



FCTC

WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

FCTC/COP/INB-IT/3/REC/2

**CONFERENCE OF THE PARTIES
INTERGOVERNMENTAL NEGOTIATING
BODY ON A PROTOCOL ON ILLICIT
TRADE IN TOBACCO PRODUCTS**

Third session

GENEVA, 28 JUNE–5 JULY 2009

**VERBATIM RECORDS
OF PLENARY MEETINGS**

***CONFÉRENCE DES PARTIES
ORGANE INTERGOUVERNEMENTAL DE
NEGOCIATION D'UN PROTOCOLE SUR
LE COMMERCE ILLICITE DES
PRODUITS DU TABAC***

Troisième session

GENÈVE, 28 JUIN–5 JUILLET 2009

***COMPTES RENDUS IN EXTENSO
DES SÉANCES PLÉNIÈRES***

GENEVA
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PREFACE

The third session of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products was held at WHO headquarters, Geneva, from 28 June to 5 July 2009. The proceedings are issued in two volumes, containing, in addition to other relevant material:

summary records of committees – document FCTC/COP/INB-IT/3/REC/1

verbatim records of plenary meetings – document FCTC/COP/INB-IT/3/REC/2.

The documentation, including the list of participants, is accessible on the following web site: <http://www.who.int/fctc/>

In these verbatim records, speeches delivered in Arabic, Chinese, English, French, Russian or Spanish are reproduced in the language used by the speaker. The texts include corrections received up to 5 February 2010, the cut-off date announced in the provisional version, and are thus regarded as final

AVANT-PROPOS

La troisième session de l'organe intergouvernemental de négociation d'un protocole sur le commerce illicite des produits du tabac s'est tenue au Siège de l'OMS à Genève du 28 juin au 5 juillet 2009. Ses actes paraissent dans deux volumes contenant notamment :

les procès-verbaux des commissions – document FCTC/COP/INB-IT/3/REC/1,

les comptes rendus in extenso des séances plénières – document FCTC/COP/INB-IT/3/REC/2.

La documentation, y compris la liste des participants, peut être consultée sur le site Web <http://www.who.int/fctc/fr/index.html>

Les présents comptes rendus in extenso reproduisent dans la langue utilisée par l'orateur les discours prononcés en anglais, arabe, chinois, espagnol, français ou russe. Ces comptes rendus comprennent les rectifications reçues jusqu'au 5 février 2010, date limite indiquée dans la version provisoire, et sont de ce fait considérés comme définitifs

ПРЕДИСЛОВИЕ

Третья сессия Межправительственного органа по переговорам в отношении Протокола о незаконной торговле табачными изделиями состоялась в штаб-квартире ВОЗ в Женеве с 28 июня по 5 июля 2009 г. Материалы сессии публикуются в двух томах, в которых, помимо других документов, содержатся:

протоколы заседаний комитетов – документ FCTC/COP/INB-IT/3/REC/1

стенографические отчеты о пленарных заседаниях – документ FCTC/COP/INB-IT/3/REC/2.

Документация, включая список участников, доступна на следующем веб-сайте:
<http://www.who.int/fctc/>

В стенографических отчетах выступления участников на английском, арабском, испанском, китайском, русском и французском языках приводятся на языке оригинала. Указанные тексты включают исправления, полученные до 5 февраля 2010 г., конечного срока, указанного в предварительной редакции, в связи с чем они считаются окончательными.

INTRODUCCIÓN

La tercera reunión del Órgano de Negociación Intergubernamental de un Protocolo sobre Comercio Lícito de Productos de Tabaco se celebró en la sede de la OMS, Ginebra, del 28 de junio al 5 de julio de 2009. Sus debates se publican en dos volúmenes, que contienen, entre otras cosas, el material siguiente:

actas resumidas de las comisiones – documento FCTC/COP/INB-IT/3/REC/1

actas taquigráficas de las sesiones plenarias – documento FCTC/COP/INB-IT/3/REC/2.

La documentación, incluida la lista de participantes, se puede consultar en el sitio web
<http://www.who.int/fctc/es/index.html>.

En las presentes actas taquigráficas, los discursos pronunciados en árabe, chino, español, francés, inglés o ruso se reproducen en el idioma utilizado por el orador. Las actas contienen las correcciones recibidas hasta el 5 de febrero de 2010, fecha límite anunciada en la versión provisional, y por consiguiente se consideran definitivas.

مقدمة

عُقدت الدورة الثالثة لهيئة التفاوض الحكومية الدولية المعنية بوضع بروتوكول بشأن الاتجار غير المشروع بمنتجات التبغ في المقر الرئيسي لمنظمة الصحة العالمية بجنيف في الفترة من 28 حزيران/يونيو إلى 5 تموز/يوليو 2009. وتُنشر محاضرها في مجلدين يتضمنان، بالإضافة إلى بعض المواد الأخرى ذات الصلة، ما يلي:

المحاضر الموجزة للجان - الوثيقة FCTC/COP/INB-IT/3/REC/1

المحاضر الحرفية للجلسات العامة - الوثيقة FCTC/COP/INB-IT/3/REC/2

ويمكن الاطلاع على قائمة المشاركين من الموقع الإلكتروني التالي: <http://www.who.int/fctc/>

وترد الكلمات التي أُلقيت بالعربية أو الصينية أو الإنكليزية أو الفرنسية أو الروسية أو الأسبانية باللغات التي تكلم بها المتحدث. وتتضمن النصوص التصويبات التي تم تلقيها حتى 5 شباط/فبراير 2010، وهو الموعد النهائي المعلن في النسخة المؤقتة، وهي بالتالي تُعتبر نهائية.

前言

烟草制品非法贸易议定书政府间谈判机构第三次会议于2009年6月28日至7月5日在日内瓦世界卫生组织总部举行。除其它相关材料外，本次会议记录分两册发布，载有：

委员会摘要记录——文件FCTC/COP/INB-IT/3/REC/1

全体会议逐字记录——文件FCTC/COP/INB-IT/3/REC/2。

可通过下列网址获取包括与会者名单在内的会议文件：<http://www.who.int/fctc/>

在逐字记录中，以阿拉伯文、中文、英文、法文、俄文或西班牙文所作的会议发言，以发言者所使用的语言复写而成。散发临时版本时曾宣布，2010年2月5日是提交文字修改的截止日期。本版本包含了该日期之前收到的修改意见，因而可视为最终版。

CONTENTS

	Page
Preface.....	iii
VERBATIM RECORDS OF PLENARY MEETINGS	
First plenary meeting	
1. Opening of the session	1
2. Adoption of the agenda and organization of work.....	3
3. Progress since the second session of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products	8
4. Revised Chairperson's text for a protocol on illicit trade in tobacco products and general debate	10
Second plenary meeting	
1. Organization of work (continued).....	30
2. Revised Chairperson's text for a protocol on illicit trade in tobacco products and general debate (continued).....	31
3. Opening of the session (continued).....	32
4. Drafting and negotiation of a protocol on illicit trade in tobacco products	33
Third plenary meeting	
Revised Chairperson's text for a protocol on illicit trade in tobacco products and general debate (continued).....	55
Fourth plenary meeting	
Drafting and negotiation of a protocol on illicit trade in tobacco products (continued).....	87
Fifth plenary meeting	
1. Announcement	110
2. Report on credentials (continued).....	110
3. Reports of the Chairs of the committees.....	111

	Page
Sixth plenary meeting	
1. Revised Chairperson's text for a protocol on illicit trade in tobacco products and general debate (continued).....	117
2. Organization of work (continued).....	136
Seventh plenary meeting	
1. Organization of work (continued).....	138
2. Reports of the committees.....	138
3. Drafting and negotiation of a protocol on illicit trade in tobacco products (continued).....	145
Eighth plenary meeting	
1. Drafting and negotiation of a protocol on illicit trade in tobacco products (continued).....	170
2. Organization of work (continued).....	190
Ninth plenary meeting	
1. Drafting and negotiation of a protocol on illicit trade in tobacco products (continued).....	191
2. Dates and venues of the fourth session of the Intergovernmental Negotiating Body and of planned work between sessions.....	192
3. Drafting and negotiation of a protocol on illicit trade in tobacco products (resumed).....	207
4. Dates and venues of the fourth session of the Intergovernmental Negotiating Body and of planned work between sessions (resumed).....	209
5. Report on credentials (continued).....	218
6. Closure of the session.....	219
<i>Indexes (names of speakers; countries and organizations).....</i>	<i>226</i>

TABLE DES MATIÈRES

	Page
Avant-propos.....	iii

COMPTES RENDUS IN EXTENSO DES SÉANCES PLÉNIÈRES

Première séance plénière

1. Ouverture de la session	1
2. Adoption de l'ordre du jour et l'organisation des travaux	3
3. Progrès enregistrés depuis la deuxième session de l'organe intergouvernemental de négociation d'un protocole sur le commerce illicite des produits du tabac	8
4. Texte révisé d'un protocole sur le commerce illicite des produits du tabac présenté par le Président et débat général	10

Deuxième séance plénière

1. Organisation des travaux (suite)	30
2. Texte révisé d'un protocole sur le commerce illicite des produits du tabac présenté par le Président et débat général (suite)	31
3. Ouverture de la session (suite)	32
4. Élaboration et négociation d'un protocole sur le commerce illicite des produits du tabac...	33

Troisième séance plénière

Texte révisé d'un protocole sur le commerce illicite des produits du tabac présenté par le Président et débat général (suite)	55
---	----

Quatrième séance plénière

Élaboration et négociation d'un protocole sur le commerce illicite des produits de tabac (suite)	87
--	----

Cinquième séance plénière

1. Communication.....	110
2. Rapport sur le vérification des pouvoirs (suite)	110
3. Rapports des Présidents des commissions	111

Sixième séance plénière

1. Texte révisé d'un protocole sur le commerce illicite des produits du tabac présenté par le Président et débat général (suite)	117
2. Organisation des travaux (suite)	136

Septième séance plénière

1.	Organisation des travaux (suite).....	138
2.	Rapports des commissions	138
3.	Élaboration et négociation d'un protocole sur le commerce illicite des produits de tabac (suite)	145

Huitième séance plénière

1.	Élaboration et négociation d'un protocole sur le commerce illicite des produits de tabac (suite)	170
2.	Organisation des travaux (suite).....	190

Neuvième séance plénière

1.	Élaboration et négociation d'un protocole sur le commerce illicite des produits du tabac (suite)	191
2.	Date et lieu de quatrième session de l'organe intergouvernemental de négociation et des travaux intersessions prévus.....	192
3.	Élaboration et négociation d'un protocole sur le commerce illicite des produits du tabac (suite)	207
4.	Date et lieu de quatrième session de l'organe intergouvernemental de négociation et des travaux intersessions prévus (reprise)	209
5.	Pouvoirs des participants (suite)	218
6.	Clôture de la session.....	219

	<i>Index (noms des orateurs; pays et organisations).....</i>	226
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VERBATIM RECORDS OF PLENARY MEETINGS**COMPTES RENDUS IN EXTENSO
DES SÉANCES PLÉNIÈRES****FIRST PLENARY MEETING****Sunday, 28 June 2009, at 15:20****Chairperson:** Mr I. WALTON-GEORGE (European Community)**PREMIÈRE SÉANCE PLÉNIÈRE****Dimanche 28 juin 2009, 15h20****Président:** M. I. WALTON-GEORGE (Communauté européenne)**1. OPENING OF THE SESSION
OUVERTURE DE LA SESSION**

The CHAIRPERSON:

Ladies and gentlemen, a very warm welcome to the third session of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products, which of course is to negotiate the protocol on tackling illicit trade in tobacco products under the aegis of the WHO Framework Convention on Tobacco Control. I have been using the 15 minutes before we started just to look around the room and I am very pleased to see that there are a lot of well-known faces in the room, but also a good smattering of new faces; so I think that with experience and with fresh ideas we will be in a very good position to make progress during the course of this week. We do have a long and intensive week ahead of us. We have eight days in which to achieve a very great deal, but I am certain that by the end of this week we will have achieved very substantial progress. My first task, therefore, is the very pleasurable one of declaring this session of the Intergovernmental Negotiating Body formally open.

One practical arrangement: as you know, the seating arrangements for the meeting are drawn by lot to decide who has the pleasure of sitting in the front row. I have been informed that this year the Convention Secretariat has done the drawing and the letter "A" was drawn and therefore the seating order starts with our colleagues from Albania; so congratulations to Albania for being in the front row. However, I have been informed that you would prefer to sit in your regional blocks in order to facilitate your discussions within each region. This seems to be a very good and practical arrangement and, therefore, we will make sure that, from tomorrow morning, the seating is arranged in the regional blocks so that you will be able to consult your colleagues whenever I ask you a difficult question.

Election of officers
Élection du bureau

The CHAIRPERSON:

Going on to the agenda which we have before us, we have agenda item 1.1, which is the election of officers and I just need to remind you of some aspects of the formal situation. Under Rule 28 of the Rules of Procedure of the Conference of the Parties, since we are a subsidiary body of the Conference, we elect our own officers. The Conference decided at its third session in Durban in South Africa last November that the second term of the officers should include the sessions of the Intergovernmental Negotiating Body which are held between the third and fourth sessions of the Conference of the Parties. The first term of the officers of this Intergovernmental Negotiating Body has lapsed. This session, therefore, has to elect, or to re-elect, the officers for a new term, and Rule 28 again makes it clear that the officers of the Intergovernmental Negotiating Body shall not serve for more than two consecutive terms; the existing officers are therefore eligible for re-election; but equally, new officers can be elected during this session. The first thing, therefore, is to determine the Chairperson of the Intergovernmental Negotiating Body. I have not heard any proposals, other than from my own region so far. My own region, the European Region, has proposed that I should continue as Chairperson of the Intergovernmental or the next two sessions; but obviously if there are other candidates I am very willing and ready to hear them. So are there any other candidates for the post of Chairperson of the Intergovernmental Negotiating Body? I see no other candidates; I therefore thank you very much for your confidence. I do appreciate the confidence that you have placed in me and it is a pleasure to chair this group, which is a dynamic and vigorous one where we do have an extremely good exchange of views. I shall try to live up to your expectations and, with your support, I am sure that we will meet our objectives. Thank you once again for the confidence that you have shown in me.

(Applause/Applaudissements)

We need to look at election of Vice-Chairpersons for the Intergovernmental Negotiating Body. We have had some initial consultations with the various regions and I am pleased that in five of the regions we do have nominations: from the African Region we have Ghana and Mrs Asiedu; from the Region of the Americas we have Mexico and Mr Regalado Piñeda; from the Eastern Mediterranean Region we have the United Arab Emirates and Dr Al Mansoori; and from the South-East Asia Region we have the Maldives and Mr Mohamed, but we do not have a proposal from the Western Pacific Region. We will need to have a proposal from that Region as early as possible and I would urge the Western Pacific Region to let us know tomorrow morning who their candidate is for the Bureau so that we can then convene the full Bureau again. First of all, are there any objections to the names I have read out for the five Regions that have nominated their Bureau members? I see no objections; the representatives I have mentioned are therefore elected as Vice-Chairpersons and we will wait for the Western Pacific Region to tell us tomorrow who their candidate is, and there will have to be a formal decision in the plenary just to confirm that person.

Normally, the order in which the Vice-Chairpersons sit on the podium or take over from me if I am indisposed is drawn by lot. However, since we do not have all the candidates as yet, clearly we cannot do that at this stage, so we will proceed to that part of our organizational activity tomorrow morning, once we have the names of all the candidates available. That is as far as we can go with agenda item 1.1.

Report on credentials
Rapport sur la vérification des pouvoirs

The CHAIRPERSON:

I would like to pass on to item 1.2, Report on credentials. These are the credentials of the participants in the Intergovernmental Negotiating Body and, in accordance with the Rules of Procedure, I would like to propose that the Bureau examine the credentials of the Parties participating

in this session and report to you, in writing, at a later meeting of the plenary. The next meeting of the plenary is tentatively scheduled for Wednesday afternoon and therefore we will give you a report of the situation at that stage. Is this proposal that we should report in writing to the plenary on Wednesday on the status of credentials acceptable? Again, I see no objections; thank you. It is so decided. This concludes our consideration of agenda item 1.2.

2. ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK ADOPTION DE L'ORDRE DU JOUR ET L'ORGANISATION DES TRAVAUX

The CHAIRPERSON:

We now move on to item 2, Adoption of the agenda and organization of work. The two items there, I think, can be split, and I suggest we look at the agenda first and then we shall come to the method of work at a subsequent point. You have before you document FCTC/COP/INB-IT/3/1 which contains the draft agenda for this meeting. Are you happy with the agenda as presented to you in that document? Very good. I see no objections, so the agenda is adopted as you have it in that document.

I would like to turn now to our method of working. I think that the most practical way is to look at how we have organized our work in the past at the sessions of the Intergovernmental Negotiating Body, and at the sessions of the Conference of the Parties and, specifically, to establish two committees that will work in parallel with the purpose of accomplishing the work that is before us in negotiating the detailed text of the protocol. Each of the committees could take on roughly half of the work in relation to the protocol, in other words half of the Chairperson's text. The committees can then report back to the plenary at times which we can agree on, but certainly the first report back should be no later than Wednesday. I shall provide you with a proposal for the division of the work between the two committees after I have presented the Chairperson's revised text to you under agenda item 4, but there should be no surprises there; it will be similar, if not identical, to the split that we had for the second session of the Intergovernmental Negotiating Body. The committees have the possibility of setting up working groups on any particular topic if they feel that this is a good way of taking forward detailed discussions on essentially technical or legal issues. This would facilitate the work of the committees in reaching agreement on the text. Can I take it then that this session of the Intergovernmental Negotiating Body would accept the proposal that we should set up two committees to work in parallel and that we should give the option to those committees to set up working groups as they see fit? Is that agreeable?

Mr ALBUQUERQUE E SILVA (Brazil):

Good afternoon, Mr Chairperson. It is a pleasure to see you; congratulations on your re-election. We are very pleased to be working here with you. Mr Chairperson, as for the splitting of our work, Brazil believes that there is a difficulty in choosing which items or parts of the draft protocol are going to be designated to discussions in each committee. The plenary needs to determine the items contained in Parts I and II. In our view, during the last session it was impossible to reach agreements in smaller groups, especially on the scope of the protocol. For Brazil, the definition of the scope of the protocol is a core issue that has to be dealt with by the plenary. So we agree that, at some point, it will be necessary to split our work into two committees, but we need to discuss in plenary the scope of the protocol and Parts I and II of the draft protocol. That is our position. Thank you very much.

The CHAIRPERSON:

Thank you very much indeed, Brazil, and thank you for your kind words. I give the floor to Mexico.

La Sra. MADRAZO REYNOSO (México):

Buenas tardes y felicidades. Coincido plenamente con lo que acaba de señalar el delegado del Brasil. Esta mañana, cuando me reuní con los delegados de las Partes de la Región de las Américas, les comenté esta posibilidad o propuesta de dividirnos en dos comités para abordar las diferentes partes del Protocolo propuesto, además de lo ya señalado por el Brasil, en el sentido de que consideramos que debería decidirse en reunión plenaria la forma en que habría que dividir el análisis de algunos apartados del presente Protocolo. Las Partes de la Región de las Américas manifestaron su preocupación y recomendaron que en la medida de lo posible se creara el menor número posible de comités porque las delegaciones pequeñas tendrían problemas para poder participar en ellos. Por otro lado, como el Protocolo aborda temas transversales que implican a varios ministerios de nuestros países, la subdivisión en dos comités y después en subcomités afectaría la capacidad negociadora de nuestras delegaciones. La división en dos comités podría afectarla, y si creáramos subcomités podría afectarla aún más. Asimismo, las Partes de la Región se pronuncian por que las partes 1 y 2 del Protocolo se negocien en la reunión plenaria y que comencemos por revisar el alcance del propio Protocolo.

The CHAIRPERSON:

Thank you very much indeed, Mexico. Are there any other comments on this part of the work? I think that there is a clear desire for Parts I and II to be looked at in the plenary. I certainly have no objection to that. I think, then, that we will note that Parts I and II will be looked at in the plenary and the other Parts will be split initially between the two committees. I have noted that for smaller delegations it is difficult to split themselves into any great number of groups. Occasionally it may be necessary to have a working group if there is a really technical issue; but the working group can report back to the committee so that the smaller countries at least have a chance to hear the outcome of a working group and to contribute to that debate because the amount of work to be done this week is so enormous – and the point we have to reach at the end of this week is that we must have agreed on a fair amount of the text of this protocol – that we shall have to be a little flexible in how we tackle the work. But I have very carefully noted Mexico's point about the smaller delegations, and Parts I and II can certainly be dealt with in the plenary. We shall therefore organize our work to make sure that that can take place.

Subject to those comments, are you happy with the general approach to the work that we must do during this week? Thank you for that. It is so decided. This is how we shall operate.

The committees themselves will need very good and very strong Chairs in order to drive the work forward and we will need one Chair each for Committees A and B, and two Vice-Chairs for each of the committees and, as far as possible, we should have equitable geographical representation. This would result in three officers per committee, and I have received some indications already from the regions of people who would be willing to serve on those committees, but the officers obviously have to be elected by the committees themselves. Nevertheless, I think it is good to draw to your attention to the nominations that have come forward so far, so that you can take account of them and see if you would agree. The names that have come forward to me so far are: for the Chair of Committee A, which will deal with Part III of the protocol – which is the technical tracking and tracing, licensing and so on – there has been a nomination from the Islamic Republic of Iran, Mr Shakerian, who, I am sure you will remember from the third session of the Conference of the Parties in Durban, did an excellent job in chairing Committee A in that context. We have one proposal for a Vice-Chair from Nigeria, Dr Anibueze, and we are looking for a second Vice-Chair for Committee A.

I have not received any proposals for the post of Chair of Committee B, which will be looking at the more legal aspects of the proposal. However, I have received two proposals for Vice-Chairs of Committee B: one from the Russian Federation, Mr Salagai, and one from Sri Lanka, Mrs Demuni de Silva. Those are the names that have come forward so far, and, clearly, when you go into your meetings you will be able to take a formal decision about the Chairs and the Vice-Chairs. In the meantime, if you have any further nominations, particularly for the Chair of Committee B and for the remaining Vice-Chair of Committee A, please feel free to come forward to the Convention Secretariat so that we can take note of them and pass on that information to you as part of your considerations.

We shall come back to this once we have all the proposals, but I would recommend to you that these nominations should be considered by the committees. Would you agree that these nominations can be considered by the committees when they come forward?

Ms HEFFORD (Australia):

Mr Chairperson, allow me also to congratulate you on your reappointment to chair these proceedings. I do not want to comment on the proposed colleagues for the positions of Chair and Vice-Chair of the committees. I want to go back, if it is possible, just a few minutes to the point where you described the way in which you saw the work being divided between the two committees and you indicated that you were willing to elaborate more on that. I wonder if you would be able to elaborate a little more for all of us on the scope of the work of the two committees because that might help some of our colleagues to feel sufficiently generous to volunteer their time, and in doing so if you could please also say how much time you think we need in plenary to deal with the issues that you have agreed will be dealt with in plenary prior to separating into the two committees. I would like us to be clear about how the work will be managed over the next two or three days. Thank you.

The CHAIRPERSON:

Thank you very much, Australia. Certainly, I am happy to give you the split that I have in my mind between the two committees, which is broadly the same as we had for the second session of the Intergovernmental Negotiating Body. Committee A would take the whole of Part III, which is on supply chain control, Articles 5 to 11. Committee A would also deal with Articles 15 to 19 of Part IV: Offences and sanctions.

Committee B would look at Articles 12 to 14 in Part IV: Offences and sanctions. Then Committee B would look at Part V: International cooperation, comprising Articles 20 to 33 of the protocol on: assistance and cooperation; investigation and prosecution of offences; protection of sovereignty; jurisdiction; joint investigations; law enforcement cooperation; mutual administrative assistance; mutual legal assistance and extradition. Those would be blocks of work which would be split between the two committees.

However, the proposed working method left certain areas of the text still unaccounted for. For example, Parts I and II, Introduction and the General obligations, could be discussed in plenary; but that would leave Parts VI to IX, which contain the organizational and financial aspects, and Part X: Final provisions. I would be inclined to leave Parts VI through to X until later in the week. If there is time in one of the committees, I would propose that it look at those parts of the proposal since they are constitutional issues, if you like, relating to financing, the Convention Secretariat and so on. I know that there are strong views on this, particularly on the financing, and therefore it needs to have a proper discussion in the appropriate forum. If one of the committees gets through its work on the other items in the protocol, I will give that work to the committee, otherwise it will have to come back into the plenary to have a proper discussion through all of those items because, by the end of this week we need to have looked in detail at the wording, the drafting and the issues, so that we are all comfortable when we go home that there has been a proper examination of those points.

As regards the timing of the discussion of Parts I and II, the choice is between doing that immediately in the plenary, or once the committees have done some of their work, since some of the committee work will have an impact on Parts I and II. For example, if the committees decide they do not want something in Parts III or IV, that affects the scope and it affects the definitions and so on. I am open to suggestions in that regard. My initial inclination had been to leave that until after the committees had done some of their work; but I am in your hands and I would welcome suggestions.

La Sra. MADRAZO REYNOSO (México):

Esta mañana, cuando en la reunión con los delegados de las Partes de la Región de las Américas comentaba la propuesta de dividirnos en dos comisiones, dichas Partes manifestaron que, en su opinión, el apartado 4, que tiene que ver con sanciones y ofensas, debiera ser analizado en su conjunto por la misma comisión. Nos preocupa que este apartado se divida en dos comisiones y consideramos

que la misma comisión que aborde el apartado 4 en su conjunto debería ser el que abordara el apartado 5. Entendemos que la carga de trabajo recaería sobre la comisión que abordara todos los apartados, y entonces quizá la comisión que se ocupara del apartado 3 podría dedicarse a analizar los puntos de los apartados 6, 7, 8, 9 y 10.

The CHAIRPERSON:

Thank you very much. Are there any other views on that proposal from Mexico?

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, just to support what has just been said by the Mexican delegation and give a reason why Brazil prefers to split the work of the committees according to the explanation given by the representative of Mexico. We have in our delegation just one expert on the judicial aspects, and this person is here, to deal with Part IV of the draft protocol. If we split the negotiation of Part IV of the protocol into two committees, he will be unable to follow the work done on this issue properly. Therefore, for this specific reason, Part IV has to be dealt with by one committee alone, and Part III has to be dealt with by the other committee. I believe that many delegations will face the same difficulty we do.

Another point we would like to mention is that Brazil believes that we should discuss the scope of the protocol in plenary before going into the work of the committees. The reason is that, in our view, we would not be able to avoid discussing in the committees the inclusion in the future protocol of tobacco manufacturing equipment and all other items that some delegations might consider relevant to the protocol. If we discuss these matters in the committees before they are dealt with in plenary, it will prejudice what the plenary believes is essential and has to be part of the protocol. We would therefore prefer to initiate our work in plenary, discussing Parts I and II of the draft protocol before splitting into two committees. I must stress that when we split, in our view, we should not include items of Part IV in both committees, but in one committee alone. Thank you very much.

Mr SAINT-DENIS (alternate to Mr Leguerrier, Canada):

Mr Chairperson, Canada also supports the view expressed by Brazil and Mexico. In our view, the elements contained in Parts IV and V are interrelated and therefore the same committee should deal with them. The fear is that if elements of the two Parts were dealt with in separate committees, it would be possible to end up with either conflicting or contradictory elements, which would not further the progress of this document. Thank you.

Mr GÖRÜN (Turkey):

Thank you for giving us the floor. In our view, two different committees should discuss Part III on the one hand and Parts IV and V on the other. For example, Committee A would deal with Part III and Committee B would deal with Parts IV and V. Then, after those discussions, perhaps Parts I and II could be revised, so that Parts I and II would be discussed by the plenary once the committees had produced their results. Thank you.

Mr AL BAKER (United Arab Emirates): ()

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The CHAIRPERSON:

Thank you. That is quite delicate.

Mr PADILLA (Philippines):

Mr Chairperson, we support the position of Brazil, Canada and Mexico in relation to the method of work for Parts IV and V, but more particularly Brazil's proposal that we should deal with Parts I and II in plenary before moving into the committees. Thank you.

Mr AZOFF (Israel):

Mr Chairperson, I would like to congratulate you on your re-election. There is just a technical problem I would like to raise because the offences and sanctions in Article 12, for example, might be dependent on decisions of Committee A on what they want to license, as well as other things. We might therefore wish to take that into consideration. Perhaps someone can suggest how that could be coordinated. Thank you.

Mr HAYAKAWA (Japan):

Mr Chairperson, I would like to join others in congratulating you on your reappointment. Having said that, we would like to support Brazil's proposal that Parts I and II be discussed in plenary. Thank you.

El Dr. RADA ESCOBAR (Colombia):

Queremos insistir en que en esta división se tenga en cuenta en qué momento vamos a revisar el alcance del Protocolo porque nos preocupa que pudiera desbordar el propio Convenio Marco u otros acuerdos de otros tipos de convenios relativos a la salud.

The CHAIRPERSON:

Thank you very much, Colombia. What I would suggest, then, is that we have a look at the scope in plenary. I do not think it is useful to discuss the definitions straight away in plenary, because they will change. I am happy to look at the scope and if there is a link to any of the particular definitions as a result of the scope, we could perhaps have a first look at that: that would be Article 3. If I remember correctly, Article 3 would be the scope of the protocol and Article 4 would be the general obligations under Part II. The relationship between the protocol and other agreements, which is Article 2 of the Chairperson's text at the moment, is one that is very closely linked to some of the issues that come later in the draft text, because we have tried to fit it all together. However, I think I would suggest that in plenary we discuss Articles 2, 3 and 4, although I would like to start with Article 3 on the scope of the protocol first of all. Therefore, that would be our first session in plenary.

As regards the splitting of the work in the committees, among those people who have spoken, there is clearly an overwhelming view that Part IV should be looked at by Committee B. Now, that is an awful lot of work for that Committee to do. It will probably be quite complex. At the moment I am prepared to start the work of the two committees with Committee A looking at Part III and see how it gets on, and Committee B starting with Part IV. Committee B can look at the whole of Part IV, but I really want it to look at the more legal aspects, because it is those that are likely to cause the most difficulty and it is those which have come up from your regional meetings. We shall look at Parts VI onwards to see whether they should go into Committee A or whether we deal with them in plenary, but I think we have to split as much as possible into the committees; otherwise we are not going to get through all this work.

Therefore, for the moment I am going to allocate, provisionally, Parts VI to X to Committee A, and Parts IV and V to Committee B. When we have our plenary session tomorrow morning – because we have to come back to plenary tomorrow morning in any case to approve the Bureau member for the

Western Pacific Region – we will then start to go through those elements of Parts I and II that I have indicated and we will get down to some of the drafting (because it is important that we do not have too much general debate on this) and see how we actually put your thoughts into black and white. We may have the text up on the screen behind me and we will do the drafting on that. However, I would want to split into the committees at the very latest by the end of tomorrow; that would be the target so that we can be in the committees on Tuesday and Wednesday morning and have an initial report back to the plenary on Wednesday afternoon.

If the committees feel they need a little more time, we can always postpone coming back into the plenary until Thursday morning. But that would be my proposal: to spend, at most, tomorrow in the plenary and then split up into the committees. Is that an acceptable way forward? Does anybody feel that they cannot live with that? We will do that then. We will have our debate in plenary tomorrow; we will try and get through that efficiently and rapidly and we will aim to go into the committees at the latest by Tuesday morning.

Thank you very much for your suggestions. It is very helpful to have a sense of how things should be discussed; we will proceed on the basis of your comments. Thank you very much. I think we have agreed that the agenda and the organization of work are adopted as I have just described.

3. PROGRESS SINCE THE SECOND SESSION OF THE INTERGOVERNMENTAL NEGOTIATING BODY ON A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS
PROGRÈS ENREGISTRÉS DEPUIS LA DEUXIÈME SESSION DE L'ORGANE INTERGOUVERNEMENTAL DE NÉGOCIATION D'UN PROTOCOLE SUR LE COMMERCE ILLICITE DES PRODUITS DU TABAC

The CHAIRPERSON:

We pass on to agenda item 3, Progress since the second session of the Intergovernmental Negotiating Body. The relevant documents are documents FCTC/COP/INB-IT/3/2 and FCTC/COP/INB-IT/3/INF.DOC./1. I would like to ask Dr Nikogosian, Head of the Convention Secretariat, to present this item.

Dr NIKOGOSIAN (Head, Convention Secretariat):

Distinguished Chairperson, ministers, delegates, participants and colleagues, the progress report summarizing activities after the second session of the Intergovernmental Negotiating Body, presented as part of the working papers of this session, is document FCTC/COP/INB-IT/3/2 of 21 May. The report includes an update on the status of the WHO Framework Convention on Tobacco Control, the preparatory work for the third session of the Intergovernmental Negotiating Body, as well as international coordination and other related developments. I trust that delegates and participants have already had a chance to review the document. I will therefore be brief, focusing mainly on the developments that took place after 1 May, when this document was finalized for release.

In relation to the status of the WHO Framework Convention on Tobacco Control, which is summarized in paragraph 2 of the report, I would like to inform the Intergovernmental Negotiating Body that one more country has ratified the Framework Convention in May 2009, in addition to the 164 Parties already referred to in the report. This brings the number of Parties to the Convention as of today to 165. We are pleased to welcome, therefore, Costa Rica, Guinea-Bissau and Suriname, who are joining the negotiations as Parties to the Convention for this protocol starting from this session.

I would like also to use this opportunity to inform the Intergovernmental Negotiating Body that, as of this moment, we have 135 Parties to the Convention registered to attend this session. Another 10 States that are not Parties to the Convention are attending as observers and two international intergovernmental organizations and seven nongovernmental organizations are also attending as observers.

The Intergovernmental Negotiating Body presented a progress report to the Conference of the Parties at its third session, which was held in Durban, South Africa, in November 2008. The report is presented in the working package of this session for your easy reference. As you know, the Conference of the Parties took note of the progress report and requested the Intergovernmental Negotiating Body to continue its work; and the Conference of the Parties also confirmed the initial target of having the draft proposal for a protocol submitted to the next Conference of the Parties in 2010. Therefore, 2010 was the target from the beginning and so it remains after the review of the progress report.

The work after the second session of the Intergovernmental Negotiating Body was centred on the three main components as outlined by the second session – namely, the elaboration of the expert reviews regarding several areas on which the Intergovernmental Negotiating Body wished to have more detailed information – and they were organized by the Secretariat as proposed. The second element was the elaboration of the revised Chairperson's text for submission to this session; and finally, there was a third component, the regional consultations prior to the third session of the Intergovernmental Negotiating Body to assist the Parties in their preparations.

The elaboration of the expert reviews and the revised Chairperson's text were achieved as planned. The progress report contains the relevant information about his work and it is also presented through the relevant documents as part of the working documentation of the Intergovernmental Negotiating Body. You all have them. The Convention Secretariat will also release an additional information document on Monday, concerning the assessment of requirements at national level for an international tracking and tracing system that the Secretariat was requested by the Chairperson of the Intergovernmental Negotiating Body to convene in relation to the release of his revised text. That work was achieved in the last two months; the report just finalized will be released for your consideration and for your information tomorrow in all six languages.

The regional consultations constituted the third principal component of the intersessional work and they were convened during the six weeks that preceded the third session of the Intergovernmental Negotiating Body. In fact, it was quite an extensive schedule of events. We needed to convene six regional meetings within six weeks and another four or five briefings for the missions here in Geneva. I am very pleased that this work was done with very great and supportive cooperation from the governments concerned. Four of the six regional consultations were convened in the respective regions, in cooperation with those governments, and two regional consultations out of the six were convened here in Geneva: one for the European Region and one of the African Region.

May I take this opportunity to thank very warmly the Governments of Bangladesh, China, the Islamic Republic of Iran and Mexico for so graciously hosting and supporting the regional consultations in their respective capitals. We highly appreciated the arrangements and the hospitality and their very great support. May I also thank the Governments of Djibouti and Kenya, and again the Government of Bangladesh, for the cooperation and support they extended to the Convention Secretariat in convening the country-level assessment for an international tracking and-tracing system in relation to illicit trade in tobacco products. That is also very highly appreciated. Thank you very much.

The progress report, distinguished delegates, also refers to the work of the Bureau of the Intergovernmental Negotiating Body. The first intersessional meeting of the Bureau was convened in early February as outlined in the progress report. I would like to inform you that one additional meeting of the Bureau was convened today, earlier in the morning, and it reviewed the proceedings and the arrangements and the planning for this session. The European Commission provided significant funding to support the organization of the third session of the Intergovernmental Negotiating Body. We are very grateful for that, and I would also like to say that the Convention Secretariat worked in very close cooperation with representatives of the Commission on several practical arrangements for the session.

Distinguished Chairperson, delegates and participants, the Convention Secretariat is committed to continuing to support governments as requested and necessary. Let me also refer to the very valuable cooperation and assistance that we have been receiving from departments of the WHO Secretariat and from WHO country and regional offices in support of the negotiations. May I use this opportunity to thank the Parties to the Convention, governments and international partners for the overall support and cooperation we have been receiving for the Framework Convention process and

in, particular, for the organization of the Intergovernmental Negotiating Body after the second session. We will be at your disposal to support your work in future.

For this particular session, and following the request from the Intergovernmental Negotiating Body for guidance, we also invited a group of distinguished international experts to attend the session and to provide us, and mostly the delegates, with support on many technical issues, particularly those relating to the expert reviews. In fact, some of the international experts who participated in this process are now present. We were also very much guided by your request to invite one of the United Nations convention secretariats to be present and to provide support and clarification as may be necessary. They are invited and they will participate throughout the session. Consequently, the group of experts, including representatives of the Secretariat of the United Nations Convention against Transnational Organized Crime, will be at your disposal, in addition to the regular staff of the Convention Secretariat.

Thank you very much for your attention and thanks again to all the bodies, experts and, particularly, governments that have supported the intersessional work and have remained at our disposal for further support. Thank you.

(Applause/Applaudissements)

The CHAIRPERSON:

Thank you very much, Dr Nikogosian. Are there any comments or questions or requests for clarification that you would like to put to Dr Nikogosian? No, very good: that was obviously a very clear presentation. Thank you very much.

That concludes our consideration of item 3. However, before we go on to item 4, I would like to add my own congratulations to Costa Rica, Guinea-Bissau and Suriname on joining us in the debates today. We look forward to your contributions and it is a very welcome addition to the number of countries that we have as participants. Thank you. Of course, it would be remiss of me not to thank the European Commission, and particularly the European Anti-Fraud Office, for their very generous financial contribution to the running of this session. I know that there is a desk here in the conference centre, that is operated by the European Anti-Fraud Office and where you can see literature about "OLAF", as it is called, and their activities for combating cigarette fraud.

**4. REVISED CHAIRPERSON'S TEXT FOR A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS AND GENERAL DEBATE
TEXTE RÉVISÉ D'UN PROTOCOLE SUR LE COMMERCE ILLICITE DES PRODUITS DU TABAC PRÉSENTÉ PAR LE PRÉSIDENT ET DÉBAT GÉNÉRAL**

The CHAIRPERSON:

We shall now consider agenda item 4, and we are getting into the substance now. Item 4 is the revised Chairperson's text for a protocol on illicit trade in tobacco products; as you know, at the end of the second session of the Intergovernmental Negotiating Body you requested me to produce a revised text and this has been done in document FCTC/COP/INB-IT/3/3. I am sure all of you have this in your package of documents. When I drafted this text, I was obviously guided by the discussions that had taken place at the second session of the Intergovernmental Negotiating Body and also by the written submissions that had been made during that time, as well as before and after. I had assistance from experts and legal advisers on a number of matters and I would particularly like to thank the Convention Secretariat for all the help that they gave me in producing the text, as well as the experts involved.

Since you have the text in front of you, I do not intend to go through every single item of it, but I would like to give you a brief overview of what has happened and focus on the main changes that have occurred between the Chairperson's first text, which we looked at during the first session of the Intergovernmental Negotiating Body, and the revised Chairperson's text which we now have here. There are some general points that I think it is important to emphasize. I have not changed the main

structure of the Chairperson's text. It still consists of 10 Parts, and it is broken down into the five main areas that you see in the text itself: the introduction, the substantive sections of the text, as I would call them, which are Parts II to IV; the sections dealing with international cooperation, record keeping, and institutional arrangements; and the final clauses. I have made a small change to the title of Part IV; it was previously called "Enforcement", and I have changed it to "Offences and sanctions" because I think that more properly reflects the contents of Part IV. We have also numbered the provisions so that our debate would be much easier to target, and the references are also included. I also recall there have been suggestions that we should amend the title of the protocol to say something like "protocol to combat or to eliminate illicit trade in tobacco products". I think that is a good idea. I did not feel that I could put it in myself, but if that is something that comes out of our discussions over the next few days, we can amend it because the purpose of the protocol is clearly to eliminate or combat illicit trade, or both.

The following provisions are, in my view, the main ones which have had a change. You will recall that the previous text had a reference to "key inputs". I did have that terminology in square brackets because we recognized at that time that we needed to define what key inputs actually were. During the intervening period we have had a look with the experts to see if there are certain items that can be used uniquely in the production of tobacco products or in the machines which produce tobacco products. Because what we did not want to include in the protocol were things that had a multitude of uses and which would therefore cause a problem for other types of trade if we tried to license them or track and trace them.

I also took legal advice about whether "key inputs" could be included in the scope of the protocol because this was a significant point that had been raised at the second session of the Intergovernmental Negotiating Body. WHO's Legal Counsel has given you his very clear advice in document FCTC/COP/INB-IT/3/INF.DOC./6, saying that it is possible to include "key inputs" in the draft protocol; but of course, then we have to identify what those key inputs are. And as I say, the research that we have done has not been able to identify a key input that is used only in the manufacture of tobacco products; and for this reason I decided not to include the term "key inputs" in the revised text. Clearly that is an item which can be discussed in the committees, but that is the reasoning behind the change that was made.

I have changed the preamble quite substantially, and that is in the light of the comments that were made in discussions the last time we were together. In particular, we have put in references to public health, as well as to the Framework Convention itself, because those were the two points that several delegations raised when we were looking at the earlier preamble. The preamble will have to be looked at again, but as I said earlier, it is something that needs to be linked to the rest of the text and is therefore one of the last items we will finalize.

In my opinion, the technical heart of the protocol is still Part III, which is aimed at combating the illicit trade in tobacco products and the machine used therein, and it aims to do that through the control and regulation of the supply chain for those items. The key purpose is to prevent, detect and investigate illicit trade, both at national and at international level and it is really the one item key to the way that I have drafted this text. The scheme itself – the tracking and tracing scheme – covers tobacco products, but also the machines that are used to produce the tobacco products, and it is there in order to avoid leakages from the legal trade in tobacco into the illegal trade. The more we can ensure that the legal trade follows tough obligations, the more we can be sure that their products are not going to slip into the hands of criminals. It then gives us an opportunity to target, even more vigorously, counterfeit cigarettes and counterfeit tobacco products, which may be even more harmful to health than genuine cigarettes. Our objective is to control the legal trade to avoid the legal product slipping into the illegal market.

The other element of the tracking and tracing system, which I want to heavily emphasize, is that we need an international system. We have 165 Parties to the Framework Convention. If we have a protocol that applies to the maximum number of Parties, we need a tracking and tracing system that has global application. And this is why whatever system we end up with has to apply on an international basis. Tobacco products are traded internationally, they are moved internationally and the people who produce them are based in all countries around the world. If we do not have a system that can cope with that real situation, then we will not achieve our objective, in my opinion.

In order to do this, I have proposed in the text a set of key data which should be recorded and made available to the Parties under certain circumstances. The key data would be recorded by the manufacturers or by importers if the imports of the tobacco products and machinery come from a non-Party. These key data are linked to the unique markings that are on the packaging of tobacco products. The key data itself are not in the unique markings on the packets of cigarettes or on the cartons or on the master cases. There is too much information to have it all in that single unique marking. But the marking needs to be linked to a database which contains the key elements: who is the first customer? What is the market of intended use of the products? And so on. That is the way in which the authorities in your countries will be able to look at how goods got into the illegal channels and stop it from happening again.

The proposal that I have made in the text is that these data, which are collected by the manufacturers and the importers, are sent to a central point in each party, they are gathered in a database in each of your countries, and they are gathered on a regular basis. I have suggested that it could be on a daily basis, but that is a detail. It is something which is open for discussion, but regularity is important. I have suggested that the second stage is that the data in the national central point should then be passed to an international clearing house that would establish its own database and I have proposed that that database should be run here in Geneva by the Convention Secretariat.

This is one way of creating an international system, because it means that if there is a seizure of cigarettes or tobacco products or machinery in any of your countries, you can send the unique identifying mark on the master cases of cigarettes to your central point. The central point can send it to the international clearing house and there will be a link there between the unique identifier on the packaging and the data elements, such as the customer, the way it has been moved, the person who has paid for it, and so on. That is how the links can be created so that wherever the seizure takes place, you can always obtain the key data elements. Now I am certain that this is going to be the subject of lively and energetic debate: there will be creative ideas about how this can be operated, and this is certainly not the only way in which an international tracking and tracing system can be created. A lot depends on the information technology systems which can be put in place but, as well as moving large amounts of data around the world, it is possible to leave the data where they are and simply set up a web-based query system. In order to help you with those sorts of debates, the Convention Secretariat has its information technology personnel available to help you in the committees. If you have questions about the proposal which is in the text itself, the information technology people will be able to explain to you how it will work in practice, what sort of equipment is needed, how much time and effort and so on will be required. Equally, if you have proposals for different systems, they will be able to give guidance about whether it is practical, and again what sort of infrastructure you would need in order to set up this system or a different system.

There is scope for some flexibility in this area, but I really have to emphasize that for an international tracking-and-tracing system we have to have a basis of agreement on key data elements, we have to set the standards that all the Parties must meet; the Parties may be able to meet them in different ways, but they need to be interactive so that we can obtain information wherever a seizure takes place. The precise mechanisms might be able to be adjusted, depending on your national circumstances, but there has to be a necessary minimum of compatibility and equivalence between the outcomes and the effects of the systems. You cannot have 165 different systems; they have to be different but compatible. That is a challenge, but I think it is possible and, as I say, the one that I have proposed at least works in principle, but there are difficulties attached to it. One of the big jobs of Committee B will be to look at this. The Committee may have to have some brain-storming sessions, they may have to try and put a few experts together and say "this will work, this will not work", but you must bear in mind, at all times, that it has to be a global and international system that will work whenever and wherever there is a seizure of smuggled or illegal products. Therein lies a real challenge for you.

The next point I have put in is Internet sales. You recall that at the second session of the Intergovernmental Negotiating Body we had a very lively discussion about whether we could ban Internet sales of tobacco products, and by "Internet" we meant the Internet or similar technological systems. In the end I have proposed two alternatives because I think there is a political decision to be made here. The first alternative is broadly what we had in the first version of the Chairperson's text, and that was to have Internet sales allowed but applying all the provisions of the protocol to the persons operating the Internet sales: in other words, licensing, the know-your-customer regime and so on.

The second option is to ban Internet sales. We took expert advice on this, first of all to know whether legally this is possible, and you will see from document FCTC/COP/INB-IT/3/INF.DOC./4 that it is legally possible and it is consistent with other international obligations to ban Internet sales. Of course, there are even options within that option. We could ban Internet sales to final consumers, while still allowing businesses to conduct normal business with one another, because we are not really looking at a problem of business-to-business sales. We are looking at a problem of business-to-consumer sales. If you look at some of the main sites on the Internet which offer cigarettes for sale, you will find that these target consumers; and the way they advertise themselves is broadly to say: "You will not have to pay any tax or duty if you buy these cigarettes from us. And even if you do have to pay the duties and taxes you can simply send the cigarettes back to us and we will refund your money". The prime intention of these Internet sites that are selling to consumers is to evade taxes and duties and to put cheap cigarettes into the hands of consumers and, therefore, into the hands of the more vulnerable sectors of our societies. There is something that has to be done with that element of Internet sales at least. But the choice is between regulation and banning or a combination of banning certain sales and regulating other sales which are between businesses. I think that Committee B will need to have a very good look at that part of the draft as well.

The relationship with other international agreements is a subject on which you raised many concerns the last time we had our discussions and, in particular, the link with the United Nations Convention against Transnational Organized Crime. The Convention Secretariat and I have had close discussions and close cooperation with the secretariat of the United Nations Convention against Transnational Organized Crime, just to get a better feel for how the provisions of that Convention would compare with the provisions in our protocol. We have had a great deal of valuable advice from colleagues in the United Nations Office on Drugs and Crime and they have helped us with the drafting. I am grateful to them for their very valuable contribution. Therefore, I have included a reference to the United Nations Convention against Organized Crime in Article 2 of the revised Chairperson's text, which addresses Parties to the protocol that are party to the Convention and those that are not, and it addresses them separately. This is in order to avoid a possible overlap between the provisions. The criminal justice provisions that many of you felt were too heavy in the last text have also been looked at quite radically. The provisions on mutual legal assistance and on extradition have been amended. They have been replaced with much lighter provisions that were taken from the Convention on the Safety of United Nations and Associated Personnel which, in our view, provide adequate detail for the purposes of our protocol. But our colleagues from the United Nations Office on Drugs and Crime will be available during our discussions to explain exactly the interaction that they see between the two treaties to try and assure you that there is no conflict and that the work we intend to do does not have an unexpected impact on the existing Convention. But this should be an open discussion; you should raise all your points of concern, because we have to be sure that we get this exactly right.

Those are the main changes that I have made in the text you have before you and you can see that there is actually a huge challenge facing us this week. We have to try and arrive at agreed texts as a result of our discussions this week. It is not possible for us to have general discussions that deal with the principles in broad terms. We have to translate those sorts of comments into black and white on the screen and that is what I hope to achieve in the discussions during the rest of this week. There needs to be a full contribution from everyone, it also needs to be a constructive contribution, and you all need to feel that your views and your concerns have been taken into account.

There is going to have to be compromise. Not everyone will get everything they want; but you still need to feel comfortable that the proposal that comes out at the end of this week is a reasonable way forward; that it will achieve the objectives of the text, and that it will make a practical impact on combating illicit trade. I have to say that I have seen the results of the discussions you had in your regional coordination meetings and they were very helpful indeed. Those discussions were very productive and well focused; they brought up very good points and they provide an excellent basis for the discussions that you will have in the committees and in the plenary later on this week.

You looked at, for example, ways of tracking and tracing; you looked at the split of offences between serious criminal offences and unlawful offences, the link with extradition, and the link with existing international provisions. Those will all come up again this week, but because of the

preparations you have made, we are a lot further forward than if we were just going into this absolutely cold.

We have raised great expectations by the fact that our ministers have decided that this must be the first protocol under the WHO Framework Convention on Tobacco Control. They are expecting us to produce something at the end of the day that meets their expectations, meets the expectations of the citizens, protects revenue, protects health, protects young people and makes a real difference in the fight against the illicit trade. If we come up with a protocol that is weak, that gives too many let-outs, too many get-outs, that will not achieve our objective, we will have failed. There is no point in having a weak protocol. We want to have as many countries signing up to this protocol as possible, I fully accept that. But there comes a point where it is not worth having countries signed up to it if it has no impact. There will be a balance line somewhere in our discussions between the strength of the protocol and the ability of the Parties to sign up to it. And it may be that we have to err on the side of the strong protocol to start with so that we can then bring more Parties on board as they become convinced of its effects. That will be part of your discussion. It is not for me to dictate to you in any way how you do that or what conclusion you come to. But I do strongly urge you to try and keep this protocol as strong as possible, as rigorous as possible and as mandatory as possible, because that is what everyone is expecting us to produce.

I have talked to you already about the division of work between the committees and we have decided how we shall take this forward now. A decision has been made on which committees will deal with which aspects of the draft and it has been decided that we will start in plenary session when we address Parts I and II. We shall look at how we progress here, because I think we need to come back to the plenary fairly regularly, and I will look to the Chairs of the Committees to come to talk to me whenever they want to, but you should also keep your Bureau representative and your regional representatives fully informed for feedback to the Bureau. The Bureau will meet every evening at 18:15 to find out what progress has been made. I would also like the Committee Chairs to attend those Bureau meetings in order to explain what is going on; perhaps to underline any difficulties and seek guidance from the Bureau so that they can then go back into the Committees the next day with renewed ideas about how to proceed.

I think that will give us a practical way of working. However, I must repeat: our main objective this week is to reach agreement on texts of the articles in the Chairperson's draft. The timeline comes out of my last statement. What is our timeline for all of this work? The Conference of the Parties gave us a very tight timeline, and unless that body revises it, that is what we must follow; it stated that the Intergovernmental Negotiating Body shall submit the text of a draft protocol to the Conference for consideration at its fourth session, and the fourth session of the Conference will be held late next year, 2010. We have 16 months, at the most, before that happens and, in accordance with Article 33 of the Framework Convention, the draft protocol has to be submitted to all Parties six months prior to the fourth session of the Conference of the Parties.

In other words, we have to send an agreed text to all the Parties in six languages by mid-May 2010. So we have less than 11 months in which to do that, which is tough going, but achievable. If necessary, we can hold a fourth session of the Intergovernmental Negotiating Body. We were given that possibility by the Conference of the Parties and when we come to agenda item 6, once we have had all the technical discussions, we will discuss that point, whether we need to hold a fourth session of the Intergovernmental Negotiating Body, and if so, when and where it will be held. What we cannot do is leave a huge amount of work for the fourth session of the Intergovernmental Negotiating Body to do. You need to break the back of this during our current session.

I am sorry if I have gone on at rather great length on the subject, but I did want to underline some of the key issues and the changes that I have made. You now have the opportunity to enter into a general debate but, in the interests of time, I would urge you to limit your comments to key matters on the approach and the principles, rather than going into the detail of the drafting and the language that is included in the text, because we will be doing all of that when we start our plenary sessions and the committee sessions and, if necessary, the working groups. I therefore urge you to give your views on the approach and principles and any helpful comments and we will go into the debates on the text tomorrow morning, if at all possible.

If you intervene and wish to make a statement on behalf of your Region, the normal practice is you have a maximum of seven minutes if it is a regional statement, and if there is a Party that wishes

to intervene – although you may wish to leave it simply to your Region to make your points – a Party would have five minutes; and of course if an observer wishes to intervene at the end, it would have three minutes and you will be able to intervene from your seats.

There is the overview, the outline, the heavy schedule of work. The floor is now open to you to make your general comments and to set the debate going.

Mr YÜKSEL (Turkey):

Mr Chairperson, I am taking the floor on behalf of the Parties in the WHO European Region. At the outset I would like to congratulate you on your re-election as Chairperson of the Intergovernmental Negotiating Body, as well as the members of your Bureau.

The Parties in the European Region would like to thank Mr Ian Walton-George, Chairperson of the Intergovernmental Negotiating Body, other Bureau members and Mr Haik Nikogosian, Head of the Convention Secretariat, and his team for their efforts to provide the Intergovernmental Negotiating Body with the revised version of the Chairperson's text which is before us. The Parties in our Region support the extensive intersessional work of Mr Walton-George and of the Bureau of the Negotiating Body, who have led us through this negotiating process.

The Parties in the European Region welcome the revised Chairperson's text as it constitutes a comprehensive and more streamlined base for the negotiations we will be holding over the next week. We note with appreciation that the public health perspective has been strengthened in the preambular paragraphs of the draft protocol. The accompanying Chairperson's note and the other technical papers are very useful to us for understanding the complex nature of the revised Chairperson's text and as assistance in the preparations for this third session.

We believe that a strong and balanced protocol, to be adopted by the highest number of Parties possible, in 2010 as envisaged, would be highly beneficial for global tobacco-control efforts. We also support the idea of changing the title of the draft protocol in a way that reflects our main aim, which is to combat and eliminate illicit trade in tobacco products. We also believe that this session is crucial for reaching our target to have a strong and well-balanced protocol against illicit trade in tobacco products and we are ready to work with other distinguished Parties towards this ultimate goal. Thank you very much.

Mr AHMADI (Islamic Republic of Iran):

Mr Chairperson, allow me to begin by joining other delegations in congratulating you on your re-election. It is indeed a pleasure to continue working under your stewardship. I should also express appreciation for the work done so far by the Head of the Convention Secretariat and his colleagues in the past several months since the second session of the Intergovernmental Negotiating Body. I would like to share with you and other colleagues some general views of my delegation on some basic aspects of the text.

So far, the WHO Framework Convention on Tobacco Control has been a success as one of the most widely embraced treaties in the history of international law. To stay on the same path and repeat success, we need to stick to the same principles that have enabled us to reach out to the international community. Chief among these principles is the intention of the drafters of the Convention to refrain from addressing details and, instead, entrust them to the Parties.

We notice that the new text tries to strike a balance between criminal provisions and supply chain control, which is the main gist of the text. However, there is still room for improvement. While the protocol needs to provide very clear guidance to the Parties on how best they can combat the illicit trade in tobacco products, it has to consider the best possible ways and means of delegating more responsibilities to the Parties on such issues as offences, sanctions, mutual legal assistance and extradition, issues that are sensitive as far as the national sovereignty of the Parties is concerned.

It is crucial to preserve the balance enshrined in the Convention between the rights and obligations of the Parties and to reflect it in the present text. One of the main features of the text before us is the obligation of the Parties to fix a unique, secure and non-removable marking, containing a wide range of information, to all master cases and cartons, as well as all manufacturing equipment used in the manufacture of tobacco products, within three years of any form of accession to the protocol. According to the text, non-compliance with this obligation is considered a crime. Holding

the Parties accountable for non-compliance with this obligation, without protecting and promoting their rights to have access to relevant and affordable technologies in this field, runs counter to the balance that is necessary for a broadly-based international instrument. In this context, the role of international assistance and cooperation in this field is very significant.

Owing to the nature of criminal or preventive issues addressed in this text, we must be fully mindful of the legal consequences of any punitive or precautionary measures recommended to ensure that they are not in conflict with the fundamental human rights of the natural or legal persons engaged in activities covered by this text. I would like to refer, as an example, to the notion of “blocked customer” as reflected in Article 6. Considering natural or legal persons to be so-called “blocked customers” should only be the result of a judicial review. Without making use of legal process, such preventive measures would violate fundamental rights: namely, the right to a fair hearing, the right to respect for property, and the right to effective judicial review. It may entail legal consequences for Parties in the domestic or regional courts.

We look forward to the negotiations in the course of which we shall share our detailed comments on the Chairperson’s text with you and other colleagues. Thank you.

Le Dr MOUSSA (Niger):

Monsieur le Président, je prends la parole au nom des Parties de la Région africaine de l’OMS.

(L’orateur poursuit en anglais.)
(The speaker continued in English.)

Mr Chairperson, on behalf of the Parties in the African Region, allow me to congratulate you on your re-election and your able leadership in this negotiating process so far. We the Parties to the Framework Convention in the African Region have no doubt that with you in the chair our deliberations will find meaning at the end of this third session of the Intergovernmental Negotiating Body.

The Parties to the Framework Convention in the African Region are deeply concerned at the growing trend of illicit trade in tobacco products, its consequences on the health of our nations, as well as the negative effects on our struggling economies. Illicit tobacco trade, which consists primarily of smuggled and counterfeit products, significantly harms public health in view of the fact that it makes tobacco products cheaper, more accessible and more difficult to regulate.

Understanding the significance of tobacco-product smuggling in Africa is important for two reasons: firstly, the number of smokers is increasing on the continent, especially among youth; secondly, smuggling is substantial and is growing, thus undermining public health efforts to address the upward trajectory of tobacco use on the continent. There is evidence to suggest that smuggling occurs in at least 40 of the 54 African countries, including the countries with the largest populations. Certainly, some countries have adopted their own measures to tackle the problem of illicit tobacco trade, but obviously these measures are not sufficient: across Africa, populations continue to suffer the adverse effects of tobacco use owing to easy access on account of smuggling and counterfeiting.

Some countries have entered into bilateral agreements with neighbouring countries to support each other by way of information sharing, technical cooperation and assistance. It helps to improve the situation, but is clearly not enough. Therefore, an internationally legally binding instrument enhances these efforts and makes for a uniform mode of regulating the flow of tobacco products and countering its negative impact on public health.

In this regard, the Parties in the African Region appreciate the efforts of the Chairperson and the Convention Secretariat to come up with the revision of the Chairperson’s text after the second session of the Negotiating Body (incorporating the views of all the regional groups) which will serve as a guide for our discussions. However, much as we acknowledge its strength of substance, we must also point out that it is complex and requires significant technical consideration. It was, however, observed that some issues, items and Articles were not exhaustive or adequately addressed. It is believed that, in the course of this current negotiation, these issues will be addressed. Illicit trade in tobacco products, like all clandestine activities, is difficult to fight, and especially coming from where we do, all other indications make it a greater challenge to us than it is for others; but we are certain that with a concerted effort we can succeed. Thank you, Mr Chairperson.

Mr MOHAMED (Maldives):

Mr Chairperson, on behalf of the Parties in the WHO South-East Asia Region, I would like to make the following statement. First and foremost, we congratulate you for being re-elected as Chairperson of the Intergovernmental Negotiating Body. We also wish to congratulate and thank you for your continuing leadership and for presenting to this session a text that would form the basis for further negotiations. We would, in particular, like to thank the Convention Secretariat, the Bureau members and the experts for their contributions, and expert views that have been presented to facilitate the deliberations. In the lead up to this session, Parties from the Region had effective deliberations in Dacca on 11 and 12 June, which enabled issues that were of importance to the Parties in the Region to be consolidated. We thank the Convention Secretariat for their facilitation of the regional consultations.

The Parties in the Region are of the view that certain definitions and certain additional terms that appear in the Chairperson's text need revisiting. We reiterate our position with regard to licensing of entities in the supply chain, however, with the exception of tobacco growers and retailers. We also support the tracking and tracing measures as an effective means to control the supply chain. The Parties in the Region strongly support the ban on Internet sales and duty-free sales, and support strong provisions regarding offences and sanctions. Given that countries in the Region are largely developing countries, we attach great importance to international cooperation. The Parties in the Region, therefore, believe there should be well-developed and specific mechanisms for international cooperation. The time frames for the implementation of various Articles should take into consideration the capacities of the developing country Parties. Considering that the Parties from the Region are largely represented by small delegations, while agreeing to work in the committees, we prefer to establish working groups only when they are necessary to facilitate the work of Intergovernmental Negotiating Body, such as on tracking and tracing.

Finally, Mr Chairperson, the Parties in the Region would like to see definite outcomes from this negotiating round that will lead to a strong and effective protocol. If I may borrow from your remark, a protocol without let-outs and get-outs. I thank you.

Mr SIHASAK PHUANGKETKEOW (Thailand):

Mr Chairperson, at the outset, my delegation wishes to align itself with the statement made by the representative of the Maldives on behalf of the Parties in the WHO South-East Asia Region and, on behalf of the Thai delegation, I wish to commend you, Mr Chairperson, and the Convention Secretariat, for the hard work accomplished in revising the Chairperson's text which encapsulates key concerns raised at the last session in October 2008.

In this revised Chairperson's text, we see greater clarity and flexibilities that could be a basis for further discussions and help address differences among countries. In particular, my delegation supports the proposal for us to address in a plenary session the issue of the scope of the protocol. We think it is an important issue that we need to further discuss in order to flesh out our ideas and thinking. Importantly, the revised Chairperson's text also reflects the effort made on building on the existing international mechanisms that could mutually reinforce and enhance an efficient, effective, international coordination and collaboration against illicit trade in tobacco products.

The Thai delegation wishes to reiterate our full commitment to developing this protocol. We need to address the problem of illicit tobacco trade which contributes to the increase in tobacco consumption, undermines our tobacco-control measures and poses a threat to our tax system. With the ongoing financial and economic crisis, the revenue lost due to smuggled tobacco products is becoming a very significant problem. For Thailand, measures that could deter illicit trade in tobacco products can be found woven into various pieces of legislation. We recognize that the provisions of the draft protocol may require amendments to the existing legislation as well as efforts to strengthen coordination and collaboration among various government agencies. However, Thailand is committed to advancing this protocol to its final adoption as it is essential to have a coordinated, global approach in tackling this issue. My delegation is looking forward to working with you and contributing constructively to our deliberations. I thank you, Mr Chairperson.

Mr GRÖNLUND (Sweden):

Thank you very much indeed, Chairperson, and congratulations on your re-election. We also align ourselves with the statement by our colleague from Turkey on behalf of the Parties in the WHO European Region.

Representing the Presidency of the European Union, it is an honour to speak on behalf of the European Community and the Member States of the European Union at this third session of the Intergovernmental Negotiating Body. The European Community and its Member States are grateful to the Chairperson for the revised Chairperson's text. This text was submitted in a timely fashion which has allowed us and, I am sure, other Parties to prepare for this third session. We believe that the third session will be very important to achieving our aim of a protocol.

Before I hand over the floor to my good colleague who will continue our opening statement, can I express a thank you to the Convention Secretariat for its work intersessionally and also for preparing this third session.

Mr ROWAN (European Community):

Mr Chairperson, just to reiterate the points made by the Presidency of the European Union in thanking the Chairperson for the preparation of the revised text reflecting the outcome of our last session here in Geneva in October 2008. We welcome this revised text as it constitutes a very good and comprehensive basis for further discussions and negotiations. This text will facilitate agreement on a strong and balanced protocol. The European Community has always stated its commitment to such an effective protocol.

There are a number of critical points that the European Community would like to express at this opening session. Firstly, the Community reiterates its support for many of the supply chain control provisions, which feature in Part III of the Chairperson's revised text. In this context, the European Community attaches particular importance to the inclusion of the global tracking and tracing of tobacco products as this is a fundamental instrument in the fight against the illicit trade in tobacco products. Secondly, the European Community believes the protocol must include appropriate measures to address free zones as some of these are increasingly used to facilitate the illicit trade. Thirdly, the European Community, bearing in mind the principal of proportionality, does not wish this protocol to impose an undue burden on administrations, or on those small or medium-sized enterprises whose products do not feature on the illicit market. Nonetheless, the Community wishes to ensure that there are effective and meaningful measures to fight illicit trade.

In addition, it is essential that a balanced approach on offences and international cooperation be taken in order that we can agree on a protocol that can be ratified by all the Parties. In this regard, where appropriate, the protocol should be in line with existing international agreements such as the United Nations Convention against Transnational Organized Crime. Although it will probably prove premature to enter into negotiations on the financial and budgetary aspects at this stage, as a number of substantial issues remain to be finalized, the European Community would nevertheless already like to stress the importance of a well-prepared debate on the institutional arrangements and financial resources linked to functioning of this protocol. To this end, we would like to ask the Convention Secretariat in due time to prepare a document containing, inter alia, a budget and workplan, detailing the expected activities and costs, as well as possible modalities for financing the protocol. We are also interested in gaining a better understanding of the anticipated division of labour and cost-sharing between the Convention Secretariat and other concerned United Nations organizations.

The European Community is in favour of financially efficient arrangements that build on existing mechanisms, avoiding duplication and additional bureaucracy. Voluntary contributions should, in our view, remain the rule. Finally, the European Community emphasizes that the issue of personal data protection should be the subject of further consideration prior to the finalization of the protocol. The European Community believes that this third session of the Intergovernmental Negotiating Body will bring agreement on this protocol closer and it is committed to making a full contribution to the process to ensure that a strong, meaningful and well-balanced protocol is agreed by 2010.

Mr HAYAKAWA (Japan):

On behalf of the Japanese delegation, I would like to join others in thanking the Chairperson and the Convention Secretariat for the revised text. We believe that this text has tried to alleviate the concern expressed at the previous session of the Intergovernmental Negotiating Body. Japan's concern is that illicit trade in tobacco products is a serious international challenge. Therefore, we are committed to participating actively in the negotiations this week.

Having said that, in our view the Chairperson's revised text includes a considerable number of ambitious provisions for things as diverse as supply chain control, enforcement, international cooperation, and so forth. We would like to take this opportunity to raise several key issues and express our position. First, we believe that the provisions to be introduced for the purpose of preventing illicit trade should be feasible, flexible and realistic. For example, the provisions on tracking and tracing should not impose heavy financial burdens nor obligations to adopt state-of-the-art technologies in a uniform manner. From this point of view, we doubt the feasibility of a global tracking and tracing system, as well as the clearing-house database. Secondly, regarding the scope of the protocol, we believe that the scope should not be too wide; we should rather focus on tobacco and tobacco products. In this regard, it is difficult for us to support the idea of including manufacturing equipment used in the manufacture of tobacco products into the scope of regulation under the protocol.

In this regard, we would like to draw your attention to the Convention Secretariat background document on legal advice and the scope of the protocol (document FCTC/COP/INB-IT/3/INF.DOC./6). Paragraph 1 of the Annex to this document refers to a working group report that indicated "agreement in principle on the inclusion of manufacturing equipment, key inputs (to be identified later), leaf tobacco and dealers or brokers of tobacco". We believe that there was no agreement at the second session regarding manufacturing equipment. We also believe that the scope of licensing should be made the minimum necessary in order to ensure the effectiveness of this restriction. Thirdly, we have difficulty in supporting the idea of imposing any form of obligations in such provisions as seizure payments, mutual legal administrative assistance, or extradition. We believe that the diversity of national legal systems and social cultural backgrounds should be taken into account. Fourthly, with regard to the fight against counterfeit tobacco products or smuggling of tobacco products, much can be done through the existing legal framework. The framework for international cooperation, for instance, under the World Customs' Organization should be fully utilized and duplication of work should be avoided as much as possible.

Finally, with respect to the implementation of the protocol, we believe that ensuring an adequate degree of flexibility and discretion is essential in promoting the universality of this protocol. For the purpose of exercising effective prevention and suppression of illicit trade in tobacco products, the protocol should be one that can be accepted by as many countries as possible. We are concerned that the imposition of specific obligations in a uniform manner would diminish room for flexibility for each country, thus reducing the number of countries that can accept this protocol. In this regard, we appreciate the Chairperson's text which gives more discretion and flexibility to Parties than the previous text. However, many parts of the Chairperson's text still impose uniform obligations on Parties. Thank you.

El Sr. SOMARRIBA FONSECA (Nicaragua):

Gracias, señor Presidente. Hago uso de la palabra en nombre de las Partes de la Región de las Américas, primeramente para felicitarlo por su reelección para continuar dirigiendo los trabajos de este órgano. A continuación deseo exponer algunas consideraciones generales en relación al texto del Protocolo que emanan de una consulta regional llevada a cabo en la Ciudad de México los días 4 y 5 de junio del presente año, así como una videoconferencia realizada el pasado 16 de junio y una teleconferencia que tuvo lugar el 19 del mismo mes.

El eje rector del Protocolo deben ser la salud pública y el riesgo que para su población representan la epidemia del tabaquismo y el comercio ilícito de los productos de tabaco, al hacerlos más accesibles para los jóvenes y los grupos vulnerables. Resulta indispensable revisar y precisar el alcance del Protocolo para alinearlos al artículo 15 del Convenio Marco, en el que el mismo se encuentra acotado exclusivamente a productos de tabaco. Si el alcance de este ordenamiento jurídico

rebasando al del que le dio origen, de conformidad con las disposiciones jurídicas de las Partes de la Región, se compromete su viabilidad jurídica. El alcance previsto en el Convenio Marco debe verse reflejado en todas las disposiciones del texto. Los Estados Partes en el Convenio Marco deben establecer un Protocolo centrado en los productos de tabaco y de la misma forma en la industria tabacalera responsable de su fabricación y de la eventual introducción ilícita del producto en el comercio. Se verifica empero la referencia en todo el texto a personas jurídicas o físicas, referencia que por su amplitud conceptual desplaza el foco del sector productivo que se beneficia del comercio ilícito como mecanismo de evasión fiscal, o sea la industria tabacalera. En la Región existe preocupación en torno al contenido del Protocolo ya que el texto no satisface los preceptos del Convenio Marco. Su visión es básicamente criminalista, volcada al combate, al crimen organizado transnacional y a la prosecución del delito. Por ello se aleja de los principios de protección de la salud pública que son los que le dan origen y en su momento le darán legitimidad. Este planteamiento genera dos problemas: el énfasis en el control de toda la cadena productiva, productores agrícolas, productores de maquinaria intermediarios, transportistas y distribuidores, y la tipificación de consumidores de productos como si fueran consumidores de sustancias prohibidas. La aplicación de este Protocolo es un gran reto a nivel nacional, regional e internacional que gira alrededor de la salud pública y pretende contener la epidemia de tabaquismo que afecta al mundo entero. El reto que enfrentamos no es sólo el de normar y regular el comercio de los productos de tabaco para evitar su comercio ilícito. El verdadero reto será vigilar que se cumplan sus disposiciones, por lo que resulta pertinente que no sólo las Partes de esta Región, sino todos los Estados Partes, alcancemos acuerdos que permitan aprobar un Protocolo que fije parámetros comunes que puedan ser observados por todos. Si se aprueba un Protocolo cuyas disposiciones no puedan ser cumplidas por los gobiernos nacionales se estará favoreciendo el comercio ilícito del tabaco al fortalecer a los grupos o bandas que trafican con éste y a la propia industria del tabaco en la utilización del comercio ilícito como vía de escape para el control fiscal del Estado. El nivel de especificidad y particularidad con el que están definidas las obligaciones de las autoridades nacionales, correspondientes en el Protocolo, hacen prever la dificultad que enfrentarán los que lo ratifiquen para poder cumplir con las mismas, toda vez que resultará muy difícil adecuar el marco regulador y las legislaciones nacionales para alinearlos al contenido del documento. El resultado podría ser el debilitamiento de los objetivos que se persiguen con el mismo. El planteamiento descriptivo debilita el derecho y la responsabilidad de los países para ejercer su autoridad dentro de su marco jurídico particular, y conforme a las particularidades y prioridades nacionales. Es por ello importante que se ofrezca discrecionalidad a los Estados Partes en la aplicación de las medidas. Las Partes de la Región consideran que es necesario ofrecer a los países una mayor flexibilidad para que, en el marco de una legislación sólida y robusta, regulen de manera eficaz los productos de tabaco, su comercio ilícito y el combate contra dicho comercio a través de medidas viables que respondan a su entorno particular. Se requiere un Protocolo flexible y de fácil aplicación.

Señor Presidente, se estima innecesario establecer procedimientos específicos que deberán cumplir los Estados Partes ya que la legislación interna de cada uno de ellos es diversa y sus disposiciones internas no necesariamente se adecuan a las descripciones penales propuestas. Es necesario reconocer que el Protocolo impone obligaciones a Estados - nación con diversos niveles de desarrollo y con legislaciones distintas. Por ello resulta indispensable que el Protocolo respete las figuras jurídicas ya existentes en la materia, diferenciando ilícitos del orden administrativo y civil del penal y los procedimientos y sanciones que se impongan a los sujetos que contradigan las mismas, por lo que se sugiere que en el instrumento que nos ocupa se respeten las figuras jurídicas ya existentes en las legislaciones nacionales.

El texto actual del Protocolo banaliza la utilización del derecho penal. La utilización de tipos penales debe limitarse a casos extremos, cuando es necesaria una acción efectiva del Estado para reprimir una conducta potencialmente peligrosa para la sociedad. No es el caso del objeto del Protocolo, en la medida en que los productos de tabaco son productos ilícitos que pueden ser adquiridos y consumidos por los ciudadanos. El producto de tabaco ilícito, aunque causa un efecto negativo por el aumento de oferta, no hace ni más ni menos daño a la salud que el producto lícito. Por el potencial de daños de ambos, no se puede dar tratamiento distinto a productos que son esencialmente iguales. Además, la tipificación excesiva puede tener un efecto inverso: estimular la ilegalidad. Aunque la tipificación penal parece la respuesta más fácil, la efectividad del Protocolo

estaría mucho mejor asegurada con la utilización flexible de todos los medios de que disponen los Estados.

