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ON THE WHO FRAMEWORK CONVENTION  
ON TOBACCO CONTROL  
Provisional agenda item 7

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## Elements of a WHO framework convention on tobacco control

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## INTRODUCTION

1. This document is designed to assist the working group on the WHO framework convention on tobacco control in considering agenda item 7 at its first meeting. It sets forth some possible elements for the proposed WHO framework convention on tobacco control. It is not intended to be a comprehensive treatment of each element of a framework convention, or a draft of the convention. Rather, potential types of provisions for the convention are suggested to provide a starting point and catalyst for discussion.

2. It should be stressed that the suggestions contained in this document need to be evaluated from the perspective of their political feasibility. In the end, the content of the framework convention and its related protocols will depend on the Member States of WHO, as the conclusion of binding treaties or conventions is a prerogative of sovereign States.

3. There is no single style or length for a framework convention. Some are detailed, others less so. Their general characteristic is that they set out few substantive obligations for the States Parties (States Parties and eligible regional economic integration organizations), leaving most of those obligations to be established by individual protocols. The value of the framework convention and protocol approach is that it allows lawmaking to proceed incrementally. Topics on which there is widespread consensus among the negotiating States can be included in the convention itself. Topics on which many but not all States can agree may be included in concurrent protocols. Issues on which there is considerable debate can be addressed in protocols at some point in the future as consensus develops.

4. The following sections describe the types of provisions typically found in framework conventions, although they could also include other provisions. Conversely, some of the elements described below might not be considered appropriate for the present framework convention. Much of the material is drawn from earlier papers.<sup>1</sup> The Annex lists, with full citations, the primary framework conventions from which examples were drawn, which will be available to participants during the meeting, and other conventions referred to.

5. The elements of a framework convention on tobacco control are discussed in the following sections: I. Preamble, objective(s), principles and definitions; II. Obligations; III. Institutions; IV. Implementation mechanisms; V. Law-making processes; VI. Final clauses. Each of these elements is described in some detail in part A of each section, with sample language set forth from other framework conventions. Some of the main issues posed for the preparation of the framework convention are summarized in part B of each section. These issues are phrased as questions and may provide a template for discussions during the meeting. In some instances, examples of possible items for inclusion in the framework convention are also provided. Participants may wish to use these questions in their preparation for the first meeting.

6. This paper presents both the procedural and substantive elements of a framework convention. In view of the technical expertise of the working group, participants may wish to focus on the substantive elements described in sections I, II and III.

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<sup>1</sup> See, for example, document WHO/NCD/TFI/99.1.

I. PREAMBLE, OBJECTIVE(S), PRINCIPLES AND DEFINITIONS

A. Description

**Box 1: Preamble, objective(s), principles and definitions**

- C Preamble: includes issues and facts, such as scientific observation and historical developments, which the Parties wish to highlight. It can also incorporate a convention's objective(s) and principles
- C Objective(s): sets forth the purpose(s) and/or focus of the States Parties to a convention
- C Principles: set forth standards that guide the convention's future application and development
- C Definitions: define terminology used in a convention. For example, if the term "regional economic integration organization" is used in a convention, it is defined. Because of the preliminary nature of this document, definitions will not be addressed in this document.

7. A framework convention typically includes introductory provisions that set forth the convention's objective(s) and the principles guiding its development. A convention's underlying purpose(s) is identified as its objective(s). Guiding principles set forth standards that frame the convention's future application and development in very general terms. They do not impose specific obligations. The preamble of a convention includes issues and facts that the Parties wish to highlight or emphasize. A convention's objective(s) and guiding principles may be incorporated into a preamble, may stand as separate articles, or may appear in both. The process of determining a convention's objective(s), guiding principles, and provisions for a preamble helps to build a consensus among the prospective Parties. States may not agree on what should be done about a particular problem, but they may be able to agree upon a common goal and on general principles and issues that should guide their efforts to achieve that goal. This may provide countries with a framework within which to draft subsequent convention language and protocols. If the objective(s) and principles are drafted too narrowly, they might be interpreted as excluding certain issues from the convention or its subsequent protocols or annexes. This could limit the long-term development of a legal structure for global tobacco control.

8. Other than actually determining the substance of a convention's objective(s) and guiding principles, the treaty drafters must decide where to place these provisions: either in the convention's preamble or in separate articles. Recent environmental framework conventions, such as the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, have included separate articles setting forth their objective(s) and guiding principles, in addition to their preambles.

9. The preamble provides part of the context for interpreting a treaty. The mere fact of placement of an issue, principle or objective in a convention, whether it is in a preamble or a separate article, serves to legitimize it as a matter of international concern. Nonetheless, additional emphasis and weight are provided by setting forth a provision in the articles of a convention instead of the preamble.

The preamble

10. Preambles to conventions vary considerably in length and content. The Framework Convention on Climate Change and the Convention on Biological Diversity each have 23 separate substantive clauses in their preambles; the Vienna Convention for the Protection of the Ozone Layer contains only seven. Even though

it is quite short, this latter Convention sets forth its guiding principles and objective within the preamble rather than in separate articles, stating:

*The Parties to this Convention,*

*Aware of the potentially harmful impact on human health and the environment through modification of the ozone layer,*

*Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, and in particular principle 21 ...*

*Taking into account the circumstances and particular requirements of developing countries,*

*Mindful of the work and studies proceeding within both international and national organizations*

...

*Mindful also of the precautionary measures for the protection of the ozone layer ...*

.....

*Aware also of the need for further research and systematic observations ...*

*Determined to protect human health and the environment against adverse effects resulting from modifications of the ozone layer ... .*

### Separate articles on objective(s) and guiding principles

11. In contrast to the above, the Framework Convention on Climate Change and the Convention on Biological Diversity sets forth objective(s) and guiding principles in articles separate from the preamble.<sup>1</sup> For example, Article 2 provides for the Convention's objective, stating:

*The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.*

12. In Article 3, the Convention provides for a number of principles by which the Parties "shall be guided in their actions to achieve the objective of the Convention and to implement its provisions":<sup>2</sup>

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<sup>1</sup> See also the Convention on Biological Diversity, Article 1.

<sup>2</sup> See also the Convention on Biological Diversity, Article 3, which states the following principle:

*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

1. *The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.*
2. *The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.*
3. *The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures ... should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts ... may be carried out cooperatively by interested Parties.*
4. *The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system ... should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.*
5. *The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken ... should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.*

B. Issues for the framework convention

**Box 2: Preamble, objective(s), principles and definitions:  
summary of principal issues for the framework convention**

- C What objective(s) and principles should guide the development and implementation of the framework convention on tobacco control?
- C What tobacco-related issues or facts should be highlighted in the preamble?
- C Should the objective(s) and principles appear in the preamble, in separate articles, or in both?

## Objective(s)

13. Conventions normally state their objective(s) in a single sentence and in the broadest possible terms.<sup>1</sup> The objective(s) should not limit the future development of the convention and its protocols or annexes. The objective of the framework convention could, for example, be drafted along the following lines:

The ultimate objective of the convention and any related legal instruments is to achieve a reduction in tobacco prevalence in order to protect present and future populations from the devastating health, social and economic consequences of tobacco consumption and exposure to environmental tobacco pollution.

## Guiding principles

14. The WHO Meeting of Public Health Experts (Vancouver, Canada, 1998) concluded in its final recommendations that the guiding principles of the framework convention should include the following points:

- Ⓒ tobacco is an important contributor to inequity in health in all societies;
- Ⓒ as a result of the unique nature (addiction, health damage) of tobacco products, normal trade practices are not applicable;
- Ⓒ the public has a right to be fully informed about the health consequences of using tobacco products;
- Ⓒ the health sector bears the leading responsibility to combat the tobacco epidemic, but success cannot be achieved without the full contribution of all sectors of society.

