



WORLD HEALTH ORGANIZATION

FIFTY-THIRD WORLD HEALTH ASSEMBLY
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WHO framework convention on tobacco control

Report of the working group

1. By resolution WHA52.18, the Fifty-second World Health Assembly established an intergovernmental negotiating body open to all Member States to draft and negotiate the proposed WHO framework convention on tobacco control and possible related protocols. In order to prepare the work of that body, the Health Assembly also established a working group on the WHO framework convention on tobacco control, similarly open to all Member States, which would prepare proposed draft elements of the framework convention, report on progress to the Executive Board at its 105th session, complete its work and report to the Fifty-third World Health Assembly.
2. The first meeting of the working group (Geneva, 25 to 29 October 1999) was attended by participants from a wide range of sectors, including representatives of 114 Member States and a regional economic integration organization, observers from the Holy See, Palestine, organizations of the United Nations system, other intergovernmental organizations, and nongovernmental organizations.
3. The following officers were elected by consensus: Dr K. Leppo (Finland), Chairman; Dr V.L. da Costa e Silva (Brazil) and Dr M. Chan (China), Vice-Chairmen; Dr Y. Mochizuki (Japan) and Dr N. Chaouki (Morocco), Rapporteurs.
4. The report of the working group's first meeting was discussed by the Executive Board at its 105th session in January 2000.¹ After an updating on progress so far, the Board stressed the need for multisectoral action at national level to further the process and implementation of the future convention.
5. The second meeting of the working group (Geneva, 27 to 29 March 2000) discussed provisional texts of proposed draft elements of the convention. Reflecting the working group's wish for the fullest possible participation, it was attended by representatives of 142 Member States and a regional economic integration organization, and observers from the Holy See, organizations of the United Nations system, other intergovernmental organizations, and 22 nongovernmental organizations.²
6. In addition to the two meetings of the working group, WHO embarked on a programme of participatory consultation to obtain views on the process of negotiating the convention, its content and its implementation. In three technical conferences, participants called on Member States to integrate their recommendations into the framework convention.

¹ Document EB105/11.

² The report of the second meeting is contained in document A/FCTC/WG2/5.

7. Some 500 delegates from more than 50 States attended the WHO International Conference on Tobacco and Health: Making a Difference in Tobacco and Health – Avoiding the Tobacco Epidemic in Women and Youth (Kobe, Japan, 14 to 18 November 1999). The resulting Kobe Declaration charts the course for control of tobacco use among women and girls. The full text of the Declaration is available on the Internet.¹

8. The WHO International Conference on Global Tobacco Control Law: Towards a WHO Framework Convention on Tobacco Control (New Delhi, 7-9 January 2000) was attended by participants from more than 50 developing countries, primarily in Asia, Africa, the Middle East and the Pacific. The aim of the Conference, hosted by the Government of India, was to obtain a developing country perspective on the negotiation of the framework convention. The full text of the New Delhi Declaration is available on the Internet.²

9. The WHO International Conference on Advancing Knowledge on Regulating Tobacco Products (Oslo, 9 to 11 February 2000) was hosted by the Norwegian Ministry of Health in response to a call from the Director-General for scientific evidence that could be used as the basis for regulating tobacco products. The Conference's full recommendations are available on the Internet.³

10. The working group submits its conclusions to the Fifty-third World Health Assembly as an Annex, which contains the provisional texts of proposed draft elements for the convention, together with the comments of the working group made at its second meeting.

ACTION BY THE HEALTH ASSEMBLY

11. The Health Assembly may wish to note the progress made in implementing resolution WHA52.18.

¹ <http://www.who.int/toh/women/declaration.html>.

² <http://www.who.int/toh/fctc/delhi/delhi.html>.

³ <http://www.who.int/toh/netcapacity/prodregulation/oslo/osloreport.html>.

ANNEX

**PROVISIONAL TEXTS OF PROPOSED DRAFT ELEMENTS FOR A
WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL
WITH COMMENTS OF THE WORKING GROUP¹****I. PREAMBLE, DEFINITIONS, OBJECTIVE AND GUIDING PRINCIPLES****A. *Preamble***

(Explanatory note: The following options are based on discussions held during the first meeting of the working group and on document A/FCTC/WG1/6.)

The Parties to this Convention,

1. Recognizing that the tobacco epidemic is a global problem that calls for the widest possible international cooperation by all countries and their participation in an effective, appropriate and coordinated international response, and determined to promote such cooperation,
2. Seriously concerned about the global spread of the tobacco epidemic and the increase in the worldwide consumption and production of cigarettes and other tobacco products, particularly in developing countries,
3. Seriously concerned also about all direct and indirect advertising, marketing, promotion and other practices on the part of the tobacco industry aimed at encouraging the use of tobacco,
4. Reflecting the concern of the international community about the devastating worldwide health, social and economic consequences of the tobacco epidemic,²
5. Deeply concerned about the illegal transboundary traffic in cigarettes and other tobacco products and recognizing that coordinated action is necessary to eradicate illicit traffic,
6. Recognizing that cigarettes are among the most highly engineered consumer products, designed to create and maintain addiction, that many of the compounds they contain are pharmacologically active, toxic, mutagenic and carcinogenic, and that tobacco use is separately classified as a disorder in the International Classification of Diseases (ICD-10),
7. Recognizing also that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke are causally linked to numerous causes of death, disease and disability,

¹ Comments of the working group are shown in indented italics.

² Tobacco is responsible for one in 10 adult deaths; by 2030 the figure is expected to be one in six, or 10 million deaths per year – more than any other cause of premature death. If current trends persist, about 500 million people alive in 2000 will eventually be killed by tobacco, half of them in productive middle age, losing 20 to 25 years of life. See *Curbing the epidemic: governments and the economics of tobacco control*, Washington, D.C., the World Bank, 1999, pp. 22-23.

8. Acknowledging that there is also clear scientific evidence that prenatal exposure to tobacco smoke causes adverse health and developmental conditions,
9. Recognizing further that the negative impact of increased prevalence of tobacco use may not be apparent in the short term, as a consequence of the time lag between the exposure to smoking and other uses of tobacco products and the onset of tobacco-related diseases,
10. Deeply concerned about the escalation in smoking and other forms of tobacco consumption by indigenous populations and other minority groups worldwide,
11. Acknowledging the competence of the World Health Organization and its leadership role within the United Nations system in the field of tobacco control and calling on international organizations also concerned with such control to coordinate efforts with that Organization,
12. Recalling the resolutions of the World Health Assembly on “Tobacco or health” and taking into account the relevant treaties, recommendations, declarations, and other instruments on or relevant to tobacco control issues adopted within the United Nations system and by other international and regional organizations,
13. Recalling the preamble to the Constitution of the World Health Organization, which affirms that “[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”,
14. Recalling the pertinent provisions of the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and deeply concerned about the escalation in smoking and other forms of tobacco consumption by children and adolescents worldwide,
15. Recalling also the pertinent provisions of the Convention on the Elimination of All Forms of Discrimination against Women adopted by the United Nations General Assembly on 18 December 1979, and deeply concerned about the escalation in smoking and other forms of tobacco use by women and young girls worldwide, which requires the implementation of gender-specific tobacco control strategies,
16. Recognizing the vital leadership role that women provide in tobacco control efforts and affirming the need for the full participation of women in tobacco control at all levels of policy-making and implementation,
17. Acknowledging that tobacco control at all levels is seriously underfunded compared to the burden of disease it causes, and that new and additional financial and technical resources can be expected to make a substantial difference in the world’s capacity to address the tobacco epidemic,
18. Recognizing the need to develop appropriate mechanisms to address the long-term social and economic implications of successful tobacco demand reduction strategies, and particularly their impact on tobacco workers,
19. Recognizing also that the measures taken to understand and address the global tobacco epidemic will be most effective if they are based on relevant scientific, technical and economic considerations and are continuously re-evaluated in the light of new findings in these areas,
20. Emphasizing the special contribution of nongovernmental organizations, including health professional bodies, women’s, youth and environmental groups, academic institutions, private

industry, hospitals and other stakeholders in civil society to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts,

Have agreed as follows:

Participants proposed that additions should be made to the preamble on: programmes for smoking cessation; the role of the tobacco industry and its accountability for the harm it caused, notably when developed countries exported tobacco products to developing countries; the problems of cross-border advertising and smuggling; the use of publicity to persuade people not to smoke; youth, women and disadvantaged groups; and the protection of human health through harm reduction measures. References to existing treaties and agreements should be specific so that it was evident what was intended.

It was also proposed that a paragraph should be added, in the preamble or elsewhere, on the need for all workers in the health sector to ensure that they presented a model for others to follow. Similarly, there should be a paragraph on the right to health and on promotion of healthy lifestyles and healthy environments. Smoking prevention should be a matter of fostering healthy lifestyles. The addictive nature of the product, and connection with other substance abuse, should be explicitly stated. Wording might be added along the following lines: "In the light of the prevailing health and social priorities in countries, the growing problem of tobacco addiction demands action now to prevent an escalation of illness and death in the future". It was suggested that one of the frequent arguments against tobacco control – freedom of choice – should be acknowledged together with strong counterarguments (harm to others, addictive nature of the product). The preamble should recognize the extent of environmental degradation due to tobacco farming, production and use.