En resumen, el Protocolo debe incluir obligaciones generales y establecer bases mínimas para la actuación de los gobiernos, omitiendo particularidades jurídicas que dificulten su aplicación y reconociendo que no todos los países tienen que establecer las medidas en la misma forma. Se requiere reconocer y respetar la diversidad de los sistemas de control, regulación y legislación de los países que responden a su realidad particular. Por ello, se reitera que se debe realizar un esfuerzo para que el hilo conductor en el Protocolo sea la protección de la salud pública, y adoptar medidas que puedan ser viables de aplicar en cada uno de los países. La postura de las Partes de la Región es en el sentido de informar a la Secretaría de que existen muchos elementos del Protocolo que, en los términos propuestos, dada su especificidad no podrán cumplir las Partes de esta Región. El Protocolo sólo tendrá fundamento si ofrece soluciones satisfactorias para el tratamiento de los siguientes temas: combate al comercio ilícito, comprendido como comercio ilícito de productos de tabaco para evadir impuestos o tasas impositivas establecidas por el Estado, de forma tal que asegure la protección de la salud y no los intereses de la industria tabacalera; adopción de sistemas de control y rastreo de la producción para la exclusiva responsabilidad de los gobiernos y sin la participación de la industria; creación de mecanismos de cooperación internacional que faciliten la investigación; y establecimiento de sanciones efectivas que desalienten las prácticas ilícitas. Si bien existen pruebas científicas sobre los efectos negativos que el consumo de los productos de tabaco genera para la salud, es menester reconocer que se trata de una sustancia legal que no puede ser regulada bajo preceptos enfocados a regular productos controlados o prohibidos. Asimismo, resulta innecesario que el Protocolo contravenga acuerdos o compromisos internacionales suscritos por los Estados Partes que puedan verse afectados con la puesta en práctica de este nuevo ordenamiento. Por otro lado, es conveniente que se apoye en instrumentos e instituciones jurídicas internacionales que robustezcan la acción de las autoridades nacionales y la cooperación internacional, como serían la UNTOC o INTERPOL, por mencionar sólo algunos. Por ello, es necesario contar con el apoyo de la Secretaría para realizar una revisión de los acuerdos internacionales que pudieran verse afectados: OMC, OCDE, entre otros. Preocupan en particular las modificaciones de ciertos artículos retomados de otros instrumentos internacionales que pudieran dificultar su aplicación en el marco de las disposiciones nacionales. Cualquier modificación de instrumentos internacionales suscritos por los Estados Partes puede tener impacto jurídico sobre el instrumento original, ya que el artículo 30 de la Convención de Viena establece que, cuando dos países se convierten en parte de dos tratados que abordan el mismo tema, el contenido del primero tendrá vigencia sólo en la medida en que resulte compatible con el segundo. La UNTOC es el instrumento internacional contra el crimen organizado con el mayor número de ratificaciones. Se considera innecesario retomar su contenido en el Protocolo y se estima aún más riesgoso incorporar al Protocolo algunos conceptos modificados de la UNTOC. Toda vez que la UNTOC establece obligaciones que pueden emplearse para combatir los ilícitos previstos en la parte IV del Protocolo, a saber delitos y sanciones, consideramos que muchas obligaciones previstas en esta parte y en la V, titulada Cooperación internacional, pueden excluirse para evitar duplicidad en temas como aseguramiento, confiscación, técnicas de investigación, cooperación para la estricta aplicación de la legislación y la asistencia jurídica mutua. Asegurando que los delitos asociados al tabaco se rigen por la UNTOC, se fortalecerá este tratado y el combate del comercio ilícito de los productos de tabaco.

Finalmente, deseo mencionar que existen reservas en cuanto al contenido de la versión en español, ya que consideramos que la traducción no ha sido afortunada y deberá mejorarse sustancialmente. En muchas ocasiones la traducción no capta el sentido que se quiere dar al documento, lo que conlleva a tener dificultades de interpretación. Asimismo, quisiera señalar que existen pruebas de que el comercio ilícito en ocasiones es promovido por la propia industria tabacalera, por lo que sería conveniente hacer alusión al artículo 5.3.

Dr VINIT (Papua New Guinea):

I will try to be brief. Greetings from Papua New Guinea to you. I would like to take this opportunity to acknowledge and thank the Convention Secretariat and the European Commission, and acknowledge the teamwork that has brought us together in this meeting. It is a very important meeting. The Parties in the WHO Western Pacific Region would probably have made a statement but I understand we did not choose a representative to make one. But I would like to speak on behalf of the low- and middle-income countries. I would like to have brought a delegation here but I could not. I actually appointed a customs officer who has been attending the two sessions so I would like to bring to your attention some general comments that he has made on the protocol.

First, I would like to acknowledge and thank everybody for their input. It is very important, especially for low- and middle-income countries. Regarding the scope, he mentioned that there are a lot of details in the protocol that need to be put into a more general context. On that note, I would like to make the point, as I brought up this morning, regarding putting too much reliance on Parties. Illicit trade in tobacco is a cross-cutting issue, both in international and domestic issues, and to expect the Parties to negotiate only international issues and to deal with cross-cutting issues on illicit trade is very difficult. I would like to make a suggestion that, when the Committee meets, we try to tie in those areas, and those details should be put into more standard guidelines for Parties to comply with. We need to do it well before it fails. I am also of the opinion that we need to tie up the loose ends. After the Intergovernmental Negotiating Body has finished its work, we would like to know that there will be an international body that deals with collaboration and link-up, and the continuity in this needs to go on, because we could lose the plot; we need total dependence and reliance on the Parties and that is basically my position with respect to the low- and middle-income countries. It is fine for those developed countries that are dealing well with the capacity and are able to maintain surveillance of the borders, and enforce the regulations. But for low- and middle-income countries, we feel prevention is better than cure and I think this protocol will help us. We can talk about building capacity in the low- and middle-income countries but that is a process that depends on financial constraints.

So, Mr Chairperson, for most of the articles I would like to commend you. You have taken on board a lot of issues that have been raised by the low- and middle-income countries and they are putting in more details on how to deal with it and how to implement it; but I believe we now need to tie up the loose ends. In other statements, they said we do not need international collaboration – I would say yes, we need it.

I totally support your view that too much emphasis should not be given to Parties; that allows the international tobacco companies to abuse the low- and middle-income countries because of the flaws in our regulations and our border controls to prevent illicit trade of tobacco and we need to make a body within the Convention Secretariat after the Intergovernmental Negotiating Body has completed its work to deal with reporting, cross-cutting international issues, jurisdiction, legal issues and enforcement issues similar to Interpol dealing with crimes. We need also to have an international, enforcing body to at least help in preventing illicit drugs from entering the country. And the Parties will certainly strengthen their own rules and regulations. But where is the international body, the overall, coordinating body that will carry on the work of the protocol once the Intergovernmental Negotiating Body has finished?

Mr GÖRÜN (Turkey):

Mr Chairperson, distinguished delegates from Parties from all over the world. Turkey congratulates Mr Walton-George on his re-election as Chairperson of the Intergovernmental Negotiating Body. Secondly, we congratulate all delegations that have joined this session to give their contributions to the draft protocol which will be an important component of global tobacco control. Turkey believes that a global approach is important to combat the global problem of illicit tobacco trade, which funds both organized crime activities and terrorist movements – primary issues for all countries of the world to deal with.

Please note that the following are Turkey's preliminary views on the revised draft protocol: first, there are quite a lot of concepts included in the text without a general definition, such as "manufacturing equipment", "central points", "competent authority" and "primary processing of

tobacco". To cure this problem, definitions of these and if they exist, other definitions should be added to Article 1: Use of terms. Secondly, as regards information sharing, security provisions and confidentiality clauses should be strongly underlined and, thirdly, the blocked customer concept should consider either serious crimes or introduction of intermediary punishment sources and lastly, thank you for your patience.

Mr PADILLA (The Philippines):

I would strongly support a strong protocol on illicit trade. We are of the view, however, that it is not yet strong enough. For example, the primacy of public health over trade and commercial interests is a critical component and the uniqueness of the Framework Convention should be further pronounced. It is not enough to give priority or security to the right to public health but its primacy over trade and commercial interest must be clearly spelt out. We support a tracking and tracing regime but illicit trade involves not only master cases and packaging, but also other cases, especially in developing countries where much of the problem deals with individual packaging. In fact, many of the companies that package in smaller quantities make it easier for vulnerable groups like youth to access many of these products. But the protocol is not only about collecting correct taxes and duties on tobacco products; it is more to do with eliminating illicit trade in order to prevent it from being accessed by youth, the very particular target of the tobacco industry.

We distinctly remember that in the previous session of the Intergovernmental Negotiating Body, we had mentioned making the tobacco industry pay for whatever tracking and tracing system that we may adopt, under the principle of letting the polluter pay. We hope that this will again be considered at this session. We fully support prohibiting Internet sales of retail as well as duty-free sales, not only to make them more expensive, but also to make it more difficult for youth to access such products. We welcome the prohibition and destruction of tobacco products, which is a marked improvement from the earlier provision and we congratulate the Chairperson on that. We still have some concerns on certain criminal and legal aspects where, in some instances, guilt is presumed. The provisions of extradition as well need further involvement. It is important that guilt and the nature of any crime are more properly assessed before the courts of justice, which are supposedly well-versed in the intricacies of law rather than certain enforcement units of the police or other administrative bodies. We shall be fully discussing and engaging in further participation in this session.

La Dra. MEJÍA VELÁSQUEZ (Honduras):

Honduras se une a las felicitaciones tan merecidas de los países que nos han antecedido por su reelección y por la magnífica conducción del Protocolo.

Honduras considera que el país debe ser parte de este Protocolo, que el Protocolo en regencia sería un instrumento de vital importancia para la salud de la población, que el país no puede estar alejado de la legislación internacional por cuanto ésta es objeto de estudios y estadísticas reveladas por organismos mundiales en donde se destaca el daño que el tabaco causa a la salud.

Sin embargo, en este documento observamos algunas incoherencias, relativamente pocas, pero es oportuno su señalamiento. Por ejemplo, mencionaremos la que se encuentra en el punto 7 del apartado sobre decomisos e incautación, que literalmente dice así: «las Partes podrán considerar la posibilidad de exigir a un delincuente que demuestre el origen lícito del presunto producto del delito o de otros bienes expuestos a decomiso, en la medida en que ello esté conforme con los principios del derecho interno y con la índole del proceso judicial u actuaciones conexas». Como puede notarse, no se puede hablar de delincuente en el contexto de un artículo si se están considerando presuntos productos ilícitos, porque estaríamos en contra del principio de derecho de inocencia.

Mr LEGUERRIER (Canada):

On behalf of the Canadian delegation, I would like to note with appreciation the time and effort that went into preparation of the revised Chairperson's text. I wish to assure you of my delegation's full support in your work. Canada also notes with appreciation the work and dedication of our regional

partners, particularly Mexico, the host of our original consultation in the WHO Region of the Americas and thus for the statement that was just put forward on behalf of the Parties in the Region.

Mr Chairperson, the grave threat of illicit tobacco and tobacco products requires international cooperation and collective action. It cannot be addressed by any one country alone. Canada is very encouraged by the presence and participation of all the nations gathered here today. Our delegation intends to contribute actively to the thematic debate, which we hope will ensure the development of a strong and agile protocol that can then be ratified and implemented by all Parties.

Canada would like to flag two areas where we see the opportunity for great progress here at the third session. First, the Framework Conventions comprises a series of objectives that we implemented in a manner appropriate to each Party. This protocol may be approached in a similar fashion, providing obligations on major concepts and then allowing Parties to implement those basic obligations in a manner consistent with the respective frameworks. Secondly, the protocol continues to replicate text directly from other international instruments. Canada believes that a strong international cooperation regime to fight illicit trade in tobacco requires efficient linkages with existing international regimes. We submit that duplicating texts from other instruments is not the most effective method of accomplishing this goal. Canada will be proposing options to improve the approach to these issues.

Canada also notes two concerns elaborated by other delegations. Canada shares the concern of the European Community that we not leave to the end consideration of the governance and practical and administrative issues, including financing. As this is the first protocol elaborated under the Framework Convention, it is important that we pay attention to these practical issues. Canada also identifies with the statement made on behalf of the Parties in the WHO Region of the Americas on the scope of the protocol. We would urge Parties to be cautious about extending the scope of this protocol to deal with issues not contemplated by Article 15 of the Framework Convention. Under your leadership, and in cooperation with other delegations, Canada looks forward to hearing the ideas and the suggestions of other Parties and working together towards a strong and effective protocol. Thank you.

La Sra. ROA RODRÍGUEZ (Panamá):

Señor Presidente, en primer lugar deseo felicitarle por su reelección y mencionarle que Panamá, como Estado Parte del Convenio Marco, ha hecho esfuerzos importantes para su aplicación, habida cuenta de los beneficios que el mismo representa para la salud pública.

En este marco, quisiéramos señalar que el tabaco es un producto legal regulado, situación que no debemos pasar por alto durante todo este proceso. Dicho esto, agradecemos los esfuerzos realizados por la Mesa para facilitarnos este instrumento, el cual reconocemos que aporta elementos importantes; sin embargo, requiere la ampliación de algunos conceptos, así como la revisión de algunos textos que pueden mejorarse y simplificarse para su aplicación eficaz.

Para nuestro país, es fundamental la aplicación de mecanismos efectivos de seguimiento y localización que faciliten la intercomunicación entre los países del mundo, así como otros elementos del Protocolo propuesto.

Quisiera indicar, finalmente, las fuertes implicaciones que tiene el comercio ilícito del tabaco para la salud pública, que hace referencia a la salud colectiva y no a la salud individual. El comercio ilícito incrementa el consumo de tabaco, ya que se ofrecen productos más baratos y más asequibles a los jóvenes. A ello se suma la violación de las medidas contenidas en el Convenio Marco de la OMS para el Control del Tabaco y en la legislación nacional. Tal es el caso de las normas relacionadas con las advertencias sanitarias, la venta de cigarrillos sueltos, la regulación de contenidos, la publicidad y otros, para mencionar algunas de ellas, lo que hace de este Protocolo un instrumento que influye en diversos aspectos del Convenio Marco.

Mr BANIYA (Nepal):

Mr Chairperson, I would like to congratulate you on your re-election as the Chairperson of this session. First of all, I agree with the statement made by the Maldives on behalf of the Parties in the WHO South-East Asia Region. Nepal, being a Party to the Framework Convention, is in the process of adopting requisite administrative and assertive measures in order to implement it effectively. We all know that so as to effectively carry out the obligations under the Framework Convention,

a comprehensive tobacco control strategy is necessary. Obviously, comprehensive legislation is required, the elements of which would include: institutional mechanisms; banning the advertisement of tobacco products; labelling and packaging requirements; product regulations and prohibition of illicit trade or smuggling of tobacco products. A comprehensive tobacco control bill has been drafted that seeks to address all these issues; it is currently under consideration by the Council of Ministers even though some delay in enactment of this legislation has been experienced, which is perhaps due to political instability. The government has adopted a number of measures and instruments that are conducive to the implementation of the Framework Convention. Such measures include anti-tobacco advertisements and campaigns, prohibition by law of advertisements of tobacco-related substances in the media; increasing tax on tobacco-related products; prohibition by law of smoking in public places, including health institutions, hospitals, theatres, public vehicles, parks and government offices; and a legal obligation to place health warnings on the packaging of tobacco-related products.

So far as the issue of illicit trade in tobacco is concerned, in Nepal there is no explicit or single piece of legislation dealing with these elements of illicit trade in tobacco products. Rather, there are various laws addressing these issues in one form or another.

In summary, Nepal has certain legal provisions addressing the issues of illicit trade in tobacco products. However, there is no specific law in this regard. In this context, we have felt a need to review the existing law and make specific and comprehensive legislation on this issue. We are of the opinion that such law should address the basic elements of illicit trade, which include: the elimination of illicit trade in tobacco products; smuggling; illicit manufacturing and counterfeiting; determining the origin of the products; indicating the final destination or market; data collection on cross-border trade; exchange of information among customs and tax authorities; and licensing to control or regulate the production and distribution of tobacco products. Thank you.

Mr AL-ZADJALI (Oman):

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La Sra. DÍAZ RODRÍGUEZ (Cuba):¹

Señor Presidente, permítame agradecerle la elaboración de la versión revisada del texto de Protocolo que se somete al examen de este órgano. Al mismo tiempo me sumo, al igual de otras delegaciones, a la felicitación por su reelección.

¹ Participating by virtue of Rule 29 of the Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.

Cuba no es Estado Parte en el Convenio Marco de la OMS para el Control del Tabaco, pero sigue con atención este proceso porque nos preocupa el comercio ilícito del tabaco y sus repercusiones negativas para la salud y para el comercio lícito de este producto.

En este sentido, me permito poner a la consideración de esta reunión plenaria un punto que consideramos de vital importancia con el fin de orientar el Protocolo hacia los objetivos que persigue. Se trata de la actual propuesta del artículo 11 sobre las «zonas francas y ventas libres de derechos de aduana», que incluye una posible prohibición de las ventas de tabaco libres de derechos.

No hay ninguna razón jurídica para la inclusión de una prohibición de la venta de productos de tabaco libres de impuestos de aduana en un Protocolo sobre el comercio ilícito del tabaco. Mi delegación considera que la inclusión de esa prohibición no tiene cabida en un Protocolo cuya redacción y negociación tienen su base en las disposiciones del artículo 15 del Convenio Marco y que tiene como fin «la protección de la salud pública a través de la eliminación de todas las formas de comercio ilícito de productos de tabaco como el contrabando, la fabricación ilícita y la falsificación». No tiene sentido prohibir la comercialización de un producto en el mercado libre de derechos como medida para combatir o eliminar el comercio ilícito de ese producto. El examen de expertos solicitado sobre este punto, contenido en el documento FCTC/COP/INB-IT/3/INF.DOC./3, no demuestra ni concluye que exista un vínculo entre el comercio de tabaco libre de derechos de aduanas y el comercio ilícito del tabaco.

Además, ya existen, conforme a otros convenios internacionales, restricciones a la venta e importación del tabaco en mercados libres de derechos que evitan que este tipo de producto se desvíe al comercio ilícito. Existen limitaciones en cuanto a la cantidad de cigarrillos, tabaco y productos de tabaco que se puede importar bajo la modalidad libre de impuestos. También son comunes restricciones por motivos de edad y para las personas que crucen las fronteras con frecuencia.

Por otra parte, es necesario tener en cuenta que la venta en los mercados tradicionales libres de impuestos se desarrolla en un ambiente comercial sumamente regulado y controlado, sujeto al escrutinio y la supervisión de las aduanas. Los aeropuertos, las líneas aéreas, los barcos y las empresas de crucero que venden tabaco libre de impuestos están entre las empresas más prestigiosas y serias del mundo. Muchos de ellos son negocios públicos y sumamente controlados, cuya seguridad ha sido reforzada a partir del año 2001 como parte de las medidas antiterroristas. Sugerir que esas empresas estén implicadas en el comercio ilícito o el crimen organizado es totalmente incorrecto y no merece ninguna consideración. Incluso si hubiera razones para tales alegaciones en un país en particular, esto sería un tema para dirigirse a las autoridades nacionales reguladoras y no debería ser usado como justificación para una prohibición global de venta de tabaco libre de impuestos ni para introducir mayores restricciones a las existentes. El Estado, como regulador de la política fiscal, puede controlar el comercio de productos libres de impuestos y supervisarlos de manera que no constituyan fuentes de desvío para el comercio ilícito.

Las políticas de salud de alcance mundial no pueden obviar en su aplicación sus efectos económicos y sociales en muchos países en desarrollo, incluidos los países menos adelantados, en particular en medio de la actual crisis económica mundial, teniendo en cuenta que cuatro de los cinco mayores productores de tabaco del mundo son países en desarrollo, 43 países en desarrollo obtienen divisas a través de las exportaciones de tabaco, muchos de ellos mediante ventas libres de impuestos, y el 80% de la producción mundial de tabaco se realiza en países en desarrollo.

Entendemos el efecto dañino del tabaco para la salud de las personas. Cuba está comprometida con ello y me atrevo a asegurar que todos nosotros presentes estamos comprometidos igualmente, pero hay que comprender también que el comercio del tabaco representa una importante contribución a la economía de numerosos países en desarrollo, en cuanto al PIB y a los ingresos por exportación, incluido el comercio libre de impuestos, ingresos que después pasan a formar parte de los presupuestos para la salud pública.

Como Estado en proceso de ratificación del Convenio Marco, Cuba está comprometida con este proceso. No obstante, necesitamos un Protocolo eficaz, con regulaciones objetivamente centradas en el fin que se propone y factibles de aplicar en todos los países, teniendo en cuenta sus diferencias económicas y sociales. Por otra parte, el Protocolo resultante de esta negociación debería reflejar los puntos de vista de todos a los efectos de que realmente sea viable y pueda ser ratificado en el futuro por un mayor número de Estados.

Por último, queremos compartir algunas medidas aplicadas por Cuba para evitar y enfrentar el tráfico, el contrabando y el comercio ilícito del tabaco, que han demostrado su eficacia, sin prohibir la venta de tabaco libre de impuestos. Entre esas medidas se encuentran las siguientes: la introducción en 1995 de un código al sello de garantía nacional de procedencia; la creación de una factura única para todas las ventas de los habanos en territorio nacional - esta factura se ha ido mejorando con el objetivo de dificultar su falsificación - ; el establecimiento de un reglamento para los torcedores que laboran en determinados puntos de venta, con el objetivo de controlar el suministro de la rama, el vitolario que hay que elaborar y la venta de su producción; el establecimiento desde 2003 de un sello de garantía holográfico con tecnología láser y código numérico de barras en los envases para el mercado interno, que a principios de este año comenzó a aplicarse progresivamente también en los envases de tabacos cubanos para la exportación, lo que dificulta enormemente su falsificación, permite el control de la entrega a los clientes y posibilita una acción efectiva de la aduana a la salida del producto por la frontera; el establecimiento de un órgano interministerial superior para la lucha contra el tráfico, el contrabando y la comercialización ilícita de tabacos, compuesto, entre otros, por representantes de los órganos de orden interior, la policía, la fiscalía, Habanos S.A. y la Aduana General de la República, que tiene organizado nacionalmente el trabajo operativo contra esta forma de actividad delictiva.

The CHAIRPERSON:

Thank you very much, Cuba. I must apologize to Uruguay. I did not see your flag before I moved to the non-Parties. Uruguay, please, if you would like to take the floor now.

El Dr. ABASCAL (Uruguay):

En primer lugar, reciba usted las felicitaciones y el agradecimiento por su trabajo.

El Uruguay apoya la declaración de las Partes de la Región respecto al Protocolo, pero quiere subrayar su aspiración de que el Protocolo mantenga una perspectiva de la salud pública. El tabaco es un producto de venta legal y circulación legal. Cuando se comercializa en forma ilícita se comete un delito y ahí deberá ser perseguido y penalizado por evasión fiscal y por las demás infracciones a las normas jurídicas de los países. Pero es importante que no perdamos de vista que el contrabando tiene una enorme repercusión como resultado de una de las medidas más importantes en el control del tabaco, como es el aumento de impuestos y, por lo tanto, el aumento de precios. Esto hace que el consumo de tabaco sea menos accesible, sobre todo a la población más joven de nuestras regiones, de manera que reiteramos nuestra aspiración de que el Protocolo tenga un enfoque de salud pública y de que este tema sea considerado con la importancia del impacto que tiene sobre las medidas que los países están adoptando para controlar el consumo de tabaco.

Mr LOM (United States of America):

Thank you Mr Chairperson for the opportunity to speak and first of all, congratulations on your re-election; we want to welcome everybody here for an important week and we look forward to working with everybody and we hope to contribute as much and as best as we can.

As an observer, we have two initial observations. Number one, as you properly pointed out, the focus, we believe, of this negotiation is Part III. We believe that achievement of that part in and of itself will be a very significant achievement and for that reason we are a bit concerned that it not be bogged down by considerations of the other parts of this proposed protocol such as, for example, Part IV which, although important, should not be used to overwhelm the importance of Part III. Again Part III really is the focus, and if we achieve agreement on that I think everyone can leave here saying this truly has been a successful week.

With regard to that particular Part, I think another word of caution is that when you look at those provisions, particularly those that deal with tracking and tracing, it seems that the focus is on cigarettes and, although that is a substantial part of the illicit trade, we should not forget about the other tobacco products. And many of those tobacco products are traded in different ways from cigarettes, so I think that it is important to keep track of the fact that those products may need different

or additional mechanisms with respect to tracking and tracing since they are not traded as cigarettes. Thank you.

Mr AL BAKER (United Arab Emirates): ()

Ms MENON (World Customs Organization):

The World Customs Organization secretariat appreciates the opportunity to be an observer and to be able to say a few words at this third session of the Intergovernmental Negotiating Body on the Protocol on Illicit Trade in Tobacco Products, and we welcome the revised Chairperson's text. We would also like to congratulate you, Chairperson, on your re-election and on the work that you and the Convention Secretariat and the relevant experts have done during the intersessional period. We are convinced that the elaborated text with explanatory notes constitutes an enhanced basis for the necessary further discussion and negotiations.

The most recent analysis carried out by the secretariat of the World Customs Organization, on the basis of the information on seizures of tobacco products carried out by customs services worldwide, confirms the global extent of the phenomenon of illicit trade in tobacco products, which includes both genuine and counterfeit cigarettes. Customs services are facing challenges from both large-scale operations – often undertaken by large, organized criminal organizations – and smuggling. The various features of the same phenomenon require different approaches at the domestic level but it is also demonstrated that international cooperation and coordinated management are key factors to success.

In June 2008, the World Customs Organization Council unanimously adopted its document *Customs in the 21st Century: Enhancing growth and development through trade facilitation in border security policy*. The Council identified 10 strategy building blocks for customs to strengthen their powers to enable them to carry out their duties more effectively in coordination, cooperation and collaboration with other government entities with border control responsibility. The World Customs Organization reiterates therefore the importance of a strong and implementable protocol in light of the impact that illicit trade in tobacco products has, not only on government revenues but also on public health. These twin tracks have been globally recognized. The World Customs Organization will definitely continue providing its members with the required assistance and will continue cooperating with the Convention Secretariat to the greatest extent possible.

The World Customs Organization was delighted to contribute to the intersessional work encouraging customs administrations to participate in regional discussions and raising awareness within the customs community on the importance of such a protocol. Support was given in particular to carrying out diagnostic missions on the impact of a tracking and tracing system. A tracking and tracing regime is in fact a key element of the protocol. The World Customs Organization has a long and distinguished record in working with governments to double up international standards and norms. We strongly support the inclusion in the protocol of an international tracking and tracing system – as you mentioned, Chairperson – in order to better regulate the commercial trade of tobacco products by providing all customs administrations and other competent authorities worldwide with an essential tool to tackle the phenomenon of illicit trade.

Another extremely important issue is related to free zones, which are regarded in some countries (in so far as import duties and taxes are concerned) as being outside the customs territory. This implies the risk of exploiting the free-zone system for commercial purposes as pointed out by delegates at

previous World Customs Organization meetings. It is therefore evident that a protocol should include the most appropriate provisions for the prevention and detection of fraud cases exploiting the free-zone system. Finally, we look forward to working with the Convention Secretariat and all Parties involved and to providing the required technical assistance for further development of the protocol; and we wish for fruitful discussions and negotiations in this Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products. Thank you.

Ms JOHNS (Framework Convention Alliance on Tobacco Control):

Thank you very much, Mr Chairperson, for this opportunity to speak on behalf of the more than 350 member organizations of the Framework Convention Alliance from around the world. We would also like to congratulate you on your re-election and thank the Convention Secretariat for the work carried out since the last session. Those of you who were able to come to this afternoon's ceremony when we unveiled the death clock will have seen that more than 43 million people have died from tobacco since 1999 when negotiations on the Framework Convention began. We say this because the protocol we are here to agree has three purposes: first, it fights smuggling and other forms of illicit trade and the organized crime and terrorism that illicit trade helps to fund; secondly, it helps governments raise the tax revenue they need; and finally, it saves lives. It is critical that Parties here today make significant progress towards a protocol on illicit trade that can be adopted in time for the fourth Conference of the Parties. We believe that the revised text offers a positive basis for talks at this session, but it requires significant changes. With that in mind, the Framework Convention Alliance encourages Parties to take a three-pronged approach to this week's talks strengthening the text, so that, for example, it includes clear action against duty-free and Internet sales of tobacco products; clarifying it so that, for example, it contains effective provisions on licensing of participants in the tobacco industry and undue diligence; and simplifying it so that, for example, the articles on offences and sanctions focus on matters within the remit of WHO and ensure clear relationships with existing treaties such as the United Nations Convention against Transnational Organized Crime.

In saying this, we want to make it clear that we support the current scope of the protocol, which includes tobacco, tobacco products and manufacturing equipment used in the manufacture of tobacco products. The Framework Convention Alliance is here to support this process in any way we can. We encourage you to call on us during the week and take advantage of the extensive briefing documents we have prepared. We are confident that the overwhelming majority in this room share a common objective of better control in illicit trade and tobacco. We hope and expect that your work will help slow down the ticking of the death clock. We wish you all the best in meeting the challenge of the coming week.

The CHAIRPERSON:

Thank you very much indeed. I suggest that the two remaining nongovernmental organizations wishing to speak make their interventions in the plenary tomorrow. Then we will go straight into Parts I and II of the protocol. Thank you very much indeed for all your contributions. Have a good evening and we shall see you tomorrow at 10:00. Thank you.

**The meeting rose at 18:10.
La séance est levée à 18h10.**

VERBATIM RECORDS OF PLENARY MEETINGS

COMPTES RENDUS IN EXTENSO DES SÉANCES PLÉNIÈRES

SECOND PLENARY MEETING

Monday, 29 June 2009, at 10:20

Chairperson: Mr I. WALTON-GEORGE (European Community)

DEUXIÈME SÉANCE PLÉNIÈRE

Lundi 29 juin 2009, 10h20

Président: M. I. WALTON-GEORGE (Communauté européenne)

1. ORGANIZATION OF WORK (continued) ORGANISATION DES TRAVAUX (suite)

The CHAIRPERSON:

Ladies and gentlemen, welcome to day two of the third session of the Intergovernmental Negotiating Body. I alert you to the fact that there is one document available to you which has been issued by the Convention Secretariat. It is document FCTC/COP/INB-IT/3/INF.DOC./8 entitled "Assessment of potential requirements at national level for an international tracking and tracing system for tobacco products". You will recall that Dr Nikogosian mentioned yesterday that this would be made available and it is on the desk as you come into the hall today.

Let me begin by explaining how I am going to conduct the meeting this morning. I also need to finish the debate under agenda item 4. I need to conclude the election of the officers of the Intergovernmental Negotiating Body and the proposals for the Chair and Vice-Chair of the committees, following which we will move on to a substantive discussion of Parts I and II of the protocol itself. That is the order of play for the meeting today.

2. REVISED CHAIRPERSON'S TEXT FOR A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS AND GENERAL DEBATE (continued)
TEXTE RÉVISÉ D'UN PROTOCOLE SUR LE COMMERCE ILLICITE DES PRODUITS DU TABAC PRÉSENTÉ PAR LE PRÉSIDENT ET DÉBAT GÉNÉRAL
(suite)

The CHAIRPERSON:

I would like to finish off the debate on agenda item 4. When I finished yesterday evening I said that there were two further observers who had indicated their desire to speak. I would propose to finish off our debate on that item by calling on them to give their views. If no one objects to that, we will go to the two observers and I would be grateful if you would identify yourselves before making your intervention.

Ms MULVEY (Corporate Accountability International):

Good morning. Thank you for the opportunity to speak on behalf of Corporate Accountability International and the Network for Accountability of Tobacco Transnationals.

We look forward to supporting the Parties in a constructive round of negotiations. As the week begins, we wish to alert Parties to the guidelines for implementation of Article 5.3 on the protection of public health policy against tobacco industry interference. These guidelines were unanimously adopted by Parties, after the second session of the Intergovernmental Negotiating Body, at the third Conference of the Parties in Durban last November. They are vitally important because interference by tobacco corporations poses the single greatest threat to implementation of the treaty's lifesaving measures.

Tobacco transnationals like Philip Morris International, British American Tobacco and Japan Tobacco have benefited from, and even been complicit in, illicit trade in tobacco. We call on Parties to scrutinize and amend the revised Chairperson's text so as to ensure consistency with the Article 5.3 guidelines, and safeguard the protocol against the tobacco industry's fundamental conflict of interests with public health.

To inform the negotiations, this week we are releasing an exposé of tobacco industry attempts to undermine the WHO Framework Convention on Tobacco Control and the illicit trade protocol, and show how Article 5.3 relates to this protocol. Current tobacco industry tactics include: developing close ties with governments, drafting memoranda of understanding that grant them access to law enforcement data and personnel, using conferences on illicit trade to network with public officials, spreading misinformation and attempting to water down Framework Convention policies.

In order to uphold Parties' obligations under the Framework Convention, this protocol should prioritize health over trade, protect health policy from tobacco industry interference, and hold tobacco transnationals accountable for the harms they cause. This includes, for example, eliminating Article 2.4, which conflicts with the Framework Convention by implying that the protocol is subordinate to all other international agreements; funding tracking and tracing systems by making the polluters pay, while ensuring that Parties maintain control over these systems; and explicitly excluding cooperation with the tobacco industry in Article 4 (General obligations).

International cooperation, technical and financial assistance, and political will are essential for overcoming the economic and political influence of the tobacco industry. Thank you.

The CHAIRPERSON:

Thank you very much indeed. The next nongovernmental organization, please.

Mr JOOSSENS (International Union against Cancer):

Mr Chairperson, distinguished delegates, I make this statement on behalf of the International Union against Cancer. Firstly, we thank the Chairperson and the Convention Secretariat for the work leading up to the third session of the Intergovernmental Negotiating Body. Tobacco contraband is an important public health issue. Higher tobacco taxes decrease tobacco consumption, which constantly

causes disease and death. Contraband undermines the impact of a high-tobacco-tax strategy. Not only does contraband lower prices immediately, it may also deter governments from further tobacco tax increases. We wish to draw your attention to a new international report released yesterday, which concluded as follows: “If the global illicit cigarette trade were eliminated, governments would gain at least 31 billion dollars and from 2030 onwards would save over 160 000 lives a year”.

An economic analysis, also published yesterday, shows that an illicit trade protocol would not only save lives, but would also provide governments with significant economic and welfare benefits that far outweigh the costs. We wish to reiterate our support for a strong and effective protocol. We would urge Parties to ensure that the protocol contains effective measures to control the supply chain, including regarding licensing, due diligence, tracking and tracing, a ban on Internet sales, a ban on duty-free sales, the exclusion of tobacco from free-trade zones, and fostering information exchange and international cooperation. Dear delegates, we wish you well in your deliberations. Thank you.

The CHAIRPERSON:

Thank you very much. I think that unless there is any other Party that wishes to make a final comment, we have reached the end of agenda item 4, which now gives us the context for our debate on the detailed elements included in the draft of the Chairperson’s text. I see there are no further requests for the floor under agenda item 4, which is concluded. Thank you for all your comments under that item.

3. OPENING OF THE SESSION (continued)
OUVERTURE DE LA SESSION (suite)

Election of officers (continued)
Election du bureau (suite)

The CHAIRPERSON:

I need to go back to agenda item 1.1, which was the election of the officers of the Intergovernmental Negotiating Body. As you know, yesterday we had an initial selection of people who would serve as officers of the Negotiating Body; however, we were missing one of the regions and I am very pleased to say that we now have a proposal from the final region, and I can read out to you the representatives who have been proposed as Vice-Chairpersons of the Intergovernmental Negotiating Body.

From the African Region, Mrs Asiedu (Ghana); from the Region of the Americas, Dr Regalado Piñeda (Mexico); from the Eastern Mediterranean Region, Dr Al-Mansoori (United Arab Emirates); from the South-East Asia Region, Mr Mohamed (Maldives); and from the Western Pacific Region, Dr Vinit (Papua New Guinea). May I ask the Intergovernmental Negotiating Body whether there are any objections to the proposals that have been made? I see no objections; therefore the people whose names I have just read out are elected as officers of the Intergovernmental Negotiating Body.

We need to decide the order in which the Vice-Chairpersons will sit on the podium, or take the Chair, in the event that I am not able to serve. We will draw the names by lot. The first Vice-Chairperson of the Intergovernmental Negotiating Body will be Dr Vinit from Papua New Guinea. Congratulations to you.

(Applause/Aplaudissements)

The second Vice-Chairperson will be Mr Mohamed from the Maldives. The third Vice-Chairperson is Mrs Asiedu from Ghana. The fourth Vice-Chairperson is Dr Al-Mansoori from the United Arab Emirates, and the final one is Dr Regalado Piñeda from Mexico.

Congratulations to all those colleagues.

Election of Chairs and Vice-Chairs of the committees
Election des présidents et vice-présidents des commissions

The CHAIRPERSON:

The other outstanding element from yesterday was the possible Chair and Vice-Chair of the two committees, Committees A and B. The names that have come forward to me are the following: for the Chair of Committee A, Mr Shakerian from the Islamic Republic of Iran, and for the office of Vice-Chair of Committee A, Dr Anibueze from Nigeria in the African Region and Dr Vivili from Tonga in the Western Pacific Region. For Committee B, I am advised that Mr Navarrete from Chile in the Region of the Americas would serve as Chair, and the Vice-Chairs would be Mr Salagai from the Russian Federation in the European Region and Mrs Demuni de Silva from Sri Lanka in the South-East Asia Region.

May I ask you if the Intergovernmental Negotiating Body is happy to recommend these delegates to the committees for their formal election when the committees meet later on during our session? Thank you very much. I see no objections. It is so decided. I think we have now finished the discussions on items 1, 2, 3 and 4. We have had a general orientation debate about the Chairperson's text and you have heard my own commentary about the changes that I have made and the reasons behind them. I think we can take it that we have concluded items 1 to 4. Thank you for your contributions to those.

4. DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS
ÉLABORATION ET NÉGOCIATION D'UN PROTOCOLE SUR LE COMMERCE ILLICITE DES PRODUITS DU TABAC

The CHAIRPERSON:

Moving on to agenda item 5, this is now the beginning of our debate on the details of the text contained in the document before you. We agreed yesterday, in response to your requests, that we should look at Parts I and II of the document, in particular the scope of the protocol and then go on to the further issues. I have mentioned to you that I do not want to have a discussion of Article 1, the definitions, because it would be premature to plough our way through all the definitions when we do not know what is going to be in the body of the text. We may not need all of those definitions, or we may in fact have to create additional definitions.

However if, during our discussions of Parts I and II on Articles 2, 3 and 4, we find that we do need to have a discussion about a particular definition, then clearly that would be fine; but it must be linked to the substance of the Articles that we are going to discuss, which are Articles 2, 3 and 4. What I would like to propose to you is that we begin with Article 3, which is the scope of the protocol, then go on to Article 4 and then back to Article 2. Is that agreeable to you as a method of approaching Parts I and II?

Mr LONGOLOMOI (Kenya):

Mr Chairperson, on behalf of the Parties in the African Region, I wish to thank the Chairperson and the distinguished delegates to the third session of the Intergovernmental Negotiating Body.

Looking at the scope of the protocol, in Article 3, we find that the protocol is actually well drafted. We from the African Region find only that, after prosecution, we should be addressing final elimination of illicit trade in tobacco, tobacco products and manufacturing equipment, and we should also be able to include key inputs. We think that if we can include key inputs, which are actually the key products that are used for the manufacture of tobacco, the scope would be more comprehensive.

We also find that we are lacking the issue of public health in the context of the scope. If we could also include that, I think we could be happy and feel that the entirety of the scope is covered. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much indeed to Kenya. Could I just make another small domestic point? We will have available the online drafting facility, so that if there are particular proposals that you want to make for the wording, we can take account of those. The Convention Secretariat will write down the proposals, as far as they understand them, and I will ask them to put into the text some of the suggestions that you make. If you have written proposals, there are forms available on which you can write them down, particularly if they are fairly lengthy proposals. That makes it much easier for us to take account of those suggestions.

That being said, I have taken account of Kenya's point that the scope should talk about the elimination of illicit trade, that they would like to see key inputs re-introduced into the text and that the health elements should be emphasized. We will need to look at that latter point rather carefully in the sense that we are talking about the elimination of illicit trade, and that should be one of our main focuses. So let us keep that in mind as we go through the discussions. Syrian Arab Republic, please.

Dr ABOU AL ZAHAB (Syrian Arab Republic): ()

The CHAIRPERSON:

Thank you very much. I would be grateful if the Convention Secretariat could put on the screen the text of Article 3 so that people can actually see it while we are discussing it. I have also noted the proposal by the representative of the Syrian Arab Republic to the effect that that we may need to have an additional article to go with Article 3. Now I would like to hear any comments on Article 3 itself.

Mr YÜKSEL (Turkey):

Mr Chairperson, I am taking the floor on behalf of the Parties in the European Region. There were a number of interventions yesterday concerning Article 3, which regulates the scope of the draft protocol. The Parties in the European Region strongly support the current text of Article 3, with the view that a clear definition of the term "manufacturing equipment" should appear in Article 1 of the draft protocol in order to avoid any misunderstanding.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, as you know, Brazil has some reservations concerning the scope of the protocol as it is drafted in your text and, basically, as you are aware, Brazil has difficulty in accepting the inclusion of tobacco and manufacturing equipment in this text. We propose the elimination of a reference to tobacco as raw material and to equipment used in the manufacturing of tobacco products because those references go beyond what is enshrined in Article 15 of the Framework Convention.

I would like to reaffirm our position regarding the scope of the protocol. Brazil believes that the scope should focus on tobacco products made by the tobacco industry, in accordance with Article 15 of the Convention, as I said. It is important to note that this does not mean that the protocol will not contain provisions regarding the control of tobacco and manufacturing equipment that are closely related to tobacco products and which are necessary if we want to fight against the illicit trade in tobacco products. In black and white, as you proposed, Brazil would suggest that we place in square brackets throughout the text any reference to tobacco and manufacturing equipment until we reach agreement on the scope of the protocol.

The CHAIRPERSON:

Thank you very much, Brazil. I have noted your comment that tobacco and manufacturing equipment should not be included in the scope of the protocol. Could I, though, just ask the Legal Counsel if he could give us any guidance about the extent to which we can include tobacco and manufacturing equipment in relation to what is said in Article 15, please?

Mr BURCI (WHO Legal Counsel):

Thank you, Mr Chairperson. Delegates will recall that, at the request of the Chairperson after the second session of the Intergovernmental Body, my office prepared a note (document FCTC/COP/INB-IT3/INF.DOC./6), addressing this issue – the scope of the protocol with particular regard to key inputs and manufacturing equipment – and whether items other than tobacco products could be included in the protocol. I hope that the legal views contained in that paper are clear enough, so I will not repeat them in detail, but basically, we approached this question from the angle of the normal rule of interpretation based on the Vienna Convention on the Law of Treaties, which relies on the ordinary meaning of the words in a treaty, but also on the context in which they are used and the object and purpose of the treaty in which they are included.

We looked at the whole of the Framework Convention on Tobacco Control, going beyond Article 15, and, in terms of the context which includes subsequent agreements among the Parties on any interpretation of certain provisions of a treaty, we looked at the decisions of the Conference of the Parties establishing this Intergovernmental Negotiating Body and cited terms of reference. We also looked at the template prepared by the experts which forms a basis, as decided by the Conference of the Parties, for the work of the Intergovernmental Negotiating Body.

On that basis, it seemed to us that, although Article 15 talks only about tobacco products, except for the reference to manufacturing equipment in paragraph 4(c), the interplay between Article 15 and the rest of the Framework Convention and the decisions taken by the Conference of the Parties would, in our view, justify an extension of the scope to at least tobacco manufacturing equipment or to other elements that have a moderately close causal relationship with illicit trade and which are key and essential elements in illicit trade. This is obviously to avoid seeing the protocol in isolation and to enable the Parties to negotiate an effective instrument.

The fact that in the view of the Office of the Legal Counsel this is possible does not mean that it should be done. It means that, in our view, it could be done, but it should be discussed on a case-by-case basis whether certain particular items such as tobacco manufacturing equipment, mentioned by Brazil, respond to this criterion because they are so close to illicit trade and, in particular, to the regulation of trade that the Parties are negotiating that it would be plausible and within the spirit of the negotiation to include them. This is definitely not a policy judgement. It is simply a matter of interpretation. Thank you.

The CHAIRPERSON:

Thank you very much. I think that is helpful to have as background for our discussions.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, just a point of clarification. Brazil opposes the inclusion of tobacco and manufacturing equipment in the scope of the protocol and specifically on Article 3, but we do not refuse to accept references to tobacco and manufacturing equipment in other parts of the protocol. I want to remind you and all present that Brazil already controls tobacco leaves and manufacturing equipment used in the manufacturing of tobacco products in Brazil. We do it through the strict control of tobacco products, and when I refer to strict control I mean absolute control exercised by the State and not by the industry. Our experience shows that if a State is able to control tobacco products and, in this process, also control tobacco leaves acquired by the industry and the manufacturing equipment used to manufacture tobacco products, this is done. We therefore do not want to accept the reference to tobacco and manufacturing equipment as part of the scope of the protocol. That is our point.

The CHAIRPERSON:

Thank you, it is very helpful to have a clarification like that. I have taken careful note of that.

Mr OOKA (Japan):

Mr Chairperson, as we mentioned yesterday in the general debate, we do not think it is necessary to regulate manufacturing equipment in addition to tobacco and tobacco products. In our country there is already a system to control the supply chain of tobacco and tobacco products. This administrative structure for the manufacture and distribution of tobacco products has been functioning successfully.

Therefore, prevention of illicit trade can be adequately achieved by targeting all the raw materials and tobacco products as a subject for supply chain control. Expanding the subject beyond this would lead to the increase of unnecessary administrative costs and we would like to request the deletion of “manufacturing equipment used in the manufacture of tobacco” from all relevant parts of the text. Thank you.

The CHAIRPERSON:

Thank you very much. As I understand it, you are going slightly further than Brazil in saying that you want to delete the reference to manufacturing equipment everywhere in the text, not just in Article 3. Have I properly understood your intervention?

Mr OOKA (Japan):

Yes, Mr Chairperson, you are right. We request deletion of the words “manufacturing equipment” from all parts of the text. That is our intention.

El Dr. ABASCAL (Uruguay):

Gracias, señor Presidente. Según vemos en este intercambio de opiniones, quizá lo que debería estar fuera del alcance es el cultivo de los productos y luego el resto de la cadena debería controlarse desde su primera venta. Nosotros, como país, pensamos que los medios de fabricación, al ser medios que producen el cigarrillo o el tabaco en cualquiera de sus formas, deberán estar controlados y que este Protocolo deberá tener simplicidad para poder ser viable, pero habrá que tener la suficiente profundidad en sus medidas para que sea eficaz, porque sino podremos llegar a tener un Protocolo que finalmente no tenga ningún efecto sobre el comercio ilícito. Así pues, tratemos de abordar aquellos puntos en los cuales podamos entender las posiciones de diferentes países, pero tengamos en cuenta que la cadena de producción y suministros seguramente deberá vigilarse.

La Sra. ROA RODRÍGUEZ (Panamá):

Gracias, señor Presidente. Panamá acepta la actual redacción del artículo 3 del texto propuesto por el Presidente, pero además quisiéramos una interpretación jurídica en lo que respecta a lo dispuesto en el artículo 1 del Convenio Marco referente a la definición de comercio ilícito, puesto que al final del párrafo se dice lo siguiente: «incluida toda práctica o conducta destinada a facilitar esa actividad». Por consiguiente, entendemos que los equipos están cubiertos dentro de este marco. Quisiéramos una aclaración jurídica al respecto.

The CHAIRPERSON:

Legal Counsel, please.

Mr BURCI (WHO Legal Counsel):

Thank you, Mr Chairperson. Indeed, I believe that was part of the arguments used in our note that the definition of illicit trade in Article 1 of the Framework Convention is very broad and mentions any practice or conduct that relates to production. That is why, in our view, an argument could be made that, under certain circumstances, manufacturing equipment, as related to production of tobacco products, could be included in the protocol on illicit trade. Thank you.

The CHAIRPERSON:

Thank you. I hope that will be helpful to Panama.

Mr ROWAN (European Community):

Mr Chairperson, we strongly support the text as it stands, and one of the important issues about controlling manufacturing equipment is that manufacturing equipment is used in the production of counterfeit cigarettes. What we have seen over the last 10 years is that counterfeit cigarettes on the illicit trade market have moved from single figures up to approximately 50% and have been growing all the time, particularly as law enforcement officers take stronger measures for controlling the genuine products. It is a problem that not only will not go away, but it is going to increase significantly. Therefore, it is absolutely essential that manufacturing equipment is controlled and addressed in a protocol.

We are also rather concerned that if we start deleting items from the scope at this stage we are really weakening our hand in relation to the negotiation of your text because that is really what we are here for: to negotiate a text that will bring us a strong protocol. If we start taking items out of the scope of the protocol, we could find that some of the Articles that later on would address such issues would be redundant. We are really putting the cart before the horse here. What we should be doing is discussing the aspects of the protocol as we move on into the various articles. If, after negotiations, some items are to be left out, then the scope of the protocol needs to be defined at that stage; but we strongly support Article 3 as it stands at the moment. Thank you.

M. BARRY (Guinée):

Merci, Monsieur le Président. Je fais mienne la proposition relative aux dispositions formulée au nom des Parties de la Région africaine de l'OMS. Toutefois, je suggère l'amendement suivant à l'article 3 : « Le présent Protocole s'applique selon ses termes à la prévention, la dissuasion, la détention, les enquêtes et la poursuite en justice de toute personne impliquée dans le commerce illicite du tabac, des produits du tabac, des principaux intrants des produits du tabac et du matériel de production utilisé dans la fabrication des produits du tabac. ».

Cela dit, j'ai constaté que l'expression « principaux intrants » figurait dans les anciennes versions et qu'elle a été supprimée dans la dernière version. Je vous remercie.

The CHAIRPERSON:

Thank you very much, Guinea. I have noted your suggestion for an addition to the text.

La Sra. MADRAZO REYNOSO (México):

Muchas gracias, señor Presidente. México quisiera sumarse a la posición del Brasil que ha sido expresada hace unos minutos. Reconocemos la importancia de regular y controlar toda la cadena de producción desde la hoja de tabaco hasta el proceso de la venta al consumidor de productos de tabaco ya sea por mayoreo o menudeo. Sin embargo, la opinión del área jurídica de mi país es que en el párrafo 1 del artículo 15 del Convenio Marco se señalan expresamente los productos de tabaco y no se hace referencia explícita al tabaco y a la maquinaria con la que se producen los productos de tabaco. Siendo el Convenio Marco el instrumento jurídico que da origen al Protocolo, si el alcance del Protocolo rebasa el alcance del documento original, aquél podría encontrar dificultades jurídicas en su aplicación dentro de la legislación. Al igual que el Brasil, no nos oponemos a que estos dos conceptos, eso es el tabaco y la maquinaria para la fabricación de los productos de tabaco, permanezcan dentro del Protocolo y reconocemos su importancia, pero no necesariamente hay que incluirlos en el artículo 3, que es el que fija el alcance del Protocolo por las razones que acabo de señalar.

Mr PADILLA (Philippines):

We would like to propose that Article 3 likewise includes the objective in order to give context to the scope. With your permission, Mr Chairperson, may we suggest the following wording: "It is the objective of this Protocol to eliminate illicit trade in tobacco, tobacco products, and such manufacturing equipment exclusively used in the illicit manufacture of such tobacco products. This Protocol shall therefore apply in order to prevent, deter, detect, investigate and prosecute such illicit trade". Thank you.

The CHAIRPERSON:

Thank you, Philippines. I would be grateful if you could provide a written version of that to the Secretariat so that we can have a look at it.

Dr ANIBUEZE (Nigeria):

Mr Chairperson, thank you for giving me the floor. Nigeria aligns itself with the presentation by Kenya on behalf of the Parties in the WHO African Region. However, I wish to refer the Negotiating Body to Articles 2 and 3 of the Convention itself. Article 2 states that "In order to better protect human health, Parties are encouraged to implement measures beyond those required by this Convention and its protocols". Article 3 actually addresses the objective of the Convention itself, stating that "The objective of this Convention and its protocols is to protect present and future generations from the devastating health, social, environmental, and economic consequences of tobacco consumption".

The essence of the protocol is to prevent illicit trade in tobacco, tobacco products and all the gadgets that are used in this production. In obeying Article 2, Parties are advised to go even beyond the provisions of this protocol. I understand the situation in certain countries that are already controlling illicit trade. I think the essential thing is to have a protocol that would go beyond national boundaries to include other areas, other countries or Parties so that there would be some uniformity. I would like to say that Nigeria supports the view that everything involved in the production should be included because we are talking of the scope of this protocol. Therefore, we would not agree with the proposal that has been made by Kenya on behalf of the Parties in the African Region. Thank you.

The CHAIRPERSON:

Thank you very much Nigeria. It is very helpful to be reminded that we are dealing with an international situation, things which go beyond borders, and that whatever system we have needs to operate on that global level.

Mr MOREWANE (South Africa):

Chairperson, South Africa agrees with the statement read by Kenya on behalf of the Parties in the African Region and further wants to confirm that our point of reference for Article 3 is Article 15 of the Framework Convention, because it contains provisions on the need to deal with illicit manufacturing. Therefore, manufacturing equipment must be included in the scope of the protocol. Illicit manufacturers target the poor, the ignorant, the illiterate and young people. Therefore, our view is that this is the minimum requirement for the operation of an article on the scope. Because, if we do not do that, we run the risk of failing to protect the poor and we cannot have a protocol with too little bite. We therefore need to have a tightly worded protocol because we are dealing with a manufacturing industry that is very smart, that knows how to outmanoeuvre and looks for a loophole in every sentence. Therefore, we consider that the scope must stand as it is, including the additions proposed by Kenya. Thank you.

El Dr. SAN MARTÍN (Paraguay):

Gracias, señor Presidente. El Paraguay considera que la aplicación de este Protocolo efectivamente será un gran desafío y que los productos de tabaco, incluso las hojas de tabaco desde el momento que salen de los campos de cultivo, deben ser vigilados porque, en nuestra experiencia, la hoja de tabaco es el insumo básico que se utiliza para la fabricación y comercialización ilícitas de productos de tabaco. Por consiguiente, reitero que puede llegar a ser un desafío muy importante vigilar las máquinas productoras, pues son el instrumento esencial de que se vale la industria tabacalera para fabricar ilícitamente los productos de tabaco.

Si estos elementos no están incluidos dentro del ámbito de aplicación en este artículo 3, consideramos más complicado aún que luego puedan ser considerados dentro del desarrollo del Protocolo. Por tanto, concluimos que en general estamos de acuerdo con el texto propuesto.

Dr AL-LAWATI (Oman):

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The CHAIRPERSON:

Thank you very much. If you would submit that in writing, we can look at it and see if we put it into the text. What I am intending to do at this stage is to gather a few more ideas, following which I will make a proposal for what we should actually have in the text of Article 3, subject to revisiting it, if necessary, when we have looked at some of the written proposals. I think there is a fair amount of commonality in the comments that are being made at the moment which we can gather under two or

three suggestions for the text. However, I will wait to see if there are any additional points that Parties would like to raise.

Dr KOSTENKO (adviser to Mr Nebenzia, Russian Federation):
Д-р КОСТЕНКО (Российская Федерация):

Благодарю Вас, господин Председатель, за возможность высказать наше мнение.

В целом хотелось бы сказать, что Российская Федерация поддерживает положения данной Статьи и считает, что для того чтобы меры были действительно эффективными в борьбе против незаконной торговли табачными изделиями, необходимо, чтобы цепочка поставок контролировалась от начала до конца.

Спасибо большое.

Dr GAO Xingzhi (China):

高兴智 (中国) :

谢谢主席。

中国支持将烟草和烟草设备纳入议定书的管制范围。同时，中国建议将生产烟草的其它一些主要材料也纳入管制范围。我们认为，如果不能对烟草原料和烟草设备的非法贸易进行有效打击，就不可能很好地打击烟草制品的非法贸易。所以，在考虑和制定对烟草制品非法贸易打击的同时，必须要同时考虑对烟草制品所用的原料和烟机设备非法贸易的打击。

谢谢主席。

Mr TAGOE (Ghana):

Mr Chairperson, Ghana supports the stand taken by the Parties in the African Region as earlier presented by Kenya, to the effect that the equipment should also be included, the reason being that, if the equipment is excluded it will mean that the machines will remain and offer an opportunity for the crime to be perpetuated. This is what is normally done in all smuggling cases: whatever goes with the item is also seized. So we support the idea that the equipment should be included. Thank you.

Dr VINIT (Papua New Guinea):

Mr Chairperson, Papua New Guinea would support manufacturing equipment and items if we could include other equipments that contribute to counterfeit labelling and those equipments as well. I think the terminology may have been misconstrued here: in terms of manufacturing equipment, I think it is basically illicit manufacturing equipment, so that those who have legal manufacturing equipment can keep it; but I think we need to get this right. We are dealing with illicit tobacco and all related equipment, labelling and printing items, if that can be included as well. Thank you.

Le Professeur TIDJANI (Togo):

Merci, Monsieur le Président. Je m'associe à la déclaration faite par le délégué du Kenya au nom des Parties de la Région africaine de l'OMS. J'ai un commentaire concernant ce qu'a dit le délégué d'Oman. Nous sommes d'accord que le but de la réglementation est de protéger la santé, comme l'a montré hier la représentante de la Framework Convention Alliance on Tobacco Control en disant que, toutes les deux secondes, il y a un décès lié au tabac. Je suis donc d'accord que l'on ajoute la notion de santé publique. Quant à l'aspect économique, n'oublions pas que, dans certains pays, c'est

le tabac qui rapporte de l'argent. Ce serait donc un danger, si j'ai bien compris l'intervention du délégué d'Oman, d'ajouter le côté économie. Je vous remercie.

Mr LEGUERRIER (Canada):

Mr Chairperson, we would support Brazil's position. We believe that the scope should be limited to tobacco products but that reference to manufacturing equipment could remain in the text in another section or other provisions when appropriate or relevant. Thank you.

The CHAIRPERSON:

Thank you. Could I just clarify what was your position on the tobacco itself, please? I am sorry, I may have missed that at the beginning.

Mr LEGUERRIER (Canada):

It should be out of the scope of the protocol.

Le Dr TOESSI (Bénin):

Monsieur le Président, je voudrais tout simplement rappeler quelque chose : nous ne sommes pas réunis ici pour parler du commerce illicite du chocolat ou du chewing-gum, nous sommes ici pour parler du commerce illicite du tabac. C'est bien pour des raisons de santé, puisque la Convention-cadre de l'OMS est partie de là. C'est donc pour cela que je voudrais que nous partions tout simplement de la notion de santé d'abord, avant d'en arriver à la lutte contre le commerce illicite du tabac.

Dans ce sens, tout en appuyant bien sûr la position des Parties de la Région africaine de l'OMS, je voudrais formuler la proposition suivante : « Le présent Protocole visant prioritairement la protection de la santé des populations, il recommande aux Parties la mise en oeuvre de toutes les mesures légales en vue d'éliminer le commerce illicite des produits du tabac qui portent une atteinte grave à la santé et la saisie du matériel spécifique impliqué dans ce commerce. ».

Merci, Monsieur le Président.

The CHAIRPERSON:

Thank you, Benin. If you could give that text to the Secretariat, that would be helpful to us as well.

Mr AHMADI (Islamic Republic of Iran):

Mr Chairperson, my delegation is in favour of keeping the Article at hand as it stands right now. In our view, the phrase "manufacturing equipment" should stay in the Article that sets out the scope of the protocol. The simple rationale for the need to keep the phrase in the Article is that illicit manufacturing equipment is at the origin of producing the counterfeit cigarettes of which many countries, including mine, are victims.

Simply to alleviate, perhaps, the conscience of a number of delegations that spoke against retaining the manufacturing equipment in the scope of the protocol, I would like to propose that we insert the word "uniquely" before "used" in the fourth line of Article 3, and thus, "manufacturing equipment uniquely used" would be addressed in the protocol. Thank you.

The CHAIRPERSON:

Thank you. I shall sum up where we stand at this stage in the debate. There are a couple of Parties who have made clear that they simply do not want tobacco and manufacturing equipment to be included in the protocol at all. At the moment they are in a minority of those who have spoken. There is a strong body of support for saying we want a wide scope to the protocol so that we can tackle illicit

trade in all its forms. There is even a demand for reintroducing key inputs into the scope of the protocol. I would ask those countries that have asked for the re-introduction of key inputs to let the Convention Secretariat have a list of which items they think would fall under the definition of key inputs, because that would be something we need to look at.

Another call has been for the addition of a reference to public health. Now, whether we put public health into the scope of the protocol or whether we have that more explicitly set out in the preamble is a matter for debate. Clearly, we are acting within the context of the Framework Convention, which is a convention on public health; but we are now dealing with a specific aspect of controlling illicit trade, combating and eliminating illicit trade, which will have a consequence on the protection of health. It may be that the link can be made better in the preamble rather than in the scope itself.

The other interesting development is that several countries have suggested that, although it is not appropriate to mention manufacturing equipment and tobacco in Article 3, they nevertheless accept that the full force of the protocol should apply to the control of those two areas. In other words, tracking and tracing, know-your-customer, licensing and so on, so that we can ensure that tobacco, tobacco products and manufacturing equipment do not find their way into the illicit trade and are not used for producing items which are then used for illicit trade. There is quite an interesting scope for debate there as to how we would deal with those two items.

What I am thinking at the moment is that we could simply put into square brackets manufacturing equipment and tobacco; put back into square brackets key inputs until we know whether there is any possible definition of that; look at the proposals on health language, which people want to come up with; and then try to decide whether that should go into the preamble rather than into the scope of the protocol itself. That is my thinking.

There are some suggestions for particular wording that people have put forward and which we can look at as well, but I think the big question which we will need to answer is whether by leaving out the reference to tobacco and manufacturing equipment in Article 3, we can still go forward and apply all the rest of the provisions, offences, tracking and tracing and so on, to the items that we have nevertheless not mentioned in Article 3. That is an interesting track that we could follow. I am going to ask the Secretariat to make some of those little changes in the text so that we can look at it and see if it will actually work; then we will go on to one of the other articles. I see that there are a couple of other Parties who would like to make further comments on this and I will give them the opportunity to do so now. Then I intend to move on to Article 4.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, I am sorry for taking the floor again. In the view of the Brazilian delegation, which reflects the position taken in the legal advice that we received from many ministries in our country, there is a basic flaw in your text, which is the absence of any reference to the tobacco industry in the text. In the view of the Brazilian delegation, the tobacco industry has been playing a destabilizing role in the efforts of governments like the Government of Brazil at full implementation of the Framework Convention, and Brazil has sound reasons to believe that this same industry is not going to play a neutral role in the implementation of the future protocol. In our view, it is difficult to accept the drafting of a protocol to fight the illicit trade in tobacco products without making any reference to the tobacco industry.

We are going to be more explicit in our opposition to the line taken by you, but the mistrust that we have on the language used in the scope of the protocol has to do with this basic flaw in your proposed draft. I think there is a way out of this stalemate if we try to follow suggestions made by some delegations. I recall that the scope of the Vienna Convention on the Law of the Treaties is extremely simple. Article 1 on the scope of the Convention says simply: "The Convention applies to treaties between States". So I do not know why we need the scope of the protocol to contain so much language, including many items that, in our view, contradict the spirit and the letter of the Framework Convention.

With all due respect to the opinion of the WHO Legal Counsel, it is not the same opinion that our legal counsels have in Brazil. I think a way out would be to be very precise and specific in the scope of the protocol with language such as "the protocol shall combat illicit trade in tobacco

products” and then introduce a health perspective. We could then have an objective of the protocol and in drafting the objective of the protocol we could try to include items that are, in our view, incorrectly included in the scope of this protocol.

We would have then a scope that is very precise and very short, making reference to what is stated in the title of the protocol which, I remind you, is a “Protocol on illicit trade in tobacco products”. In the objective, we could work out language that would include other items; but the scope of the protocol, and I talk from a legal perspective, has to be simple and has to make a clear reference to what is in the title of the protocol and what is in Article 15 of the Convention. Thank you very much.

The CHAIRPERSON:

Thank you very much, Brazil. I am not attached to this Article at all. It would be just as easy to delete the whole Article because we do not need actually to specify what the scope of the protocol is. As long as we agree on what is in the content, we are home and dry. So if everyone would be happy to delete Article 3, I would be delighted.

Once you start talking about making it more flowery, making the reference to health and so on, it is simply not necessary to do that. We can simplify this Article, I agree with you on that. It can be simple or it can disappear, because there is no obligation on us to specify the scope of the Article. I understand you have a proposal for this revision; if you give that to the Convention Secretariat, we will look at it. That being said, please bear in mind that I am not attached to Article 3 and would welcome its deletion if necessary; but I am happy to look at simplifications as well.

La Sra. ROA RODRÍGUEZ (Panamá):

Precisamente, señor Presidente, quisiera hacer nuevamente una consulta al Asesor Jurídico acerca de si los elementos que no se enuncian en el artículo 3 pueden ser desarrollados posteriormente a lo largo del Protocolo, pues tengo dudas al respecto.

Mr BURCI (WHO Legal Counsel):

I hope I understood correctly the question from Panama. The scope defines the “outside boundaries” of the Protocol, what is to be contained in the protocol. In a way, even if the scope is limited to the illicit trade in tobacco products, that does not prevent the rest of the protocol, in respect of tracking and tracing and other provisions, from covering raw tobacco or manufacturing equipment when doing certain things with those items responds to and fulfils the purpose of prosecuting and preventing illicit trade in tobacco products.

I believe the position of Brazil is that even if it is not in Article 3, that does not mean that it cannot be regulated in the protocol. I think that there should be some flexibility in not linking too closely what is in the scope with what can be regulated later on in the protocol from a technical point of view. Thank you.

The CHAIRPERSON:

Thank you very much. I think that is very useful background information

Mr AL BAKER (United Arab Emirates):

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The CHAIRPERSON:

Thank you very much for your intervention. As I understand it, the advice of Legal Counsel is that, even if we refer only to tobacco products in the scope of the protocol, we can have provisions further on in the text in relation to tobacco, in relation to manufacturing equipment, even in relation to key inputs if we can define them, if the purpose of controlling those items leads to the achievement of the objective of Article 15; in other words, combating illicit trade. I therefore think that there is a great deal of scope for us to go down that line and I am reflecting whether we can produce a revised version of Article 3 which would in fact give us that possibility.

Dr AL-LAWATI (Oman):

Thank you, Mr Chairperson. I am just wondering whether deleting Article 3, as you suggested a few minutes ago, would have any implications or no implications at all for the rest of the protocol. Obviously, you have one thing at hand. You have just mentioned that you want to rephrase Article 3 and that this will have no implications, as you said just now, but would it not be the same if you delete it altogether? Thank you.

The CHAIRPERSON:

It is a good question and I will ask the WHO Legal Counsel.

Mr BURCI (WHO Legal Counsel):

Thank you, Mr Chairperson. As you yourself said, there are many treaties that do not have an article on scope. I do not know if it is more the exception than the rule, but I can think of many, many treaties that do not define in a discrete, separate way what the scope is. The scope is then defined by the overall instrument, by the substantive provisions that define its extent, define the measures

required of parties, and define the object of regulation and so on. I would therefore agree with what you said, Mr Chairperson, that the deletion of the scope would not in any way affect the negotiation on the substance of the instrument regarding what Parties can do. Obviously, as several delegations have said, the basis remains Article 15 of the Framework Convention in terms of the objectives to be pursued and in terms of some of the measures that could be included in the protocol.

El Dr. ABASCAL (Uruguay):

Señor Presidente, creo que este intercambio de opiniones acerca del artículo 3 ha sido muy beneficioso para todos los países, porque ha puesto sobre la mesa el tema que seguramente estará en las discusiones de todos los artículos del presente Protocolo, y esto significa que tendremos que esforzarnos por tener un Protocolo que pueda ser viable y aplicable por los países sin que esto signifique que pierda su eficacia en el control del comercio ilícito. Por consiguiente, vamos a estar continuamente tensados entre dos extremos, uno en la viabilidad de la aplicación de las medidas que aprobaremos, y otro en que estas medidas realmente signifiquen un control efectivo del comercio ilícito. A veces será difícil que podamos juntar estas cosas, pero debemos esforzarnos a conseguirlo. Por eso me parece que el artículo 3 deberá tener un redactado general amplio, aunque esto no debería significar que disminuya la eficacia en la aplicación del Protocolo.

En segundo lugar, quería manifestar que mi país apoya la posición del Brasil respecto a establecer en el texto la responsabilidad de la industria en su vinculación con el comercio ilícito. Finalmente, y en referencia al primer punto, sobre la colocación de los insumos, creo que esto puede quedar establecido en el texto, mientras que el articulado me parece que debe referirse fundamentalmente a los filtros y al papel para la fabricación de los productos de tabaco.

Dr ANIBUEZE (Nigeria):

Mr Chairperson, just to add to some of the key inputs that we were referring to earlier: they would include, as my colleague has said, cigarette filters, cigarette papers, additives that are unique to tobacco production, and some laboratory equipment such as smoking machines. As we go on, we will be developing this list, but, so far, that is what I am referring to. Thank you.

The CHAIRPERSON:

Thank you very much indeed. If you can put those down on the sheet of paper at the entrance, that would be very helpful to us as well.

El Sr. TORRES MARTIN (Colombia):

Muchas gracias, señor Presidente. Como este Protocolo es el desarrollo del artículo 15 del Convenio, creemos oportuno sugerir que se suprima el artículo 3, pues ya está incluido en el artículo 15. En el artículo 15 encontramos el marco general de la regulación que debe ser objeto del presente Protocolo. A efectos de ir avanzando en este Protocolo, reiteramos nuestra propuesta de suprimir el artículo 3.

La Sra. JAQUEZ (México):

Gracias, señor Presidente. Nuestra preocupación ya quedó abordada en intervenciones anteriores.

M. MOHAMEDOUN (Mali):

Merci, Monsieur le Président. J'interviens probablement un peu tard après votre intervention, mais le problème est le fondement juridique du protocole. Si on a des difficultés à accepter un élargissement du champ d'application sous prétexte que l'article 15 ne prévoit pas cet élargissement, on aura également des problèmes avec le fondement juridique du protocole : sans intégration dans le champ d'application du protocole, il y aura exclusion du protocole. Si on ne trouve pas de compromis

dans le sens d'un élargissement du champ d'application assez souple et général, il faudra à la rigueur en arriver à la suppression de l'article 3.

Merci, Monsieur le Président.

M. DONBE (Tchad):

Merci, Monsieur le Président, de m'avoir donné la parole, mais le Mali a déjà marché sur ma langue: supprimer l'article 3 reviendrait à réduire le champ d'application des autres articles, lesquels seront soumis à diverses interprétations. Je suis d'avis que l'article 3 a sa raison d'être et qu'il faut l'élargir plutôt que de le supprimer. Merci.

Mr MOHAMED (Maldives):

Mr Chairperson, I am taking the floor on behalf of the Parties of the South-East Asia Region. We understand there are still divergent views and you also have mentioned that there could be a reformulation of the text. There is now also a suggestion for total deletion. However, at this point the Parties in the South-East Asia Region in principle support the text of Article 3 as it now stands. But if there is reformulation or a new decision, then we will reconsider. We thank you for the new seating arrangement. We will consult again. Thank you.

Mr BALOCH (Pakistan):

Mr Chairperson, we notice that the Chairperson's note no longer includes key inputs as part of the scope and we note the rationale for excluding key imports. We are concerned that this is a missed opportunity to control a key part of the supply chain, while we recognize that certain inputs used for tobacco products manufacturing could also be used for other purposes, ready-made cigarette filters as well as filter tow being an exception. Including these two key inputs in the scope of the protocol would, in our view, significantly strengthen its effectiveness.

Pakistan therefore proposes to include filter tow and ready-made cigarette filters in the scope of the protocol. We also propose that manufacturing equipment used in the manufacturing of tobacco products should be clearly defined and include, but not be limited to, cigarette-packing machines as well as cigarette filter-making machines. Thank you.

Dr ABOU AL ZAHAB (Syrian Arab Republic): ()

Le Dr ALELUIA LOPES (Guinée-Bissau):

Nous suggérons de compléter le texte de l'article 3 en y incluant les moyens de transport et l'infrastructure pour la conservation et la vente des produits du tabac. Merci.

Mr IBRAHIM-SALAH (Libyan Arab Jamahiriya): ()

Dr DLAMINI (Swaziland):

Mr Chairperson, having listened to the WHO Legal Counsel on this issue, and being a legal person myself, I want to contend that the argument that it is legally impossible for the protocol to deal with the issues of manufacturing equipment, tobacco leaf and key inputs because of the wording of Article 15 of the Convention does not, with all due respect, hold any water whatsoever.

What we seek to regulate here is the major public health problem of illicit trade in tobacco products, and certainly not for our own sake. It is therefore extremely important that the scope of the protocol and its application should be broad enough to make reference to tobacco leaf, manufacturing equipment and key inputs used in the illicit manufacture of and trade in tobacco products.

Second, if we were to delete Article 3 of this protocol completely, then the other Articles will have no meaning whatsoever because, in my view, Article 3 informs the other articles of the protocol.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, having listened to many colleagues and the advice given by the WHO Legal Counsel and having taken a look at the Framework Convention that in Part II talks about objective guiding principles and general obligations of the Convention, I would like to propose that we accept the deletion of the scope of the protocol if we agree on having an objective of the protocol which would read as follows: "The objective of this Protocol is to eliminate all forms of illicit trade in tobacco products in accordance with the terms of Article 15 of the Framework Convention on Tobacco Control." Thank you very much.

The CHAIRPERSON:

Thank you very much, Brazil. With your permission, I am going to have a moment of reflection with the WHO Legal Counsel and Convention Secretariat and then give you my feeling as to where we have reached on Article 3.

**The meeting was suspended at 12:00 and resumed at 12:05.
La séance est suspendue à 12h00 et reprend à 12h05.**

The CHAIRPERSON:

Thank you very much for your indulgence. What I propose is the following. It seems to me that, legally, we can include in the text manufacturing equipment, tobacco, even key inputs, as long as they are consistent with the objective of the Framework Convention itself: that is Article 15. The vast majority of people who have spoken this morning have said that we are able to negotiate the other parts of the Protocol in relation to supply chain control, offences and so on, taking into account that this will or could apply, depending on our negotiation, to manufacturing equipment and to tobacco.

If that is properly understood and there will be no legal argument when we get to the later parts of the text about the controls on tobacco and manufacturing equipment, in other words people will not argue to me that there is no legal possibility of having control systems on these other elements, then I am prepared to put Article 3 into square brackets with a view to it being deleted once we have reached agreement on the mechanisms in the rest of the protocol. That is a way of ensuring that we do not throw out the baby with the bathwater at this stage.

I think that we can probably decide to eliminate Article 3, but I do not want to have the argument later on this week that, because we are eliminating Article 3, we therefore cannot have supply control measures on tobacco and on manufacturing equipment and on key inputs. The legal advice from the WHO Legal Counsel is, I think, very clear. Article 15 of the Convention allows us to include those elements that contribute to the combating of illicit trade in tobacco products and these could be the manufacturing equipment and key inputs and tobacco, and other things possibly.

Therefore, my proposal to you is that, if you are able to agree that there will be no legal argument on these matters later on, I will put Article 3 into square brackets with a view to its deletion once we have reached agreement on the other parts of the text.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, thank you for your proposal. Brazil still believes that, in a way, we needed either a scope or an objective for this protocol. We cannot agree that, in the future, we will not oppose the understanding that we – including the delegation of Brazil – have agreed here that no legal objection can be raised by our delegation concerning the inclusion of tobacco or manufacturing equipments in some parts of the protocol.

I shall explain why Brazil will defend the argument, later on, that this protocol has to accept the possibility of reservations. Brazil believes that it will be ultimately impossible for our country to sign and ratify this protocol, given the wording of some parts of this text. We can live with the square brackets around Article 3, but our understanding is that we are free to defend our positions in the forthcoming negotiations concerning the inclusion or not of some items described in the text that will be in square brackets. Thank you.

The CHAIRPERSON:

Thank you very much. Perhaps I can clarify my position. You can certainly argue that you do not want to have certain things covered by particular articles in the protocol, but the discussion that we have had so far is that there is a legal basis for including them if we want to. What I do not want to have is an argument at a later stage that it is legally impossible to include manufacturing equipment and tobacco in the other parts of the protocol. You are free to argue that you do not want them there, but not that it is legally impossible. I hope that clarifies the situation. Is that acceptable to everyone?

Le Dr TOESSI (Bénin):

Merci, Monsieur le Président. Je vous remercie pour cette synthèse et cette vision qui visent à faire avancer nos travaux. Cependant, au nom du Bénin, je souhaite exprimer quelques inquiétudes : en effet, le Bénin a élaboré une loi antitabac, mais nous avons rencontré d'énormes difficultés dans sa mise en application parce qu'il a été dit que le texte n'a pas prévu ceci, n'a pas prévu cela, ce qui entraîne d'interminables discussions juridiques. Je tiens donc tout simplement à faire remarquer que si

l'article 3 est supprimé, il faudra qu'il y ait des détails dans les autres articles pour faciliter l'application sur le terrain et éviter toute interprétation erronée.

The CHAIRPERSON:

Thank you very much, Benin. That is a very valid point. We would need to make sure that the provisions further on are clear, precise and mandatory. If that is the situation, we will have an international treaty that sets out those obligations and will, we hope, avoid some of the arguments that you have experienced. Thank you for pointing that out.

M. FALL (Sénégal):

Je vous remercie, Monsieur le Président. Il me semble en fait que, pour ce qui est de l'article 3, son insertion dans le texte ne devrait pas poser de problème parce qu'il n'est pas gênant. Ce serait même mieux de reprendre exactement le champ d'application du protocole parce qu'en fait la Convention qui sera certainement ratifiée par les États devrait profiter, en tout cas dans son application, aux autres administrations, du moins à celles qui sont chargées notamment du contrôle aux frontières et par conséquent de la sécurité et de la santé dans les États.