15. These conclusions could form the starting point for consideration of the content of the guiding principles of the framework convention. The principles could also include the following elements:

- Ⓒ stemming the growth of the tobacco epidemic is of critical importance in protecting and promoting global public health (partially reflected in resolutions WHA40.38 and WHA39.14);
- Ⓒ there is indisputable scientific evidence unequivocally establishing that tobacco consumption is causally linked to numerous fatal and disabling health problems (partially reflected in resolutions WHA40.38 and WHA39.14, recommendations of the Thirteenth World Congress of the Organization of Consumers Unions (Hong Kong, 1991), and resolutions of the Tenth World Conference on Tobacco or Health (Beijing, 1997));
- Ⓒ tobacco consumption and exposure to environmental tobacco pollution are incompatible with human health and are an important contributor to health inequity in all societies (partially reflected in WHA39.14, recommendations of the Thirteenth World Congress of the Organization of Consumers Unions, resolutions of the

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<sup>1</sup> See, for example, the Convention on Biological Diversity, Article 1, which states:

*The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.*

Ninth World Conference on Tobacco and Health (Paris, 1995), and conclusions of the WHO Meeting on the Framework Convention on Tobacco Control (Vancouver, Canada, 1998));

- C the tobacco epidemic is a problem of global dimension that calls for the widest possible cooperation by all countries and their participation in an effective, appropriate and coordinated international response, in accordance with relevant scientific, economic and technical considerations (partially reflected in resolution WHA39.14);
- C all people have the right to be fully informed about the addictive and lethal qualities of tobacco consumption (also reflected in the conclusions of the WHO Meeting on the Framework Convention on Tobacco Control);
- C all countries should take immediate action, in a flexible manner and on the basis of clear priorities, to strengthen and implement multisectoral comprehensive tobacco control strategies, as a first step towards comprehensive response strategies at all levels (also reflected in resolutions WHA48.11 and WHA45.20);
- C all people have the right to a tobacco-smoke free environment (also reflected in the Manila Declaration; partially reflected in resolution WHA39.14);
- C tobacco control is cost-effective and will yield unprecedented health benefits without harming economies (also reflected in the resolutions of the International Conference on the Economics of Tobacco Control (Cape Town, South Africa, 1998) and in *Curbing the epidemic: governments and the economics of tobacco control*. Washington, D.C., The World Bank, 1999);
- C tobacco companies should be held accountable for past, present and future harm by use of legal processes (also reflected in the conclusions of the International Policy Conference on Children and Tobacco (Washington, D.C., 1999));
- C women play a vital role in tobacco control efforts and there is a need for the full participation of women at all levels of policy-making and implementation for tobacco control (also reflected in the conclusions of the WHO Meeting on the Framework Convention on Tobacco Control, and resolutions of the Tenth World Conference on Tobacco or Health, and of the Eighth World Conference on Tobacco or Health (Buenos Aires, 1992)).

These same elements, however, could also be folded into the preamble.

### Preamble

16. Other issues to which countries wish to draw attention may be included in the preamble. For example, in the tobacco context, some of the following points might be considered appropriate:

- C the international community is extremely concerned about the dramatic global spread and devastating worldwide impact of the tobacco epidemic (also reflected in the resolutions of the Tenth World Conference on Tobacco or Health);
- C there has been an alarming increase in the consumption and production of cigarettes and other tobacco products in the past several decades, particularly in developing countries (also reflected in resolution WHA40.38 and resolutions of the Tenth World Conference on Tobacco or Health);

- C there has been an escalation of smoking and other forms of tobacco consumption among children, women and indigenous populations worldwide (partially reflected in the conclusions of the WHO Meeting on the Framework Convention on Tobacco Control and resolutions of the Tenth World Conference on Tobacco or Health);
- C all direct and indirect marketing, promotion and other practices aimed at promoting the use of tobacco are of serious concern because this product is addictive and lethal when used as promoted (also reflected in resolution WHA39.14, resolutions of the Fourth Asia-Pacific Conference on Tobacco or Health (Chiang Mai, Thailand, 1995), recommendations of the Seventeenth Eastern Regional Conference on Tuberculosis and Respiratory Diseases (Bangkok, 1993), resolutions of the Ninth World Conference on Tobacco and Health, and resolutions of the International Conference on the Economics of Tobacco Control);
- C there is considerable concern about the environmental consequences of tobacco cultivation and use (also reflected in the recommendations of the Thirteenth World Congress of the International Organization of Consumers Unions; partially reflected in resolution WHA42.19);
- C illegal transboundary traffic in cigarettes and other tobacco products requires coordinated State action (also reflected in the resolutions of the Eighth World Conference on Tobacco or Health, and conclusions of the WHO Meeting on the Framework Convention on Tobacco Control);
- C States should take measures necessary for the proper exchange of information on trends in smoking and other forms of tobacco use, tobacco products, tobacco-related diseases, national tobacco control programmes and legislation, and other matters relevant to monitoring the tobacco epidemic (also reflected in resolutions of the Eighth World Conference on Tobacco or Health).

## II. OBLIGATIONS

### A. Description

#### **Box 3: General obligations**

- C National measures to control the problem of tobacco use
- C Education, training, raising public awareness
- C General cooperation
- C Cooperation in scientific research
- C Exchange of information

17. A framework convention normally contains quite general obligations, with more specific commitments placed in protocols or annexes. In some cases, specific obligations may be included if consensus can be reached on them.

18. As can be seen from the table below, most framework conventions contain similar obligations on scientific and technical cooperation, international cooperation, education, scientific research, exchange of information, and the undertaking of national measures to reach the convention's objective(s). Some of these conventions also provide for certain types of scientific monitoring or observation, or for scientific training.

## COMMON GENERAL OBLIGATIONS

Convention	Scientific and technical cooperation	International cooperation	Education	Scientific research	National measures	Exchange of information
Protection of the Mediterranean Sea Against Pollution	X	X		X (and monitoring)	X	X
Biological Diversity	X	X	X (public)	X	X	X
Long-range Transboundary Air Pollution	X	X (consultation required)	X (and training programmes)	X (and monitoring) (and development)	X	X
Climate Change	X	X	X (public)	X (and systematic observation)	X	X
Prohibitions or Restrictions on the Use of Certain Conventional Weapons ...			X			
Protection of the Ozone Layer	X (includes training)	X		X (and systematic observation)	X	X

19. Despite the similarities between framework conventions as to the types of general undertakings, there is no single way of drafting a section on obligations. Each convention can be tailored to meet the needs of the issue or area it addresses. For example, the Convention on Biological Diversity has no one article containing general obligations. Rather, it contains commitments in 15 separate articles, some of which are the standard obligations identified in the table above, while others address issues specific to biodiversity.<sup>1</sup>

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<sup>1</sup> The Convention also contains separate articles on the following: general measures for conservation and sustainable use (Article 6); identification and monitoring (Article 7); in-situ conservation (Article 8); ex-situ conservation (Article 9); sustainable use of components of biological diversity (Article 10); incentive measures (Article 11); impact assessment and minimizing adverse impacts (Article 14); access to genetic resources (Article 15); and access to and transfer of technology (Article 16).

20. A more skeletal approach is found in the Vienna Convention for the Protection of the Ozone Layer, which has one article listing a number of obligations. Its Article 2 entitled “General Obligations” provides for the Parties:

- Ⓒ to take appropriate measures in accordance with the Convention to protect human health and the environment from adverse effects associated with changes in the ozone layer;
- Ⓒ to cooperate through systematic observations, research and information exchange;
- Ⓒ to adopt appropriate legislative or administrative measures and cooperate in harmonizing appropriate policies;
- Ⓒ to cooperate in the formulation of agreed measures, procedures and standards for the Convention’s implementation, with a view to the adoption of protocols and annexes;
- Ⓒ to cooperate with competent international bodies to implement the Convention effectively.