A delegation proposed a new preambular paragraph reading as follows: "Recognizing the differences in levels of development between countries and the differences in terms of the capacities of the various health systems, means of propaganda, forms and methods for producing and using tobacco etc., requiring the need to adopt a multisectoral approach to this problem".

A number of amendments were proposed. In paragraph 1, "growing" should be added before "global problem". A delegation proposed that, in paragraph 2, "particularly in developing countries" should be replaced with "and particularly concerned by the shift of marketing towards developing countries". Paragraphs 2 to 4 could be merged as follows: "In the face of the concern of the international community with respect to the social and health aspects of the tobacco epidemic, and the increase in production of cigarettes and other tobacco products linked to direct and indirect aspects of advertising, promotion, marketing and other incentives from other endeavours of the tobacco industry to promote and increase consumption in developing countries".

It was suggested that paragraph 5 should read: "Deeply concerned about illegal transboundary traffic, which is constantly increasing, and recognizing that coordinated action is necessary to eradicate this traffic and to put an end to illicit forms of traffic". A further suggestion was that paragraph 5 should include reference to counterfeit brands, since their content was uncontrolled. Reference should also be made to legal transboundary transactions between countries, which were probably contributing to the consumption of tobacco in other countries.

With regard to paragraph 6, “addiction-producing” was preferred to “pharmacologically active”, and “tobacco addiction” to “tobacco use”. It was considered that paragraphs 3 to 8 were acceptable provided that the topics mentioned were dealt with in the operative part of the convention; another view was that paragraphs 6 to 8 belonged to the protocols. Paragraph 9 should be rephrased to read more positively, while paragraph 10 should be deleted, since it overlapped with paragraph 2.

It was further suggested that paragraphs 14 and 15 could be merged, recalling provisions relating to women and children and the great increase in the use of cigarettes and other products by women and girls. Other speakers considered that they should be kept apart, since children and women should be treated separately. It was proposed that paragraph 17 should make specific reference to developing countries. Paragraph 18 was considered particularly important for tobacco-producing developing countries and should appear earlier in the preamble. It was proposed that “tobacco workers” should be replaced by “tobacco-producing countries”. Paragraph 20 should be expanded to refer to the scientific community, cultural foundations and media associations.

It was suggested that the language be reviewed throughout to ensure an objective tone. The terms in which deaths caused by tobacco were referred to also needed to be re-examined.

B. Definitions

(Explanatory note: Definitions are usually added late in the negotiation process, when it is apparent, in the light of the rest of the text, which terms need to be defined. Therefore, no proposed draft text is suggested, except for the definition of “tobacco product”, which was requested at the first meeting of the working group, and “passive smoking”, a term that requires clarification since a number of different terms are used to refer to similar concepts.)

A. The term “tobacco product” covers any product for the purpose of smoking, snuffing, sucking or chewing, inasmuch as it is, even partly, made of tobacco; it includes, *inter alia*:

1. smoking tobacco:
 - (a) cigarettes:
 - (i) regular tobacco (manufactured or hand-rolled);
 - (ii) kreteks (containing clove);
 - (iii) bidis;
 - (b) cigars:
 - (i) large cigars;
 - (ii) small cigars;
 - (iii) cigarillos;
 - (c) for pipes:
 - (i) clay;
 - (ii) wooden;
 - (iii) hubble-bubbles;

2. non-smoking/smokeless tobacco
 - (a) snuff:
 - (i) moist;
 - (ii) dry;
 - (b) chewing tobacco:
 - (i) *pan masala* (can also be made without tobacco);
 - (ii) *gutka* (can also be made without tobacco);
 - (iii) loose-leaf or plug.

B. The term “passive smoking”, also referred to interchangeably as “second-hand smoking”, “environmental tobacco smoke exposure” and “involuntary smoking”, describes involuntary inhalation of a mixture of the smoke given off directly by the burning of tobacco and the smoke exhaled by smokers. This mixture contains many compounds that are pharmacologically active, toxic, mutagenic or carcinogenic, and are strong irritants.

Participants found the definitions generally satisfactory. With regard to paragraph A.1 on “smoking tobacco”, it was suggested that “cheroots” should be added, and that cheroots, kreteks and bidis should be grouped under “cigars” instead of “cigarettes”, as all were wrapped in tobacco leaf, not paper.

Under paragraph A.2 on “non-smoking/smokeless tobacco”, a new category “(c) sublingual tobacco” should be added to cover “nass”, a form of tobacco containing nicotine and other dangerous additives used in Central Asia. In paragraph A.2(b), sublingual powder tobacco should be added. Under “chewing tobacco”, it was noted that pan masala was prepared without tobacco and should therefore be omitted, the text after gutka reading “(can be made with tobacco)”. Alternatively, the definitions should be broad, concentrating on type and mode of use, without listing all possible forms of tobacco.

It was stated that the definition of “passive smoking” in the document went beyond the realm of legal definition and into commentary. A speaker proposed that the definition of “passive smoking”, after “exhaled by smokers”, should continue as follows: “thus violating the basic human right of the passive smoker, forcing him/her to inhale smoke against his/her wish, choice and desire”.

C. Objective

(Explanatory note: The options presented in this section are based on document A/FCTC/WG1/6 and alternative proposals made during the first meeting of the working group by some countries and a regional economic integration organization.)

1. The [ultimate][objective][aim] of this Convention and its protocols is to

Option 1: achieve a reduction in the prevalence of tobacco use in order to protect present and future generations from the devastating health, social and economic consequences of tobacco consumption and exposure to passive smoking.

or

Option 2: establish and agree on international responses to achieve a reduction in tobacco use in order to reduce the public health, social and economic consequences of tobacco consumption and to provide the mechanism for implementing such responses through the engagement of the Parties.

or

Option 3: establish and implement quantitative and qualitative standards to achieve a reduction in the prevalence of tobacco use in order to protect present and future generations from the devastating health, social and economic consequences of tobacco consumption and exposure to passive smoking.

or

Option 4: provide a framework for integrated tobacco control efforts in order to put an end to tobacco use in any form, beginning with a reduction in tobacco consumption, and to take palliative measures in respect of tobacco use and its health-damaging effects with a view to protecting human health.

Views differed as to the most appropriate wording for the convention's objective. Several delegations proposed option 2, alone or merged with the first part of option 4. Others preferred a combination of options 1 and 4, possibly with options 2 and 3 as a second tier. Further speakers selected option 4, a combination of options 1 and 2, or option 2 but with the opening words of option 3. Another suggested that, in option 2, "passive smoking" be inserted after "tobacco consumption". It was proposed that the objective should include reference to production, marketing, promotion and consumption of tobacco, and sales to children.

D. Guiding principles

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided *inter alia* by the following principles:

1. reducing the current impact and halting the growth of the tobacco epidemic is of critical importance in protecting individuals as well as national and global public health and requires comprehensive multisectoral national actions and coordinated international responses;
2. everyone should be fully informed about the addictive and lethal nature of tobacco consumption and non-smokers should be guaranteed protection from passive smoking;
3. the special circumstances of some countries, in which public health resources are limited or economic circumstances are overwhelming, may require that technical assistance be furnished to assist them to establish and implement effective tobacco control programmes;
4. trade policy measures for tobacco control purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade;
5. the tobacco industry should be held accountable for past, present and future public health harm caused by its products worldwide;
6. present and future generations of humankind must be protected from the negative health, economic and social impact of tobacco consumption and exposure to tobacco smoke.

It was suggested that paragraph 2 should be amended to emphasize the reduction of exposure to tobacco smoke in schools and child-care centres. The word “guaranteed” would cause difficulties to governments and should be omitted or replaced by “provided”. In paragraph 3, the words “and financial” should be added after “technical”. Paragraph 3 might also express awareness of the relative importance of the tobacco problem alongside the many others besetting countries. It was suggested that paragraph 4 should be omitted or modified, as WHO dealt with public health, not trade. Participants were advised that the language contained in paragraph 4 had been used in multilateral environmental conventions and was compatible with existing international trade agreements. The view was expressed that the wording in paragraph 5 was extremely direct, and that the matter should be left to the negotiation phase. However, support was voiced for the inclusion of the paragraph, and for clear statements of the tobacco industry’s liability in the convention. On the other hand, several delegations considered that the paragraph should be omitted, leaving the matter to national legislation.

Further paragraphs were proposed on: the responsibility of each country to develop its own tobacco control programmes in the spirit of the convention; the obligation for developed countries to support developing countries in establishing effective programmes; smoke-free air; harm reduction, pending the introduction of adequate tobacco control measures; and, either as paragraph D.6 or perhaps as A.4, the environmental damage caused by tobacco farming. The interaction between the framework convention and existing treaties would have to be taken up in the convention and the protocols.

II. OBLIGATIONS

A. General obligations

1. Each Party shall develop, implement, periodically update and enforce, where appropriate, comprehensive multisectoral national tobacco control strategies, plans, programmes, policies, legislation and other measures in accordance with the provisions of this Convention and, as relevant, its Protocols.