Par ailleurs, je voudrais revenir sur le point suivant : tout à l'heure, j'avais proposé par écrit une autre rédaction du texte français pour éviter les répétitions dans ce texte : « tabac, produits du tabac et matériel de fabrication utilisé dans la fabrication des produits du tabac » ; il serait préférable d'écrire, par exemple, « produits du tabac et matériel destiné à la fabrication desdits produits ». Pour ce qui concerne la prévention, la dissuasion et la détection, je propose la rédaction suivante : « Le présent Protocole s'applique à la prévention, à la dissuasion, à la détection, au contrôle et aux sanctions du commerce illicite du tabac brut (si vous voulez inclure le tabac comme matière première), des produits du tabac et du matériel destiné à la fabrication desdits produits. ». à mon sens, quand on parle de contrôle et de sanctions, il faut permettre aux administrations, notamment celles qui sont chargées de lutter contre la fraude ou contre les produits contrefaits – la douane, la police, la gendarmerie, par exemple – de préserver la santé publique. Il convient de pouvoir contrôler les matériels utilisés dans la fabrication et, en tout cas, les entreprises qui ne sont pas structurées ou qui sont tout simplement en situation de fraude. Je vous remercie.

The CHAIRPERSON:

Thank you very much. Yes, I understand your points. If we have an Article 3, then we would have to look at the text again; but, as I say, for the moment I am inclined towards deletion of Article 3 and to make the rest of the protocol sufficiently clear and mandatory so that there is no misunderstanding about what it applies to, to whom it applies and so on.

Dr AL-LAWATI (Oman):

Mr Chairperson, I would like to draw your attention to the fact that, as you just said, as did the WHO Legal Counsel, it is quite possible to have Article 3 as it is at the moment, and you have seen also that most speakers have been requesting that it be retained or slightly amended. We would therefore like to keep it as it is, even without the brackets, until we look at it again later. If it is not going to cause any harm, why should we delete it when the majority have expressed their willingness to accept it as it is or with minor amendments? Also, legally, it is possible to have it and it is not in contradiction with any legal terms. I would like to keep it as it is at the moment without even the brackets, please. Thank you.

The CHAIRPERSON:

I understand your view. My personal view is that it would be very nice to keep it as it is; but I think, in order to make any sort of progress at the moment, the only way is by putting brackets round it at this time. I hate to do this, but we have had two hours of discussion and my major contribution

has been to put two brackets into the text. Not a good sign of my chairpersonship; but given the differences of view, I think that is the only practical way of going forward. Nothing is ever lost. We never lose sight of text and it remains in my back pocket to be brought out if absolutely necessary. However, I would beg your indulgence to allow me to put a couple of brackets in the text for the moment.

M. BOUCHEDOUB (Algérie):

Monsieur le Président. Je précise que nous estimons que cet article ne devrait pas être maintenu entre crochets. Sur le plan juridique et conformément à la pratique des conventions-cadres, comme dans le cas de la Convention-cadre de l'OMS pour la lutte antitabac, le protocole doit être plus précis que la convention-cadre et ne pas uniquement s'y référer. L'article 15 ne doit donc pas être un prétexte pour ne pas garder l'article 3. Je vous remercie.

The CHAIRPERSON:

Thank you very much, Algeria. I understand your view, but I think that Article 3 will not have a major impact on what we have in the rest of the text. However, when we have looked at the rest of the text, we have the right to come back to Article 3 to make that decision. As I say, nothing is lost by putting it into the square brackets.

El Sr. TORRES MARTIN (Colombia):

Apoyamos la propuesta de la Presidencia de mantener el artículo 3 entre corchetes.

Dr ABOU AL ZAHAB (Syrian Arab Republic): ()

15

The CHAIRPERSON:

Thank you. It remains my intention that manufacturing equipment will be considered under the other Articles of the protocol. It is the other articles of the protocol that contain the teeth of what we have to do. That is where the real substance is. I hope that when we come to those articles, you will be arguing strongly in support of what is there and I shall be very grateful for that support. I think that is where we will have a very good discussion.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, I simply wish to comment on the negotiation process. In my view, it would not greatly help advance these negotiations simply to put square brackets around entire articles. If you avoid including the language proposed by delegations, even if it increases the length of the text or, in some cases as in my latest proposal, it offers a minimum possibility of solution, we will never escape from stalemates like this. With all due respect, I believe that the method of negotiation should include the proposals on the screen made by delegations trying to reach agreement on articles such as the one we are discussing now. In my view, simply putting square brackets is not a clear reflection of the discussion held during the last two hours.

The CHAIRPERSON:

Thank you very much. There have been toings and froings. We will gather the proposals that have been made, but it seems to me that there is a way forward that could be acceptable to all: that is, to delete Article 3. That is why I have suggested the square brackets, but I am perfectly happy to receive your proposals on a shorter text, a more precise text, if we have to come back to wording for Article 3. However, my feeling at the moment is that we do not need an Article 3 and we could have something on the health reasons in the preamble; but any proposals will be welcome.

I would have preferred to have agreed a specific text for Article 3 but, clearly, some delegations were not going to accept having manufacturing equipment or tobacco there, while others were pressing very strongly for it. You would have found yourself in a minority if we had adopted the majority view. So I am going to stick to my proposal to have the square brackets, gather the proposals that have been made and have a look at them once we have agreed on the substance of the other articles contained in this protocol. That is what I am definitely going to do. Thank you.

El Dr. ABASCAL (Uruguay):

Señor Presidente, no estaríamos de acuerdo con la supresión del artículo 3 porque creemos que el artículo en sí no es el problema; el problema son algunos puntos que están contenidos en él, y seguramente durante la discusión de los mismos deberemos tratar de llegar a un acuerdo sobre ellos. Me parece que suprimirlo no va a evitar el problema que tendremos mañana u hoy mismo cuando abordemos este tema, de manera que preferiría que dicho artículo quedara bajo la forma en que está o entre corchetes, pero que lo tuviéramos presente y luego solucionaríamos los problemas que saldrán más adelante en la discusión.

The CHAIRPERSON:

Yes indeed, that is my proposed way forward, simply to have the brackets around the text at the moment and we have to tackle the real substance of the problem when we come to Articles 5, 6, 7 and so on. I support your point of view in that particular.

La Sra. JAQUEZ (México):

Siguiendo la intervención de mi colega, el distinguido delegado del Brasil, desearía preguntar por qué no se están poniendo estas sugerencias en la pantalla. Creo que es muy difícil seguir la negociación con las opciones que se han presentado, ya sea la que usted está proponiendo, que es mantener los corchetes, o la de llegar incluso a borrar el párrafo o incluso el texto alternativo, si no las estamos viendo en la pantalla. En la pantalla nada más vemos la propuesta del texto original. Creo que es necesario por lo menos saber por qué no se están poniendo y tratar de ponerlas porque a eso es a lo que se refería, si no me equivoco, mi colega del Brasil: no se está siguiendo en la pantalla la discusión que estamos teniendo con las propuestas que los delegados están incluyendo. Estas son mi pregunta y mi sugerencia, y quisiera saber qué es lo que opina al respecto la Secretaría.

The CHAIRPERSON:

The points made in the discussion have been taken into account in the sense that we can move forward to look at the rest of the articles. If we put everyone's suggestions on the screen now, that would be confusing. What I want to gather is the elements that people have put forward and see if I can put something into a more consolidated text.

I can make a compromise proposal: if we need to have text for Article 3, I am quite happy to do that and for the Convention Secretariat to help me, but I think that at the moment it is simply not worth putting it up on the screen. There is too much divergence as a result of the current discussions. If we find another approach, I will then look at the other proposals that have been made. If necessary, we can even put something up on the screen later on, but now we have a way forward by putting square

brackets round this text and looking at the substance of the subsequent articles. I hope that you will be able to agree with that way of proceeding.

Mr PADILLA (The Philippines):

Mr Chairperson, we are also against the deletion of Article 3 and agree fully with the previous delegation's view that this is all about negotiations. The Negotiating Body should be given more options than those offered by the Chairperson on his own. We in fact welcome, as the Chairperson has said, different proposals from the various delegations, but let them be proposals that we can deal with and deliberate on and discuss, not simply the deletion of Article 3. Thank you, Mr Chairperson.

The CHAIRPERSON:

I take the advice. Thank you. We will gather together the items that have been proposed and have a look at them and see if there is a compromise that can be put forward. At present we will keep the square brackets around the text because if we spend the whole of the day discussing Article 3, we are never going to get into the substance of the debate and that is what we have to do; moreover, as you have all said, when it comes to the particular articles, you will have your arguments to put forward as to how or whether we apply tracking and tracing and whether we apply control.

Article 3 is a generic issue that can be amended in the light of what we have actually agreed in the substance of the text. That was why I was slightly reluctant to start off our debate by looking at Parts I and II of this protocol, because I do not think that would help take us forward into the proposals that we need for controlling the illicit trade. In any case, this has been at least a helpful clarification of where we stand on some of the items which are included in Article 3. Canada, please.

Mr OLDHAM (alternate to Mr Legurrier, Canada):

Mr Chairperson, I do not want to extend this discussion, but in the Canadian view, we support the colleagues from Brazil, Mexico and the Philippines: the tracking of this discussion so that we can all see where we have been is extremely important. The first thing is that all of this is in square brackets and nothing has been agreed. If you were going to do anything, perhaps you would put square brackets around it and put strikeout through it, but when we come back to this later on to discuss it again, we want to know where we have been and what the various proposals have been that have been put forward.

In a negotiation we have to work on the individual words and if we do not do it in that manner, we will find ourselves at a very high level of general discussion, and you and the Convention Secretariat may well know what went on, while the rest of us will not have a clear idea at all. I think the traditional way of building a negotiating text filled with those ugly square brackets and alternatives and either/ors, and that kind of thing is really the only way to get through this process. Thank you.

The CHAIRPERSON:

Thank you, Canada. We have certainly gathered the texts that have been proposed. Obviously, some of them have not been given to us yet in writing in order to allow us to do it in the text, but once we have got all of the proposals in writing, then we can do what you suggest. There is no problem there. What I am saying is that trying to do it without having the written text is actually quite difficult and takes a lot more time, whereas if we produce one consolidated version which you can look at, if we then need to come back to it, as you say, we have a record of our discussions, on which we can then base our future discussions. We have not lost what has been proposed, we just have not put it on the screen before we have the exact written text from the delegations.

M. YOMO (Congo):

Merci, Monsieur le Président. Nous sommes de concert avec les collègues qui soutiennent l'inclusion de l'article 3. La délégation du Congo-Brazzaville estime que ce serait une grosse erreur de

supprimer cet article, pour des raisons juridiques : c'est en effet la Convention-cadre qui fixe les bases générales des lois que nous allons adopter plus tard. Nous pensons que, si à la fin de cette rencontre nous n'avons pas défini l'objet de notre protocole, ce sera un camouflet et cela risque de nous poser des problèmes à la longue. Vous avez estimé que l'article 3 ne faisait pas le poids, mais à mon avis cet article fixe l'objet qui va justifier tous les articles qui vont suivre.

Merci, Monsieur le Président.

Le PRÉSIDENT:

Je vous remercie de votre intervention. Il n'est pas nécessaire de définir un objectif dans le protocole, parce qu'il l'est déjà à l'article 15 de la Convention. À mon sens, ce n'est donc pas absolument nécessaire et ce n'est pas nécessaire du point de vue juridique d'avoir un article 3 dans le protocole lui-même. Nous pouvons donc faire ce que nous souhaitons.

J'ai déjà proposé de mettre l'article 3 entre crochets. On pourra revenir sur les autres articles du protocole après les discussions ; on ne laisse donc rien de côté, mais on doit commencer notre débat sur la teneur des autres articles. Là, je crois que nous pouvons mettre en place assez rapidement – je l'espère – un système fort, efficace et contraignant, mais on ne peut pas continuer de débattre de la nécessité ou non de l'article 3. À mon avis, ce n'est pas nécessaire. Je ne suis pas juriste, mais j'ai consulté l'avocat qui se trouve à mes côtés.

Ma proposition reste donc inchangée pour le moment, à savoir mettre l'article 3 entre crochets et réunir toutes les propositions faites par les délégués ce matin. On verra ensuite s'il y a quelque chose qu'on pourrait proposer comme compromis, si c'est nécessaire. Comme je l'ai déjà indiqué, je ne suis pas convaincu que l'on doive avoir un article 3 définissant le champ d'application du protocole. J'ai cependant pris bonne note de toutes les interventions faites pendant la séance de ce matin et je ne négligerai aucune proposition jusqu'à ce que nous nous mettions d'accord sur les autres articles du protocole.

J'espère que cela va rassurer les Parties présentes dans la salle : nos discussions peuvent aboutir à quelque chose de très solide et efficace. Je vous propose donc de mettre des crochets et de compiler pendant ou après la pause déjeuner les autres propositions afin que vous ayez le texte un peu plus tard dans la journée ou demain. Comme je l'ai dit à la délégation canadienne, on ne va donc rien perdre.

(Le président poursuit en anglais.)

(The Chairperson continued in English.)

Almost bursting into song, *je ne regrette rien*. I hope that is clear for the people involved as the way to go forward on that.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, your position is very clear, but I want to make it also clear that we oppose this method of work for the work of the committees. We will not accept this method of work, avoiding including on screen the comments and suggestions made by delegations. That is not an equitable way to proceed, Mr Chairperson. The choice you have made will be respected by this delegation, but we oppose it. We believe that it is not the wisest way to go ahead and I believe that we should not have to discuss and come to the end on Sunday and find that we no longer have the present text.

We are now trying to find the text of the whole, the text of the international community. You just mentioned majority/minority and that Brazil was in a minority position. Mr Chairperson, we are trying to achieve a consensual text. It does not matter if our position is not a majority position. Brazil, I say it very clearly, will not accept this method of work as the method of work of the committees. We believe that it is a way forward that will not lead us to a consensual text. Thank you very much.

The CHAIRPERSON:

Thank you very much, Brazil. I am not sure that I had actually proposed that this should be the method of work for the committees. That will be a matter for them. I suggest that you talk to the

Chairs of those committees about the way they conduct their work. What we are doing is talking about Parts 1 and II, which need to be considered in plenary, and this is the way that I have chosen for this Article.

We will look at Article 4 this afternoon, which is a much more technical Article, in a sense, and that is where it will be possible to put proposals into the text on the screen. This is much more a debate about principle, rather than technical details, and that is why I have chosen for Article 3 not to put the drafting on the screen, but it in no way prejudices the work of the committees. Your point is well taken and the Chairs of those committees will be entirely free to do the work in whatever way they see fit, taking account of the delegations' comments. I hope that will reassure you as far as the committees are concerned.

I am thinking of lunch, but I do not know about the rest of you. What I would suggest is the following, which will give me a little more time to gather the comments that have been made by the delegations during the morning: I would like to go on to Article 4 this afternoon and to start looking at the detailed technical drafting of Article 4, because I think that is where, as the representative of Brazil quite rightly said, we can use the on-screen drafting much more successfully. Thank you for your lively and informed contributions and *bon appétit*.

**The meeting rose at 12:40.
La séance est levée à 12h40.**

VERBATIM RECORDS OF PLENARY MEETINGS

COMPTES RENDUS IN EXTENSO DES SÉANCES PLÉNIÈRES

THIRD PLENARY MEETING

Monday, 29 June 2009, at 15:05

Chairperson: Mr I. WALTON-GEORGE (European Community)

TROISIÈME SÉANCE PLÉNIÈRE

Lundi 29 juin 2009, 15h05

Président: M. I. WALTON-GEORGE (Communauté européenne)

REVISED CHAIRPERSON'S TEXT FOR A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS AND GENERAL DEBATE (continued) TEXTE RÉVISÉ D'UN PROTOCOLE SUR LE COMMERCE ILLICITE DES PRODUITS DU TABAC PRÉSENTÉ PAR LE PRÉSIDENT ET DÉBAT GÉNÉRAL (suite)

The CHAIRPERSON:

Good afternoon, everybody. I would like to finish Parts I and II today in plenary and therefore it is my intention to convene an evening meeting so that we can make sure that we finish all of this and go into the committee meetings tomorrow. That is the plan of action for today so that we can go into depth in these two Parts that you wanted to discuss so badly, so as to make sure that we achieve that objective. We shall move on to Article 4, and I shall put up on the screen the first part of Article 4 so that you can see it. You have the *en tête* in addition to the provisions of Article 5 of the WHO Framework Convention, followed by paragraph 1.

We will do specific online drafting as you requested this morning. If you have particular comments or drafting suggestions to make, please make them clearly and slowly and, if necessary, repeat them in writing afterwards so that we have a record of this; but we will try and capture as many of the comments as we can as we go through the text. Please look at Article 4, paragraph 1, only paragraph 1 at this stage. Have you any drafting suggestions or proposals you wish to make on paragraph 1?

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, I would like you to put square brackets in paragraph 1 after the word "regulate", beginning with "the supply chain" up to "used in". The sentence would then read "adopt

and implement appropriate measures to control or regulate the manufacture of tobacco products in order to prevent, detect and investigate illicit trade and shall cooperate with one another to this end;”

The CHAIRPERSON:

Thank you, Brazil. Could I ask then for the square brackets to begin after the word “regulate” in the first line of the normal text and end after the phrase “manufacturing equipment used in”. I assume your proposal is for a deletion. Yes, thank you.

Mr ALBUQUERQUE E SILVA (Brazil):

The phrase should read “manufacture and distribution of tobacco products”, adding “and distribution” in square brackets. Thank you very much.

La Sra. ROA RODRÍGUEZ (Panamá):

Gracias, señor Presidente. Quisiéramos cambiar la palabra «apropiadas», por no ser muy específica, que está en la primera línea del párrafo 1, por «efectivas», de modo que el texto resultante quedaría como sigue: «adoptarán y aplicarán medidas efectivas».

The CHAIRPERSON:

Thank you very much. We shall add the word “effective”. Colombia, please.

El Sr. TORRES MARTIN (Colombia):

Aunque sabemos que el asunto relacionado con los insumos y materias primas para la elaboración del producto final del tabaco está en proceso de consulta, no dejemos a un lado la cuestión de las materias primas e insumos.

The CHAIRPERSON:

May I check that I have properly understood you? Do you want to make any change in order to introduce the concept of primary materials or of inputs? Or not at this stage?

El Sr. TORRES MARTIN (Colombia):

Lo que queremos es que en este párrafo y en los demás se incluya el siguiente texto: «los insumos y materias primas para la elaboración de tabaco».

The CHAIRPERSON:

I am sorry to ask for clarification again. I understand that you do not support the Brazilian deletion. Is that correct? Or are you proposing something additional?

El Sr. TORRES MARTIN (Colombia):

Proponemos añadir, como lo dijo el delegado del Uruguay esta mañana, las palabras «las materias primas e insumos», no sólo en este párrafo sino en los demás.

Dr DLAMINI (Swaziland):

Mr Chairperson, Swaziland takes the floor on behalf of the 46 Parties in the African Region in relation to Article 4 of the protocol. The Parties in the WHO African Region support the inclusion in the protocol of general obligations additional to those applicable to Parties to the protocol under Article 5 of the Framework Convention. However, Mr Chairperson, we wish to make the following

textual changes in paragraph 1. In the first line we propose the deletion of the word “appropriate” and its replacement with the word “effective” so that the phrase will read “adopt and implement effective measures to control” and the rest follows. We shall stop at that for now while dealing with paragraph 1.

The CHAIRPERSON:

Thank you very much. So that accords with one of the changes already proposed, which is helpful. Can anyone not accept changing “appropriate” to “effective”? That is good. We therefore agree to change “appropriate” to “effective”. Are there any other suggestions for paragraph 1? No? Thank you. Let us go on to Article 4, paragraph 2. Are there any suggestions for paragraph 2?

Mr AHMADI (Islamic Republic of Iran):

Mr Chairperson in paragraph 2, my delegation would like to propose the addition of a phrase to be inserted after “measures” in the first line, which would read “in accordance with their national law”. Therefore the first line would read “take appropriate measures, in accordance with their national law,” and the rest of the sentence follows.

The CHAIRPERSON:

We shall insert “in accordance with their national law”. Thank you.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, our proposal is to put the word “tobacco” in the third line in square brackets, as well as the words “or manufacturing equipment used in the manufacture of tobacco products” in the third and fourth lines.

La Sra. ROA RODRÍGUEZ (Panamá):

Quisiéramos que en el párrafo 2 se suprimieran las palabras «de reglamentación» de modo que el texto resultante dijera «y otros organismos pertinentes», y que en la tercera línea la palabra «o» que precede a «equipo de fabricación» fuera reemplazada por la palabra «y».

The CHAIRPERSON:

Thank you very much. The proposal is to change “or” to “and” as the first word within that bracket.

Mr ROWAN (European Community):

Mr Chairperson, we have no problem with the wording as it was originally, with the exception of just one word. We would like to see the word “agencies” in square brackets and replaced by “authorities”. Thank you.

The CHAIRPERSON:

Thank you. Therefore “agencies” would become “authorities” if the European Community’s proposal were accepted.

Dr DLAMINI (Swaziland):

Mr Chairperson, I am still speaking on behalf of the 46 Parties in the WHO African Region. In paragraph 2 we do not propose any brackets whatsoever. However, we can accept the proposed deletion of “or” and its replacement by “and”. We also want to have the word “detecting” in the

second line placed before “preventing”, so that the sentence will now read as follows: “take appropriate measures to increase the effectiveness of customs, police and other relevant agencies responsible for detecting...” followed by the rest of the sentence. Still on paragraph 2, we propose that the reference to “other relevant regulatory agencies” in the first and second lines should not be limited to regulatory agencies. There may be a range of relevant non-regulatory agencies with responsibility for detecting, preventing, deterring, investigating and eliminating illicit trade in tobacco products. Thank you.

The CHAIRPERSON:

Thank you for that. We shall put “regulatory” in square brackets. Mexico, please.

La Sra. MADRAZO REYNOSO (México):

El comentario que deseaba hacer México ya ha sido atendido. No estábamos satisfechos con las palabras «agencias regulatorias», que ya han sido sustituidas por la palabra «autoridad», y tampoco con la palabra «pertinentes», que ha sido reemplazada por la palabra «competentes». Por consiguiente, la preocupación de México ya ha sido atendida.

Mr OOKA (Japan):

Excuse me. With your indulgence, could you please go back to Article 4, paragraph 1. We have just a small comment and failed to intervene at the appropriate time. Our comment refers to the Brazilian proposal to add “and distribution”. In our view, distribution should not be included in the element. Could you please place the word “distribution” in square brackets.

El Sr. TORRES MARTIN (Colombia):

Como en la anterior oportunidad, proponemos agregar las palabras «insumos y materias primas» después de la palabra «tabaco». La frase resultante sería «productos de tabaco, materias primas e insumos».

Mr TAGOE (Ghana):

Mr Chairperson, we support the position just read out on behalf of the Parties in the WHO African Region, but we would like to emphasize that the word “pertinent” should be bracketed because if you talk about pertinence, then you are trying to point to a particular thing that should be done. But we believe that “relevant” regulatory agencies or authorities would be more appropriate. Thank you.

El Sr. NAVARRETE (Chile):

Gracias, señor Presidente. En el párrafo 2 estimamos que sería mejor incluir las palabras «administración tributaria» en vez de la palabra «aduana», ya que incluyen tanto la aduana como los servicios de impuestos internos; ambos servicios están a cargo de la persecución de este problema en materia tributaria.

The CHAIRPERSON:

Thank you very much. I think the situation may be different in different countries. There is sometimes a distinction between customs and taxation authorities; but we can see to the precise wording there once we have gathered all the suggestions.

M. FALL (Sénégal):

Merci, Monsieur le Président. Nous proposons de rédiger le paragraphe 2 de l'article 4 comme suit : « prennent des mesures nécessaires afin de rendre plus efficaces les services des douanes, de police et des autres services compétents chargés de prévenir, de constater et de réprimer toutes les formes de commerce illicite de tabac, de produits du tabac et du matériel destiné à la fabrication desdits produits ». Je vous remercie.

The CHAIRPERSON:

Thank you. We need to change the text then so that it refers to all forms of illicit trade, putting "all forms of" before the word "illicit", and instead of "agencies" or "authorities", we would say "other competent services". At the end we would say "manufacturing equipment designed for manufacturing the said products." I think and hope that that reflects the comments of Senegal.

Mr AL BAKER (United Arab Emirates): ()

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The CHAIRPERSON:

Thank you. I agree with you that it is the Parties that would have to decide whether it is appropriate or necessary in that circumstance.

Mrs ROBINSON (Seychelles):

I apologize for taking us back to Article 4, paragraph 1, but my point concerns both paragraph 1 and paragraph 2. I am seeking clarification as to why the word "prosecute" or "prosecution" was not included there.

The CHAIRPERSON:

In paragraph 1, I think the reason was that the control measures themselves would not lead to the prosecution, but you raise an important issue. We use different combinations of these words in different places and I apologize for not having spotted that earlier. Because in Article 3 we talk about prevention, deterrence, detection, investigation and prosecution, as you say; then in Article 4, paragraph 1 we talk about prevent, detect and investigate, which means that we have lost something. I think we need to have a consistent set of terms that we should use in all of these paragraphs. My feeling is that it should be the wider set of terms that we have used in Article 3 so that we cover everything. You are right, we are talking about the ability to enable prosecution if it appears to be appropriate. I would therefore like to have consistency and ensure that we use the same five terms in all the relevant places.

Mr TAGOE (Ghana):

Thank you, Mr Chairperson. Our main concern is with the words "customs" and "taxation" authorities. It would be preferable to use the words "revenue authorities". That is the more current phraseology for the institution engaged in duty collection.

Mr HOSHINO (Japan):

Mr Chairperson, we do not think that the words “primary materials and inputs” should be included in paragraph 2. The same is true of the words “manufacturing equipment”. Since our original position is to delete “manufacturing equipment” from the relevant parts of the text, those words should be bracketed as well.

The CHAIRPERSON:

Thank you. Yes, that has been done.

Mr MOREWANE (South Africa):

Mr Chairperson, South Africa agrees with the statement made by Swaziland on behalf of the Parties in the WHO African Region but would like to make the following proposal: that the word “customs” should be maintained because in our case customs would deal with both collection and enforcement. We would therefore be comfortable with the retention of “customs”, rather than just simply “taxation”, since taxation alone would be limited to collection rather than include enforcement.

The CHAIRPERSON:

Thank you very much. Could I just ask you whether the term “revenue authorities” would cover your concern?

Mr MOREWANE (South Africa):

It would come closer to doing that, but we would have been comfortable with the retention of the word “customs”.

The CHAIRPERSON:

Thank you. Let us look at “necessary” and “appropriate” in the first line. What do you say to “necessary”? You decide what is necessary and you obviously would not take unnecessary measures. Therefore, would “take necessary measures” be acceptable to everyone?

El Dr. ABASCAL (Uruguay):

Señor Presidente, a nuestro entender las palabras «necesaria» y «apropiada» no son contradictorias. Pueden utilizarse ambas; pues lo necesario quizá también sea apropiado.

The CHAIRPERSON:

That is true. Let us say then that “appropriate” is a subset of “necessary” and therefore that “necessary” would also cover “appropriate”. Would anyone have a problem if we simply said “take necessary measures”? Would that be acceptable?

Ms HEFFORD (Australia):

Mr Chairperson, I have two comments. I would prefer “appropriate” to “necessary” as that is the normal language that Australia recommends in situations like this. However, I have a second comment: I am wondering how you intend to proceed from here. You are taking wording suggestions from across the room, some of them not consistent with one another and we are putting them all up on the screen. We have done that for paragraph 1 and we are now doing it for paragraph 2. Is it your intention that at the end of Article 4 we will come back and try to resolve this? Or at some point will you seek agreement from all countries about the choice of language? There seem to be so many

different terms on the screen. We can all come in and make a comment on every bit of square-bracketed text, but it might take quite a long time. Perhaps you can clarify your intention.

The CHAIRPERSON:

My intention is to try and obtain as much agreement on the text as possible today. My feeling was that we would, as discussed this morning, take everyone's comments, put them on the screen and see if we could do a little tidying up on screen. This is a first attempt to get much nearer to agreement on the specific terms of the protocol.

I have noted your preference for "appropriate". Let me try the question the other way round. If I were to say "any necessary and appropriate measures", would that help you at all?

Ms HEFFORD (Australia):

I would prefer "appropriate". I think it better recognizes that all member countries have different constitutions, different administrative structures. Australia is a federation. It has a slightly different structure from that of many other countries and it often requires us to have agreed arrangements with a number of governments because Australia has both state and territory governments as well as a federal Government, as well as the provincial government structure. "Appropriate" is therefore a much preferred term from our perspective. "Necessary" is much harder for us to accept.

The CHAIRPERSON:

Given that this is something that has to be implemented by the Parties in any case, would there be anyone who could not agree to simply using the words "take appropriate measures"?

Le Professeur TIDJANI (Togo):

Merci, Monsieur le Président. Comme vous l'avez vous-même dit ce matin, nous sommes un conseil juridique et, en tant que tel, nous pouvons nous inspirer par exemple de ce qui a été fait à l'Organisation mondiale du Commerce pour voir les termes qu'on utilise généralement. Sinon, si on veut voter pour les termes « approprié » et « indispensable », on risque de passer beaucoup de temps.

Merci, Monsieur le Président.

The CHAIRPERSON:

Thank you. Is the WHO Legal Counsel able to give any guidance on that?

Mr SOLOMON (WHO Secretariat, Office of the Legal Counsel):

Thank you, Mr Chairperson, and thank you for the question. In terms of the most immediately relevant source for this, it would be the general obligations article in the Convention itself, Article 5, which uses variously the modifier "effective" as well as the modifier "appropriate". I do not see in Article 5 a reference to "necessary" as a modifier, while "necessary" generally conveys a sense of that which is unavoidable or inescapable. Therefore, if you use the terms "unavoidable" or "inescapable" measures, it may convey a narrower meaning than might be appropriate in a multilateral context such as this. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much. I think that is a helpful clarification. It therefore seems that "appropriate" is the term we have used in the past. I repeat my question. Can anyone not agree to using the word "appropriate"?

La Sra. ROA RODRÍGUEZ (Panamá):

En realidad, deseaba referirme a otro tema dentro del texto actual del artículo que estamos examinando. A mí me parece bien utilizar la palabra «apropiadas».

The CHAIRPERSON:

Thank you, Panama. We shall come back to you with your other points in a moment.

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Mr Chairperson, Canada is happy with “appropriate”, but I have a suggestion – as we are going to come up against a generic issue – that relates to the “necessary”/“appropriate” issue, as well as to the next square bracket “in accordance with their national law”. This is going to keep popping up, I am sure, and a way to shorten the discussion might be to think about some of these generic issues that can be put near the introduction to say that everything in this agreement is in accordance with national law or something of that kind, so that we do not have to keep repeating these matters again and again. Because it is going to be a constant concern and it relates to the issue of which measures are necessary and which measures are appropriate. That is one suggestion.

I also have a major pruning suggestion concerning the bunch of square brackets that follows. My thinking on this is that what we want to do is take measures to increase the effectiveness of authorities responsible for eliminating all forms of illicit trade, rather than attempt to describe or make a shopping list of everything that the possible authorities might do. We could simply say that this is targeted at those authorities who have responsibilities in this area and we could prune all the modifiers out of the text. Therefore, as I said, my suggestion is to “increase the effectiveness of authorities responsible for eliminating all forms of illicit trade in tobacco products”.

The CHAIRPERSON:

Thank you, Canada. I think that is a helpful suggestion. I am less keen on your first one, I have to say. Using general qualifiers to say that everything is subject to national law would not necessarily move us forward in terms of some of the other parts of the agreement. I would like to put that one on the back burner if you do not mind and perhaps come back to it a little later on.

However, regarding your suggestion of pruning, I am all in favour of significant pruning wherever possible. If we can do something like that, it may have to come as a separate suggestion, rather than in among the square brackets, so that we can actually see it. It would read something like this: “take appropriate measures to increase the effectiveness of authorities responsible for...” and instead of the word “eliminating” proposed by Canada, we could say “prevention, detection, investigation” and so on: the five terms used before, followed by “illicit trade in tobacco, tobacco products, manufacturing equipment” and so on.

I think that broadly reflects the Canadian idea that we can cut down on listing customs, taxation, police and so forth. The square brackets that have been mentioned previously – obviously by Brazil and others – would remain in place because of “tobacco and manufacturing equipment”, etc. But I think that the approach of saying “take appropriate measures to increase the effectiveness of authorities responsible for” covers a broad range and takes account of the different situations in different countries. It would then be followed by the rest of the phrase as we have already drafted it.

La Sra. ROA RODRÍGUEZ (Panamá):

La idea ya ha sido plasmada un poco por el Canadá en cuanto a no hacer mención de un listado de autoridades. Sin embargo, en español la palabra «responsables» tiene connotaciones diferentes, por lo que sugeriría utilizar el término «competentes» que además es el que se está utilizando en el tratado.

M. FALL (Sénégal):

Merci, Monsieur le Président. C'était juste pour revenir sur le terme « approprié » dont vous avez fait mention tout à l'heure. En réalité, le terme « appropriées » ne sied pas parce que la Convention sera appliquée par des autorités administratives et que, dans l'administration, on parle en fait d'actions nécessaires, c'est-à-dire que ce sont des actions qui s'imposent à la situation. On peut donc mettre tout simplement « les mesures nécessaires ». Les administrations vont décider exactement ce qui est approprié et ce qui ne l'est pas, parce que le terme « appropriées » ne peut en aucun cas être quantifié ou bien même qualifié. Donc, mettons « nécessaires » au lieu de « appropriées ».

The CHAIRPERSON:

I am feeling a sense of *déjà-vu* here. We take your point that “necessary” for you is a better description, but it obviously causes problems for others. We shall have to come to some sort of compromise on that. Let us leave it as it is for the moment. However, I think “appropriate” could also be interpreted as including “necessary” in each Party.

El Dr. ABASCAL (Uruguay):

Señor Presidente, le pido disculpas por lo que voy a decir. En principio, no tengo problema en que se use la palabra «apropiado», pero no es lo mismo «apropiado» que «necesario». «Apropiado» implica una correspondencia entre la intención de hacer algo y el hecho de hacerlo, mientras que «necesario» en este contexto significa aquellos instrumentos para hacerlo, ya sean normas jurídicas, autoridad o competencias sobre el tema, de manera que los dos términos no son exactamente iguales. De todas maneras, no queriendo obstaculizar el debate, no tengo ninguna objeción a que se use la palabra «apropiado».

The CHAIRPERSON:

Thank you, Uruguay, for your flexibility.

Professor PRAKIT VATHESATOGKIT (Thailand):

I have two proposals. The first is to use the term “appropriate/necessary measures”, using both adjectives. Second, I think that we should delete the phrase “in accordance with national law”, which weakens the provision.

The CHAIRPERSON:

I have noted that you are opposed to the introduction of the words “in accordance with national law” and that you would suggest putting “appropriate/necessary” as a compromise in the first line.

Mr OLDHAM (alternate to Mr Legurrier, Canada):

Thank you. I am sorry to come back. But in order to avoid a shopping list of all possible kinds of activities, I suggest that we simply say “responsible for combating illicit trade in...” followed by whatever formula we agree on.

Mr AL BAKER (United Arab Emirates): : ()

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The CHAIRPERSON:

Could I just ask the WHO Legal Counsel whether if we simply say “take appropriate measures” that would mean that it is the Parties’ responsibility?

Mr SOLOMON (WHO Secretariat, Office of the Legal Counsel):

Thank you, Mr Chairperson. In the absence of a specific modifier referring to some supranational authority, the use of the term “appropriate measures” would be understood to mean appropriate in the judgement of the State concerned, subject to the principle of observation of these obligations in good faith. “Appropriate” is not unlimited, it must be understood within the context of *pacta sunt servanda*, in good faith; but the “appropriateness” would be in the judgement of the State concerned.

The CHAIRPERSON:

Thank you very much. I think that is a clear opinion from the Office of the WHO Legal Counsel that “appropriate” means that the measures are appropriate in the eyes of the Party. We therefore do not actually have to say it in the text because that is the normal interpretation of treaty provisions. I hope that will be acceptable as it will avoid cluttering up the text with additional wording.

Mr AL BAKER (United Arab Emirates): :()

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The CHAIRPERSON:

Thank you. I think it will depend on what we have included in the subsequent articles, because if there are specific obligations then clearly there is no leeway for the State to say it does not want to apply those obligations. However, in many parts of the text there are ways in which things can be applied appropriately by the State, but for this particular part of the protocol I think it is sufficiently clear that it is the State that decides what the appropriate measures are for increasing the effectiveness. I think if we can accept that it would be a helpful step forward, but your point is well taken. We need to look at that when we come to the specific elements in the text as well.

Dr VINIT (Papua New Guinea):

Mr Chairperson, regarding “necessary” and “appropriate”, if we look at your text, most of it probably says “appropriate”, I therefore think that we should probably stick to what is appropriate, because most of the text talks about appropriateness. I would like to move forward rather than talk about the terminology, which you can probably get right.

I would like to move on to the other matter of “manufacturing equipment”, which was discussed at length this morning in connection with Article 3 and I see it as I look through the articles now. Efforts are being made to remove it here as well. We could perhaps put it in a different form; we might follow “illicit trade in tobacco, tobacco products” with the words “and all logistics, equipments and materials in its production”. Thank you.

El Sr. TORRES MARTIN (Colombia):

Disculpe, señor Presidente, pero insistimos en que se deben incluir las palabras «las materias primas y los insumos» por cuanto se está hablando de que las aduanas, la policía y las autoridades competentes deben adoptar las medidas apropiadas para prevenir, impedir, detectar, investigar o eliminar precisamente las materias primas e insumos que ayudan a producir el producto. Por eso no creemos oportuno eliminarlas.

Por otro lado, apoyamos mantener la palabra «apropiado» en todo el texto que ya se ha consensuado en la segunda reunión.

Ms MALLIKARATCHY (Sri Lanka):

Mr Chairperson, I wanted to raise the matter of whether the obligation is a Party obligation. If you look at the initial paragraph of the Article, it says that “Parties shall”. I therefore do not see any issue arising from that aspect at all. With regard to the terms “appropriate” and “necessary”, I would prefer the word “appropriate” as it gives the Party more flexibility. Thank you.

La Sra. ROA RODRÍGUEZ (Panamá):

En aras de colaborar a la redacción del texto, sugiero que se podría eliminar las palabras «apropiadas» y «necesarias» porque sin ellas el texto diría «adoptará medidas para potenciar la eficacia» y en el criterio de eficacia están implícitos los criterios de lo que sería adecuado, pertinente, etc., de las autoridades competentes. Esta solución ya se utilizó durante la negociación del tratado, específicamente en el artículo 5.2(b), y es un referente que podríamos tener en cuenta.

The CHAIRPERSON:

Thank you very much. We would just delete both appropriate and necessary and say “take measures”. Would anybody have a problem with that? Congo, please.

M. YOMO (Congo):

Merci, Monsieur le Président. En supprimant le terme « appropriées », on risque de revenir au débat de ce matin lié à l'article 3. Si l'on regarde l'article 15.4.c) de la Convention-cadre, on trouve « prendre les mesures appropriées pour assurer la destruction de tout le matériel de fabrication ... ». Mais si maintenant on refuse d'intégrer dans notre protocole le terme « appropriées », il faut commencer par l'extirper de notre Convention-cadre ; or il y figure. à mon sens, ce que nous sommes en train de faire dans le protocole est le reflet de notre Convention-cadre ; soyons donc un peu plus prudents de sorte qu'on ne s'écarte pas de notre Convention-cadre. Merci.

The CHAIRPERSON:

Thank you very much. We shall make one final attempt to clean this up. I would propose that we use the word “appropriate” since that gives you enough flexibility to do what you need to do in order to meet your obligations. It is the State that decides what is appropriate. We will say “take appropriate measures.” The phrase in square brackets “in accordance with their national law” has been proposed by one delegation; “to increase the effectiveness of”, I was going to say the appropriate authorities but that might start the debate all over again. Canada’s proposal was “increase the effectiveness of the competent authorities”. We then have the point about the “customs authorities”. Mexico, would you like to intervene at this stage?

La Sra. MADRAZO REYNOSO (México):

Quisiera hacer un comentario respetuoso para todos los que nos encontramos presentes. Si intentamos buscar o identificar una palabra concreta que se pueda aplicar a todas las legislaciones nacionales, el avance va a ser muy lento. Tenemos que buscar conceptos que podamos adaptar a las particularidades de nuestros países, porque, además, los países en que no hablamos inglés o en que nuestra lengua oficial no es el inglés luego tenemos el problema de la traducción. Porque muchas veces incluso un mismo concepto no se interpreta igual en todas las Partes de la Región.

Entiendo a los países que señalan que es importante destacar el área de aduanas. Sin embargo, si utilizamos «autoridad competente», puede tratarse de una o todas las autoridades competentes, todas las autoridades que necesariamente tendrían que intervenir para incluir en este caso particular los conceptos que están en el párrafo 2 del artículo que estamos discutiendo. Creo que si usamos las palabras «autoridad competente» podría resultar cómodo para todos los que estamos presentes y podríamos continuar avanzando en la discusión. Gracias.

El Sr. TORRES MARTIN (Colombia):

En la línea de México, las palabras «autoridad competente» incluyen a todas las autoridades que pueda haber en cada país. Entonces, para solucionar este pequeño asunto podríamos poner una nota al pie de página en donde se definiera qué son las autoridades competentes y ahí se podría colocar a todas las autoridades que quisiéramos incluir en el texto.

Mr NICOLAS (Philippines):

We believe that it is better not to delete the terms “customs” and “police” in the identification of authorities that will be in charge of activities against illicit trade and not simply to use the generic term “competent authorities”. The role of customs and police should be emphasized in the fight against illicit trade in tobacco. Customs are primarily responsible for controlling the border flow of international trade, and are also responsible for the enforcement of domestic trade laws. And in pursuit of better overall coordination of this fight against tobacco, the competent authorities will be the customs and the police and they would identify other agencies that could participate. That is all, Mr Chairperson.

The CHAIRPERSON:

Thank you. We could actually put both those things in. We could say the “competent authorities, including, but not limited to, customs, police” and so on. It is not very elegant but it covers everyone’s concerns in those situations.

El Dr. ABASCAL (Uruguay):

Señor Presidente, el término «autoridades competentes» involucra a todas las autoridades que un Estado pueda tener y que puedan actuar en el control del comercio ilícito. Si nombramos a algunas de ellas y dejamos a otras fuera, estamos poniéndonos en problemas. Yo pregunto: ¿deberían

incluirse las autoridades impositivas? y las autoridades de control de los fondos de dinero a través del posible lavado, ¿también deberían incluirse? Y así sucesivamente, pero entonces incluiríamos prácticamente a todo el Estado. Por lo tanto sugiero que adoptemos un término que englobe a todos y luego cada país de acuerdo a la realidad de su legislación podrá decidir cuáles son las «autoridades competentes» para ese país, porque la aduana es competente en este caso para muchos países, pero para otros lo son las autoridades tributarias, para otros la policía y para otros organismos distintos. Si hacemos una lista corremos el riesgo de que dejemos fuera a organismos importantes en el control del tabaco. Por eso hago este llamado a simplificar y usar términos que engloben al conjunto de las actividades de los Estados en el control del tabaco.

Le Dr NGABA (République centrafricaine):

Merci, Monsieur le Président. En ce qui concerne l'utilisation du terme « autorité compétente », je suis favorable à ce qu'on en donne une définition ; on dira ce qu'est l'autorité compétente au sens strict du protocole sur le commerce illicite des produits du tabac. Actuellement, on peut énumérer dans la définition le noyau dur des autorités compétentes en ce qui concerne spécifiquement la lutte contre le marché illicite des produits du tabac parce que cela correspond à peu près au mot « appropriées » dont on a discuté. À l'article 5 de la Convention, au paragraphe 2.b), on insiste sur le mot « appropriées » (« élaborer des politiques appropriées ») et donc le noyau dur.

Quand on définira dans le protocole les autorités compétentes, il s'agira des noyaux durs qui vont concevoir des textes nationaux d'application, parce que c'est bien les autorités compétentes qui vont concevoir les activités à mener sur le terrain. Il est clair que les douaniers, les policiers et les autres autorités ne feront qu'appliquer les textes que le noyau dur de ces autorités aura conçus. C'est pourquoi je suis favorable à ce qu'on définisse le terme « autorité compétente » sans citer ces autorités pour ne pas alourdir le texte.

Merci, Monsieur le Président.

The CHAIRPERSON:

“Competent authorities” gives you the scope to decide for yourselves which authorities you want to use for these purposes. You can decide it is the customs; you can decide it is the fiscal authorities; you can decide it is the border guards; you can decide whatever you wish. The Framework Convention already refers to “competent authorities” so it cannot be an unknown term because you have all adopted it in the Framework Convention. I would suggest that we stick to the term “competent authorities” in Article 4, paragraph 2. I shall reflect on whether we need to have a definition in the text itself, but all that the definition would say would be that “competent authorities” means those authorities which the Party designates as responsible as for combating illicit trade, which does not add very much to what we have here.

I would therefore ask you to accept the term “competent authorities” in the text of paragraph 2 since that gives you every opportunity then to decide which authorities those are. It is consistent with the Framework Convention; it gives you flexibility, but it means that we cover everything that we need to cover.

Dr VINIT (Papua New Guinea):

Mr Chairperson, I should like to highlight something here but it may perhaps be dealt with in the other Articles. Illicit trade crosses boundaries. I would like to see where we could include “competent international authorities” in the general obligations because if we do not put it here we may find it in the other articles. I am simply trying to say that the States must also include international organizations to deal with illicit trade, which crosses boundaries. I do not know how we can factor that in, but maybe we can say “competent authorities both national and international”. Thank you.

The CHAIRPERSON:

I think the term “competent authorities” itself would cover the whole range, because the Party can only deal with authorities that fall within its own jurisdiction. I think that would have to be left to the Party.

Mr ROWAN (European Community):

We would just like to move on with these issues, but one point is that “customs” is important to us in this text because we heard yesterday even from our colleagues in the World Customs Organization that it is an issue that is addressed by customs worldwide and they have a huge part to play in the fight against the illicit trade. On the other hand, of course, we understand that there are other competent agencies that also play important parts, so we would see something along the lines of “customs, police and other competent authorities”, which surely covers everything while making mention of our word “customs”. But we are willing to be flexible. Thank you.

The CHAIRPERSON:

Like the European Community, I would like to move on – I hope quickly. “Competent authorities” is a well-known term; it should be possible for us all to accept that phraseology. I shall make one final attempt to meet the European Community’s proposal. If we were to say “customs, police and other competent authorities”, would that be possible? Would anyone not be able to accept that?

El Sr. SOMARRIBA FONSECA (Nicaragua):

Gracias, señor Presidente. Quisiera hacer una intervención en nombre de las Partes de la Región de las Américas en cuanto al tema que nos ocupa en este momento. El deseo de dichas Partes es mantener la referencia a las autoridades competentes, pues es así como lo prefiere. A este respecto, quisiera señalar que en el mismo artículo 4.3 ya se hace referencia al concepto de «autoridades competentes».

The CHAIRPERSON:

Thank you very much. We shall stick with “competent authorities” for the moment and not try to list those authorities. I shall reflect on the suggestions you have made, with a view perhaps to putting a few ideas to you later on during the week, because, otherwise, we are simply not going to move off this particular paragraph. I think that as long as you have put on paper now all the concepts that you feel are appropriate for this paragraph, we have a record of the issues that you want to have considered.

Let us move on to Article 4, paragraph 3, and see if we can make any better progress on that one. Please put paragraph 3 up on the screen. Any drafting suggestions for paragraph 3?

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, regarding paragraph 3, Brazil can accept the language proposed by the Chairperson. However, we believe that it is not necessary to include the words “clear and”, which would suggest that it is not a substantive proposal, but a language proposal. Let me explain: Brazil can provide trade data on tobacco products and manufacturing equipment; we can also provide production data on tobacco products. But since the language used is, in our view, careful enough to stimulate countries to adopt effective measures to provide such information, we would prefer not to separate trade data – which in our perspective are only possible for tobacco products and manufacturing equipment – from production data, which, in our reality, are only possible for tobacco products. To summarize, we agree with the language and we merely propose the elimination of the words “clear and”.

El Sr. TORRES MARTIN (Colombia):

Después de las palabras «productos de tabaco» quisiéramos agregar las palabras «materias primas e insumos». Gracias.

The CHAIRPERSON:

Thank you very much. We have put that into the text.

M. FALL (Sénégal):

Je vous remercie, Monsieur le Président. Nous avons une proposition quant à la rédaction, mais il faudra peut-être fédérer les paragraphes 3 et 4, ainsi que les paragraphes 5 et 6, parce que les paragraphes 3 et 4 traitent de la même chose : la coopération entre les administrations ou entre les États. Nous proposons donc : « prendre des mesures encourageant l'assistance administrative mutuelle, l'assistance financière, le renforcement de capacités et la coopération internationale afin de mettre à la disposition des autorités compétentes » ; « l'échange entre elles ». Puis « renseignements » au lieu de « données », c'est-à-dire « renseignements quant à la production, à la fabrication et à la commercialisation de toute forme de tabac brut, de produits du tabac et du matériel destiné à la fabrication desdits produits, originaires ou provenant de leur territoire ». Je vous remercie.

The CHAIRPERSON:

I think it is too complicated to try and combine paragraphs 2 and 3. I think we should try to keep the two separate. We have your comments noted down here, but I would much rather if we could look at the wording of paragraph 3 as currently proposed. Therefore, are there any comments on paragraph 3 itself?

Mr AHMADI (Islamic Republic of Iran):

In paragraph 3 my delegation would like to propose the addition of the word “transit” after “production” in the third line to read “production, transit...”. The reason for this addition is that the measures called for in this paragraph could cover possible transit activities as well. Thank you.

Mr KAZI (Bangladesh):

Mr Chairperson, I am speaking with the support of the Parties in the WHO South-East Asia Region. We have a small drafting suggestion here. First of all, we would like to thank the Brazilian delegation because we also support the deletion of the words “clear and”; we would then suggest “effective measures for facilitating or obtaining ...” with the remainder of the text following. Thank you.

El Sr. MONTALVO (Ecuador):

Gracias, señor Presidente. Cuando se debatía sobre el artículo 3, se insistía en no poner «equipos de manufactura o de fabricación» o también incluir «insumos y materias primas». Varios delegados de otros países han propuesto asimismo incluir algunos otros aspectos, como el tránsito, que podría ser entendido también como transporte de los productos de tabaco. Tal vez sea más conveniente, aunque el Convenio Marco señale explícitamente «equipos de fabricación», usar términos más genéricos que pueden ser válidos tanto para este párrafo 3 como para los párrafos 2 y 1, y referirse a infraestructura, equipamiento e insumos utilizados en la elaboración, transporte y comercialización de productos de tabaco, porque usar términos genéricos también puede permitirnos llegar a consensos más fácilmente.

The CHAIRPERSON:

Where would you see that occurring in the text, please? Could you give us an idea of that?

El Sr. MONTALVO (Ecuador):

Está en el lugar donde se habla de equipamiento, después de «productos de tabaco». Es preferible utilizar los términos genéricos «infraestructura, equipamiento e insumos».

The CHAIRPERSON:

This may be a translation or interpretation point. Did you say “infrastructures”? Perhaps you could write down the proposal so that we can have a further look at it.

Mr OOKA (Japan):

Mr Chairperson, as we mentioned before, we would have to propose again to delete the words “manufacturing equipment used in the manufacture of tobacco products”. Again, we do not think we need the words “primary materials” or “manufacturing equipment”. Thank you.

The CHAIRPERSON:

Thank you. We shall put brackets around manufacturing equipment at the end of the paragraph.

Dr GAO Xingzhi (China):

高兴智（中国）：

谢谢主席。

4.3要求各缔约国采取措施收集和交换有关烟草的各种生产和贸易数据。我们认为本条的规定超出了公约第15条的要求，中国反对将烟草各种生产和贸易数据向其它国家开放和交换。我们认为，本议定书只是涉及烟草非法贸易的数据，而不是所有烟草的数据。要求交换烟草各类数据，就超出了本议定书的宗旨。所以，我们建议对这一条的修改，最好只涉及有关烟草非法贸易数据的收集和交换问题。

谢谢。

Mr ROWAN (European Community):

The European Community is happy with the text as it stands in paragraph 3, subject to clarification on one particular item, which is the trade data. We need clarification as to whether “trade data” refers to general statistical data or whether it refers to company-related data; because if it is the latter we would have a problem on two fronts: first, business secrecy, and secondly, possible data protection violations. Thank you.

The CHAIRPERSON:

I understand that the first of your options there would be for the term “trade data” to refer to general statistical data. Thank you.

El Dr. ABASCAL (Uruguay):

Señor Presidente, quería reflexionar sobre algunos puntos relativos a este artículo. En primer lugar, según he escuchado se debería tener información sobre el comercio ilícito, pero precisamente por tratarse de un comercio ilícito difícilmente tengamos información. Podremos tener aproximaciones a la magnitud del problema, pero al ser un comercio que está fuera de los sistemas, seguramente no vamos a tener información. En segundo lugar, y más importante que aquello a lo que me quería referir, quisiera transmitirle a usted una duda que me ha surgido: ¿cómo puedo yo en mi país cumplir con este artículo 3 si no tengo lo que dice el artículo 1? Para tener información suficiente, para poder intercambiarla y cooperar, necesito tener el control sobre alguna o gran parte de la cadena de producción y el comercio de tabaco. Si no tengo eso, no voy a tener datos para intercambiar.

Asimismo, quisiera nuevamente reflexionar sobre cuáles son las medidas eficaces para controlar el comercio ilícito. Dichas medidas pasan por la cadena de producción y el comercio de tabaco. Por consiguiente, debemos tener claro que las medidas del presente Protocolo deberán ir dirigidas fundamentalmente a estos puntos: si no poseo la información, porque no controlo la cadena de producción y de comercio, no podré intercambiar información con ningún país, y eso va a beneficiar mucho a los grupos o empresas que se dedican al comercio ilícito, porque cuando los países no puedan cooperar, es cuando el comercio ilícito va a progresar.

The CHAIRPERSON:

I fully agree with the points you make. We need to have the rest of the protocol to make this work. These are the general provisions, but you are right in saying that we have to have the strongest possible specific provisions later on in the protocol, and then we will have the data that we can exchange in order to combat the illicit trade on an international level, because that is the only way we are going to be able to do that. I am grateful to you for underlining that point. Thank you for making that clear.

Ms HEFFORD (Australia):

Mr Chairperson, I feel the need at this point to reiterate Australia's commitment to the value of the protocol and to continuing to work to implement a good text that will enable us all to travel home with a level of confidence that the text is something we can live with within our own countries. Some of the comments are quite critical of the text. I feel the need to reiterate our strong commitment to being here and to working to obtain an agreed text. I am wondering if, in respect of paragraph 3 and in fact generally, regarding the following couple of paragraphs in this section of Article 4, it might help if we were a little bit clearer about the purpose of the statements contained here.

I understand that these are the general obligations and that they refer to more detailed obligations contained in the later parts of the protocol. I recognize, for example, that funding and financing are covered in detail in Articles 35 and 38, but financing seems to be covered in two different ways here in Article 4: first, in the reference in paragraph 3, and secondly, in the reference in paragraph 6. I suspect that they are talking about different aspects of financing, but I am not clear about that. If paragraph 3 is about providing technical assistance and capacity building and international cooperation and the provision of data on the illicit tobacco trade, then perhaps the reference to financial support is redundant in that paragraph.

If I understand paragraph 3 correctly, perhaps there needs to be some reference to the fact that the technical assistance and financial support, capacity building and international cooperation are intended to serve the purpose of understanding illicit tobacco trade, because that phrasing is not in paragraph 3 as it exists at the moment. It might also be useful if, in explaining to me your approach to this draft, you could tell us what links you see between each of these paragraphs and the relevant articles of the rest of the protocol. As I have said, I think paragraph 6 relates to Articles 35 and 38. Perhaps you could help us to understand and therefore be less critical of the text if you gave us such references for the other paragraphs. Thank you.

The CHAIRPERSON:

Thank you, Australia. Just to respond to that last question of yours, if you want to relate it to the appropriate part of the text, that paragraph relates to Article 20. I hope that clarifies that point.

Dr DLAMINI (Swaziland):

While we agree with the proposal that the data referred to in paragraph 3 should be broadened to include any relevant data on tobacco, tobacco products and manufacturing equipment used in the manufacture of tobacco products, we are opposed to the deletion of the word “clear”. Also, we wish to propose as an addition to this paragraph, specifically in the fourth line, the insertion of a comma after the word “within”, followed by the phrase “entering, or transiting through their territory”. This is meant to cover or prevent illicit cross-border trade in such products. Thank you.

Mr AZOFF (Israel):

I more or less agree with the delegate from Australia. If the purpose of this provision is to enhance technical assistance and give financial support, capacity building etc., I do not think that we should define here what kinds of information would be transferred. Part V deals with international cooperation and information sharing and we have not yet agreed on what information will be shared internationally. Therefore, I would suggest that if we agree to talk about information sharing here, we should say information to be exchanged under this protocol or something similar. Thank you.

The CHAIRPERSON:

Thank you very much, Israel. You are absolutely right. The logic of the way we are approaching this is not the one that I had envisaged. I had envisaged looking at the substance of the protocol first of all and then looking at Parts I and II, because only when you know the content of the heart of the protocol can you in fact look at the general provisions and, if necessary, the scope. But “the best laid schemes o’ mice an’ men gang aft agley”, as the Scots might say. This was not something that the Parties wished to do; maybe in retrospect we were wrong to take this route. However, unfortunately we are halfway down this road now and what I intend to do is to finish off these two parts of the protocol, and then move into the heart of the matter tomorrow.

I think Israel’s point was absolutely right. This was not a logical approach. Nevertheless, that was your request and that is how we are doing it. I think we should at least try and identify those that are causing you problems or where you have concerns so that we can highlight them. But we will certainly have to come back to this after we have looked at the substance of what is in the Chairperson’s text, because of the tracking and tracing provisions, the data sharing, the financing and so on. However, this is at least useful for clarifying some of the initial problems that you can foresee with this part of the text.

Le Professeur TIDJANI (Togo):

Merci, Monsieur le Président. Pour revenir au paragraphe 3, nous ne voulons pas nous répéter, mais on avait dit au paragraphe 1 : « adoptent et appliquent des mesures appropriées ». C’est la raison pour laquelle je propose qu’on mette « adoptent des mesures appropriées et efficaces d’assistance technique et d’appui économique ». Pourquoi je préfère le mot « économique » ? Je suis d’Afrique et, pendant un certain nombre d’années, quand on nous envoyait de l’assistance, c’était de l’assistance technique et économique. Donc, si on ne veut pas garder « des mesures appropriées », je préfère qu’on mette « des mesures pertinentes » au risque de nous répéter. Sinon, je suis pour « mesures appropriées et efficaces d’assistance technique et économique ».

Merci, Monsieur le Président.

The CHAIRPERSON:

Thank you very much. Instead of “financial support” you propose “economic assistance” and “appropriate and effective measures”.

Mrs ROBINSON: (Seychelles):

Mr Chairperson, I am having some drafting difficulties. Paragraph 3, even though it is part of Article 4, stands on its own and when we say “exchange with the competent authorities” I wonder which competent authorities we are referring to. Because we cannot just refer to them, without first mentioning which they are. Also, I am not clear whether “competent authorities” in the third line refers to competent authorities of the Party or competent authorities of other Parties. Lastly, we could perhaps replace the word “assure” with “ensure”. Thank you.

The CHAIRPERSON:

Thank you very much. The idea behind the use of the term “competent authorities” in this part of the text was in fact to cover the competent authorities both in the Party of collection of the data and the competent authorities to which those data might be transferred. It is therefore very much a global term for competent authorities of all the Parties. I have noted your comment about changing “assure” to “ensure” and that is fine.

El Sr. TORRES MARTIN (Colombia):

En la traducción de las palabras «materia prima» del español al inglés aparece «primary materials», pero nosotros creemos que lo correcto es «raw materials». Asimismo, a nuestro entender el texto no debería decir «key inputs» sino solamente «inputs». Gracias.

The CHAIRPERSON:

Thank you very much, Colombia. We shall change “primary” to “raw” and we shall delete the word “key” from “key inputs”. Thank you for that clarification.

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Mr Chairperson, my intervention goes to the list that we have here of measures: technical assistance, financial support, capacity building and international cooperation. Canada cannot guarantee that it can deliver on all of these; probably only some. Therefore, we would suggest that we say something along the lines of “adopt measures, including technical assistance, financial support, capacity building and international cooperation” so that it is clear that there is a menu here and that not all of them must necessarily be provided by everybody.

The CHAIRPERSON:

Thank you. The change, then, would be “adopt measures, including technical assistance, financial support ...” and so on. That would be your proposed change there. Good.

Ms HEFFORD (Australia):

Thank you very much for your kind advice in response to my previous enquiry and for referring me to Article 20. I have reread Article 20 and note that there is no reference there to either financial support or economic assistance. I would therefore like to suggest, in the spirit of these being general obligations which refer us to the detailed text further on, that we limit the language here to “technical assistance and capacity building” with no reference to either financial support or economic assistance.

The CHAIRPERSON:

Thank you very much. We shall put some brackets around the various bits that you do not want in that text. Could you repeat that again slowly, just how you would like the text to read, please?

Ms HEFFORD (Australia):

Certainly. "Technical assistance and capacity building" and the intervening text referring to financial and economic support is deleted.

M. MOHAMEDOUN (Mali):

Merci, Monsieur le Président. Au paragraphe 3, une précédente intervention a fait une proposition sur l'« échange avec elles ». Je pense que, dans la version française, il devrait s'agir plutôt de l'échange entre elles, comme cela est dit au paragraphe 4 suivant : « collaboration étroitement entre elles ». Je propose donc, au lieu de « échange avec elles », « échange entre elles ». Ces observations auraient pu être communiquées au Secrétariat aux fins de rédaction, gagnant ainsi du temps pour nous consacrer aux questions de fond. Je vous remercie.

The CHAIRPERSON:

Thank you very much. Certainly if there are any points like that which you have spotted in the rest of the text please do let us have them and we shall check the consistency between the different versions of the text.

Mr AHMADI (Islamic Republic of Iran):

Mr Chairperson, I have another addition to propose for this paragraph, which is the phrase "achieve the objectives of this protocol" in the second line after "in order to". It would then read "in order to achieve the objectives of this protocol and assure the availability to" and so on.

The CHAIRPERSON:

Thank you very much. We have put it on the screen.

Mr AZOFF (Israel):

Mr Chairperson, I think that the last part of my previous proposal was somehow lost. I suggested that, instead of having a list of data to be transferred in order to solve the drafting problem, we would say "information to be exchanged under this protocol", which would avert a drafting problem here on the type of information or data to be exchanged, and whatever we decide later on in Part V would be fine. Thank you.

The CHAIRPERSON:

Thank you. That means we would say "to ensure the availability to, and exchange with, the competent authorities", following which we would introduce your phrase.

Mr OOKA (Japan):

Mr Chairperson, we support the view previously expressed by our Australian colleague.

Dr VINIT (Papua New Guinea):

I just want to acknowledge the previous adoption of all these articles and also paragraph 3. I would simply like clarification from the Chairperson regarding those two sets of information.

Paragraph 2 would be data on illicit trade, whereas paragraph 3 would be more nominal information that is given to customs in terms of production and trade. Now, it is my interpretation that it also includes Article 7 which deals with tracking and tracing. We need that information for tracking and tracing. Maybe financial support should be included in Article 7 as well, because there would be some assistance to ensure that reliable information can be obtained for tracking and tracing. What I am trying to say is that rather than deleting text, we need to go back and see why people suggested those paragraphs. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much. You are absolutely right that there are reasons for these paragraphs to link into the subsequent paragraphs; because if you are going to have an effective fight against illicit trade, you need solid data on which to base it. You need to be able to use those data for your risk assessment systems; you need to be able to use the data as part of the tracking and tracing system. This is why it feeds into the next and subsequent articles in the protocol.

As I say, I think we will need to revise these parts, these paragraphs anyway, once we have decided what the substantive elements should be in the rest of the protocol. But they are supposed to link into the rest to make the substantive provisions more effective by having the necessary data, the necessary international cooperation, the necessary support and the effectiveness of the enforcement authorities. Those are the general statements we are making at this stage so that they then have an impact on the more detailed technical issues later on. That was the purpose and the method behind the drafting.

Mr OOI Poh Keong (Malaysia):

Mr Chairperson, as you have clarified that paragraph 3 is related to Articles 20 and 21, perhaps it would be better to change the words “trade data” to “statistical data”. Thank you.

The CHAIRPERSON:

We shall put in brackets after “trade” the word “statistical”. Thank you. Are there any other comments on paragraph 3?

Mr GÖRÜN (Turkey):

Mr Chairperson, concerning paragraph 3, we propose the addition of the word “securely” before the word “exchange” as data security is vitally important these days for all Parties that are involved in this process. Also, please note that we have the same view on Article 4, paragraph 5.

The CHAIRPERSON:

Thank you very much, Turkey. So we note that we must have the word “securely” before “exchange” in paragraph 3 and that you have the same proposal for paragraph 5. Have we exhausted paragraph 3? I must say I am in some difficulty here because I cannot see the screen clearly enough to suggest to you ways of amending the text. I would ask that you allow me to look at what we have done so far, between the end of this meeting and the beginning of our evening meeting. I will try to work out where compromise proposals can be made.

Let us move on to Article 4, paragraph 4. I invite you to make drafting suggestions for this paragraph.

Mr TORRES MARTIN (Colombia):

Mr Chairperson, I shall speak in English just for the sake of clarity. I was hoping that maybe for paragraph 4, if you agree, we could change somewhat the structure of the way we are submitting comments and submit them in written form in a short break so that we could then see them all on the

screen and analyse the various proposals all at once, rather than having new text being continuously introduced. You may find that more effective.

The CHAIRPERSON:

Thank you for your suggestion. What I would like to propose is that if there are comments you should make them orally so that people can react to your comments; but I would like to gather them in writing as well so that we have them in black and white. But it is a good opportunity for people to react to any suggestions that are made. That is fine if you would like to submit them in writing.

La Sra. JAQUEZ (México):

La delegación de México quisiera hacer un comentario que tiene que ver en parte con la sustancia de este artículo y en parte también con otra situación que, como Región de las Américas, ya hemos comentado a la Secretaría del Convenio respecto de la traducción en inglés y en español. En este párrafo hay un problema que se refiere a la expresión «la acción represiva». Voy a leer la frase: «para potenciar la eficacia de la acción represiva destinada a combatir los delitos comprendidos en el presente Protocolo». Para México, esta expresión tiene una connotación muy negativa, pero el significado se complica más cuando vemos que en la versión en inglés ni siquiera aparece esta frase tal cual, sino que se utilizan otros términos. Por lo tanto, proponemos que se ponga entre corchetes la frase «law enforcement action», porque como hemos señalado en español dice otra cosa. Gracias.

The CHAIRPERSON:

Thank you very much. Could you please indicate what it is in the Spanish version?

La Sra. JAQUEZ (México):

La razón de este comentario es que México estaría de acuerdo en el concepto de «law enforcement action», pero en español dice otra cosa, y hasta que no estén equivalentes las dos versiones, no podemos opinar a favor de este párrafo. Gracias, señor Presidente.

The CHAIRPERSON:

Thank you very much. I shall ask the Convention Secretariat to look into the different versions there. However, for the moment I have noted that you would like square brackets in the English text round the three words “law enforcement action”. I understand that you actually agree with the concept in the English version but you need to have the same thing in the Spanish version.

Mr MOREWANE (South Africa):

I would like to take the Chairperson back to paragraph 3 of Article 4. There is just a small point: we would like to retain “financial support” in the first line because we do not want to work from a premise that assumes that no one would need financial support in order to establish actual trade data, for instance. We therefore wish to state strongly that “financial support” should be retained. Thank you.

The CHAIRPERSON:

Thank you very much. I have noted your strong desire to keep that phrase. Just going back to the point raised by Mexico, rather than placing square brackets round the words in the English text we shall put an asterisk next to it to show that we need to check the texts.

Dr DLAMINI (Swaziland):

Mr Chairperson, I was also going to beg your indulgence to return to Article 4, paragraph 3, but my point has already been taken care of by my colleague from South Africa. Thank you.

The CHAIRPERSON:

Thank you. We now all agree on this paragraph, subject to the language. Excellent. The Syrian Arab Republic, please.

Dr ABOU AL ZAHAB (Syrian Arab Republic): :()

The CHAIRPERSON:

Very good. We shall put an asterisk next to “offences” and remember that it is the Arabic text we need to look at there. That paragraph is agreed, subject to checking the text. We move on to Article 4, paragraph 5. Any comments on paragraph 5, please?

Mr AZOFF (Israel):

Mr Chairperson, I would like to know what is meant by the term “relevant organizations”. As it stands now, it could mean any organization from the tobacco company or lobby to nongovernmental organizations, to the World Customs Organization, or to the United Nations. I think that this term needs clarification because we are dealing here with information sharing and, therefore, with issues of data protection and confidentiality.

The CHAIRPERSON:

Thank you for your question. The intention was to deal with bodies such as the World Customs Organization or United Nations bodies; certainly not with any private enterprises or anything like that. And it was our intention that the relevant organizations would be determined by the Parties themselves. That is what was in my mind when I used that term. The World Customs Organization, the United Nations Office on Drugs and Crime might be concerned, for example. It is that type of international level of which I was thinking. If anyone would like to propose better terminology, I am very open to that.

El Dr. ABASCAL (Uruguay):

Simplemente nos preguntamos si el párrafo 5 no está ya incluido en la redacción del párrafo 3. Cuando se dice «creación de capacidad y cooperación internacional, de manera que posibiliten a las autoridades competentes la disponibilidad y el intercambio de datos sobre la producción» etc., esta parte de la cooperación internacional quizá se refiera a organismos que pueden estar en las Naciones Unidas o de otro tipo. Gracias.

The CHAIRPERSON:

Thank you, Uruguay. I do not think “competent authorities” would include a body such as the World Customs Organization. But you are right that we could look at the text and see if it is possible to put the two together: paragraphs 3 and 5. But if you are happy with the wording of paragraph 5, maybe we should just keep it separate. We might be able to agree on that quite quickly. Are there any other comments on paragraph 5? We have noted, for example, that there was a proposal to put the word “secure” before the word “exchange” and that needs to be put into the text. Is there anything else?

Mr SAINT-DENIS (alternate to Mr Leguerrier, Canada):

As a suggestion, Mr Chairperson, we would propose that paragraph 5 could perhaps read “cooperate and communicate as appropriate with Parties and their competent authorities” – bringing the two together – “in an exchange of information covered by this protocol”, implying Parties and their competent authorities, subject to the Parties.

The CHAIRPERSON:

Would that cover a body such as the World Customs Organization though?

Mr SAINT-DENIS (alternate to Mr Leguerrier, Canada):

I do not think it would. If I am not mistaken, the World Customs Organization is almost considered a nongovernmental organization, is that not so?

The CHAIRPERSON:

I think it is safer to leave it as it is, because I am convinced that it would not be a competent authority of a Member State, not the sort of international organizations that we are thinking of. Do you feel strongly on that point, Canada? The WHO Legal Counsel has very helpfully pointed me to Article 15.6 of the Framework Convention, in which we talk about “cooperation between national agencies, as well as relevant regional and international intergovernmental organizations”. That is safe wording because we have already used it in the Framework Convention, and it would actually then define the fact that we are talking about intergovernmental organizations, not private companies. That may be a useful addition, a change in the text that we could make here.

La Sra. ROA RODRÍGUEZ (Panamá):

Solo quisiera señalar que nosotros pensamos que los párrafos 3 y 5 manejan conceptos diferentes, entidades distintas, y por lo tanto preferiríamos que se mantuvieran separados. Consideramos que las sugerencias incluidas son válidas pero preferimos que se mantengan separados, o de lo contrario complicarían muchísimo la redacción del párrafo 3.

The CHAIRPERSON:

Thank you very much, Panama. I agree with you on that.

Mr AHMADI (Islamic Republic of Iran):

Mr Chairperson, this paragraph – paragraph 5 – is committing and/or obligating Parties to cooperate and communicate with relevant organizations and bodies. In our view, somehow or somewhere we should know who these organizations and bodies are: perhaps in a footnote or later on or, for the time being, we could add an asterisk and revisit it because we need to have names, for we will be committed to cooperating and communicating with them. Thank you.

The CHAIRPERSON:

What I would like to suggest is that we use the wording from Article 15.6 of the Framework Convention here. It would read something like “cooperate and communicate as appropriate with ...” followed by whatever is used in Article 15.6 of the Framework Convention. In other words, it would say “with relevant regional and international intergovernmental organizations”, which gives you the opportunity to act “as appropriate”, and it would define the relevant organizations in the same way as Article 15.6 of the Framework Convention itself, to which you have already signed up. I would suggest adding “as appropriate” after “cooperate and communicate” at the beginning of the sentence. That gives the Parties the ability to decide with which organizations they cooperate.

Le Dr NGABA (République centrafricaine):

Merci, Monsieur le Président. Votre intervention de tout à l’heure règle le même problème. Je voulais intervenir dans ce sens.

El Sr. TORRES MARTIN (Colombia):

Gracias, señor Presidente. Me preocupa la connotación de la palabra «segura» en el intercambio de información, pues no sé hasta dónde llega el concepto de «seguro», o sea, si lo que queremos decir es que cuando hay un intercambio de información entre entidades intergubernamentales se debe mantener confidencial o reservada esa información, o bien que la comunicación entre un punto y otro debe ser segura. No sé a que se refiere aquí el término «seguro», por lo que le ruego que me lo explique.

The CHAIRPERSON:

Thank you. It means that it has to be protected from things like hacking. Most of the ways of exchanging information now can be encrypted. That is the sort of security that I am looking for: the information technology type of security, which means that it is not readily available to anyone just looking at the transfer or hacking into the transfer of information. It must be secured under normal information technology conditions. Is that all right?

El Sr. TORRES MARTIN (Colombia):

Por consiguiente, estamos hablando del intercambio y de la comunicación seguras a través de una información encriptada y certificada digitalmente.

The CHAIRPERSON:

Yes, that is what “secure exchange” means: that it is an exchange between two points and it is secured. I hope that is the situation. Thank you.

Mr AL BAKER (United Arab Emirates): :()

The CHAIRPERSON:

It would clearly be up to you to decide when it was appropriate to exchange information with these bodies. I think almost all of the Parties in this room, for example, are members of the World Customs Organization. Therefore, you are already exchanging data with the World Customs Organization because your customs authorities send seizure data to the World Customs Organization and there is a secure network which allows that to happen, as far as I am aware. I may need to get clarification from the representative of the World Customs Organization. But you do not have to be a member if you decide that it is appropriate for you to exchange the data. But if you do decide you want to exchange it you simply have the obligation now to make sure that it is exchanged securely. There is a great deal of freedom for the Party to organize this in relation to its own requirements and the requirements of the international body.

Mr AL BAKER (United Arab Emirates): : ()

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The CHAIRPERSON:

In those circumstances, you would simply determine that it was not appropriate to hand over the data. It still falls entirely within your discretion as a Party if we use the wording that is on the screen at the moment.

Mr SAINT-DENIS (alternate to Mr Leguerrier, Canada):

Mr Chairperson, perhaps we can have a clarification on your part. Article 15.6 of the Framework Convention refers to information relating to investigations, prosecutions, etc. of individuals involved in the illicit trade. The particular phrasing here would suggest that the type of information being discussed is much broader than that. In fact, it seems to cover all information covered by the protocol. Article 15.6 talks about a specific type of information which should be exchanged with appropriate international agencies while Article 15.5 talks about certain types of information that need to be exchanged with the Conference of the Parties. Is it your intention to have the type of information covered here encompass all information gathered under this protocol and, where a Party deems it appropriate, that it be exchanged with international agencies?

The CHAIRPERSON:

Thank you for the question. It certainly covers all the information in the protocol; you are right about that. But it would be data that are relevant for combating illicit trade. The sorts of international or regional organizations where you might consider exchanging the information would be those where you felt it would be helpful in your fight against the illicit trade. It is really in your own hands as to how much data you give them, which organization it is, and your assessment of the way it will contribute to combating illicit trade. The idea is to make sure that there is this provision here, which allows you to do so and, in fact, encourages you to do so. If it is mentioned here, clearly you will want to exchange data on some occasions. You do it with the World Customs Organization now because of the seizure data, because that helps in combating illicit trade. That is the logical process of thought you would have to go through on each occasion when you wanted to exchange data or when you were requested to provide data.

Mr SAINT-DENIS (alternate to Mr Leguerrier, Canada):

So this paragraph contemplates a broader type of exchange of information than Article 15.6 and in fact would cover all types of information encompassed by the protocol. Thank you.

Mr ALBUQUERQUE E SILVA (Brazil):

In our view, illicit trade in tobacco products is a transnational problem, as you pointed out earlier, the resolution of which will require international cooperation. That is why we deem it very important to have a good paragraph on cooperation, and we believe that this paragraph is much better with the suggestion just made by the Office of the WHO Legal Counsel. I think the Legal Counsel has helped us to achieve good language and we could agree to the incorporation of "regional and international intergovernmental organizations".