It provides two further obligations in separate articles:

- Ⓒ scientific research and systematic observations (Article 3);
- Ⓒ cooperation in the legal, scientific and technical fields (Article 4).

21. The standard provisions appearing as obligations in framework conventions will be described in the remainder of this section. Also included is a section describing other obligations, including that of financial assistance from developed to developing countries. It should be noted that establishing obligations in a framework convention or one of its protocols does not normally imply that States are precluded from carrying out additional measures, not listed in the treaty. Nonetheless, some conventions explicitly state that fact, particularly if prohibition of the subject matter is a possible option for States. For example, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (which is not a framework convention) provides in Article XIV that:

*The provisions of the present Convention shall in no way affect the right of Parties to adopt:*

- (a) stricter domestic measures regarding the conditions for trade ... of species included in [the appendices], or the complete prohibition thereof; or*
- (b) domestic measures restricting or prohibiting trade ... of species not included in [the appendices].*

#### National policies and measures

22. A standard provision in most framework conventions is an undertaking that Parties will adopt national policies and measures to promote the convention’s objective. The Framework Convention on Climate Change, for example, in Article 4(1)(b), provides that Parties shall “[f]ormulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change ...”.

23. In contrast, the Convention on Biological Diversity calls for national measures, programmes, plans, and arrangements on a number of issues specific to biodiversity, such as impact assessments and conservation.

The Convention does so, not in a single article as in the case of Climate Change, but in a number of different articles (for example, Articles 8, 9, 10, 11, 14, 15, and 19).

### Education, training and public awareness

24. A common noncontroversial feature of framework conventions is a provision calling upon Parties to raise awareness of a particular problem through a variety of methods. For example, the Convention on Biological Diversity, in Article 13, calls upon Parties to:

*(a) Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes; and*

*(b) Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity.*

In addition to those types of obligations, the Convention on Climate Change, for example, provides in Article 6 for the training of scientific, technical and managerial personnel, and for cooperation in the development and implementation of education and training programmes.

### General cooperation

25. A common provision in framework conventions calls for general cooperation among Parties. Some conventions include a broad general obligation. For example, the Convention on Biological Diversity states in Article 5 that:

*Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, ... for the conservation ... of biological diversity.*

In contrast, some conventions address cooperation in more detail, listing the specific areas for cooperation. For example, the Convention for the Protection of the Ozone Layer in Article 2.2(c) also calls upon Parties to cooperate with a “view to the adoption of protocols and annexes” to the Convention.

### Technical and scientific cooperation

26. Another common feature of framework conventions is a separate provision for technical and scientific cooperation. Cooperation in scientific research and monitoring may be provided for within the same provision or separately. The Convention on Biological Diversity, in Article 18, addresses both:

*1. The Contracting Parties shall promote international technical and scientific cooperation ... where necessary, through the appropriate international and national institutions.*

*2. Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this Convention, inter alia, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and strengthening of national capabilities, by means of human resources development and institution building.*

3. *The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.*
4. *The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies ... in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.*
5. *The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Convention.*

Other examples may be found in the Convention on Long-range Transboundary Air Pollution, Article 7, the Convention on Climate Change, Article 5, and the Convention for the Protection of the Ozone Layer, Articles 2.2(a) and 3.

### Exchange of information

27. Another standard provision in framework conventions is one requiring exchange of information on policies, activities, measures, and other information relevant to the convention. For example, the Convention on Long-range Transboundary Air Pollution in Article 8 requires that Parties

*... shall, in their common interests, exchange available information on:*

- (a) *data on emission at periods of time to be agreed upon ...;*
- (b) *major changes in national policies and in general industrial development, and their potential impact, which would be likely to cause significant changes ...;*
- (c) *control techniques for reducing air pollution relevant to long-range transboundary air pollution;*
- (d) *the projected cost of the emission control ... on a national scale;*
- (e) *... data relating to the processes during transmission;*
- (f) *... data relating to the effects of long-range transboundary air pollution ...;*
- (g) *national, subregional and regional policies and strategies for the control of ... compounds ... and other major air pollutants.*

In Article 17, the Convention on Biological Diversity also provides for Parties to

1. *... facilitate the exchange of information, from all publicly available sources ..., taking into account the special needs of developing countries.*
2. *Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge ... .*

Other examples are the Convention on Climate Change, Article 4.1(h), and the Convention for the Protection of the Ozone Layer, Articles 4.1-4.2.

### Other obligations

28. A number of conventions, including framework conventions, obligate developed countries to provide financial assistance to developing countries in order to assist their implementation of a convention. The obligation is normally somewhat vague and ill-defined. The Convention on Climate Change, for example, requires certain developed States Parties (listed in an annex to the Convention) to provide full financial support to assist developing countries in the preparation of their country reports on convention implementation (Article 4.3). It also requires provision to developing countries of unspecified financial amounts to sponsor projects to mitigate or adapt to climate change and/or to assist with implementation of their convention obligations (Articles 4.4-6). Similarly, the Convention on Biological Diversity in Article 20.2 requires developed country Parties to provide “new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures” which fulfil the Convention’s obligations. The financial assistance can be provided directly by a developed to a developing country on a bilateral basis. It can also be provided multilaterally through a convention’s financial mechanism (described in section III.A). (See, for example, the Convention on Biological Diversity, Article 20.3.)

### B. Issues for the framework convention

**Box 4: Obligations: summary of principal issues for the framework convention**

- C What types of national measures (policies, programmes, or legislation) should Parties undertake to carry out?
- C How should education, training and public-awareness raising be carried out?
- C What types of general cooperation should be encouraged?
- C What types of scientific and technical cooperation should be encouraged?
- C What information should Parties exchange?
- C Should there be an obligation for developed countries to provide developing countries with financial assistance?

### National policies and measures

29. A number of national measures, policies, programmes, plans, arrangements or legislation could be considered for inclusion in the framework convention. For example, States could, *inter alia*, undertake to:

- C develop uniform systems of surveillance to capture country data on:
  - % prevalence of tobacco use and consumption patterns;
  - % patterns and trends in tobacco-attributable morbidity and mortality;
  - % the level of awareness among different segments of the population of the health risks associated with tobacco use;
  - % pricing policies, backed by country and segment-specific elasticity studies to determine the impact of taxation on tobacco control;

- % behaviours and attitudes with respect to tobacco control measures (partially reflected in resolution WHA39.14);
- C compile and maintain a database of laws and regulations on tobacco control (national and subnational), with information on enforcement;
- C establish guidelines for strengthened tobacco control legislation and programmes for education and cessation (resolution WHA39.14);
- C establish a focal point for tobacco control in every ministry of health (partially reflected in resolution WHA39.14. The Convention for the Protection of the Mediterranean Sea Against Pollution has a similar requirement in Article 10 obliging Parties to designate the competent authority responsible for pollution monitoring);
- C adopt legal measures aimed at protecting the health of nonsmokers (also reflected in resolutions WHA39.14 and WHA43.16);
- C adopt measures to control the direct or indirect advertising of all types of tobacco (also reflected in resolutions WHA39.14 and WHA43.16);
- C restrict the consumption of tobacco in any form whatsoever in public places (also reflected in resolution WHA43.16);
- C take measures to protect children and adolescents through the regulation of advertising, marketing, promotion and sponsorship and enforcement; enforce the laws and ordinances aimed at eliminating the sale of tobacco products to minors; and establish effective prevention programmes (also reflected in resolution WHA39.14);
- C prepare and implement plans of action, with educational, legislative, regulatory, and fiscal components, for the prevention and control of tobacco use (also reflected in resolutions WHA39.14 and WHA42.19);
- C implement crop substitution in cases where the economy depends heavily upon tobacco production (also reflected in resolution WHA42.19);
- C promote alternative viable economic activities for tobacco growers (also reflected in resolution WHA39.14);
- C take appropriate legal, administrative and other measures to prevent and punish illicit traffic in tobacco products (similar to the Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, Article 4);
- C require strong and rotating, large and highly visible health warnings on their tobacco products (partly reflected in resolution WHA39.14).