2. To this end each Party shall, as far as possible in accordance with the means at its disposal and its capabilities:

(a) establish and fund a national coordinating authority for tobacco control efforts under the auspices of the health ministry, with input from other relevant governmental and nongovernmental bodies;

(b) adopt legislative and administrative measures and cooperate with other Parties in harmonizing appropriate policies to reduce tobacco consumption. The measures and policies referred to in the present paragraph include the following:

(Tobacco taxes)

(i) coordinate taxes for tobacco products at internationally determined minimum tax rates and implement national measures to:

– ensure that excise tax is at least two-thirds of the package price of tobacco products;

- apply tobacco taxes to all tobacco products;
 - increase tax to keep pace with the rate of inflation;
 - remove tobacco from the consumer price index;
- (Explanatory note: As reflected in the report of the first meeting of the working group (document A/FCTC/WG1/7, paragraph 22), some participants suggested that specific issues related to pricing could be considered for inclusion in the proposed convention.)**

(Tobacco sales to youth)

- (ii) prohibit tobacco sales to children and adolescents through such measures as, *inter alia*: prohibiting sales of tobacco products to persons under the age of [INSERT]; requiring that a tobacco purchaser provide evidence that he or she has reached the age of [INSERT]; and prohibiting tobacco vending machines;

(Exposure to tobacco smoke)

- (iii) **Option 1:** adopt measures to protect the health of non-smokers from passive smoking;

or

Option 2: adopt measures to protect the health of non-smokers from passive smoking, including the prohibition of smoking:

- in the indoor premises of day-care centres for children and of educational institutions intended for students, and in their outdoor areas primarily intended for persons under the age of [INSERT];
- in the indoor premises of cafes, restaurants and other establishments where the serving of food and/or beverages is the main activity of the establishment;
- in the indoor premises of bars, discothèques and similar establishments;
- in the indoor premises of government agencies and authorities and comparable public bodies intended for the public and clients;
- at public events arranged indoors to which the public has unrestricted access;
- inside public means of transport; and
- in the joint and public premises of workplaces and in their premises intended for clients;

(Regulation of the contents of tobacco products)

- (iv) adopt standards for the regulation of the contents of tobacco products, including standards for testing and measurement, design, manufacturing and processing;

(Regulation of tobacco product disclosures)

(v) **Option 1:** regulate tobacco product disclosures, including ingredients, additives, design, manufacturing and processing of tobacco products;

or

Option 2: adopt standards for full and independently verified tobacco product disclosures, including all ingredients and additives in all tobacco products and all major toxic constituents in tobacco products and tobacco smoke, using test methods approved by the World Health Organization;

(Tax-free and duty-free sales)

(vi) prohibit tax-free and duty-free sales of tobacco products; and

(c) gradually eliminate subsidies and government support for tobacco and promote alternative viable economic activities for tobacco growers, undertaking necessary research into alternative livelihoods and alternative uses for tobacco.

3. The Parties undertake to finance national tobacco control strategies, plans, programmes, policies and legislation through a dedicated appropriation of at least [INSERT] % of all tobacco tax revenue, earmarking [INSERT] % of such appropriation for tobacco control, health promotion and agricultural diversification.

4. The Parties shall cooperate in the formulation of agreed measures, procedures and standards for the implementation of this Convention, with a view to the adoption of Protocols and Annexes.

5. The Parties shall cooperate with competent international bodies to implement effectively this Convention and the Protocols to which they are Parties.

6. The provisions of this Convention shall in no way affect the right of Parties to adopt domestic measures additional to those referred to above, nor shall they affect additional domestic measures already taken by a Party, provided that these measures are not incompatible with their obligations under this Convention and the Protocols by which that Party is bound.

7. The Parties may enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant to this Convention, provided that such agreements are consistent with this Convention. Copies of such agreements shall be communicated to the secretariat of the Convention by the Parties concerned.

A number of delegations called for the obligations to be couched in more general terms, leaving detail to the protocols; others found the section on tobacco taxes (paragraph 2(b)(i)) in particular too prescriptive, although it was seen as a most important issue. Other delegations, however, argued for more, not less detail in the framework convention. One of them drew attention to the recommendations of the WHO International Conference on Advancing Knowledge on Regulating Tobacco Products (Oslo, 9 to 11 February 2000) particularly with regard to the scientific committee with clearing-house functions; regulation of tobacco products should be based on the principles of premarket evaluation and burden of proof of health effects and safety should be placed on the tobacco industry.

Objections were raised to the idea of establishing and funding a national coordinating authority for tobacco control under the health ministry (paragraph 2(a)), either because existing structures should be used or because it was for governments to decide which national entity was to do the work.

Although there was outright or qualified support for the idea of earmarking of tobacco tax revenue for tobacco control (paragraph 3), further speakers warned that it raised national legal problems that might preclude ratification.

Some countries expressed the view that it was too early in the process to stipulate the percentages of excise tax. Other delegations suggested that tobacco excise-tax provisions were not appropriate for inclusion in the framework convention. It was noted that provisions to remove tobacco from the consumer price index should be introduced carefully because components of the index differed from country to country.

*There was wide support for the prevention of tobacco sales to young people (paragraph 2(b)(ii)); indeed, speakers advocated banning the sale of tobacco products – including individual cigarettes – either to persons under the age of 18, or to those under 17 or under the age of majority. Tobacco sales **by** children and adolescents ought to be banned. Support for the prevention of exposure to tobacco smoke (paragraph 2(b)(iii)) was also strong, though speakers warned against blanket bans that were apt to displace the problem rather than solve it. Delegations' preferences were almost equally divided between option 1 and option 2 in that subparagraph.*

On regulation of the contents of tobacco products (paragraph 2(b)(iv)), a speaker suggested deleting “manufacturing and processing”; the same speaker favoured option 2 of regulation of tobacco product disclosures (paragraph 2(b)(v)), suggesting, however, that it be made more specific, along the lines of paragraph 2(b)(iii), option 2. Delegations were equally divided over options 1 and 2. It was pointed out that product standards varied greatly, even without taking account of cottage industry products such as the bidi. The freedom of enterprise activities should also be taken into account.

The banning of tax-free and duty-free sales enjoyed great support. This was linked with harmonization of taxation under national legislations as well as international treaties, and the prevention of smuggling. Another view was that sections on taxation, pricing and duty-free sales should not be included in the convention, bearing in mind the economic problems of economies in transition.

A speaker asked why there was no reference to the responsibility of tobacco-exporting countries. A ban on subsidies was suggested, especially in developed countries; however, possible contradictions with WTO agreements should be taken into account. It was pointed out that if such a provision were to be made compulsory, some countries would have difficulty in ratifying the convention.

The view was expressed that absolute bans on smoking in bars, restaurants and discothèques could not feasibly be enacted in developing countries. It was noted that bans on smoking in restaurants might prove difficult to implement, since these establishments were often located in private homes in developing countries.

It was pointed out that it would be very difficult for most countries to verify whether the tobacco industry was complying with possible product regulation measures in the convention or

a related protocol. Therefore, WHO should establish or support regional centres to collaborate with countries in the analysis of contents of tobacco products.

B. Advertising, promotion, and sponsorship

1. The Parties, in accordance with the means at their disposal and their capabilities, undertake

Option 1: to prohibit tobacco advertising, marketing, promotion, and sponsorship targeted at children and adolescents, and regulate or prohibit those targeted at others.

or

Option 2: to impose appropriate restrictions on the advertising, marketing and promotion of tobacco products, with the aim in particular of reducing the appeal of these products to children and adolescents.

2. Each Party shall require that tobacco companies disclose all expenditures on advertising and promotion and make those figures available to the public.

(Explanatory note: This provision is also included in document A/FCTC/WG2/4 as a possible basic obligation among the proposed technical components of a protocol on advertising and sponsorship.)

3. Each Party shall ensure satisfactory implementation of restrictions through, *inter alia*, clear definitions and simple legislative language, and effective enforcement mechanisms such as the application of the principle of accountability of tobacco companies, penalties with adequate deterrent effect for any/all violations of the law, and adequate funding to carry out enforcement activities.

4. The Conference of the Parties shall initiate the preparation of a Protocol setting out appropriate rules and procedures in the area of tobacco advertising, marketing, promotion, and sponsorship.

(Explanatory note: If participating States choose to negotiate a protocol on advertising, marketing, promotion, and sponsorship at the same time as they negotiate the convention, this paragraph will not be necessary.)

Participants agreed on the crucial importance of this provision, on which international cooperation was a priority. Some speakers referred to the difficulty of considering a ban at the present stage, because their constitutions protected freedom of trade and expression. It was stressed that indirect promotion should be included, and that the issue of cross-border advertising resulting from sponsorship of international events should be addressed. It was suggested that a fund be set up to provide alternative sponsorship of sports and entertainment, now heavily dominated by the tobacco industry.

Support was expressed for both options in section II.B. Several delegations supported what was in effect a proposal for a total ban through the shortening of option 1 to read: “to prohibit tobacco advertising, marketing, promotion and sponsorship”. One suggestion was to deal with marketing in a separate paragraph. Another was to delete “or prohibit” after “and regulate”. A further suggestion was to merge options 1 and 2 to read: “to prohibit tobacco advertising, marketing, promotion and sponsorship, or impose appropriate restrictions on those activities with the aim of reducing the appeal of the products”.