We would like to point out, however, that we have the same preoccupation as the Chilean delegation. The introduction of "secure" in this text would require a definition of a secure exchange of information. I heard your explanation, but interpretation of what "secure" means in this text would allow many Parties to have divergent points of view. We would therefore prefer not to include the term "secure". We would suggest after "organizations" a phrase such as "with a view to assuring the exchange of all relevant information needed to ensure the full implementation of this protocol". We definitely have a problem with "secure". However, if we define it in the first part of the protocol, then we would be able to accept it; but without a definition it poses a problem for us. Thank you very much.

The CHAIRPERSON:

I think we would need to have an information technology expert come and give you that definition. I am not capable of explaining to you what "secure" is. It seemed to me to be a normal sort of term. You simply make sure that it is not open to leaks. Countries may have different systems. I will consult the information technology people in the Convention Secretariat and see if there is some explanation we can give you. I appreciate your question on this matter. I am just looking at your suggested redraft, which is broadly similar to what we have but slightly expanded, if I am correct.

Mr ALBUQUERQUE E SILVA (Brazil):

Yes, but if it is not consensual we can withdraw it. Ours is simply an attempt to contribute to consensual language.

The CHAIRPERSON:

We shall put the Brazilian suggestion separately at the bottom so that people can at least see it in case we can reach agreement on what we already have; but let us not lose sight of the consensual language.

El Sr. NAVARRETE (Chili):

Gracias, señor Presidente. En lo que respecta al mismo punto que nos hacía ver el Brasil, la sugerencia sería que usted agregue o proponga agregar una nota al pie de página explicando el concepto de «seguridad». Particularmente, en la expresión inglesa parece quedar claro que se está refiriendo a la seguridad de la información desde el punto de vista de la protección de la confidencialidad de la información. Si nos referimos al castellano, esto no sería tan claro, de tal manera que en la traducción al español habría que tener cuidado de que dijese que se está refiriendo al intercambio de información del Protocolo en condiciones de seguridad garantizadas. Así quedaría más claro que estamos hablando de la confidencialidad, no de la seguridad de que la información llegó de un punto a otro. De tal manera que nos parece que lo más lógico es que, si se pone la palabra «secure» en inglés, se agregue una nota al pie señalando que se refiere a la seguridad del punto de vista de la

confidencialidad de la información o de la definición que le den a usted los técnicos y expertos en informática y tecnologías de la comunicación. Gracias, señor Presidente.

The CHAIRPERSON:

Thank you for that. I shall explore the possibilities of footnotes or simply just an explanation from the information technology people; but we certainly want it to be secure and confidential. That is the message that we are trying to get across.

Mr GÖRÜN (Turkey):

As the country that suggested the addition of the word “secure” in Article 4, paragraphs 5 and 3, given Brazil’s and Chile’s opposition to this inclusion, we have to take the floor once more. Nowadays, we live in a high-tech world in which any kind of information can be stolen easily by high-tech hackers and we should give consideration to the conditions obtaining in the world in this respect. We have to retain the word “secure” in this Article, but we agree that it would be better if we had a definition of “secure” if there are concerns in the minds of some other Parties’ delegations. We could include a definition in Article 1. Thank you.

The CHAIRPERSON:

Thank you very much, Turkey. I think that Brazil and Chile accept that we want to have secure exchange. They are simply concerned about knowing exactly what that means. We will therefore explore that and see what we can find.

El Sr. TORRES MARTIN (Colombia):

A nivel informático, la seguridad se encuentra en los certificados electrónicos que expiden los certificadores electrónicos que tenemos en todos los países, así como en la información que viaja en forma encriptada, el BPN, que mencionan los informáticos en inglés. Es necesario que en la definición de «secure» se especifique que la información viajará certificada o electrónicamente y encriptada. Eso es lo que le da seguridad a la información. Gracias.

The CHAIRPERSON:

The Convention Secretariat and the Legal Counsel have helpfully pointed me to Article 21, paragraph 4, of the Framework Convention, which talks about the reporting and exchange of information under the Framework Convention and says that it shall be subject to national law regarding confidentiality and privacy, and that the Parties shall protect, as mutually agreed, the confidential information that is exchanged. It talks about protection and confidentiality of information. We also have a phrase here which means it is up to the Parties to determine what that is. It may therefore be possible to extend the wording from the Framework Convention into the protocol. I will explore that possibility with the Convention Secretariat and with the WHO Legal Counsel. We shall put an asterisk against that one as well.

I think there is broad consensus that we can achieve something on this paragraph. Do you feel relatively comfortable that we have covered all the issues for paragraph 5?

La Dra. MEJÍA VELÁSQUEZ (Honduras):

Señor Presidente, al igual que la palabra «seguro», considero que debe incluirse o escribirse al pie de página la definición clara de «órganos pertinentes». Es importante que quede muy claro lo que significa esto.

The CHAIRPERSON:

I think that it is safer to leave it as “relevant” so that you can determine yourselves what is relevant. If we include a definition, then you are going to be constrained by feeling that you have to start exchanging with these bodies. Could you accept the word “relevant” as it stands and leave it to your interpretation in your State Party?

La Dra. MEJÍA VELÁSQUEZ (Honduras):

Estamos de acuerdo.

The CHAIRPERSON:

Thank you very much; that is much appreciated. I think that we have sufficient material to reach an agreement on paragraph 5. Are there any comments on the drafting of Article 4, paragraph 6?

M. CISSE (Sénégal):

Merci, Monsieur le Président. Au paragraphe 6, il faut écrire « la limite » et non « les limites ». Ce paragraphe, à mon avis, est assez difficile à saisir ; j’avais cru comprendre qu’il s’agissait pour les États, en plus des moyens et des ressources dont ils disposent de rechercher – peut-être par le biais de la coopération bilatérale et multilatérale – des ressources financières pour la mise en oeuvre efficace du protocole. Si c’est bien ce que j’ai compris, je pourrai proposer ceci : « en plus des moyens et des ressources dont elles disposent, elles cherchent à obtenir les ressources financières nécessaires à la mise en oeuvre efficace du présent Protocole par le biais de la coopération bilatérale et multilatérale ». Merci.

The CHAIRPERSON:

Thank you very much. If I understood correctly, your proposal was to put after the word “raise” the two words “the necessary” and that the phrase would read: “cooperate to raise the necessary financial resources”. Have I understood you correctly? Yes.

Mr NICOLAS (Philippines):

I am sorry, Mr Chairperson, but I would like to go back to Article 4, paragraph 5 on just a small point. I think paragraph 5 was lifted from Article 5.5 of the Framework Convention, in which the description of the international and regional organizations meant that they were also Parties to the Framework Convention or to the protocol. In its current wording, Article 4, paragraph 5 does not include the phrase “to which they are Parties”, whereas in Article 5 of the Framework Convention, the qualification is that they must be Parties, Parties to the Convention.

If I may further explain, Mr Chairperson: otherwise, there would be an obligation on the part of the Parties to give information to any relevant regional and international organization, but there is no subsequent obligation on their part to give us information, since they are not Parties to this protocol anyway. That is why I think the Framework Convention mentioned that they must be Parties.

Mr SOLOMON (WHO Secretariat, Office of the Legal Counsel)

Thank you. The Chairperson has just asked me to offer a view on how this Article 5.5 has been read. The phrase “to which they are Parties” has been read to apply to the protocols to which they are Parties, as opposed to the organizations and other bodies to which they belong. In other words, what Article 5.5 has been understood to say is that Parties to the Framework Convention shall cooperate under the Convention and that, with respect to those protocols of the Convention by which they are bound; they shall cooperate with respect to those, and only those, protocols. This allows for the fact that if a Party to the Convention does not adopt a protocol it would not be bound by Article 5.5. I do understand the reading that has been offered, that the phrase “to which they are Parties” at the very

end might apply to organizations and other bodies, but that is not how it has been traditionally read. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much. I think it is useful to have that clarification. And of course if you look at Article 5.6, that is where we have taken the wording to put into our Article 4, paragraph 6. We have tried to steal the words from the Article of the Framework Convention itself. That means that the international organizations do not have to be Parties to anything. That is not the reading of Article 5.5, according to the Office of the WHO Legal Counsel.

Mr NICOLAS (Philippines):

I understand that, Mr Chairperson, but that would mean that the Parties will be obligated to give whatever information this relevant international organization asks for from any of the States Parties with no concomitant obligation on the part of such organizations to give us information if we wanted such information.

The CHAIRPERSON:

I do not think that is entirely true, because there is the possibility for you to decide if it is appropriate to give the information and if you are not receiving reciprocal arrangements with that body that could be a factor which you take into account. I therefore think that would protect you under those circumstances.

Mr NICOLAS (Philippines):

One final point, Mr Chairperson: I understand that, but if that were the case, if it were a matter between two consenting organizations, that could be done very easily by just talking to each other. But as we are now wording Article 4, paragraph 5, it says to cooperate and communicate. In other words, there is an obligation on the part of the Parties to give this information when there is no concomitant obligation on the part of that organization to give us information.

The CHAIRPERSON:

That is true but, in fact, by adding the words “as appropriate” you simply would not give the information to the international organization unless you were sure you were going to get something back. I think you can set the framework within which you want to exchange information with those bodies. And you are right: you are not going to give information if you are not going to get anything back. So, I think there is enough flexibility and I see, in fact, that Article 4, paragraph 5 of the Framework Convention says “shall cooperate as appropriate”. If we put those words into our text in Article 4.5 we are fully in line with what the Framework Convention states.

M. MOHAMEDOUN (Mali):

Merci, Monsieur le Président. Il s’agit bien, au paragraphe 6, des obligations des Parties qui, dans la limite des moyens et des ressources dont elles disposent, coopèrent pour obtenir les ressources financières nécessaires à la mise en oeuvre efficace du protocole. Je propose qu’on s’arrête là et qu’on fasse l’économie du reste de la phrase ; en effet, nous avons déjà, à la première ligne, le membre de phrase « coopèrent pour obtenir des ressources financières nécessaires ». À mon avis, cela suffirait. Merci.

M. BARRY (Guinée):

Merci, Monsieur le Président. Concernant les obligations générales décrites à l’article 4, je voudrais proposer un amendement qui, j’espère, comblera une lacune dans cet article. Cet

amendement concerne les produits hors taxes car, comme vous le savez, toutes les dispositions du texte du Président s'y appliquent. Par exemple, les dispositions sur l'octroi des licences doivent comprendre la mention que tous les points de vente au détail de produits hors taxes doivent obtenir des licences et faire l'objet du contrôle de suivi et de traçabilité prévu par le protocole. Ces dispositions doivent également s'appliquer aux produits hors taxes de la même manière que pour une production nationale ordinaire de tabac.

En conséquence, l'amendement vise à ajouter un nouveau paragraphe – le paragraphe 7 –, qui serait formulé comme suit : « s'assurer que les dispositions du Protocole, y compris la sécurité de la chaîne d'approvisionnement, la coopération internationale et les délits, s'appliquent à tous les produits du tabac, y compris les ventes hors taxes ». Je vous remercie.

The CHAIRPERSON:

Thank you very much. Would you mind confirming that in writing to the Convention Secretariat so that we can be absolutely certain that we have it right? I am not quite sure we have taken everything down on the screen because it was quite rapid. We shall leave that aside for the moment and come back to paragraph 6.

La Sra. ROA RODRÍGUEZ (Panamá):

Nosotros nos sentimos más cómodos con la redacción original del párrafo 6 de este artículo, pues hace referencia a un texto casi exacto del artículo 5.6 del Convenio.

The CHAIRPERSON:

Thank you. Yes, I think it is easier to accept something we have already accepted once.

Dr LEWIS-FULLER (Jamaica):

Like Mali, we believe that countries have a primary responsibility to raise funding to implement these obligations and, therefore, I think we would say "within the means and resources at their disposal, raise financial resources for effective implementation of this protocol". However, I do not think that this should preclude cooperation with multilateral and bilateral funding mechanisms for raising additional funds if we need to. We therefore propose the following: "within the means and resources at their disposal, raise financial resources for effective implementation of this protocol, including cooperating with bilateral and multilateral funding mechanisms". Thank you, Mr Chairperson.

El Sr. TORRES MARTIN (Colombia):

Nosotros, como Panamá, nos sentimos cómodos con la redacción original del Convenio y además no nos sentimos cómodos con la adición del párrafo 7 porque, si así se hiciera, ello implicaría no solamente las ventas que se realizan en los «duty frees» sino que también habría que incluir toda la cadena. Creo que este párrafo 7 sobra porque los demás párrafos ya lo incluyen.

Le Dr MOUSSA (Niger):

Merci, Monsieur le Président. Pour le paragraphe 6, je suggère que la formulation soit la suivante, car dire « moins » et « ressources » relève de la capacité : « dans la limite des capacités dont elles disposent, coopèrent pour obtenir des ressources additionnelles nécessaires à la mise en oeuvre efficace des dispositions du présent Protocole ». Le reste sans changement. Merci.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, in support of the intervention just made by the Colombian delegation, we also believe that Article 4, paragraph 7, is not necessary. It brings a new subtext to the analysis of the delegations. We definitely believe that mentioning only duty-free tobacco products in a new paragraph – this one – would be clearly insufficient and would cause problems. We therefore propose its deletion. Since it is between brackets we can live with it, but we will oppose it.

Mr AL BAKER (United Arab Emirates): ()

7

The CHAIRPERSON:

Thank you very much. I have noted the hesitations about Article 4, paragraph 7, but let us try to agree on Article 4, paragraph 6, first of all. There are two options in paragraph 6: the first is simply to stick to the text that we have already agreed once in the Framework Convention. Now, there should be no problem about doing that. Can I take it that if the text were the same as is in the Framework Convention nobody would object to that? Very good.

The additional or alternative wording will open a debate on this point, particularly “including cooperating with bilateral and multilateral funding mechanisms”. I think we already have enough in the current text, which talks about bilateral and multilateral funding, to give us some security. I hope that Jamaica would feel able to go along with that as a compromise. The additions that have been suggested are basically to “cooperate to raise the necessary financial resources”. Once we start straying into words we have not already agreed, I am not sure how much agreement we will get. For example, if we added the phrase “the necessary financial resources” would that pose a problem for any Party?

Ms HEFFORD (Australia):

Mr Chairperson, I am of the view that we would do best to leave this paragraph as originally drafted. It is language previously agreed and I see no value in inserting any additional text at this stage. We would not be comfortable with the words “necessary” or “additional necessary”.

The CHAIRPERSON:

Thank you very much, Australia. I think that we should stick to the words that we have in the Framework Convention. We have obviously recorded the additional suggestions there, but my strong proposal to you would be to use the words from Article 5.6 of the Framework Convention and, therefore, the words that are currently in Article 4, paragraph 6. I hope that that will be a possible solution. You have heard the resistance to paragraph 7, the new addition. We will leave it in square brackets for the moment, but I think it is premature at 17:55 to try and open the discussion on that point. What I suggest to you, therefore, is that we close the afternoon meeting. We will reconvene here at 19:00 and we will move on to Article 2, and, as I say, I would like to finish that tonight so that we can start with the committee work tomorrow.

**The meeting rose at 17:55.
La séance est levée à 17h55.**

VERBATIM RECORDS OF PLENARY MEETINGS

COMPTES RENDUS IN EXTENSO DES SÉANCES PLÉNIÈRES

FOURTH PLENARY MEETING

Monday, 29 June 2009, at 19:10

Chairperson: Mr I. WALTON-GEORGE (European Community)

QUATRIÈME SÉANCE PLÉNIÈRE

Lundi 29 juin 2009, 19h10

Président: M. I. WALTON-GEORGE (Communauté européenne)

DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS (continued) ÉLABORATION ET NÉGOCIATION D'UN PROTOCOLE SUR LE COMMERCE ILLICITE DES PRODUITS DU TABAC (suite)

The CHAIRPERSON:

Welcome back everyone. My intention this evening is to go through Article 2, and only Article 2. Has anyone any comments they would like to make on Article 2, paragraph 1. No? That one is agreed. Thank you very much. Now, paragraph 2; are there any comments on the drafting of paragraph 2? No? Paragraph 2 is agreed as well. Thank you very much for that. Now, what comments do you have on paragraph 3?

Mr GRÖNLUND (Sweden):

Thank you very much, Mr Chairperson. With regard to paragraph 3, speaking on behalf of the European Community, we take the view that this paragraph or this provision should not be included in the operational part, so to speak, of the protocol and therefore we submit that this paragraph should be moved to the preamble. The wording, of course, would have to be revised to take into the account the context of the preamble.

Mr HOSHINO (Japan):

Mr Chairperson, it goes without saying that the full application of the United Nations Convention against Transnational Organized Crime is necessary if a country is a Party to the protocol.

There is no need to repeat what is patently obvious. Japan would, rather, like to propose deletion of paragraph 3 from Article 2. Thank you.

The CHAIRPERSON:

Thank you very much, Japan. We have put that into square brackets to take account of your comments.

Dr VINIT (Papua New Guinea):

Illicit trade is an international problem; therefore, rather than deleting it we could rephrase it so that, under Article 2, there is some relationship between the protocol and agreements and legal instruments. Rather than deleting the whole paragraph, we need to insert something there so that it refers to coordination and international collaboration with those related agreements and legal instruments. We need to complement what we want to obtain from the protocol. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much. If you have any wording you would like to suggest, perhaps you would like to write it on one of the forms we have at the entrance to the meeting room. Because we need to look at the exact wording in order to make progress on this.

La Sra. ROA RODRÍGUEZ (Panamá):

Al respecto de este párrafo, quisiera plantear la siguiente duda: si las Partes en el Convenio Marco y en el presente Protocolo que no sean también Partes en la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional podrán aplicar o no según su criterio los artículos 5, 6, 8 y 10, cuya aplicación se recomienda aquí. ¿Esto no generaría un limbo jurídico para algunas Partes?

The CHAIRPERSON:

Perhaps the WHO Legal Counsel could shed some light.

Mr BURCI (WHO Legal Counsel):

Thank you, Mr Chairperson. Indeed, I think that paragraph 3 tries to address a limitation which is that not all Parties to the protocol may be Parties to the United Nations Convention against Transnational Organized Crime. I think that Convention has just over 130 Parties, fewer Parties than the Framework Convention, for example. That was why it was felt that, even if not the ideal solution, a possible element to encourage stronger enforcement of certain provisions against organized crime was to recommend to Parties to the protocol, which are not Parties to the United Nations Convention against Transnational Organized Crime, to accept voluntarily some of the articles of that Convention, the articles that are reproduced on the screen.

As I said, legally it is not ideal, because obviously what accountability do you have if you are not a party to a certain treaty and you do certain things on a purely voluntary basis? However, I think the feeling was that, for want of something better, it was at least a strong recommendation of a policy nature to take certain measures to strengthen the implementation of the protocol. Thank you.

Mr AL BAKER (United Arab Emirates): ()

3

The CHAIRPERSON:

We have put that into the text. I think that reflects the point you were just making that they shall try to apply the articles and provisions of the United Nations Convention against Transnational Organized Crime.

Mr AHMADI (Islamic Republic of Iran):

Mr Chairperson, I ask for the floor to express our agreement with the proposal already put forward to move this paragraph to the preamble. My delegation can also agree to take it out altogether. Thank you.

Mr DEMPSEY (Canada):

Mr Chairperson, Canada agrees with the intervention of the European Community and the recent intervention of the Islamic Republic of Iran. We submit that the concepts contained in this paragraph are best addressed in the preamble. Thank you.

The CHAIRPERSON:

On a point of clarification: if we simply shifted the whole text into the preamble as it is, would that suffice for you? Or would you also have drafting suggestions if it were put into the preamble?

Mr DEMPSEY (Canada):

Mr Chairperson, I think we would have some drafting suggestions for the text.

The CHAIRPERSON:

I would like to propose that any delegation that wishes to move the text or has other suggestions for it should also put forward any written proposals that they have so that we can consider them at the appropriate time. Because we shall have to look at the preamble at some point even if we shift the text there. Thank you very much.

M. MOHAMEDOUN (Mali):

Monsieur le Président, je n'ai pas d'objection de principe au renvoi à la Convention des Nations Unies contre la criminalité transnationale organisée, surtout pour les États qui l'ont déjà ratifiée. J'ai cependant une question concernant la nature des infractions et le degré de sanction applicable puisque nous parlons de criminalité : est-ce qu'il s'agit des infractions graves ? Les sanctions pour ces infractions sont-elles applicables à toutes les infractions qui sont prévues par le protocole ?

Merci, Monsieur le Président.

The CHAIRPERSON:

Thank you very much. The United Nations Convention against Transnational Organized Crime does apply to serious crime. It contains a definition of serious crime. We are trying to make a link here between what already exists for certain types of serious crime and what we regard as serious offences under our own protocol. This was an attempt to meet a concern that the Parties had expressed at the previous session of the Intergovernmental Negotiating Body to the effect that we should try and clarify the link with the United Nations Convention against Organized Crime. It is very much a declaratory statement here and it may be that by shifting it to the preamble we solve the problem and look at it a little later on and see what can be done once we have looked at all the comments of the delegations.

Mr TAGOE (Ghana):

Mr Chairperson, my concern is with the third and fourth lines of paragraph 3, beginning with “Parties to this protocol that have not become Parties to...”. I think “have not become Parties to” is not particularly good in this context. What I mean is that, in relation to the Convention, it should read “are not Parties to...” and not “have not become Parties to...” Thank you.

The CHAIRPERSON:

Thank you very much: “are not Parties to the United Nations Convention against Transnational Organized Crime”

Dr VINIT (Papua New Guinea):

Mr Chairperson, I would totally object to that paragraph being shifted to the preamble – simply because the preamble does not include Article 2. If you are thinking along those lines you might as well take Article 2 out. We cannot remove this, the whole purpose of the protocol on illicit trade. I am speaking from my perspective and that of my country and the developing countries. Illicit trade does not come from within; it comes from outside. It is a transnational issue: therefore Article 2 must stand. And this is a very important aspect that we cannot shift to the preamble. It has to be here. I have made my statement, which I shall consign to a paragraph.

There are already other bodies dealing with crime and I think we have known evidence that a tobacco epidemic has been part of the major problems affecting our countries, basically, in terms of health and socioeconomic issues. It has to be part and parcel of the protocol and I would not like it to be diluted and moved to the preamble because transnational crimes must be addressed with other organizing bodies.

Mr Chairperson, if we talk about shifting it from here, that makes it necessary for the Framework Convention to have its own body, which would be a duplication of what is already in process. We need to work with what is already in place in terms of the United Nations Convention against Transnational Organized Crime and others; to work towards collaboration and networking on common ground. Therefore, I think that, rather than shift it to the preamble, we need to keep it here and perhaps factor in some language to the effect that we need to work towards collaboration and harmonization so that there is a complementary system. Thank you.

The CHAIRPERSON:

Thank you very much. Yes, we do need to make the two systems work together. We do not want conflict, we do not want duplication, but we need them to be complementary. If you have drafting suggestions, please let us have them and we shall look at them.

Ms HEFFORD (Australia):

Mr Chairperson, it is unfortunate that my colleague from Papua New Guinea and I have not yet had an opportunity to discuss this, because our views diverge. I would like to speak in support of the

European Community, Canada and others who have suggested moving the text to the preamble. I think there is an obvious place in the preamble for it to go, that is the paragraph in the preamble that says “recognizing still further the importance of other international agreements, such as the United Nations Convention against Transnational Organized Crime”, and I think we could work on some language that would flow from that to capture the language that is currently in Article 3, paragraph 2. I would be willing to prepare a draft in conjunction with Canada and the European Community and bring it back to you.

The CHAIRPERSON:

Thank you very much, Australia. That is a very helpful suggestion.

Mrs ADEYEMO (Nigeria):

Mr Chairperson, my own contribution to this is that I would like to expand the scope of Article 2, so that if you desire to move it you should move everything along with it and that should include more international agreements and conventions. Illicit trade is a transnational crime. By its very nature it involves border-crossing as an essential part of the criminal activity. Also, these are crimes that take place in one country but their consequences significantly affect another country. On that note, I would like us to capture essentially the provisions of the International Convention on the Simplification and Harmonization of Customs Procedures (revised Kyoto Convention), with particular reference to transit and transshipment procedures.

The second agreement I would like us to capture is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement), because illicit trade in itself is a violation of intellectual property rights of another company. My proposal has been set down in two drafts. If you will allow me, I can read it out so that you can see my precise focus on those two agreements: “Parties to this protocol that are also Parties to the revised Kyoto Convention, particularly on transit and transshipment procedures, shall ensure the full application of the provisions of the latter Convention in ensuring that the customs authorities of a State Party shall not release into free circulation, in their country, such illicit tobacco products in transit and/or in transshipment. Parties to this protocol who are not Parties to the revised Kyoto Convention shall consider applying the relevant provisions of that Convention effectively to cases of illicit trade in tobacco and tobacco products. This protocol shall also provide for the suspension of a Party that releases into free circulation in its territory tobacco and tobacco products destined for export from such territory”.

I also want us to capture the provisions of the TRIPS agreement which deals with intellectual property rights: “Parties to this protocol that are also Parties to the Agreement on Trade-Related Aspects of Intellectual Property Rights shall ensure the full application of the provisions of the TRIPS agreement that are relevant to illicit trade in tobacco and tobacco products. Parties to this protocol that have not become Parties to the TRIPS agreement shall consider applying the relevant provisions of that agreement as appropriate to cases of illicit trade in tobacco and tobacco products”. Otherwise, we shall consult and seek the assistance of the two organizations involved with these two agreements and conventions – the World Customs Organization and the World Trade Organization to assist us in drafting relevant provisions of this section of this protocol.

I base this on the fact that we are trying to set up a central portal system. The central portal system will capture legal tobacco and tobacco products that are manufactured in States Parties. How then do we capture the statistics of illicit trade? It is as important that the statistical data of illicit tobacco trafficking can be officially captured only within the transit regime, since those perpetuating illicit trade cannot access this central portal system. The inclusion of these two conventions and agreements will enhance the following: effective monitoring of the supply chain; and strengthening the tracking and tracing regime. It will also prevent an intermediate State Party from being subjected to undue pressure from illicit traffickers after they have falsified the shipping documents. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much, Nigeria. Could you let us have the drafting that you had for the Kyoto Convention and the TRIPS agreement part of your intervention so that we can have a look at it? Thank you. We may even ask our colleague from Australia if there is any possibility of a reference to other agreements in a preambular statement. Thank you for that suggestion.

El Sr. TORRES MARTIN (Colombia):

Muchas gracias, señor Presidente. Creemos que el artículo 2.3 debe quedar como está y no como preámbulo, ya que la parte dispositiva de un artículo es vinculante, mientras que el preámbulo es una consideración. Por lo tanto, consideramos que es importante mantener este artículo como se encuentra y así garantizar a los Estados Miembros el respeto de los convenios que ya han suscrito, no sólo de los que están aquí establecidos, sino de los demás acuerdos multilaterales y bilaterales.

La Sra. JAQUEZ (México):

Primeramente la delegación de México quería manifestar su acuerdo con que este párrafo se pudiera trasladar al preámbulo, en caso de que en el texto que se nos va a proponer se mencionaran todos los acuerdos pertinentes, pero a raíz de la intervención de nuestro colega, el distinguido delegado de Colombia, tal vez sería conveniente solicitar el apoyo del Asesor Jurídico para que nos explicara si quitarlo de aquí y ponerlo en el preámbulo le quitaría peso jurídico, tal como se ha manifestado.

Por otra parte, México también apoya las sugerencias de Nigeria con respecto a la vinculación con otros tratados y otras convenciones, además de la relacionada con el comercio transnacional organizado, y en especial quisiéramos incluir una alusión al Acuerdo de la OMC y su subsiguiente, dado que el presente Protocolo versa sobre un tema relacionado con el comercio ilícito. En este sentido, tenemos una propuesta de párrafo que haremos llegar a la Secretaría para su inclusión con miras a que el Protocolo no afecte los derechos y obligaciones de las Partes, conforme al Acuerdo de la OMC o su subsiguiente. Así, aprovechando que, como usted nos informó en el día de ayer, contamos con la presencia de expertos de la Organización Mundial del Comercio, nos gustaría conocer su opinión sobre la pertinencia de incluir esta alusión. Muchas gracias; aquí está la propuesta de párrafo que mencionaba.

Mr BURCI (WHO Legal Counsel):

Thank you. The Chairperson has asked me to reply to the last question from Mexico. I think that there are two aspects here. From a strictly legal point of view, it does not make that much difference if Article 2, paragraph 3, stays where it is now or is moved to the preamble, as far as States Parties to the United Nations Convention against Transnational Organized Crime are concerned, because no matter what Article 2, paragraph 3, says, they are bound by the obligation, under the United Nations Convention against Transnational Organized Crime, to enforce the Convention regarding organized criminal activities concerning illicit trade in tobacco products if they fall under the Convention. Accordingly, paragraph 3 does not create new obligations. It is, in a way, a reminder to States Parties to the United Nations Convention against Transnational Organized Crime to fully enforce it so as to strengthen the protocol.

As delegations will remember, this is, to some extent, the result of the debate that took place at the previous session when the Chairperson proposed the text that reproduced certain parts of the United Nations Convention against Transnational Organized Crime, and the recommendation from the Parties was that that was not necessary because the United Nations Convention against Transnational Organized Crime would remain applicable. That is the second part of my answer: whether or not legally it makes a difference. Certainly from a visual point of view, from the point of view of policy statement, it has more prominence in an operative article than in a preamble. In short, from a legal point of view, I do not think it would make a real difference for Parties to the United Nations Convention against Transnational Organized Crime. Regarding the weight of the policy statement that

is contained in paragraph 3, it would probably lose some of that weight if it is moved to the preambular part.

The CHAIRPERSON:

Thank you very much. I think that is very useful background for us to have.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, first of all, I believe that it will be important for my delegation to see the proposal that the delegation of Canada has on the new writing of this paragraph. We really look forward to analysing it because we believe that this is an important item under discussion and, depending on the language proposed by Canada, Brazil will take a position. But I would like to refer to the proposals made by the distinguished representative of Nigeria. I wish to express our serious preoccupation with the tendency, which we wish to abolish, of making references to different international instruments, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights or the revised Kyoto Convention.

I do not think this is a good tendency and it is very clear to Brazil that over the last years there has been a proliferation of negotiating exercises in many international forums in an attempt to increase the level of obligations, of protection of intellectual property rights. Brazil believes that under the pretext of the defence of legitimate interests such as the protection of public health, the defence of consumers or the fight against illicit transnational crimes, these negotiating exercises have been promoting an agenda of amplification of obligations of Member States in the area of intellectual property rights, which poses risks for these negotiations in WHO.

It is very important to remind everyone that we are negotiating an instrument under this Organization, which means that we are dealing with very sensitive aspects of protection of public health, and Brazil would not wish this protocol to give the false impression that we are here to protect trademarks of the tobacco companies and that we are here to reaffirm that tobacco products that stem from legitimate production are not an evil for public health and those that stem from illegal production are an evil for public health. They are both an evil for public health. Consequently, this protocol should not give the false impression that the protection of intellectual property rights is more important than the protection of public health and we believe that this tendency of reinforcement of intellectual property rights is a tendency that we must abolish.

My delegation certainly, and many other delegations, will face many difficulties in reinforcing a protocol that is basically once more attempting to discuss at WHO this dangerous tendency of overprotecting intellectual property rights, in this case giving the false impression that those products stemming from legitimate production are less detrimental to public health than others. Thank you very much, Mr Chairperson.

Mr MOREWANE (South Africa):

Mr Chairperson, thank you very much. South Africa would like to join other voices that have called for the retention of this paragraph under Article 2, because the view is that shifting it to the preamble will not necessarily give it better meaning if in its current form it does not have adequate meaning. If the challenge lies with one or two sections of wording, we may need to improve on it to make sure that it really gives us a better meaning. I also agree with the WHO Legal Counsel that its unfeasibility once it goes into the preamble may pose a major challenge. Therefore South Africa thinks that we need to retain it and if it needs to be reworked, it may have to be reworked.

El Dr. ABASCAL (Uruguay):

Gracias, señor Presidente. No me entusiasma la idea de trasladar este párrafo al preámbulo, por cuanto si bien jurídicamente eso sería posible, afectaría la estructura del Protocolo. El preámbulo es el lugar donde se establecen conceptualmente las razones de por qué hacemos este Protocolo, mientras que este párrafo es específico en la operativa del Protocolo, de manera que si lo trasladamos al

preámbulo, la estructura va a perder su coherencia. De todas maneras, además de esto, si el párrafo 3 se traslada y se elimina del artículo 2, dicho artículo probablemente pierda su razón de ser porque precisamente el mencionado párrafo es su núcleo central por lo que dice su texto. Por lo tanto, me parece que deberíamos considerar mantener este párrafo donde está y si es necesario modificar su texto en alguna medida, pues hagámoslo pero no lo cambiemos de lugar.

La Sra. ROA RODRÍGUEZ (Panamá):

En relación al párrafo en discusión, la delegación de Panamá considera que el mismo debe permanecer donde está por razones ya antes explicadas, si bien propone algunas modificaciones que haré llegar a la Mesa para que puedan ser examinadas. Además, nos oponemos total y absolutamente a la inclusión de elementos de otros tratados que protejan los intereses del comercio sobre la salud pública. Este es un tratado de salud pública, que es lo que debe prevalecer, y además es un mandato de este órgano que emana del artículo 2.2 del Convenio Marco, que hace referencia explícita al tema de las relaciones entre el presente Convenio y otros acuerdos e instrumentos jurídicos, y en el cual se establece que las Partes, a pesar de tener derecho a alcanzar este tipo de acuerdo, deben vigilar y hacer prevalecer los intereses de la salud pública. Por consiguiente nosotros no consideramos, al igual que las manifestaciones del colega del Brasil, que se deben incluir otros elementos de otros tratados en este Protocolo. Nos tenemos que guiar por los elementos que establece para estos efectos el artículo 2.2 del Convenio Marco.

Mr PADILLA (Philippines):

Mr Chairperson, without actually deciding whether or not to move this provision to the preamble or leave it in Article 2, we do have a proposal. Should it stay in Article 2, the following wording could be used: "In the absence of any provision to the contrary, the provisions of the United Nations Convention against Transnational Organized Crime shall be made suppletorily applicable. Non-Parties to the United Nations Convention against Transnational Organized Crime are encouraged to apply relevant provisions thereof as appropriate."

You will notice, Mr Chairperson, that, firstly, with this revision we are trying to say that the protocol and the Framework Convention take precedence. Then, and only then, is the United Nations Convention against Transnational Organized Crime made suppletorily applicable. Second, we did away with the reference to specific provisions, the various articles, so that the entire United Nations Convention is actually applicable if need be. Thirdly, we also agree with previous speakers who have said that public health is the primary concern here. Should there be any exception to any existing treaty, it should only be in regard to the United Nations Convention and nothing else. Since public health is still primary, I think reference to the TRIPS agreement or to any other trade agreement is not acceptable, in so far as our delegation is concerned, Mr Chairperson. Thank you.

The CHAIRPERSON:

Thank you very much. We should like to look at your proposal in writing if possible. We have your proposal on the screen and we shall look at the wording.

Mr TAGOE (Ghana):

Mr Chairperson, looking at this paragraph 3, we are actually not in favour of this particular Article being moved to the preamble. The preamble has its purpose, but it gives you a narrative of what the whole protocol is about. Now, looking at paragraph 3 in particular, it is not a narrative in itself; it forms part of the substance of the relationship between the protocol and other agreements and legal instruments. I therefore believe that it should be retained as it is, subject to the various amendments that have been suggested.

With reference to the phraseology "try to apply", when one says "try to apply", the word "try" actually implies failure. It is not a phrase we use in legislation. The best formula would be "shall apply the provisions of the United Nations Convention against Transnational Organized Crime that are

relevant to illicit trade in tobacco products” and not “try to apply”; we are not trying to do anything here. Thank you very much.

Dr PRASAD (India):

Mr Chairperson, India would like to submit that public health and tobacco control cannot and will not work in isolation. We need to take into consideration and use all the available and existing treaty provisions that have helped us achieve our stated objectives. I would therefore submit that we could consider modifying paragraph 3 or have a new paragraph that reads as follows: “Nothing in the protocol shall affect the rights and obligations of Parties towards any provisions that are more conducive to the achievement of elimination of illicit trade of tobacco products which may be contained in any other international convention, treaty or agreement in force for that Party, in particular the United Nations Convention against Transnational Organized Crime”.

I shall also give references. For example, we have a similar kind of article, Article 23, in the Convention on the Elimination of All Forms of Discrimination against Women and we have a similar article in the Convention on the Rights of the Child. There are similar provisions in many other conventions and I think this should settle the debate on the primacy of public health, yet taking into consideration the available provisions in other treaties. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much, India. Is there not some sort of overlap here, though, with paragraph 4 of Article 2; paragraph 4, where we already talk about the protocol not affecting the other rights and obligations and responsibilities under international law? Are you making a proposal for paragraph 3 or is this covering both paragraphs 3 and paragraph 4?

Dr PRASAD (India):

Mr Chairperson, this should cover both paragraphs 3 and 4.

Ms HEFFORD (Australia):

Mr Chairperson, we have a proposed text for a change to the preamble. I am willing to read it out for people to consider. I also have a written version that we can make available to the Convention Secretariat. However, if I may begin by going to the preamble, currently the nineteenth paragraph beginning at the moment “*Recognizing still further ...*” I am proposing that this paragraph should now read “*Recalling and emphasizing the importance of other international agreements such as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption and the obligation that Parties to these conventions have to apply the relevant provisions of those conventions to the illicit trade in tobacco*”.

I now need to add another new preambular paragraph which reads: “*Encourages those Parties to this protocol that have not yet become Parties to these other international agreements to consider doing so*”. That is an attempt to capture the two concepts. We have not included the comment made earlier about the TRIPS agreement as it is hard to see how that language would fit within this, but it is perhaps a starting point for people to consider. Thank you.

The CHAIRPERSON:

Thank you very much, Australia. Could I just ask a background question to that? I understand the wording. It is very clear and precise. But why is there a problem in having the wording in the substantive Article itself? What is it that causes you to wish to put it into the preamble rather than having the item in the Article. It is just for my own understanding.

Ms HEFFORD (Australia):

Mr Chairperson, I am happy to respond although we were not, I think, the only country to raise the issue. Our concern is that the operations of these other agreements are covered in other places and our obligations under them are spelt out in other places. It is difficult to see how you could be committed to actioning those commitments in the operational part of a different document. If you are a Party to those conventions, as you would be, you take absolutely seriously your requirements and obligations under those conventions, but you are not operationalizing those through other agreements.

The CHAIRPERSON:

Thank you very much. Now, I find that a very helpful background piece of information and I hope it will help other delegations to understand the reasoning behind that one approach, which is shared by several delegations, to put it in the preamble. Of course, there is a balance of view on the other side that it should remain in the Article itself. But I hope that you can take account of the explanation given by Australia that that is the reason they and other countries wish to put it into the preamble: not to repeat an obligation which they already have under a substantive convention which already exists.

El Sr. TORRES MARTIN (Colombia):

El punto anterior ya fue aclarado. No estamos de acuerdo con lo que ha señalado Australia. Gracias.

La Sra. MADRAZO REYNOSO (México):

Entendemos la explicación de Australia. Sin embargo, habiendo escuchado la explicación amplia y clara del Asesor Jurídico, México se pronuncia por apoyar la propuesta de Colombia, Uruguay y Panamá, por mencionar solamente Partes de la Región de las Américas, en el sentido de que este párrafo debiera permanecer dentro del artículo 2 del Protocolo para no correr el riesgo de restarle peso jurídico y político. Todos los países estamos aquí trabajando para tener un Protocolo sólido, robusto, que nos permita contar con las herramientas suficientes para proteger a nuestra población y, concretamente, la salud de nuestra población, del comercio ilícito del tabaco. Por lo tanto, nos pronunciamos por que el párrafo permanezca dentro del artículo.

En relación a la intervención que hizo hace unos minutos México, donde manifestábamos que también se hiciera alusión a compromisos adquiridos, por ejemplo, con la Organización Mundial del Comercio, quisiera señalar dos cosas: la primera es que reconocemos que este es un documento que se elabora y se emitirá desde la Organización Mundial de la Salud, es decir, es un documento que busca la protección de la salud pública, en este caso particular, del comercio ilícito de los productos de tabaco. La segunda es que este pronunciamiento se hace también partiendo de que existe ya jurisprudencia, dentro de la propia OMS, en la que se ha determinado que podrán establecerse medidas de excepción, por ejemplo cuando se trate de proteger la salud y la vida de las personas. La propia jurisprudencia señala tres casos; entre ellos, que dichas medidas serán necesarias para lograr un objetivo legítimo, como la protección de la vida y la salud humanas, que es precisamente el tema que nos ocupa. Por esto consideramos que esta inclusión de ninguna manera comprometería el hecho de que el bien público que se quiere tutelar en este caso es la salud pública, y por tanto sería el derecho que tendría que prevalecer.

Dr VINIT (Papua New Guinea):

Mr Chairperson, I would like to make an addition here because this Article basically specifies the relationship between the protocol and all these agreements. Therefore, we need to rephrase it so that it is in harmony with the other treaties. I shall go through it: "Parties to this protocol that are also Parties to the United Nations Convention against Transnational Organized Crime shall ensure that the illicit trade of tobacco be inclusive in the provisions of the United Nations Convention against

The CHAIRPERSON:

Thank you for pointing out the difference that exists between the texts. If you discover other issues where there is a problem with translation – and this applies to all the Parties – I would be grateful if you could signal them to the Convention Secretariat so that they can be corrected as soon as possible on the screen.

Mr KAZI (Bangladesh):

Mr Chairperson, we are taking the floor again on behalf of the Parties in the WHO South-East Asia Region. We would like to join other delegates in expressing our concern about moving this particular paragraph to the preambular part. We could see that the Chairperson was rather convinced by the explanation given for the new text, but we regret to say that the Parties in our Region were less convinced by the explanation. We believe that this issue should be addressed under Article 2 as it is being done in the draft text. We attach importance to this matter and do not want to dilute its importance as it is captured in its current formulation.

Again, with the suggested new text, we have some issues with the second part which sounds like an operative paragraph, starting as it does with the word “*Encourages*”. We do not quite understand how that fits in with the preambular part; and, secondly, if we can understand the reason for using a word like “*encourages*”, we would like to point out for the convenience of the concerned delegates that Article 2, paragraph 3, actually allows a lot of flexibility to non-Parties to the United Nations Convention against Transnational Organized Crime, and the Chairperson’s text contains the wording “*shall consider... as appropriate*” and other forms of language that offer a cushion to non-Parties. It is our contention that the suggested new text rather places a greater obligation on non-Parties to the United Nations Convention against Organized Crime. Thank you.

Ms EVISON (New Zealand):

Mr Chairperson, I wish to express New Zealand’s agreement with Panama’s suggestion that paragraph 4 be removed, and to support the views of Canada, Australia and several other nations regarding shifting paragraph 3 to the preamble. New Zealand is obligated to comply with the conventions whether that is written in this treaty or not. Having it here adds no extra value or weight to New Zealand’s responsibilities under the other conventions that are being discussed. Thank you.

The CHAIRPERSON:

Thank you very much, New Zealand. May I just ask a question of those countries that want to move the provisions into the preamble? Paragraph 3 as it is drafted at the moment clearly has two parts to it. The first is saying that the Parties that are Parties to the United Nations Convention against Transnational Organized Crime shall ensure the full application of the provisions. The second part talks about the Parties that are not Parties to the United Nations Convention. Would you have any problem in leaving that part of the text in paragraph 2, Australia, Canada, European Community?

In the meantime, are there any other comments on paragraph 3? We shall then move on to paragraph 4. I see that there are no other comments on paragraph 3 for the moment. We are in a dilemma on paragraph 3 because there is a sort of split opinion as to whether it should be retained in paragraph 3 or shifted to the preambular section, and there are strong feelings on both sides. We shall have to think that through rather carefully.

Ms HEFFORD (Australia):

Mr Chairperson, I would like very much to be able to resolve this issue and I am trying to understand what you are asking and to be as accommodating as I possibly can. I think you are asking, in relation to paragraph 3, if we could accept that the first sentence was removed and the second and third sentences were to stay with the current drafting. If that was what you were asking I am in agreement with that position. Our concern about the first sentence is that it means nothing because we

are already obligated if we are already Parties to the United Nations Convention and it is therefore not a helpful or meaningful statement. The rest I can accept. If that was your question, our answer is yes.

The CHAIRPERSON:

Thank you very much. Regardless of what my question was, I will accept the yes. I am simply exploring the possibilities at this stage. I am not making any formal proposal, but at least that could be a way forward.

Mr SAINT-DENIS (alternate to Mr Leguerrier, Canada):

Mr Chairperson, the last sentence of paragraph 3, is somewhat problematic. I think it would be giving false hope to the Parties to the protocol to think that they could apply the articles mentioned in that sentence by applying those articles of the United Nations Convention against Transnational Organized Crime since there are procedures and their mechanisms in the Convention that apply exclusively to Parties to that Convention. Parties to the protocol that are not party to the Convention would not be able to make use of those mechanisms dealing with international cooperation, for instance.

If a Party to this protocol that was not a party to the Convention wished to use the provisions of that Convention for international cooperation, for mutual legal assistance, for instance, it would not be able to do so because there is no obligation on a party to the Convention to respond to a request from someone who is not a party to that Convention. Therefore, to my mind, that is perhaps not an appropriate sentence for this paragraph.

You also asked a little earlier why paragraph 3 was somewhat problematic and I think the response is, in part, what our colleague from Australia said, but also, in our view, it is not necessary to remind parties to the United Nations Convention what their obligations are. This is the kind of language which is rather hortatory in nature and, while I am mindful of the views expressed by the WHO Legal Counsel as to the perhaps symbolic value of having this in an operational paragraph, it is to my knowledge, firstly, precedent-setting that we should be referring to an international instrument that is not the instrument to which this protocol is attached, but a completely different international instrument, such as the United Nations Convention Against Transnational Organized Crime.

Second, it seems to me that it is the kind of thing that is best said in a preambular statement, because it is really in the end almost all hortatory in nature. It says that Parties to the protocol that have ratified the United Nations Convention need to comply with their obligations – and that goes without saying – and then it requests those who are not party to the United Nations Convention to consider becoming so. Those are the kinds of proposals that one finds normally in preambular language rather than in operational paragraphs or operational articles of a convention. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much for those additional comments. I take your point about the last sentence of paragraph 3: that there may be some provisions there that simply cannot be applied. But I do think that the second sentence, which refers to Parties to the protocol that are not party to the United Nations Convention against Transnational Organized Crime, encouraging them to do something is not language we normally have in a preamble. The language is usually “recognizing”, “aware of”, “mindful of” and so on, whereas this is actually giving guidance to someone to do something or consider doing something more positively. I do feel that there is more of a substantive element to that, but I accept that it is a matter of judgement and I can see there would be different views.

Regarding the first sentence, I do – I am afraid, Bangladesh – feel convinced by what Australia and Canada have said; that if you have signed up to a convention, then you have signed up to meeting the obligations of that convention and you do not need to be reminded to do it again in another protocol. But I do think that there is an advantage to having the second sentence in the body of Article 2 because it is actually putting a degree of pressure on people to consider becoming party to the United Nations Convention.

M. DONBE (Tchad):

Monsieur le Président, au paragraphe 3 de l'article 2, en ce qui concerne la deuxième phrase, je pense c'est peut-être le fait qu'elle est liée à la première qui cause problème. Est-ce qu'il n'est pas possible de la détacher ? Elle mérite sa place, mais il faut la déplacer pour pouvoir la reformuler. La deuxième phrase devrait devenir le paragraphe 4 et le paragraphe 4 actuel deviendra le paragraphe 5.

Merci, Monsieur le Président.

The CHAIRPERSON:

Thank you for that proposal, but I was inclining towards moving the first sentence of paragraph 3 into the preamble. Nevertheless, I have taken note of your structural ideas. Sweden, on behalf of the European Community, please.

Mr GRÖNLUND (Sweden):

Thank you, Chairperson. The European Community agrees with you that the first sentence should clearly be moved to the preamble. I think that is what you suggested and we appreciate that, thank you. With regard to the second and third sentences, I will begin with the third and last sentence. Like Canada, and I think you recognize this, Mr Chairperson, we have some concerns here, since the third sentence relates to certain articles of the United Nations Convention against Transnational Organized Crime; for instance, Article 13, which relates to international cooperation between States Parties for purposes of confiscation. There is also Article 16 on extradition, which clearly is an issue for the contracting Parties to the United Nations Convention against Transnational Organized Crime.

As colleagues will recognize, we have specific provisions later on in the protocol on extradition and so on that will be covered by the protocol itself. If I move on to the second sentence, we simply do not think it brings added value to have it in the operational part of the protocol, but we do recognize that it would be useful to have an encouragement or a best endeavour obligation in the preamble. However, if you find consensus for your proposal to keep the second sentence and remove the first sentence, I think we would look favourably on your proposal. I would note, however, Mr Chairperson, that the second sentence reads "shall consider". One might wish to consider the wording "shall endeavour", but I will leave it to your judgement. Thank you.

The CHAIRPERSON:

Thank you very much, European Community. That shows helpful flexibility.

Mr AL BAKER (United Arab Emirates): : ()

preamble, while others say it cannot really go into the preamble because it is such a substantive point. We know the two sides of the argument, but I would like to hear if there are any other elements that come forward. Would Uruguay like to intervene on that?

El Dr. ABASCAL (Uruguay):

Señor Presidente, ya di mi opinión respecto de que sería conveniente que el párrafo 3 permaneciera dentro del artículo 2, por las razones que fundamenté sobre la estructura del Protocolo. Pero si esto no fuera así, si finalmente se cambiara y se trasladara al preámbulo, entonces tendríamos que tener mucho cuidado en la redacción del párrafo 4, porque a mi entender, y estoy adelantando lo que va a suceder, debería decir lo siguiente: «Nada de lo dispuesto en el presente Protocolo afectará a los derechos, obligaciones y responsabilidades de las Partes con arreglo al derecho internacional en lo referente a la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional», y ahí se terminaría el párrafo. Es decir que suprimiríamos del texto original las palabras «en particular» y «entre otras cosas», y nos referiríamos exclusivamente a los derechos, obligaciones y responsabilidades respecto de la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional y no de cualquier otro tratado que no se especificara. Si se eliminara el párrafo 3, este párrafo adquiriría relevancia.

The CHAIRPERSON:

Thank you very much. Let me then try to finish with paragraph 3. I do not wish to hear you repeat your existing positions. I have taken note of them and I shall consider how I am going to try to deal with the divergent positions. But if you have a new point to raise, then please leave your flag up and I will ask you to speak, but please do not repeat something you have already said this evening.

Dr VINIT (Papua New Guinea):

Mr Chairperson, I think I have a new point, not basically on the previous one. I am simply concerned about the other Parties that may not be Parties to the other international treaties. What does the Intergovernmental Negotiating Body and the Framework Convention think about having a body that can liaise and coordinate efforts at international cooperation? I will support what I am saying. Your Article 7, Article 9, Article 12, Article 15, Article 16, Article 20 and Article 26 are basically dealing with international issues, international cooperation, confiscation and seizure, jurisdiction that may go beyond the Parties' jurisdiction and if those Parties are not party to international agreements, how does the protocol deal with these issues? If we do not put this right now the other articles would have a conflict. It may not have any bearing. I therefore suggest that the Intergovernmental Negotiating Body develop a body that coordinates and assists the other Parties that are not party to those international agreements. Thank you.

The CHAIRPERSON:

Thank you very much. We have three options. I give the floor to Canada, which perhaps gives us four options.

Mr DEMPSEY (alternate to Mr Leguerrier, Canada):

Thank you, Mr Chairperson. I would just like to go back to your comment about the concern about having the paragraph that encourages Parties to ratify other international instruments in the preamble. I take your point, and with advance apologies to Australia, I would like to propose that, in fact, we do move that language back into the main text of the protocol. It is up to you which paragraph it would go into – perhaps as paragraph 3, perhaps as another part of the second section, but Canada has text that we would like to propose for this to move it back into the operative section of the protocol.

The CHAIRPERSON:

You may wish to read it out now if it is relatively short.

Mr DEMPSEY (alternate to Mr Leguerrier, Canada):

I am happy to do so. It reads: "The Parties to this Protocol shall consider ratifying all other international instruments that may assist in the implementation of this Protocol". Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much, Canada. We now have four options. I shall stop there, I think. We have enough to look at there. Option 1: leave the text where it is but possibly polish it a bit; option 2: shift the concepts into the preamble along the lines that Australia has put forward on behalf of some countries; option 3: shift the first sentence of paragraph 3 into the preamble, keep the second sentence of paragraph 3 in the Article itself and delete the third sentence of paragraph 3; and the fourth option would be the one that Canada has just read out, if I understand correctly.

Perhaps we can draw lots for it again. I mean, I quite like my own proposal, but I am biased of course. Let me put it to you this way: can you live with the option that I have proposed that we move the first sentence into the preamble as a preambular statement, keep the second sentence and delete the third? Who cannot live with that? Very good. Thank you very much indeed; a major step forward.

Now, we come to Article 2, paragraph 4 and we have already had a couple of suggestions from the floor on the way that this can be drafted. Are there any other points that you would like to make on paragraph 4.

Mr PADILLA (Philippines):

Mr Chairperson, because of the lateness of the hour, we just wish to say it should be deleted. Thank you.

Mr AHMADI (Islamic Republic of Iran):

I can agree with the Philippines' proposal for the deletion of the paragraph. However, in the meantime I have a point of clarification to raise, through you, with the WHO Legal Counsel. Looking at paragraph 4 as it now stands and bearing in mind that my country is not a party to the United Nations Convention against Transnational Organized Crime, I am wondering whether paragraph 4 is going to affect the status of either this protocol or the United Nations Convention by, for instance, subordinating one to the other. Thank you.

Mr BURCI (WHO Legal Counsel):

Mr Chairperson, paragraph 4 has the effect, at least the way I read it, of subordinating the protocol to other international agreements because it says that nothing in this protocol shall affect other rights, obligations and so on. That would also include the United Nations Convention against Transnational Organized Crime in so far as a Party to this protocol is also party to the United Nations Convention, because if it is not it is obviously irrelevant. But it does have, in my view, the effect, in case there is a conflict between this protocol and provisions of another agreement that have the same object, of subordinating this protocol to the other agreement. Thank you.

Dr AL-LAWATI (Oman):

Mr Chairperson, we would like to second the opinion or the proposal expressed by the Philippines and Iran to delete this paragraph.

La Sra. ROA RODRÍGUEZ (Panamá):

Quisiera ratificarme en mi posición expuesta anteriormente de eliminar el párrafo. Gracias.

El Dr. ABASCAL (Uruguay):

Señor Presidente, nosotros también estamos de acuerdo en eliminarlo. En mi anterior intervención manifesté que si se mantenía este párrafo, debería modificarse tal como propuse, haciendo referencia exclusivamente a la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional, pero no me molesta que se elimine.

The CHAIRPERSON:

Thank you very much. Does anyone not want to delete it?

Professor NUNTAVARN VICHIT-VADAKAN (Thailand):

I also support deleting this paragraph, on behalf of the Parties in the South-East Asia Region.

Dr DLAMINI (Swaziland):

Mr Chairperson, we are in favour of the deletion of Article 2, paragraph 4, not because it is late at night but because, Mr Chairperson, not only is it inconsistent with Article 2 of the Framework Convention, but it also makes the protocol subordinate to the United Nations Convention against Transnational Organized Crime, for instance. That is the main reason we are in favour of the deletion of this provision.

M. MOHAMEDOUN (Mali):

Merci, Monsieur le Président. C'est pour appuyer la proposition tendant à supprimer ce paragraphe.

M. DONBE (Tchad):

Merci, Monsieur le Président. Je ne suis pas pour la suppression du paragraphe 4 car il répond à mon souci relatif au paragraphe 3 en ce qui concerne la deuxième phrase. Si nous subdivisons le paragraphe 3 en paragraphes 3 et 4, le 4 viendra à l'appui du paragraphe 5 en cas de défaillance. Je m'explique : en cas de défaillance, le paragraphe 4 actuel qui devient le 5 prendra en compte le paragraphe 4 nouveau comme appui. Voilà pourquoi je ne suis pas pour la suppression du paragraphe 4. Je suis minoritaire bien sûr, mais c'est mon point de vue. Si vous le permettez, Monsieur le Président, j'aimerais demander au Conseiller juridique de se prononcer par rapport à ma proposition.

The CHAIRPERSON:

Before I ask the WHO Legal Counsel, we have only one sentence left in Article 2, paragraph 3 now; it is the second sentence of the current draft of paragraph 3 which remains. Other than that we have only what is currently in paragraph 4. My question, therefore, is really whether anyone is anxious to keep the current paragraph 4.

M. DONBE (Tchad):

Effectivement, je réitère ma position ; si elle n'est pas pertinente, il appartient aux autres Parties de la juger. à mon sens, il est pertinent que le paragraphe 4 devienne le 5, et que la deuxième phrase du paragraphe 3 devienne le paragraphe 4 pour que le nouveau paragraphe et l'ancien 4 s'appuient mutuellement en cas de défaillance du nouveau paragraphe 5 par rapport au paragraphe 4 nouveau également.

The CHAIRPERSON:

I think there may be a misunderstanding here. Because the solution that we found for paragraph 3 is to move the first sentence into the preamble in a slightly different wording, keep the second sentence of paragraph 3 and delete the third sentence of paragraph 3. The only part that is left in paragraph 3 is the existing second sentence. We do not have a sort of supplementary piece of text which could become a new paragraph 4. There may just be a misunderstanding there. Paragraph 3 is now simply one sentence and we have the existing proposal for paragraph 4. Therefore, I think my question still remains: should the existing paragraph 4 remain or should it be deleted? The overwhelming majority so far has been towards deleting it.

El Sr. TORRES MARTIN (Colombia):

Solamente quisiera hacer una aclaración que creo que es importante que tengamos en cuenta. En el presente Protocolo estamos ocupándonos del comercio ilícito de productos de tabaco, y tanto la Organización Mundial del Comercio como la Organización Mundial de Aduanas tienen normas específicas relativas al contrabando y al comercio ilícito, o sea que este Protocolo no se contrapone a las normas de la OMC, de la OMA ni de los derechos de propiedad intelectual, porque estamos hablando de comercio ilícito. Por lo tanto, este párrafo 4 estaba destinado a confirmar lo que estoy diciendo. Es por esto que nosotros habíamos comentado que, en el entendido de que la primera frase del párrafo 3 se trasladara al preámbulo, el párrafo 4 podría mantenerse en el artículo 2 con la ligera modificación de recordar que la Organización Mundial de Aduanas, la Organización Mundial del Comercio y la Organización Mundial de la Propiedad Intelectual, etc., están acordes con el Protocolo. Muchas gracias.

The CHAIRPERSON:

I think it would be rather difficult to take that line, referring to those other protocols and conventions and saying that that they are applicable to what we are doing. Can I ask you whether you are really attached to keeping paragraph 4 or could you accept its deletion?

El Sr. TORRES MARTIN (Colombia):

Se puede eliminar siempre y cuando en el preámbulo quede establecido que esto va en concordancia con la Organización Mundial del Comercio, la Organización Mundial de Aduanas y la Organización Mundial de la Propiedad Intelectual. Gracias.

The CHAIRPERSON:

I think we shall have to look at that, because I do not think that we can say that immediately. I shall do a little consultation overnight to see whether that is possible.

El Dr. ABASCAL (Uruguay):

Señor Presidente, lamento discrepar con mi colega de Colombia, pero no sería aceptable para el Uruguay que el presente Protocolo dependiera de otros acuerdos internacionales, así genéricamente, de manera que la única relación aceptable para nosotros es con la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional. Por lo tanto, aceptaríamos la eliminación de este párrafo si no hubiera otra posición que nos convenciera de otra opción.

Le Dr TOESSI (Bénin):

Merci, Monsieur le Président. Avec votre permission, j'aimerais mettre en parallèle notre situation et l'épidémie de grippe aviaire. En effet, ma conviction professionnelle profonde me dit que nous sommes en épidémie. Dans le cas de la grippe, si nous allons rapporter toutes les dispositions

would remain responsible for the breach of the protocol. So, it does not relieve Parties of responsibility under other obligations and does not somehow eliminate the other treaties. It simply tells you what to do in case of a conflict. Now, even if paragraph 4 were deleted, there are other ways to resolve conflicts. For example, we have a residual rule in Article 30 of the Vienna Convention on the Law of Treaties, which applies a residual provision in case there are no specific conflict clauses in international agreements.

However, most importantly, and this is a comment that I have not heard tonight, there is clear guidance in Article 2.2 of the Framework Convention, which applies specifically also to protocols, because it uses the language “The provisions of the Convention and its protocols” This means that there is already guidance there in terms of what Parties can do and not do, in terms of subsequent agreements. It is up to the Parties whether that is enough or whether it needs to be supplemented in the protocol. However, once again, I would agree with you and with the countries that said that it would probably be clearer to delete paragraph 4 because it is not entirely consistent with Article 2.2 of the Framework Convention. Article 2.2 restricts the rights of Parties to enter into subsequent agreements, in the sense that the subsequent agreements must be “compatible with their obligations under the Convention and its protocols”. Article 2, paragraph 4, of the protocol goes further. There could therefore be inconsistency, and a good way to resolve it would be, as you proposed, to delete paragraph 4. Thank you.

The CHAIRPERSON:

Thank you very much. That is very helpful.

El Sr. TORRES MARTIN (Colombia):

La explicación del Asesor Jurídico es muy clara. Por lo tanto, retiramos la propuesta de no eliminar el párrafo 4; es decir que estamos de acuerdo en eliminarlo.

The CHAIRPERSON:

Thank you very much; that is very helpful.

Mr AL BAKER (United Arab Emirates): :()

The CHAIRPERSON:

Thank you very much for your intervention. I am still inclined to go for the deletion of the paragraph. I would ask you if you could consider your position overnight and perhaps discuss it with the other Parties in your Region to see if there are views there that might help you come into line with the consensus that seems to be emerging in the rest of the room. I would be grateful if you could take the time to reflect on that.

El Dr. ABASCAL (Uruguay):

Perdóneme, señor Presidente, que abuse del tiempo de los colegas en esta reunión, pero me pareció importante dar una opinión acerca del probable o posible conflicto futuro. Creemos que este tema, que es eminentemente de salud pública, en la cual está en juego la vida de millones de personas, y que por ser un tema de salud pública y del derecho a la vida y la salud de las personas está vinculado a los derechos humanos, debería estar por encima de otros derechos comerciales, empresariales o de otro tipo. Por consiguiente, llamo la atención sobre este punto porque me parece que es muy importante que lo tengamos bien claro. Por supuesto que debemos respetar los tratados internacionales y los acuerdos en los cuales participemos, pero tengamos claros los niveles de jerarquía de dichos acuerdos. Este es un acuerdo que tiene que ver con la salud de nuestros pueblos y con el derecho humano a la vida y la salud de todos. Gracias.

Mr GRÖNLUND (Sweden):

Thank you for allowing me to take the floor again on behalf of the European Community. I shall be brief. We will definitely think this over overnight and consult our colleagues and look into this at a later stage at your convenience. May I simply suggest, Mr Chairperson, that there might be two options here: either to keep the text in square brackets, as I think you suggested, so as to allow parties to have a think overnight, or, possibly, one could consider the possibility of moving this paragraph to the preamble. That might be a way forward that also could be looked into by Parties overnight if you so wish, Mr Chairperson. Thank you.

The CHAIRPERSON:

Thank you very much. We shall have a very long preamble and not a lot of text, at this rate. Sri Lanka, you have the last word.

Mrs DEMUNI DE SILVA (Sri Lanka):

Thank you, Mr Chairperson. It is with regard to the issue that was raised by the distinguished representative of the United Arab Emirates with regard to the prevalence of the protocol over other treaties that had been concluded in the past. I think perhaps we can find an answer to this in Article 30 of the Vienna Convention on the Law of Treaties, which says that subsequent protocols and treaties would prevail over those that had been entered into previously. That would be compatible, I believe, with Article 2.2 of the Framework Convention. Thank you.

Mr SAINT-DENIS (alternate to Mr Leguerrier, Canada):

Mr Chairperson, my concern is that if we agree to delete this today that might in fact open the door for this body, in its enthusiasm, to put forward proposals that may in fact encroach on obligations and responsibilities that are contained in earlier documents, and I am thinking particularly of the United Nations Convention against Transnational Organized Crime. But perhaps there may be others where, inadvertently, we would put forward something that would end up conflicting with these other provisions. Can we simply leave it in square brackets but without taking a firm decision to delete the text?

One other element is that if, in fact, we do agree to remove this text now and we end up with some text in the latter parts of this document which do conflict with earlier international instruments,

that may be a bar to some countries ratifying this protocol, which is something, I think, that would be undesirable. I reiterate, therefore, that rather than agreeing to delete the text tonight, can we simply agree to leave it in square brackets, with perhaps a review once we have a better sense of what the end document will look like, before we take a final decision on this text?

The CHAIRPERSON:

Thank you for your proposal. What I will do – or someone will do – is produce a document that contains what could be an agreed version of Article 2, which would keep the current paragraphs 1 and 2, the second sentence of paragraph 3, and would have nothing where paragraph 4 is at the moment. But then the document would record what you have seen on the screen here, including a square bracket round paragraph 4. You will be able to see what could be a clean version of Article 2, but still with an option to come back on paragraph 4 if your reflections after the discussions of the substance lead you to that point. You will see a clean version plus what is written on the screen and square brackets round paragraph 4. That, I hope, will give you some encouragement towards an agreement on the Article, but with a little get-out clause to come back on that.

I say this because we need to move forward to the discussion of the substantive parts of the text. If you find that there are conflicts that arise, then that would be a good reason for coming back to this point and discussing it again. Would that be an acceptable way forward for all delegations? We shall do that then. For Article 3, simply to forewarn you of what we will be producing in the document, we shall actually produce a document on Article 3 showing all the written comments that we have received, and for Article 4 we shall reproduce for you the text you saw on the screen when we had the discussion this afternoon. As I said, you will receive that shortly before the committee meetings start tomorrow afternoon. That would cover all the aspects of Articles 2, 3 and 4.

Thank you very much for your contributions. I hope we made some progress.

**The meeting rose at 21:15.
La séance est levée à 21h15.**

VERBATIM RECORDS OF PLENARY MEETINGS

COMPTES RENDUS IN EXTENSO DES SÉANCES PLÉNIÈRES

FIFTH PLENARY MEETING

Wednesday, 1 July 2009, at 17:00

Chairperson: Mr I. WALTON-GEORGE (European Community)

CINQUIÈME SÉANCE PLÉNIÈRE

Mercredi 1 juillet 2009, 17h00

Président: M. I. WALTON-GEORGE (Communauté européenne)

1. ANNOUNCEMENT COMMUNICATION

The CHAIRPERSON:

Ladies and gentlemen, let us press on with our agenda for today, please. First of all, since we are now in formal session, a non-restricted session under the new rules, I would just like to read into the record the decision that was taken during the restricted session. Accordingly, “a vote was taken to exclude the public from further plenary and committee meetings of this session of the Intergovernmental Negotiating Body. The proposal was adopted with 83 in favour, 33 against, and one abstention.”¹That is the official record of what we did during our restricted session.

2. REPORT ON CREDENTIALS (continued) RAPPORT SUR LA VÉRIFICATION DES POUVOIRS (suite)

The CHAIRPERSON:

You will recall that under agenda item 1.2, we have to report on the credentials; a draft report was made available to you this morning and it is contained in document FCTC/INB-IT/3/4. The report

¹ For first reference to the restricted session, see the comments of the Chair in the final section of the summary record of the third meeting of Committee A.

was prepared after the review of the credentials of the Parties by the Bureau at its meeting yesterday evening. Since then, I have been informed that formal credentials have been received from several more Parties. They have been received from Armenia, Djibouti, Kyrgyzstan, Paraguay, Slovakia and Trinidad and Tobago.

These Parties had previously submitted provisional credentials and have now submitted formal credentials. It was not feasible to call a Bureau meeting to examine these formal credentials which have just arrived, but I have examined them in conjunction with the WHO Legal Counsel and have found them to be in conformity with the Rules of Procedure of the Conference of the Parties. I would therefore recommend to the plenary that Armenia, Djibouti, Kyrgyzstan, Paraguay, Slovakia and Trinidad and Tobago be accepted as having submitted formal credentials and that the draft report should be amended accordingly. Does the plenary agree with this procedure? I see no objections; it is so decided. May I then take it that the plenary is ready to adopt the draft report as amended? Again I see no opposition, so it is so decided. Thank you very much.

3. REPORTS OF THE CHAIRS OF THE COMMITTEES RAPPORTS DES PRÉSIDENTS DES COMMISSIONS

The CHAIRPERSON:

Our final item for the plenary this afternoon is to hear a brief report from the two Chairs of Committee A and Committee B to inform you of where things stand at the moment and what their plans are for their future work.

Report of the Chair of Committee A Rapport du Président de la Commission A

The CHAIRPERSON:

I would like to call on the Chair of Committee A to give us a report on the progress that has been made in that Committee. Mr Shakerian, please.

Mr SHAKERIAN (Islamic Republic of Iran) (Chair of Committee A):

Thank you, Mr Chairperson. I shall be very brief. We have discussed Articles 5, 6, 7, 8 and 9 during the three meetings of Committee A.

On Articles 5, 6, 7 and 8, we were able to receive the written submissions of delegations and, with the help of the Convention Secretariat, we have been able to insert them in your text. Now we have a full compilation of the exact proposals expressed and proposed by delegations inserted into your text. At the same time, owing to the importance of Article 7; the Committee accepted my proposal to establish an open-ended working group for Article 7 and this working group is supposed to convene this afternoon after the meeting of Committee A, and after the plenary meeting we will again meet in Committee A to address the two remaining articles, Articles 10 and 11, which are important articles. At the same time, as I mentioned, as soon as I receive the written submissions and proposals by delegations I will try to be proactive in approaching delegations to ask, like you, if it is possible to have a revised text. Then I shall begin the real negotiation. I shall put everything on the screen and we will engage in a negotiation on the text. For the time being, that is my report. With your help and the help of the other delegations I hope we will be able to do our job by the end of this session of the Negotiating Body. Thank you.

The CHAIRPERSON:

Thank you very much, Mr Shakerian, and thank you for all the efforts that you and our colleagues in Committee A have put into the work so far. I am very pleased to hear of the progress that has been made and look forward to it continuing.

Are there any questions that any delegation would like to put to Mr Shakerian?

Ms HEFFORD (Australia):

Mr Chairperson, I have a couple of questions about the proposed working group for this evening. Do we have interpretation? Because I think if the proposal is for us to consider Article 7 in a working group, we need interpretation. We also need a venue and I am just wondering what level of Convention Secretariat support we will receive for that working group. It will be a very difficult meeting to hold without support, I think. Thank you.

The CHAIRPERSON:

Thank you very much, Australia. I shall give the floor to Dr Nikogosian to answer your questions.

Dr NIKOGOSIAN (Head, Convention Secretariat):

Thank you, Mr Chairperson. Yes, the working group will have full interpretation support in the six languages and also full Convention Secretariat support. Not different, or only slightly different, to that for the full Committee. The room number is 3 and it officially accommodates 120 people and has full interpretation facilities.

The CHAIRPERSON:

Thank you very much. Philippines, please.

Mr PADILLA (Philippines):

Thank you, Mr Chairperson. We discussed the possibility of working groups in the various committees and although I did not personally attend the meetings of Committee A, it was the opinion of the Parties in the Western Pacific Region that, as far as possible, we should not form any working groups simply because of the delegations' problems. It was also the decision of the Parties in our Region that if we did form a working group it should be open-ended. I say this because I understand that the decision of Committee A was to limit the participation of the regions to just four participants. I am simply conveying the sentiment of the Parties in my Region.

The CHAIRPERSON:

I shall ask Mr Shakerian to reply to that, please.

Mr SHAKERIAN (Islamic Republic of Iran) (Chair of Committee A):

Thank you, Mr Chairperson. I believe that from the very beginning we were pretty clear that this working group would be open-ended and provide a forum for most interested delegations to participate in a better atmosphere to reach to an agreement on this particular issue. So by no means did we ever mention that we would like to deprive any delegation of the possibility of participating in that meeting. However, I encourage delegations and the regional groups, in order to be more efficient, to send only the most interested delegation to that working group. I do understand that the room is reserved for 120 persons, but at the same time I believe that since several delegations have the same position and are actually supporting each other, there is no need for all delegations with exactly the same views to

attend and express or repeat the same position, because we would like to reach a conclusion by the end of this week.

That is why I am not encouraging all delegations to attend that meeting. So while the meeting is open-ended, if any delegation has a strong interest, that delegation is very welcome to attend, but at the same time my humble suggestion and request to delegations is that only those who have strong views should attend. As for the regional groups, I think we had a discussion with the regional groups and I encouraged them to send only a few representatives. I think it was pretty clear to the regional coordinators that they might come to a decision to send a limited number of representatives to the working group, but at the same time the working group is open-ended and if any delegation is interested in participating they can attend. I hope my explanation allays any concerns regarding this issue. Thank you.

The CHAIRPERSON:

Thank you very much, Mr Shakerian. I think that is a useful clarification. Are there any further questions for Mr Shakerian?

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, I would just like to point out, adding to what my colleague from the Philippines has just said, that the Brazilian delegation considers that the formation of subgroups constitutes a problem for smaller delegations and can, in a certain way, put the participation of delegations of my regional group, for example, which have only one or two representatives, in a difficult situation. In our case, we reserve for ourselves the right to intervene during the meetings of Committee A, and, as I told you in our meeting yesterday, Mr Chairperson, our absence from one or two meetings of the subgroup will never represent our lack of interest in the discussions held in those subgroups. While I respect the position taken by the Chair of Committee A, I would just like to emphasize that there are some delegations that might feel they are not represented properly in the subgroups since they do not have large delegations here at this session. Thank you very much.

The CHAIRPERSON:

Thank you very much, Brazil. Your point is certainly well taken, but I fully support Mr Shakerian's approach to having a working group when it is necessary, and similarly for Committee B. We must make as much progress as we can this week and, of course, there will always be a report back to the committees and the plenary so that no one will lose out on that. However, your comment is well taken.

El Sr. TORRES MARTIN (Colombia):

Muchas gracias, señor Presidente. Voy a hablar sobre otro tema que no está relacionado con el grupo de trabajo de esta tarde, sino con la buena conducción de las deliberaciones por parte del Presidente de la Comisión A, puesto que ha facilitado la participación de todas las delegaciones en la presentación de propuestas a los artículos. Sin embargo, vemos con preocupación que no hemos llegado a acuerdos respecto de ningún artículo, porque solamente se han presentado propuestas y el tiempo está pasando. Entonces, desearíamos saber cuándo las comisiones o la Comisión A vamos a tener la oportunidad de entrar a negociar los textos propuestos por las delegaciones y que han sido incluidos en varios párrafos durante esta semana o se incluirán en lo que queda de esta semana. Gracias.

The CHAIRPERSON:

Thank you, Colombia. I think that Mr Shakerian has explained what he intends to do: that he is gathering the information together; he also intends to produce possible texts himself, and then perhaps move on to on-screen drafting once he has seen them all. I think he is now at the gathering period,

after which there should be a very strong acceleration towards drafting on the text itself. I think Mr Shakerian is well aware of the point that you make, but thank you for making it.

El Sr. PINEDA (México):

Gracias, señor Presidente. En esta ocasión, pido la palabra en nombre de las Partes de la Región de las Américas para expresar la preocupación de algunos de dichos Estados Partes, no solamente del Brasil, por lo que respecta al modo de trabajo que ha planteado el Presidente de la Comisión A, que si bien respetamos, insistimos que nos preocupa en cuanto a la agilidad en los avances y la obtención de resultados de la Comisión. A muchas delegaciones con pocos representantes, y el Brasil lo ha señalado muy bien previamente en nombre de las Partes de la Región, les resulta complicado seguir los avances de este grupo de trabajo en particular, y consideramos que la discusión para poder concluir la redacción de los artículos que le ha sido encomendada a la Comisión A ha sufrido un retraso que debemos resolver. Gracias, señor Presidente.

The CHAIRPERSON:

Thank you very much. I am very confident in the working method of Mr Shakerian and I am sure that it will lead to very solid results during the course of the week. However, your comments have been noted; but I have full confidence in the Chair of Committee A.

Mr PRASAD (India):

I would like to speak on behalf of the Parties in the South-East Asia Region to say that there is consensus among us that we have lost a little time. Our progress needs to be accelerated, and I would also like to point out that the Conference of the Parties had mandated eight days for this third session of the Negotiating Body so that we could make considerable progress and reach some consensus. In order to catch up, I would suggest that we have extended sessions so that we can complete the task assigned to us by the Conference at the Parties at its second session during the mandated time frame. Thank you very much.

The CHAIRPERSON:

Thank you very much, India. I have noted your request for evening sessions and we shall be happy to comply. Is there anyone else? Are there no further questions for Mr Shakerian? Very good. Thank you very much indeed for the report and thank you for all your efforts, and I fully support your continued actions in this area. Thank you.

Report of the Chair of Committee B
Rapport du Président de la Commission B

The CHAIRPERSON:

I invite the Chair of Committee B to make a report. Mr. Navarrete, please.