#### Education, training and public awareness

30. The framework convention could provide not only for tobacco-related education and public-awareness programmes, but also for training of medical personnel on the consequences of tobacco use and exposure. This type of provision is not new to tobacco regulation. In Health Assembly resolutions, Member States have

been encouraged to establish education and public information programmes on tobacco and health issues, including smoking cessation programmes (resolutions WHA39.14 and WHA42.19).

### General cooperation

31. A large number of tobacco control issues may be handled more effectively with cooperation. General cooperation with other Contracting Parties for tobacco control efforts could be required, as well as cooperation with a view to the adoption of protocols to the convention. Specific cooperation could also be required, for example, by calling upon States Parties to cooperate:

- C by affording one another the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings in relation to the illicit traffic of tobacco products;
- C on labelling requirements;
- C on harmonization of treatment of ingredient disclosure;
- C on harmonization of regulation of advertising, marketing, promotion and sponsorship.<sup>1</sup>

### Technical and scientific cooperation

32. Technical and scientific cooperation is also useful for tobacco control efforts. In particular, some of the provisions described in section II.A above from Article 18 of the Convention on Biological Diversity could also prove useful in the tobacco context. Of note are the call for a clearing-house mechanism for technical and scientific cooperation (Article 18.3) and the call for such cooperation to be carried out with developing countries, in particular, through the development and implementation of national policies (Article 18.2).

33. Possible areas for technical and scientific cooperation to further tobacco control could include those described below.

- C research: cooperative research in order to develop regional and global systems of surveillance for issues on which countries are obligated to compile national data (pursuant to possible obligations in the framework convention on national measures, described in section II.B above).
- C policy interventions: research to determine the impact of tobacco control policies, including taxation and pricing, clean indoor-air policies, restrictions on marketing, advertising and promotion, and restrictions on young people's access to tobacco.
- C programme interventions: research on possible interventions including opportunities for, and barriers to, tobacco control; optimal components of a comprehensive tobacco control strategy; development of effective measures to counter tobacco industry promotions; behavioural research to test prevention and treatment programmes; development and evaluation of novel approaches to preventing tobacco use, especially among populations at disproportionate risk; and the relative effectiveness of prevention interventions.

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<sup>1</sup> See document A/FCTC/WG1/3.

- C treatment of tobacco dependence: examination of a range of approaches to increase cessation rates in populations, and evaluation of new pharmaceutical interventions and delivery mechanisms.
- C tobacco product design and regulation: research on ways in which product modification (in nicotine and tar content, delivery system, additives, taste, size, etc.) can change use patterns and/or reduce harm among various subgroups.
- C tobacco industry analysis: research on the international role of the transnational tobacco companies, including representations about the health consequences of smoking and addiction; advertising, marketing and promotion, possible links to smuggling activities; and tobacco and cigarette production as an international and regional trade issue in terms of foreign exchange earnings, employment, country imports and exports.
- C tobacco farming: important research topics could include the relationship of tobacco production to the ecosystem; attitudes, beliefs and practices of tobacco farmers; the economic impact of tobacco control on developing countries that grow and/or manufacture tobacco or tobacco products for domestic or foreign markets; opportunities for alternative crops and livelihoods; cultivation and curing practices at country and subnational levels; occupational health hazards related to cultivating, curing and handling tobacco; the impact of tobacco cultivation on women and children; and the feasibility of diversification in countries heavily dependent on tobacco farming and manufacturing.<sup>1</sup>

### Information exchanges

34. Policies and programmes to control tobacco use can be assisted by reliable and timely information about the pattern, extent and trends of tobacco use in the population, the health and economic consequences of tobacco use, and sociocultural factors which underlie it.<sup>2</sup>
35. Exchanges of information could be requested, for example, with respect to:
  - C surveillance of tobacco use (all products);
    - % initiation rates and prevalence among young people; consumption, expenditures and sales by brands, socioeconomic status and sex;
  - C surveillance of tobacco-related diseases and attributable mortality;
  - C tobacco control programmes, legislation, and institutions;
    - % advertising restrictions; prices; clean-air legislation, etc.;
    - % tobacco advertising, marketing, sponsorship and promotion, including statistics on youth- and women-targeted programmes;
  - C tobacco production, trade and industry;

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<sup>1</sup> See document WHO/NCD/TF1/99.12.

<sup>2</sup> See document A/FCTC/WG1/3

C availability of treatments for tobacco dependence.<sup>1</sup>

#### Other obligations

36. A provision for financial assistance in the framework convention would be consistent with previous WHO actions. The Health Assembly has called for support to countries that depend on tobacco production in its resolutions WHA43.16 and WHA45.20. Financial resources could also be provided to developing country Parties to assist them in their implementation of obligations in the framework convention or its protocols. Also possible, either alone, or in conjunction with an article on cooperation or financial assistance, would be a provision calling for technical assistance for States in carrying out their obligations pursuant to the framework convention or its protocols.

37. The following suggestions have also been made for inclusion in the framework convention or one of its protocols:

C adopt measures to counteract smuggling, such as:

- % penalties, requiring “tax-paid” stamps on tobacco products;
- % special package and product markings to indicate duty-exempt status;
- % tobacco-specific licences for manufacturers, exporters, importers, wholesalers, transporters, warehouses and retailers;
- % a unique serial number printed legibly on all packages of tobacco products by each manufacturer;
- % record-keeping requirements;
- % requirement that exported cigarettes indicate on the label the country of final destination and carry appropriate and country-specific health warnings;
- % requirement that exporters post bonds on cigarette shipments that can only be released after the cigarettes are shown to have reached their final destination;

C ban or restrict tobacco advertising, marketing, promotion and sponsorship;

C require industry to disclose all ingredients and additives in all tobacco products, including all constituents, using internationally accepted test methods, which require disclosure of product process, manufacturing and design and the purpose of each ingredient;

C ban the sale of cigarettes in packs of fewer than 20 cigarettes;

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<sup>1</sup> See Global tobacco surveillance system: multi-partner project TFI/World Bank/UICC/CDC. Atlanta, Centers for Disease Control and Prevention, 1999; and *Guidelines for controlling and monitoring the tobacco epidemic*. Geneva, WHO, 1998, pp. 167-170.

C remove unproven health claims on the package of tobacco products, such as “light”, “mild” and “low-tar”;

C provide help to tobacco farmers to switch to alternative crops and/or livelihoods.<sup>1</sup>

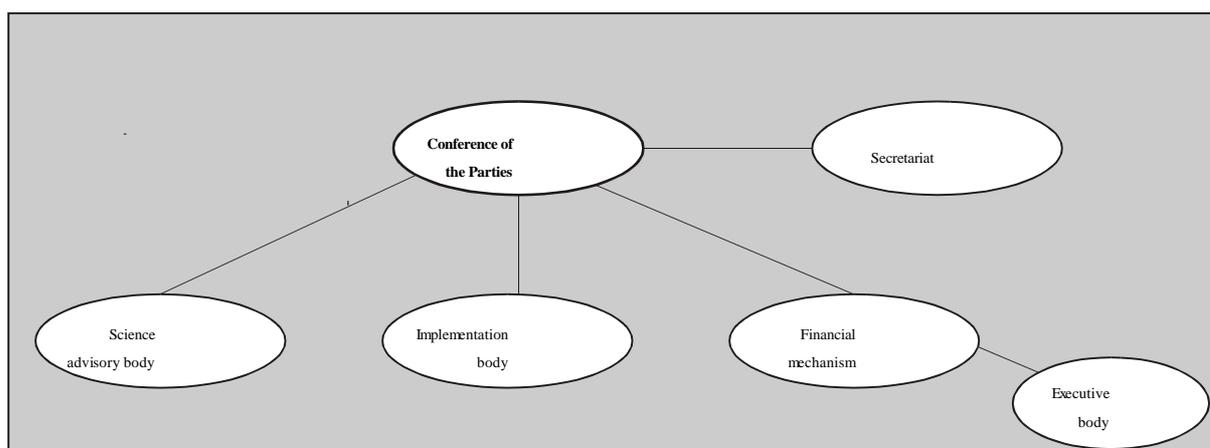
### III. INSTITUTIONS

#### A. Description and merits

38. A key function of framework conventions is the creation of institutions. These institutions serve as the basis for continuing international cooperation and governance of a particular issue, such as tobacco control.