It was noted that paragraph 2 on disclosure of expenditures should not prejudice the restrictions mentioned earlier in the convention. The view was expressed that disclosure should not be required, as the activities themselves were not banned. The provision would be difficult to apply to producers of traditional products.

C. Treatment of tobacco dependence

1. The Parties, in accordance with the means at their disposal and their capabilities, undertake to establish effective programmes for the treatment of tobacco dependence.

2. Each Party shall take all practical, effective and cost-effective measures to treat tobacco dependence and to promote cessation of tobacco use, taking into account local circumstances and priorities.

3. Taking into account local circumstances, each Party shall undertake the following measures:

(a) promotional and education campaigns aimed at encouraging tobacco cessation;

(b) integration of the treatment of tobacco dependence into reproductive health programmes such as “safe motherhood” programmes, routine advice on cessation of tobacco use, and support by health professionals, including physicians, health practitioners, nurses, pharmacists, community workers and social workers, based on primary care.

(Explanatory note: These provisions are also included in document A/FCTC/WG2/4 as possible basic obligations among the proposed technical components of a Protocol on the treatment of tobacco dependence.)

4. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures in the area of the treatment of tobacco dependence.

(Explanatory note: If participating States choose to negotiate a Protocol on the treatment of tobacco dependence at the same time as they negotiate the convention, this paragraph will not be necessary.)

There was general agreement on the importance of this topic and its inclusion in the convention. Treatment should be viewed as part of a broader cessation strategy integrated within primary health care. Support was expressed for the establishment of cost-effective strategic programmes, including routine advice and behavioural and pharmacological treatment, tailored to countries’ circumstances. Attention was drawn to the need for extensive international cooperation to study cost-effective methods for treating use of smoking tobacco so that smokers could receive the benefits of treatment. Due account should be taken of human rights issues and the need for confidentiality. Women, children, indigenous people and other ethnic groups or minorities should receive special attention.

Delegates suggested that a paragraph should be added on financial support and WHO support to developing countries for the development of treatment programmes. International cooperation with countries needing more treatment facilities could possibly draw on tobacco industry funds.

A proposal was made to redraft paragraph 1 to read: “The Parties, in accordance with the means at their disposal and their capabilities, undertake to establish ongoing and effective programmes for the treatment of tobacco dependence by all means”. Another proposal was that paragraphs 1 and 2 should be reviewed to avoid redundancy. It was considered that

paragraph 3(b) needed redrafting for greater clarity. It was suggested that treatment of tobacco dependence should be incorporated into all health sector programmes, not just reproductive health. A further proposal was to add a new paragraph 3(c) on making nicotine replacement products easily available and accessible.

D. Measures to eliminate smuggling

1. The Parties recognize that the elimination of smuggling of tobacco products is an essential component of tobacco control efforts with respect to tobacco products sold or distributed in the domestic market and in international trade. The Parties, in accordance with the means at their disposal and their capabilities, undertake

Option 1: to take appropriate legal/administrative and other measures in order to prevent and combat smuggling of tobacco products.

or

Option 2: to provide for appropriate legal, administrative and other measures to prevent and combat smuggling of tobacco products and cooperate in promoting investigations, prosecutions and judicial proceedings relating to the smuggling of these products.

2. Each Party shall adopt appropriate measures to ensure that all tobacco products sold or manufactured under its jurisdiction carry a statement “Sales only allowed in [the country where the product is to be placed on the market]”.

3. Each Party shall undertake the following legal, administrative and other measures in order to prevent and combat the smuggling of tobacco products:

(a) improve cooperation between different national administrations;

(b) monitor and collect data on the illegal, tax-free and cross-border trade in tobacco products.

(Explanatory note: These provisions are also included in document A/FCTC/WG2/4 as possible basic obligation among the proposed technical components of a Protocol on the elimination of smuggling.)

4. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures for the elimination of smuggling.

(Explanatory note: If Member States choose to negotiate a Protocol on the elimination of smuggling at the same time as they negotiate the convention, this paragraph will not be necessary.)

Combating smuggling was considered to be a key component of the convention, because smuggling had the capacity to undermine all other efforts to control tobacco use. The evidence pointed to the need for strong measures. Technical cooperation and information exchange would be essential.

It was proposed that the essential elements for a possible protocol¹ should be included in the convention itself. The preparation of a protocol on the subject was supported. Existing international agreements and the activities of other international organizations would need to be taken into account.

In paragraph 1, support for option 2 outweighed that for option 1. Paragraph 3(a) was considered too weak; a binding provision should be developed. Another suggestion was that a subparagraph be added in paragraph 3 requesting parties to the convention to participate in an international conference under the auspices of the United Nations to coordinate efforts to control smuggling.

A delegation noted that smuggling was just one aspect of illicit trade in tobacco, and suggested that section D should be entitled “Combating illicit trade in tobacco products”. It proposed the inclusion of two paragraphs. The first would cover measures for cooperation and exchange of information among the competent bodies of parties to the convention, dealing with combating illicit trade, including smuggling, tax infringements in trade in tobacco products, and combating corruption involved in illicit trade and production of tobacco products. The second would deal with steps to improve national legislation and harmonize measures to combat illicit trade in tobacco products.

E. Packaging and labelling

(Explanatory note: As reported in document A/FCTC/WG1/7 (paragraph 22), some participants in the first meeting of the working group supported the inclusion of detailed provisions on tobacco packaging and labelling and full disclosure of product contents – including additives – in the proposed convention. This section offers options on this topic.)

1. Because the regulation of tobacco packaging and labelling is an essential component of control efforts with respect to tobacco products sold or distributed in the domestic market and in international trade, each Party shall adopt appropriate measures to ensure that:

- (a) the sale of cigarettes individually or in packets of fewer than 20 cigarettes shall be prohibited;
- (b) the use on tobacco packets of the terms “low tar”, “light”, “ultra light”, “mild” or any other similar terms that have the aim or the direct or indirect effect of conveying the impression that a particular tobacco product is less harmful than others shall be prohibited;
- (c) tobacco packaging and labelling shall not otherwise promote a tobacco product by any means that are false, misleading or deceptive or that are likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;
- (d) all tobacco products shall carry the statement specified in Article [II.D.2].
- (e) **Option 1:** all units of tobacco products shall carry the warnings [and a picture or pictogram] elaborated in Annex [INSERT].
(Explanatory note: Annex [INSERT] in this document contains two options on tobacco package design and labelling.)

¹ See document A/FCTC/WG2/4, especially paragraphs 2 to 5.

or

Option 2: all units of tobacco products shall carry a picture or pictogram illustrating the harmful consequences of tobacco consumption and general health warnings in the principal language or languages of the country where the product is placed on the market. The Conference of the Parties [shall initiate the preparation of a Protocol setting out appropriate rules and procedures in the area of tobacco packaging and labelling] [may adopt standards to harmonize tobacco packaging and labelling in a technical Annex to this Convention].

It was pointed out that cigarette packaging was one of the most important marketing and communication tools available to the tobacco industry. The obligations relating to packaging and labelling should include a reference to the need for information on tobacco products, their emissions, and health hazards from use. It was suggested that maximum allowable levels of constituents should be stated if a safe level was known, and that health warnings should come from ministries of health.

The view was expressed that details would be more appropriately set out in a protocol. It was suggested that paragraphs 1(a) to 1(d) were too specific. In paragraph 1(e), each of the options had some support.

It was pointed out that the situation envisaged in paragraph 1(a) would affect adults as much as young people in some countries, where cigarettes were typically sold separately or in small quantities. Moreover, some speakers considered that it would not be practical to attempt a ban; in fact, the provision might push people to use local products more. A delegate suggested that the words “or similar products” be added after “the sale of cigarettes” in paragraph 1(a), in order to cover cigars, bidis, cheroots, etc.

F. Surveillance

Option 1:

(Explanatory note: The provisions under this option are intended to be implemented incrementally, starting with the most essential surveillance programmes and progressing to other areas of surveillance in accordance with national means and capabilities.)

1. Each Party shall set up progressively, directly or through competent international bodies, including the World Health Organization, joint or complementary programmes for national, regional and global surveillance, providing for periodic updating on the following:

- (a) prevalence of tobacco use:
 - (i) brand-specific prevalence of tobacco use in youth;
 - (ii) prevalence of tobacco use in health professionals;
 - (iii) prevalence of tobacco use in adults by brand, age group, gender and social class;
- (b) expenditures on and sales of tobacco products by brand name;
- (c) knowledge of the health risks associated with tobacco use and attitudes towards tobacco control measures by age group, gender and social class;

- (d) tobacco prices and tax structures;
 - (e) patterns and trends in tobacco-attributable morbidity and mortality by age, gender and social class;
 - (f) tobacco production and trade;
 - (g) intention to cease tobacco use and access to methods for the treatment of tobacco dependence;
 - (h) percentage of youth able to purchase tobacco products;
 - (i) value and quantity of tobacco advertising and sponsorship by advertising/sponsorship types and by tobacco products;
 - (j) estimated price elasticity of tobacco products by age group, gender and social class.
2. Each Party shall integrate, to the extent feasible, tobacco surveillance programmes into its national health surveillance programmes.

or

Option 2

1. Each Party shall support and further develop, as appropriate, national, regional and international programmes and networks or organizations aimed at defining, conducting, assessing and financing surveillance, taking into account the need to minimize duplication of effort.
2. To this end, the Conference of the Parties shall undertake to formulate, adopt and implement common definitions, sampling methods, nomenclature, procedures and standards for surveillance in order to establish a uniform system to record country data.
3. Each Party shall compile and maintain a database of national and subnational laws and regulations on tobacco control, with information on enforcement.