El Sr. NAVARRETE (Chile) (Presidente de la Comisión B):

Gracias, señor Presidente. La Comisión B ha trabajado, en primer lugar, con una metodología que consiste en mostrar en la pantalla el artículo respectivo e ir escuchando las opiniones de los comisionados al respecto. Me parece que este sistema ha dado resultados, ya que ha permitido una discusión bastante rica entre todos los participantes: hay opiniones diversas, pero se ha ido buscando un consenso, y me parece que hemos logrado este consenso en artículos que eran bastante complejos y hemos ido avanzando, aunando las ideas y llegando a ciertos parámetros básicos que compartían todos los comisionados.

Hasta el momento hemos tratado desde el artículo 12 hasta el artículo 18. En particular, nos hemos detenido en la discusión del artículo 12, que se refiere al problema de los delitos. Este tema fue bastante polémico, porque hubo posiciones un poco encontradas en cuanto a cómo calificar, por ejemplo, lo que era delito grave y qué criterios debíamos utilizar para calificar un delito como grave. Algunos eran partidarios de mantener el catálogo de figuras que aparece en el artículo 12, y otros preferían resumirlos o trasladarlos a otro tratado con arreglo al criterio de que se trata de delitos graves. Finalmente, llegamos a un acuerdo de mantener un listado, que es el que se incluye en el artículo 12 pero con ciertas modificaciones en cuanto a establecer algunas ideas de cuáles son los criterios para calificar un delito como grave que permitan a las distintas legislaciones adaptar esas figuras, pero con ciertos parámetros comunes a todos los comisionados.

En lo que se refiere a los decomisos y las incautaciones también hubo bastante polémica. Se discutió acerca de si el texto propuesto debía ser acorde con la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional, si simplemente se debía reproducir la mencionada Convención o si había que remitirse a ella. Entonces surgió la dificultad de que algunos países, 20 en particular, no habían firmado ese tratado, lo que podría ocasionar un problema para ellos. En definitiva, llegamos a un consenso en cuanto a mantener este artículo pero haciéndole algunos ajustes que están pendientes. Los otros artículos fueron revisados, como dije, hasta el 18, y en general hubo consenso en todos ellos. Por lo tanto, me parece que se ha avanzado en el sentido esperado; ya que sólo está pendiente básicamente ajustar los últimos elementos del artículo 12 y las consecuencias que éste tendrá sobre el artículo 16 una vez que se hayan efectuado dichos ajustes; y también quedará el artículo 19 que está pendiente.

Me parece que se ha avanzado dentro de los tiempos previstos para esta Comisión B y que podemos seguir funcionando en los horarios normales. Si es necesario, obviamente, tendremos que hacer una reunión nocturna, pero hasta el momento me parece que los comisionados han funcionado con bastante entrega e incluso algunos de ellos han renunciado a algunas posiciones para alcanzar un consenso. Así pues, agradezco especialmente a todos los países participantes la buena disposición que han tenido para buscar un consenso, lo que en algún momento nos ha permitido avanzar en temas muy polémicos y seguir dentro de las jornadas de trabajo normales, de modo que no sé si va a ser necesario, en el caso de la Comisión B, trabajar en horarios especiales. Hasta el momento todo ha funcionado con cierta rapidez gracias sobre todo a la buena voluntad de los participantes en la búsqueda del consenso y de renunciar a posiciones muy individualistas que no permitirían ese avance.

Por lo tanto, estoy bastante satisfecho con la labor realizada hasta el momento por la Comisión B, especialmente gracias a la participación de los distintos delegados en el espíritu de este Convenio Marco que, en definitiva, tenemos claro que es fundamental que permita una uniformidad en materias relevantes para que todos los países podamos combatir eficazmente el comercio ilícito de productos de tabaco.

The CHAIRPERSON:

Thank you very much indeed, Mr Navarrete, and thank you for your strong leadership in Committee B and also to the Parties which have shown very constructive suggestions to take the work forward. I am encouraged by your report and I think that we are on a good track for the completion of that work. Are there any questions for Mr Navarrete? I see Mexico first, please.

El Sr. PINEDA(México):

Muchas gracias, señor Presidente. En primer lugar, queremos hacer un reconocimiento público a la labor realizada por nuestro compañero de Chile al frente de esta Comisión. Lo queremos felicitar por su excelente trabajo y por la gran agilidad con la que ha dirigido los trabajos de la Comisión B. También queremos insistir en la cuestión del sistema de trabajo que el representante de Chile decidió para esa Comisión, o sea, la revisión en pantalla de los avances y de las propuestas de redacción de los artículos, como él mismo ya ha descrito, ya que creemos que es una forma ágil de poder hacer el seguimiento de ese tipo de acuerdos sobre la redacción de los mismos y consideramos que puede ser una propuesta de trabajo también para la Comisión A.

Insistimos en que el hecho de hacerlo de esta manera nos permite a todos ir haciendo un seguimiento preciso de cómo se van produciendo los cambios en la redacción del texto, lo que nos hubiera evitado tener que hacer las recomendaciones por escrito desde nuestras capitales, además de que, para algunos Estados Partes de la Región, el hacerlo en la forma en que lo estamos haciendo nos ha dado poca agilidad y nos ha hecho pensar que no estábamos utilizando el tiempo de forma adecuada. Gracias, señor Presidente.

El Sr. ALBUQUERQUE E SILVA (Brasil):

Gracias, señor Presidente. Solamente desearía reiterar lo que acaba de decir el delegado de México. Estoy participando en los trabajos de la Comisión B, y desde aquí quiero transmitir de parte del Brasil nuestras felicitaciones por el trabajo excepcional hecho por el Presidente de la Comisión B, el delegado de Chile. Me parece que ahora estamos construyendo un texto de los Estados. El texto base que el Presidente nos presentó poco a poco deja de ser el texto del Presidente para ser el texto de los Estados, y creo que éste es el objetivo de todos nosotros. El método de trabajo de la Comisión B nos permite ver ahora un texto que, aunque tenga corchetes en varias partes, refleja de una manera bastante transparente la posición de los Estados. Felicito al Presidente de la Comisión B porque creo que es un buen método de trabajo y estamos avanzando. Hay problemas, pero avanzamos y estamos construyendo por primera vez un texto de los Estados. Muchas gracias.

The CHAIRPERSON:

Thank you. Are there any other questions? Since there are none, I would like to pay tribute to both Chairs of the committees for the sterling work that they are doing under often difficult circumstances and I am sure that they will lead to appropriate and effective results with your support. It is important that you support the Chairs of both committees and the work of both committees, and I hope that you will do that and that you will ensure that most of the work is done in a very efficient and effective way. It is important that we all contribute to this and that we try to support the lead that is given by the Chair of each committee. I am confident that in that way we will have excellent results by the end of the week. Let us see what happens. I am grateful to both Chairs and to the members of the two committees and I hope that that work will continue to bear fruit.

What I suggest now is the following: Committee A, I know, wanted to look at Articles 10 and 11 of the text and I think Mr Shakerian would want to have at least half an hour to do that in Committee A. Perhaps I can ask Mr Navarrete whether Committee B wishes to have a short half-hour session. Or do you want to start again in the morning in Committee B? Mr Navarrete, please.

El Sr. NAVARRETE (Chile) (Presidente de la Comisión B):

Tenemos pendiente de la parte que habíamos programado para hoy día sólo el artículo 19. Pienso que en media hora podríamos tratar este artículo, salvo que, como hoy se avanzó bastante en temas muy complejos, lo dejemos para mañana para que la Comisión tenga un breve descanso.

(Applause/Applaudissements)

The CHAIRPERSON:

I would therefore like to close this plenary session. Thank you very much indeed.

**The meeting rose at 17:35.
La séance est levée à 17h35.**

VERBATIM RECORDS OF PLENARY MEETINGS**COMPTES RENDUS IN EXTENSO
DES SÉANCES PLÉNIÈRES****SIXTH PLENARY MEETING****Friday, 3 July 2009, at 19:00****Chairperson:** Mr I. WALTON-GEORGE (European Community)**SIXIÈME SÉANCE PLÉNIÈRE****Vendredi 3 juillet 2009, 19h00****Président:** M. I. WALTON-GEORGE (Communauté européenne)

- 1. REVISED CHAIRPERSON'S TEXT FOR A PROTOCOL ON ILLICIT TRADE IN TOBACCO AND GENERAL DEBATE (continued)**
TEXTE RÉVISÉ D'UN PROTOCOLE SUR LE COMMERCE ILLICITE DES PRODUITS DU TABAC PRÉSENTÉ PAR LE PRÉSIDENT ET DÉBAT GÉNÉRAL (suite)

The CHAIRPERSON:

Good evening and welcome to our evening session. I would like to touch very briefly this evening on Articles 2 to 4, which we touched on in our first plenary session; then touch very briefly on Article 7, which is the tracking and tracing regime. The main parts of our discussion this evening will be on Parts VI to X of the draft protocol because we have not had a look at those parts at all so far. I would like to get down to some constructive work on Parts VI to X and then I would like to give you some guidance at the end of the session on how we will spend our time for the remaining days here in Geneva until Sunday. This will be followed by a few comments about possible work between the end of this third session of the Negotiating Body and the beginning of the fourth session.

Starting with Articles 2 and 3, you have received my revised draft text of 30 June, based on the discussions we had on Monday and recording all your comments, reflecting our discussions and including square brackets and possible additional text.

The document in question reads:

**Revised draft text reflecting the proposals of the Plenary on 29 June 2009
at its second, third and fourth meetings on Articles 2, 3 and 4**

PART I: INTRODUCTION

Proposed clean Article

[Article 2

Relationship between the Protocol and other agreements and legal instruments

1. The provisions of the WHO Framework Convention on Tobacco Control that apply to its protocols shall apply to this Protocol.
2. The Parties to the Protocol that have entered into the types of agreements mentioned in Article 2 of the WHO Framework Convention on Tobacco Control shall communicate such agreements to the Meeting of the Parties through the Convention Secretariat.
3. Parties to this Protocol that are not Parties to the United Nations Convention against Transnational Organized Crime shall endeavour to apply the relevant provisions of that Convention, as appropriate, to cases of illicit trade in tobacco products.]

or

[Article 2

Relationship between the Protocol and other agreements and legal instruments

1. The provisions of the WHO Framework Convention on Tobacco Control that apply to its protocols shall apply to this Protocol.
2. The Parties to the Protocol that have entered into the types of agreements mentioned in Article 2 of the WHO Framework Convention on Tobacco Control shall communicate such agreements to the Meeting of the Parties through the Convention Secretariat.
3. [[Parties to this Protocol that are also Parties to the United Nations Convention against Transnational Organized Crime shall [ensure the full application of] / **[[try to]/[shall] apply**] the provisions of the latter Convention that are relevant to illicit trade in tobacco products.] [Parties to this Protocol that [have not become] / **[are not]** Parties to the United Nations Convention against Transnational Organized Crime shall [consider] / **[endeavour]** applying the relevant provisions of that Convention, as appropriate, to cases of illicit trade in tobacco products.] [In particular, they shall consider application of Articles 5, 6, 8, 10–13, 15, 16 and 18 of the United Nations Convention against Transnational Organized Crime.]] (*propose to move to preamble*)

or

[In the absence of any provision to the contrary the provisions of United Nations Convention against Transnational Organized Crime shall be made supplementally applicable. Non Parties to United Nations Convention against Transnational Organized Crime are encouraged to apply relevant provisions thereof as appropriate.]

or

[The Parties to this Protocol shall consider ratifying all other international instruments that may assist in furthering the objectives of this Protocol]

or

[Nothing in the Protocol shall affect the rights and obligations of Parties towards any provision that are more conducive to the achievement of the elimination of illicit trade of tobacco products which may be contained in any other international convention, treaty or agreement in force for that Party, in particular United Nations Convention against Transnational Organized Crime.]

[Recalling and emphasizing the importance of other international agreements such as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption and the obligations that Parties to these Conventions have to apply the relevant provisions of those Conventions to the illicit trade in tobacco.] *(to replace para 19 in preamble)*

[Encourages those Parties to this Protocol that have not yet become Parties to these other international agreements to consider doing so.] *(to be inserted after para 19 in preamble)*

4. **[Nothing in this Protocol shall affect other rights, obligations and responsibilities of Parties under international law, in particular under, but not limited to, the United Nations Convention against Transnational Organized Crime.]**

[Article 3

Scope of the Protocol]/[Purpose of the Protocol]

This Protocol shall apply, in accordance with its terms, to the prevention, deterrence, detection, investigation [and] prosecution **[and elimination]** of **[any person involved in the]** illicit trade in [tobacco **[leaf]**,] tobacco products [, **key inputs [of tobacco products]**] [and [manufacturing equipment used **[uniquely]** in the [manufacture of tobacco products] / **[illicit production of tobacco products]**] / **[to the equipment used for the manufacture, transfer and preservation of tobacco products]**] **[in order to protect States' economies from damage and to protect public health].]**

or

[This Protocol, which aims primarily to protect public health, recommends that the Parties should implement all legislative measures to eliminate the illicit trade in tobacco products with serious consequences to health and ensure the seizure of the specific materials involved in this trade.]

or

[This Protocol shall apply to the prevention, deterrence, research, monitoring and sanctioning of illicit trade in raw tobacco, tobacco products and equipment for the manufacturing of said products.]

or

[The Scope of this Protocol shall be in line with Article 15 of the WHO Framework Convention on Tobacco Control.]

or

[Article 3

Objective

The objective of this Protocol is to eliminate all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO Framework Convention on Tobacco Control.]

or

[Article 3

Objective and scope of the Protocol

It is the objective of this Protocol to eliminate illicit trade in tobacco, tobacco products and such manufacturing equipment exclusively used in the illicit manufacturing of such tobacco products. This Protocol shall, thus, apply in order to prevent, deter, detect, investigate and prosecute such illicit trade.]

PART II: GENERAL OBLIGATIONS

Article 4

General obligations

In addition to the provisions of Article 5 of the WHO Framework Convention on Tobacco Control, Parties shall:

1. adopt and implement **[effective]** measures to control or regulate [the supply chain of tobacco, tobacco products, **[primary materials and inputs]** and manufacturing equipment used in] the manufacture **[and [distribution]]** of tobacco products in order to prevent, detect and investigate illicit trade and shall cooperate with one another to this end;

2. take [appropriate]/**[necessary]** measures **[in accordance with their national law]** to increase the effectiveness of **[customs, police and other competent authorities]** / **[competent authorities including but not limited to]** / [customs]/**[taxation authorities]**/**[revenue authorities]**, police and other [relevant [regulatory] [agencies]/**[authorities]**/**[pertinent agencies]** / **[other services]** responsible for **[[detecting,] preventing, deterring, [detecting], investigating and] eliminating all forms of illicit trade in [tobacco], tobacco products [, primary materials and inputs] [or]/[and] [manufacturing equipment] [and all logistic equipment and materials in its production] [designed for manufacturing tobacco products]/[used in the manufacture of tobacco products;]**

or

take [appropriate]/[necessary] measures to increase the effectiveness of [competent authorities] / [authorities responsible] for [preventing, deterring, detecting, investigating and eliminating all forms of]/[combating] illicit trade in tobacco, tobacco products or manufacturing equipment used in the manufacture of tobacco products;

3. adopt [clear and] **[appropriate]** / [effective] measures [for **[facilitating or obtaining]** / **[including]** technical assistance and [financial support / **[economic assistance]]**, capacity building [and international cooperation] in order to **[achieve the objectives of this protocol and] assure / [ensure]** the availability to, and **[securely]** exchange with, the competent authorities **[information to be exchanged under this protocol]** / [of production [, **transit]** and trade / **[statistical] data]** for all forms of tobacco, tobacco products [, **primary materials and key inputs,] / [raw materials and inputs]** and [manufacturing equipment used in the manufacture of tobacco products] originating within, **[entering, or transiting through their territory]** their territory;

or

[to take measures to ensure financial, administrative assistance, reinforcement, and international cooperation to authorities to have at their disposal ????? the manufacture and commercialization of all forms of raw tobacco, tobacco products, and materials used to design said products that originate or come from their other territories]

4. cooperate closely with one another, consistent with their respective domestic legal and administrative systems, in order to enhance the effectiveness of law enforcement action* to combat the offences* covered by this Protocol;

5. cooperate and communicate **[as appropriate]** with relevant **[regional and international intergovernmental organizations]** / [organizations and bodies] in the **[secure]**** exchange of information covered by this Protocol; and

[with a view to assure the exchange of all relevant information needed to ensure the effective implementation of this Protocol]

6. within the means and resources at their disposal, cooperate to raise **[additional necessary]** / **[the necessary]** financial resources for effective implementation of this Protocol **[, including cooperating with bilateral and multilateral funding mechanisms]** / [through bilateral and multilateral funding mechanisms].

Add

[7. To ensure that the provisions of the Protocol, including security of the supply chain control, international cooperation will apply to all tobacco products including duty free tobacco products.]

There was a feeling that some of the points we raised in relation to Articles 2 to 4 could not be resolved until we had looked at other parts of the draft protocol. I have been having a look at the various comments you made during the sessions and trying to take account of them. My feeling is that we can probably reach a large measure of agreement on Articles 2 to 4 by simply avoiding mention of some of the problems that will emerge later in the protocol.

You will recall that in Article 3, for example, on the scope of the protocol, we could not decide whether we should have a list of items: tobacco, tobacco products, manufacturing equipment and so on, and the same occurred in Article 4, General obligations. I think there is a way of avoiding that issue and ensuring that we can keep Articles 2 to 4 very general, which is what they are supposed to be. They are not supposed to be substantive provisions, but simply a starting-point for the substantive provisions which come later in the text. If you would be happy to explore that approach, I would be happy to put down my suggestions in writing in a small document, which could be translated into all six languages overnight, so that you could see them tomorrow, after which we could have a substantive discussion on the text of Articles 2 and 3 and 4. I think there is a pretty good chance of reaching broad agreement on the precise wording of those articles.

My suggestion would be to rename Article 3. At the moment it is called "Scope of the Protocol". I think it would be reasonable to change it to "Objective of the Protocol" and amend the wording of Article 4 to avoid some of the references to individual products, which made our discussion on Monday rather difficult. If you are prepared to agree with me and go down that line for our discussions I will arrange for the document to be translated. It is a short document and it will be available to you first thing in the morning. Would that be an acceptable way of trying to make progress on Articles 2 to 4? To put it another way, would anybody object if I take that approach? Brazil, please.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, thank you very much for your proposal. We would like to see the text in writing tomorrow morning and we anticipate our appreciation for your efforts. Regarding Article 4, I would like to make one proposal to the Convention Secretariat for an additional item. It concerns language that the Brazilian delegation would like to propose. Would you like me to read it or simply give it to the Convention Secretariat?

The CHAIRPERSON:

Thank you, Brazil. I suggest that you give it to the Convention Secretariat. However, if you would like to read it out now so that we have a taste of what is to come, that would be fine.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, the addition would come in Article 4, which is entitled "General obligations". The *en tête* line reads, "In addition to the provisions of Article 5 of the Framework Convention on Tobacco Control, the Parties shall". We would like to insert in that Article the following wording, "implement their policies to combat the illicit trade in tobacco products, take all measures to protect those policies from commercial and other vested interests of the tobacco industry, in accordance with national law". Thank you very much.

The CHAIRPERSON:

Thank you very much, Brazil. The document that I produce tomorrow probably cannot take account of your proposal, but it may be possible to translate your suggestion into all the languages so that people can see those as well. Thank you for that suggestion. We shall have a general debate on those three articles tomorrow to see if we can reach firm agreement on their wording. I see no other objections to my suggested approach so we shall go down that path.

The next point I wanted to raise was in relation to Article 7. If you have been participating in Committee A you will know that there has been a lively debate on Article 7, which is the tracking and tracing Article for supply chain control. There was a working group session, very well chaired by our colleague from Nigeria, as a result of which some progress was made. However, there is still a lot of work to be done on Article 7. There are different views as to how we should tackle it. Therefore, what I would like to do, again as a contribution to the debate, is to make a suggestion as to how we might go forward on Article 7. However, I am very sensitive to the fact that the Chairperson's text should now be the Parties' text and that I should not be trying to give you too many new pieces of text.

Nevertheless, I think it is still incumbent on me to make suggestions where I feel that this could be helpful to the Parties. Accordingly, again if you would be content, I will prepare a small document containing a few ideas about how we might tackle the tracking and tracing issue. I will make sure that it is translated into all six languages and that, again, it will be available to you tomorrow morning. This would mean that perhaps tomorrow afternoon we could have a look at that document as well as the document on Articles 2, 3 and 4, to see if we can make some progress, or at least sketch out how we can make progress, over the coming months. With your indulgence, unless anyone objects, I would like to prepare that document and have it ready for you first thing in the morning. Would anybody object to me adopting that approach? Thank you very much. I will do that and we will have two small documents ready for you in the morning in all six languages.

The Convention Secretariat rightly reminds me that in fact there will be no new text for Article 2. It will be Articles 3 and 4 that will be different, and Article 2 will simply be the texts that are currently in the revised draft that you already have. However, I think it would be possible to have a brief discussion on that as well. With that clarification we will go forward as I have proposed.

Our main task this evening is to look at Parts VI to X of the Chairperson's text, which is contained in document FCTC/COP/INB-IT/3/3. Part VI: Reporting begins at Article 34 and Part X: Final provisions ends at Article 49. My intention is to give you the opportunity to make general comments on these parts and on the articles therein, but also to make specific suggestions on how the

drafting should be done. Since we have had no discussion about these concepts at all so far, I shall give a few brief words of introduction.

These are what I would call the institutional elements of the protocol. They are to look at the arrangements for committees, for financing, for the Convention Secretariat, for development of the protocol, settlement of disputes, and final provisions, which include the articles on reservation and withdrawal. Many of these articles are common to other instruments adopted under the WHO framework, but it is important that we are comfortable with the arrangements as they apply to our protocol and as they apply to the progress of our work, which is why I want to have a debate on Parts VI to X this evening.

I do not want to take them in the numerical order in which they appear in the document, because Part VI: Reporting talks about the Meeting of the Parties, which does not appear until subsequent Articles of the protocol. It is therefore quite difficult to take a decision on reports to the Meeting of the Parties if we have not decided to have a Meeting of the Parties. Therefore, again with your indulgence, I would like to start with Part VII: Institutional arrangements and financial resources, which concerns the Meeting of the Parties and comprises four articles.

I would like to open the floor to you, first of all, for your comments in general on the issue of the Meeting of the Parties in Article 35 and hear your views on the principle and any other general issues that you would like to raise. Would anyone like to make any comments, first of all, in general on Article 35: the question of a Meeting of the Parties.

Could we please have Article 35 on the screen? Is everyone happy with the concept? It appears so. Has anyone any comments on the detail of Article 35? You are all happy with Article 35 – very good. We have the first clean complete article. I beg your pardon, Canada.

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Mr Chairperson, these Parts VI to X, as you have mentioned, have not yet been discussed and I understand that a general discussion is under way; however, it is based on a text that has a series of assumptions, which I think have to be examined methodically and in the light of a number of other models we see around the United Nations system where there are frameworks, and appending either conventions or protocols. There are many of these, in fact, and many different ways of handling this. We think it is very important that the members be more broadly prepared for this discussion before we enter into it.

We recall that during the discussion of the Framework Convention on Tobacco Control, for example, there was an extensive paper produced by the Secretariat dealing with governance issues. With that in mind, we would like to make a proposal, which perhaps could be discussed in more detail tomorrow when other colleagues have had a chance to consider it. What we propose is that this discussion should really take place at the fourth session of the Intergovernmental Negotiating Body and that it should be ramped up by a paper, prepared by the Convention Secretariat ahead of the fourth session, setting forth options on governance, secretariat function, management, finance, as well as costing of some of the major elements that are being proposed in this agreement. In that way we will have a better idea of what we are actually getting into.

We are not talking about intersessional meetings here, but about a possibility for Member States to make submissions to the Convention Secretariat regarding their thoughts on these matters so as to inform the Secretariat in its work. Perhaps interested countries could sit down with the Convention Secretariat tomorrow and talk about the scope of such a report, so that it has immediate guidance on some of the things that are of concern to us. But we would suggest that it is hard to focus on issues such as that contained in Article 35 without this kind of background document with options. Thank you.

The CHAIRPERSON:

Thank you very much, Canada. You have certainly pre-empted one of the issues I was going to raise at the end of the plenary today about intersessional work, so I will touch on that now and take up one of the points that you made. I think it is important that there is discussion between the third and fourth sessions of the Negotiating Body in order to try and reach a broad measure of agreement about what could be the way forward on these sections. I think it will be too late to leave it to the fourth

session itself to start that work. I think your idea of some countries, or all countries, submitting their ideas very quickly to the Convention Secretariat is a good one.

However, my plan had been to ask the representatives of the countries here in Geneva to meet for a session as a working group or "Friends of the Chair" in order to take forward some of these issues. In any case, I will ask Dr Nikogosian if he would like to comment on your idea about gathering ideas by sitting down with the Secretariat and possibly producing a paper with options. I give the floor to Dr Nikogosian.

Dr NIKOGOSIAN (Head, Convention Secretariat):

Thank you, Mr Chairperson and thank you, Canada. A paper can certainly be prepared. Regarding the contributions from the Parties, we will be ready for contributions before and after the paper is prepared. We can have a consultation with interested Parties who would like to contribute. We also could somehow ask the interested Parties to comment on the draft when it is released for "narrow" circulation as a draft before it is finalized. It will also be open to any other forums of Parties for contributions and comments and suggestions you may wish to make. However, in principle, the paper is feasible and we can start all contacts after the current session and ask for your views and contributions during the process. Thank you.

Ms MOLIN HELLGREN (Sweden):

Speaking on behalf of the European Community, I thank you, Mr Chairperson, and you, Dr Nikogosian, for this clarification. My thanks also go to Canada for what we see as a very useful proposal. As you will recall, the European Community stated in our introductory intervention that we too seek clarification regarding feasible options. We have also already asked in our introductory statement for the Convention Secretariat to be so kind as to provide such a document ahead of the fourth session of the Negotiating Body so as to put us all on an equal footing. Since I am not sure that the understanding of all these issues before us is the same everywhere, it would allow us all to adopt informed positions as to how to govern, finance and organize the secretariat.

The issues here are all the more important as they will set a precedent for possible future protocols, and we do not think they should be made in haste or taken lightly. We would also ask for the costing of the different options that are outlined in such a document. It will make a huge difference if these issues are dealt with within the Framework Convention or through a separate arrangement. We would also assume that the legal implications of the different options will be included in such a document and we would be very happy, as the European Community, to contribute our views ahead of the paper or during the course of its elaboration, as is deemed appropriate by the Convention Secretariat. I thank you, Mr Chairperson.

Mr MOSSOP (alternate to Ms Hefford, Australia):

Mr Chairperson, we would like to thank Canada for its useful suggestion for a paper to be developed and we thank the Convention Secretariat for agreeing to consider preparing that paper. We would also like to thank the Chairperson for his suggestion of utilizing the time most effectively between the third and fourth sessions. I think that, for the record, I like the title "Friends of the Chair". I think it more accurately reflects how we want to work. I do agree that there is a difficulty in looking at these provisions now, which concern the governance arrangements for this protocol, when there is still a large amount of uncertainty about what will be the crux of this protocol and what it will contain. We therefore think that the paper will be a good method of outlining options to which all countries can contribute. Thank you.

The CHAIRPERSON:

Thank you very much indeed, Australia. I think that unless anyone objects we can go ahead with the idea that there should be an options paper from the Convention Secretariat, but that Parties should feed in any ideas they may have very quickly to that Secretariat so that they can be taken into

account in the drafting of the paper because it is important that what is produced meets the needs and the expectations of the Parties concerned. I think you should have a short period in which to submit those comments to the Secretariat; perhaps by the end of July if you wish.

The suggestion by Canada of sitting down together tomorrow with members of the Convention Secretariat is a very good one. I would be happy and I am sure that the Secretariat can make itself available for that, but it should certainly be done in the next three weeks so that there is adequate time to prepare a proper and full paper. As I said, once that has been done, I would call on the "Friends of the Chair" – and these friends would be Geneva-based friends so that as many people could participate as possible – in order to thrash out some of the ideas in the Secretariat paper and look at some of the text itself. I would like to see you transfer your ideas into black and white as far as possible.

It would be possible to have two meetings of the Geneva-based friends and that would allow us to have some sort of document with text circulated before the fourth session, because the more chance you have to look at what is being proposed, the better are our chances of reaching quick agreement on the text at the fourth session.

May I clarify what the scope of the paper should be in terms of the articles that will be covered by it? I have assumed that Articles 34, 35, 36, 37 and 38 are those that are really concerned by this options paper. If I am wrong about that could you inform me now, please? It is helpful to know what our target is.

Before we move on to the other elements in Parts VI to X, I would still like to give you the opportunity to make any general comments that you have about reporting arrangements, the secretariat and so on. If you do not wish to make any comments now, that is fine. However, if there is something that is really a burning issue, that you feel other delegates should hear at this time, feel free to put that forward. Sweden, please, on behalf of the European Community.

Ms MOLIN HELLGREN (Sweden):

Mr Chairperson, excuse me for taking the floor again, but since you offered, we do have a few burning issues that I have been mandated to put forward, so I shall take the opportunity here. I would like to point out a few elements in these articles that you mention that we find especially problematic. This especially concerns Article 35.4: our understanding of the current wording is that it could imply an open-ended financial commitment, and that is not acceptable to the European Community. We would also want there to be a distinction drawn between the different costs involved. For example, technical assistance, which would be necessary for the functioning of the protocol, should be treated separately from Secretariat treaty-specific tasks. They need to be clearly distinguished.

Furthermore, we think that Article 38, concerning financial resources, also needs to be revisited in order to reflect the principle of voluntary funding. We would also like to flag at this point that eventually, the European Community would like to see a specific budget and workplan worked out, notwithstanding whatever arrangement we might choose to end up with.

We would also at this point like to flag that we think it is important to build on existing structures and avoid duplication and unnecessary bureaucracy, and I would imagine, depending obviously on what is decided in the preceding chapters, that there will be important potential in a division of labour within different parts of the United Nations and international treaties, such as the United Nations Convention on Transnational Crime and the United Nations Convention against Corruption. It is important to use what is already there and not to duplicate these structures under the Convention Secretariat. I think that will suffice for this evening. Thank you.

The CHAIRPERSON:

Thank you very much. I look forward to tomorrow morning's contribution. I thank you for those helpful suggestions. Could you perhaps jot them down on a piece of paper and pass them to the Convention Secretariat as part of the process of informing it for its paper?

Would anyone else like to make a comment? Let me just say that if, like the European Community, you would like to give your suggestions on some of the main issues that need to be tackled by the Convention Secretariat, please do so and, if possible, before the end of this session; but as I said earlier, you have got a couple of weeks to submit other suggestions.

We shall now move on to Article 39, Settlement of disputes. Can we put that up on the screen please? Are there any general issues that you would like to raise on this, or are you happy with the way that this is drafted?

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, just a general comment, on which I would like to have a reaction from the WHO Legal Counsel. Basically, what Brazil sees here, and this is the opinion of our legal counsel back in Brasilia, is that when the protocol admits the possibility of amendments to the text, what it does is to create the possibility of a hidden form of reservation. I shall explain myself: the protocol – and not only this protocol as there are other conventions that do the same – establishes that there is a way for a Party to propose an amendment to the text of the protocol.

We read here in Article 40.3 that “If all efforts at consensus have been exhausted and no agreement reached, the amendment shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting ...”. According to our legal counsel in Brasilia, this is a hidden form of reservation. When protocols or conventions create the possibility of amendments either by a three-quarters majority vote or, as the American Convention on Human Rights does when it says that “Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification”, when conventions do this, they also admit the possibility of reservations. We have the example of the human rights convention I have just referred to, and we also have at WHO a very clear indication of this position in the International Health Regulations (2005). That means that there is the possibility of amendments and there is the possibility of reservation. My question therefore is, given the fact that the draft that we have in front of us admits the possibility of amendments and given the interpretation from our legal counsel in Brazil that this is a hidden form of reservation, would that not allow countries to interpret this to mean that the eventual need for reservation would not be something out of order? This is a question that I raise because, in our view, Article 40.3 creates a hidden form of reservation. I would like to hear from the WHO Legal Counsel, please.

The CHAIRPERSON:

Thank you very much, Brazil. I am happy to hand that one over to the WHO Legal Counsel.

Mr BURCI (WHO Legal Counsel):

Thank you, Mr Chairperson. I am not sure I understand how an amendment constitutes a hidden form of reservation because amendments are agreed changes to an agreement. Agreements are not set in stone; conventions are not set in stone; so they require a possibility for subsequent changes. These changes have to be adopted somehow. There are some conventions, for example some Cold War arms control conventions that only admit consensus for the adoption of amendments, but I would say the vast majority of agreements allow for adoption by just a majority, following which they are subject to the same procedure for entry into force as the main convention. They are open to ratification and so on, and once they reach the threshold for entry into force, they enter into force for the Parties that have already agreed to be bound by them. That is, as far as I can see, an absolutely standard clause in all agreements.

Obviously the amendments will be binding only on the countries that have chosen to subscribe to the agreement, to be bound by it. A reservation is something different. A reservation is a unilateral statement by a Party with the purpose of excluding that Party from being bound by some of the obligations. It is a partial opt-out, if you wish; a Party does not accept to be bound by some of the provisions of a treaty. I therefore see a fundamental difference between this unilateral act, and an agreed process such as the process of amendment, which is based in a way on the same procedure and the same logic as the adoption and entry into force of the main treaty. While I defer to the legal counsel in Brasilia, I confess that I do not see that as a hidden form of reservation. Thank you.

The CHAIRPERSON:

Thank you very much, WHO Legal Counsel. Might I suggest that if there is still any uncertainty in the Brazilian delegation that they have a bilateral discussion with the Legal Counsel and we could always come back to this point at a later stage? Thank you. We have managed to skip over Article 39, I am afraid. My question was whether anyone had a problem with Article 39. Everyone can accept Article 39 as drafted. Article 39 is agreed.

On Article 40, we have heard a point from Brazil that will be taken forward. Are there any other points in relation to Article 40, please? Is everyone happy with the way it is drafted?

Dr AL-LAWATI (Oman):

Mr Chairperson, on a point of clarification, could the WHO Legal Counsel explain whether, after the amendment of the protocol, any Party that does not like the amendment would still have the right to withdraw from the protocol, even before the completion of the two years which is mandated by the protocol, and by the Framework Convention, or can they not? Let us imagine that within two years we amended the protocol and a particular Party did not like that amendment. Despite the three-quarters majority, would that Party still be eligible to withdraw before the completion of two years of ratification for that Party?

The CHAIRPERSON:

Thank you very much, Oman. I pass the floor to the WHO Legal Counsel, please.

Mr BURCI (WHO Legal Counsel):

Thank you. Withdrawal obviously is something quite exceptional which, in general, a country resorts to if its fundamental interests are compromised by something that happens in the context of the treaty. As a general observation, I hope that the adoption of an amendment would not constitute an event of such magnitude as to force countries to withdraw. However, if that were the case, withdrawal continues, at least in the draft protocol as we have it now, to be regulated by Article 43. I would therefore assume that that would be the accepted procedure and that if any country wants to withdraw it has to follow the procedure under Article 43, including the deadline of two years. Thank you.

Mr ALBUQUERQUE E SILVA (Brazil):

To return to the interpretation of the WHO Legal Counsel which we fully respect, I would like to draw attention to Article 40.4, which states, "An amendment adopted in accordance with paragraph 3 of this Article shall enter into force for those Parties having accepted it on the [XX] day after the date of receipt by the Depository of an instrument of acceptance...". My question is whether this amendment will enter into force only for those Parties having accepted it or for all those countries, even those who did not vote in favour of the amendment during the three-quarters majority approval process. Thank you.

The CHAIRPERSON:

Thank you very much. WHO Legal Counsel, please.

Mr BURCI (WHO Legal Counsel):

Thank you. No, the amendment would only enter into force for those countries that have accepted it. In other words, the Meeting of the Parties is only for the purpose of finalizing the text of the amendment as adopted. However, the amendment is like a treaty. It has to be accepted individually by the Parties that wish to do so and it enters into force when a certain threshold of acceptance has been reached; but it enters into force only for those countries that have deposited an instrument of

acceptance. It is not like a law which, when amended, is binding on everyone. A treaty is a contract and so an amendment is also a form of contract. It is binding only on those countries that have accepted to be bound by it. That is, those that have voted affirmatively and have deposited an instrument of acceptance with the United Nations in New York.

Mr ALBUQUERQUE E SILVA (Brazil):

Therefore, there is a possibility that with amendments you have “two-level” Parties under the same protocol: those who have signed and ratified the original protocol and those who have not ratified the amendments. So in this sense there is a possibility, through this process, of some Parties making reservations through amendments made to the original protocol, even if you do not call them reservations. There will be a two-level degree of ratification of the whole protocol with amendments, will there not?

The CHAIRPERSON:

Yes. Legal Counsel agrees that your interpretation is correct. A question on paragraph 4: we have put “XX” there saying that the amendment shall enter into force for those Parties having accepted it on the XX day. Is there a standard number of days or is that open for negotiation?

Mr BURCI (WHO Legal Counsel):

For the Framework Convention it is 90 days. There is nothing set in stone. It is an assessment of what is likely to be a reasonable period of time between the reaching of the threshold and the entry into force so that the countries are prepared to assume their obligations fully.

The CHAIRPERSON:

Thank you very much. I suggest, therefore, that we replace “the [XX] day” with “the 90th day” after the date of receipt. Would that be acceptable to the Parties ? I see no objection; we shall change the text so that it reads “the 90th day after the date of receipt ...” in paragraph 4 of Article 40.

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Could I briefly go back to Article 39, Settlement of disputes? It is a question on which perhaps the WHO Legal Counsel again could guide us. How are potential conflicts between the protocol, the Framework Convention and other protocols that may be under the Framework Convention resolved? I think we understand how the Framework Convention takes precedence over the protocol; but if another protocol is developed and they happen to be in conflict in some way, how is this resolved? Or do we need language of some kind to deal with this issue?

The CHAIRPERSON:

Thank you, Canada. WHO Legal Counsel, please.

Mr BURCI (WHO Legal Counsel):

Thank you. That is not an issue concerning the settlement of disputes. It is more an issue of the relationship between the Convention and future protocols, but it is often useful to include language to that effect. That is exactly what you were discussing under Article 2, which in part aims at regulating the relationship between the protocol and other international obligations. In the silence of the protocol, normally the rule of thumb, under the Vienna Convention on the Law of Treaties, is that the later instrument would prevail, and also, in accepted practice, specific instruments would prevail over a general one.

Obviously, this is probably one of the most complex parts of the law of treaties because you can have so many different permutations, but depending on the particular circumstances and in the silence of the protocol, the protocol would prevail. However, in the particular case of the Framework Convention, I would like to draw your attention to Article 2.2, of the Framework Convention, which says that Parties may enter into agreements “on issues relevant or additional to the Convention provided that such agreements are compatible”. That provision does not apply strictly speaking to the protocols, but it gives a certain responsibility to Parties to have good quality control of the instruments they are negotiating so as to avoid possible conflicts. Should conflicts, however, arise, I would assume that the protocol would prevail. Thank you.

The CHAIRPERSON:

Thank you very much. Is that all right, Canada? On that basis, you have no problem with the wording of Article 39? Good. Thank you.

M. MOHAMEDOUN (Mali):

Merci, Monsieur le Président. À propos des amendements, j’ai jeté un coup d’œil sur ce qui est prévu au niveau de la Convention-cadre et je me suis demandé s’il ne serait pas plus facile et peut-être moins problématique, dans la tendance qu’on est en train d’envisager sur le plan institutionnel, de renvoyer purement et simplement les amendements à ce qui est prévu au niveau de la Convention.

Merci, Monsieur le Président.

The CHAIRPERSON:

Thank you, Mali. I will take the Bolivarian Republic of Venezuela’s question first and then pass the floor to the WHO Legal Counsel.

La Sra. MELKOM (República Bolivariana de Venezuela):

Volviendo al artículo 40, y siguiendo un poco la intervención del Brasil, si la enmienda ya ha sido aprobada porque cumplió ciertos requisitos, eso es, su aprobación por una mayoría de las tres cuartas partes de las Partes presentes y votantes en la reunión, desearía saber por qué para un grupo, o para unas Partes, su entrada en vigor tiene un plazo y para el resto de las Partes otro. En mi opinión, si ya es un tratado, si ya es un instrumento jurídico, debería entrar en vigor inmediatamente para todas las Partes.

The CHAIRPERSON:

Thank you very much. We have two questions for the WHO Legal Counsel if he does not mind.

Mr BURCI (WHO Legal Counsel):

Thank you. I shall start with the Bolivarian Republic of Venezuela. As I said, amendments are also contractual instruments like a treaty. Normally, an amendment is adopted, for example, by the conference of the parties to a treaty, with a certain majority. However, in the case of a treaty, in the case of the Framework Convention, for example, which was adopted by the World Health Assembly, before coming into force it had to be ratified by each individual State. Each individual State that wants to be bound has to deposit an instrument with the United Nations, indicating its acceptance of the treaty.

The same is true for an amendment. There are exceptions: for example, a convention familiar to us is the Constitution of WHO and, in general, any treaty setting up an international organization, since most of the provisions are institutional provisions that create common bodies and so on and for which it would not make sense, as Brazil said, to have a two-speed situation. An amendment to the WHO Constitution, for example, or to the Charter of the United Nations, enters into force for all the

Parties once a certain threshold has been reached. In the case of our Constitution, that means two thirds of the members. But these, I must say, are normally exceptions.

In practice, in most cases amendments only enter into force for the countries that have accepted them, which have ratified them and have deposited an instrument of acceptance of the amendments. Both models are possible; the model of a constitution is normally reserved for specific treaties such as instruments that establish an international organization.

Turning to Mali, a cross-reference could certainly be made to Article 28, and this was discussed previously when we discussed the first articles of the protocol. Sometimes it is better to have a self-contained article to avoid ambiguities and clear up doubts, since you are talking of the role of a different instrument. However, theoretically, a cross-reference to Article 28, *mutatis mutandis*, is possible. Thank you.

The CHAIRPERSON:

Thank you very much. Are there any other questions on Article 40? I see none. Therefore, subject to the bilateral discussion between Brazil and the WHO Legal Counsel, we are broadly happy on that issue. No amendments have been suggested.

We turn to Article 41, Adoption and amendment of annexes to this protocol. Are there any points you would like to make in connection with Article 41?

Ms MOLIN HELLGREN (Sweden):

Mr Chairperson, speaking on behalf of the European Community, I would just like to make a short comment on Article 41, paragraph 3, on annexes to the protocol and amendments thereto. The European Community would simply at this stage of the negotiations like to flag that we would like to have the option of opting out of any annexes at this point – not that we would encourage this – but mainly because we are not clear about the process by which annexes will be adopted. Thank you.

The CHAIRPERSON:

Thank you. The WHO Legal Counsel, please.

Mr BURCI (WHO Legal Counsel):

Thank you, Mr Chairperson, and thank you to the European Community for raising this point. I wanted to make a very quick comment on this Article, which reproduces Article 29 of the Framework Convention. The Article was, in a way, imported from environmental conventions, which formed to a certain extent the model for the Framework Convention. In several environmental conventions, for example the Rotterdam Convention on Prior Informed Consent, the Helsinki Convention on the Transboundary Effects of Industrial Accidents and so on, there are indeed annexes that are adopted together with the convention and contain, for example, lists of substances, lists of criteria for reporting the production of certain substances; in other words, fairly specific and very technical materials.

In these conventions, the procedure for adoption of new annexes or amendments of existing annexes is somewhat different from that which appears in Article 29 of the Framework Convention or Article 41 of the draft protocol. That is because in our two instruments they are treated like amendments, which means, once again, that they must be accepted by 40 Parties and so on. It is a fairly heavy process. In several environmental conventions, Parties that do not want to be bound by an annex can simply notify the Depositary and so opt out of the annexes, as the representative of the European Community said. Those who do not opt out are bound after a certain deadline, for example, one year from the adoption of the annex and so on, so that there is an attempt to simplify the adoption, amendment and entry into force or opting out of annexes.

This is precisely because they are very technical and because it is important that the annexes, as much as possible, enter into force for all the Parties since they constitute some of the technical substance of their obligations. If it would be of interest in the process of preparing a paper for the

fourth session, the Convention Secretariat could probably offer some of the precedents to the environmental conventions so that Parties could see what they look like and which regime might be more suitable for the Framework Convention and the protocol. Since the protocol does not mention annexes, it is difficult to see at this stage what annex might be required for a protocol on illicit trade. However, in case there are any in future, I think it would be good to have a reasonable and realistic regime for their adoption and amendment. Thank you.

The CHAIRPERSON:

Thank you very much. As I understand it, therefore, it might be useful to have a little paper on that so that we can examine it when the Geneva-based "Friends of the Chair" meet. They could have a look at that matter as well. Thank you.

El Sr. SAMUDA (Panamá):

Gracias, señor Presidente. Es una consulta para el Asesor Jurídico. En el párrafo 2 del artículo 41 se indica que los anexos sólo versarán sobre cuestiones de procedimiento y aspectos científicos, técnicos o administrativos. ¿Vamos a dejar fuera entonces la posibilidad de presentar posteriormente alguna enmienda al artículo 12 sobre delitos? Porque se trata de materias y situaciones cambiantes, y puede ser que hoy estemos regulando un hecho y posteriormente se presenten otras nuevas tipificaciones u otros nuevos hechos que pudieran ser motivo de ser tipificados como delitos.

Mr BURCI (WHO Legal Counsel):

Thank you. If I understood correctly, the question would be why not have an annex on the conduct referred to in Article 12, and a different procedure for the amendments. Everything is possible, obviously. As I said, that was not the logic of the environmental conventions, which confined annexes to very technical issues that required a particular process for the elaboration of amendments, such as technical groups and so on. For example, under the Rotterdam Convention on Prior Informed Consent, there is a long list of chemicals whose export requires notification through the mechanism of the Convention. Changing that list required very technical meetings.

In the case of Article 12 we are talking about substantive conduct; it is not a very technical list. Obviously, the appreciation of the Parties can change; but I wonder whether in that case the normal process of amendment would be more appropriate because it does touch the core of the obligations of the Parties under the protocol. Thank you.

The CHAIRPERSON:

Thank you very much. Is that all right for Panama? Thank you. I would just like to remind Parties that we did, I think, at one stage consider whether an annex might be useful for descriptions of things like machinery or key inputs, but it was those sorts of technical things that could change quickly through technological developments. We did not think of any of the substantive items as being included in annexes. Any other comments on Article 41 please? No? Thank you. We have noted the fact that Article 41.3 may require a paper from the Secretariat.

Article 42, Reservations: "No reservations may be made to this Protocol".

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, although, in principle, Brazil agrees on not having reservations to this protocol, we believe that, depending on the negotiation we will be having and the provisions to be approved by the majority, by a consensus, on offences and sanctions especially, Brazil reserves the right to revisit its position of principle of not having reservations in this protocol. This is because there is a possibility that, depending on the negotiations that we are yet to have, there will be a need for a defence of reservations, on the part of our delegation, according to what is established in the 1969 Vienna

Convention on the Law of Treaties, which states that reservations may be acceptable when they are compatible with the objective and the purpose of the convention.

In principle, we agree with the drafting proposed by the Chairperson of having no reservations but, as I said, the International Health Regulations (2005) admit reservations, and I would like to remind all delegates that one of the reasons the Framework Convention has the same provision as the one we see here is that the contentious issues were withdrawn from the text. Brazil chaired the negotiating group and I recall from reading the documents of the time that at one point we had a very long Framework Convention containing details on tracking and tracing, on offences and sanctions and other items that were contentious, and the decision taken so that we could have the Framework Convention approved, was to withdraw the contentious issues and to start bringing these issues to the consideration of the Parties through the approval of protocols.

That is why we have no reservations in the Framework Convention. Brazil believes that the best way forward would be not to have reservations, but our position will certainly depend on the decision that we take, especially on Part IV: the provisions linked to offences and sanctions. We therefore reserve the right to review our position. Thank you.

The CHAIRPERSON:

Thank you, Brazil. That is very clear. I think we should, therefore, somehow mark the text as we will need to come back to this once we know what the rest of the text contains, particularly the offences and sanctions section.

Mr PADILLA (Philippines):

Mr Chairperson, I wanted to ask the same question of the WHO Legal Counsel, whether the protocol may allow reservations, even if the main Convention does not admit any. Second, assuming it does allow reservations, what can be the subject of the reservations? Thank you.

Mr BURCI (WHO Legal Counsel):

Thank you to the Philippines for a very interesting question. I made a very quick search, by no means complete, especially once again relying on the environmental conventions model. What I have seen is a rather symmetrical situation, where the “mother” convention, so to speak, is silent on reservations or allows reservations. The same goes for the protocols and, conversely, when the “mother” convention prohibits reservations, the same goes for the protocols. However, from a strictly legal point of view, I do not think there is a cogent principle that if the Framework Convention prohibits reservations the same must be true for protocols.

The one concern, however, is that if the protocol, for the sake of argument, allows reservations, then Parties could somehow have a “backdoor” reservation to the main convention by entering a reservation to the protocol. To give you an example: imagine that a Party enters a reservation not accepting the obligation to seize or to confiscate the proceeds derived from illicit trade. That would affect Article 15.4(e) of the Framework Convention, making it something of a backdoor, indirect reservation to the main Convention. I think that should be avoided, because it would considerably weaken and run counter to the spirit of the Framework Convention.

In terms of what reservations can be allowed, practice offers many examples. One example is simply silence, making the acceptability of a reservation subject to the general regime of the Vienna Convention, which is largely based on the idea of compatibility with the object and purpose, but also on the acceptance or rejection of the reservation by other Parties. A number of treaties qualify the right to enter reservations. There can be reservations only to certain provisions, or other provisions cannot be the object of reservations. Some conventions – such as the International Health Regulations (2005) – explicitly prohibit reservations that are incompatible with the object and purpose. This means that there are several safeguards for reconciling the possibility of entering reservations with the protection of the core obligation of the instruments. Once again, when we get closer to the end there will be time to look at possible alternatives, if need be. Thank you.

Mr AL-LAWATI (Oman):

Mr Chairperson, since you agreed earlier to replace “XX” with “ninetieth day”, would it not be also possible to follow the Framework Convention here? Then we can delete this Article altogether later on. Thank you.

The CHAIRPERSON:

You are absolutely right, Oman. You are reading the text carefully. Therefore, subject to putting in “ninetieth day”, Article 47 is agreed.

Article 48, Depositary: that seems to be standard text there. That one is also agreed. Thank you.

Article 49, Authentic texts: I am sure that one must be all right. Good. That one is agreed as well. That is very useful. We have clarified a great deal. Sorry, the Philippines.

Mr PADILLA (Philippines):

I apologize, Mr Chairperson, but, returning to Article 47 and the first XX, there is another XX there that needs to be filled in. In the Framework Convention it says “fortieth”.

The CHAIRPERSON:

Thank you for that suggestion, Philippines. Would everyone be happy to put the word “fortieth” in the second line where the second “XX” appears? It would be “the fortieth instrument of ratification ...”. “Ninetieth” in the first line and “fortieth” in the second line of the English text. The conclusion that I draw from this is that for Parts VI and VII we need to have discussions between the Parties and the Secretariat in order to produce a document. The European Community, please.

Ms MOLIN HELLGREN (Sweden):

Mr Chairperson, speaking on behalf of the European Community, I did not have a comment on that. I simply wished to make an addition. Things went very rapidly there in the beginning. I just wanted to ask you, before you conclude, how we are going to handle Parts VI to X, which we discussed initially, the financial and governance arrangements and so forth: Articles 34 to 38, if I recall correctly, since I represent 27 Member States. I remember Canada saying that we could perhaps conclude the discussion tomorrow when we have had a chance to think about the different parts of it. We are in agreement in principle and it goes very much along the line that we suggested in our introductory intervention. All the same, I think it would be useful if regions or if different Member States could think about it and we merely put a marker down tomorrow, and also think of any other useful suggestions on how we can arrange that work. Simply as a matter of principle. I did not mean to interrupt you but just wanted to say that if we could just formally “gavel” it tomorrow, that would be very helpful. Thank you.

The CHAIRPERSON:

Thank you very much, European Community. No, I understand the coordination issue there. I think the meeting tomorrow should be the initial giving of ideas to the Convention Secretariat. However, I did say that you could have a couple of weeks extra in order to gather your thoughts in a rather more precise fashion before the holiday season starts in Geneva and Brussels. The European Community, please.

Ms MOLIN HELLGREN (Sweden):

I am sorry, Mr Chairperson. Speaking on behalf of the European Community, I would like to explain that I was also thinking about the process itself. We could give you the green light formally tomorrow, saying that we think that is a useful way forward, which I am sure we will because it goes

along the lines of our thinking. However, I need to put it to our Member countries formally tomorrow morning. They may have other suggestions that I, off-the-cuff, have not thought of myself and I would then like to put them to the floor tomorrow. If we could do it that way it would be immensely helpful. Thank you.

The CHAIRPERSON:

Yes, certainly. The same applies to all the regions. If you have issues that you want to raise after your coordination meetings tomorrow, that would be perfectly fine. We will find an opportunity either in the margins or in the plenary itself.

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Mr Chairperson, may I take you back to Article 48 to make the following suggestion? Your text does not contemplate the addition of annexes, so I would suggest that we have to add the words “and of annexes” after the word “thereto”.

The CHAIRPERSON:

That is a very helpful suggestion. Thank you, Canada. We will amend the text accordingly. We will then have to say “Articles 40 and 41” because the annexes come under Article 41. I give the floor now to Dr Nikogosian, please.

Dr NIKOGOSIAN (Head, Convention Secretariat):

Thank you, Chairperson, and many thanks to the Parties that suggested the opportunity of having a meeting with the Convention Secretariat. We are very pleased to have that opportunity. I would like to ask, if possible, that we just identify the possibility of having such a meeting tomorrow if that is agreeable to the Parties. It will be an open-ended group: all those Parties that would like to share their views and give us guidance on this important paper relating to institutional and financial and other related arrangements. Any other guidance you may wish to give the Convention Secretariat for the intersessional period, particularly for Parts VI to X, would be very much appreciated as we have this opportunity to discuss this with you. Thank you.

The CHAIRPERSON:

Thank you very much, Dr Nikogosian. There you are: you have your forum to put your initial views forward and, of course, you can always provide extra views subsequently. I think that covers the operational way that we will tackle Articles 34 through 38 initially. The meeting of Geneva-based “Friends of the Chair” will look at those articles, in close cooperation with the Convention Secretariat, in order to provide the paper, which will then feed into the drafting of the protocol itself. For the remaining Parts that we have discussed this evening, we have a few square brackets and a few additions, but most of those are acceptable.

The only issue is that we will have to come back to the question of reservations, once we have agreed the text of the full protocol. However, the overwhelming feeling, I think, is that we do not want to have reservations if at all possible, but that we need to just have a final check at the end of the session. I think that takes us to the end of Parts VI to X.

2. ORGANIZATION OF WORK (continued)
ORGANISATION DES TRAVAUX (suite)

The CHAIRPERSON:

I have just got a couple of things that I would like to raise with you, unless anyone has any final questions on those Parts of the protocol. I see no flags. The work between the third and fourth sessions of the Intergovernmental Negotiating Body will be crucial because we have done a large amount of work so far this week. We have another day and a half to achieve more, but I think there are some thorny issues, some key issues, which have come up in the work of the committees, where it may be necessary to set up small drafting groups or small brainstorming groups in order to produce text that can then be put to the fourth session with a good chance of being adopted.

This is a process that was used during the Framework Convention sessions: small working groups, as I say, to draft on particular issues. These working groups comprised a representative from each Region or, in fact, four people from each Region, making 24 people in all. I am looking to set up a couple of groups, if you feel that they are needed, to look at specific technical issues and limited to, as I say, 24 to 30 people as a maximum. Otherwise, drafting becomes a very, very difficult issue. What we need to do is identify the technical areas where you feel that this approach would produce concrete results. Some of the points where difficulties have emerged in the committees include Article 5, on licensing; Article 7, Tracking and tracing; Article 12, Offences; but there may also be others. Article 12, of course, is a very sensitive area, where a technical group would probably not be the right place to do that sort of brainstorming and drafting; but it may be.

I have therefore asked the Bureau representatives to raise this issue with you tomorrow in the regional meetings to try and have your ideas on a couple of areas where working groups could be set up to do this type of drafting work. The working groups could meet here in Geneva; there would be full secretarial support and there would be interpretation. We could probably manage to fit in two meetings per working group in order to make some substantive progress that can then be fed back to the fourth session of the Intergovernmental Negotiating Body. This is because, as far as possible, I would like to get rid of as much of the textual drafting before the fourth session, so that we can really concentrate on getting rid of all the last brackets and problems that exist in the text. Would you, therefore, please reflect on which areas you think are suitable for this sort of work and feed back your ideas through your regional representatives so that we can consider them.

The other issue is that tomorrow we need to decide whether in the morning we go straight into a plenary session or whether we give the committees an extra half-day to tackle some of the outstanding areas in the draft of the protocol. I had an initial consultation with the Bureau and with the two Chairs of the committees this evening and the feeling there was that an extra half-day in the committees would be useful because there is now a momentum in the committees which should allow us to reach agreement on considerable areas of the text. Therefore, I suggest that we go into the committees, Committees A and B, tomorrow morning and then we come back into the plenary tomorrow afternoon with a view to having a plenary session in the evening as well. It will also give you more time to look at my papers on Articles 3, 4 and 7 so that we can use those as the basis for part of our discussions in the plenary meetings tomorrow. That is my outline of how we should go forward.

The committees will have to adopt their reports at some stage, but, of course, we can discuss how that can physically be done and how the Chairs report back to the plenary. The discussions that have taken place in the two committees so far will be reflected and made available overnight so that at the end of your meeting tomorrow morning in each committee you could formally propose the record of your committee meetings up to this evening. After that the two Chairs could give an oral report to the plenary on Sunday morning of the discussions that took place on Saturday morning. However, we do have some flexibility there. Dr Nikogosian could perhaps give us some more detail.

Dr NIKOGOSIAN (Head, Convention Secretariat):

Thank you, Mr Chairperson. I would simply confirm that the understanding is that tomorrow the committees will continue the work in the morning meetings. The papers for the committees tomorrow will be available in the morning in the form of the usual conference papers. The progress that will be

achieved during the morning meetings can only be reflected in written form for a Sunday morning meeting. The committees may wish to adopt their reports based on what they already have in the morning, and the additional oral report will cover the progress in the morning from the Chairs to the plenary meeting in the afternoon. Again, when it comes to the written reflection of the morning's work, it will be feasible to have it on Sunday morning in six languages as we normally produce the papers overnight. Thank you, Chairperson.

The CHAIRPERSON:

Thank you very much, Dr Nikogosian. Is that clear to everyone?

Dr AL-LAWATI (Oman):

Mr Chairperson, I was going to seek some clarification on your previous point of establishing the so-called Geneva-based groups with four members. May I, or should I intervene at a later time? I wanted to know whether you are referring to the intersessional work. Is that so? Does the definition "Geneva-based" mean that it will consist of people from the Missions? Or would you be calling on people from Parties in the six WHO Regions? Thank you.

The CHAIRPERSON:

Thank you very much. My idea was that for the technical working groups on, let us say, Article 5 we would have the four representatives of the Parties per WHO Region coming to those meetings. For the Geneva-based discussion on Parts VI to X, I would envisage just those people who are based here in Geneva. I think that there is a regional spread in the people in Geneva, so I am not limiting that to 24 or 30 people. Those who wanted to take part would be very able and welcome to do so. The Geneva-based Friends is a wider bunch of friends than the working-group Friends, if I can put it like that. Is that acceptable? Very good, thank you.

Those, then, are the issues that I want you to reflect on so that in your regional meetings tomorrow you can have a look and see what areas you think should be looked at by the technical working groups. Are there any final points that anyone would like to raise, or any clarifications before we conclude? No? Thank you very much for your patience and your contributions.

**The meeting rose at 20:30.
La séance est levée à 20h30.**

VERBATIM RECORDS OF PLENARY MEETINGS

COMPTES RENDUS IN EXTENSO DES SÉANCES PLÉNIÈRES

SEVENTH PLENARY MEETING

Saturday, 4 July 2009, at 17:10

Chairperson: Mr I. WALTON-GEORGE (European Community)

SEPTIÈME SÉANCE PLÉNIÈRE

Samedi 4 juillet 2009, 17h10

Président: M. I. WALTON-GEORGE (Communauté européenne)

1. ORGANIZATION OF WORK (continued) ORGANISATION DES TRAVAUX (suite)

The CHAIRPERSON:

Good afternoon, everyone, and welcome to our plenary meeting. You will have seen from the programme of work issued at the start of today that this plenary meeting will deal with three or four items. We shall first hear the reports of Committees A and B, after which we shall look at Articles 2, 3 and 4, then move on to Article 7. There is also a formal point to which I must return in relation to the discussion on Parts VI to X which we conducted yesterday evening.

I will start straight away with the reports from the committees: you will hear an oral report from the Chairs of the committees today and the formal reports will be adopted tomorrow at the beginning of the plenary. I am therefore going to ask the Chairs to give their oral reports, highlighting the activities of the committees and the progress made and to identify any points that should be looked at in the intersessional period between the third and fourth sessions of the Intergovernmental Negotiating Body.

2. REPORTS OF THE COMMITTEES RAPPORTS DES COMMISSIONS

The CHAIRPERSON:

I give the floor to Mr Shakerian, the Chair of Committee A.

Report of committee A
Rapport de la commission A

Mr SHAKERIAN (Islamic Republic of Iran) (Chair, Committee A):

Thank you, Mr Chairperson, for giving me the floor. Briefly, I would like to inform the plenary of the activities of Committee A. As you delegated to us in Committee A, we addressed Part III, covering Article 5 to Article 11, which were the more technical parts of the text. I shall go straight to the articles and report, article by article, on the activities of the Committee.

We had a constructive discussion on Article 5. It is one of the important articles of this text and, together with Article 7 and Article 6, might be considered to constitute the backbone of this protocol. On Article 5, based on the written submissions that I received, I provided the Committee with a revised text and we started work based on the revised text. After some consultations, we came to the understanding that we have to determine the main introductory text for that Article and if we come to an agreement on how we look at the implementation of Article 5 it would be much easier for us to apply that general introductory text to all the provisions of Article 5. Following several consultations on this issue, I proposed to the Committee to convene an informal drafting meeting on Article 5. They came up with some proposals because the main issue on Article 5 was whether for the conduct of several activities it should be obligatory to have a licence or whether it should be in the form of a “soft” law or a “soft” obligation or whether it should not encourage any kind of obligation at all.

In the end, a formula emerged in this informal setting and we used it in the first introductory text of Article 5. This formula appeared to receive general agreement but in the course of the discussion we received a proposal to simply keep your original text – that is paragraph 1 of Article 5 – as another option. It means, therefore, that we have two options for the introductory text for paragraph 1 of Article 5: one option, which enjoys the broad support of Committee A members, and at the same time your original proposal, based on the proposal that we recently received from one delegation. However, since our procedure is to work in a transparent and very democratic manner, we agreed that these two options should be in brackets.

Accordingly, we went through the whole text, but I think this was our main achievement in Committee A concerning Article 5. In any event, we have to decide on this paragraph and when we decide – I mean during the intersessional period – I think the main issue for the working group, if the working group is going to address Article 5, would be that it has to choose a path or an approach as to whether it should be obligatory or in a non-obligatory format. In that case, it would be quite helpful if you apply that.

Regarding Article 6, we adopted the same approach concerning customer identification and verification. There, too, I encouraged delegations to meet in an informal drafting group and they did so. I thank those who provided us with a new text. If you look at page 6 of the consolidated paper on Articles 5 to 11, with today’s date, they proposed text and also provided an introductory text. This text is very important: it indicates that the main issue was whether due diligence, which is the backbone of customer identification and verification, should be an obligation upon an introductory text or whether Parties can require persons – be they natural or legal – to do the same thing.

We came to some understanding and we were – and, I think, are – close to some solution. I am sure that if we work on the basis of the proposed text from the informal drafting group in the intersessional period we will not be very far from reaching agreement. The main issue, I think, in this area is whether we would like to have it in the form of obligation or a “soft” obligation and, simply for determining the niceties of the related issue we can put that in the hands of the Parties to do so, in accordance with national laws and regulations.

Another issue relating to Article 6, which I suppose needs further discussion, is the “blocked customer”. In general, we had the chance to address that issue; however we had no time to decide whether we would like to keep this idea or not; but I am sure that blocked customers and the way we would like to treat them nationally or internationally, and how a natural person or legal person is labelled as a blocked customer, would be an issue. The main issue is whether it is possible to do the same thing with other customers or whether it should stem from due process of law.

Concerning Article 7, given the importance and technicality of the issue of tracking and tracing, I proposed the formation of a working group, which was established with Dr Anibueze of Nigeria as

coordinator. The group had a fruitful discussion and they determined that the most important paragraph is paragraph 1 because it also serves as the introductory text for all of Article 7 and that if Parties can come to a conclusion about that paragraph, they would be in a position to apply it to all the provisions of Article 7.

After that, in order to speed up the work of Committee A, we did not have a chance to convene the Committee again, owing to the time limit. I appreciated your intervention on this issue and your provision of a new text, which you would be in a better position to explain, and I am sure that, since you are the most knowledgeable person on this issue, it would be helpful to the intersessional group if they started working on your new text.

We made quite good progress on Article 8. Perhaps the main issue is whether we would like to make record-keeping an obligation or keep it as a “soft” obligation. This issue needs to be further clarified in the text and, I think, if we decide on this matter Article 8 is very close to being ready. If you look at the text there are not so many brackets.

On Article 9, Security and other preventive measures, we made good progress. A great deal of text in brackets has been settled, but some issues in paragraphs 4 and 5 needed to be discussed. I again proposed the establishment of a drafting group and I thank the members of that drafting group. They proposed some ideas that might form the basis for the negotiations during the intersessional period. I am referring to Article 9, paragraphs 4 and 5.

Regarding Article 10, Sale by Internet, telecommunication or any other evolving technology, since from the beginning you personally provided us with two options – and those two options were somewhat different in nature – we came to the decision, based on the reaction I sensed from the discussion and with the agreement of the Parties participating in Committee A, that we cannot solve this problem because it is a matter of choice whether you would like to ban it or to regulate it by other ways and means. We decided simply to refer Article 10 back as you originally drafted it and that we would not start negotiation on Article 10.

We discussed and negotiated Article 11 and the main issue was – and there was a general understanding in the room – that free-trade areas are different from free zones, which was the term to be used, and that the two concepts – free zones and duty-free sales – should be separated. We then decided to have an article that covered only free zones and another for duty-free sales. I also established a small drafting group which worked hard on this very delicate issue and came up with a proposal on free zones, which appears on page 20 of the consolidated paper. Having separated them, the group proposed to have two separate articles, Article 11 and Article 11 *bis*, the latter possibly becoming Article 12 in the final version of this part of the protocol.

Still on Article 11, Free zones, we almost reached an agreement on free zones and considered that the word “intermingling” needed to be defined in the definition section. There are also some internal brackets which are not related specifically to free zones; they are the general controversial issues that apply to many parts of the text. At the same time, since the duty-free sales article has not been yet finalized, one regional group decided to reserve its views on the whole of Article 11 until they saw the paragraph on duty-free sales. It means that they do not have a problem with the free-zone Article, but since there are some links between the two, they wanted to see the whole text before expressing their views.

In the end, this informal drafting group met again in order to see whether, going the extra mile, they could find a solution on duty-free sales, but they thought that, owing to the time-limit, it was not possible to do so, also because the divergence of views on this issue is still deep. However, I believe that, with the cooperative atmosphere that prevailed, the Committee could have addressed it and that the only issue was the time-limit. In the end we also decided simply to recopy your original suggestion for Article 11 under Article 11 *bis* and put that in brackets and we deleted the other options in order to help the work of the intersessional working group. If you look at the entire text of Article 11 *bis*, there are some issues such as manufacturing equipment, raw materials and key inputs, which do not specifically concern Articles 5 to 11, but also exist in other articles, which must all be addressed together, rather than in any single article at a time when we are unaware of what is happening with those issues in other articles. I therefore suggest that these issues be addressed during the intersessional period, since they are elements that are repeated in many other articles.

In conclusion, while I have the floor I wish to thank all the participants in Committee A, in which the cooperative atmosphere and help from participants made for a situation in which there is

more understanding of the text, which we cleaned up as far as we were able. I also thank you, Mr Chairperson, for providing your text, which was the basis of our negotiations, which is now much clearer and much closer to achieving consensus. Thank you.

The CHAIRPERSON:

Thank you very much indeed, Mr Shakerian, and thanks to you personally for your leadership in Committee A and to all the participants in Committee A. The report shows that there has been a huge amount of hard work carried out on the articles in Part III and on some of them, in particular, you have made very substantial progress. I think you have given us a road map for the future work and, certainly, you have identified some areas where intersessional work could be helpful. I would like to open the floor for any questions or comments in the light of the report which Mr Shakerian has just given you. There are none. You are all very clear on what he has said? That is excellent. It falls to me to thank you again, Mr Shakerian.

(Applause/Aplaudissements)

Report of Committee B
Rapport de la commission B

The CHAIRPERSON:

Let us now move on to the report of Committee B. Mr Navarrete, I wonder if you would present for us the highlights of Committee B.

El Sr. NAVARRETE (Chile) (Presidente de la Comisión B):

Gracias, señor Presidente. Me tocó el honor de presidir la Comisión B, y como tal en primer lugar desearía agradecer a todos sus participantes la colaboración que prestaron para llevar a buen fin su cometido.

Esta Comisión tuvo a cargo la revisión de los artículos 12 a 33, correspondientes a las partes IV y V del Protocolo. Comenzamos la discusión con el artículo 12, que se ocupa del problema de los delitos. Este es un tema muy complejo ya que en él se manifiestan las diferencias del tipo de legislaciones o sistemas jurídicos, por ejemplo, la *common law*, el sistema romano, el sistema germánico u otros, que tienen distintas concepciones de lo que es un delito. En consecuencia, hubo arduos y largos debates sobre qué se debía entender por delito y por delito grave. Después de muchas discusiones se avanzó en ese tema puesto que se llegó a un cierto consenso sobre lo que se iba a entender por delito. El punto clave fue simplemente la palabra «grave», el concepto de «grave», ya que de acuerdo con su legislación y su sistema el Grupo Regional para África necesitaba incluir ese término. Esta situación era distinta para el resto de los comisionados, que podían aceptar el texto sin ese término calificativo. Por el contrario, para los Estados Partes de la Región de África el concepto de delito grave era muy importante para iniciar o desencadenar la cooperación internacional. Por lo tanto, este asunto terminológico, no menor, nos llevó en definitiva a establecer estas dos posiciones y plasmarlas en el texto con las dos alternativas. Esto no obsta que, posteriormente, entre esta reunión y la próxima, se pueda afinar este concepto tomando en cuenta, como dije, todos los tipos de legislación o sistemas jurídicos que se ocupan de este problema, ya que es un tema de mucha complejidad.

Además, avanzamos en la cuestión de las conductas, puesto que en principio se planteó mantener la lista de conductas que presentaba el Presidente en el artículo 12 y, posteriormente, ver la forma de que cada país la ajustara a su legislación de acuerdo a ciertos parámetros, entendiendo que debían ser consideradas como delito las conductas de mayor relevancia. Por ejemplo, se comentó que cuando estas conductas fueran realizadas por organizaciones criminales, en un contexto transfronterizo y a gran escala comercial, podíamos hablar de una actitud criminal relevante que debía ser sancionada por las legislaciones de los distintos países. Discutimos, por ejemplo, el concepto de escala comercial, que se entendió que era un concepto referido a volumen, básicamente a operaciones de entidad, puesto que la idea de este proyecto es combatir ese tipo de conductas, las más relevantes.

El artículo 12 es, tal como apunté, muy rico en consecuencias jurídicas. Tras una ardua discusión me parece que avanzamos bastante; esto está reflejado en el texto, en los consensos que logramos. Quedan algunas partes que deben terminarse de decidir en el futuro una vez que se reúnan los comités especializados y en la cuarta reunión del Órgano de Negociación Intergubernamental.

Después, analizamos el artículo 13, sobre la responsabilidad de personas jurídicas. En esa materia hubo bastante consenso, pues se llegó a un acuerdo general de mantener el texto salvo que finalmente se dejó entre corchetes por la opinión de un comisionado. Después pasamos al artículo 14, relativo a las sanciones. Aquí también se trajo a colación qué se entendía por conducta grave y discutimos el tema de las penas que se podían aplicar, y nuevamente surgió la cuestión de los delitos, puesto que esto es una consecuencia directa del tema ya tratado en el artículo 12, y se mantuvo esta diferencia que ya venía de dicho artículo entre quienes conceptualizaban o requerían ciertos elementos para que se considerara que un delito era grave y aquellos que estimaban que debería haber otros parámetros para estimar qué era o no era grave.

Después revisamos el artículo 16, relativo a la incautación y decomiso de bienes, en que se hizo la distinción entre ambas intervenciones. La primera de ellas correspondería a una actuación administrativa, mientras que la segunda sería una actuación judicial respecto a los bienes. Aquí también era pertinente lo que ya se había tratado en el artículo 12.

Se analizaron las distintas técnicas o prácticas operativas para llevar a cabo la incautación y el decomiso, y se observó que lo importante era establecer ciertas reglas básicas, puesto que en esta materia hay muchas técnicas para llevar a cabo la incautación y decomiso por los distintos órganos de las administraciones de cada país. Hubo un análisis muy rico de las distintas prácticas en uso y se estimó también la posibilidad de que cada país, dentro del marco de las normas del Convenio, pudiera adoptar sus medios especiales al respecto, respetando la soberanía nacional.

Un tema muy vinculado con esta cuestión es el relativo a los pagos relacionados con incautaciones y la destrucción de los bienes decomisados. Todo esto fue tratado en forma conjunta ya que a grandes rasgos apunta a un mismo tema. También vimos las técnicas especiales de investigación, que es un tema muy práctico, muy técnico, de cómo llevar a cabo las distintas investigaciones. Aquí se trataba de buscar una cierta uniformidad, sobre todo tomando en cuenta que existen países que tienen menos desarrollo en estas técnicas, y la idea justamente era buscar cómo se les puede dar un apoyo de los países más desarrollados para permitir aplicar mejor estas técnicas de investigación, que están muy relacionadas también con la cuestión de la información y la cooperación, que veremos más adelante.

Por consiguiente, yo diría que el eje principal de la discusión de estos primeros artículos de la parte IV giró en torno al concepto de delito, a qué se entendía por delito y por delito grave para unos y otros países, entendiendo la gravedad en función de los diversos parámetros de cada legislación. Ahí hubo, como ya dije, dos posiciones. Esta cuestión creo que queda pendiente de afinar, aunque se avanzó bastante en ciertos conceptos básicos que están reflejados en el texto. Sin embargo; es necesario que más adelante, en un trabajo tal vez de comisiones especiales, las que se van a formar entre estas dos reuniones, y en la cuarta reunión del Órgano de Negociación Intergubernamental, se termine por afirmar un concepto definitivo. Hay que reconocer que el tema es muy espinoso, debido a que detrás de este concepto de delito y de infracciones civiles y administrativas están los sistemas jurídicos, que contienen distintas legislaciones y que muchas veces son difíciles de compatibilizar. En esta parte IV creo que hubo un gran esfuerzo de los comisionados por lograr acercar posiciones y prácticamente alcanzamos un consenso casi absoluto, salvo por esta palabra «grave» que tendrá que ser resuelta más adelante.

La Comisión B continuó el análisis de los artículos contenidos en la parte V, relativa a la cooperación internacional. Aquí partimos de un punto claro: todos los comisionados estaban de acuerdo en que la cooperación era clave. Efectivamente, es un aspecto fundamental, especialmente la cooperación de los países más desarrollados con los menos desarrollados. En este punto abordamos específicamente los tipos de intercambio de información. En primer lugar, se trató el tema del intercambio de información de datos estadísticos, en el que en general hubo bastante consenso, salvo algún pequeño corchete que se incluyó pero que no apuntaba a ningún aspecto con demasiada importancia sino simplemente a una cuestión terminológica. También se examinó el intercambio de información relativo a los datos operacionales, y ahí nuevamente se hizo hincapié en la necesidad de respetar la voluntad de cada nación y cada legislación en la forma de llegar a este intercambio.

Muchas veces este es un tema bastante operativo. En esta materia se consultó a la Organización Mundial de Aduanas por lo que se refiere a la conformación de las bases de datos, puesto que las aduanas tienen una base de datos muy pertinentes que pueden ser muy útiles en todo este intercambio de información, y su posterior ingreso a las bases de datos va a permitir intercambiar una información de carácter relevante y oportuna.