39. All framework conventions provide for a periodic meeting of the Parties (usually called the Conference of the Parties) and for a secretariat. Some framework conventions, such as that on climate change, also establish a broad range of subsidiary institutions, covering scientific matters, implementation and finance.

#### POSSIBLE INSTITUTIONS OF A FRAMEWORK CONVENTION



#### Conference of the Parties

40. The central institution created by a framework convention is the Conference of the Parties. It is normally open to participation only of States and other entities that are Parties to the Convention. Often, however, States and relevant intergovernmental and nongovernmental organizations that are not Parties are invited to send observers. This is the case, for example, of the Convention for the Protection of the Ozone Layer (Article 6.5) and the Framework Convention on Climate Change (Article 7.6). Some framework

<sup>1</sup> See document A/FCTC/WG1/3.

conventions adopted under the umbrella of international organizations provide for meetings of the Conference of the Parties to take place in connection with the meetings of an appropriate organ of the parent organization.

41. The Conference of the Parties of the convention meets regularly in order to provide a forum for discussion of implementation and any associated problems, for monitoring, and for ongoing negotiations. Normally the conventions themselves specify the method in which the timing of the meetings will be set.<sup>1</sup> These regular meetings allow government and public attention to remain focused on an issue and build a sense of community among the States Parties. Through these meetings, the Conference of the Parties can determine the scope and future of the convention. For example, it can determine whether to adopt further protocols to the convention and the content of those protocols.

42. The tasks and duties of the Conference of the Parties are set forth in the framework convention and can include the following:

- Ⓒ adopting rules of procedure, for example, specifying the quorum required for voting or the number of Parties necessary to approve a particular type of decision;
- Ⓒ developing methodologies and formats for countries or subsidiary bodies to follow when they transmit reports or information, (see, for example, the Convention for the Protection of the Ozone Layer, Article 6.4(a), and the Convention on Biological Diversity, Article 23.4(a)). The content of these reports is specified in the framework convention itself as described in section IV below;
- Ⓒ promoting and facilitating the exchange of information on measures adopted (e.g. the Framework Convention on Climate Change, Article 7.2(b));
- Ⓒ reviewing reports of subsidiary bodies and providing guidance (e.g. the Framework Convention on Climate Change, Article 7.2(j));
- Ⓒ considering reports or other transmitted information of States Parties (e.g. the Convention on Biological Diversity, Article 4(a));
- Ⓒ establishing working groups (e.g. the Convention on Long-range Transboundary Air Pollution, Article 10.2(b)) and other subsidiary bodies (e.g. the Convention for the Protection of the Ozone Layer, Articles 4.2(i) and 6.2(i)) and their procedures (e.g. the Framework Convention on Climate Change, Article 7.2(i)) to consider matters related to the implementation and development of a convention;
- Ⓒ reviewing implementation of the convention and making decisions on effective implementation (e.g. the Framework Convention on Climate Change, Articles 7.2, 7.2(e) and 7.2(f));
- Ⓒ making recommendations to the Parties (e.g. the Framework Convention on Climate Change, Article 7.2(g), and the Convention for the Protection of the Ozone Layer, Article 6.2(c));
- Ⓒ adopting programmes for research, monitoring, and/or scientific and technological cooperation (e.g. the Convention for the Protection of the Ozone Layer, Article 6.4(d));

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<sup>1</sup> See for example, the Convention for the Protection of the Ozone Layer, Articles 6.1 and 6.2, and the Framework Convention on Climate Change, Articles 7.4 and 7.5.

- ⊆ promoting relevant policies or measures and harmonization thereof (e.g. the Convention for the Protection of the Ozone Layer, Articles 2 and 6.4(c));
- ⊆ reviewing the adequacy of the convention's provisions and adopting amendments, annexes or protocols to it (e.g. the Convention for the Protection of the Ozone Layer, Articles 6.4(e) and (h), and the United Nations Convention to Combat Desertification ..., Article 22.2(f));
- ⊆ reviewing the adequacy of the convention's protocols or annexes and recommending amendments to them (e.g. the Convention for the Protection of the Ozone Layer, Article 6.4(f));
- ⊆ seeking and utilizing the services and cooperation of international bodies (e.g. the Framework Convention on Climate Change, Article 7.2(l), and the Convention for the Protection of the Ozone Layer, Article 6.4(j));
- ⊆ seeking to mobilize financial resources (e.g. the Framework Convention on Climate Change, Article 7.2(h)).

43. In addition, some framework conventions such as that for the Protection of the Ozone Layer, Article 6.4(k), and that on Climate Change, Article 7.2(m), allow the Conference of the Parties to consider and undertake any additional action that may be required for the achievement of the purposes of the convention.

#### Secretariat

44. Secretariat services for a framework convention, in particular the servicing of the Conference of the Parties and any other organs (see below), can be accomplished in several ways:

- ⊆ the convention establishes an independent intergovernmental organization with its own secretariat;
- ⊆ secretariat functions are provided by the executive head of the organization under whose auspices the convention was adopted;
- ⊆ the Conference of the Parties, at its first meeting, makes arrangements with an existing organization to provide secretariat services (it could also be provided that the Conference of the Parties may change these arrangements from time to time).

45. The provision of the Framework Convention on Climate Change on establishment of a secretariat is fairly typical of framework conventions, identifying its functions in Article 8 as follows:

- (a) *To make arrangements for sessions ... and to provide ... services as required;*
- (b) *To compile and transmit reports submitted to it;*
- (c) *To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;*
- (d) *To prepare reports on its activities and present them to the Conference of the Parties;*

- (e) *To ensure the necessary coordination with the secretariats of other relevant international bodies;*
- (f) *To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and*
- (g) *To perform the other secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.*

The secretariat services established in respect of the framework convention normally apply also to its protocols.

#### Scientific advisory committee

46. Environmental framework conventions use a wide variety of institutional arrangements to obtain scientific advice and information. Some conventions provide for certain scientific information to be provided by a group of independent experts. Others establish a permanent scientific committee that reports to the Conference of the Parties. In that case, experts appointed by States Parties serve on the committee. That committee is charged with assessing the state of scientific knowledge or the effects of certain measures, and providing advice or answering questions. The committee may also be used for an exchange of views, to allow for consultations on scientific matters, and to foster cooperation in the collection, study and exchange of scientific research. Because a permanent scientific advisory committee comprises representatives of States Parties, its intergovernmental nature can sometimes limit its effectiveness as a supervisory scientific institution. In contrast, a group of independent nongovernmental experts, appointed by a specified official, such as the executive head of the parent organization or the head of the secretariat for the convention, may be more effective in its supervision.

47. The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa provides for advice from both independent experts, and from a scientific committee of delegates representing States Parties. For example, it provides in Article 24.3 for the formation of ad hoc panels of independent experts who can be appointed by the Conference of the Parties to provide “information and advice on specific issues regarding the state of the art in fields of science and technology ...”.<sup>1</sup> At the same time, it establishes in Article 24.1 a Committee on Science and Technology made up of delegates from States Parties.