It was considered that surveillance of tobacco use, as well as of determinants and consequences of use, should be one of the cornerstones of the convention. Surveillance would enable governments to plan action and evaluate change, and was a strong intervention tool because it gave good arguments for discussion in the media. Although it was a matter for each country, international coordination and guidelines were needed for comparison.

It was suggested that the convention should clearly specify the need for a comprehensive but feasible surveillance system that would serve all countries. National surveillance information should be central to the development of countries' goals and strategies; in turn, that information could be fed into regional and global databases.

Numerous delegations expressed the view that the section was very detailed, and that agreement should first be reached on common definitions, approaches and priorities for surveillance. The general preference was for option 2, or a combination of the two options. A delegation that preferred option 1 proposed inclusion of a biannual prevalence study. A

supporter of option 2 proposed the addition of the words “Financial support should be provided to carry out these functions”.

G. Research

1. The Parties undertake to promote and encourage research that contributes to reducing tobacco consumption, particularly in developing countries, in accordance with decisions of the Conference of the Parties [**Option:** taken upon recommendations of the subsidiary mechanism for provision of scientific and technical advice].

2. The Parties undertake to develop and coordinate, as far as possible, national research programmes relating to tobacco control. To this end, the Parties shall, in accordance with their capabilities and means at their disposal, initiate and cooperate in, directly or through competent international bodies, the conduct of research and scientific assessments

Option 1: elaborated in Annex [INSERT].

or

Option 2: on the following:

- (a) the impact of tobacco control policies, including research on taxation, pricing and anti-smuggling measures, clean indoor air policies, restrictions on marketing, advertising and promotion, and restrictions on young people’s access to tobacco;
- (b) programme interventions, including research on the identification of high-risk segments of the population, opportunities for and barriers to tobacco control, and optimal components of a comprehensive tobacco control strategy, together with evaluation and behavioural research to test intervention programmes;
- (c) the treatment of tobacco dependence, including research on approaches to increase cessation rates and to evaluate new treatments for tobacco dependence, their cost-effectiveness and their impact on diverse subgroups, as well as research on collaboration with the pharmaceutical industry to ensure the further development of effective and necessary products for the treatment of tobacco dependence and their wide availability, particularly in developing countries;
- (d) the design and regulation of tobacco products, including research on the effect of product modification, for example, changes in nicotine and tar content, delivery systems, additives, taste and size, in altering the extent of harm among various subgroups;
- (e) the role of the tobacco industry, including research on internal industry documents in the public domain on, *inter alia*, tobacco product design and regulation, marketing and promotion, public relations and lobbying activities;
- (f) tobacco farming, including research on opportunities for alternative crops, occupational hazards, environmental impact, sociocultural impact (especially among women and children) and economic impact of tobacco growing in developing countries.

3. The Parties undertake to cooperate in the establishment and implementation of regional and other international research programmes for the purposes of this Convention.

It was suggested that more detailed discussion of the place to be given to research in the convention would be useful.

It was proposed that the provision of financial support to developing countries should be included in paragraph 2. A delegate proposed the modification of paragraph 2(f) in option 2 to read: “tobacco industry and opportunities for alternative crops in developing countries, with regard to occupational hazards and environmental, economic, social and cultural aspects, especially concerning women and children”.

H.

Option 1: Media, communications and education

or

Option 2: Education, training and public awareness

1. Each Party shall:
 - (a) undertake to develop and implement effective and comprehensive educational and public awareness programmes on the health risks of tobacco use and exposure to tobacco smoke, including the use of various media, such as the Internet, films, television and radio;
 - (b) ensure that children and youth are fully informed about the health risks of tobacco consumption and exposure to tobacco smoke;
 - (c) facilitate public access to publicly available information on the tobacco industry;
 - (d) undertake to develop and implement appropriate training programmes on tobacco control for medical and other health care workers, lawyers, economists, epidemiologists, teachers, environmental officers, public health practitioners, clinicians, and other technical personnel, taking into account the needs of developing countries;
 - (e) endeavour to promote the participation of public and nongovernmental organizations in the development of strategies for tobacco control.

Most delegations preferred the title in option 2, which read “Education, training and public awareness”; additional proposals were “Information, education and communication” and the addition of “information” in option 2. The subject was considered acceptable for inclusion in the convention itself, depending on the level of detail included. Option 1 could be made into a separate element.

Speakers advocated greater emphasis on programming to discourage young people from smoking and on changing attitudes and behaviour. Counter-advertising was important, and the traditional media should be involved.

The need for community involvement was stressed, as part of an overall strategy for capacity-building at local level. It was proposed that a sentence be added to state that financial support should be extended to developing countries to carry out such work.

It was suggested that paragraphs 1(a) and 1(b) should refer to environmental degradation from tobacco farming and to publicity for tobacco industry strategies, respectively. Paragraph 1(d) was considered too detailed. Mention should also be made of the provision of technical support to countries.

I. Cooperation in the scientific, technical and legal fields

(Explanatory note: This provision has been separated from elements F. (Surveillance) and G. (Research) (above) because the cooperation of the Parties is a precondition for the execution of the surveillance and research functions outlined there.)

1. Each Party shall cooperate, in accordance with its national laws, regulations, practices and international obligations, and taking into account in particular the needs of developing countries, in promoting, directly or through the secretariat or other competent international bodies, the following:

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

(b) provision of technical, scientific, legal and other expertise to establish and strengthen national tobacco control programmes, policies and measures, to build a strong legislative foundation, to assist in the treatment of tobacco dependence, to assist tobacco workers in developing alternative livelihoods, and to carry out other activities to achieve the objectives of the Convention and its Protocols as applicable;

(c) support for the establishment and maintenance of training programmes for appropriate personnel as provided in Article [II.H.1(d)] above; and

(d) the supply of necessary equipment for tobacco control programmes and activities.

2. The Conference of the Parties shall determine how to establish a clearing-house mechanism to promote and facilitate scientific, technical and legal cooperation.

A number of delegations considered the topic suitable for inclusion in the convention, depending on the level of detail. It was noted that cooperation in the legal field could be very sensitive. A proposal was made to include a reference to scientific and financial cooperation for workers and farmers losing their livelihood, either in section I or in section A or J. It was suggested that WHO should establish or support centres to collaborate with countries in the analysis of tobacco products.

J. Liability and compensation

(Explanatory note: At its first meeting, the working group recommended (see document A/FCTC/WG1/7, paragraph 37), that the principle of “polluter pays” should be explored as a means of holding the tobacco industry accountable for the harm it causes. The elements set out below provide possible options for liability and compensation.)

Option 1:

1. The Parties shall endeavour to formulate and adopt appropriate procedures for determining liability and compensation for damage caused by natural or juridical persons related to [INSERT].
2. Each Party shall ensure that recourse is available in accordance with its legal system for prompt and adequate compensation or other relief in respect of damage caused by natural or juridical persons related to [INSERT].
3. With the objective of assuring prompt and adequate compensation in respect of all damage caused to public health by [INSERT], the Parties shall cooperate in the implementation of applicable rules of international law and the further development of international law relating to compensation and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation.

or

Option 2:

1. The Conference of the Parties shall initiate the preparation of a Protocol setting out appropriate rules and procedures in the field of liability and compensation related to [INSERT].

The view was expressed that countries would need to consider the section carefully to ensure overall consistency with their national legal systems; as it stood, the section appeared to provide for exceptional compensation applicable only to damage caused by smoking. A number of participants proposed that the subject should not be considered, either for the convention or a protocol, and that the matter be left to individual countries.

Some delegations believed that the subject would be better suited to a protocol. In that regard, there was some support for option 2, while a delegation expressed a preference for option 1. The view was also expressed that the liability provisions in option 1 should be strengthened so as to address action originating in one country that affected health and the environment in other countries.

K. Information exchange

(Explanatory note: This Article proposes a mechanism to facilitate commitments outlined in Article II.F (Surveillance), Article II.G (Research) and Article II.I (Cooperation in the scientific, technical and legal fields).)

1. The Parties, in accordance with their national legislation and without prejudice to their obligations under applicable international agreements, shall, within the framework of the Conference of the Parties and bilaterally, promote and cooperate in the full, open and prompt exchange of scientific, technical, socioeconomic, commercial and legal information, as well as information

regarding practices of the tobacco industry, relevant to this Convention (as elaborated in Annex [INSERT]).

2. Information to be exchanged pursuant to this Article shall be provided to the Conference of the Parties through the secretariat. [If the secretariat receives information regarded as confidential by the supplying Party, it shall ensure that such information is not disclosed and shall aggregate it to protect its confidentiality before it is made available to all Parties.]