En esta parte dedicada a la cooperación internacional se discutió también la cuestión de la protección de datos. Se señaló que dentro del intercambio de información había diferentes tipos de intercambios: algunos apuntaban básicamente a los temas administrativos o datos generales, que, a mi parecer, de acuerdo a lo que reveló la discusión, no presentan mayores problemas. Sí presentaban problemas, por ejemplo, los intercambios de información relativos a delitos cometidos contra personas, o, como se planteaba en algún artículo, a personas que eran sospechosas de participar en actos ilícitos. Ahí hubo un cierto consenso de que a veces es delicado compartir información sobre aquellos que aparecen como sospechosos, por el tema de la protección de datos básicos y personales, de modo que se hizo la reserva de que en esta materia era necesario revisar toda la legislación relativa a la protección de datos, porque se trata de un tema muy importante en el que cada país muchas veces mantiene una posición bastante definida y clara en lo tocante a la protección de datos de sus nacionales. Como justamente lo que buscamos aquí es la cooperación internacional y el intercambio de información, es importante fijar la norma básica en esta materia, a nivel internacional, para poder establecer un marco básico de cooperación. Por esto se planteó que ese tema había que examinarlo con detalle de aquí a la cuarta reunión del Órgano de Negociación Intergubernamental, para poder establecer una base que pudiera ser aceptada por todos los países respetando sus legislaciones nacionales.

Después nos ocupamos del artículo 24, que hace referencia a la asistencia y cooperación respecto a la investigación de actos delictivos y enjuiciamiento. Ahí también trajimos a colación los problemas indicados anteriormente y se insistió en que siempre había que tomar en cuenta el respeto de las normativas internas, que muchas veces son muy celosas en la protección de la información.

También analizamos el artículo 27, relativo a las investigaciones conjuntas, y hubo un gran consenso respecto de que había que trabajar estrechamente para ir mejorando los sistemas de colaboración entre los distintos países y de que debía hacerse todo el esfuerzo posible por lograr esta cooperación. Hubo algún momento en que la discusión se centró en que había que cuidar los resultados, porque una cosa era cooperar y otra cosa eran los resultados efectivos. Pero en suma, había una voluntad general de aceptar el principio de la cooperación para seguir adelante en las investigaciones conjuntas, siempre respetando la soberanía, que es un aspecto muy importante para los países. Hay que mantener el respeto a la soberanía en estas investigaciones conjuntas, que muchas veces pueden implicar, eventualmente, que agentes de una administración entren en otro país. Se discutió pues el tema de la soberanía, que siempre tenía que estar protegida, porque muchos países son muy celosos de que los actores de la investigación sean los del propio país, de la administración respectiva. Se hizo mucho hincapié en este extremo y llegamos al consenso en varios artículos de esta parte del Protocolo.

El artículo 28, sobre cooperación en materia de cumplimiento de la ley, obtuvo un consenso general. Se examinó con mucha prontitud y hubo unanimidad de todos los comisionados en aceptarlo tal cual está. Después, pasamos al artículo 29, en que también hubo bastante consenso, salvo en lo relativo al párrafo *d*), sobre información relativa a personas que hubieran cometido o participado en alguno de los delitos enumerados en el artículo 12 o se sospechara que fueran a hacerlo. En relación a lo que ya comentamos sobre la protección de datos personales, ahí hubo una cierta aprensión de algunos comisionados en cuanto a que este artículo en su párrafo *d*) presentaba dificultades. Algún sector de los comisionados entendió que esto ya estaba incluido en el artículo 28, que se había aprobado con consenso en su forma original propuesta por el Presidente. En términos generales, hubo consenso salvo en el párrafo mencionado que presentó este problema, pues para algunos comisionados ya estaba incluido en el artículo 28, por lo que no habría problema en eliminarlo. Sin embargo, otro sector estimaba que el párrafo *d*) debía mantenerse porque era importante y le daba más fuerza al artículo respectivo.

También tratamos el tema de la asistencia judicial recíproca, correspondiente al artículo 30, y por último examinamos en forma conjunta los artículos 31, 32 y 33, relativos a la extradición. La extradición es un tema jurídicamente muy complejo, cosa que saben especialmente los abogados, muy

numerosos en esta sala, junto con los médicos y otros profesionales. Es una cuestión respecto de la cual se ha escrito mucho por muchos tratadistas y por muchos autores. Por lo tanto, aquí analizamos estos tres artículos en términos generales, puesto que no cabe duda de que para examinar a fondo la extradición se requiere un comité técnico más especializado ya que es un tema muy complejo técnicamente que requiere un mayor desarrollo, especialmente porque existen tratados internacionales relativos a esta materia.

Muchos comisionados manifestaron su preocupación respecto de si aquí íbamos a seguir el camino de la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional, en relación a las normas que ésta incluye sobre la extradición, o íbamos a seguir un camino distinto. Es importante tomar una decisión general en cuanto a qué camino se sigue porque, sea un camino u otro, los efectos serán distintos y la redacción misma del texto será distinta. Esto está también muy ligado a lo que ya dijimos respecto al artículo 12, o sea, lo que se entiende por delito grave o importante. A este respecto, me parece que es importante trabajar posteriormente en la comisión respectiva que se cree al efecto, previa a la cuarta reunión del Órgano de Negociación Intergubernamental, y además en la misma reunión en particular, el tema de la extradición, que es muy importante. Es un tema también muy espinoso, como ya dije, y los comisionados manifestaron su preocupación especialmente en cuanto a decidir qué vía o qué alternativa íbamos a seguir respecto a la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional u otra vía particular. Se trata de una cuestión importante que es como la consecuencia final de todo lo anterior, ya que al final si entendemos ciertos conceptos como delito o infracción, etc., todo esto en definitiva, en el tema de la cooperación internacional termina en la extradición, puesto que muchas veces los países van a requerir la extradición, por ejemplo, de un sujeto respecto de otro Estado porque está siendo investigado por un delito o ha sido condenado, y ahí van a tener que operar estos mecanismos multilaterales. Así que me parece que la extradición es una materia de la máxima importancia y en consecuencia debe quedar muy clara la normativa que lo rige. Merece un trabajo posterior más allá de los consensos alcanzados en esta ocasión: un trabajo en detalle, porque es una materia muy especial y muy compleja.

A grandes rasgos, y sin perjuicio de que mañana el texto de las dos partes IV y V esté fusionado, diría que, en lo que tratamos en la Comisión B, en bastantes artículos alcanzamos el consenso, lo que me parece importante porque logramos un avance. Asimismo, en los artículos que no logramos consenso, hubo igualmente un avance importante. Establecimos algunas posiciones claras que permiten fijar las reglas del juego para los próximos pasos, y de alguna forma acotamos y acercamos el camino para llegar al destino final. Hay textos completos, como el artículo 28, que fueron aprobados en forma íntegra y otros que tuvieron pequeñas salvedades que muchas veces no apuntan a lo relevante; pues en lo relevante hubo consenso.

Los grandes temas que quedan por afinar son el de los delitos - cómo entendemos lo que es un delito importante a estos efectos - y el concepto de extradición, que están ligados obviamente, porque definir qué entendemos por delito y cuáles son los requisitos para un delito de carácter importante o grave, según sea la terminología o una infracción grave, será muy relevante para llevar a un concepto posterior de extradición y poder tomar una posición única de todos los comisionados.

Esto es la síntesis del trabajo efectuado a lo largo de las reuniones de la Comisión B. Reitero mi agradecimiento a todos los integrantes de dicha Comisión, que manifestaron gran generosidad y permitieron llegar a muchos consensos. También deseo agradecer la gran ayuda que nos dio la Secretaría con todos sus funcionarios, el Asesor Jurídico y el Asesor de la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional, que prestó un gran apoyo y aportó claridad en algunas discusiones bastante técnicas, así como la Representante de la Organización Mundial de Aduanas, que también fue un gran aporte para lograr dilucidar algunos aspectos complejos durante la discusión. En definitiva, fue un trabajo en equipo que nos hizo acercarnos más a la meta final. Obviamente quedan algunos puntos por afinar, pero me parece que en general logramos el objetivo que se pretendía, pues revisamos todos los artículos que nos correspondían. En algunos logramos el consenso, en otros avanzamos para alcanzarlo, y en otros quedamos a punto del consenso. Lo importante fue la voluntad y la generosidad de todos los integrantes de la Comisión B, a los cuales estoy especialmente agradecido. Muchas gracias.

(Applause/Applaudissements)

The CHAIRPERSON:

Thank you very much, Mr Navarrete, and in my turn I would like to thank you for your excellent direction of this Committee and to all the participants who made your life reasonably comfortable in some areas. There were some thorny issues that you had to deal with that you have identified: the question of offences, serious offences, extradition and data protection, and we shall have to have a look at those. But are there any comments or questions that you would like to put forward in the light of Mr Navarrete's explanations and report?

I think not. I think, Mr Navarrete, that you have been very clear on that. Thank you very much and I am very grateful to you for keeping the ball rolling on this matter and for the consensus that has been reached. Both committees, I think, have done some excellent work and I believe we now have a basis that will serve to clean up the text.

What I would like to do before we pass on from these two reports is to try and highlight a few of the areas where we think intersessional work might be helpful. I will not ask for your firm decisions at this stage. But from what Mr Shakerian and Mr Navarrete have said, it looks as though Articles 5, 6 and 7 make a package because of the way they link up; that could be one area for an intersessional working group to look at. Offences and serious offences linked to extradition, or maybe separately, could be another. Data protection may be a little lower down the scale. But are there any other areas which you have identified in your own minds as perhaps being suitable for small intersessional groups to address? You can feel free to simply put forward a couple of ideas at this stage, but we shall come back to it at a later point in the agenda as well.

If you have something that you think is really suitable for intersessional work, let us know later on. However, I would like you to join me in thanking both Chairs for the excellent job that they have done.

(Applause/Applaudissements)

3. DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS (continued)
ÉLABORATION ET NÉGOCIATION D'UN PROTOCOLE SUR LE COMMERCE ILLICITE DES PRODUITS DU TABAC (suite)

The CHAIRPERSON:

Very well. Let us pass on then to the next item on our agenda and this is the treatment of Articles 2, 3 and 4 of the draft protocol, but in particular Articles 3 and 4. You will have seen from my suggestions paper on Articles 3 and 4, of today's date, entitled "Chair's suggestions in relation to the debate and written proposals on Articles 3 and 4", that I have been reflecting on some of the issues that came up during our debate. The paper in question reads:

In the debate on Articles 3 and 4 of the draft Protocol, Parties expressed very different views about whether there should be specific mention in these Articles of the products (tobacco, cigarettes, other tobacco products, manufacturing equipment, etc) which are dealt with by the Protocol in later Articles. Reflecting on this, the Chair feels that it is not in fact necessary to make specific reference to the products in Articles 3 and 4, since the Parties will decide on the substantive provisions to apply to the various products in later Parts of the text.

For this reason, and to support the discussions on Articles 3 and 4, the Chair would like to suggest that:

- Article 3 be drafted as covering the "Objective" of the Protocol (in line with the Approach taken in the WHO FCTC). Two possible versions are attached for consideration.
- Article 4 be redrafted so that it refers to "goods covered by the provisions of this Protocol", or a similar phrase, rather than to tobacco, tobacco products, etc. A possible clean

draft of Article 4, adopting this approach and attempting to find middle ground among the various suggestions of the Parties, is therefore attached for consideration.

PART I: INTRODUCTION

Article 3

Objective

The objective of this Protocol is to eliminate all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO Framework Convention on Tobacco Control.

or

The objective of this Protocol is to provide measures at the national and international levels to prevent, deter, detect, investigate and eliminate illicit trade in the goods covered by the provisions of this Protocol.

PART II: GENERAL OBLIGATIONS

Article 4

General obligations

In addition to the provisions of Article 5 of the WHO Framework Convention on Tobacco Control, Parties shall:

adopt and implement effective measures to control or regulate the supply chain of goods covered by the provisions of this Protocol in order to prevent, deter, detect, investigate and prosecute illicit trade in such goods and shall cooperate with one another to this end;

take any necessary measures in accordance with their national law to increase the effectiveness of their competent authorities and services, including customs and police responsible for preventing, deterring, detecting, investigating, prosecuting and eliminating all forms of illicit trade in goods covered by this Protocol;

adopt effective measures for facilitating or obtaining technical assistance and financial support, capacity building and international cooperation in order to achieve the objectives of this Protocol and ensure the availability to, and secure exchange with, the competent authorities of information to be exchanged under this Protocol;

cooperate closely with one another, consistent with their respective domestic legal and administrative systems, in order to enhance the effectiveness of law enforcement action to combat the offences covered by this Protocol;

cooperate and communicate, as appropriate, with relevant regional and international intergovernmental organizations in the secure* exchange of information covered by this Protocol in order to promote the effective implementation of this Protocol; and

within the means and resources at their disposal, cooperate to raise any necessary financial resources for the effective implementation of this Protocol through bilateral and multilateral funding mechanisms.

*NB: A secure exchange of information between two parties is resistant to interception and tampering (falsification). In other words, the information exchanged between the two parties cannot be read or modified by a third party.

We had a long and fairly complex discussion of Articles 3 and 4 in particular on Monday when we were meeting in plenary. It was complex because the discussion brought out different points of view among the Parties on matters of substance about the products which should be covered within the protocol. In other words, which products should the protocol apply to? We tried several formulations during the meeting on Monday to try and meet as many of the wishes of the Parties as we could, but we did not achieve consensus on any one particular proposal.

When we looked at Article 3, we even considered deleting the whole article because we thought that it was not absolutely necessary to define the scope of the protocol or to have a particular objective for the protocol. That is still an option that is available to us because we also agreed that if we deleted the Article it would not prejudice any decision to be taken on the coverage of the substantive articles that come later in the protocol.

Another option that we looked at was changing the Article from being one that described the scope of the protocol to one that described the objective. I took account of those discussions when I drafted the suggestions paper which you have before you, and the approach that I have suggested tries to take account of your ideas, but it is designed to avoid the need to discuss the precise coverage of the protocol. We thought that it was not absolutely necessary to define the scope of the protocol or to have a particular objective for the protocol. That is still an option that is available to us because we also agreed that if we deleted the article it would not prejudice any decision to be taken on the coverage of the substantive articles which come later in the protocol.

My idea is that, in Article 3, we would simply describe, in general terms, the objective of the protocol and how we propose to achieve this objective. If you look back to the Framework Convention, you will see that in that Convention there was an Article dealing with the objective of the Convention. It did not try to define the scope of the Convention in that particular Article.

On the basis of that approach, I looked for two options for Article 3, both of which would be to take the route of defining an objective. I am not discarding the other possibilities, so please do not feel that I have thrown out everything else; this is simply an attempt to try to stimulate some debate on this approach and to see if it might work to produce consensus.

The two options that I have included in the suggestions paper include one that was already in the earlier paper of today's date entitled "Revised draft text reflecting the proposals of the Plenary on Articles 2, 3 and 4". That is the option that defines the objective as the elimination of all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the Framework Convention. One of the benefits of that type of description is that it uses the wording of the title of the protocol itself and refers specifically to the context in which we are negotiating it – in other words, Article 15.

The second option that I have included, which I have also termed as describing the objective of the protocol, is to go into a little more detail by saying that the objective of the protocol is to provide measures at national and international level to achieve certain objectives. And I have tried to flesh out those objectives to refer to prevention, deterrence, detection, investigation and elimination of illicit trade. In any event, what I have specifically tried to do is to avoid a debate on the coverage of the products to which this objective would apply. And I have done that, or I have tried to do that, by using a very generic term. This means that the objective would apply to the goods covered by the provisions of this protocol. It does not say what those goods are in Article 3 because we do not need to, as long as we refer to the goods that are covered by the protocol.

My thinking is that by referring to a generic term – to the goods covered by this protocol – it preserves the Parties' negotiating position on the substance of the following articles: Article 5 on licensing, tracking and tracing and so on. It may then allow us to reach agreement on Article 3 without having to worry about specific terms like tobacco, tobacco products, cigarettes and so on, because that debate will have to take place when we come to the subsequent articles of the protocol.

In relation to Article 4, I have tried to adopt the same approach by using a generic description of the coverage of the protocol because Article 4 is describing the general obligations which the Parties will assume. In order to achieve that objective of using a generic description, I have used particular phrases; for example, in paragraphs 1 and 2, I have used the phrase "the supply chain of goods covered by the provisions of this Protocol"; in paragraph 2, I have used the phrase "illicit trade in goods covered by this Protocol". When I looked at paragraph 3, I thought the same approach was possible and therefore I said "information to be exchanged under this Protocol". It does not say "exchanged in

relation to tobacco or tobacco products". It simply refers to information to be exchanged under the protocol. And then in paragraphs 4 and 5 I have kept the original phrases, which are already generic, and in paragraph 4 it says: "offences covered by this Protocol"; it does not try to say what those offences are. And in paragraph 5 it says "information covered by this Protocol". So, once again, it does not try to say what the information is.

A side benefit of this approach is that it achieves consistency in all the paragraphs of Article 4. We look to a generic description which then avoids us having to have a discussion on the particular items that are going to be covered in the protocol. In putting forward my suggestions, I tried to take account of the discussions that we had on Monday and the proposals on the other aspects of Article 4 and I have taken the liberty of trying to put forward a clean text of Article 4 to provide, I hope, a basis for consensus. By taking such an approach, I appreciate that the Parties will not see, in this clean text, the precise wording for each and every proposal that they made when we were looking at the drafting. I clearly cannot do that because some of the proposals do not fit together with each other very well. But I hope that when you look at this clean text, you will at least see reflected the concepts that you were trying to put forward during the debate on Monday and that you might, therefore, be able to accept this as a compromise.

What I have not included is the proposal for the new paragraph 7, which again came up on Monday. The reason for that is not because I object to the paragraph as such, but because it refers to specific products again, tax-free products and so on, and I do not believe it is necessary to enter into that part of the debate in Article 4 when we are talking about general provisions. My suggestion also did not take account of the proposal made by Brazil in the plenary session yesterday evening because by then my paper was significantly advanced and it was simply not possible to take it into account in producing the paper. However, I had a look at the proposal and my initial feeling is that since it is expressing a general obligation, this is something which we could perhaps well take on board as part of general obligations under Article 4, because it does not prejudice in any way the debate we will have on the specific drafting of the articles later on in the protocol.

But, of course, that is a matter for the Parties to decide; my opinion is not important on that, but this is simply to give you my initial reaction. This is, therefore, the background to the suggestions that I have made in my document. I hope that it would provide us with a way of going forward on Articles 3 and 4, and I am very much interested in hearing your views on this approach, after which I would like to examine the text of Articles 3 and 4 to see if we can reach consensus. I do not think we are very far away from consensus; it is just a matter of fine tuning.

After we have looked at Articles 3 and 4, I would like to turn briefly back to Article 2; but I think that there too on Monday evening we reached a broad consensus on what might be a possible way of dealing with this; so I would only touch on that fairly briefly. When we have finished the debates on Articles 2, 3 and 4, I would then go to my second paper, which are my suggestions in relation to Article 7, and we would have a debate on that as well. But I do want to emphasize something very strongly: these are simply my suggestions to you as a contribution to the debate and an idea as to how we might reach a consensus on Articles 3 and 4. The text is still yours and you are the ones who are able to decide whether the text is acceptable or not, whether we need to change it, whether we need to polish it and so on. But I do believe that it is not necessary to enter into the debate on the specific items of products in Articles 3 and 4 because these are general articles and we still reserve our right to discuss those in the remainder of the articles of the protocol.

I would therefore like to open the floor first of all to hear any general comments on the approach that I have adopted. Obviously, if you agree that this is a reasonable approach, then you do not need to take the floor and we shall proceed to the text on the screen and we can see if we agree on the provisions. But I am very happy to take your general comments first and then we shall go into detail. I see that Colombia has asked for the floor.

El Sr. TORRES MARTIN (Colombia):

Señor Presidente, permítame felicitarlo por el excelente trabajo que hizo con este texto que está buscando una concertación entre todos los delegados. Permítame asimismo sugerirle, a efectos de ser más general, no definir «productos y materiales», sino «mercancías», tal como lo establece la Organización Mundial de Aduanas, o «bienes», cualquiera de los dos términos, los cuales engloban

todo lo que queramos decir. Luego, en el desarrollo del Protocolo, ya se especificará qué es lo que consideramos como «mercancías» o como «bienes». Gracias.

The CHAIRPERSON:

Thank you very much, Colombia, for your support for the general approach. At the moment, therefore, we are just seeing whether we use the word “goods” or the word “merchandise”, but the approach is acceptable and I am grateful for your encouragement. Can everyone else accept the approach that is being adopted? If so, we shall then look at the specific wording.

Dr AL-LAWATI (Oman):

Mr Chairperson, obviously we support your approach, but I just wondered whether the initial Brazilian suggestion was that they just would like to remove tobacco and manufacturing equipment and key inputs from this Article, at which point you made them a special offer to the effect that if they retained tobacco and manufacturing equipment in the rest of the protocol you would be prepared to delete it here. Was that not on the table? Or is it a new approach and nullifies what was offered initially? Thank you.

The CHAIRPERSON:

Thank you, Oman. I think there might be a slight misunderstanding of what I suggested on Monday. What I said was that we could delete Article 3 concerning scope or objectives, provided that all delegations agreed that in subsequent articles they would not argue that it was legally impossible to include items such as tobacco, manufacturing equipment and so on. In other words, by removing Article 3, it would not prejudice the discussion in subsequent articles about the scope of the protocol. And so my approach now is simply to avoid the argument about precise products in Articles 3 and 4 because we will still have to have that debate when we come to Articles 5, 6, 7 and so on. I think that was the offer that I made on Monday evening.

So, if everybody is happy with the general approach, let us put the text up on the screen. If we could start with the text of Article 3 please. You have this text in front of you, and you will see there the two objectives that I have suggested. The first one is simply to talk about illicit trade in tobacco products, while the second one is to go into a little more detail when we say that we want to have measures at national and international levels to prevent deter, detect and so on. I refer to the generic term “goods” in the second objective which may, in fact, be preferable because, if we refer to tobacco products in the first one, it could open the debate again, even though tobacco products are quite clearly stipulated in the title of the protocol.

Ms HEFFORD (Australia):

Mr Chairperson, Australia is very comfortable with the proposed approach you have outlined. In relation to the text for Article 3, Objective, our strong preference is for a very simple, strong, clear statement that is not ambiguous in any way. I would like to advocate that we go with the first option but stop after the word “products” and simply say “the objective of this protocol is to eliminate all forms of illicit trade in tobacco products”. I think that is a very clear, unambiguous statement. I take on board your final comments about the reference to the word “goods” If it was important to other colleagues in the room, we would be able to live with “the objective of this protocol is to eliminate all forms of illicit trade in tobacco goods”. Thank you.

Mr OOKA (Japan):

Mr Chairperson, we support the view expressed by Australia. We would like to support the first option of this Article. Thank you.

Dr ANIBUEZE (Nigeria):

Mr Chairperson, I want to thank you for this approach, which is quite acceptable. But the issue is that, while we are avoiding opening up this issue, we cannot move on this protocol without this particular Article. The issue of scope which you are trying to avoid, and which will appear in the rest of the articles, is extremely important to us and our Region and “tobacco products” does not satisfy our concerns. We would like you, in the process of seeking a way forward, to see what we can do to take care of our concerns, which are that it is not just the products, but that some of the inputs and the machinery used pose a problem for us and we would like you to consider that and see whether, in a spirit of negotiation, it would be acceptable to all of us. Thank you.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, allow me to express my appreciation for your proposal and for your efforts. Brazil believes that the option you have given us clarifies the issue and helps us to solve the problem we had during the first two days of this session. Brazil believes that the proposal just made by Australia is totally acceptable and is in line with what was decided by the Parties when we decided to draft, sign and ratify the Framework Convention.

I again remind my colleagues here that Article 15 of the Framework Convention talks about illicit trade in tobacco products, and Brazil has been very flexible during the negotiations, as every delegation here in this room can attest. We have never opposed discussing the inclusion of tobacco and machinery in the majority of the parts of this protocol. All we want is for the objective to be coherent with what is stated in Article 15. I have therefore taken the floor to support your proposal, to support the amendment just made by Australia, and again to extend my compliments to you for your progress on this text. Thank you very much.

La Sra. ROA RODRÍGUEZ (Panamá):

Con la finalidad de lograr la articulación del concepto de salud pública dentro de lo que persigue el presente Protocolo, sugeriría que en los artículos 3 y 15 del Convenio Marco se pudiera incorporar este objetivo del Protocolo: «eliminar todas las formas de comercio ilícito de productos de tabaco», y terminar la frase en ese punto.

The CHAIRPERSON:

Thank you, Panama, I am not sure I fully understood your proposal. So do you or do you not specifically want a reference to health in Article 3? I am sorry but could you just clarify that for me?

La Sra. ROA RODRÍGUEZ (Panamá):

No, en realidad lo que quiero que se haga explícito es el artículo 3 del Convenio Marco, que habla de los objetivos del propio Convenio, como elemento referente de que en realidad el artículo 15 es un medio para lograr tales objetivos. Y aquí sugería al compañero de Colombia que se agregaran las palabras «productos y materiales».

The CHAIRPERSON:

Thank you very much, Panama. I am certainly not going to go down the road of expanding the products. I think we need to keep it as close as we can to the texts we have here. Australia has talked about “tobacco goods”, I think we can probably polish the language a little there, but let us see what others say first.

Le Dr MOUSSA (Niger):

Merci, Monsieur le Président. La première formulation nous semble en tout cas la meilleure surtout si on pouvait aller au-delà des produits du tabac et inclure aussi tout ce qui a un rapport avec le matériel de production de produits de tabac ou de fabrication de produits du tabac. Merci.

Dr ABOU AL ZAHAB (Syrian Arab Republic): ()

"Goods"

"Goods"

"Goods"

"Goods"

The CHAIRPERSON:

Thank you very much. My understanding in the English text is that goods are normally opposed to services, so manufacturing equipment is certainly goods. We talk about investment goods for example, which include machinery, fixed machinery and so on. Certainly, in English, "goods" covers everything that is solid and tangible. It may be that we need to find the right term in Arabic to reflect that same concept, but in English it is certainly a wide term.

Mr PADILLA (Philippines):

We support the Australian amendment to your text, in the sense that the objective of this protocol is to eliminate all forms of illicit trade in tobacco products. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much. I think Australia proposed "tobacco goods" if I recall correctly. Australia, could you please clarify?

Ms HEFFORD (Australia):

Mr Chairperson, I personally prefer "tobacco products", but I am willing to concede to "tobacco goods" if that more encompassing term enables us to move forward together.

The CHAIRPERSON:

Thank you, Australia.

El Sr. NAVARRETE (Chile):

Gracias, señor Presidente. En primer lugar, felicitamos la formulación que ha hecho, puesto que permite superar los problemas del texto anterior. Así, aceptamos plenamente la primera formulación con la enmienda indicada por Australia, y apoyamos el nuevo texto.

Mr AHMADI (Islamic Republic of Iran):

Mr Chairperson, first of all, allow me to thank you for the efforts you have made, the very good approach you suggested and the very good options that you put forward for the delegations to consider. In the view of our delegation, the term “goods” referred to in the second option is a good one and we need it to be somehow reflected and inserted in the option. But the first option, in our view, is the best one and therefore we propose to take the latter part of the second option, starting from “the goods” and insert it in the first paragraph after “trade” It would then read: “trade in the goods covered by the provisions of this protocol”. Thank you.

The CHAIRPERSON:

Thank you very much, Islamic Republic of Iran. I think that is a very helpful suggestion.

Mrs ROBINSON (Seychelles):

In the first suggestion, I have understood that tobacco goods will cover the raw tobacco, tobacco products and also the equipment used in the production of tobacco. I shall therefore go along with the proposal made by Australia to the effect that the objective of this protocol is to eliminate all forms of illicit tobacco and tobacco goods, instead of tobacco products and stop after “tobacco goods”. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much, Seychelles. Could I just, as an English drafter, suggest something here? Because “tobacco goods” is not something with which I feel comfortable in the English language. Would it be possible to use the amended version, saying “the objective of this protocol is to eliminate all forms of illicit trade in the goods covered by the provisions of this protocol”? That is pretty ugly as well, but at least it is clear and I think that it might give us the basis for an agreement. But let us continue with the requests for the floor.

Dr VINIT (Papua New Guinea):

Mr Chairperson, I would like to propose that “goods” can be fine as well, because it is quite broad, as you stated, and, second, I would also like to know if reference to Article 15 is covered elsewhere. If it is not, then it might be better to tie it in the objective. Thank you.

The CHAIRPERSON:

Thank you very much. “Goods” is indeed broad and it is intended to be a broad term so that it covers what people want to read into it when they come to subsequent articles. I do not think we should have a definition of goods. I am just checking whether there is a reference to Article 15 in the preamble – or somebody is checking that – because I think there ought to be a reference in the preamble somewhere to that Article. I shall come back to Oman.

Dr AL-LAWATI (Oman):

We would like to support the amendment made by the Islamic Republic of Iran. It covers the concerns of many Parties. However, you just mentioned that you do not want to put the definition of “goods” in here. Let us say that subsequently, in the negotiations at the fourth session of the Intergovernmental Negotiating Body, we agreed to include tobacco, tobacco products, key inputs, etc. Would that be impossible? Can you give us a reason why you do not wish to include that, please?

The CHAIRPERSON:

Thank you very much. If we reached agreement later on about a specific list of items which were covered by the protocol, we could actually extract the word “goods” and insert “x, y, z” and so on to describe them, but I really do not think that a definition of what constitutes a “good” is worth putting into this protocol. “Goods” is a broad term opposed to “services” and it is intended to mean all things to all people.

Ms HEFFORD (Australia):

Thank you, Mr Chairperson. I can see that your English drafting was an improvement on the language we had, where we had “the objective of this protocol is to eliminate all forms of illicit trade in tobacco goods”. However, I am uncomfortable with your revised version, which reads “the objective of this protocol is to eliminate all forms of illicit trade in the goods covered by the provisions of this protocol”, because I feel that our objective, at least, needs to be clear and concise and should contain the word “tobacco” somewhere. Or perhaps we have lost our perspective on this one.

M. YOMO (Congo):

Merci, Monsieur le Président. Je crois que nous devons faire attention aux concepts que nous utilisons ici parce que tout est cadré par un document douanier que nous appelons le « Tarif » et qui a un langage qui lui est propre. Quand nous disons « la production du tabac » cela ne veut rien dire en termes douaniers ou tarifaires. Le Tarif retient plutôt « produits de fabrication du tabac ». Je crois, au risque de me tromper, que c’est le langage des Parties de la Région africaine ; nous estimons en effet qu’il faut intégrer les produits de fabrication du tabac. L’expression « produits du tabac » sous-entend cigarettes, cigares et toutes les autres choses qui en découlent ; le terme « fabrication du tabac » ne veut pas dire « produits de fabrication du tabac ». On ne peut pas aller à l’encontre des dispositions tarifaires qui existent déjà, telles qu’elles ont été conçues par l’Organisation mondiale des Douanes.

Merci Monsieur le Président.

The CHAIRPERSON:

Thank you very much. I am afraid I disagree with that. I think we can use whatever terms we like in the protocol, as long as we understand what they mean. I am going to take a few more interventions from the floor and then I am going to see if we can arrive at something which is acceptable to everybody.

M. MOHAMEDOUN (Mali) :

Merci, Monsieur le Président. Je pencherais pour la première définition. L’objectif du protocole est de lutter contre toutes les formes et tous les moyens. Je propose d’ajouter « tous les moyens », en laissant le reste sans changement, parce que le mot « moyens » peut inclure le matériel de production ou les intrants qui pourraient être utilisés dans le commerce, mais seulement ceux qui entrent dans le commerce illicite. Il me semble que l’ajout de « toutes les formes et tous les moyens » est assez général pour inclure tout ce qui est envisagé en termes de matériel intrant lorsqu’il entre dans le champ du commerce illicite.

Merci, Monsieur le Président.

Ms MATSAU (South Africa):

I have no objection whatsoever to using the word “goods” instead of “products”, provided it is understood in the manner in which you have explained. However, if this current session of the Negotiating Body is anything to go by, I know that at the next session people will be arguing that they do not know what “goods” means. Therefore, simply to avoid that, I have seen your logic for not wanting to define “goods”, but after this experience, I think we should not take any chances. Please

put it somewhere and define it, because we shall spend the whole of the next session of the Intergovernmental Negotiating Body arguing that we do not know what “goods” is or what the meaning was and that we did not agree. In the interests of progress at the next session, could we have a definition of the word, or at least that “goods” in this context means “machinery, inputs, tobacco products” and so on? Then there will be no excuse for anybody to forget the agreement we reached.

The CHAIRPERSON:

Thank you, South Africa. I will certainly consider whether there is a way of recording the fact that “goods” is a broad term that covers anything that is not a service, and I think that will give the sort of satisfaction that you want to have. Before we go on to the other speakers, would the Secretariat do me the favour of putting on the screen the version that Australia asked for? Simply type it in cleanly so that it says that “the objective of this protocol is to eliminate all forms of illicit trade in tobacco goods”.

El Dr. J.R. PIÑEDA (México):

En primer lugar, quisiera felicitarlo por su contribución en aras de llegar al consenso. La posición de México es suscribir la propuesta enmendada por Australia y el Brasil. Preferiríamos por supuesto que se incluyeran las palabras «productos del tabaco». Sin embargo, con miras a llegar a un consenso, si la decisión de esta asamblea fuera tal que quedara como «bienes del tabaco», no nos opondríamos a ello. Gracias.

The CHAIRPERSON:

Thank you very much, Mexico. That is very flexible and I appreciate it.

El Dr. ABASCAL (Uruguay):

Quisiéramos manifestar nuestro apoyo a su propuesta revisada, que reza así: «el objetivo del presente Protocolo es eliminar toda forma de comercio ilícito de productos de tabaco de conformidad con los términos del artículo 15 del Convenio Marco de la OMS para el Control del Tabaco». Creemos que aquí hay un acuerdo básico en el objetivo. Si empezamos a introducir en el objetivo elementos que merecen definiciones y descripciones, estamos sacándole la importancia que puede tener este aspecto del objetivo en el artículo 13, y si a eso le sumamos que muchas de las propuestas que queremos incluir en el objetivo son elementos que están para definir en las próximas reuniones, sería abrir de nuevo la discusión de todo el Protocolo.

The CHAIRPERSON:

Thank you very much, Uruguay. Before I go on to the next three requests, could I take it that the second of my options is not one that Parties really want to look at and that we could delete that one, at least, from our consideration? Does anyone object? Good, let us delete that one.

Dr ABOU AL ZAHAB (Syrian Arab Republic): ()

Mr FISH BERREDO MENEZES (Brazil):

I would just like to comment that, regarding to the third option that you are proposing to delete, Mr Chairperson, it is already in Article 4, General obligations in saying almost exactly the same thing. I therefore do not think we could use it here in the objectives because it is almost covered by paragraph 1 of the general obligations.

Mr ALBUQUERQUE E SILVA (Brazil):

If you will, allow me to complement what my colleague has said, Mr Chairperson. It is necessary that delegations take into consideration the fact that there is no reference to manufacturing equipment in Article 15 of the Framework Convention, no reference at all. That means that, even though there is no reference to manufacturing equipment, my delegation fully agrees that there are some parts of the text that should include manufacturing equipment and if delegations go forward in this position of ignoring Article 15, I would really appreciate hearing from the WHO Legal Counsel what delegations have to do to amend Article 15 of the Framework Convention, and, if amended, we would be able to accept the full inclusion of all items suggested by many delegations. However, since we are still bound by Article 15 as it stands, what would delegations need to do to alter it? Thank you.

The CHAIRPERSON:

Thank you very much, Brazil. Article 15 does, of course, refer to manufacturing equipment in subparagraph 4(c). In any case, I do not think I shall even enter into the debate about how we can amend Article 15. Let us stick to the task in hand and see if we can reach agreement on the task that we have in front of us.

Mr LEGUERRIER (Canada):

Mr Chairperson, we would support the first option, as proposed by our colleague from Australia.

Mr PRASAD (India):

Mr Chairperson, on behalf of the Parties in the South-East Asia Region, we thank the Chairperson for providing us with a clear text to initiate a good discussion. We support the first option. We would also like to suggest that we add, after “tobacco products” the words “in accordance with the Framework Convention on Tobacco Control”, rather than mentioning any particular article. We would also like to say that mention of tobacco products here would not deter us from using “other merchandise” or “other related products like machinery, equipment etc.” in the main provisions.

The CHAIRPERSON:

Thank you very much to the Parties in the South-East Asia Region.

Dr VINIT (Papua New Guinea):

Mr Chairperson, I should like to read out my text, which is: “The objective of this protocol is to eliminate all forms and means of illicit trade in tobacco”. That would basically cover all aspects of tobacco, whether products or machinery. Thank you.

The CHAIRPERSON:

Thank you, so it would read “all forms and means of illicit trade in tobacco products”. That would be your suggestion?

Dr VINIT (Papua New Guinea):

Sorry, Mr Chairperson, not products; it stops at “tobacco”.

Dr DAGANEE (Libyan Arab Jamahiriya): (

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La Dra. MEJÍA VELÁSQUEZ (Honduras):

Nosotros apoyamos la primera opción. No es redundante; es clara y es específica. En un objetivo no precisamente debemos especificar la forma cómo lo vamos a lograr; entonces, me parece que la primera opción es más correcta y también está basada en el artículo 15 del Protocolo sobre el comercio ilícito.

El Dr. SAN MARTÍN (Paraguay):

Al Paraguay no le queda claro por qué habría que elegir en este momento si el texto queda sólo en «productos de tabaco» o en «bienes cubiertos por este Protocolo», ya que eso está en otros artículos que van a ser estudiados más adelante. Las palabras «bienes cubiertos por este Protocolo» hacen posible que de acuerdo a las discusiones posteriores el texto sólo quede centrado en productos de tabaco o también sea cubierto por otros productos. Por lo tanto, estoy a favor de la segunda definición. Gracias.

Le Professeur TIDJANI (Togo) :

Monsieur le Président, quel que soit le texte adopté, il faut en tout cas faire référence à l'article 15 de la Convention. Je proposerais donc la première définition, à condition d'ajouter « l'article 15 de la Convention-cadre ».

Merci, Monsieur le Président.

The CHAIRPERSON:

Thank you very much. Australia, would you have a problem in referring to Article 15 if we wanted to put that back in?

Ms HEFFORD (Australia):

Mr Chairperson, under the circumstances, if that is the mood of the room, I would accept it. I think it is not necessary, but I would accept it.

Dr AL-LAWATI (Oman):

Sir, I was just going to say that we need a reference to Article 15 because it also somehow inherently points to production and counterfeiting and other things. Thank you.

The CHAIRPERSON:

Since Article 15 makes reference to manufacturing equipment it gives us a handle for later on if we need it. May I suggest “The objective of this protocol is to eliminate all forms of illicit trade in tobacco products in accordance with the terms of Article 15 of the WHO Framework Convention on Tobacco Control”, which I think is probably what I proposed as my first option. Is there anybody who simply cannot accept the first option that I proposed in my suggestions paper? If you really object, wave your flag. Congo. Would you like to tell us why, please?

M. YOMO (Congo):

Monsieur le Président, je l’ai déjà dit et je le répète : dans la Convention-cadre, on parle des produits du tabac, puis de la fabrication illicite. La fabrication suppose qu’il y a du matériel ; avec ce matériel, pour obtenir des produits du tabac – comme je le disais tout à l’heure – il faut des intrants. Ce qu’on appelle ici « intrants » s’appelle en termes douaniers « les produits de fabrication », ce qui permet aux fabricants de fabriquer les produits du tabac. Si on n’intègre pas justement dans notre protocole les produits, les intrants, alors pourquoi parlerait-on même du matériel ? On ne peut pas avoir les produits du tabac sans les intrants et je pense qu’il faut intégrer dans le protocole tant « les produits du tabac » que « les intrants ». Sinon, cela ne servirait à rien de parler du matériel, parce qu’un matériel seul ne peut pas vous donner les produits du tabac ; il faut des intrants, il faut des produits de fabrication. Voilà mon raisonnement, Monsieur le Président.

The CHAIRPERSON:

I follow your logic entirely. You cannot make cigarettes without the raw material, but I do not find that a convincing argument for changing the text of the Article on the objective. If it is really essential, I would go back to the flexibility that Australia was prepared to show and talk about “trade in tobacco goods in accordance with Article 15 of the Convention.” Is there anybody who could not live with that? I think that is not a good idea, actually. I will withdraw that suggestion, so there is no need for anyone to comment on that.

Let us return to the issue of the first option, to “illicit trade in tobacco products” with a link to Article 15. “Tobacco products”, in my mind, would include raw tobacco, it would include filters, it would include everything that goes in there, and in a sense it does not matter because we will have defined it anyway in the subsequent articles. We could say what we like in Article 3 because it does not affect what we then put into the substantive articles. The protocol is concerned with combating illicit trade in tobacco products. Article 15 gives us the framework for that and also has a reference to manufacturing equipment; therefore, I cannot see that there is a difficulty in accepting the first option here.

Mr LONGOLOMOI (Kenya):

Thank you, Mr Chairperson, for withdrawing the suggestion that you had made, and cautioning us not to talk about it. In my opinion, therefore, I think that I can live with the text on the screen, which also includes “means of illicit trade”, which can be linked to Article 15.

El Dr. J.R. PIÑEDA (México):

Hablo en nombre de las Partes de la Región de las Américas para suscribir la primera propuesta, que reza así: «el objetivo del presente protocolo es eliminar toda forma de comercio ilícito de productos de tabaco». Consideramos que este texto abarca, como usted mismo ha mencionado, los otros elementos que han estado en la discusión, y nos parece una forma general y breve de establecer

cuál es el propósito de los trabajos que hemos venido llevando desde las primeras reuniones del Órgano de Negociación Intergubernamental para este Protocolo.

Le Dr NGABA (République centrafricaine):

Merci, Monsieur le Président. Je souhaiterais garder la proposition du Président et ajouter « et protéger la santé publique ainsi que l'économie ».

The CHAIRPERSON:

Thank you very much. I think we are floating away from the concept that I want to nail down here. There was a specific proposal that the first option should say "eliminate all forms and means of illicit trade". Is that something that people could live with? Adding "and means"? No, put it the other way around: would anybody not be able to accept adding the words "and means"? Sudan, please. Have you problems with that?

Dr WIDAD YOUSIF (Sudan):

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Le Dr ALELUIA LOPES (Guinée-Bissau):

Monsieur le Président, je suis d'accord d'ajouter « les moyens », on aura donc « les moyens qui facilitent le commerce illicite du tabac ». Je partage la troisième position, où l'on dit « l'élimination de toutes les formes et de tous les moyens illicites de commerce du tabac ».

Merci, Monsieur le Président.

M. MOHAMEDOUN (Mali):

Merci, Monsieur le Président. Je crois que nous avons la bonne formulation : il suffit d'éliminer tous les crochets figurant actuellement dans la première option ; en les éliminant, tout le reste sera parfait. Merci.

The CHAIRPERSON:

I tend to agree with you. That seems to be the most sensible and logical thing to do, even if it is not necessary to refer to Article 15, it does not hurt to do it and it also gives us the reference to the whole of Article 15. If we take out all the square brackets in the first option on the screen, is anybody unable to accept it?

Ms LECLAIRE (alternate to Mr Leguerrier, Canada):

Mr Chairperson, based on that proposal, do you propose to leave "and means of illicit trade in tobacco products"? My concern here is that we are in the same situation as with the objective for health, and the health objective is tied to the illicit trade in tobacco products, not the means of getting there. It is the illicit trade in the tobacco products that is the objective for health. I question whether there is a mandate under health to consider the means of getting there. And so it concerns me that I see this as a possible expansion of what is in the Framework Convention.

The CHAIRPERSON:

Thank you, Canada. I do not think that is right. I think we are here to combat illicit trade by any means we can. If we have illicit trade, we have to be able to find the way to combat it. Tracking and tracing is one of the means to combat illicit trade by having unique markings that you can follow and so on. So there is an absolute logic in following that path. The health objective is paramount; you are absolutely correct about that. That is why we are doing all this, but the means of stopping illicit trade, by using tracking and tracing, by using licensing, by using know-your-customer, is exactly what we mean by “the means that we use to tackle illicit trade”. We have half of that actually in the protocol itself, so I hope that you would be able to reflect on that and agree if all others can agree. Can anyone not agree?

Mr OOKA (Japan):

Mr Chairperson, we support Canada’s view and we prefer not to retain “and means”.

The CHAIRPERSON:

Thank you, Japan. You did not find my arguments convincing?

Mr OOKA (Japan):

If we have simply “all forms of illicit trade”, the phrase is very much in line with Article 15 of the original Convention.

La Sra. MADRAZO REYNOSO (México):

Yo me pronunciaría por que se quitara la palabra «means» y le voy a explicar por qué. Entendí su explicación: «means» son los medios a través de los cuales se puede llevar a cabo el comercio ilícito. La forma en que vamos a combatir estos medios es múltiple, y se menciona a lo largo del Protocolo, eso es, a través de medidas de control, regulación, sanción, combate al delito y prevención del delito. Pero eso no tendría por qué estar en la definición del objetivo, porque el objetivo que perseguimos es que no haya comercio ilícito. ¿Cómo lo logramos? ¿Qué estrategia seguimos? Eso tendrá que definirse a lo largo del Protocolo. El fin es que no haya venta ilícita de productos de tabaco. Esto nos llevará a controlar toda la cadena de producción, a hacer el seguimiento de toda la cadena de producción a lo largo del Protocolo, y luego ya decidiremos si incluimos tabaco, máquinas, insumos clave y todo lo que hemos venido discutiendo. Pero el objetivo *per se* es que no haya comercio ilícito. Aquí la palabra «means» no es adecuada. Tendrá que definirse a lo largo del resto del Protocolo. Espero que me haya explicado con claridad, señor Presidente.

The CHAIRPERSON:

One final attempt: “The objective of this protocol is to eliminate, by all reasonable means, all forms of illicit trade in tobacco products.” That was a shock. Thank you for your support, Mexico.

La Sra. MADRAZO REYNOSO (México):

I hope it was a shock, but not a surprise, Mr Chairperson.

The CHAIRPERSON:

Let us see if we can write that down. “The objective of this protocol is to eliminate, by all appropriate means, all forms ...”, then delete “and means” and continue with “of illicit trade in tobacco products in accordance with the terms of ...” etc. How is that?

Dr AL-LAWATI (Oman):

Mr Chairperson. I think that weakens the text substantially, because if you use the qualifier “by all appropriate means”, someone will definitely argue, whether within your country or a third Party, or second Party, that this is not appropriate. And that is what weakens it terribly. So we would like to revert to the initial one without the amendment which you have just suggested a minute ago. Thank you.

The CHAIRPERSON:

How about deleting the whole Article? As you said, as I mentioned on Monday, I am really not attached to this Article, despite my valiant efforts to try and get something agreed, but I just cannot believe that we are unable to reach an agreement on such a simple statement. Nigeria and then Jamaica, please

Dr ANIBUEZE (Nigeria):

Mr Chairperson, let me congratulate you because you are nearly there. I think that part of our problem is with the words you have used and we can look at simple English definitions of these words. When you say “means”, you are thinking about income, earnings, resources, revenue, funds, wealth, capital and many other things. But when you are referring to form, which is what we are addressing, you are referring to shape, appearance, figure, outlines, structure, type, and so on. I think that is where we are. Let us not become confused. We are not talking about the income and resources for entering into illicit trade. We have studied all forms and types of illicit trade and that will resolve our problem, provided we refer to Article 15 of the Framework Convention, from which we derive our power. In Article 15 there is a definition of tobacco products and this will solve our problem. I am sure that everyone can live with this.

The CHAIRPERSON:

Thank you very much. I appreciate your enthusiasm and I think we are almost there. I am just not quite sure where “there” is at the moment. Through the means at our disposal, which could be, as you say, wealth, income, revenue, all of those items, we have to find a way out of this impasse. The only one that appears to gather almost consensus support is, in fact, the original one in my suggestions paper and we are close, very close, as the last speaker said, to being there.

I am going to leave you some time to think about that. I think we have thrashed this around so much that I shall come back to it at the beginning of this evening’s meeting. I want you to consider whether you can live with my original proposal, given that we will be talking about the substantive articles later on in the text, which will include discussions of machinery, inputs, everything else, because this should not prejudice what is in the subsequent articles of our text.

Dr PRASAD (India):

Mr Chairperson, I would like to draw attention to decision FCTC/COP2(12) of the second session of the Conference of the Parties which gave us the mandate to negotiate. The decision says that the Intergovernmental Negotiating Body will be “open to all Parties to draft and negotiate a protocol on illicit trade in tobacco products which will build upon and complement the provisions of Article 15”. It clearly envisages that we will build upon and complement the provisions of Article 15 and does not necessarily restrict us to Article 15. India would therefore propose deletion of the words “the terms of Article 15 of”, leaving “in accordance with the WHO Framework Convention” and that is what we want. I would seek legal advice as to whether this wording allows us and prepares us to look beyond Article 15, and if it does that then the scope of the protocol goes well beyond Article 15. Thank you.

The CHAIRPERSON:

Thank you very much. I am going to suspend the discussions on this Article so that I can consult, later on, with the Convention Secretariat, in order to try and find a way of resolving this, taking into account perhaps the comment by India that has just been made. Ultimately, deletion is a possibility but I think that would be an indication of total failure on our part and I would be very upset, very disappointed, if we had to go down that path. So I am going to suspend the discussion on that and, encouraged by our success, I shall move on to the more difficult article, Article 4. I apologize to those who have asked for the floor, but I would really like to try something different on this.

Article 4, as I mentioned to you, is an attempt to again avoid the listing of the types of goods that are covered by the protocol itself. What I have asked the Convention Secretariat to do is to put on the screen my clean proposal in yellow and underneath it the text which came out of the discussions on Monday. I would like first of all to continue, on the basis of the support you have given me, to look for the use of general terms, generic terms, rather than listing specific products. With that in mind, if we look at Article 4, paragraph 1 you can see that the text which came out of the discussions on Monday – the text that is not yellow – had a fair number of square brackets, but there were things that we could probably agree on relatively easily.

You will see that I took on board the word “effective” so that we would adopt and implement “effective measures to control or regulate the supply chain”; then, instead of “of tobacco, tobacco products” etc., I have said “to regulate the supply chain of goods covered by the provisions of this Protocol in order to prevent, deter, detect, investigate ...” etc. Consequently, the changes I have made are to accept the word “effective” and to replace the list of goods by the phrase “the goods covered by the provisions of this protocol”. Would that be an acceptable compromise following the discussions which we had on Monday?

Ms HEFFORD (Australia):

Mr Chairperson, I think that what you have done with the text in this section, Article 4, is very, very good, and, on the whole, Australia is very comfortable with the text. I have one small change to suggest in the first line of paragraph 1. I would like it to read “adopt and implement, as necessary, effective measures to control or regulate...”. Thank you.

The CHAIRPERSON:

Thank you, Australia. Does anyone support that?

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, you may disbelieve what I am going to say, but I agree with the whole text that you just proposed. I have no amendment to propose, it is an excellent proposal. We would just like to remind you that yesterday we proposed a new paragraph that talks about the tobacco industry that, in our view, has to be added to the general obligations. So as for the text proposed by you, we have no amendments to propose; we just would like to add our article to the general obligations. My congratulations, Mr Chairperson.

The CHAIRPERSON:

Thank you, Brazil. Your paragraph 8 appears at the bottom of the text here, so we will come down to it. Thank you for that. Australia, could I prevail upon you not to press for “as appropriate” on this occasion?

Ms HEFFORD (Australia):

Mr Chairperson, if no one else has any changes they require to the text, I can live with the text as it is.

The CHAIRPERSON:

Australia, thank you very much indeed. We have accepted that text. No, not quite. Jamaica, please.

Dr LEWIS-FULLER (Jamaica):

Thank you, Mr Chairperson. I would like to congratulate you on the changes you have made. However, regarding “goods”: could we not use the word “products” instead of “goods”? I would feel more comfortable with the word “products”. That is my suggestion. Thank you.

The CHAIRPERSON:

Thank you very much, Jamaica. I think “products” is a very much narrower concept than “goods”. “Goods” was deliberately chosen so that it could cover manufacturing equipment, tobacco, key inputs and so on. “Products” tends to be, in my view, limited to the smaller things, whereas “goods” has a very wide range which gives us the scope for our negotiations later on in the text. I hope that, perhaps in the light of that, you could be able to live with the word “goods”.

Dr LEWIS-FULLER (Jamaica):

I know “goods” does not necessarily mean it is a good product or a good output from the supply chain, but it does have a slightly positive connotation and, from that point of view, I would have preferred another word that would take in the full gamut of all the various items: the manufacturing items, the products themselves and the inputs. I do not know whether you can come up with a word that I would feel more comfortable with using than the word “goods”.

The CHAIRPERSON:

Thank you, Jamaica. I am afraid I have wracked my brain and “goods” is actually the best I can come up with. I think it is, as I mentioned, goods as opposed to services, so it is everything that is tangible in terms of solidity. Unless anyone really objects, let us stick to the word “goods”. Can anyone not live with the amended text?

La Sra. JAQUEZ (México):

El texto nos parece muy bien, y lo felicitamos por esta contribución, pero quisiéramos llamar la atención al hecho de que, una vez más, la versión en español no coincide con el texto que estamos viendo en inglés. En español dice «productos y materiales» o sea, bienes, mientras que en inglés dice «*goods and products*». Esto es sumamente confuso y queremos dejar claro que se está hablando de bienes, y nos parece bien así. Además, el tiempo verbal que se está usando para traducir esta sugerencia es erróneo, porque en la versión en español no dice que las Partes «deben adoptar» sino «adoptarán» y «aplicarán», como si fuera una obligación. Por consiguiente, queremos dejar claro que no estamos de acuerdo con la traducción más sí con su texto, señor Presidente.

The CHAIRPERSON:

Thank you very much, Mexico. Perhaps you could have a bilateral discussion with the Secretariat and sort out the Spanish, but thank you for your support; it is much appreciated.

El Sr. TORRES MARTIN (Colombia):

Creo que sería oportuno aprovechar la presencia de la Organización Mundial de Aduanas para que su experto nos diga si, de acuerdo con los términos propios del derecho aduanero, los conceptos de «productos y materiales» están incluidos en la palabra «bienes». Acuérdense, o acordémonos todos, que quien en definitiva va a controlar toda esta mercancía y el problema del contrabando o

comercio ilícito serán nuestras aduanas. Entonces ellos son los expertos que pueden definir si los «productos y materiales» están incluidos en la palabra «bienes». Por nuestro lado, creemos que efectivamente lo están.

The CHAIRPERSON:

Thank you, Colombia. I think the answer is yes as well from my experience, having worked in customs for 35 years. But I will ask the World Customs Organization.

Ms MENON (World Customs Organization):

Thank you Mr Chairperson. I think I tend to agree with what you have said.

Mme LIKIBI-BOHO (Congo):

Merci, Monsieur le Président. Je voulais dire que nous avons des problèmes de traduction, parce que « marchandise » ou « bien » en français ne signifie pas ce que vous pensez. C'est pour cela que maintenant nous utilisons « produits de fabrication » ou « matériel de fabrication ». Chez nous, « bien » ou « marchandise », c'est ce qui est vendu. Donc, ça n'entre pas dans le cas précis que nous examinons en ce moment.

The CHAIRPERSON:

Thank you very much. I think we need to look at the French then, because my understanding is that it would be something like “biens” and not necessarily “produits”, making the comparison between “biens” and “services”. However, I shall ask the Secretariat, just to make sure that the right word is used in the French version. I will take it that paragraph 1 is agreed in the terms of the yellow version on the screen. Thank you all.

Paragraph 2. Can we scroll down to paragraph 2, please? Thank you. You will see from the text that came out of Monday night that we had “take appropriate or necessary measures”. What I have suggested is a slight fudge on that, so that I have said “take any necessary measures in accordance with their national law”, which I have taken on board, “to increase the effectiveness of their competent authorities”. You remember we had this debate about how far we should list the customs, tax authorities and police and so on? So I have tried to take account of your concerns by referring to the “effectiveness of their competent authorities and services” because I recall that at least a couple of you said that sometimes you were not dealing with authorities, you were dealing with services. I have therefore said “competent authorities and services”. In addition, because several delegations mentioned that it was important to highlight customs, I have said “including customs and police responsible for preventing, deterring, detecting all forms of illicit trade in goods covered by this Protocol”: the same approach, trying to avoid listing the goods that are mentioned later on to try then to meet all your concerns. Can I ask whether you have any problems with the yellow version of the text you see on the screen in front of you? Excellent, we agree then – the yellow version of paragraph 2 is accepted. Thank you very much indeed.

Paragraph 3. This was more difficult. What I have done is to use the word “effective” rather than “appropriate” or “clear and appropriate” because I think “effective” covers what we wanted to have and “clear and appropriate” are not necessary there. My text reads, “adopt effective measures for facilitating or obtaining technical assistance and financial support”. I believe the term “financial support” is a better or more usual one than “economic assistance”. I think it is used more regularly in the instruments that we have, so “financial support, capacity building and international cooperation, in order to achieve the objectives of this Protocol and ensure the availability to, and secure exchange with, the competent authorities of information to be exchanged under this Protocol.”

You will see that the final phrase talks about “information to be exchanged under this Protocol”, which means that we do not need to talk about where they originate, whether they are entering or transiting; we are simply talking about the information which we agree will be exchanged under the specific terms of the subsequent articles of the protocol. Also, several of you asked for a definition of

“secure exchange of information”. You will see in the document that I have put an asterisk at the bottom of page 3, with a very brief description of what “security” means in this context. It means that the exchange is resistant to interception and tampering, or falsification; in other words, the information exchange between the two parties cannot be read or modified by a third party. So has anyone any objection to the yellow text of paragraph 3?

Dr AL-LAWATI (Oman):

Mr Chairperson, it is not an objection by any means, but in the definition of “secure”, when you use the word “parties”, do you mean the Member States who are Parties to the protocol or do you mean any two parties without specification? Thank you.

The CHAIRPERSON:

Thank you, Oman. No, this is just a general description of two people or industries or whatever; it must meet the same criteria. We agree on that one as well. Paragraph 3 is accepted in the terms of the yellow version. Thank you.

Paragraph 4. I do not think I have made too many changes here: “cooperate closely with one another, consistent with their respective domestic legal and administrative systems, in order to enhance the effectiveness of law enforcement action to combat the offences covered by this Protocol”. I think that we had more or less agreed that in fact on Monday night. We had just highlighted that offences would have to be looked at under Article 12. There was something else that was asterisked, was there not? It was enforcement action, which will cover things such as joint investigations and so on.

Dr AL-LAWATI (Oman):

Mr Chairperson, would it not be better simply to replace the words “with one another” by “with other Parties”?

The CHAIRPERSON:

No, I do not think so because the introductory text says that “Parties shall cooperate closely with one another”, so it must be between the Parties simply by the definition of the introductory text. Would that meet your requirement? Very good. Thank you.

La Sra. MEJÍA VELÁSQUEZ (Honduras):

El párrafo 2 dice «de conformidad con la legislación nacional», mientras que el párrafo 1 no lo dice. Me parece que hay una incoherencia porque todo debe estar de acuerdo con la legislación nacional. Por tanto, propongo que en el encabezado del artículo 4, donde dice: «Además de observar las disposiciones contenidas en el artículo 5 del Convenio Marco de la OMS para el Control del Tabaco», se añada «de acuerdo a la legislación nacional». O bien se quita esta mención del párrafo 2, porque sólo está en él y en ningún otro párrafo del artículo. Todo debe hacerse de acuerdo a la legislación nacional.

The CHAIRPERSON:

Thank you, Honduras. It is only in paragraph 2 because that is the more sensitive one when we are talking about national sovereignty, enforcement authorities and so on. The rest is obligatory and should remain obligatory. I hope you will be able to accept that even if there does appear to be a slight difference. It is there for a specific reason. Can you live with that, Honduras, please?

La Dra. MEJÍA VELÁSQUEZ (Honduras):

Señor Presidente, cuando apliquemos la ley, tendremos que hacerlo de acuerdo a la legislación nacional. Si nosotros aplicamos las medidas de control para regular la cadena de suministro, tiene que ser de acuerdo a la legislación nacional. Si potenciamos la eficacia de las autoridades y los servicios encargados de hacer cumplir la ley, el trabajo de investigar, enjuiciar y eliminar el comercio ilícito también lo tenemos que hacer de acuerdo a la legislación nacional. Comprendo lo que usted dice, pero estos textos no solamente van a ser leídos por nosotros, sino por otras personas que tienen que comprenderlo también. Solamente he querido señalar esta incoherencia para que se produzca una reflexión al respecto. Gracias.

The CHAIRPERSON:

Thank you, Honduras. I have certainly taken note of your view, but I do not propose to change the texts at this stage since we have actually just agreed them.

La Sra. JAQUEZ (México):

México considera que si bien usted tiene razón en hablar de obligaciones generales, dado que esta es la parte que nos ocupa en este momento, es importante tratar de hacer alusión a la legislación nacional en todos los párrafos, como dice Honduras. Si a usted no le parece correcto alterarlos todos y cada uno de ellos, tal vez se pueda poner un preámbulo para que se refleje esta disposición general de que las obligaciones se tendrán que aplicar de acuerdo a la legislación nacional.

The CHAIRPERSON:

Thank you, Mexico. I think my option will actually be to take it out of the one it appears in at the moment because that is where the inconsistency is.

Dr VINIT (Papua New Guinea):

Mr Chairperson, I would just like to know whether we could put “international law enforcement” because I have not seen it in the other obligations. Illicit trade is transnational and that concept is not captured in the obligations.

The CHAIRPERSON:

Thank you, Papua New Guinea. Are you proposing an additional paragraph to Article 4? If you are, do you have some text please?

Dr VINIT (Papua New Guinea):

Mr Chairperson, just inclusion of “domestic and international” or “national and international”.

The CHAIRPERSON:

I am sorry, which paragraph are we talking about?

Dr VINIT (Papua New Guinea):

Mr Chairperson, it is paragraph 4. Instead of “closely working with one another”, I propose “closely working with one another consistent with their respective domestic and international legal and administrative systems”.

The CHAIRPERSON:

Thank you for your suggestion. I see: “domestic and international legal and administrative systems”. I would like to put this point to the WHO Legal Counsel. This is paragraph 4 of the amended text, where at the moment it says “Parties shall cooperate closely with one another consistent with their respective domestic legal and administrative systems”. Papua New Guinea has suggested that it should say “consistent with their respective domestic and international legal and administrative systems”. Is that something which is appropriate? Or should it normally just be domestic?

Mr BURCI (WHO Legal Counsel):

Thank you, Mr Chairperson. I think it should be just “domestic”, because the issue here is that their obligations should be implemented within the framework allowed by the legal administrative system of each State. I cannot tell what the reference to “international” would mean in this case. Thank you.

The CHAIRPERSON:

Thank you very much. I hope perhaps, Papua New Guinea, in the light of that, you might be able to live with the current text, please.

Dr VINIT (Papua New Guinea):

Mr Chairperson, I am simply concerned that it is not reflected in any other obligations. We might, therefore, have to consider putting it somewhere because the other Articles, in terms of Article 12, would be referring to international collaboration with the United Nations Convention against Transnational Organized Crime and others. Thank you.

The CHAIRPERSON:

I take that then as a general comment, that we need to look at it in other parts of the text.

Mr GRÖNLUND (Sweden):

Mr Chairperson, speaking on behalf of the European Community, can I draw your attention to the fact that we may have to review the use of the term “offences” in paragraph 4 in the light of forthcoming discussions on Article 12, which I think will take place at a later stage? Thank you.

The CHAIRPERSON:

Thank you. Yes, that is certainly one of the asterisked issues. I am quite happy to put the asterisks which occur in the Monday text into the yellow text. Just remind us if that would meet your concern.

M. MOHAMEDOUN (Mali):

Merci, Monsieur le Président. Par rapport à la question qui vient d’être posée sur l’utilisation des mots « national » et « international », je ne pense pas qu’il soit nécessaire de mettre « international », parce que tout ce qui est ratifié entre dans le système juridique national. De mon point de vue, Monsieur le Président, le paragraphe 4 me donne entière satisfaction. Je vous remercie.

The CHAIRPERSON:

Subject to the two asterisks, I think we agree on paragraph 4 as well. Very good. Thank you very much. We are making excellent progress.

Paragraph 5. Here I have taken on board that we should “cooperate and communicate, as appropriate, with relevant regional and international intergovernmental organizations”, because that is terminology that we have had before, “in the secure exchange of information covered by this Protocol”. So there are two items there: “secure”, which we mentioned in one of the previous paragraphs, and “information covered by this Protocol” – again to make sure that we are covering the issue in generic terms – “in order to promote the effective implementation of this Protocol”. Are there any objections to that? No? Thank you very much. That paragraph is agreed then, Paragraph 5 in the yellow text with the asterisk against “secure” remains and the rest is deleted.

Paragraph 6: “within the means and resources at their disposal, cooperate to raise ...”, and here I have said “any necessary financial resources”. I took a middle course between “additional necessary” and “the necessary” to produce “any necessary financial resources for the effective implementation of this Protocol through bilateral and multilateral funding mechanisms”. That is just a bit of a cobbling together of what was there, so you will not necessarily feel totally comfortable; but I hope at least it is something that you can live with. Canada, please.

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Mr Chairperson, Canada would propose deleting both of those, leaving simply “cooperate to raise financial resources”, reflecting the text in the Framework Convention on this Article. Thank you.

The CHAIRPERSON:

Thank you very much. Could you just repeat that more slowly, please?

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

I am sorry, Mr Chairperson. We would propose the deletion of the two brackets before financial resources, so that the text would read “cooperate to raise financial resources for effective implementation ...” without any modifiers.

Mr GRÖNLUND (Sweden):

Mr Chairperson, the European Community would agree with the Canadian proposal on the understanding that the text proposed is actually aligned with the words used in the Framework Convention in this regard. Therefore we do support the Canadian proposal.

The CHAIRPERSON:

Thank you, European Community. On the assumption that that is an alignment on what the Framework Convention says, I do not think we can take objection to reproducing it. Paragraph 6 is therefore also agreed with that change proposed by Canada.

I mentioned to you in my opening remarks that I had looked at the new paragraph 7 and understood the point that was being made there but that, because it was referring to tobacco products including duty-free tobacco products, I felt that this was going further than the general obligations which Article 4 is supposed to cover. I therefore took the view that we could leave it out here because duty-free, for example, comes up in Article 11. The supply-chain control will also cover products which are moving duty-free; hence I would beg the indulgence of the Parties who had proposed that new paragraph 7 not to press for it to appear here. Would it be acceptable not to include paragraph 7 please? It seems so. Thank you very much for your flexibility on that. So we agree we will not take paragraph 7.

Paragraph 8 is the proposal from Brazil put forward yesterday evening and I shall read it out slowly: “In setting and implementing their policies to combat the illicit trade in tobacco products, take all measures to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”. Would anybody have a problem in putting that into the text? No, it seems not. Very good. We can accept Brazil’s proposal.

El Sr. TORRES MARTIN (Colombia):

Gracias, señor Presidente. Creo que esta adición está repitiendo lo que ya se mencionaba en uno de los párrafos anteriores. Sería como repetir, y al repetir algo estaríamos borrando lo que se está diciendo en la parte anterior. Además, si se desea mantener habría que indicar, como hemos venido haciéndolo, que no hace referencia a «productos de tabaco» sino a «bienes cubiertos por las disposiciones de este Protocolo.»

La Sra. JAQUEZ (México):

México está de acuerdo con la propuesta del Brasil, pero nos surge la duda al final de este párrafo, donde dice «de acuerdo con la ley nacional», porque usted nos había dicho que esta frase no se podía incluir en las obligaciones generales porque todo era obligatorio. Quisiera oír la opinión del Asesor Jurídico al respecto, porque me está generando confusión no poder poner un preámbulo en esta parte relativa a las obligaciones generales; haberlo quitado de un párrafo y ahora ponerlo en otro. Quisiera una aclaración. Gracias.

The CHAIRPERSON:

I take your point that including the phrase “in accordance with national law” weakens the text. Sorry, would you like to repeat your question? I may have misunderstood.

La Sra. JAQUEZ (México):

Nosotros habíamos apoyado una intervención de la distinguida delegada de Honduras en el sentido de que en uno de los párrafos, el segundo, se hacía una alusión a que estas disposiciones se harían de acuerdo a la legislación nacional, pero usted le explicó que no podía ponerse esa alusión en todos los párrafos porque era de obligación general, y nosotros así lo entendemos, pero ella volvió a insistir para decir que esto podría ser beneficioso para explicar a nuestras contrapartes a la hora de evaluar la firma de este acuerdo que todas estas medidas u obligaciones generales se tienen que hacer de acuerdo a la legislación nacional. Entonces México sugirió la inclusión de un preámbulo y usted dijo que como el párrafo 2 era el único que tenía aquella mención, la deberíamos quitar para que no causara confusión. Viendo hacia dónde va la discusión estamos de acuerdo con su propuesta; pero ahora hay un nuevo párrafo que dice «de acuerdo a la legislación nacional». Por consiguiente, México quisiera que en todos los párrafos se dijera «de acuerdo a la legislación nacional», o bien que se añadiera un preámbulo que dijera que estas obligaciones por supuesto se hacen de acuerdo a la legislación nacional, todo ello después de oír, si es posible, la calificada opinión del Asesor Jurídico. Gracias.

The CHAIRPERSON:

Thank you very much, Mexico. WHO’s Legal Counsel has just drawn my attention to Article 5.3 of the Framework Convention which I will read out to you: “In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry, in accordance with national law”. This comes back to the point that one of the earlier speakers made that perhaps it is simply a repetition of what is already there, so we may not need it at all. May I ask Brazil whether they might simply like to withdraw it in those circumstances, please?

Mr FISH BERREDO MENEZES (Brazil):

Yes, Mr Chairperson, you can remove Brazil’s proposal. Thank you.

The CHAIRPERSON:

Thank you very much; that is very helpful. We can delete paragraph 8. Does that mean we have agreed the entire Article? I think then we have agreed an Article; this is a first for the protocol. Well done, everyone. We have 10 minutes left.

Dr AL-LAWATI (Oman):

Mr Chairperson, you may wish to revert to the Article on which we could not reach agreement. Perhaps everyone has settled and is in a mood to support your final proposal before you leave it altogether. Alternatively, you could open the matter again once we have had some consultations after the break and before the next meeting. Thank you.

The CHAIRPERSON:

Thank you, I think that would be a good idea.

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Mr Chairperson, sorry to intervene. I just wanted to check something. Could the editor roll back to paragraph 6?

The CHAIRPERSON:

Yes, it should read “within the means and resources at their disposal, cooperate to raise financial resources for the effective implementation”, etc. I think that was the version that you had proposed, if I recall correctly.

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

That is correct.

The CHAIRPERSON:

Very good. We shall stop there. Thank you very much for your cooperation this afternoon. We shall take up Oman’s suggestion, if you would not mind consulting during the break, to see if we can agree on Article 3. We shall meet at 18:45 and continue the plenary then. Thank you very much indeed.

**The meeting rose at 17:50.
La séance est levée à 17h50.**

VERBATIM RECORDS OF PLENARY MEETINGS

COMPTES RENDUS IN EXTENSO DES SÉANCES PLÉNIÈRES

EIGHTH PLENARY MEETING

Saturday, 4 July 2009, at 19:05

Chairperson: Mr I. WALTON-GEORGE (European Community)

HUITIÈME SÉANCE PLÉNIÈRE

Samedi 4 juillet 2009, 19h05

Président: M. I. WALTON-GEORGE (Communauté européenne)

1. DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS (continued) ÉLABORATION ET NÉGOCIATION D'UN PROTOCOLE SUR LE COMMERCE ILLICITE DES PRODUITS DU TABAC (suite)

The CHAIRPERSON:

When we stopped just before the break we had reached the point at which we said we would come back to Article 3 of the protocol to see if we could find some inspiration. But first I shall give the floor to Canada.

Mr OLDHAM (alternative to Mr Leguerrier, Canada):

Thank you, Mr Chairperson. I regret very much that on reconsideration of Article 4, paragraph 1, Canada does not think yet that it can agree to this paragraph. The reasons for this are that we feel it has to be aligned to the objective, which has not yet been negotiated, and it will be very much influenced by what is negotiated in the agreement itself. Therefore, we would like to put that paragraph in square brackets, please.

The CHAIRPERSON:

Thank you, Canada. As you can imagine, that is not good news to me. It is a shame that you did not think about that before we reached the end of the paragraph. Would you like to try and put square brackets around parts of it or the whole of it?

Mr OLDHAM (alternative to Mr Leguerrier, Canada):

Mr Chairperson, rather than try to do this in a piecemeal fashion, we would like our legal advisers to have a look at it. Would you leave brackets around the whole text please? Thank you.

The CHAIRPERSON:

I will, but with some reluctance. It is a shame that it was not looked at this morning when we had the document ready. Well now because of Canada, we do not have an agreement on Article 4 of the text. It has been placed in square brackets. I would urge Canada to let me know the outcome of their consideration within the next three weeks so that we can decide whether we have to take the square brackets off or leave them on. Is that acceptable to Canada?

Mr OLDHAM (alternative to Mr Leguerrier, Canada):

As I said, Mr Chairperson, the meaning of that paragraph depends somewhat on the outcome of the negotiation: what the meaning of “goods” is, for example. I am not sure I can agree to meet that deadline. We will consult and get back to you as soon as we can.

The CHAIRPERSON:

Thank you. We shall go back to Article 3 and, as I said, we will be looking for some inspiration.

Dr AL-LAWATI (Oman):

Mr Chairperson, we were unable to follow Canada’s brackets as the text is not right in front of us. Could you please tell us again where the brackets might be?

The CHAIRPERSON:

Thank you, Oman. Canada requests that brackets be put round the whole of Article 4, paragraph 1 because they do not understand what the text means. Thank you. Let us consider Article 3.

El Dr. ABASCAL (Uruguay):

Gracias, señor Presidente. En referencia al artículo 3, desearía señalar que en la redacción o formulación de un plan o proyecto, o de un protocolo, cuando se dispone que se va a indicar un objetivo, lo que se pretende es mostrar el lugar al cual teóricamente se quiere llegar, cuál es el motivo por el que se va a hacer tal actuación. Y lo que debe estar en el objetivo es sólo eso. No se pueden incluir en él otras consideraciones sobre cómo son los medios o el tiempo que va a llevar para alcanzarlo, ni quién lo va a financiar, ni cuáles son las metas que se quieren alcanzar. Todo esto aparece más adelante en el desarrollo del Protocolo. Así, los temas que se pretende introducir en el artículo 3 se desarrollarán para su discusión en los siguientes artículos del Protocolo. El objetivo debe ser conciso y dar claramente la idea de adónde queremos ir.

Creo que el texto que usted presentó en primera instancia, que dice que «El objetivo del presente Protocolo es eliminar todas las formas de comercio ilícito de productos de tabaco, de conformidad con los términos del artículo 15 del Convenio Marco de la OMS para el Control del Tabaco», define cuál es el objetivo y remite al artículo 15 del Convenio Marco para señalar qué hay que hacer para alcanzarlo. Por consiguiente, no creo que debamos introducir más cosas en el artículo 3.

Dr AL-LAWATI (Oman):

Mr Chairperson, during the break I consulted with the Parties in our Region and all of them have unanimously decided to support your option 1 for the text as set out in your suggestions paper of 4 July. That is the position of the Parties in the Eastern Mediterranean Region.

The CHAIRPERSON:

Thank you very much. That is some support. We are gathering support for option 1.

Mr DLAMINI (Swaziland):

Mr Chairperson, I appreciate the efforts that you are all putting into this work before us and one should perhaps congratulate representatives on their effort. However, Mr Chairperson, my first question is a procedural one. I would just like to know whether Parties are at liberty to revisit texts that have been agreed upon, reopen them and maybe come up with some additions or additions of brackets, as it were. This is the first thing that I need to know. In relation to Article 3, I believe that the text as proposed in your suggestions paper as the first option is the most preferable and I can accept it. Thank you.

The CHAIRPERSON:

Thank you very much indeed. I shall pass your first question on to the WHO Legal Counsel, please.

Mr BURCI (WHO Legal Counsel):

Thank you, Mr Chairperson. I think it depends on the method of negotiation adopted by the Intergovernmental Negotiating Body. This has probably not been overtly discussed here, but I have been sitting in Committee B and I do not know how Committee A operated. However, in a few instances delegations have reflected on text that has been agreed, then felt that they could not agree and put back some brackets. I think therefore that, implicitly, the negotiating method the Negotiating Body has adopted – I stand ready to be corrected – on the evidence of the practice of this week, is the classic “nothing is agreed until everything is agreed”. Even though I think that delegations, in a spirit of good faith and respect for others, should think very carefully, first before agreeing on something and, once they have agreed, before reopening an agreed text, I do not think that an agreement on a paragraph means that the paragraph has become untouchable for the rest of the negotiation. Therefore, given the flexibility shown recently in regard to second thoughts, it may be completely legitimate to reopen a text, but with a lot of care in what is discussed, what is agreed, so as to avoid reopening a text that may have cost a lot of time and on which other delegations may have worked and agreed in good faith. Thank you.

The CHAIRPERSON:

Thank you very much.