48. The Convention on Long-range Transboundary Air Pollution relies on its Working Group on Effects, which exists independent of the Convention itself (as an organ of the parent United Nations Economic Commission for Europe), to provide detailed information on the environmental effects of acid rain. The Convention on Biological Diversity relies on its Subsidiary Body on Scientific, Technical and Technological Advice, established pursuant to its Article 25.2 to:

- (a) *Provide scientific and technical assessments of the status of biological diversity;*
- (b) *Prepare scientific and technical assessments of the effects of types of measures taken in accordance with the provisions of this Convention;*

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<sup>1</sup> Article 24.3 also requires that the need for a multidisciplinary approach and broad geographical representation should be taken into account when choosing the experts.

- (c) *Identify innovative, efficient and state-of-the-art technologies and know-how relating to the conservation and sustainable use of biological diversity and advise on the ways and means of promoting development and/or transferring such technologies;*
- (d) *Provide advice on scientific programmes and international cooperation in research and development related to conservation and sustainable use of biological diversity; and*
- (e) *Respond to scientific, technical, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.*

49. Although the Convention for the Protection of the Mediterranean Sea Against Pollution and the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects do not provide for scientific input or advice, or for the establishment of subsidiary bodies, drafters of more recent framework conventions have chosen to provide for such input.

50. An independent scientific advisory committee could also play an important role in tobacco control efforts. In recognition of this fact, WHO established an independent official body, the Policy/Strategy Advisory Committee, which came into operation on 15 January 1999. This Committee provides advice for WHO's global tobacco control work on the overall broad direction of the Tobacco Free Initiative; on definition of key political issues related to its work, including coordination of partners; on policy implications of scientific matters; and on any other related issues at the request of the Director-General. A similar type of committee could be established for the framework convention. It would also need to include experts from diverse backgrounds, ranging from epidemiology to economics to agriculture.

### Implementation committee

51. Monitoring compliance with treaties is a common practice and is sometimes viewed as a central mechanism for ensuring implementation of a convention's provisions. As described in section IV below, implementation mechanisms generally require that States Parties submit reports or transmit information at periodic intervals on measures taken to implement the treaties. Although such reports are usually transmitted to the Conference of the Parties, some conventions have created a separate institution to review such reports or information, an implementation body. In some cases that body has been also charged with carrying out noncompliance procedures, a function also discussed below.

52. The Framework Convention on Climate Change establishes in Article 10 a Subsidiary Body on Implementation comprising "government representatives who are experts on matters related to climate change". The Montreal Protocol to the Convention for the Protection of the Ozone Layer establishes in Article 6 a similar type of body, although it is made up of only 10 States elected for a period of two years. Although no body is completely independent of the States Parties themselves, the Montreal Protocol's body has the advantage of being small in size. Further, the individuals serving on the Montreal Protocol's body are accountable to States other than their State of nationality, as they are elected by the Conference of the Parties as a whole. Nonetheless, the lack of independence can limit the effectiveness of an implementation body in performing a truly supervisory role.<sup>1</sup>

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<sup>1</sup> See the proposal for an independent implementation committee for the framework convention in document WHO/PSA/96.6.

53. The Convention to Combat Desertification provides a flexible approach to this issue, which could allow for the future establishment of an independent implementation body. It does so by providing that the Conference of the Parties shall:

*consider and adopt procedures and institutional mechanisms for the resolution of questions that may arise with regard to the implementation of the Convention* (Article 27, emphasis added)

and may

*regularly review the implementation of the Convention and the functioning of its institutional arrangements in the light of the experience gained at the national, subregional, regional and international levels and on the basis of the evolution of scientific and technological knowledge* (Article 22.2(a)).

This type of language allows for an implementation mechanism to be developed over time, adjusted as needs and priorities change. Such a mechanism could possibly encompass a body of independent experts, rather than State delegates alone.

54. Although the Subsidiary Body on Implementation of the Framework Convention on Climate Change is not independent, Article 13 of the Convention does allow for the formation of an independent body to carry out a multilateral consultative process in cases of noncompliance by States Parties.

### Financial mechanism

55. In Article 11.1, the Framework Convention on Climate Change defines a “mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology ...”. Similarly, the Convention on Biological Diversity in Article 21.1 provides for a “mechanism for the provision of financial resources to developing country Parties for purposes of this Convention on a grant or concessional basis ...”. Both conventions provide for this mechanism to operate under the guidance of, and be accountable to, the Conference of the Parties. This means that the Conference of the Parties determines the “policies, programme priorities and eligibility criteria related to th[e] Convention” as regards the operation of the financial mechanism.<sup>1</sup> Neither Convention provides for a separate institution to serve as the financial mechanism, but leaves the institutional question to the Conference of the Parties. Nor do any of the conventions provide for the specifics of financial contributions or financial assistance. The specifics are left to the Conference of the Parties to be established later. The Convention for the Protection of the Ozone Layer, through the London Amendments to the Montreal Protocol, has established a Multilateral Fund to assist developing countries.<sup>2</sup>

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<sup>1</sup> Framework Convention on Climate Change, Article 11.1.

<sup>2</sup> The Montreal Protocol provides in Article 10.1 that “The Parties shall establish a mechanism for the purposes of providing financial and technical cooperation, including the transfer of technologies to Parties ... to enable their compliance with ... control measures ...”.

## B. Issues for the framework convention

**Box 5: Institutions for the framework convention: summary of principal issues**

- C Conference of the Parties
  - What is its mandate?
  - What is its relationship to the Health Assembly?
- C Secretariat
  - Will the WHO Secretariat serve as the secretariat for the framework convention?
- C Will a scientific committee be created?
  - Will it be independent? Will it be established as a permanent body within the framework convention or will the decision on its specifics be deferred to the Conference of the Parties?
- C Will an implementation mechanism be created?
  - Will it be independent? Will it be established as a permanent body within the framework convention or will the decision on its specifics be deferred to the Conference of the Parties?
- C Will a financial mechanism be created?
  - What institution will be designated to manage it or will the decision on its specifics be deferred to the Conference of the Parties?
  - Should the framework convention provide for financial assistance to developing countries? How?

## IV. IMPLEMENTATION MECHANISMS

## A. Description and merits

**Box 6: Implementation procedures**

- C National reporting
- C Dispute settlement
- C Noncompliance/consultative procedures

## National reporting

56. Reporting of certain information to the Conference of the Parties is a common requirement of many framework conventions. States may have to report on activities that give rise to the problem (for example, tobacco cultivation, manufacturing, trade in tobacco, tobacco use), and/or the measures that a State is taking in response to it (for example, policies to promote crop substitution, or advertising restrictions). For example, the Convention on Biological Diversity, in Article 26, provides that:

*Each Contracting Party shall, at intervals to be determined by the Conference of the Parties, present to the Conference of the Parties, reports on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention.<sup>1</sup>*

57. Reporting requirements can be very useful. National reporting encourages States to undertake a more comprehensive and systematic review of their existing policies. This may encourage various government agencies and others to coordinate their actions within a country. Reporting can also serve an educational function, allowing States to benefit from the experience of others. In terms of implementation, reporting promotes transparency. Reporting also makes it possible to judge the effectiveness of a treaty and assess the need for further action.

58. The Convention on Biological Diversity in Article 26 and the Convention for the Protection of the Mediterranean Sea Against Pollution in Article 14 require that States Parties submit reports to the Conference of the Parties.