It was considered that the subject could appropriately be included in the convention, provided that the level of detail was suitable.

L. Financial resources

1. Each Party shall provide, in accordance with its capabilities, financial support and incentives in respect of national activities intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.

2. Developed country Parties may also provide, and developing country Parties may avail themselves of, financial resources related to the implementation of this Convention through bilateral, regional and other multilateral channels.

3. The Parties recognize that countries that export manufactured tobacco products have a special responsibility to provide technical support to developing countries to strengthen their national tobacco control programmes.

Many developing countries emphasized the need for appropriate financing mechanisms to assist them in implementing the range of activities envisaged by the framework convention and related protocols. Those would include both the provision of support for national control programmes, capacity-building and institutional strengthening, and support to tobacco-growers as they endeavoured to find alternative livelihoods. It was pointed out that the question of a financial mechanism was dealt with in section III.F.

It was suggested that there was a contradiction between the title and the provision of technical – as opposed to financial – support under paragraph 3. Specific amendments were also proposed to that paragraph. A delegation suggested the amendment of the opening wording to read: “The Parties recognize that developed countries that export ...”. A further suggestion was to replace paragraph 3 by: “The Parties recognize that developing countries should be supported financially to strengthen their national tobacco control programmes”.

A delegation suggested the addition of a new paragraph 4 to read: “The Parties recognize that developing countries, especially those whose national economies are dependent on tobacco industries, and particularly on tobacco growing, need support to diversify into other viable options through an appropriate funding mechanism”.

III. INSTITUTIONS

(Explanatory note: A key function of framework conventions is the creation of institutions. These institutions serve as a basis for continuing cooperation in and governance of subject matters falling within their competence.)

A. *Conference of the Parties*

(Explanatory note: The Conference of the Parties is the central institution created by a framework convention. The Conference of the Parties meets regularly in order to provide a forum for discussion of implementation and associated problems, for monitoring, and for ongoing negotiations. Through these meetings, it can determine the scope and future course of the convention and its protocols.)

1. A Conference of the Parties is hereby established. The first session of the Conference of the Parties shall be convened by the Director-General of the World Health Organization no later than one year after the entry into force of this Convention. Thereafter, ordinary sessions of the Conference [of the Parties] shall be convened as and when necessary by the Director-General.
2. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one-third of the Parties.
3. The Conference of the Parties shall agree upon and adopt by [**Option 1:** simple majority vote or **Option 2:** a two-thirds majority vote] rules of procedure [and financial rules] for itself and for any subsidiary bodies it may establish.
4. The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and its Protocols, and shall take, within its mandate, the decisions necessary to promote the effective implementation of these instruments. To this end, it shall:
 - (a) periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objective of the Convention, the experience gained in its implementation, and the evolution of scientific and technological knowledge, as well as prevailing socioeconomic conditions;
 - (b) promote and facilitate the exchange of information pursuant to Article II.K above;
 - (c) facilitate, at the request of two or more Parties, the coordination of measures adopted by them relevant to the implementation of this Convention and its applicable Protocols;
 - (d) promote and guide the development and periodic refinement of comparable methodologies, in addition to those provided for in Article II.F and Annexes [INSERT], relevant to the implementation of this Convention and its Protocols;
 - (e) promote, in accordance with Article II, the harmonization of appropriate strategies, plans, programmes, policies, legislation and other measures;
 - (f) promote and carry out programmes to assist Parties in implementing their obligations pursuant to Article II;

- (g) assess, on the basis of all information made available to it in accordance with the provisions of this Convention and its Protocols, their implementation by the Parties, the overall effects of the measures taken pursuant to these instruments, and the extent to which progress towards the objective of this Convention is being achieved;
- (h) consider and adopt regular reports on the implementation of the Convention and its Protocols and arrange for their publication;
- (i) make recommendations to the Parties, the World Health Organization, and other international organizations and bodies on any matters necessary for the implementation of the Convention and its Protocols;
- (j) seek to mobilize financial resources to support secretariat services pursuant to Article [III.B] and to support implementation of this Convention in accordance with Articles [II.L and III.F];
- (k) establish such subsidiary bodies as it deems necessary for the implementation of the Convention, review their reports, and provide guidance to them;
- (l) seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent intergovernmental and nongovernmental organizations and bodies;
- (m) exercise such other functions as are required for the achievement of the objective of this Convention, as well as all other functions assigned to it under this Convention.

5. The United Nations, the World Health Organization and other specialized agencies of the United Nations, as well as any State not party to this Convention, may be represented by observers at meetings of the Conference of the Parties. Any body or agency, whether national or international, governmental or nongovernmental, which is qualified in matters covered by this Convention, and which has informed the secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer, may be admitted unless at least one-third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure of the Conference of the Parties.

B. Secretariat

(Explanatory note: A convention adopted under the auspices of an international organization frequently assigns secretariat functions, in particular the servicing of the Conference of the Parties and any other organs, to that organization. This is without prejudice to the fact that the discharge of the functions and provision of the services foreseen in this section, together with their programme and budget implications, are subject to the approval of the competent bodies of the organization concerned.)

1. The secretariat shall be a unit of the World Health Organization's Secretariat designated for that purpose by the Director-General of the Organization. The Director-General shall designate the head of that unit.
2. The functions of the secretariat shall be:
 - (a) to make arrangements for sessions of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;

- (b) to compile and transmit reports submitted to it;
- (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 submit 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;
- (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.

C. Subsidiary mechanism for provision of scientific and technical advice

(Explanatory note: Framework conventions often use institutional mechanisms to obtain scientific advice and information. As noted in paragraph 50 of document A/FCTC/WG1/6 the Director-General established an advisory body, the Policy/Strategy Advisory Committee, which came into operation on 15 January 1999.)

1. The Conference of the Parties may, as necessary, appoint ad hoc panels to provide it with information and advice on specific issues regarding the current state of fields of science and technology relevant to the objective of this Convention. These panels shall be composed of experts, taking into account the need for a multidisciplinary approach and broad geographical representation. These experts shall have backgrounds relevant to the Convention and its Protocols, including, *inter alia*, epidemiology, economics, law and agriculture, and shall be appointed by the Conference of the Parties on the recommendation of the secretariat. The members of these panels shall serve in their personal capacity. The Conference of the Parties shall decide on the terms of reference and the modalities of work of these panels.

D. Subsidiary body for implementation

(Explanatory note: Monitoring compliance with treaties through the review of States' reports is a common practice and a central mechanism for encouraging implementation of a convention's provisions (see Article IV.A). A subsidiary body for implementation can serve as the convention's institutional mechanism to monitor compliance.)

Option 1:

1. A subsidiary body for implementation is hereby established to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention. It shall consist of [INSERT] members and shall carry out the functions hereinafter provided.

2. This body shall be composed of persons of recognized competence on matters related to the objective of this Convention. The members of the body shall serve in their personal capacity. It shall report regularly to the Conference of the Parties and may make suggestions and general recommendations based on the examination of the reports and information received from the Parties.

3. Under the guidance of the Conference of the Parties, this body shall:
 - (a) consider the information communicated in accordance with Article [INSERT], to assess the overall aggregated effect of the steps taken by the Parties;
 - (b) consider the information communicated in accordance with Article [INSERT] in order to assist the Conference of the Parties in carrying out the reviews required by Article [INSERT];
 - (c) assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.
4. The body shall be [elected by the Conference of Parties] [appointed by the director of the secretariat]. The Conference of the Parties shall, at its first session, determine the terms of reference of this body.

or

Option 2:

1. A subsidiary body for implementation is hereby established to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention. This body shall be open to participation by all Parties and comprise government representatives who are experts on matters related to the object of this Convention and its Protocols. It shall report regularly to the Conference of the Parties on all aspects of its work.
2. Under the guidance of the Conference of the Parties, this body shall:
 - (a) consider the information communicated in accordance with Article [INSERT], to assess the overall aggregated effect of the steps taken by the Parties;
 - (b) consider the information communicated in accordance with Article [INSERT] in order to assist the Conference of the Parties in carrying out the reviews required by Article [INSERT];
 - (c) assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.

E. Support of the World Health Organization

1. The Conference of the Parties may call upon the World Health Organization for technical cooperation in achieving the objective of this Convention or in connection with any problem arising out of the application of the Convention and its Protocols. The Organization shall accord such support in accordance with its programmes and within the limits of its resources.
2. The World Health Organization may, on its own initiative, make proposals on this matter to the Parties.

F. Financial mechanism

1. A mechanism for the provision of financial resources on a grant or concessional basis, including the transfer of technology, is hereby established. It shall function under the guidance of and be

accountable to the Conference of the Parties, which shall decide on its policies, programmes and priorities, and on eligibility criteria related to this Convention. Its operation shall be entrusted to [**Option 1:** the secretariat or **Option 2:** one or more existing international entities].

2. Pursuant to the objective of this Convention, the Conference of the Parties shall determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for access to and utilization of the financial resources, including regular monitoring and evaluation of such utilization. The Conference of the Parties shall decide on the arrangements to give effect to paragraph 1 above after consultation with the body entrusted with the operation of the financial mechanism.