La Sra. JAQUEZ (México):

Quisiera hacer dos comentarios. El primero lo haré en nombre de las Partes de la Región de las Américas para recordar que desde el inicio y en medio del debate sobre el objetivo del Protocolo, dichas Partes se manifestaron a favor de la propuesta original del texto presentado por usted. Esto quiere decir que todas las Partes fueron consultadas y se manifestaron en este sentido. Hemos estado observando que nuestros colegas en este grupo han tenido que reiterar una y otra vez nuestra postura, dado que se ha seguido discutiendo sobre este texto. Así pues, quiero volver a dejar claro que las Partes de la Región de las Américas están a favor de que el artículo diga lo siguiente: «El objetivo del presente Protocolo es eliminar todas las formas de comercio ilícito de productos de tabaco.»

Seguidamente quisiera hacer un comentario en nombre de México, a raíz de lo que acaba de decir el Asesor Jurídico y concatenándolo con el comentario del distinguido delegado del Canadá, con respecto a la posibilidad de que las delegaciones releen y tengan segundas consideraciones sobre los textos que se nos han presentado. A pesar de que estemos muy presionados por el tiempo para tratar de acabar el trabajo que se nos ha encomendado, no creo que esto nos impida hacer consideraciones a textos que se han presentado unas horas antes y hablar con nuestras delegaciones, hacer las consultas del caso para poder presentar comentarios, sobre todo cuando, como dijo el Asesor Jurídico, estamos completamente de acuerdo en que todo está en corchetes hasta que no esté acordado todo. En este sentido, quisiera apelar a la comprensión, el respeto y la actitud de cooperación de parte del Presidente para que, cuando las delegaciones presenten consideraciones, no crea que es que no entendemos el texto o que no lo hemos leído bien, o que queremos impedir el avance de las negociaciones, sino que simplemente estamos tratando de leer bien el texto y hacer las consultas del caso y producir un texto que nos sirva a todos y sea muy bueno para todos. Muchas gracias, señor Presidente.

The CHAIRPERSON:

Thank you, Mexico, and thank you to the Parties of the Region of the Americas for their support of the first version.

Le Dr TIDJANI (Togo):

Monsieur le Président, l'article 3 concerne l'objectif, n'est-ce-pas ? Cet objectif y est annoncé, mais reste à préciser les moyens pour l'atteindre. Compte tenu de la position des Parties de la Région africaine de l'OMS – à laquelle je m'associe totalement – je rappelle la position du Togo : l'objectif du protocole est d'éliminer toutes les formes de commerce illicite des produits du tabac, conformément aux dispositions de l'article 15. Cet article de la Convention-cadre est à la base de notre travail. Par ailleurs, il ne paraît pas souhaitable de revenir sur un article auquel ont été consacrées de très nombreuses heures de négociation. Une fois que c'est terminé, c'est terminé ! Merci, Monsieur le Président.

Dr GAO Xingzhi (China):

高兴智。(中国):

谢谢主席。

中国注意到各代表团为推动第3条的谈判提出了很多、很好的建议。但是我们比较以后还是认为主席提出的两个备选案文中的第一个更为恰当。所以，我们支持用主席案文，就是最原来那个案文里边的第1条。这个案文准确地表达了议定书的根据和来源，就是烟草控制框架公约。同时表明了目标，就是消灭一切形式的烟草制品非法贸易。我们认为，在关于议定书的管制范围方面，本条跟我们议定书的名称是一致的。如果本条需要扩大，那我们议定书的标题是不是也要扩大？就像主席先生多次指出的一样，在议定书后面各条中可能提到的烟草或烟草制品的设备不会影响第3条的内容。所以，我们完全支持使用主席两个备选案文的第一个。

谢谢。

The CHAIRPERSON:

Thank you very much, China.

Dr TSETSEGDARI (Mongolia):

Mr Chairperson, we too appreciate the Chairperson's proposal. My suggestion is that we add a second paragraph to the first paragraph. For example, "The objective of this protocol is to eliminate all forms of illicit trade in the goods covered by the provisions of this protocol by providing measures to prevent, deter, detect, investigate and eliminate, and prosecute illicit trade in such goods", and I would like to combine two paragraphs. Thank you.

Mr ROWAN (European Community):

Mr Chairperson, this is the first time that we have intervened on this. It was discussed last Monday for two and a half hours; it was discussed for an hour and a half before the break, and we are now almost into another half an hour of discussion. This is really terrible. The only thing is that every cloud has a silver lining. We are really lucky that there is no one up in the public gallery because we would be the laughing stock of the industry if they saw us here today. It is really ridiculous that we are arguing over words. The first suggestion, the one that you made, was accepted by all Parties as far as I remember, except one. Now, if that one Party has changed their mind and can accept it, we can leave this issue, park it and move on to something else. But if they cannot, we will really have to consider deleting the whole thing. I therefore really urge the Party to reconsider and let us move on, please.

The CHAIRPERSON:

Thank you very much, European Community. I shall try that, then, and see what happens. There has been a fair amount of support expressed for option 1 in the suggestions paper. I will ask the question which I asked before the break: Is there anybody who cannot accept, after due reflection, the first option for Article 3 in the suggestions paper? Can anybody not accept the first formulation of the objective? Jamaica, are you keeping your flag up to object?

Dr LEWIS-FULLER (Jamaica):

Thank you, Mr Chairperson. Actually, my flag has been up for some time now. I wanted to comment on, and to support option number 1, but to say that I need the honourable representatives and yourself, Mr Chairperson, to take note that this paragraph 1, which I support, says "all forms of illicit trade in tobacco products", which reflects very faithfully what Article 15 of the Framework Convention refers to. It sometimes goes into the other specificities, such as manufacturing equipment and counterfeiting and so on, but it never speaks of "goods" and, therefore, I suggest that we stick to what Article 15 says and which I am in agreement with. Reflecting forward, or backwards, to Article 4, where "goods" was brought in, I still think we can stick to Article 15 and say "tobacco products". Thank you.

The CHAIRPERSON:

Thank you very much, Jamaica. I do have a long list of people who want to intervene. India, please.

Dr PRASAD (India):

Thank you, Mr Chairperson. I speak on behalf of the Parties of the South-East Asia Region. Before the break we sought clarification from the WHO Legal Counsel as to whether the use of the term "Article 15" here restricts the scope of the protocol. The view of the Parties in our Region is that we should say "in accordance with the WHO Framework Convention on Tobacco Control", which allows us to invoke all the provisions. I shall give an example: if we want to ban Internet sales, we can use Article 13; if we want to ban Internet sales to children, we can use Article 16. Do I restrict myself by keeping "Article 15"? I would like clarification from the WHO Legal Counsel. Thank you, Mr Chairperson.

Mr BURCI (WHO Legal Counsel):

Thank you, Mr Chairperson. Obviously Parties are totally free to see which qualifier better captures the spirit of the draft protocol. In legal terms, I do not think, with all due respect, that the reference to Article 15 limits the scope of the protocol. This is a protocol on illicit trade in tobacco products. Article 15 is an article of the Framework Convention on Tobacco Control. Therefore, in my view, the reference to Article 15 seems totally legitimate and totally sound. Before the break, the delegation of India mentioned the decision of the second session of the Conference of the Parties, which launched these negotiations, at which the Conference decided that the protocol will “build upon and complement the provisions of Article 15” and he asked whether this language meant that the protocol went beyond the scope of Article 15.

Personally I do not think so because “build upon and complement” does not mean to go beyond; it means to give a certain interpretation of the content of Article 15, and if delegations have read the note that my Office has prepared on the scope of the protocol, we make precisely this argument that that language, in a way, expresses the agreement of the Parties on the interpretation of Article 15, to the effect that it does not somehow “go beyond”. Therefore, subject once again to the policy choice of what is the best language, in legal terms I think the reference to Article 15 is perfectly appropriate. Thank you.

The CHAIRPERSON:

Thank you very much. India, did you want to come back on that point?

Dr PRASAD (India):

In that case, Mr Chairperson, we would go along with your first option. Thank you.

The CHAIRPERSON:

Thank you very much. I shall repeat my question. Is there anyone who cannot accept the first option? Very good. Thank you. We adopt the first option in the suggestions paper.

(Applause/Aplaudissements)

The CHAIRPERSON:

Thanks to you all for your spirit of compromise.

Now we move on to the more difficult parts. But first, I just wished to say a few words about Article 2. On Article 2 you will remember that we had wording from the Monday meeting. I do not intend to reopen that discussion because there are still some elements there that we cannot totally clarify, but I hope that the clean version of Article 2 will, in fact, turn out to be the one that we can accept. We shall move on to Article 7 now, please. What I would like to explain to you is the background to the paper that I issued. I am sorry. Colombia.

El Sr. TORRES MARTIN (Colombia):

Muchas gracias, señor Presidente. Antes de entrar a examinar el artículo 7, y haciendo referencia a lo que usted estaba comentando sobre la presentación en limpio del artículo 2, sería muy recomendable que presentara también la nueva redacción del preámbulo porque una parte del mencionado artículo pasó al preámbulo. Colombia estaría muy interesada en conocer cómo quedó el preámbulo, lo que es sustancial.

The CHAIRPERSON:

Thank you, Colombia. I was just referring to Article 2; I did not intend to have a further discussion today, but if you are missing some piece of text in one of the documents that have been issued, perhaps you could let the Secretariat know. But I do not intend to discuss Article 2 at this stage today. Do you wish to intervene again?

El Sr. TORRES MARTIN (Colombia):

No estoy diciendo que se abra la discusión del artículo 2 sino que para nosotros sería muy oportuno conocer la propuesta de preámbulo, por cuanto una parte del mencionado artículo pasó al preámbulo. Ocurre que la Secretaría no nos ha entregado el texto que se propone para el preámbulo, para así poder entrar a discutir el artículo 2 mañana.

The CHAIRPERSON:

Thank you, Colombia. We will make sure that when we produce the documents for the next draft, there will be elements in the preamble to reflect what we have moved or what we may move from Article 2 so that you will then be able to see the full text in the preamble. Thank you for drawing our attention to that.

Article 7 has really been one of the centrepieces of the Chairperson's text and it deals with tracking and tracing. It is one of the most significant technical elements, as well as one of the main substantive issues that we need to tackle. This is why I have taken the liberty of putting down in the paper entitled "Chair's suggestions in relation to the debate and written proposals on Article 7", which you received this morning, some thoughts or suggestions in relation to this Article. The paper in question reads:

The Chair has taken careful note of the comments of the Parties in relation to the scheme for tracking and tracing set out in Article 7 of the Chair's text. There is still considerable discussion about whether tracking and tracing are practical for certain types of goods, and about who should be responsible for keeping and making available the data elements which would be needed to ensure an effective application of a tracking and tracing system. There is also some debate about how systems already in existence at a national level could contribute to the necessary international system. However, if there are different national systems it is vital that they can contribute to achieving the standards and information necessary at an international level.

The Chair does not wish to pre-empt the debate among the Parties, particularly since the text must now become the Parties' text rather than the Chair's text with a view to it being adopted at COP4 towards the end of 2010. However, the Chair wishes to contribute to the debate by making available a revised draft of Article 7 which sets out a possible compromise on the question of the rules to be applied to the various products which will be treated in the Protocol.

For this reason, the attached version of Article 7 proposes that the tracking and tracing system must apply to cigarettes and other tobacco products which are sold in packets or packaging (since such packets or packaging will allow the necessary unique markings to be affixed), but that tobacco, manufacturing equipment and key inputs (if the Parties decide to reintroduce this concept into the text) should be rigorously controlled by means of the licensing and customer identification provisions contained in Articles 5 and 6 of the draft Protocol. One reason for this is that it is not practical to apply tracking and tracing to raw tobacco since unique identification marks cannot be affixed.

In addition to the clearing house described in my current text, the attached suggestion places in square brackets the current proposal that the data elements necessary for the correct application of the tracking and tracing system should be moved from the cigarette manufacturers and other businesses to a data base in a national central point and then from there to the central clearing house data base. An alternative is for the data elements to remain where they are originally collected (by the businesses themselves) and

to have a system which allows each Party simply to send (electronically) the unique identification number found on any seized product to the international central point. The international central point would then send the query (electronically) to the business holding the data relating to the product which has that unique identification number and would receive the answer. This answer would then be passed (electronically) to the Party which made the original query. If this system were to be implemented, it could also be necessary to establish mechanisms to ensure that the businesses holding the data respected their obligations so that the Parties could be assured that the data they received would be accurate and complete. If the Parties consider that this approach would be useful to explore further, I would be ready to provide a suggested text.

PART III: SUPPLY CHAIN CONTROL

Article 7

Tracking and tracing

1. For the purposes of further securing the supply chain and to assist in determining the point of diversion and monitor, document, control and investigate the movement of tobacco, tobacco products and manufacturing equipment used in the manufacture of tobacco products, and their legal status, the Parties to this Protocol agree to establish practical tracking and tracing measures to secure the distribution system for such goods at both national and international level in accordance with the terms of this Protocol.
2. The Parties shall use a system of marking on unit packets and packages of tobacco products and any outside packaging of such products to assist Parties in determining the origin of tobacco products and to control their movement and their legal status.
3. To this end, in relation to [cigarettes and other tobacco products], each Party shall ensure that each manufacturer of [cigarettes and other tobacco products] intended for that Party's domestic market [is]/[are] subject to a global tracking and tracing regime unless the [cigarettes and/or other tobacco products]:
 - (a) are subject to stringent and comprehensive national controls, such as a regime of fiscal or other stamps or marks; and
 - (b) have not been seized outside that Party's domestic market in quantities that exceed [the threshold]. *[to be established by INB]*
4. Each Party shall ensure that each manufacturer of [cigarettes and/or other tobacco products] intended for a market other than its own domestic market (exports) is subject to a global tracking and tracing regime for those [cigarettes and/or other tobacco products].
5. Pursuant to paragraph 2 of this Article, with a view to enabling effective tracking and tracing, each Party shall, within three years of accession, acceptance, approval, formal confirmation or ratification of this Protocol for that Party, require that unique, secure and non-removable markings are affixed to all master cases, cartons and, when technology is sufficiently developed in accordance with paragraph 17(c) of this Article or otherwise, packs of cigarettes containing more than one unit manufactured in or imported onto its territory, and to all packets and packages of tobacco products, other than cigarettes, containing more than one unit manufactured in or imported onto its territory.
6. Each Party shall, as part of its tracking and tracing system, require that the unique markings affixed, pursuant to paragraph 5 of this Article, permit, when scanned pursuant to this Protocol, determination of the following information:
 - (a) date and location of manufacture;

- (b) manufacturing facility;
- (c) machine used to manufacture tobacco products;
- (d) production shift of manufacture;
- (e) the name, invoice, order number and payment record of the first customer who is not affiliated with the manufacturer;
- (f) the intended market of retail sale;
- (g) product description;
- (h) any warehousing and shipping;
- (i) the identity of any known subsequent purchaser; and
- (j) the intended shipment route, the shipment date, shipment destination, point of departure and consignee.

7. Each Party shall require, within [three] years of accession, acceptance, approval, formal confirmation or ratification of this Protocol for that Party, that the information set out in paragraph 6 of this Article is recorded, by using an appropriate technology, at the time of first shipment by any manufacturer established on that Party's territory or at the time of import onto its territory of products covered by paragraph 3 of this Article which have not been subject to the provisions of this Protocol.

8. In relation to tobacco, each Party shall ensure the control of its production and movement and its legal status through application of the licensing and customer identification provisions contained in Articles 5 and 6 of this Protocol in relation to both domestically produced tobacco and imported tobacco.

9. In relation to manufacturing equipment used in the manufacture of tobacco products, each Party shall ensure the control of its production and movement and its legal status through application of the licensing and customer identification provisions contained in Articles 5 and 6 of this Protocol in relation to both domestically produced and imported machinery.

[10. In relation to key inputs, each Party shall ensure the control of its production and movement and its legal status through application of the licensing and customer identification provisions contained in Articles 5 and 6 of this Protocol in relation to both domestically produced and imported key inputs.]

11. Each Party shall ensure that the information recorded under paragraph 7 of this Article is accessible by means of a link with the unique markings required to be affixed under paragraph 5 of this Article.

[12. Each Party shall ensure that the information recorded in accordance with paragraph 7 of this Article, as well as the unique codes rendering such information accessible in accordance with paragraph 11 of this Article shall be included [daily and] in an appropriate format at a central point on its territory.

13. Each Party shall establish a link or interface with the central point referred to in paragraph 12 of this Article and ensure that data are transferred [daily and] in an appropriate format to the clearing-house database.]

14. Each Party shall establish the means by which a competent authority on its territory, upon any seizure being made within its territory of cigarettes, other tobacco products [or manufacturing equipment used in the manufacture of tobacco products], can make a request based on the unique marking on such seized products to the central point on its territory and shall ensure that such a request is passed on to the clearing-house [database] to obtain the information listed in paragraph 4 of this Article in relation to that seizure.

15. Each Party shall require the further development and expansion of the scope of the applicable tracking and tracing system to require the marking and recording of information relating to sales by first purchasers, second purchasers and, wherever feasible, subsequent purchasers, and to enable recording and access to such information in accordance with the provisions of this Article.

16. Parties shall cooperate with each other to ensure that, as far as possible, the tracking and tracing systems established on their territories avoid unnecessary costs or duplication of requirements imposed on manufacturers of cigarettes, other tobacco products and manufacturing equipment used in the manufacture of tobacco products. Where a tracking and tracing system already exists in another Party, it shall be taken into account when establishing any system in a Party that does not currently have such a system.

17. The Parties shall endeavour to cooperate, with each other and with competent international organizations, in progressively sharing and developing or requiring licences to develop improved technologies for tracking and tracing. Such cooperation shall include:

- (a) facilitation of the development, transfer and acquisition of improved tracking and tracing technology, including knowledge, skills, capacity and expertise;
- (b) support for training and capacity-building programmes for Parties that express such a need; and
- (c) further development of the technology to mark and scan cigarette packs and unit packs of other tobacco products to make accessible the information listed in paragraph 6 of this Article.

Some of the key issues that arise were debated in the working group which the Chair of Committee A set up and which was chaired in extraordinarily good spirit and to very good effect by Dr Anibueze of Nigeria. I would like to thank him for all his efforts. Their discussions centred on a couple of things: the interaction of national and international systems, and the list of possible items to be covered by a tracking and tracing system. It is clear from the discussions that the Parties want to have the best possible system of tracking and tracing in order to combat illicit trade. However, issues were also raised about the practicality of having a track-and-trace system that applied to a large range of different types of products. We have already mentioned in many of our discussions tobacco, cigarettes, other tobacco products, machinery, key inputs and so on.

Taking into account the discussions in the working group, and looking again at the text of Article 7, I have made some suggestions for redrafting part of Article 7 itself and my idea is to adopt an approach to tracking and tracing which impacts on those products that are the most suitable for a tracking and tracing regime. The products that are most suitable are those that are actually produced and packaged in certain ways. In addition to that, I have suggested that, for other products, where for technical reasons it is not so easy to apply a tracking and tracing regime because it is not practical, Parties could specify that other tough control measures contained in the draft protocol could apply to those items, and the tough measures that I have in mind are licensing requirements in Article 5, and the customer identification requirements in Article 6.

In any event, I want to emphasize to you that I am not making a formal proposal to amend the Chairperson's text. The paper that I have put forward is purely to aid the reflections of the Parties and to help with some of the key issues that come up under Article 7.

As a separate matter, in the paper I have put in square brackets the elements of the Chairperson's text that relate to the clearing house database, and this is because the clearing house database is not the only system that could be used to make sure that a tracking and tracing system works effectively. As I mentioned in the cover note to my paper, an alternative would be to allow the data to remain with the businesses that have collected the data in the first place. These would be producers, manufacturers or whoever. I could certainly produce text that would assist the Parties if the Parties so wished. However, we are at an early stage of the debate and I think it would be premature to produce text on that.

I want to have the opportunity this evening to have a general debate on this sort of approach to tracking and tracing; but before I do so, I would like to show you a short presentation that explains in outline and in very simplified terms how the current proposal for national central points and a clearing house database would work and how the alternative of not moving the data around could also operate. It is only about nine slides long and should only take about 10 minutes. What is the proposal currently in the Chair's text? The data are moved from the manufacturers to the national central point and then from the national central point to the clearing house database; the data are shifted around the system.

The next slide shows what would happen under those circumstances. You will see here that the cigarette manufacturer gathers data and then actually moves them to the national central point. These are the cigarette manufacturers within your country: you could have two, three or four, or you could have the other people who are gathering the appropriate data. All the data end up in the national central point.

The next slide shows you the national central point in country A, the national central point in country B, and the two arrows that will come up show that country A's data are moved to the clearing house database, which could be in the Convention Secretariat; country B's data are moved to there and, in fact, all Parties' data would be moved into the clearing house database: based possibly here in Geneva.

What happens then, when you make a seizure of a tobacco product in country A? The competent authority in country A sends the unique identification number that is on the seized product to its national central point. The central point sends the unique identification number on the seized product to the clearing house database here in Geneva. Since the clearing house database contains all data, it is able to link the unique number to the data elements relating to that number, in other words the first purchaser, the date of sale, any other of the items that are listed in Article 7. That goes to the national central point and the national central point sends those data elements back to the competent authority of country A so that the country then knows all the linked data relating to the seizure that it has made.

That is the Chairperson's text at the moment. That is how it would work in very, very simple terms. I have not gone into the technical data, into technical details, but that is the outline. The possible option which I have mentioned in my cover paper is that the data remain stored in the databases of the businesses, the producers, the manufacturers, the growers – if we chose to include growers of tobacco. At the next stage, it is not essential to have a national central point, but it could still be part of the system if the Parties so desired. How would this operate? Here you have different manufacturers in different countries and you have electronic links between the clearing house, which is no longer a database, and the manufacturers. If we click round the circle, you find that there are these links. It means that the clearing house and the manufacturers have perhaps a web-based interface that allows them to pass queries and to receive replies.

If we look at the next stage, we go back to the point where there is a seizure of a tobacco product in country A by the competent authority. Here again the identification number is passed to the national central point and that is passed on to the clearing house. Or you could actually have the unique number passed directly by competent authority A to the clearing house. If we click there you will see that that is exactly the same process: the unique identification number goes to the clearing house. This is just an electronic transfer again of the unique number.

The next stage is the different one. If we click on the various arrows you find that what happens then is that the clearing house identifies the manufacturer of the product that has been seized because this can be done from the unique number affixed to the product. It then passes that to the manufacturer, and the manufacturer sends back a reply containing all the data elements linked to that unique number. Again, it is the first customer, the date of dispatch, the routing and so on. It goes back to the clearing house, the clearing house passes on those data to country A and they can go to the national central point or to the competent authority of country A. That is how the system, in the very simplest of terms, could operate under either the Chairperson's system or an alternative – or rather another option – because there are many options and not just two alternatives.

If we look at it in those terms, I hope it gives you a better feel for how the system is supposed to operate under the Chairperson's proposed text or under a different option. What I would like to do for this evening is to hear your views on the possible approach of making a distinction between products that can be tracked and traced because of their physical nature, and those that cannot. Then, if we

decide that some products simply cannot be tracked and traced – for example because we cannot put a unique number on a leaf of tobacco – how should we tackle them within the terms of the protocol? Should we use the system of licensing, know-your-customer and so on, as a sufficient control method to ensure proper compliance?

At this stage it seems that this may well be one of the points that we have to give to an intersessional working group, perhaps together with Articles 5 and 6, so it can really thrash out how this could work, what products it could apply to, what the practicalities are, and what benefits we would gain. But we can debate that some more tomorrow when we talk about the working groups that should be set up and the issues that they should look at.

I should like you, first of all, if you would, to give me a general reaction as to whether you think it a good idea to split up products so that some of them are tracked and traced, for example cigarettes and other tobacco products, under the full system; that is, by using the unique identification numbers, linking them either to a database or making electronic queries, while other products, for example, key inputs, machines, tobacco itself, should be properly controlled by means of other provisions in the protocol. Because if we decide that we need to make that split, then we obviously have to adjust the text, and what I have put into the text of Article 7 in my paper – the “Chair's suggestions” – is a way of splitting the products. However, I have also tried to take account of your discussions in the working group in relation to paragraph 1, but we can come to the detailed drafting once I have gathered your views as to whether it might be a practical way to explore splitting the products between those that can be tracked and traced in practical terms and those that cannot.

I would be very interested to hear any initial views, otherwise we can actually have a look at some of the textual proposals, but I would be interested in your reaction to the principle itself. The floor is open for your comments. Can I take it that you think this, at least, is an option that should be explored and that perhaps should be given to the working group to have a look at alongside its consideration of the original Chairperson's text? Would anyone object to that approach? China, please.

Dr GAO Xingzhi (China):

高兴智。(中国):

谢谢主席。

我们认为主席刚才介绍的思路很好。但是具体操作起来可能会有很大的困难。我们认为，所有的烟草制品和设备都是可以追踪和跟踪的。我们应该分成国内贸易和跨国界的贸易。而我们追踪和跟踪的重点，也就是我们议定书所关注的重点应该是跨国界的国际贸易。我们所有的国际贸易，不管是烟草制品，还是烟草机械或者烟叶，只要它是跨国交易的都应该可以追踪。所以我们重点应该放在跨国界的贸易和对非法贸易数据的收集和管理上。

谢谢。

The CHAIRPERSON:

Thank you very much, China. Any other comments? The idea of splitting between domestic trade and international trade is something that I have also taken up as part of my suggestions paper in the sense that if there are strong provisions for controlling domestic trade, then there could be no need for an international tracking and tracing system. However, there would be consequences if the so-called domestic trade were found in international trade and in the international illicit market.

Mr ROWAN (European Community):

Mr Chairperson, first of all, thank you very much for that very detailed presentation. I think you have made it very clear. We find everything you said very positive. We have just one question in

relation to tobacco products: for example, you did mention that, as foreseen, if goods for the domestic market were not seized in another jurisdiction they might be exempt from the track and trace. We had proposed that all international market cigarettes should be liable to the full track and trace, but, on the other hand, if, for example, something like cigars, which are exported, so they actually become an international trade, are not found in the illicit trade, would we really need to implement a full track-and-trace system if there is no problem and if the goods are not diverted? If they are diverted, of course we would absolutely subscribe to the view that they should be. We are not trying to weaken this; we simply want some clarification because the principle of proportionality, of course, comes in here. As I said, we are very willing to listen to you. We support your ideas. Thank you.

The CHAIRPERSON:

Thank you very much. One option, which is included in my paper, is that cigarettes and other tobacco products would be exempt from the tracking and tracing if they were thoroughly controlled domestically; but that if even cigars found their way on to the illicit market in international trade, that would then have consequences for the domestic producer of those cigars. I think that we have to be clear that if there are problems, there must be mechanisms available to fix them since we cannot give *carte blanche* to so-called domestic manufacturers who then start diverting all their products onto the international market.

Dr PRASAD (India):

Thank you, Mr Chairperson. On the limited point of coverage of tracking and tracing, the Parties of the South-East Asia Region would recommend that we start with tracking and tracing all tobacco products, which means cigarettes and other tobacco products. We would want to track all tobacco products and we would like to have a domestic system. I would like to reserve my comments on the text because there are principles which we need to work on, on which the Parties in the South-East Asia Region have a position. If you wish I can read it now or we can have it later.

The CHAIRPERSON:

Thank you. Could you just explain whether your text is on amending what I have put forward or whether it relates to the principle of what is involved?

Dr PRASAD (India):

Mr Chairperson, it is on the principles. It is on the principles of tracking and tracing. So, with your permission, I shall go ahead.

The Parties in the South-East Asia Region would like to thank you for this excellent presentation. In fact, the presentation brings more clarity than the draft which you have presented, I am sorry to say, and the draft is currently in an unacceptable version. We would like to remind all Parties that this protocol covers all illicit trade in all its dimensions, including any illicit trade or movements that are covered in the territory of the country, and not only global illicit trade markets. Our Region proposes that we must agree on some guiding principles for tracking and tracing so that working groups can work out a suitable draft during the intersessional period. We would recommend the following principles.

Principle 1: It recognizes that tracking and tracing will apply to all tobacco products in a phased and time-bound manner.

Principle 2: Parties shall set up a national system and, where this is not feasible, a regional system.

Principle 3: The global tracking and tracing regime would interface with the national systems and, for this, standardizations would need to be agreed upon at a later date when databases, reporting formats would need to be agreed upon.

Principle 4: A tracking and tracing regime will need to be at the level of unit packets and packages.

Principle 5: Online sharing of information by national systems with the global regimes will be limited to cross-border transactions.

Principle 6: The decision on where the global database or the clearing house will be located could be taken at the fourth session of the Negotiating Body once we have a clearer understanding of what the governance structure is likely to be. If you are going to have a body empowered by the Conference of the Parties, we will have the system operating there. It need not necessarily be in the Convention Secretariat because if there is a body that is being created to ensure that the protocol is managed, then it will be in the body. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much, India. It is very helpful to have those principles because that will be a good input to the working group later on. I am glad you found the presentation helpful as well. Any other comments please?

There is just one thing I want to mention in relation to the comments from India. It is very clear that we have to try and track and trace those things that are physically capable of being tracked and traced by this unique identification number. If you do not have packaging, you cannot stick an identification number on it. I mean, you can obviously stick a number on a machine, that is not too difficult. With bales of tobacco you can do so to a certain extent, I suppose, as with bales of filter tow, acetate tow. However, it does not actually help you when you make a seizure because they have all been split down into small quantities and you cannot tell where they came from originally. The working group would have to look at that.

Dr AL-LAWATI (Oman):

Thank you, Mr Chairperson. We keep talking about the technology or that it is not feasible to do this for tobacco or for this or that product. However, we are establishing a system for perhaps the next 50 or 100 years, we do not know, and we do not want to return every so often to amend this protocol. It is not an annual or biennial business. We want the scope to be as broad as possible, maybe the technology does not allow raw tobacco to be tracked and traced for the time being; but, as always, technology improves and when it is feasible we will do it. It does not harm the countries that do not have a problem with this at the moment. It simply leaves the option for other countries to work in the future and to determine whether they will benefit from it or not. Otherwise, they cannot institute any national laws for such products or raw materials. Thank you.

The CHAIRPERSON:

Thank you very much, Oman. I think that is a good principle to keep in mind so that when we are thinking of the procedures here, there may be scope for saying "when the technology is available" as we have done for packs of cigarettes, for example.

Dr AL-LAWATI (Oman):

During this session there have been several presentations from our colleagues in Brazil and Turkey, and they say it is feasible at the pack level. I therefore do not know why your text has excluded the pack itself, limiting it to the master boxes, I think, as I read it properly in Arabic. It is feasible at the level of individual packs.

The CHAIRPERSON:

Thank you, Oman. Certainly the working group needs to look at that and see if, at the international level, it works on the packs as well. Because if that is correct then, surely, we should try and put it in straight away. I agree with that, but it has to be at the international level, and if we can solve that, it would really be a very big step forward. Nonetheless, we need to be realistic about what we can achieve now, but with an eye to the future. That is why in my paper I have been structuring the

products where we know we can do it now and where we may want to consider other methods of doing it currently; but we could always have a clause put into the protocol saying that as soon as tracking and tracing possibilities exist for raw tobacco, for example, Parties shall meet in order to decide how to put it into effect.

I am not going to draft as I speak, but the group needs to look at those sorts of issues and it may be that there needs to be a step-by-step approach so that we quickly achieve some concrete results and then expand so that we gradually apply the same procedures to other things. However, it sounds as though the working group could at least explore the issues of whether we quickly do tracking and tracing for the things that are immediately possible, then look at the other issues to see if they can be tackled in different ways straight away, then with a view to the future for something more rigorous.

Would you feel that this is at least an element that the working group should take into account when it looks at the principles of Article 7? If we set up the working group it will have to look at drafting. We need the working group to produce something in order for the fourth session of the Negotiating Body to reach conclusions on this. We cannot leave some of these really big issues for discussion in plenary at the fourth session. Unless I see any objection to that, I will assume that this can be an element of reflection for the working group. That is so decided. Japan, please.

Mr OOKA (Japan):

Thank you, Mr Chairperson. We are happy to support your general orientation in that you propose a step-by-step approach which seems quite practical.

The CHAIRPERSON:

Thank you very much, Japan. The other issue then is the options we have for the tracking and tracing system: whether we start shifting large amounts of data around or whether we try to set up a system that has electronic interfaces with the databases that already exist. I shall let the European Community come in at this point, please.

Mr ROWAN (European Community):

Yes. We were particularly impressed with the second aspect of your proposal because the problem is that, although the illicit trade in cigarettes represents a very small percentage of the global market, we would be recording vast amounts of information on a daily basis, that would be terrifying for administrations. On the other hand, we must have access to the information which relates to seizures. Hence the idea of it rushing off to go through a central base, perhaps with the Convention Secretariat, and rushing off to the manufacturers so that we can quickly identify where the goods have been diverted and so on, would be very, very important, rather than capturing vast amounts of information that are not really relevant. I am not even sure if the manufacturers would accept it. They might even take legal action against us because if we are capturing all that information, there is a serious risk of leaking business secrets and so on. Whereas all we really want is the information that relates to the illicit trade. Thank you.

The CHAIRPERSON:

Thank you, European Community. I should add that one of the points that I referred to in my cover note to this suggestions paper on Article 7 was that if we decided in favour of a different system of making electronic queries to existing databases we might need to establish mechanisms that would ensure that the businesses holding the data were actually respecting their obligations. Because we have to have some way of being sure that we are receiving the right information and the full information and that we are receiving it on time. I think, therefore, that this should also be taken into account by the working group if it starts to explore this as a different option for dealing with the situation. Have you any other views on the database idea or the shifting of information? No. Then we shall ask the working group to take that into account in its deliberations and see if it can make a proposal to the fourth session of the Intergovernmental Negotiating Body as to how we could proceed on this. Are

there any other general points that you would like to raise about anything that you have seen or heard this evening or anything that is in the suggestions paper that I have issued?

Dr AL-LAWATI (Oman):

Yes, Mr Chairperson. I think that, in addition to the principles very elegantly highlighted by India on behalf of the Parties in the South-East Asia Region, it would very nice if the working group address some of the technical issues of the servers, the burden of establishing this administration, and whether it would be national or an international clearing house. It would be very nice to have some of this information, rather than having an expert sitting in the corner of this room and telling us. It would be nice to have it in hand well before. Thank you.

The CHAIRPERSON:

Thank you very much, Oman. Of course, the Convention Secretariat has produced its document about what the consequences would be in three different countries, which gives a starting point for that. It looked at Bangladesh, Djibouti and Kenya, providing us with a block of information, if you like, which will start us off. However, to follow up on your intervention, I think, nevertheless, that we do need to have someone on the information technology side in the room when the experts are discussing this, because there is no point in drafting a text that is technically impossible to implement. I therefore hope that one of the information technology experts of the Convention Secretariat or WHO could be present to participate in those discussions. Are there any other general points you would like to raise?

Mr AL JEHANI (Saudi Arabia):

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The CHAIRPERSON:

Thank you very, much Saudi Arabia. I think that is a very valid point. If the regions have a look at that in their meetings and say that they would like the nongovernmental organizations to be involved, I imagine there would be no problem with that. Thank you for your suggestion. Any other questions? No. Then we will use the elements we have here from my suggestions paper, from the original Chairperson's text and from the discussions we have had, particularly the principles proposed by India, and I would urge you to do something similar to what India has done. If you have some contribution that you would like to make to this, even though you may not end up being a member of the working group, then please do make your contributions known to us so that we can take them into account.

Tomorrow we will talk about the working groups themselves, representation and so on. But I think that at least we have got a feel for some of the areas that they need to look at and that they have to come up with draft clauses and articles as a result of their work.

The final issue I would like to look at this evening is the first two paragraphs of Article 7 because the working group did look at paragraph 1, in particular, to try and see if they could come up with a text that was acceptable. I looked at the text they had produced and tried to take account of the concepts they had included and I split it into two paragraphs in my suggestions paper on Article 7,

which you can see there on the screen in front of you. I would be interested to have your reaction to the two paragraphs that I have drafted to see if you think they are on the right track, at least to start off Article 7, since there was a great deal of discussion as to exactly how we would introduce Article 7, that is, its introductory paragraph. I would like to know whether this could also be a contribution to the debate of the working group. If you have had a chance to look at the drafting of paragraphs 1 and 2, I would welcome any suggestions this evening.

Dr AL-LAWATI (Oman):

Thank you, Mr Chairperson. I think the drafting is rather good. I would just like to suggest that instead of the word “practical” in the fourth line, perhaps the word “efficient” might be better, but I shall leave it to the others to comment. Thank you.

The CHAIRPERSON:

Thank you very much. We might consider “efficient” or “effective”, or something like that. Other comments, please?

Dr PRASAD (India):

Thank you, Mr Chairperson. Can we add the word “origin” in the first line so that it reads, “at the point of origin, diversion”? Because we need to know from where it started, only then can we look at where it went other than the way it was destined to go. Can we have the word “origin”?

Mr TAGOE (Ghana):

Mr Chairperson, regarding the words “practical” and “efficient”, we propose that, instead of “practical” or “efficient” we use the word “effective”: “effective tracking and tracing measures”. We believe that to be more appropriate. Thank you.

The CHAIRPERSON:

Thank you very much. Certainly – that was in my mind as well. Any other comments, please? Does this look as though it has a reasonable chance of success if we use these first two paragraphs to begin Article 7? Perhaps using the word “effective” instead of “practical” but, otherwise, broadly along those lines?

Mr ROWAN (European Community):

Mr Chairperson, merely a point of clarification, please. I see that we have machine manufacturing equipment here. I thought that you felt that it might be better that these types of items should be subject to stringent controls on their licensing or somewhere else. Thank you.

The CHAIRPERSON:

That is true. What would you suggest in order to correct that?

Mr ROWAN (European Community):

We feel that it should be “cigarettes” but I know there are many Parties here that believe it should be “tobacco products” and for the basis of discussion we shall certainly accept “tobacco products”. We do not see tracking and tracing of manufacturing equipment as exactly the same thing. It is totally different from tracking and tracing tobacco products, which is why we would like to see them subject to stringent controls by whatever means, licensing or any other, so we would accept the “movement of tobacco products”. Thank you.

Dr ANIBUEZE (Nigeria):

Thank you, Mr Chairperson. I think that we are again navigating on an issue you wished to leave. I think your original text could sit well with the Parties in the African Region. The reason is that we have said time and time again that we have a major concern with illicit production of the products and the machines used to produce them. I would want to know who produced them and where they have sent them, because they come into our countries and are stocked in a garage, manufacturing these cigarettes and moving them out and our people are using them. We would need to have information also about tracking them. Why can we not track these things? We should be able to have the privilege, if we were given it, to track them. We think that we could begin to consider the original text, although one aspect of what we required was not there. The original text, as it stands, took our concerns into consideration.

Mr AHMADI (Islamic Republic of Iran):

Mr Chairperson, thank you for putting forward the two paragraphs. As to the first paragraph, my delegation is in full support of what you proposed and we can go along with the word “origin” that has been proposed, as well as “effective” to be inserted instead of “practical”. With these two changes we will be able to support what you proposed as Article 7, paragraph 1.

El Sr. TORRES MARTIN (Colombia):

Es importante mencionar el origen, pero también la procedencia, porque muchas veces los productos pueden ser originarios de un país pero proceden de otro, pues los han desembarcado en el puerto de otro país y los han sometido a algún procesamiento o distribuido hacia varios destinos. Por lo tanto, se debería indicar su origen y procedencia.

The CHAIRPERSON:

Thank you very much for those comments. It would be helpful if you could write them down as well and we can take them into account for the working group.

Mr LEBEPE (South Africa):

Thank you, Mr Chairperson. In the working group on this Article we had agreed with the European Community. We had traded some of our interests and they had traded “cigarettes”, but a few minutes ago they said that if the industry were present we would be a laughing stock. That is because the topic on the table was in their interest. Now they are fully aware that the Parties in the African Region traded some issues for “manufacturing tobacco products”. I think that, in the spirit of negotiation, they should not be somersaulting at this point. We are happy with your proposal and we would prefer that, in the spirit of negotiation, they withdraw the objection they laid on the table.

Mr AL JEHANI (Saudi Arabia):

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The CHAIRPERSON:

Thank you very much. Is there anyone who would not like to see the word “origin” included in the text? No, it seems not. Could you take “origin” out of brackets please. What do you feel about the word “effective”? Could we accept “effective” and delete “practical and efficient”?

La Sra. JAQUEZ (México):

Estamos de acuerdo en quitar los corchetes de la palabra «origen», pero hace unos momentos la delegación de Colombia pidió que, además del origen, se incluyera también la procedencia. Nosotros pedimos que, si vamos a hablar de un sistema eficiente de monitoreo, aparte del origen y la procedencia se mencione el destino; porque una cosa es dónde se originan los productos y otra de dónde vienen y a dónde van. Así pues, pedimos que se refleje la aportación de Colombia. Muchas gracias.

The CHAIRPERSON:

I think we have a problem finding the right English word for *procedencia*. Could it be “routing” or something similar? It sounds like “routing” to me: the way it proceeds along the path. Yes, “routing”.

Mr FISH BERREDO MENEZES (Brazil):

Thank you, Mr Chairperson. I would just like to suggest something for the consideration of the other Parties. I do not know what the other Parties think, but today is Saturday and it is almost 20:30 and I think we have discussed Article 7 a great deal with regard to the tracking and tracing regime. We have tried to propose a text between Canada and the European Union. I discussed this issue with India and the Parties in the African Region. We have made a lot of amendments and suggestions and I think we have a good basis for the working group to go further with this issue. I recognize your effort in trying to produce a new text, which I think is a good one for all bases and for all Parties and for discussion, but I do not think that Brazil is in a position to discuss it.

I do not think we have time to discuss 17 paragraphs. I think we will not finish this discussion if we put all new suggestions and amendments into this text. I will therefore propose to you and all of the Parties that your text, together with the revised draft text reflecting the proposals of Committee A on Part III: Supply chain control (*Article 5 to 11*), which has been distributed and is a result of the discussion with all of the Parties, should be considered in the discussions of the working group during the intersessional period. I do not think that discussion now will be profitable or allow us to start another document and another article to be subject to the working group. This is only something for you to consider. Thank you.

The CHAIRPERSON:

Thank you very much. No, you are right. My intention was not to go through 17 paragraphs of this. It was only the first two paragraphs because the working group looked at the first paragraph. I was trying to see if there was any way we could build on the working group’s work on that paragraph. Do not worry. I am not going to go through 17 paragraphs.

Dr DLAMINI (Swaziland):

Mr Chairperson, I think that the principle is well accepted and your suggestions can, and will in fact, form a good basis for the work to be done by the working group when it deals with Article 7 if it was agreed that such a group should be established. And as regards Article 7, paragraph 1, Mr Chairperson, the proposed text with the modifications made by our colleagues from India regarding the addition of “origin”, as well as the replacement of “practical” by “effective” is also well accepted. I believe that this proposal is direct and precise regarding what we seek to achieve and I believe that it is one attempt on your part to assist us in directing the issues you are dealing with here because the system that we seek to establish is the one that will assist us in tracking and tracing all the things mentioned in paragraph 1.

Mr FITZGERALD (Australia):

Mr Chairperson, Australia simply wishes to reiterate the comments made by Brazil to the effect that the text that has been put up is a good starting point for the working group that is going to be established but we are not sure that now is the right time to be discussing it, even if it is only two paragraphs. The working group that was held on Tuesday or Wednesday night was held for three and a half hours, I think we got through six lines in three and a half hours. We appreciate the attempts that have been made and think it would be a very good starting point for the working group, which is possibly the place where the discussions should start. Thank you.

The CHAIRPERSON:

Thank you, Australia. I am beginning to get the message, do not worry. I think that exhaustion is creeping in all around, but I think it has been useful, nevertheless, to hear a few ideas on the principles which the working group could look at and – you are quite right – we need to decide tomorrow that there will be a working group. But if they do set up then I think we have a chance now of looking at the different options that have been flagged in the original Chairperson's text, in the new suggestions paper and also in the overhead presentation. I think we can probably make that presentation available to you, at least in English.

Simply to clarify matters, the text we have in my suggestions paper on Article 7 will form part of the basis for the discussions of the working group and will be included in a proper document for that purpose, including paragraphs 1 and 2 which we have discussed here tonight with the various brackets in place. A final comment from the European Community, please?

Mr ROWAN (European Community):

Thank you, Mr Chairperson, simply on a point of clarification for our colleagues from Africa. We would be delighted to participate in this working group. We are going there in good faith to try to find the best possible solution and we are more than willing to have "manufacturing equipment" on the table for discussion. Thank you.

The CHAIRPERSON:

That is very good. I think that is a good sign of openness for the discussions that are going to take place there. Thank you.

I see no more flags at the moment, so I shall sum up. We will have to decide tomorrow in the plenary whether we have a working group on this area, for example on Articles 5, 6 and 7 taken together. I think that is almost inevitable, but that is your decision in the plenary tomorrow. If there is such a group, we should use the Chairperson's text in addition to the document to which I have just referred, with the few amendments it contains. I think you should have the overhead presentation simply as explanatory material. I do not think it is an official document of the Convention Secretariat, but it will be made available to you and it means that the working group can look at the different possibilities for tracking and tracing for different products. It can look at the different possibilities for the data exchange or data transfer or questioning of databases and they will be tasked with the job of producing text, which will certainly facilitate the work of the fourth session of the Intergovernmental Negotiating Body .

2. ORGANIZATION OF WORK (continued)
ORGANISATION DES TRAVAUX (suite)

The CHAIRPERSON:

I shall outline for you the issues that we need to discuss tomorrow morning. We need to have the formal adoption of the reports of Committee A and Committee B. We need to take a decision on the working groups that we will set up in the intersessional period, the topics that they will discuss and the arrangements. We need to discuss the dates of the fourth session of the Intergovernmental Negotiating Body. That will probably be all, in fact. Therefore, I hope that it will not be too long a meeting tomorrow. Dr Nikogosian.

Dr NIKOGOSIAN (Head, Convention Secretariat):

Since we consider that the discussion on agenda item 5 is now close to being concluded or almost concluded – Mr Chairperson, please correct me if I am wrong – you will now be discussing the intersessional process prior to the fourth session of the Intergovernmental Negotiating Body. We will therefore take the liberty of consolidating all three fragments of the text: one from Committee A; one from Committee B; and one from the plenary – whatever was discussed and agreed with brackets, or not agreed but with brackets – to put them all together as a negotiating text for the future process. It will be a big document, but one document. This is our intention. If that is agreeable to you, the document will be available to you tomorrow morning in the plenary. Thank you.

The meeting rose at 20:30.
La séance est levée à 20h30.

VERBATIM RECORDS OF PLENARY MEETINGS

COMPTES RENDUS IN EXTENSO DES SÉANCES PLÉNIÈRES

NINTH PLENARY MEETING

Sunday, 5 July 2009, at 09:30

Chairperson: Mr I. WALTON-GEORGE (European Community)

NEUVIÈME SÉANCE PLÉNIÈRE

Dimanche 5 juillet 2009, 9h30

Président: M. I. WALTON-GEORGE (Communauté européenne)

- 1. DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS** (continued)
ÉLABORATION ET NÉGOCIATION D'UN PROTOCOLE SUR LE COMMERCE ILLICITE DES PRODUITS DU TABAC (suite)

The CHAIRPERSON:

Good morning, everyone. Welcome to the final meeting of the third session of the Intergovernmental Negotiating Body.

We shall go straight into the agenda, please. We need to finish off the discussion on item 5, which is the discussion on the text of the protocol itself. You will have seen this morning that there is a paper that the Secretariat produced overnight, which is dated 5 July and which is entitled "Draft negotiating text for a protocol on illicit trade in tobacco products". This text contains a consolidated version of the draft articles of the protocol and it reflects the amendments made by the Parties in Committees A and B and in the plenary of course. As agreed yesterday, the text is being presented for the consideration of the Intergovernmental Negotiating Body as the basis for the further negotiations to be carried out by the Intergovernmental Negotiating Body, including the intersessional work that is being discussed and that we will obviously discuss in detail shortly. In relation to the draft negotiating text, there are a couple of things that I would like to mention to you.

If you look at paragraph 11 of the cover note of the text, which is on page 2 in the English version, you will see that the penultimate sentence says "Where consensus was reached, this is indicated (*consensus*)". That has certainly been done in the text for Committee B but we have not in fact done that for the consensus reached in the plenary or in Committee A. Accordingly, with the permission of the Intergovernmental Negotiating Body, I would propose that we add the word

“consensus” in brackets after Article 3, which we discussed yesterday evening, and Article 5, paragraphs 4 and 5, which were discussed in Committee A, and finally, Article 8, paragraphs 6 and 7.

Those were the areas on which we reached consensus but regarding which the document does not actually record that at present. Therefore, if you agree, I will ask the Convention Secretariat to put that into the record. Are there any objections? No. That seems to be agreeable, therefore it is so decided. Thank you.

There is one small correction which needs to be made and this relates to Article 6, paragraph 3. On page 11 of the English text, the second line of paragraph 3 currently says “conducting” in English. In fact, it should say “conduct” because the proposal was to delete the phrase before that word so that the paragraph would begin with the words “Conduct customer identification ...” I am sorry for the slight confusion, but we will change the word to “conduct” because that is what the delegation actually requested and it makes sense in English if you delete everything before that word. Is that acceptable to Parties? Very good. I think that seems to be the case. Canada, please.

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Thank you, Mr Chairperson. There are two parts to my question: firstly, could you just go through again the list of the consensus areas so that we can make sure that we understand that correctly? Second, my recollection was that in fact we had consensus on many of the Articles after Part VIII. Am I incorrect in this assumption?

The CHAIRPERSON:

Thank you very much, Canada. On the first part of your question, I will repeat the Articles that I mentioned. I mentioned consensus on Article 3, Article 5, paragraphs 4 and 5, and Article 8, paragraphs 6 and 7. Regarding your question in relation to the final parts of the protocol, I think in fact you are correct. I think we did reach consensus on large amounts of the final elements of the protocol. I will ask the Convention Secretariat to look into that and we will have to revert to it before we close finally the discussion on item 5. Thank you for drawing that to our attention. Subject to that, are there any other points that you want to raise in relation to item 5, which I will not formally close at this stage until we have checked the final parts of the text. I see no more comments on that. Thank you very much. Let us pass on to agenda item 6.

2. DATES AND VENUES OF THE FOURTH SESSION OF THE INTERGOVERNMENTAL NEGOTIATING BODY AND OF PLANNED WORK BETWEEN SESSIONS
DATE ET LIEU DE LA QUATRIÈME SESSION DE L'ORGANE INTERGOUVERNEMENTAL DE NÉGOCIATION ET DES TRAVAUX INTERSESSIONS PRÉVUS

The CHAIRPERSON:

Agenda item 6 concerns the dates and venues of the fourth session of the Intergovernmental Negotiating Body and of planned work between sessions. Has the final decision on the date and venue of the fourth session of the Intergovernmental Negotiating Body to be taken by the Bureau of the Conference of the Parties or by the Intergovernmental Negotiating Body? I am told it is the Bureau of the Conference of the Parties, but of course we can make proposals to the Bureau of the Conference of the Parties as to what is possible. We need to meet early in 2010 so that we can meet the deadline of presenting a text six months before the date of the next session of the Conference of the Parties itself, which will be towards the end of 2010. Therefore the current indication, which will be subject to a decision by the Bureau of the Conference of the Parties, is that the fourth session of the Intergovernmental Negotiating Body would take place in Geneva, and the current dates proposed are 14–21 March, both dates inclusive. Unfortunately, both of those dates are Sundays, which means that

we have another eight-day session, including two Sundays. That is just for your information at the moment. I hope you will at least block your diaries for that. Those are the indications for the dates and the place. Looking then at the process for the period up to the next session of the Intergovernmental Negotiating Body, you will also have found on your desks, or on the desk, another paper containing a draft decision of the Intergovernmental Negotiating Body. This is a document entitled "Draft decision of the Intergovernmental Negotiating Body on a protocol on illicit trade in tobacco products", which reads:

**Draft decision of the Intergovernmental Negotiating Body on a protocol
on illicit trade in tobacco products**

The Intergovernmental Negotiating Body,

Recalling Decisions FCTC/COP2(12) and FCTC/COP3(6) of the Conference of the Parties to the WHO Framework Convention on Tobacco Control on the elaboration of a protocol on illicit trade in tobacco products;

Having considered the Revised Chairperson's text on a protocol on illicit trade in tobacco products contained in document FCTC/COP/INB-IT/3/3;

AGREED that the text contained in document FCTC/COP/INB-IT/3/5 will form the basis for further negotiations on a draft protocol;

DECIDED:

- (1) to establish _____ drafting groups on _____, respectively, to work during the period between the third and fourth sessions of the Intergovernmental Negotiating Body;
- (2) that the drafting groups will comprise four Parties from each of the six WHO Regions, with the membership to be communicated to the Convention Secretariat by the respective member of the Bureau of the Intergovernmental Negotiating Body not later than 15 August 2009; and
- (3) that the drafting groups will develop possible text of the Articles assigned to them to facilitate further negotiation at the fourth session of the Intergovernmental Negotiating Body;

REQUESTED that the Convention Secretariat:

- (1) make the necessary arrangements, including budgetary arrangements, for the drafting groups to undertake their work and to make available the possible text elaborated by the drafting groups not later than 60 days in advance of the opening of the fourth session of the Intergovernmental Negotiating Body; and
- (2) elaborate a paper reflecting the options for the institutional and financial arrangements addressed in Parts VI and VII of the Negotiating text contained in document FCTC/COP/INB-IT/3/5, and the financial implications of implementing those options, in consultation with Permanent Missions of Parties in Geneva;

FURTHER DECIDED to take note of the cost estimates provided by the Convention Secretariat for the above intersessional work;

CALLED UPON Parties to make extrabudgetary contributions to fund this intersessional work;

REQUESTED the Bureau of the Conference of the Parties to reflect this intersessional work in the workplan for the Convention Secretariat for 2009 and 2010; and

ADDITIONALLY DECIDED to hold a fourth session of the Intergovernmental Negotiating Body in early 2010, with the date and venue to be determined by the Bureau of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.

The CHAIRPERSON:

This document was discussed briefly in the Bureau yesterday evening. Dr Nikogosian presented the outline of what would be included in the draft decision because it needs to take account of all the areas of work that we shall have to undertake, and draws the attention of the Intergovernmental Negotiating Body to various issues, including budgetary issues. We need to decide on the number of groups that we wish to set up and the topics on which those groups will actually wish to concentrate. What I would suggest is that we have a discussion now on the groups which we feel should be established, simply to confirm the view of the Intergovernmental Negotiating Body. We should also confirm the subject matter of those groups, what they will be looking at and the participation in the groups. You will recall that we discussed that there should be two intersessional working groups that would be drafting groups, which would really be small groups of people representative of the regions, to look at particularly thorny issues. Separately, there would be a group based here in Geneva, which would be a wider group, which would work with the Convention Secretariat to produce an options paper on Parts VI to X of the protocol, so that there is clarity about what would be involved. And that group would also work with the Convention Secretariat to produce any necessary drafts as a result of having considered the options paper. Therefore, that will be a wider group, the Geneva group; there is no limitation on the number of participants for that group and they will work very closely with the Convention Secretariat to achieve the two objectives that I have sketched out. However, it will be necessary for the two drafting groups to be much more restricted in participation because of the work they have to do. I would propose that there should be, from each region, four persons representing the Parties in the region. That means that there would be two working groups and in each of those groups four persons from each region. It will be a matter for the regions to decide who should represent them, but I think it needs to be kept at that level so that we have 24 people, experts from your regions, who would be able to work on the drafting of the articles that we decide they should tackle. The areas that we should look at were briefly touched on yesterday. We identified Article 7. Philippines, would you like to intervene before I go on? Philippines, please.

Mr PADILLA (Philippines):

Yes thank you, Mr Chairperson, but only in relation to the working groups. Mr Chairperson, we had a discussion this morning, as well as yesterday, in relation to this and, as you know, the Parties in the Western Pacific Region are a very, very dynamic group. There are a great many issues that are being discussed, and many divergent views. It was our hope that the working groups would be open-ended, but if they cannot be open-ended we hope that the Chairperson will allow the Parties in the Western Pacific Region to have at least six representatives on the working group if that is at all possible.

La Sra. JAQUEZ (México):

Las Partes de la Región de las Américas quisieran también apelar a la comprensión del Presidente en lo que se refiere a la diversidad de posturas que tienen sus miembros y quisieran pedir cinco representantes para poder acomodar a un representante del Caribe en esta representación.

Mr AL MANSOORI (United Arab Emirates): ()

Mrs ASIEDU (Ghana):

Thank you, Mr Chairperson. As you are all aware, the African Region is most diverse and most culturally and traditionally varied. It has a lot of companies, so that if the other regions are expecting the working group to be opened up we would also be very grateful if the groups are opened up to contain five persons each. Thank you.

Mr YÜKSEL (Turkey):

Mr Chairperson, I am taking the floor on behalf of the Parties in the WHO European Region. In principle, we have no objections to having five representatives for the small drafting groups. Thank you very much.

The CHAIRPERSON:

Thank you very much. I think then that there would be consensus if we limited the representation to five persons from each region. Is anyone not able to go along with that? Five persons. Kenya, please.

Mr LONGOLOMOI (Kenya):

Thank you, Mr Chairperson. At this point in time it is the feeling of my delegation that we have had representation from the Framework Convention Alliance on Tobacco Control at most of the sessions of the Conference of the Parties and in the working groups. In addition, their participation here has actually been very fruitful to us because they support the protocol to the Convention. In that respect, therefore, I believe it would be of interest also to have them included so that the people with the relevant expertise can come and join the technical working group for what I think would be better output and better progress.

The CHAIRPERSON:

Thank you, Kenya. I will come on to that point once we have decided how many representatives from the regions there should be. Can I put my question again? Can anyone not accept the proposal of having five persons from each region for these two drafting groups? They can be different persons for the different groups but it should be limited to five per region.

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Thank you, Mr Chairperson. We can certainly agree to that. What I am also interested in, however, are the practical implications of this because there are budgetary implications. I think there has been some discussion, for example, of whether we have a working group for five or six and then a separate working group for seven or something along those lines. In practical terms, could the Convention Secretariat comment on whether this cuts down our flexibility to have more working groups or fewer working groups? That is my only question, so that we are aware of some of the practical implications of these decisions. Thank you.

The CHAIRPERSON:

Thank you very much. There is an item in the decision which refers to the budgetary issues and the organizational issues and I will ask the Convention Secretariat to explain what they have in mind. However, I would like at least to confirm at this stage that we can agree to five.

Mr PADILLA (Philippines):

Mr Chairperson, on behalf of the Parties in the Western Pacific Region. When we were having our discussions we went through the motions of finding out who wished to be members of this working group. We in the region divided ourselves into south-east Asian Parties, the Pacific Islands and other Parties, with Australia, China and Japan also coming in. We would prefer, if possible, to have six, considering that this is a very important intersessional meeting, considering that this is also a drafting group and we have very, very strong and divergent views on this matter. We again ask for the Chairperson's understanding to allow us to have six members for the group.

The CHAIRPERSON:

I need to ask two questions in that case. Would the other regions be prepared to make an exception for the Parties in the Western Pacific Region to have six and still keep to five in the other regions? Would anyone object to that?

Mr MOHAMED (Maldives):

Yes. We would like to start first with the issue of giving the floor. We would appreciate it if the Chairperson gave the floor in order of request. Our submission is on the initial issue of the number of persons. Rather than the number of persons, we would suggest five Parties. We would also like to register the fact that the Parties in the South-East Asia Region, although small in number of countries, are also a very dynamic group; at least we think so. And we wish to be even more dynamic. We are really unified as a group – and want to be able to contribute constructively. We therefore suggest five Parties rather than limiting it to five persons. On the last question the Chairperson has just asked, our view is that we would prefer to have equal treatment, which, I think, would make for more consensus on the floor. Thank you.

The CHAIRPERSON:

Thank you very much, Maldives. My apologies if I did not recognize you in the right order. I cannot agree to your proposal that there should be five Parties. That would simply mean that there could be an infinite number of people participating, depending on how many people each Party wished to send. One could have delegations of 10 people per Party and it would simply get out of hand. I would therefore really not like to go down that road if I can avoid it.

Mr YÜKSEL (Turkey):

Mr Chairperson, I am taking the floor on behalf of the Parties in the European Region. When we were discussing the establishment of the small drafting groups, the most important issue that we considered was efficiency and the idea that the group would do some brainstorming and some drafting. That being so, we would like to see at most five people from each region, simply to be fair to each region. Thank you very much.

Le Dr MOUSSA (Niger):

Merci, Monsieur le Président. Je prends la parole au nom des Parties de la Région africaine de l'OMS et j'ai deux questions. Concernant les deux groupes de travail, j'entends bien qu'un groupe va examiner les points relatifs aux articles 5 et 7 et un deuxième groupe l'article 12. Les Parties de la Région ajoutent au premier groupe l'article 6 et au deuxième groupe l'article 11. Quant au nombre de participants, les Parties de la Région avaient appuyé la démarche pour que ce nombre soit de cinq. S'il y a une exception, qu'elle s'étende à tout le monde ; il n'y a pas de groupe plus efficace qu'un autre. Les Parties de la Région africaine sont d'ailleurs très efficaces quand on connaît les moyens dont elles disposent ! Merci.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, I wish to seek clarification from you. I think that the use of the expression “drafting” and “drafting groups” is probably giving some delegations the wrong impression that these drafting groups are to be assigned the task of drafting a final version of our work. In fact, Brazil agrees to participate in these working groups, in view of the importance that we place on the attempt to solve some key issues that are not being solved in these large discussions. However, it is obvious to Brazil that anything to be concluded by this small group is open to revisiting and to discussions and to opposition by any delegation in plenary.

Accordingly, I would like to remind all delegations that these working groups are not going to elaborate a definitive text. They are simply an attempt to advance your work, Mr Chairperson, and ours. I believe, therefore, that four or five would be a reasonable number since there are budgetary limits, as Canada has just pointed out. Again, Brazil is going to take part only on the understanding that no final result will emerge from the work of these working groups. Perhaps “drafting group” is giving the wrong impression that we are going to finalize something during these discussions. Am I right, Mr Chairperson?

The CHAIRPERSON:

Thank you, Brazil. Yes, you are absolutely right. Nothing is agreed until it is agreed, and in fact the Intergovernmental Negotiating Body or the Conference of the Parties will take the final decisions on the text, whereas these groups would take the process forward by trying to find texts that might carry the day at the session of the Intergovernmental Negotiating Body. However, it will depend on the Intergovernmental Negotiating Body’s decision; we are looking to take the process forward and obtain a better feel for what might well be a semi-final version of the text.

Mr PADILLA (Philippines):

Mr Chairperson, we really feel that we could probably have six members for the first working group but, in any case, let me make a counter-proposal. If we limited our membership of the second working group to four would it be permissible to have six in the first working group? If it is a question of budgetary requirements, it should pose no problem. Would that be at all possible?

The CHAIRPERSON:

Thank you, Philippines. I think that is a very creative suggestion and if we have an overall limit of 10 persons for the two working groups I think that would probably work. Can everyone else go along with that?

Dr PRASAD (India):

Mr Chairperson, the intervention of the Parties in the South-East Asia Region to suggest that we have the term “Parties” was intended to ensure maximum representation of Parties from each region. We could restrict the participation to one person per Party. The draft decision you introduced earlier also uses the word “Parties” and not “persons”. The Parties in the South-East Asia Region would also like to support the inclusion of Article 11 in the first working group. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you, India. It is certainly my intention that there should be five Parties represented by one person per Party. It would be good if everyone understood that. It is the maximum number of persons that we need to limit, but there should be a person from each of the regions that are nominated.

Mr SHAKERIAN (Islamic Republic of Iran):

Mr Chairperson, my comment concerns operative paragraph 2 of the draft decision, where you say that “the drafting groups will comprise four Parties”. I think the message that this sent to the regional groups was that on this important issue of the drafting group there would be four Parties, or perhaps five Parties, from each region. I think that the message was well received and it seems that the delegations would like to reach a compromise solution if possible even before the Conference of the Parties.

However, if we wanted to limit the number of the persons who are going to be present, this concerns first of all the Parties, or governments, and then the region. I think we have to give States Parties the opportunity to provide even more than one person, particularly with regard to technical issues where it is not only one person who will be knowledgeable about an entire issue.

For example, some technical issues are interlinked and interrelated. I think, therefore, that if some delegations or some Parties would like to bring more than more than one person, it is quite logical that they would not conflict with one another because in the end you will hear one voice from one Party. That is what is important. You are not going to hear several voices from one delegation. There would be one person representing the Parties, supported by perhaps one or two, which is quite logical. We do not expect the Parties to come with a very large delegation; they have to keep it to a very limited number, but in the end what is very important and should be the issue is that we are going to hear only one voice from one Party.

That, therefore, is my suggestion which is in line with what Maldives also said, based on the experience we all had in Committee A and Committee B. It is too difficult to imagine that only one person representing one Party on behalf of the region should know everything. The person sitting in the chair needs to consult with his or her own delegation. My humble suggestion to you is that you can perhaps reconsider your suggestion and, as you mentioned, we can limit that to five Parties, while allowing the delegations to have more than one person, but not too large a delegation – with the support of at least one or two other people. That is my suggestion. Thank you.

The CHAIRPERSON:

Thank you very much, Islamic Republic of Iran. I can see the underlying reason for your request but it does mean that we simply would not know how many people would be there, how big the meeting would be or what the costs would be. These are the practical arrangements that I am concerned about, which is why I have suggested that we would need to amend the decision in any case in order to refer to groups which will comprise a representative from each of the Parties.

Ms HEFFORD (Australia):

Mr Chairperson, I am just wondering whether we could spend a couple of minutes thinking about the sequence of the work and the way in which it might be conducted, which might help us resolve some of these issues. For example, it is our view that the working group looking at Articles 5 and 6, and even Article 7, would need to conclude its work before the working group on Article 12, and that work would need to be concluded before Parts VI to X could effectively progress. There is a logical sequence to the way in which the work should be done and that may influence some countries' availability and capacity to attend all of those meetings.

The second thing that may be an influential factor would be the question of whether or not we block the working groups. If the intersessional working groups are all able to meet in one group, in a sequence of three or four days, that would increase the capacity for some people to provide technical expertise. If these are to be on individual dates a month apart it would be very difficult for a country like Australia to send someone from the capital and we would be more likely to do that using our permanent representative here. Other countries might react similarly if they knew how the work was going to be blocked and the sequence of the conduct of the work. Thank you.

The CHAIRPERSON:

Thank you very much, Australia. I shall ask the Convention Secretariat if they can give you an outline of what they have in mind at the moment and see if that helps. Thank you for that suggestion.

Dr NIKOGOSIAN (Head, Convention Secretariat):

Thank you, Mr Chairperson. Our estimate, as of yesterday, is that there would be two working groups of four, now apparently five, which does not change the organization, although it may change the budget a little, of course. The plenary plan was to convene two separate meetings of these working groups: one in early October and one in mid-October; that ties in with the availability of the rooms we have, which we checked yesterday; then to convene the second meetings of the same working groups during the last week of November, back to back, also providing for one day overlap or a half-day overlap in case the working groups wished to consult each other on some cross-cutting issues.

If we see that the nominations come in such a way that there is a substantial overlap of the membership between the working groups, we may also, under your guidance, suggest convening even the first working group meetings in October back to back if, let us say, there is a substantial number of people who are the same nominees, in order to facilitate the work. However, our initial option was to make them not necessarily back to back but to make the second meetings back to back.

Also, we really need to finish the meetings by the end of November because the minimum time for editing and translation of whatever documentation will come out is five to six weeks, after which we have to release this documentation in mid-January, 60 days before the mid-March deadline or timeline, let us say, or the prospective dates of the fourth session of the Intergovernmental Negotiating Body. This is our timeline of work. Of course we shall take your views and comments and guidelines into account in organizing this work, but that is how it stands now from our very short period of time thinking it over yesterday. Thank you.

The CHAIRPERSON:

Thank you very much, I think that is a helpful clarification because if they are back-to-back meetings it would meet one of Australia's concerns that if we had a working group first on Articles 5 to 7 that message could then be passed on to the next working group immediately starting on Article 12 for example, and then similarly for the second round of activities.

Mr YÜKSEL (Turkey):

Thank you very much, Mr Chairperson. I am taking the floor on behalf of the Parties in the European Region. Firstly, we would have no problems with the sequencing as proposed by the Convention Secretariat. The second issue I would like to underline is that from the beginning of this discussion about the setting up of the drafting groups, your message to the regions has been that they should comprise four persons from each region. We are trying to accommodate your wish and we are ready to work with five persons from each region.

However, we believe that a balance between the drafting groups should be maintained, and what I would like to underline once again is that we would like to see five people representing each region on each of the working groups. Last but not least, there was a suggestion about the participation of nongovernmental organizations, as far as I remember, from the floor. We have no problem with the participation of nongovernmental organizations as observers in both working groups. Thank you.

The CHAIRPERSON:

Thank you very much, Turkey. We have got some wording concerning the nongovernmental organizations which we will put up for you shortly, once we have sorted out this issue of the representatives.

Dr TSETSEGDARI (Mongolia):

Thank you, Mr Chairperson. Based on decisions of the third Conference of the Parties on intersessional work we suggest the following amendment to the draft decision of the third session of the Intergovernmental Negotiating Body. We would like to suggest the insertion, under "DECIDED", paragraph 2, of the following: "to invite the relevant intergovernmental and nongovernmental organizations with specific expertise on the matter to participate in the working groups".

The CHAIRPERSON:

Thank you very much. You may, in fact, have been reading my brief by the sound of it because that is very similar to the wording that the WHO Legal Counsel will probably ask to have put up on the screen.

El Dr. ABASCAL (Uruguay):

En principio, nosotros apoyamos la propuesta inicial de cuatro Partes por Región, pero podemos aceptar hasta cinco Partes por Región. No obstante, consideramos que debería ser una persona por Parte, y se trataría de que esas personas tuvieran el conocimiento técnico adecuado para poder proponer y discutir temas complejos y llegar a una solución de consenso. El Uruguay no participará en estas reuniones en los intervalos entre reuniones, ya que se ha tratado de buscar que la Región de las Américas tenga una representación equilibrada entre las diferentes posiciones que conviven en ella. Así pues, confiamos en que las delegaciones que representarán a nuestra Región de alguna manera reflejarán las diferentes posiciones que hemos tenido a lo largo de este tiempo en las reuniones regionales, así como en las reuniones plenarias. No es posible pensar que podamos reproducir toda la gama de matices que hay en esta reunión, pero sí alcanzar acuerdos básicos sobre asuntos concretos desde el punto de vista técnico. También existe la posibilidad de que nos comuniquemos vía Internet y de que hagamos consultas en algún punto muy difícil en que haya que tomar decisiones. Creemos que tenemos que emplear los medios tecnológicos de comunicación que están a nuestra disposición para que estas reuniones puedan ser ágiles y fructíferas y sirvan para que, cuando llegue la cuarta reunión del Órgano de Negociación Intergubernamental, tengamos bastante adelantadas las posibilidades de acuerdos y los consensos. Gracias.

The CHAIRPERSON:

Thank you very much, Uruguay. I fully agree with your ideas on that. I am going to take two more suggestions and then I shall take a look at the nongovernmental organization position, after which I will try to sum up.

Mr AL JEHANI (Saudi Arabia): : ()

The CHAIRPERSON:

Thank you very much, Saudi Arabia. Yes, I will have some wording to put up on the screen for that.

Mr MOHAMED (Maldives):

Mr Chairperson, the Parties in the South-East Asia Region would like to make an additional suggestion. As the Chairperson and the Convention Secretariat would appreciate, we have agreed to a limitation of the number but we realize that, before we come to Geneva for this drafting exercise, there would not be an opportunity for the working group to have a consultation. In those circumstances, we request that the meeting be scheduled in a way that the Parties in some cases arrive half a day or one day before the meeting so that they can have a consultation among themselves. We think this will help speed up the process of groups reaching a consensus. Thank you.

The CHAIRPERSON:

Thank you very much. I think that is something that could be arranged for half a day. I wonder if the Convention Secretariat could put up on screen the text relating to the nongovernmental organizations please, and observers in general. This is based on the language of decision FCTC/COP(3)15 of the third Conference of the Parties and this could be put into the draft decision we have in front of us. It would read: "Requested the Convention Secretariat to invite relevant intergovernmental organizations with specific expertise in the subject of the Articles assigned to the drafting group to nominate not more than one representative and nongovernmental organizations to nominate collectively not more than four representatives with specific expertise in the subject of the Articles assigned to the drafting group, to participate and contribute in an expert capacity to the further elaboration and development of the text as observers to the intersessional drafting groups". That means that there is also a balance with what we are suggesting to the regions of five persons in total, one for the intergovernmental organizations requested by the Convention Secretariat to participate and four representatives from the nongovernmental organizations with specific expertise needed in the subject of the discussion of the working group. I hope that that would take account of the various requests of the regions that nongovernmental organizations should be able to participate where appropriate and where they have the specific expertise involved and I think that will help to take the work forward. Turkey, do you want to intervene before I try and conclude?

Mr YÜKSEL (Turkey):

Thank you very much. I do not think we have problems with this language. I would just like one clarification. Could the WHO Legal Counsel explain for us the rights of observers in these groups? Thank you very much.

Mr BURCI (WHO Legal Counsel):

Thank you, Mr Chairperson. Consistent with how the rights of observers are understood within subsidiary bodies, they would be able to participate, that is to attend and to speak. These are not decision-making groups so, obviously, there are no decisions to be made. However, the key issue here, I think, is whether as observers there would be a possibility of making proposals, and it is generally understood within such groups that the opportunity would not be available in this case, as it is generally not available to observers in any case. I repeat, it would be possible to attend and to speak, consistent with those same practices in subsidiary bodies.

The CHAIRPERSON:

Thank you very much. I hope that clarifies the position for the Parties in the European Region.

Mr LOM (United States of America):¹

Thank you, Mr Chairperson. We were just wondering whether we could also have clarification on the role of States non-Parties as observers to these intersessionals. Thank you.

The CHAIRPERSON:

Thank you very much, United States. The practice in the past, I am informed, is that States non-Parties and other observers have not participated in such drafting groups and that the way of keeping such Parties informed is through the normal regional consultations. You would obviously be free to ensure that you linked in with your regional group in order to make your views known and to receive information about the results. I hope that will help to clarify the situation. We shall endeavour to conclude this topic now.

There is a slight technical amendment to the proposal on intergovernmental organizations and nongovernmental organizations, simply to make it clear that they have to be organizations that are accredited to the Conference of the Parties. I do not think that will cause problems for anyone.

Dr PRASAD (India):

Mr Chairperson, we appreciate the participation of nongovernmental organizations as observers in the working groups. Since we have restricted the number of representatives to five, we would also like the number of nongovernmental organizations to be restricted in each working group. Further, we also feel that they will have the same status as observers and may make any comments. The right to make comments may be granted by the chair of the working group on the basis of requests. Thank you.

The CHAIRPERSON:

Thank you very much. I think the draft decision shows quite clearly that there are a limited number of representatives, one from the intergovernmental organizations and four from the nongovernmental organizations. I think that meets your proposal on that point. The working arrangements will be sorted out by the people in the group when they actually meet so that the observers can participate, speak and so on. I think that should pose no problem for India.

I shall attempt to sum up on this subject. For the two working groups, participation should be limited to 10 persons in total from the regions, but the Philippines' proposal can be taken into account to make it six and four if they wanted to; and the meetings would, if at all possible, be back to back, so that there can be a transfer of the results and expertise of the first group to the second group.

Now we clearly have to decide what the content of the working groups is so as to ensure that that logic can be carried forward. The intergovernmental organizations would be limited to one representative and the nongovernmental organizations would be limited to four; so they would have balance as well: five all around. This is an attempt to ensure that there is a reasonable spread and reasonable representation. Would you be able to go along with that idea?

Mr YÜKSEL (Turkey):

Thank you, Mr Chairperson. We have no problems with the plan you just laid out. However, at the very beginning you said 10 people altogether for both working groups. As I mentioned in my previous interventions, we would like to see five persons from each region for each working group. I do not think we would be in a position to consider the representation of 10 people in all for both working groups. This is the position of the Parties in the European Region.

¹ Participating by virtue of Rule 29 of the Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.

The CHAIRPERSON:

Thank you very much. I just want to confirm with you that you have understood what I proposed. There would be two working groups; normally there would be five persons from each region for each group; but, exceptionally, if a group wanted to have six in one working group and limit themselves to four in another, they could do so but that would be the limit; we would not have nine and one or eight and two. It would have to be understood that it could only be six and four and that is specifically to take account of the special request of the Parties in the Western Pacific Region, and I have seen no objection from anyone else. Can the Parties in the European Region agree to that?

Mr YÜKSEL (Turkey):

Mr Chairperson, I would like to say that our strong preference would be five persons representing each region in each drafting group. However, at this point, for the sake of conciliation, we would be willing to accept your proposal. Thank you very much.

The CHAIRPERSON:

Thank you very much. I do appreciate your flexibility. I know it is not easy to achieve consensus and I am very grateful that you have managed to align yourself with the rest of us. Thank you for that.