59. Exactly what can be done with the reports or information varies from one framework convention to another. The Convention for the Protection of the Ozone Layer in Article 5 provides that the Conference of the Parties may consider information on the measures adopted by States Parties in implementation of the Convention and the Convention on Biological Diversity, in Article 26, includes “their effectiveness in meeting the objectives of the Convention”. If an implementation institution or body is created, then some of the review tasks may be assigned to it. For example, according to the Framework Convention on Climate Change, the task of its Subsidiary Body for Implementation is:

- Ⓒ to “assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention” (Article 10.1);
- Ⓒ to consider the implementation reports of Parties in order “to assess the overall aggregated effect of the steps taken by the Parties” and in order “to assist the Conference of the Parties in carrying out [its] reviews” (Article 10.2(a)(b));
- Ⓒ “[a]ssist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions” (Article 10.2(c)).

This is the only framework convention that provides for the possibility of procedures to resolve questions on implementation of the convention itself. This compliance process is discussed in paragraph 63 below.

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<sup>1</sup> Other examples of other conventions are the Convention for the Protection of the Mediterranean Sea Against Pollution, Article 20 (requiring reporting on implementation measures); Long-range Transboundary Air Pollution, Article 8 (requiring “exchange of information” on, *inter alia*, emissions data; major changes in national policies; potential control technologies; and national, subregional and regional policies and strategies for pollution control); Protection of the Ozone Layer, Article 5 (requiring transmission of information on implementation measures); and Climate Change, Article 12.1 (requiring a “national inventory” of emissions; “a general description of steps taken or envisaged by the Party to implement the Convention”; and information on implementation policies and measures on certain commitments and a specific estimate of their effects).

## Dispute settlement

60. Most framework conventions rely on nonbinding methods of dispute settlement. The most common type of provision is one providing for negotiation or any other means acceptable to the parties to the dispute, but is often insufficient in overcoming differences.

61. Binding resolution of disputes, by resorting to the International Court of Justice or to arbitration, for example, is only available if the parties to the dispute consent. The Framework Convention on Climate Change, in Article 14, provides:

*2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depository that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:*

- (a) Submission of the dispute to the International Court of Justice, and/or*
- (b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.*

*A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.*

The conventions for the Protection of the Ozone Layer (Article 11.3) and on Biological Diversity (Article 27.3) have similar provisions. The provision of the Convention for the Protection of the Mediterranean Sea Against Pollution is somewhat different in that it only provides for the filing of a declaration indicating a Party's intent to accept an obligation to arbitrate in accordance with Annex A to the Convention (Article 22).

62. If, however, there has been no acceptance by disputing parties of a binding means of dispute settlement and other settlement attempts have failed, many conventions contain a provision requiring conciliation. Compulsory conciliation is provided for in the conventions on Protection of the Ozone Layer (Article 11), Climate Change (Article 14), and Biological Diversity (Article 27.4 and Annex II, part 2). Conciliation provides for a dispute to be referred to a commission (possibly two members chosen by each party and a president chosen by the commission members) that examines the facts and makes recommendations for a settlement. The recommendation does not bind the parties, but they are required to consider it in good faith. This type of third party role, i.e., the neutral president of the commission, may assist parties in overcoming their differences.

## Noncompliance and consultative procedures

63. Compliance control is the international monitoring and supervision of States Parties' implementation of, and compliance with, a treaty. Compliance control not only determines whether a State is abiding by its obligations, but also assists in resolving questions about any norm(s) potentially in dispute. The purpose of noncompliance procedures is to help States meet their obligations, rather than to adjudicate guilt for past violations. It enables the Conference of the Parties to work continually on improving compliance with treaty obligations. The noncompliance procedures do not take the place of traditional dispute settlement procedures, but act as a complement.

64. Most international environmental agreements, including some of the environmental framework conventions, provide for a noncompliance procedure, administered by a special, dedicated institutional mechanism such as the implementation committee described in section III above. But no framework convention to date has elaborated on the provision in the convention itself. Rather, the noncompliance procedure has been developed as a mechanism for later protocols of framework conventions, such as the Montreal Protocol to the Convention for the Protection of the Ozone Layer, the 1994 Protocol to the Convention on Long-range Transboundary Air Pollution, and the Kyoto Protocol to the Framework Convention on Climate Change. The latter Convention, however, was drafted to allow for the creation within the Convention itself of a similar procedure. Article 13 provides that:

*The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention.*<sup>1</sup>

65. The central role in a compliance control system may be played by a standing body, such as the Montreal Protocol's Implementation Committee, or by an ad hoc panel of review. Typically, review by such a committee will be initiated either by a complaint by one party against another, or by the secretariat of the convention in a situation where it believes a party to be in noncompliance.

#### B. Issues for the framework convention

**Box 7: Implementation mechanism: summary of principal issues  
for the framework convention**

- C What information should be compiled and presented in reports by Parties?
- C Should there be a provision for international monitoring and review?
- C What type of dispute settlement should be provided for?
  - % compulsory conciliation?
  - % optional or compulsory submission of disputes to the International Court of Justice for adjudication or to binding arbitration?
- C Should a noncompliance or multilateral consultative process be established?

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<sup>1</sup> Accordingly, the First Meeting of the Conference of the Parties established an ad hoc open-ended working group of technical and legal experts "to study all issues relating to the establishment of a multilateral consultative process and its design".

## V. LAW-MAKING PROCESSES

### A. Description and merits

#### Box 8: Law-making processes

- C Protocols
- C Annexes
- C Amendments

#### Protocols

66. The term “protocol” is generally used to refer to a subsidiary international agreement that supplements or extends an earlier or concurrent international agreement. In the context of framework conventions, protocols build on the parent convention through the elaboration of additional or more specific commitments and institutional arrangements. They can be comprehensive in their subject matter or can focus on a particular part of the problem addressed by the framework convention. Protocols are normally only open to States or entities that are Parties to the parent convention.

67. Protocols can be developed concurrently with a framework convention. Both the conventions on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and for the Protection of the Mediterranean Sea Against Pollution have concurrent protocols. In order to become a party to the latter Convention, States must also become a party to at least one protocol. For the former, States must become a party to at least two protocols. Framework conventions can also be adopted without a concurrent protocol. The framework convention and protocol approach allows the negotiating States to include those provisions in the basic convention on which they all agree, to incorporate provisions in concurrent protocols on which many of them agree, and to postpone matters for possible future protocols on which no sufficient agreement can be reached immediately.

68. Framework conventions set out the procedures for the adoption of protocols. The conventions for the Protection of the Mediterranean Sea Against Pollution (Article 15) and on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (Article 8) call for an ad hoc diplomatic Conference of the Parties to adopt a protocol. In contrast, the conventions on Protection of the Ozone Layer (Article 8), Biological Diversity (Article 28), and Climate Change (Article 17) allow the regular Conference of the Parties to adopt protocols. The conventions for the Protection of the Mediterranean Sea Against Pollution, on Protection of the Ozone Layer and on Biological Diversity provide detailed rules regarding the amendment of protocols, including the requirement for their adoption and entry into force. This approach has proved inflexible on occasion, when parties to a protocol have wanted amendments to enter into force more quickly by allowing for a smaller number of ratifications than the number required by the framework convention itself.<sup>1</sup> The

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<sup>1</sup> The Convention for the Protection of the Ozone Layer specifies that amendments to protocols should be adopted by a two-thirds majority vote, and accepted by two-thirds of the Parties to a protocol in order to enter into force. The Parties to the Montreal Protocol to the Convention wanted to adopt amendments which, under the rule set forth in the Convention, should have required 38 ratifications for entry into force. The London Conference wanted the amendments to enter into force more quickly, and therefore specified that only 20 ratifications were sufficient for entry into force, even though this was technically inconsistent with the Convention.

Framework Convention on Climate Change avoids this problem by providing in Article 17.3 that “the requirements for the entry into force of any protocol shall be established by that instrument”.

69. Protocols typically use the same secretariat as their parent convention. Protocols adopted under a framework convention may often have their own Conferences of the Parties. These usually meet in conjunction with the Conference of the Parties of the convention itself. Indeed, their meetings may be joined, except that on any issue affecting particularly a given protocol, only the representatives of parties to that protocol may vote.