It was suggested that the creation of institutions should be discussed at a later stage, once the scope and requirements of the convention were known. The level and status of the possible institutions should be carefully examined, bearing in mind the financial implications. It was considered that full use should be made of existing mechanisms; for example, the Health Assembly could review reports submitted under section IV and WHO could provide the secretariat. A delegation suggested that the United Nations drug conventions could provide a model for a cost-effective institutional scheme.

It was considered that the convention should be a comprehensive instrument with separate institutions from WHO. The Conference of the Parties could decide on the institutional arrangements at its first session. With regard to section III.A, some participants expressed the view that the Conference of the Parties should meet regularly each year. Under paragraph III.A.2, extraordinary sessions might also be held at the request of the Bureau of the Conference. In paragraph III.A.3, some delegations favoured option 1 and others option 2. One view was that voting by simple majority was preferable; another was that voting by two-thirds majority should be selected as a general rule. A third proposal was to require a two-thirds majority for the adoption of rules of procedure and financial rules, and a simple majority for other matters. The view was also expressed that the wording of subparagraphs III.A.4(l) and (m) should be modified to avoid infringing the sovereignty of States Parties. Another suggestion was that the subparagraphs in paragraph III.A.4 should be placed in protocols after the introductory sentence. In paragraph III.A.5, it was proposed that in the second line the words "any State not party to" should be replaced by "any State, even a non-party to".

Under section III.B, a delegation proposed the creation of a monthly magazine on world tobacco control to report on progress. Under sections III.C and III.D, a preference was expressed for bodies to be composed of government representatives, not experts serving in a personal capacity. Several delegations supported option 2 in section III.D, though a preference was also expressed for the limited size and ease of decision-making offered by option 1. A further view was that a subsidiary body for implementation was unnecessary. In paragraph III.F.1, more support was expressed for option 1 than for option 2.

IV. IMPLEMENTATION

A. Reporting

1. In accordance with guidelines agreed upon by the Conference of the Parties, each Party shall communicate to the Conference of the Parties, for consideration by the Subsidiary Body for Implementation, the following data:

- (a) information on tobacco control institutions, strategies, plans, programmes, policies, legislation and other measures initiated or implemented in accordance with the provisions of Article [III], together with information on enforcement where appropriate;
 - (b) information on steps taken to carry out financial obligations in accordance with Articles [II.L and III.F];
 - (c) information on the economic, social and other consequences of various response strategies adopted to implement this Convention and its Protocols;
 - (d) description of steps taken or envisaged by the Party to implement this Convention in addition to those described above;
 - (e) any other information that the Party considers relevant to the achievement of the objective of this Convention and suitable for inclusion in its report on implementation.
2. Each Party shall make its initial communication within one year of the entry into force of the Convention for that Party and, thereafter, every [INSERT]. The Subsidiary Body for Implementation may request further information from a Party.
 3. Starting at its first session, the Conference of the Parties shall arrange for the provision to developing country Parties of technical and financial support, on request, in compiling and communicating information under this Article. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate.

B. Settlement of disputes

1. If a dispute arises between two or more of the Parties concerning the interpretation or application of this Convention or of any of its Protocols, those Parties shall consult among themselves with a view to resolving the dispute by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.
2. Any dispute of such a character not so resolved shall, with the consent in each case of all parties to the dispute, be referred for settlement [**Option 1:** to arbitration or **Option 2:** to the International Court of Justice or to arbitration]; however, failure to reach agreement on reference [**Option 1:** to arbitration or **Option 2:** to the International Court of Justice or to arbitration] shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 above.
(Explanatory note: If Option 2 is selected, it should be noted that disputes involving regional economic integration organizations cannot be submitted to the International Court of Justice but only to arbitration.)

With regard to section IV.A, participants considered that reporting procedures should be simple and directly concerned with the implementation of the convention, in order to avoid too heavy a burden on contracting parties. Reports to the Subsidiary Body for Implementation should be analysed by the latter for submission to the Conference of the Parties. Procedures for assessment by the Subsidiary Body should be developed, including assessment of compliance. It was suggested that reporting cycles for developed and developing countries might differ. Developing countries might need financial support for the reporting process.

Several delegations suggested that a prudent approach should be taken to section IV.B, "Settlement of disputes"; it was premature to select a method until the negotiation stage. Although several delegations expressed a preference for option 1 over option 2, there was support for a non-binding system of consultation or the use of diplomatic channels, which should become option 3.

V. DEVELOPMENT OF THE CONVENTION

A. Proposals

1. Any Party to this Convention may at any time propose, by a written communication to the secretariat:

- (a) an amendment to this Convention;
- (b) a new Annex to this Convention;
- (c) an amendment to an Annex to this Convention;
- (d) a new Protocol to this Convention.

2. Any Party to a Protocol to this Convention may, except as otherwise provided in that Protocol, at any time propose, by a written communication to the Secretariat:

- (a) an amendment to the Protocol;
- (b) a new Annex to the Protocol;
- (c) an amendment to an Annex to the Protocol.

3. Annexes to the Convention or its Protocols shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention or its Protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to technical, scientific and administrative matters, unless otherwise provided in the present Convention or its Protocols.

B. Simplified adoption of proposals

1. A Party making a proposal as provided in Article V.A.1(a)-(c) above may at the same time propose that the provision to which the proposal relates be adopted by the following simplified procedure. The secretariat shall promptly circulate the proposal to all Parties to this Convention with an indication that it is doing so pursuant to this simplified procedure. If within 12 months from the date of such circulation no Party has objected to either the proposal or its adoption by this simplified procedure, it shall be considered adopted; if any Party makes an objection within the 12-month period, the proposal shall be considered in accordance with Article V.C.

2. A Party making a proposal as provided in Article V.A.2 may, except as otherwise provided in the Protocol to which the proposal relates, at the same time propose that the provision be adopted by the following simplified procedure. The secretariat shall promptly circulate the proposal to all Parties to the Protocol with an indication that it is doing so pursuant to this simplified procedure. If within

12 months from the date of such circulation no such Party has objected to either the proposal or its adoption by this simplified procedure, it shall be considered adopted; if any Party makes an objection within the 12-month period, the proposal shall be considered in accordance with Article V.C.

C. Normal consideration and adoption of proposals

1. Any proposal not adopted in accordance with Article V.B shall be considered at the next session of the Conference of the Parties, provided that no such consideration shall take place at such a session if the proposal has been circulated less than six weeks before the convening of that session and more than one-quarter of the Parties to this Convention object to such consideration.

2. The Conference of the Parties may request the assistance of the secretariat and of an ad hoc panel established in accordance with Article III.C.1 in considering any proposal submitted to it. It may also establish a working group for this purpose and instruct it to meet during or between its sessions. It may postpone consideration of the proposal to a later session.

3. The Conference of the Parties may at any time take a decision on the adoption of the proposal, as originally presented or as it may be amended by the Conference pursuant to its rules of procedure. In taking such a decision, it shall strive to achieve general agreement; if no such agreement is possible, adoption shall require the affirmative vote of two-thirds of all the Parties.

4. In taking any decision under the present Article in relation to a proposal made pursuant to Article V.A.2, only the votes of the Parties to the Protocol to which the proposal relates shall be taken into account and all relevant provisions of the Protocol shall be observed.

D. Entry into force

1. An amendment to this Convention shall enter into force after its adoption pursuant to Article V.B.1 or V.C.3:

(a) if it relates to any provision of Part I, III, V or VI of this Convention, when it has been accepted by [three-quarters] of all the Parties, at which time it shall enter into force for all Parties;

(b) if it relates to any other provision of this Convention, when it has been accepted by [two-thirds] of all the Parties, provided that it shall at that time only enter into force for the Parties that have accepted, and for other Parties it shall enter into force when each so accepts. Any State or regional economic integration organization which becomes Party to this Convention after the entry into force of an amendment shall be considered as a Party to this Convention as amended.

2. A new Annex to this Convention or an amendment to an Annex to this Convention shall enter into force for all Parties on the expiration of [INSERT] months from its adoption pursuant to Article V.B.1 or Article V.C.3, except that it shall not enter into force for any Party that within such period notifies the secretariat that it objects thereto, until such Party notifies the secretariat that it withdraws such objection. If within the above period more than [one-third] [one-half] of the Parties notify the secretariat of their objection, the Annex or the amendment shall not enter into force.

3. A new Protocol adopted pursuant to Article V.C.3 shall, except if it otherwise provides, enter into force in accordance with the applicable provisions of Article VI.D [Entry into force].

4. An amendment to a Protocol adopted pursuant to Article V.B.2 or Article V.C.3 shall, except if the Protocol otherwise provides, enter into force, *mutatis mutandis*, in accordance with Article V.D.1(b).

5. A new Annex to a Protocol or an amendment to an Annex to a Protocol, adopted pursuant to Article V.B.2 or V.C.3, shall, except if the Protocol otherwise provides, enter into force, *mutatis mutandis*, in accordance with Article V.D.2.

Participants considered that section V could be dealt with at a much later stage. The relationship between the convention, protocols and annexes would need clarification. It was suggested that proposed amendments to the convention should be considered by the Conference of the Parties without resort to the simplified procedure. In paragraph V.D.2, it was suggested that “one-third” was preferable to “one-half”.