Mr PADILLA (Philippines):

Thank you, Mr Chairperson. We wish to thank Turkey and the Parties in the European Region and the other groups, and you, Chairperson, for giving us this explanation.

The CHAIRPERSON:

Thank you very much, Philippines. We obviously have to draft the wording of this to make sure that it fits correctly. I shall give the WHO Legal Counsel and the Convention Secretariat a little time to do that while we look at the content of the working group. I think that is obviously one of the most important issues to be decided. During the discussions yesterday evening, we were looking at Article 7 and there seemed to be a fair consensus that Article 7 should be tackled by a working group.

However, there was also a feeling that this had to link in with Articles 5 and 6, making for a sort of package of measures, but that they would start with Article 7 and take account of licensing in Article 5 and the know-your-customer identification in Article 6. Now, that is a rather big block of work but, I think, a manageable block if they organize their time correctly. Of course, if they completed those articles it would be possible to add on Articles 10 and 11 at a later stage of their meeting. That would cover a working group within the context of Committee A's area of expertise, if I may call it that; that is Part III of the protocol.

That being said, it seemed to me that there was a feeling yesterday that Article 12 was another area where a working group could usefully get together to see if they can resolve some of the issues and do some of the drafting. I would, however, like to hear your views on that. I am not in a position to make a firm proposal until I hear your considerations on those two areas. The first proposal is Article 7, plus Articles 5 and 6 as the starting point. If there is time we will add on Articles 11 and 10, but for the second group I would very much welcome your views. The floor is open to you.

Mr AL MANSOORI (United Arab Emirates): ()

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Mr YÜKSEL (Turkey):

Thank you very much. I am taking the floor on behalf of the Parties in the European Region again. Mr Chairperson, we are ready to go along with your suggestion that the first working group should cover Articles 5, 6 and 7. But we believe that it is not really possible for this working group, given the workload that we are giving them right now, to discuss Articles 10 and 11. Regarding the other working group, which will discuss Articles 12 to 14, we are ready to accept that proposal.

In relation to the first working group which will discuss, as far as I understand, Articles 5, 6 and 7, we have a strong preference for Article 7 to be considered by the working group first and foremost and then they can discuss Articles 5 and 6. This is the preference of the Parties in the Region.

The CHAIRPERSON:

Thank you very much. I have noted your suggestion of Articles 12–14 for the second group and I think you may have missed my explanation on the first group that they would do Articles 7, 5 and 6. That was the order of play I had suggested. You are right: they may not have more time to do other things but, if they do, I would say Article 11 and Article 10.

Le Dr MOUSSA (Niger):

Merci, Monsieur le Président. Je m'exprime au nom des Parties de la Région africaine de l'OMS. Nous retenons votre proposition pour le premier groupe : 5, 6 et 7. Par contre, pour le deuxième groupe, nous proposons 11 et 10 en plus de 12, autrement dit dans l'ordre 12, 11, 10 pour que 10 soit traité compte tenu de la réserve que vous avez émise quant au temps disponible. Je vous remercie.

The CHAIRPERSON:

Thank you very much, Niger. I can see your reasoning for wanting to be sure that Articles 10 and 11 are discussed. My only slight concern is that the second working group, which will be looking at very legal issues, might not be competent to look at Articles 10 and 11. I shall take some comments on that from the floor and we shall see.

El Sr. NAVARRETE (Chile):

Gracias, señor Presidente. Me parece que, como ya se ha dicho, es fundamental que se revise el artículo 12 por parte del segundo grupo de trabajo, pero juntamente con ese artículo, sería muy importante, por lo técnico de la materia, que se revisaran también los artículos 31 al 33, relativos a la extradición, ya que este es un tema jurídicamente muy complejo y probablemente tratarlo posteriormente en la cuarta reunión del Órgano de Negociación Intergubernamental va a ser muy difícil. Sería necesario llegar a esa reunión con un cierto acuerdo sobre cómo se va a enfocar el tema de la extradición, ya que es un tema que tiene muchas aristas y muchas posiciones distintas, y creo que es fundamental que esté de alguna forma resumido en pocas posiciones para que se pueda resolver más rápido. De lo contrario, se van a producir muchas polémicas y tal vez será difícil llegar a un acuerdo. Este tema está directamente ligado al artículo 12, relativo a los delitos.

The CHAIRPERSON:

Thank you very much. I think we should give due weight to the Chair of Committee B since he led the discussions.

Mr PADILLA (Philippines):

Mr Chairperson, we agree with the proposed method of work for working groups A and B but also reaffirm what was stated by Chile that in group 2 or group B Articles 31, 32 and 33 on extradition should be included. That was a thorny issue which needs to be likewise taken up. Thank you.

The CHAIRPERSON:

Thank you, Philippines. If there are no other contributions to the debate I will try to sum up what the second group could look at. I would like to suggest that we follow the advice of Mr Navarrete and tackle Article 12 and Articles 31–33; but I have noted that Articles 13 and 14 have also been suggested and that they should be looked at as well if the group can manage to do so. Therefore the second group would consider Article 12, Articles 31–33 and then Articles 13 and 14 because those are very much legal concepts which have to be put together: offences, the issue of serious offences, extradition and so on. I appreciate that I am not meeting Niger's request for Articles 11 and 10 in the second working group, but I know they are vital issues: Internet sales and free zones, and duty-free sales.

However, I feel that that should be looked at in the first working group if they can tackle them. They may need to devote at least one day of their discussions to those Articles, even though their principal objective is to tackle Articles 7, 5 and 6. Because we only have two sessions of each working group and if we can break the back of some of these very thorny issues, I think it will create the momentum for the fourth session of the Intergovernmental Negotiating Body to reach its agreement by the end of its session. I shall repeat what the groups would look at just so that I can be sure that you agree.

The first working group would look at Articles 7, 5 and 6 in that order with additional work on Articles 11 and 10 later on in their work programme, and certainly they should try to dedicate half a day or a day to those Articles. The second working group should examine Articles 12, 31 to 33 followed by 13 and 14. Would that meet with the general approval of the Intergovernmental Negotiating Body? Anyone who objects should now show their card.

Le Dr MOUSSA (Niger):

Merci, Monsieur le Président. Vous avez dit, j'ai cru entendre, pour le premier groupe les articles 7, 6 et 5 et, s'il y a assez de temps, les articles 10 et 11. C'est bien cela ? Pour le deuxième groupe, vous avez proposé les Articles 12 et 31 à 33 ? . Merci, Monsieur le Président.

Le PRESIDENT:

Oui, c'est la proposition que j'ai faite. J'ai ajouté les Articles 13 et 14 au deuxième groupe s'il y a du temps disponible. J'espère donc que cela est clair maintenant, et on peut regarder si les autres délégations, les autres Parties, sont d'accord pour travailler sur cette base.

Mrs ROBINSON (Seychelles):

I am not objecting to the articles that the two working groups would have to look at when the time comes. I am just making a proposal for Article 30 to be added to the work of Committee B because there are some links for Committee B between Article 30 and Article 12. Thank you.

The CHAIRPERSON:

Thank you very much indeed, Seychelles. The second group should bear that in mind when they are doing their work because there will be interlinking; they will have to look fairly broadly at what

links with what. But, if we make their starting point that they should really concentrate on the articles that I have mentioned, they would then take account of anything else which they think should be put into the melting pot, if I can call it that.

Ms HACOHEH (Israel):

Thank you, Mr Chairperson. I would like to point out that, in my opinion, Article 30 is very crucial and needs substantial work and definitely should be included in this working group.

The CHAIRPERSON:

Thank you, Israel. Let us put that in with the articles for the second group. Subject to that, would you be able to agree to that broad split between the two groups which would meet twice, each of them and, we hope, back to back so that they can transfer their results to each other to facilitate the work of the two groups? Is that acceptable to the Intergovernmental Negotiating Body? If it is we shall look for wording to describe that decision. I see no objection. That is the decision, in principle, but we need to look at the wording to make sure that it is accurate. While we are waiting for that, Dr Nikogosian obviously has to describe to you the budgetary implications of what is being proposed. I shall give the floor to him and then we will return to the actual drafting.

Dr NIKOGOSIAN (Head, Convention Secretariat):

Thank you, Mr Chairperson. I shall be giving the bad news now. Of course we did not have time for a very detailed and accurate budget estimate. The discussions started yesterday and they are still continuing today. Our assumption is two groups and two meetings per group. The calculation was made for four representatives each and that now has become five; three or four days of meetings are anticipated for each of the working groups. Exceptionally, there might be five if it was felt that that was needed, particularly for the second one if the group so requests; otherwise, there would be three or four.

I would like to say that this is a quite costly process, of course. The price tag comes to around US\$ 800 000. I am ready to give some breakdown with your understanding that this is an approximation and that a more accurate costing will be presented to the Bureau of the Conference of the Parties and the more accurate expenses will be referred to in the financial report of the Convention Secretariat for this year. The travel costs will be around US\$ 350 000, depending on the composition of the delegations, because we can support only Parties who are normally on the travel support list for the Intergovernmental Negotiating Body. The same will apply: one per Party.

Interpretation costs will be between US\$ 180 000 and US\$ 200 000 if we provide six-language interpretation. Translation costs of the resulting documentation, including the support documentation, are estimated at approximately US\$ 120 000. And the additional logistics, administrative and technical support, and some expertise to be brought in, will minimally cost about US\$ 150 000. This brings us to US\$ 800 000 approximately. Again, I ask for your understanding that these figures are approximate, simply a draft to give the picture. More accurate figures will be presented to the Bureau once we receive all nominations and schedule the meetings.

To give you a comparison, when the Conference of the Parties recently created working groups to work intersessionally for some articles, each working group was also estimated at about US\$ 450 000; under Article 4.2 it was about US\$ 900 000. We are trying, of course, to work on the minimum estimates, bearing in mind that the funds are not there. Perhaps we can manage this within US\$ 800 000 for the two working groups, which also includes, by the way, some light processing of the Secretariat report, in consultation with the Geneva-based missions, which may also require one small meeting.

We turn now to how this can be funded. I would like to ask for your understanding and your guidance. We are at the end of the biennium and there is no budget available. The Secretariat already had a budget gap because of the previous intersessional process, which was requested without additional funding. Then we requested the Bureau of the Conference of the Parties to prioritize our work so that we could give priority to that work. But, of course, some things will not be done. Let us

be very clear about that. If I may now ask the Parties to make extrabudgetary contributions to cover these expenses, as requested in the draft decision, that would be highly appreciated.

If that is done or partially done, or if that is not received, then the other option is to request the Conference of the Parties to redistribute the work of the Convention Secretariat so as to make these activities a priority, which simply means taking something out of the programme, which I do not think would be a very easy decision either for the Bureau of the Conference of the Parties and the Convention Secretariat or for the Conference of the Parties, because there are very important developments going on anyway, and this was already done once, by the way, before the third session of the Intergovernmental Negotiating Body.

That, then, is the financial situation. I would like to ask for your guidance on this matter and also for contributions if possible. Mr Chairperson, I would like this to be placed in the record, if possible, so that I could have a formal basis on which to operate. Thank you.

The CHAIRPERSON:

Thank you very much indeed. Are there any comments that you would like to make in response to Dr Nikogosian's explanation?

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Thank you, Mr Chairperson. Perhaps the Convention Secretariat can clarify for us the budget for the fourth session of the Intergovernmental Negotiating Body. Has it been earmarked already?

Dr NIKOGOSIAN (Head, Convention Secretariat):

Yes, the budget for the fourth session of the Intergovernmental Negotiating Body is already earmarked in the next biennial budget and workplan and that is safe. Also, even if some intersessional work is required, let us say in January and February, we also have a little reserve there. The problem is for this year. Thank you.

The CHAIRPERSON:

Thank you very much. May I take it, then, that you agree with the approach that Dr Nikogosian has outlined here and that we should provide that support to him?

I think that is agreed. I am not sure you have your US\$ 800 000, but *en principe* or *normalement* some money could be forthcoming. Perhaps we can explore sources of funding to see what might be possible. We can go then to the draft decision to see if we can agree on the wording so that we can adopt it today.

Apparently, we have a technical hitch at the moment so I shall go back to the issue of the areas of consensus.

3. DRAFTING AND NEGOTIATION OF A PROTOCOL ON ILLICIT TRADE IN TOBACCO PRODUCTS (resumed)
ÉLABORATION ET NÉGOCIATION D'UN PROTOCOLE SUR LE COMMERCE ILLICITE DES PRODUITS DU TABAC (reprise)

The CHAIRPERSON:

Regarding the draft negotiating text which you received this morning, Canada correctly pointed out that we had reached consensus on some of the articles in the Chairperson's text when we looked at Parts VI to X. I shall read out to you the articles which we have noted as having been the subject of consensus. They are Articles 39 and 40, Article 43, Article 44, Article 46, Article 47 and Article 49. I shall just repeat those: Articles 39 and 40, 43 and 44, 46 and 47, and 49. Does that accord with the

collective memory of the Intergovernmental Negotiating Body? If so, we shall put the word “*consensus*” in brackets after those articles.

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Thank you, Mr Chairperson. Is the only reason for leaving out Article 45 that we have yet to determine the place and the date? Is that the only reason?

The CHAIRPERSON:

Yes, if you are happy to have that marked as “*consensus*” subject to those two points, that is perfectly acceptable to me. Thank you. We put “*consensus*” against it, subject to agreeing the date and place. Thank you for that addition.

Mr MOHAMED (Maldives):

The Parties in the South-East Asia Region would like to ask for a clarification. We note that we always have our regional consultation before the sessions of the Intergovernmental Negotiating Body. I would like to seek clarification from the Convention Secretariat about the fate of this, because it was not mentioned. Simply a clarification. We strongly suggest that we have the regional consultation as well, because this has always been definitely very helpful to Parties in our Region. Thank you.

The CHAIRPERSON:

Thank you very much. Is that in relation to the draft text that we have in front of us? It is a separate issue? Let me then finalize the text and I will come back to your question. On the basis of the additional information you received this morning, is the Intergovernmental Negotiating Body ready to accept the negotiating text with the amendments proposed, as the record of our work on the Chairperson’s text?

Mr SHAKERIAN (Islamic Republic of Iran):

Mr Chairperson, we are wholeheartedly ready to agree to your proposal that we accept the document. However, I have a question concerning the second page of the negotiating text, paragraph 11, which in the fourth line refers to the indication of consensus. I would like to have clarification that, technically, only consensus achieved in the plenary should be marked as “*consensus*.” But if consensus was reached in the committees, we should perhaps indicate that differently. The reason is that, technically and procedurally, according to established practice, committee decisions need to come to the plenary to be adopted. It is a procedural matter and we would like to have your clarification. as to whether we have discussed that or not. Thank you.

The CHAIRPERSON:

Thank you, Mr Shakerian. You are right that we have not discussed some of these issues in the plenary, for example, Articles 5.4 and 5.5. The committees reached consensus. Is there perhaps a way of putting an asterisk against those items which were agreed in committees and not having an asterisk against the consensus items which the plenary adopted? Then we can have a footnote saying: “*Consensus reached in the Committee but no decision by the plenary”. Would that meet your concern?

Mr SHAKERIAN (Islamic Republic of Iran):

Actually, I did not have any concern on this issue. It was simply a question of procedure and in order to be very correct. Your proposal is a very good one and has captured the issue. Thank you.

The CHAIRPERSON:

Very good. We shall do that. Subject to that additional clarification, does anyone have a problem with the text as such? No? Very good. I think I am able to decide that this text is agreed as the basis for our future negotiations. I see no objections. It is so decided. Thank you very much.

4. DATES AND VENUES OF THE FOURTH SESSION OF THE INTERGOVERNMENTAL NEGOTIATING BODY AND OF PLANNED WORK BETWEEN SESSIONS (resumed)
DATE ET LIEU DE LA QUATRIÈME SESSION DE L'ORGANE INTERGOUVERNEMENTAL DE NÉGOCIATION ET DES TRAVAUX INTERSESSIONS PRÉVUS (reprise)

The CHAIRPERSON:

Let us go back then to agenda item 6 and the decision that we have been looking at this morning. We now have wording on the screen which tries to reflect the discussions we had. In the part concerning the working groups, under "DECIDED", paragraph (1), the text would read: "to establish two drafting groups on (a) Articles 7, 5 and 6, then, time permitting, Articles 10 and 11; and (b) Articles 12 and 31 through 33, then Articles 13 and 14..." I think we agreed that we would have Article 30 as well, if I remember correctly, which should also be included. We will add "and 30". Would that meet with the agreement of the Parties? I see no objection.

New paragraph (2) will read "that each WHO Region will nominate not more than 10 persons to comprise the drafting group, those persons to be divided between the drafting groups evenly, unless exceptionally a division of four and six persons between the two groups is deemed appropriate by the Region". Does that meet the conclusion that we reached earlier in the day?

Ms HEFFORD (Australia):

Thank you, Mr Chairperson. We are very comfortable with the text on the screen before us at the moment. I had only one question which was whether or not we were going to also try to capture the proposal to have a further intersessional process in October/November, which was to look at Parts VI to X. That was a proposal to consult with the permanent missions here in the first instance and then distribute a paper at the process that was outlined yesterday at the consultation held during the lunch break. I am just wondering if we are going to try to capture that process as well.

The CHAIRPERSON:

Thank you, Australia. That is on page 2 of the draft decision, under "REQUESTED", paragraph (2), which requested that the Convention Secretariat "elaborate a paper reflecting the options for the institutional and financial arrangements in consultation with Permanent Missions of Parties in Geneva". However, we could certainly add to that that the group should also cooperate with the Convention Secretariat in any necessary drafting that comes out of that consultation paper. I think we need to add some words to that when we reach page 2. Let us return to paragraph (2) on page 1. I think is acceptable to everyone? Good.

New paragraph (3): "that each WHO Region will communicate the persons nominated to the Convention Secretariat through the respective member of the Bureau of the Intergovernmental Negotiation Body not later than 15 August 2009". Does anyone object to that?

Dr ABOU AL ZAHAB (Syrian Arab Republic): ()

The CHAIRPERSON:

Thank you very much. Could the Convention Secretariat put paragraph (2) up on the screen so I can just look at it again, please? Thank you. It is the regions that have to nominate their representatives and there has to be coordination in the region in order to achieve that. It is therefore up to the region to determine the Parties and the persons involved. I do not think it would be fair to ask the Convention Secretariat to distinguish between possible representatives.

Mr SHAKERIAN (Islamic Republic of Iran):

Thank you. It is another procedural point. I think, procedurally, the regional groups are not nominating persons, they are nominating the Parties and then the Parties will choose who would be their representatives at the meeting. The way it has been drafted in operative paragraphs (2) and (3) indicates that the regional groups are going to nominate a person, which is not correct. We can just say that "each WHO Region will communicate the five representatives from the Region" and then they decide who would be their representative in the region. I think that is the notion, because the regional groups never nominate persons, they always nominate the Parties. Thank you.

The CHAIRPERSON:

I give the floor to the WHO Legal Counsel.

Mr SOLOMON (WHO Secretariat, Office of the Legal Counsel):

Thank you, Mr Chairperson. You can change the construction in the light of the Iranian delegation's suggestion, so that instead of reading in the first line of paragraph (2) "ten persons" it would say "not more than ten Parties, to comprise the drafting group". You would need to add a sentence after that to say "Each Party will be represented by no more than one person". Then a sentence saying "Those persons will be divided between the drafting groups evenly", and then carry on with the rest of the paragraph. I think that would take care of the concern about who is actually being nominated and who is actually representing the nominated Party.

The CHAIRPERSON:

Thank you very much. That sentence, then, should go into the second line after the word "groups". It would then read: "Each WHO Region will nominate not more than ten Parties to comprise the drafting groups. Each Party will be represented by no more than one person, those persons to be divided between the drafting groups evenly, unless exceptionally a division of four and six persons between the two groups is deemed appropriate by the region." Is that acceptable?

Dr ABOU AL ZAHAB (Syrian Arab Republic): ()

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The CHAIRPERSON:

Could I ask the Convention Secretariat to respond, please?

Dr NIKOGOSIAN (Head, Convention Secretariat):

Thank you, Mr Chairperson, and thank you, Syrian Arab Republic. I can only confirm that not only in Durban, but also in the previous session of the Conference of the Parties, the membership of the working groups established by the Conference of the Parties was decided on the spot at the session itself, with some time given for some new countries to join, but the principal membership was established during the session and reflected in the decision. If regions are ready to make the nominations or to announce the nominations now, at least the nominations of the Parties, not the persons, the Convention Secretariat will happily receive them and that will even create a much easier process for us. Much, much easier, I fully agree. Perhaps there are wishes to announce those nominations now and to help in the decision. Thank you.

The CHAIRPERSON:

Thank you very much. If you know your nominees now, please pass them to the Convention Secretariat after the meeting, because it is already covered in paragraph (3) that you simply have to give the nomination not later than 15 August. You may wish to give it today, 5 July, for example. I think there is no problem in doing that. The text is actually logical, even though you may have your representatives ready already. Does anyone have a problem accepting the text as it is?

Mr PADILLA (Philippines):

Yes, Mr Chairperson. In paragraph (3) it is no longer the WHO region that will communicate the persons nominated. I think it is already the relevant Party itself that shall communicate the nominee. This is because we have already decided in paragraph (2) that the WHO region will nominate the 10 parties. Is it not logical, therefore, that in paragraph (3) it is the Party actually nominated that will make the communication?

The CHAIRPERSON:

As long as it is done through the Bureau member, that will be fine. Thank you.

Mr YÜKSEL (Turkey):

Thank you. We wish to confirm that our intention is to submit at this session to the Convention Secretariat the Parties that will take part in the working groups. However, I would like to use this opportunity to call for the Parties in the European Region to come together, after the end of this meeting, to decide on the Parties that will occupy the fifth seat.

The CHAIRPERSON:

Thank you very much. I am sure that can be accommodated.

Mr MOHAMED (Maldives):

Thank you, Mr Chairperson. I think we both wanted to make the same point here. We had earlier discussed that each region will be nominating five parties; there are two groups, Mr Chairperson. Now, if a country wants to participate in both groups the Parties should be free to nominate two members but here it says each Party will be represented by no more than one person. That places restrictions on the Parties' participation in both the working groups, while earlier in the meeting we had discussed and decided that some countries will participate in both the working groups and some countries may participate in only one of these two working groups. We seek some clarification. Thank you, Mr Chairperson.

The CHAIRPERSON:

Certainly it was not the intention to rule out the idea you have on that. We need to find some crafting of the wording to make sure that that can be reflected.

Mr LONGOLOMOI (Kenya):

Thank you, Mr Chairperson. Please allow me to take you back to page 1. I am not talking about the nominees for the Parties in the African Region because they will be presented by its Bureau. Regarding page 1 of the draft decision of the Intergovernmental Negotiating Body, the Kenyan delegation would refer you to Article 3 of the protocol, given that we have already agreed and reached consensus on the objective of the protocol further to deliberations at the second session of the Intergovernmental Negotiating Body. We wish to propose that, given the amendment of the title for the draft protocol, the title of the draft decision should be: "Draft decision of the Intergovernmental Negotiating Body on a protocol to eliminate illicit trade in tobacco products". This is because I think that the text, as it reads in your draft, does not capture the spirit of the protocol as reflected in Article 3. Thank you, Mr Chairperson.

The CHAIRPERSON:

Thank you very much, Kenya. You are absolutely right. It was in my proposal – or my notes to the Intergovernmental Negotiating Body – that we should change the title of the protocol so that it referred to "a protocol to eliminate illicit trade in tobacco products". I did forget to raise that with the Intergovernmental Negotiating Body at an earlier stage. Clearly, if there is no objection to that change, we can introduce it into the title here. Do I see any objection to taking up Kenya's proposal which reflects the point that I made in my Chairperson's note? I see no objections; we will make that change. Thank you very much, Kenya. We will do that in the draft decision and in the draft negotiating text that you have before you on the screen.

Let us proceed a little further with the draft decision and come back to the point that we still have to settle. Let us go down to the fifth paragraph, under "DECIDED", which reads:

to invite

(a) relevant intergovernmental organizations that are accredited observers to the Conference of the Parties with specific expertise in the subject of the Articles assigned to the drafting group to nominate not more than one representative; and

(b) nongovernmental organizations that are accredited observers to the Conference of the Parties to collectively nominate not more than four representatives with specific expertise in the subject of the Articles assigned to the drafting group". Can you accept the fifth paragraph? Islamic Republic of Iran, please.

Mr SHAKERIAN (Islamic Republic of Iran):

Thank you, Mr Chairperson. We agree with paragraph 5 but I have one question because I have no idea how many intergovernmental organizations are accredited as observers to this session of the Intergovernmental Negotiating Body. I would just like to know the number.

The CHAIRPERSON:

Thank you. Are you sure you want to know? There are 50.

Mr SHAKERIAN (Islamic Republic of Iran):

There are 50? That was exactly my question and my concern. Because in each group we have 24 Parties plus four nongovernmental organizations. What would happen if the relevant organizations wanted to send one representative? Am I right in my understanding they are able to send one representative? Not one for all of them, but one for each organization.

The CHAIRPERSON:

The answer to the question is that there are very few intergovernmental organizations that have relevant experience in the area. The Convention Secretariat would invite those intergovernmental organizations which it felt had relevant expertise, possibly two or three at a maximum and invite them to send a representative from each intergovernmental organization that might be relevant, but the filter there is the Convention Secretariat deciding on the intergovernmental organizations' relevancy to the discussion that will take place in the working group.

Mr SHAKERIAN (Islamic Republic of Iran):

Thank you. My only concern is that we do not want to face a situation in which the Parties are outnumbered by a host of intergovernmental organizations that are participating. While their presence is important, at the same time, owing to the very delicate combination of these working groups, we have to be careful that Parties should not be outnumbered by intergovernmental organizations. Because the way it has been drafted it might indicate that if they wanted to attend these meetings we are not in a position to say no to them. That was only a concern that I wanted to convey to you.

The CHAIRPERSON:

Thank you very much. As I say, the filter will be that there has to be an invitation to them and that will be the point at which there can be a decision on, for example, the World Customs Organization. They would probably be the only one with expertise in the area of Articles 7, 5 and 6.

Mr ALBUQUERQUE E SILVA (Brazil):

Mr Chairperson, although perfectly aware that it is not up to the Parties to influence the way that nongovernmental organizations decide on the representatives they are sending to these meetings, Brazil would like to address a request to the nongovernmental organizations to respect the principle of geographical representation when they choose their experts. It is important for our regional grouping and for all regions that the nongovernmental organizations should be represented during our discussions, but it is very important that, given the different cultural and juridical realities of our regions, they should respect the principle of geographical distribution. Thank you very much.

The CHAIRPERSON:

Thank you very much, Brazil. I hope that the nongovernmental organizations have taken note of your request and that they take it into account when they take their decisions. Thank you for drawing that to our attention.

Is paragraph (5) acceptable to the Parties? Do I see any objections? No. Paragraph (5) is fine. Was there anything else further down? We shall now go back to the one point that is still outstanding. The WHO Legal Counsel has advised me that as long as we agree here today what the interpretation of that paragraph is we do not need to play with the wording. The interpretation that we should agree today is that “this does not prevent the same person from a Party from participating in both working groups, provided the overall limit is respected of 10 persons”. I think this would meet the concerns of India and, I hope, of other delegations.

Dr PRASAD (India):

Mr Chairperson, just one slight change. I suggest that after the second sentence, which reads “Each Party will be represented by no more than one person”, we should add the words “in each drafting group” and that will suffice.

The CHAIRPERSON:

Thank you, India. That is a very helpful suggestion. We shall insert “in each drafting group” simply to make it consistent with the earlier language. Thank you very much.

Mr SHAKERIAN (Islamic Republic of Iran):

Thank you, Mr Chairperson. I am sorry to take the floor again on this issue, but since procedures are always very important and might affect even the content, it is better to have a clear understanding of the procedures, and establishing working groups or drafting groups always calls for further discussion and consideration. Having heard the explanation by the Head of the Convention Secretariat, I see that there are some countries that are on the Convention Secretariat travel support list, which provides support for only one person. In that case, since many countries need to bring more than one person, perhaps not more than two, the second person will be supported by his own government. Also, as I have said, there is always the need to have someone with whom to consult. We cannot expect that one person to sit in the chair and know everything about, for example, Articles 5, 6, 7, 10 and 11 and know everything in the other working group.

My suggestion is that we can say that each Party will be represented by no more than two persons in each working group, on the understanding that the second person will be supported by his own government. If the Secretariat supports only one person on the travel support list, the extra person will involve no cost to the Secretariat. It is difficult to expect that one person to be in a position to pronounce the Party’s last word because if we wanted to find some solution or other, the person may need to telephone his capital. May I seek clarification from the Secretariat as to whether or not, based on my explanation, the second person places any burden on the Secretariat? Thank you.

The CHAIRPERSON:

Thank you very much, Islamic Republic of Iran. It is not just a question of the budgetary cost though. It is a question of the size of the drafting group, because if each Party were allowed to nominate two people, we immediately double the size of the group. That is the reason for my hesitation.

Dr GAO Xingzhi (China):

高兴智（中国）：

谢谢主席。

中国支持伊朗代表提出的意见。我们认为参加这样的工作组为的是更好地开展工作，应该考虑让每个缔约国派出不超过两名代表。至于费用问题，另一名代表可以由缔约国自己提供。另外，如果有两个人同时参加A工作组和B工作组是不是可以允许的？比如，这两个工作组连在一起开会时，那么这一个国家的两位代表是不是可以同时先参加A工作小组的工作，然后接着参加B工作小组的工作？

谢谢。

The CHAIRPERSON:

Thank you very much. The two drafting groups will not be meeting at the same time, except perhaps for half a day at the end of one of the group's meetings and the beginning of the other. Therefore, I do not think that is an issue. The real issue is the size of these working groups. The precedent we have from looking at working groups in the context of the Framework Convention – the expert group that prepared the template for this protocol – shows that we were very, very strict about the number of people who participated, and I think that the expert group that looked at the template comprised four persons, and we have actually expanded it to five on this occasion. I am extremely reluctant to have a possible doubling of the size of a drafting group.

El Dr. ABASCAL (Uruguay):

Antes de que avancemos en la propuesta de aumentar el número de miembros de los grupos, desearía apuntar una razón técnica y operativa sobre el número adecuado de miembros para que esos grupos puedan funcionar desde el punto de vista técnico, y así obtener una propuesta que pueda servirnos a todos. Si seguimos aumentando el número de participantes, terminaremos creando otro Órgano de Negociación Intergubernamental, y esto no es lo que habíamos pensado hacer. En el día de ayer se nos informó de que iba a haber cuatro representantes por Región, un representante para cada grupo, y que seríamos, en total 24 personas discutiendo, a lo cual se propuso agregar también técnicos de las organizaciones no gubernamentales e intergubernamentales. El Uruguay aceptó no participar en tales grupos porque cree que ya está representado en las diferentes opiniones que existen equilibradamente en la Región de las Américas por medio de las cinco Partes que ya tiene designadas y que la representarán en cada uno de los grupos. No ha habido problemas porque hemos tenido la idea de que la delegación en conjunto de la Región debe ser equilibrada y representar sus diferentes opiniones. Si seguimos aumentando el número de miembros de los grupos de trabajo, éstos seguramente van a ser absolutamente ineficientes. Por tanto, aceptamos pasar a cinco delegados, pero ahora vamos a pasar a duplicar la cantidad de delegados, de modo que tendríamos que volver a examinar, también nosotros, todas las posiciones que hemos adoptado hasta ahora.

Solicito a las diferentes delegaciones que piensen que esto no es definitivo, que es un área técnica de avance y apoyo al desarrollo del proyecto del texto, de manera que luego vendrá una etapa política en la que los países analizarán y verán si cada uno está de acuerdo, revisarán sus opiniones con otras Partes y con otras Regiones. Este es el juego de la negociación. Pero ahora entramos en una etapa de avance y especificaciones técnicas en la que ha habido algunas diferencias, y necesitamos estas dos reuniones en el intervalo entre reuniones para que, cuando lleguemos a la próxima reunión del Órgano de Negociación Intergubernamental, tengamos aclarados muchos aspectos técnicos que dificultan los acuerdos. Este es el motivo de estas reuniones. Si nos ampliamos con más miembros vamos a trabar el fundamento y el objetivo de esta planificación. Gracias.

The CHAIRPERSON:

Thank you very much. I agree 100 per cent with everything you have said in that intervention. I think that you have precisely put your finger on the key issue and I thank you for expressing it so clearly to the meeting here today.

Le Professeur TIDJANI (Togo):

Monsieur le Président, vous auriez pu aussi m'applaudir parce que je vous aurais dit la même chose que l'Uruguay. Or comme je suis un enseignant et que les enseignants sont appelés à répéter, je ne vais répéter qu'une seule chose : de nombreux pays d'Afrique n'auraient pas la possibilité de payer un deuxième billet ; il y aurait donc déjà un déficit dans le groupe. C'est la raison pour laquelle j'appuie à 200 % la position de l'Uruguay.

Merci, Monsieur le Président.

The CHAIRPERSON:

Thank you very much. My proposal, my strong proposal, is that we agree to what we have here on the screen and make sure that we choose the right people and that we keep this group a sharp instrument. In order to make progress, would anyone object to that proposal? Thank you. Then, we will keep the wording we have on the screen. Thank you very much to those who have shown flexibility on this point, but I think it is important. Accordingly, paragraphs (2) and (3) are accepted as well. I think that means that the decision as a whole has been looked at and is agreed.

I shall go to the end of the document, if you would please scroll down, and there we have the last paragraph which reads: "ADDITIONALLY DECIDED to hold a fourth session of the Intergovernmental Negotiating Body in early 2010, with the date and venue to be determined by the Bureau of the Conference of the Parties to the WHO Framework Convention on Tobacco Control". We discussed the possible dates and we have agreed that that will be the process we adopt in order to determine the final date and location. Having said that, may I proceed to adoption of the decision?

Mr YÜKSEL (Turkey):

Thank you very much, Mr Chairperson. I am sorry for taking the floor again. On behalf of the Parties in the European Region, I would like to suggest an amendment to the paragraph which starts with the words "CALLED UPON Parties to make extrabudgetary contributions..." What we would like to suggest as new wording for this paragraph is deletion of the phrase "CALLED UPON Parties to make" and its replacement with the words "RECOGNIZED the need for". The reason behind this suggestion, Mr Chairperson, if you will allow me to explain, is that we do not really believe that the correct formulation is to call upon the Parties to make extrabudgetary contributions to the intersessional work. If you could clarify, that would be very useful as well.

Dr PRASAD (India):

Thank you, Mr Chairperson. The last paragraph begins "ADDITIONALLY DECIDED to hold a fourth session of the Intergovernmental Negotiating Body...". Earlier we also had a provision for holding a regional meeting before the next session of the Intergovernmental Negotiating Body. Does this mean that we are eliminating the possibility of any regional meeting before the next session of the Intergovernmental Negotiating Body? Mr Chairperson, that was the clarification I wished to seek. Thank you.

The CHAIRPERSON:

Thank you. We now have two issues that we need to tackle: one from the Parties in the European Region about the extrabudgetary contributions, where they want to change the wording to "RECOGNIZED the need for extrabudgetary contributions", after which we need to discuss the

regional meetings issue. Is the proposal from the Parties in the European Region acceptable? Are there any objections?

Mr OLDHAM (alternate to Mr Leguerrier, Canada):

Thank you, Mr Chairperson. Under this formulation it is no longer a decision and therefore has to be put somewhere else in the text. Perhaps in the preamble.

The CHAIRPERSON:

Could we say “ENCOURAGED Parties to make ...”? That is in fact the wording we used in the Conference of the Parties itself. If the Parties in the European Region would agree, we shall use the wording “ENCOURAGED Parties to make extrabudgetary contributions”. Thank you very much, that seems to be agreeable. Very good. We encourage lots of extrabudgetary contributions.

The question that arises now is the regional meetings issue. Dr Nikogosian, would you like to respond to that ?

Dr NIKOGOSIAN (Head, Convention Secretariat):

Thank you, Mr Chairperson, and thank you, India. It is difficult to exclude the possibility of regional consultations if the Parties decide to consult. The only issue is that we have to plan it strictly here and even budget it. Given the substantial budget required for this technical intersessional work, we thought that possibly this intersessional process could focus mostly on this kind of work rather than regional consultations, not excluding the possibility that the regions or the Parties may also possibly decide to create their intersessional regional consultation process closer to the fourth session of the Intergovernmental Negotiating Body, for example, in January and February. The Convention Secretariat will be happy to provide any support we can unless it comes with substantial budgetary implications. We could, for example, provide technical support and organizational support. The only problem is that I would hesitate to undertake budgetary obligations unless there are clear funding possibilities. Thank you.

The CHAIRPERSON:

Thank you very much, Dr Nikogosian. Unless there are any final comments on the draft decision itself, in the light of the discussion we have had, I would like to propose that the Intergovernmental Negotiating Body adopt the draft decision as amended during this plenary. Do I see any objections?

Dr ABOU AL ZAHAB (Syrian Arab Republic): :()

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The CHAIRPERSON:

Thank you for your comments. Concerning your first point, the Convention Secretariat can commit itself to circulating the names of the participants once they have been received. That would

give clarification on that. I do not think it would be wise to put it into the decision because it could change if the regions decide that they want to make a change before they have notified the Convention Secretariat. That gives you flexibility on both sides. However, once we have the names the Convention Secretariat will circulate them so that everyone knows what the situation is.

On the question of making sure there is no overlap between the working groups, one of the points that I made earlier was that it would be helpful perhaps for both groups to be in the same place for at least for half a day in order to transfer the knowledge that has been attained in one working group in case it affects the work in the second working group. That does not mean that there has to be an overlap of a working session. It could be for a morning or an afternoon when there is nothing going on; but I do think that we should allow for this back-to-back approach with perhaps half a day in the middle for consultations between the two working groups so that we do not lose the expertise. If that would be acceptable to you I hope it will resolve your issue.

Dr ABOU AL ZAHAB (Syrian Arab Republic): ()

The CHAIRPERSON:

Excuse me. I have misunderstood. I shall give the floor to Dr Nikogosian.

Dr NIKOGOSIAN (Head, Convention Secretariat):

Indeed, Mr Chairperson, and thank you, Syrian Arab Republic. We are indeed facing a quite extensive schedule of meetings in the autumn. We already had four working groups established by the Conference of the Parties for four different articles. All these four working groups will have one meeting each by the end of this year, in September, October and November. Now, there are another four meetings coming in from this process. It will now be eight meetings in September, October and November. That is quite extensive. I seek your understanding that we shall be of course trying to ensure that there is no overlap whatsoever, but some juxtaposition of meetings cannot be avoided. However, we shall ensure there is no overlap. The time schedule is very, very tight for eight meetings. Thank you.

The CHAIRPERSON:

I think that your problem will be resolved in the light of what Dr Nikogosian has just said. On that basis, do I see any objection to adopting the draft decision, as amended, during this plenary session? I see no objection, the decision is therefore adopted. Thank you very much. That concludes agenda items 5 and 6, if I understand correctly.

5. REPORT ON CREDENTIALS (continued)
POUVOIRS DES PARTICIPANTS (suite)

The CHAIRPERSON:

I have one formal piece of business which has to do with the credentials. As you know, we had a discussion on the credentials in the plenary on Wednesday and since then I have been informed that since the Bureau last met, formal credentials have been received from Belgium, Honduras, the Islamic Republic of Iran, the Libyan Arab Jamahiriya, the Federated States of Micronesia and the Republic of

Korea. Those Parties had previously submitted provisional credentials. I have not been able to convene a meeting of the Bureau to examine these formal credentials, but I have looked at them myself. I have examined them and have found them to be in conformity with the Rules of Procedure of the Conference of the Parties. I would therefore, like to recommend to the plenary that Belgium, Honduras, and the Islamic Republic of Iran, the Libyan Arab Jamahiriya, the Federated States of Micronesia and the Republic of Korea be accepted as having submitted formal credentials. Does the plenary agree with this procedure, first of all? I see no objection. It is so decided. These credentials are now accepted as formal. Thank you very much.

6. CLOSURE OF THE SESSION CLÔTURE DE LA SESSION

The CHAIRPERSON:

I hope there is not going to be too much debate on this agenda item. We have had a very long and intensive week of negotiations without a break. As many of you have commented, this is possibly the first time we have spent eight days, including evening sessions, without having the opportunity to enjoy a little extramural activity. Nevertheless, the progress that has been made is encouraging. We have all appreciated that there is still a huge amount of work to be done; but I think we need to draw encouragement from what we have achieved this week. We need to be able to finalize the protocol by the end of the fourth session of the Intergovernmental Negotiating Body in order to meet the timetable agreed at the fourth session of the Conference of the Parties in late 2010. As part of that process, I am sure that the work of the intersessional groups, the two drafting groups and the group working with the Secretariat will provide very considerable impetus to the work which will need to be done at the fourth session of the Intergovernmental Negotiating Body.

This week's work was done to a very large extent in the two committees and in the working group, and those working forums have made a very substantial contribution to the progress that we have been able to achieve. I would like to thank again Mr Shakerian from Committee A, Mr Navarrete from Committee B and Dr Anibueze from the working group. Each of them has contributed unstinting efforts and very good leadership in these groups and I hope that their leadership may continue in future sessions. My personal thanks go to them and to all the members of the committees and the working group for everything they have done. One thing that I am taking away from this session is Dr Anibueze's very strong conviction that "we are there". I think that is something we should bear in mind. Whatever difficulties we are experiencing, whatever discussion about particular wording, we are there. We are here in order to make sure that this works and that we achieve a protocol that is effective. And I shall always keep that concept in mind when I think back on this session of the Intergovernmental Negotiating Body.

However, before we finish I would like to extend thanks to a series of people who have made very significant contributions to our work: first of all, to the Bureau members and the regional coordinators. We have had our meetings every evening and we have had a very fruitful exchange of views, ideas and suggestion for progress. I would like to thank them again personally for all their help, their guidance and their support; because without them it would have been very difficult to do the work I have been doing; so thank you for that. I am sure you would also want me to thank Dr Nikogosian, Head of the Convention Secretariat, and all his team. They have worked absolutely tirelessly during these very intensive eight days. They have met all our expectations and our requests in very difficult circumstances. They have had teams working overnight to produce the documents that you see in front of you. We do not often see the backroom staff, but they are there and they do work which enables us to carry on with our work. I therefore ask you to join me.

(Applause/Applaudissements)

I would also like to make special mention of the interpreters. They facilitated our work enormously. We have been talking about very technical issues, legal issues, which, I imagine, are not

easy to interpret. We have always expressed huge enthusiasm for what we do here and that may have led us to talk rather rapidly and at some length, and I apologize on behalf of all of us for that; but it is enthusiasm and a desire to get the work done. I do thank each and every one of you for the amazing work that you do in interpreting our discussions here. I hope you have not been put off forever from coming to these sorts of meetings. We could not have done our job without you and I would like to thank you most sincerely for all your efforts.

(Applause/Applaudissements)

I must, of course, mention the European Community because they gave very generous funding to allow this session of the Intergovernmental Negotiating Body to go forward and, particularly, the European Anti-Fraud Office for its ability to get this funding together so that we could hold our meetings. We shall have to see whether anything is left for future activities. We need to fund our anti-fraud activities, but I thank them again for making this possible.

(Applause/Applaudissements)

Last but not least, I wish to thank all of you – every single one of you – for contributing and participating and making every effort to drive this process forward. This is your meeting, and this is now your text. This is your objective to do something which will help in the fight against the damage that illicit trade does to health and to our populations. The atmosphere in this room and in the committees has always been warm and encouraging. You have been looking for solutions and you have always tackled the difficult issues with enthusiasm, with a view to finding a way out of the impasses that we sometimes face. You have come forward with suggestions and ideas that have helped me considerably when I was finding it difficult to find solutions to some of the issues that we have been discussing. I have really appreciated that, because it makes my job so much easier. It is always an honour and, indeed, a pleasure to chair this group.

In some ways I am very disappointed that I shall only be able to do it once more. In some ways I am not disappointed that I only have to do it once more; but it is a real pleasure to be sitting here on the podium working with you, the professionals that you are, and the way in which you always put forward constructive ideas to ensure that we have a text which will work in practice. I am, in fact, looking forward to the next session of the Intergovernmental Negotiating Body. I look forward to us being able to agree on a draft of the protocol at the end of the fourth session of the Intergovernmental Negotiating Body, and I look forward to us being able to adopt it at the fourth session of Conference of the Parties at the end of the year. I would like to extend my very warm thanks to all of you for everything that you have done.

(Applause/Applaudissements)

Before I finally close, may I ask whether the Russian Federation would like to intervene at this stage?

Mr SALAGAI (Russian Federation):

Г-н САЛАГАЙ (Российская Федерация):

Глубокоуважаемый г-н Председатель,

Спасибо большое за предоставленное слово. Во многом своим выступлением вы предвосхитили то, что хотели сказать мы. Российская Федерация хотела бы поблагодарить глубокоуважаемого Председателя за его усилия в координации МОП, Председателей Комитетов д-ра Шахерияна и д-ра Навареки, избравших различные методы работы, но в обоих случаях позволившие нам продвинуться в выработке эффективного проекта протокола. Благодарим также Секретариат Конвенции и его Председателя д-ра Haik Nikogosian за организационное обеспечение МОП. Отдельное спасибо хотели бы сказать юрисконсульту за профессиональную помощь. Выражаем также признательность всем делегатам за атмосферу конструктивного диалога. Спасибо большое переводчикам и всем сотрудникам,

способствовавшим оптимальному функционированию МОП. Желаем всем приятного возвращения домой и конструктивной работы в будущем.

Спасибо большое.

(Applause/Aplaudissements)

The CHAIRPERSON:

Thank you very much indeed, Russian Federation, and thank you for your kind words to all the participants here. I have two requests for the floor. Turkey and Niger.

Mr YÜKSEL (Turkey):

Mr Chairperson, thank you very much. Mr Chairperson, distinguished participants, I am taking the floor on behalf of the Parties in the European Region. At the outset, we would like to thank Dr Nikogosian, members of the Bureau, the Chairs of both committees and the working group, as well as all the Convention Secretariat staff for their tireless work and dedication during our deliberations over the Chairperson's text. As the Parties in the European Region, we are grateful to all delegations for their hard work and professionalism during our negotiations on the draft protocol and, in particular, the spirit in which the discussions took place. The Parties in the Region would like to use this opportunity to reiterate their confirmed commitment to an effective protocol to be adopted in 2010.

The work of this third session of the Intergovernmental Negotiating Body showed us that the negotiations on such a protocol would need more preparation during the intersessional period, prior to the beginning of the fourth session of the Intergovernmental Negotiating Body. We believe that we can find common ground for the complex but essential issues we have before us by working together in small drafting groups as we have agreed.

We would like to express our gratitude to the interpreters for their perseverance during our long and often difficult discussions. And, finally, we thank the Chairperson, Mr Ian Walton-George, for his patience and commitment to ensuring that we move closer to achieving our objective of a strong, meaningful and well-balanced protocol. Thank you very much.

(Applause/Aplaudissements)

The CHAIRPERSON:

Thank you very much. I appreciate your comments. Niger, please.

Le Dr MOUSSA (Niger):

Merci, Monsieur le Président. Permettez-moi, au nom des Parties de la Région africaine de l'OMS, de vous réitérer nos sincères remerciements ainsi que nos vives félicitations pour votre grand professionnalisme dans la conduite, depuis le début jusqu'à ce jour, du processus de négociation. Nos félicitations vont également aux Présidents des Commissions A et B pour leur leadership efficace. À cette même occasion, nous remercions aussi le Secrétariat de la Convention pour son engagement et son dynamisme dans l'organisation des travaux. Les Parties de notre Région saluent toutes les délégations pour leur souplesse et leur volonté qui ont permis d'aboutir à un consensus sur plusieurs points du protocole.

Les Parties de la Région africaine de l'OMS considèrent que les résultats enregistrés jusqu'à ce jour au cours de nos négociations sont encourageants. Cependant, des efforts restent à faire pour parvenir au même résultat en ce qui concerne les points relatifs au thème portant sur les « infractions et sanctions, confiscation et saisie d'avoirs, techniques d'enquête spéciales, suivi et traçabilité, entraide judiciaire et extraction ». Les Parties de notre Région adhèrent à la proposition de constituer des groupes de travail sur les parties énumérées dans la décision, la soutiennent et y apporteront leur contribution. Nous pensons également que, à ce stade des négociations, des consultations régionales intersessions seront nécessaires et contribueront sans doute à l'harmonisation des points de vue.

Enfin, nous saisissons cette occasion pour remercier la Commission européenne et l’OMS pour leur appui technique et financier dans l’organisation de cette troisième session de l’organe intergouvernemental de négociation. Nous ne saurions terminer sans exprimer nos remerciements aux interprètes, aux organisations intergouvernementales, aux ONG et au personnel du Centre international de Conférences de Genève. Nous souhaitons un bon retour aux délégations dans leur pays respectif.

Merci, Monsieur le Président.

(Applause/Aplaudissements)

The CHAIRPERSON:

Merci, Niger. Now the Syrian Arab Republic, please.

Dr ABOU AL ZAHAB (Syrian Arab Republic): الدكتور بسام أبو الذهب (الجمهورية العربية السورية):

The CHAIRPERSON:

Thank you very much indeed. The Maldives, please.

Mr MOHAMED (Maldives):

Thank you, Mr Chairperson. We would like to make a statement on behalf of the Parties in the South-East Asia Region, and my colleague from India will do so.

Dr PRASAD (India):

Thank you very much, Mr Chairperson. The Parties in the South-East Asia Region wish to congratulate the Chairperson on the manner in which he conducted these negotiations, tackling difficult and contentious issues with flair and wit. The Parties in the Region thank all the delegations to this session of the Intergovernmental Negotiating Body for their constructive contributions to the drafting of an effective and strong protocol. The Parties in the South-East Asia Region are committed to achieving this goal, in cooperation with all regions.

Mr Chairperson, we would like to assure you, as well as all participants, that we will work towards successfully building a very strong and effective protocol for tackling illicit trade in tobacco products. In conclusion, we would like to thank the Convention Secretariat staff and all those who work behind the scenes to make our negotiations so fruitful. We have had a really great time and have really enjoyed it all. You all worked to ensure that we came to this pleasant conclusion. Thank you very much.

(Applause/Aplaudissements)

The CHAIRPERSON:

Thank you very much indeed. Mexico, followed by the Philippines, please. Mexico.

El Sr. PINEDA (México):

Muchas gracias, señor Presidente. En nombre de las Partes de la Región de las Américas, deseo suscribir las felicitaciones a usted, como Presidente del Órgano de Negociación Intergubernamental, y a la Secretaría técnica, la OMS, la Comisión Europea y el grupo de intérpretes. Quiero extender asimismo la felicitación a todos los delegados y, como usted mismo lo ha mencionado, estamos, nos vemos allí. El trabajo que queda no es poco. Sin embargo, las Partes de la Región de las Américas muestran su determinación y su compromiso por llegar al acuerdo por el cual se prohíba toda forma de comercio ilícito de productos de tabaco, y tenemos la firme determinación de concluir los trabajos y aportar un protocolo fuerte que efectivamente consiga ese objetivo.

The CHAIRPERSON:

Thank you very much indeed. The Philippines, please.

Mr PADILLA (Philippines):

Thank you, Mr Chairperson. On behalf of the Parties in the Western Pacific Region, Mr Chairperson, diverse as we are in our views, unable to find consensus in many instances, we are finally one in congratulating and thanking you, Mr Chairperson.

(Applause/Aplaudissements)

We also thank the Convention Secretariat, WHO, and the European Commission for their financial and other assistance. We thank the various regions for their flexibility, and we thank all the delegations here for their openness and their seriousness in negotiation. However, most of all, Mr Chairperson we also thank the various delegations and countries in the Western Pacific Region for being such good sports and for being such a fantastic group with which to work. And thank you again, Mr. Chairperson, for your fantastic work and contributions. Thank you.

(Applause/Aplaudissements)

The CHAIRPERSON:

Thank you. If there are no more Parties that wish to speak, I see an observer who does. Switzerland, please.

M. VON KESSEL (Suisse):¹

Monsieur le Président, nous souhaiterions à notre tour dire quelques mots sur les négociations de cette semaine relatives à un projet de protocole sur le commerce illicite des produits du tabac.

Nous aimerions rappeler que la Suisse a signé la Convention-cadre et qu'il est dans l'intention de notre Gouvernement de la ratifier une fois que notre droit national aura été adapté aux exigences de la Convention. Parallèlement, la Suisse et l'Union européenne négocient actuellement un accord sur la santé qui prévoit la reprise de l'acquis européen dans le droit suisse. Ces négociations concernent aussi le domaine du tabac.

C'est avec grand intérêt que nous avons suivi les débats qui ont eu lieu tout au long de la semaine. En tant qu'observateur, la Suisse soutient l'élaboration d'un protocole sur le commerce illicite des produits du tabac. En effet, une protection efficace contre le commerce illicite grâce au protocole permet de garantir les revenus pour l'état et d'éviter d'affaiblir l'effet préventif de l'imposition. Nous attendons par conséquent avec intérêt l'aboutissement des négociations lors de la quatrième session de l'organe intergouvernemental de négociation.

¹ Participating by virtue of Rule 29 of the Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.

Nous profitons de cette occasion pour vous remercier, vous ainsi que les Présidents des Commissions et le Secrétariat de la Convention, pour votre appui et votre engagement durant cette troisième session.

The CHAIRPERSON:

Thank you very much, Switzerland.

(Applause/Applaudissements)

I see there is another Party that wishes to speak. I am sorry that I missed you the first time. Honduras, please.

La Dra. MEJÍA VELÁSQUEZ (Honduras):

Señor Presidente, nos sentimos muy honrados en felicitarlo. Difícilmente pudimos superar el Protocolo redactado por usted, pues en muchas ocasiones teníamos que regresar a la versión original. Lo felicito por su paciencia y por su magnífica conducción de las deliberaciones. También me honro en felicitar a los integrantes de las diferentes comisiones, muy especialmente al Presidente de la Comisión A, en la cual nos tocó trabajar, por su paciencia, y porque al final nos convencimos de que la metodología que empleó era la correcta. Estábamos muy bien informados a través de todos los documentos que nos presentaban y que fueron muy útiles para nosotros, los de habla hispana. Sé que éste fue un trabajo muy intenso, y muy duro también, de la Secretaría. Felicito a todas las delegaciones, y a todos y cada uno de los delegados en especial. Espero que regresen muy bien a sus países, que encuentren muy bien a sus familias, y me siento muy feliz de lo que se ha protagonizado en este encuentro, aunque muy triste por el problema en que nos encontramos en nuestro país. Muchas gracias a todos.

(Applause/Applaudissements)

The CHAIRPERSON:

Thank you very much indeed, Honduras. I am just ensuring that there are no more Parties because there is a nongovernmental organization that has asked for the floor.

Mr THOMPSON (Framework Convention Alliance on Tobacco Control):

Thank you very much, Mr Chairperson. I speak on behalf of the Framework Convention Alliance and I will be very brief. We would like to extend our sincere thanks to everyone present for their hard work at the Intergovernmental Negotiating Body and for their welcome commitment to further work between this session and the fourth session of the Intergovernmental Negotiating Body.

We believe that there has been considerable progress at this session towards an effective protocol and we are confident that all our efforts will be met with success. Particular thanks to you, Mr Chairperson, to the Chairs of the two committees and to the Convention Secretariat, and Dr Nikogosian in particular, for their hard work throughout the week. Once again, our warm congratulations on your achievements here and our very best wishes for our future collective work and for the future success of the protocol.

The CHAIRPERSON:

Thank you very much. I see one more nongovernmental organization.

Mr JAKPOR (Corporate Accountability International):

Thank you for the opportunity to speak on behalf of Corporate Accountability International and the Network for Accountability of Tobacco Transnationals. We applaud the Intergovernmental Negotiating Body on its progress this week, including its decision to remove tobacco lobbyists. At the same time, we urge Parties to remain vigilant to attempts by the tobacco industry to interfere in the process. Powerful financial interests are at stake here on issues such as tracking and tracing and duty-free. Only with truly full and consistent application of Article 5.3 of the Framework Convention on Tobacco Control will you overcome tobacco's vested interests and achieve a strong protocol. We look forward to working with you through the intersessional process and at the session of the Intergovernmental Negotiating Body. Thank you.

The CHAIRPERSON:

Thank you very much. I think that is everyone. All that remains for me to do is to thank you all again very much for all your contributions. I wish you a very safe journey home and I look forward to our meeting again at the fourth session of the Intergovernmental Negotiating Body to agree on the draft of a protocol. I declare the session closed.

(Applause/Aplaudissements)

The session closed at 12:10.
La session est levée à 12h10.

INDEX OF NAMES

This index contains the names of speakers reported in the present volume.

INDEX DES NOMS DES ORATEURS

Cet index contient les noms des orateurs dont les interventions figurent dans le présent volume.

- ABASCAL, W. (Uruguay), 27, 36, 45, 51, 60, 63, 66, 71, 77, 93, 102, 104, 105, 108, 133, 154, 171, 200, 215
- ABOU ALZAHAB, B. (Syrian Arab Republic/République arabe syrienne), 34, 46, 50, 77, 133, 151, 154, 210, 211, 217, 218, 222
- ADEYEMO, G.O. (Nigeria/Nigéria), 91
- AHMADI, K. (Iran, Islamic Republic of/République islamique d'Iran), 15, 41, 57, 69, 74, 78, 89, 103, 152, 187
- AL BAKER, A.M. (United Arab Emirates/Emirats arabes unis), 6, 28, 43, 59, 63, 64, 79, 80, 86, 89, 97, 100, 101, 106
- AL-JEHANI, K.J. (Saudi Arabia/Arabie saoudite), 185, 187, 200
- AL MANSOORI, E. (United Arab Emirates/Emirats Arabes Unis), 194, 204
- ALBUQUERQUE E SILVA, S.J. (Brazil/Brésil), 3, 6, 34, 36, 47, 48, 50, 53, 55, 56, 57, 68, 81, 86, 93, 108, 113, 116, 122, 126, 127, 128, 131, 150, 155, 161, 197, 213
- ALELUIA LOPES, F. (Guinea-Bissau/Guinée-Bissau), 47, 158
- AL-LAWATI, A.J. (Oman), 39, 44, 49, 103, 127, 134, 137, 149, 152, 157, 160, 164, 169, 171, 172, 183, 185, 186
- AL-ZADJALI, S.M.S. (Oman), 25
- ANIBUEZE, M.E. (Nigeria/Nigéria), 38, 45, 150, 160, 187
- ASIEDU, L. (Ghana), 195
- AZOFF, R. (Israel/Israël), 7, 72, 74, 77
- BALOCH, A.A. (Pakistan), 46
- BANIYA, B.K. (Nepal/Népal), 24
- BARRY, A.B. (Guinea/Guinée), 37, 84
- BOUCHEDOUB, M.F. (Algeria/Algérie), 50
- BURCI, G.L. (WHO Legal Counsel), 35, 37, 43, 44, 88, 92, 103, 106, 126, 127, 128, 129, 130, 131, 132, 166, 172, 175, 201
- CISSE, M.M. (Sénégal), 83
- DAGANEE, I.S. (Libyan Arab Jamahiriya/Jamahiriya arabe libyenne), 156
- DEMPSEY, G. (Canada), 89, 102, 103
- DEMUNI DE SILVA, I. (Sri Lanka), 108
- DÍAZ RODRÍGUEZ (Cuba), 25
- DLAMINI, V. (Swaziland), 47, 56, 57, 72, 77, 104, 172, 188
- DONBE, N.B. (Chad/Tchad), 46, 100, 104
- EVISON, K. (New Zealand/Nouvelle Zélande), 98
- FALL, B.M. (Sénégal), 49, 59, 63, 68, 69
- FISCH BERREDO MENEZES, M. (Brazil/Brésil), 155, 168, 188
- FITZGERALD, T.E. (Australia/Australie), 189
- GAO XINGZHI (China/Chine), 40, 70, 173, 181, 215
- GÖRÜN, H. (Turkey/Turquie), 6, 22, 75, 82
- GRÖNLUND, M. (Sweden/Suède), 18, 87, 100, 108, 166
- HACOHEN, N. (Israel/Israël), 206
- HAYAKAWA, O. (Japan/Japon), 7, 19
- HEFFORD, J.S. (Australia/Australie), 5, 60, 61, 71, 73, 74, 86, 90, 95, 98, 112, 124, 149, 151, 153, 156, 161, 198, 209
- HOSHINO, D. (Japan/Japon), 60, 87
- IBRAHIM-SALAH, M. (Libyan Arab Jamahiriya/Jamahiriya arabe libyenne), 47

- JAKPOR, P. (Corporate Accountability International), 225
- JAQUEZ, M.A. (Mexico/México), 45, 51, 76, 92, 162, 165, 168, 172, 188, 194
- JOHNS, P. (Framework Convention Alliance on Tobacco Control), 29
- JOOSSENS, L. (International Union against Cancer), 31
- KAZI, F.M. (Bangladesh), 69, 98
- KOSTENKO, N.A. (Russian Federation/Fédération de Russie), 40
- LEBEPE, C. (South Africa/Afrique du Sud), 187
- LECLAIRE, S. (Canada), 158
- LEGUERRIER, Y. (Canada), 23, 41, 155
- LEWIS-FULLER, E. (Jamaica/Jamaïque), 85, 162, 174
- LIKIBI-BOHO, R. (Congo), 163
- LOM, J. (United States of America/États-Unis d'Amérique), 27, 202
- LONGOLOMOI, I. (Kenya), 33, 157, 195, 212
- MADRAZO REYNOSO, M.
(Mexico/Mexique), 4, 5, 38, 58, 66, 96, 159
- MALLIKARATCHY, M. (Sri Lanka), 65
- MATSAU, N. (South Africa/Afrique du Sud), 153
- MEJÍA VELÁSQUEZ, L.S. (Honduras), 23, 82, 83, 156, 164, 165, 224
- MELKOM, R. (Bolivarian Republic of Venezuela/République bolivarienne du Venezuela), 129
- MENON, A. (World Customs Organization), 28, 163
- MOHAMED, H. (Maldives), 17, 46, 196, 201, 208, 212, 222
- MOHAMEDOUN, O.A. (Mali), 45, 74, 84, 89, 101, 104, 129, 153, 158, 166
- MOLIN HELLGREN, A. (Sweden/Suède), 124, 125, 130, 133, 134
- MONTALVO, M. (Ecuador/Equator), 69, 70
- MOREWANE, R. (South Africa/Afrique du Sud), 39, 60, 76, 93
- MOSSOP, D.J. (Australia/Australie), 124
- MOUSSA, S. (Niger), 151, 196, 204, 205, 221
- MULVEY, K. (Corporate Accountability International), 31
- NAVARRETE, E.J. (Chile/Chili)
Chair, Committee B, 58, 81, 114, 116, 141, 151, 204
- NGABA, J. (Central African Republic/République centrafricaine), 67, 79, 158
- NICOLAS, R. (Philippines), 66, 83, 84
- NIKOGOSIAN, H. (Head, Convention Secretariat), 8, 112, 124, 135, 136, 190, 199, 206, 207, 211, 217, 218
- NUNTAVARN VICHIT-VADAKAN
(Thailand/Thaïlande), 104
- OLDHAM, P. (Canada), 52, 62, 63, 73, 123, 128, 135, 167, 169, 170, 171, 192, 195, 207, 208, 217
- OOI Poh Keong (Malaysia/Malaisie), 75
- OOKA, N. (Japan/Japon), 36, 58, 70, 74, 149, 159, 184
- PADILLA, A.A. (Philippines), 7, 23, 38, 52, 94, 103, 112, 132, 134, 151, 194, 196, 197, 203, 205, 211, 223
- PINEDA, J.R. (México/Mexique), 114, 115, 154, 157, 223
- PRAKIT VATHESATOGKIT
(Thailand/Thaïlande), 63
- PRASAD, V.M. (India/Indie), 95, 114, 155, 160, 174, 175, 182, 186, 197, 202, 214, 216, 222
- RADA ESCOBAR, C.V.
(Colombia/Colombie), 7
- ROA RODRÍGUEZ, R.G. (Panama), 24, 25, 37, 43, 56, 57, 62, 65, 78, 85, 88, 94, 97, 104, 150
- ROBINSON, F. (Seychelles), 59, 73, 152, 205
- ROWAN, A. (European Community/Communaute européenne), 18, 37, 57, 68, 70, 174, 181, 184, 186, 189
- SAINT-DENIS, P. (Canada), 6, 78, 80, 81, 99, 108
- SALAGAI, O.O. (Russian Federation/Fédération de Russie), 220
- SAMUDA, R. (Panama), 131
- SAN MARTÍN, V. (Paraguay), 39, 156
- SHAKERIAN, S. (Islamic Republic of Iran, République islamique d'Iran), Chair, Committee A, 111, 112, 139, 198, 208, 210, 213, 214

- SIHASAK PHUANGKETKEOW
(Thailand//Thaïlande), 17
- SOLOMON, S.A. (WHO Secretariat, Office of
the Legal Counsel), 61, 64, 83, 210
- SOMARRIBA FONSECA, N. (Nicaragua), 19,
68
- TAGOE, G.N.T. (Ghana), 40, 58, 59, 90, 94,
186
- THOMPSON, F. (Framework Convention
Alliance on Tobacco Control), 224
- TIDJANI, O. (Togo), 40, 61, 72, 156, 173, 216
- TOESSI, J.C. (Benin/Bénin), 41, 48, 105
- TORRES MARTIN, R.A.
(Colombia/Colombie), 45, 50, 56, 58, 65,
66, 69, 73, 75, 79, 82, 85, 92, 96, 101, 105,
107, 113, 148, 162, 168, 175, 176, 187
- TSETSEGDARI, G. (Mongolia/Mongolie),
174, 200
- VINIT, T.D.Y. (Papua New Guinea/
Papouasie-Nouvelle-Guinée), 22, 40, 65,
67, 74, 88, 90, 96, 102, 152, 155, 156, 165,
166
- VON KESSEL, A. (Switzerland/Suisse), 223
- WALTON-GEORGE, I. (European
Community/Communauté européenne)
**Chairperson of the Intergovernmental
Negotiating Body on a Protocol on Illicit
Trade in Tobacco Products**, 1, 219
- WIDAD YOUSIF, M.A. (Sudan/Soudan), 158
- YOMO, J.-B. (Congo), 52, 65, 153, 157
- YÜKSEL, E.S. (Turkey/Turquie), 15, 34, 195,
196, 199, 201, 202, 203, 204, 211, 216, 221
-

INDEX OF COUNTRIES AND ORGANIZATIONS

This index lists the countries, organizations and bodies represented by the speakers whose names appear in the index on the preceding pages.

- ALGERIA, 50
- AUSTRALIA, 5, 60, 61, 71, 73, 74, 86, 90, 95, 96, 98, 112, 124, 149, 151, 153, 156, 161, 189, 198, 209
- BANGLADESH, 69, 98
- BENIN, 41, 48, 105
- BRAZIL, 3, 6, 34, 36, 42, 47, 48, 50, 53, 55, 56, 57, 68, 81, 86, 93, 113, 122, 126, 127, 128, 131, 150, 155, 161, 168, 188
- CANADA, 6, 23, 41, 52, 62, 63, 73, 78, 80, 81, 89, 99, 102, 103, 108, 123, 128, 135, 155, 158, 167, 169, 170, 171, 192, 195, 207, 208, 217
- CENTRAL AFRICAN REPUBLIC, 67, 79, 158
- CHAD, 46, 100, 104
- CHILE, 58, 114, 116, 141, 151, 204
- CHINA, 40, 70, 173, 181, 215
- COLOMBIA, 7, 45, 50, 56, 58, 65, 66, 69, 73, 75, 79, 82, 85, 92, 96, 101, 105, 107, 113, 148, 162, 168, 175, 176, 187
- CONGO, 52, 65, 153, 157, 163
- CORPORATE ACCOUNTABILITY INTERNATIONAL, 31, 225
- CUBA, 25
- ECUADOR, 69, 70
- EUROPEAN COMMUNITY, 18, 37, 57, 68, 70, 174, 181, 184, 186, 189
- FRAMEWORK CONVENTION ALLIANCE ON TOBACCO CONTROL, 29, 224
- GHANA, 40, 58, 59, 90, 94, 186, 195
- GUINEA, 37, 84
- GUINEA-BISSAU, 47, 158
- HONDURAS, 23, 82, 83, 156, 164, 165, 224
- INDIA, 95, 114, 155, 160, 174, 175, 182, 186, 197, 202, 214, 216, 222
- INTERNATIONAL UNION AGAINST CANCER, 31
- IRAN (ISLAMIC REPUBLIC OF), 51, 41, 57, 69, 74, 78, 89, 103, 111, 112, 139, 152, 187, 195, 208, 210, 213, 214
- ISRAEL, 7, 72, 74, 77, 206
- JAMAICA, 85, 162, 174
- JAPAN, 7, 19, 36, 58, 60, 70, 74, 87, 149, 159, 184
- KENYA, 33, 157, 195, 212
- LIBYAN ARAB JAMAHIRIYA, 47, 156
- MALAYSIA, 75
- MALDIVES, 17, 46, 196, 201, 208, 212, 222
- MALI, 45, 74, 84, 89, 101, 104, 129, 153, 158, 166
- MEXICO, 4, 5, 38, 45, 51, 58, 66, 76, 92, 96, 114, 115, 154, 157, 159, 162, 165, 168, 172, 188, 199, 223
- MONGOLIA, 174, 200
- NEPAL, 24
- NEW ZEALAND, 98
- NICARAGUA, 19, 68
- NIGER, 16, 85, 151, 196, 204, 205, 221
- NIGERIA, 38, 45, 91, 150, 160, 187
- OMAN, 25, 39, 44, 49, 103, 127, 134, 137, 149, 152, 157, 160, 164, 169, 171, 172, 183, 185, 186
- PAKISTAN, 46
- PANAMA, 24, 37, 43, 56, 57, 62, 65, 78, 85, 88, 94, 97, 104, 131, 150
- PAPUA NEW GUINEA, 22, 32, 40, 65, 67, 74, 88, 90, 96, 102, 152, 155, 156, 165, 166
- PARAGUAY, 39, 156
- PHILIPPINES, 7, 23, 38, 52, 66, 83, 84, 94, 103, 112, 132, 134, 151, 194, 196, 197, 203, 205, 211, 223
- RUSSIAN FEDERATION, 40, 220

SAUDI ARABIA, 185, 187, 200
SENEGAL, 49, 59, 63, 69, 83
SEYCHELLES, 59, 73, 152, 205
SOUTH AFRICA, 39, 60, 76, 93, 153, 187
SRI LANKA, 65, 108
SUDAN, 158
SWAZILAND, 47, 56, 57, 72, 77, 104, 172,
188
SWEDEN, 18, 87, 100, 108, 124, 125, 130,
133, 134, 166, 167
SWITZERLAND, 223
SYRIAN ARAB REPUBLIC, 34, 46, 50, 77,
133, 151, 154, 210, 211, 217, 218, 222

THAILAND, 17, 63, 104
TOGO, 40, 61, 72, 156, 173, 216
TURKEY, 6, 15, 22, 34, 75, 82, 195, 196, 199,
201, 202, 203, 204, 211, 216, 221

UNITED ARAB EMIRATES, 6, 23, 43, 59,
63, 64, 79, 80, 86, 89, 97, 100, 101, 106,
107, 194, 204
UNITED STATES OF AMERICA, 27, 202
URUGUAY, 27, 36, 45, 51, 60, 63, 66, 71, 77,
93, 102, 104, 105, 108, 133, 154, 171, 200,
215

VENEZUELA (BOLIVARIAN REPUBLIC
OF), 129

WORLD CUSTOMS ORGANIZATION, 28,
163

INDEX DES PAYS ET ORGANISATIONS

Cet index contient les noms des pays, organisations et organismes divers représentés par les orateurs dont les noms figurent dans l'index précédent.

- AFRIQUE DU SUD, 39, 60, 76, 93, 153, 187
ALGÉRIE, 50
ARABIE SAOUDITE, 185, 187, 200
AUSTRALIE, 5, 60, 61, 71, 73, 74, 86, 90, 95,
96, 98, 112, 124, 149, 151, 153, 156, 161,
189, 198, 209
- BANGLADESH, 69, 98
BÉNIN, 41, 48, 105
BRÉSIL, 3, 6, 34, 36, 42, 47, 48, 50, 53, 55,
56, 57, 68, 81, 86, 93, 113, 122, 126, 127,
128, 131, 150, 155, 161, 168, 188
- CANADA, 6, 23, 41, 52, 62, 63, 73, 78, 80,
81, 89, 99, 102, 103, 108, 123, 128, 135,
155, 158, 167, 169, 170, 171, 192, 195,
207, 208, 217
CHILI, 58, 114, 116, 141, 151, 204
CHINE, 40, 70, 173, 181, 215
COLOMBIE, 7, 45, 50, 56, 58, 65, 66, 69, 73,
75, 79, 82, 85, 92, 96, 101, 105, 107, 113,
148, 162, 168, 175, 176, 187
COMMUNAUTÉ EUROPÉENNE, 18, 37, 57,
68, 70, 174, 181, 184, 186, 189
CONGO, 52, 65, 153, 157, 163
CORPORATE ACCOUNTABILITY
INTERNATIONAL, 31, 225
CUBA, 25
- EMIRATS ARABES UNIS, 6, 23, 43, 59, 63,
64, 79, 80, 86, 89, 97, 100, 101, 106, 107,
194, 204
EQUATEUR, 69, 70
ETATS-UNIS D'AMERIQUE, 27, 202
- FÉDÉRATION DE RUSSIE, 40, 220
FRAMEWORK CONVENTION ALLIANCE
ON TOBACCO CONTROL, 29, 224
- GHANA, 40, 58, 59, 90, 94, 186, 195
GUINÉE, 37, 84
GUINÉE-BISSAU, 47, 158
- HONDURAS, 23, 82, 83, 156, 164, 165, 224
- INDE, 95, 114, 155, 160, 174, 175, 182, 186,
197, 202, 214, 216, 222
INTERNATIONAL UNION AGAINST
CANCER, 31
IRAN (RÉPUBLIQUE ISLAMIQUE D'), 51,
41, 57, 69, 74, 78, 89, 103, 111, 112, 139,
152, 187, 195, 208, 210, 213, 214
ISRAËL, 7, 72, 74, 77, 206
- JAMAHIRIYA ARABE LIBYENNE, 47, 156
JAMAÏQUE, 85, 162, 174
JAPON, 7, 19, 36, 58, 60, 70, 74, 87, 149, 159,
184
- KENYA, 33, 157, 195, 212
MALAYSIE, 75
MALDIVES, 17, 46, 196, 201, 208, 212, 222
MALI, 45, 74, 84, 89, 101, 104, 129, 153, 158,
166
MÉXIQUE, 4, 5, 38, 45, 51, 58, 66, 76, 92, 96,
114, 115, 154, 157, 159, 162, 165, 168,
172, 188, 199, 223
MONGOLIE, 174, 200
- NÉPAL, 24
NICARAGUA, 19, 68
NIGER, 16, 85, 151, 196, 204, 205, 221
NIGÉRIA, 38, 45, 91, 150, 160, 187
NOUVELLE-ZÉLANDE, 98
- OMAN, 25, 39, 44, 49, 103, 127, 134, 137,
149, 152, 157, 160, 164, 169, 171, 172,
183, 185, 186
- PAKISTAN, 46
PANAMA, 24, 37, 43, 56, 57, 62, 65, 78, 85,
88, 94, 97, 104, 131, 150
PAPOUASIE-NOUVELLE-GUINEE, 22, 32,
40, 65, 67, 74, 88, 90, 96, 102, 152, 155,
156, 165, 166
PARAGUAY, 39, 156
PHILIPPINES, 7, 23, 38, 52, 66, 83, 84, 94,
103, 112, 132, 134, 151, 194, 196, 197,
203, 205, 211, 223

RÉPUBLIQUE ARABE SYRIENNE, 34, 46,
50, 77, 133, 151, 154, 210, 211, 217, 218,
222

RÉPUBLIQUE CENTRAFRICAINE, 67, 79,
158

SÉNÉGAL, 49, 59, 63, 69, 83

SEYCHELLES, 59, 73, 152, 205

SRI LANKA, 65, 108

SOUDAN, 158

SWAZILAND, 47, 56, 57, 72, 77, 104, 172,
188

SUÈDE, 18, 87, 100, 108, 124, 125, 130, 133,
134, 166, 167

SUISSE, 223

TCHAD, 46, 100, 104

THAÏLANDE, 17, 63, 104

TOGO, 40, 61, 72, 156, 173, 216

TURQUIE, 6, 15, 22, 34, 75, 82, 195, 196,
199, 201, 202, 203, 204, 211, 216, 221

URUGUAY, 27, 36, 45, 51, 60, 63, 66, 71, 77,
93, 102, 104, 105, 108, 133, 154, 171, 200,
215

VENEZUELA (RÉPUBLIQUE
BOLIVARIENNE DU), 129

WORLD CUSTOMS ORGANIZATION, 28,
163