### Annexes

70. Annexes are normally used for listing technical items in some detail or perhaps for specifying lists of States to be subject to or exempt from certain requirements. For example, the Convention for the Protection of the Ozone Layer in its Annex 2 lists the types of scientific, technical, socioeconomic, commercial, and legal information to be exchanged. The Convention on Biological Diversity provides for its arbitration and conciliation procedures in Annex 2. Annexes constitute integral parts of their convention.

### Amendments

71. The Convention on Long-range Transboundary Air Pollution, in Article 12, requires that amendments should be adopted by consensus. Most framework conventions, however, provide that an amendment may still be adopted and go into force with votes of two-thirds<sup>1</sup> or three-quarters majority.<sup>2</sup>

## B. Issues for the framework convention

**Box 9: Law-making processes: Summary of principal issues  
for the framework convention**

- C Should any protocols or annexes be drafted concurrently with the framework convention?
  - % What issues should the protocols or annexes address: children and adolescents, advertising, regulation of tobacco products, smuggling?
  - % Should there be a requirement that for States to become Parties to the framework convention itself, they must become parties also to one or more of any concurrently adopted protocols?
- C Should the requirements for the ratification, entry into force and amendment of protocols be specified in the framework convention or left to each protocol?

## VI. FINAL CLAUSES

### A. Description

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<sup>1</sup> For example, the Convention on Biological Diversity.

<sup>2</sup> For example, the conventions on Climate Change, for the Protection of the Mediterranean Sea Against Pollution, and on Protection of the Ozone Layer.

**Box 10: Final clauses**

- C Reservations
- C Signature
- C Adoption
- C Ratification, approval or acceptance
- C Accession
- C Entry into force
- C Withdrawal or denunciation
- C Relation to other treaties
- C Depositary
- C Authentic texts

72. The final clauses of treaties, including framework conventions, provide, *inter alia*, for the items described below.

- C Reservations. A reservation is a unilateral statement made by a State when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it claims to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. Some framework conventions do not allow for reservations in order to ensure uniformity of the obligations assumed by each Party, some allow for reservations to specific provisions (e.g., those relating to dispute settlement), and some explicitly or implicitly allow reservations. In the absence of a specific provision in a treaty, a reservation may be made so long as it does not defeat the “object and purpose” of the treaty.<sup>1</sup>
- C Signature. The signature designates which entities (States, regional economic integration organizations) may become a party to the treaty and when and where signature should take place.
- C Ratification, acceptance or approval. These terms signify an act by which a State that has signed a convention expresses its consent to be bound by it.
- C Accession. If a State or other entity eligible to become a party to the convention does not sign the convention, it may signify its consent to be bound by the treaty by means of accession.
- C Entry into force. These provisions set forth the criteria for a treaty to become legally binding for States that have consented to it. Normally, they specify that the convention will enter into force as soon as a certain number of ratifications have been received or after some specified period. The Framework Convention on Climate Change requires 50 ratifications, whereas the Convention for the Protection of the Ozone Layer requires only 20. A low number of ratifications allows a convention to enter into force more quickly. If it is too low, however, the convention may not be viewed as persuasive or effective.
- C Withdrawal or denunciation. This specifies the conditions under which a Party may arrange to be no longer bound by a treaty. Normally, it specifies the earliest date on which notification of withdrawal or denunciation may be given (possibly a few years after the convention has entered into

<sup>1</sup> Vienna Convention on the Law of Treaties, Article 19.

force), and the waiting period required before the notification takes effect. A treaty may also provide that it cannot be denounced.

- C Relation to other treaties. If a convention addresses an issue that is also addressed by other international agreements (for example, conventional weapons), it may include an article specifying its relations to those other treaties.
- C Depositary. The depositary of a treaty is any State, organization or institution to which is entrusted the custody of the treaty and any ancillary instrument and must be specified in the text. Except to the extent that a treaty otherwise specifies, the functions of the depositary are those provided for in Article 77 of the Vienna Convention on the Law of Treaties. When a multilateral treaty is adopted within an international organization or at a conference convened under its auspices, the organization, or its executive head, is usually designated depositary.
- C Authentic texts. Conventions drawn up under the auspices of an international organization normally provide that the texts in all the official languages of the organization (Arabic, Chinese, English, French, Russian and Spanish, in the case of WHO) are equally authentic. This means that no linguistic text is given preference over another in interpreting the convention.

## B. Issues for the framework convention

**Box 11: Final clauses: summary of principal issues for the framework convention**

- C Should reservations to the framework convention be permitted?
- C Should only WHO Members be allowed to become Parties to the framework convention?
  - % When and where should the signature take place?
- C How many ratifications or accessions should be required for the framework convention to come into force?
- C Should there be a right to denounce the framework convention? Under what conditions?
- C Should there be a provision in the framework convention which makes specific reference to its relationship to other conventions?
- C Which organization should serve as the depositary of the framework convention?
- C Will the final clauses of the framework convention automatically apply also to any protocols?

## ANNEX

**CONVENTIONS REFERRED TO IN THIS DOCUMENT**

## FRAMEWORK CONVENTIONS

Convention for the Protection of the Mediterranean Sea Against Pollution, 16 February 1976, *entered into force* 12 February 1978, 1102 United Nations Treaty Series 27, *reproduced in* International Legal Materials, 1976, 15: 290.

Convention on Biological Diversity, 5 June 1992, *entered into force* 29 December 1993, *reproduced in* International Legal Materials, 1992, 31: 818.

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 10 October 1980, United Nations document A/CONF.95/15, Apps. A-D, 1342 United Nations Treaty Series 137, *entered into force* 2 December 1983, *reproduced in* International Legal Materials, 1980, 19: 1524.

Convention on Long-range Transboundary Air Pollution, 13 November 1979, *entered into force* 16 March 1983, 1302 United Nations Treaty Series 217, *reproduced in* International Legal Materials, 1979, 18: 1442.  
Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Further Reduction of Sulphur Emissions, 14 June 1994, United Nations document EB.AIR/R.84, *reproduced in* International Legal Materials, 1994, 33: 1540.

Vienna Convention for the Protection of the Ozone Layer, 22 March 1985, *entered into force* 22 September 1988, 1513 United Nations Treaty Series 293, *reproduced in* International Legal Materials, 1987, 26: 1529.  
Montreal Protocol on Substances that Deplete the Ozone Layer, 16 September 1987, *entered into force* 1 January 1989, 1522 United Nations Treaty Series 3, *reproduced in* International Legal Materials, 1987, 26: 1550.  
London Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer, 29 June 1990, UNEP/OX.L.Pro2/3 (Annex II), *entered into force* 10 August 1992, *reproduced in* International Legal Materials, 1991 (“London Amendments”).

United Nations Framework Convention on Climate Change, 9 May 1992, *entered into force* 21 March 1994, *reproduced in* International Legal Materials, 1992, 31: 849.  
Kyoto Protocol to the United Nations Framework Convention on Climate Change, 10 December 1997, United Nations document FCCC/CP/1997/L.7/Add.1 (1997), *reproduced in* International Legal Materials, 1998, 37: 22 (“Kyoto Protocol”).

## OTHER CONVENTIONS

Convention on International Trade in Endangered Species of Wild Fauna and Flora, 3 March 1973, *entered into force* 1 July 1975, 993 United Nations Treaty Series 243, *reproduced in* International Legal Materials, 1972, 12: 1085.

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, A/AC.241/27, 21 September 1994, *entered into force* 26 December 1996, *reproduced in* International Legal Materials, 1994, 33: 1328.

Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, 22 March 1989, *entered into force* 24 May 1992, *reproduced in* International Legal Materials, 1989, 28: 657.

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