VI. FINAL CLAUSES

(Explanatory note: This section was not the object of many comments during the first meeting of the working group. Some delegations, moreover, expressed the view that it would be premature to discuss proposed draft elements of final clauses in detail before agreement is reached on substantive elements. The possible draft provisions listed below, therefore, are based on the elements arising from the discussion at the first meeting of the working group as well as on the elements contained in document A/FCTC/WG1/6.)

A. *Reservations*

Option 1: No reservations may be made to this Convention.

or

Option 2: No reservations may be made to Articles ... [Parts ...] of this Convention.

(Explanatory note: If reservations are allowed to the whole Convention, there is no need for a specific provision.)

B. *Signature*

This Convention shall be open for signature by

Option 1: States

or

Option 2: all Member States of the World Health Organization

or

Option 3: States Members of the United Nations or of any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by any other State which has been invited by the World Health Assembly to become a party to the present Convention

and by

Option 1: regional economic integration organizations

or

Option 2: regional economic integration organizations, constituted by sovereign States Members of the World Health Organization, which have competence in respect of international agreements in matters covered by the present Convention

in [place of opening to signature] or at the headquarters of the World Health Organization on [date of opening to signature], from ... until

(Explanatory note: If a subsequent second place of signature is considered, the seat of the depositary is normally designated, with a mention of the place and opening and closing dates.)

C. Ratification, acceptance, approval, accession

(Explanatory note: In previous United Nations conventions, access has either been included in the same article as the other modes of expression of commitment to be bound, or dealt with in a separate article. For the sake of simplicity, they will be kept separate for the purpose of the present document. In some conventions admitting regional economic integration organizations as contracting parties, their rights and obligations *vis-à-vis* their Member States are regulated in the same provisions. A proposed draft element to this effect is included in paragraphs (b) and (c) below for the consideration of the working group.)

1. *Ratification, acceptance or approval*

(a) This Convention [and any protocol] shall be subject to ratification, acceptance or approval by States referred to in Article [insert the number of the article on signature] and by

Option 1: regional economic integration organizations.

or

Option 2: regional economic integration organizations, constituted by sovereign States Members of the World Health Organization, which have competence in respect of international agreements in matters covered by the present Convention.

Instruments of ratification, acceptance or approval shall be deposited with the depositary.

(b) Any organization referred to in paragraph (a) above which becomes a Party to this Convention [or any of its Protocols] without any of its member States being a Party shall be bound by all the obligations under the Convention [or the Protocol]. In the case of such organizations, one or more of whose member States is a Party to this Convention [or relevant Protocol], the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention [or the Protocol]. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention [or relevant Protocol] concurrently.

(c) In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph (a) above shall declare the extent of their competence with respect to the matters governed by the Convention [or the relevant Protocol]. These organizations shall also inform the depositary of any relevant modification in the extent of their competence.

2. *Accession*

(a) This Convention [and any Protocol] shall be open for accession by States referred to in Article [insert the number of the article on signature] and by

Option 1: regional economic integration organizations.

or

Option 2: regional economic integration organizations, constituted by sovereign States Members of the World Health Organization, which have competence in respect of international agreements in matters covered by the present Convention.

Instruments of accession shall be deposited with the depositary.

(b) The provisions of Article [insert the number of the article on ratification, acceptance or approval], paragraphs (b) and (c), shall apply to regional economic integration organizations which accede to this Convention [or any Protocol].

D. *Entry into force*

1. *Threshold for entry into force*

Option 1: The present Convention shall enter into force [on the ... day] [... months] following the date of deposit of the [INSERT] instrument of ratification, acceptance, approval or accession with the depositary.

or

Option 2: The present Convention shall enter into force [on the ... day] [... months] after the date on which not less than [INSERT] States, representing at least [INSERT] % of the [total consumption] [total imports] [total production] of tobacco and tobacco products as calculated by [INSERT] in the year [INSERT] have deposited their instruments of ratification, acceptance, approval or accession with the depositary.

2. *Entry into force of Protocols*

Option 1: Any Protocol, except as otherwise provided in such Protocol, shall enter into force [on the ... day] [... months] after the date of deposit of the [INSERT] instrument of ratification, acceptance or approval of such Protocol or accession thereto.

or

Option 2: Any Protocol shall enter into force [on the ... day] [... months] after the date of deposit of the number of instruments of ratification, acceptance, approval or accession specified in that Protocol.

or

Option 3: Any Protocol shall enter into force [on the ... day] [... months] after the date of deposit of the [INSERT] instrument of ratification, acceptance or approval of such Protocol or accession thereto.

3. *Entry into force for Parties joining after the requirements for the entry into force of the Convention or of a Protocol have been met*
 - (a) For each Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the [INSERT] instrument of ratification, acceptance, approval or accession, it shall enter into force [on the ... day] [... months] after the date of deposit by such Party of its instrument of ratification, acceptance, approval or accession.
 - (b) Any Protocol [, except as otherwise provided in such Protocol,] shall enter into force for a Party that ratifies, accepts or approves that Protocol or accedes thereto after its entry into force pursuant to paragraph [INSERT] above, [on the ... day] [... months] after the date on which that Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which this Convention enters into force for that Party, whichever shall be the later.
4. *Participation by regional economic integration organizations for purposes of entry into force of the Convention and Protocols*
 - (a) For the purposes of paragraphs [insert the number of the paragraphs on the conditions for the entry into force of the Convention and its Protocols] above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

E. Withdrawal or denunciation

(Explanatory note: According to the general international law of treaties, as codified in Article 56 of the 1969 Vienna Convention on the Law of Treaties, a treaty that does not provide for denunciation or withdrawal is normally not subject to denunciation or withdrawal. Should the proposed convention not allow withdrawal or denunciation from it and from its Protocols, no specific provision excluding withdrawal or denunciation needs to be included. Should denunciation or withdrawal be allowed, Member States may wish to consider a proposed element along the lines set out below.)

1. *Denunciation of, or withdrawal from, the Convention or Protocols at any time*
 - (a) Any Party may [denounce this Convention] [withdraw from this Convention] by written notification to the depositary at any time.
 - (b) [Except as may be provided in any Protocol] any Party to a Protocol can [denounce it] [withdraw from it] by written notification to the depositary at any time.
2. *Denunciation of, or withdrawal from, the Convention or Protocols subject to time limitations*
 - (a) At any time after [INSERT] years from the date on which this Convention has entered into force for a Party, that Party may [denounce] [withdraw from] this Convention by giving written notification to the depositary.
 - (b) [Except as may be provided in any Protocol,] at any time after [INSERT] years from the date on which [such] [a] Protocol has entered into force for a Party, that Party may [denounce] [withdraw from] the Protocol by giving written notification to the depositary.

3. *Effects of denunciation or withdrawal*

(a) Any such [denunciation] [withdrawal] shall take effect upon expiry of [INSERT] after the date of its receipt by the depositary, or on such later date as may be specified in the notification to the depositary.

(b) Any Party which [denounces] [withdraws from] the Convention shall be considered as having [denounced] [withdrawn from] any Protocol to which it is a Party.

(Explanatory note: If negotiating States intend to make participation in the Convention conditional upon participation in one or more Protocols, the following provision may be considered.)

(c) Any Party which, upon [its denunciation of] [its withdrawal from] a Protocol, is no longer a Party to any Protocol to this Convention, shall be considered as also having withdrawn from this Convention.

F. Relations between the Convention and its Protocols

(Explanatory note: Member States may wish to consider whether participation in the convention should be conditional upon participation in one or more protocols, or whether protocols should remain completely optional, i.e. a State or regional economic integration organization may become a Party to the convention without at the same time becoming a Party to one or more protocols. In the latter case, no specific provision needs to be included in the convention. The former option obviously can only be envisaged if one or more protocols are to be negotiated and adopted together with the convention. Member States may also wish to consider the reverse option, namely, that States or regional economic integration organizations may not become Parties to a protocol unless they become at the same time Parties to the convention. Member States may wish to consider proposed draft elements along the following lines.)

Option 1:

1. No one may become a Party to this Convention unless it becomes at the same time a Party to at least one of its Protocols. No one may become a Party to a Protocol unless it is, or becomes at the same time, a Party to this Convention.

2. Any protocol to this Convention shall be binding only on the Parties to the Protocol in question.

or

Option 2:

1. Ratification, acceptance or approval of any of the Protocols to this Convention, or accession thereto, shall be optional for each Party, provided that at the time of the deposit of its instrument of ratification, acceptance or approval of this Convention or of accession thereto, that Party shall ratify, accept or approve, as the case may be, any [INSERT] or more of these Protocols, or accede thereto.

2. At any time after the deposit of its instrument of ratification, acceptance or approval of this Convention or of accession thereto, a Party may deposit with the depositary an instrument of ratification, acceptance or approval of any Protocol by which it is not already bound, or of accession thereto.

G. Relationship with other international conventions

(Explanatory note: Some United Nations treaties state, among the final clauses, that their provisions shall not affect the rights and obligations arising for their Parties under other international conventions. In other cases, such clauses are included in different parts of the conventions. Unless and until negotiating States identify what these other international conventions might be and the scope and effects of the relationship of the convention with them, it is difficult to propose possible draft elements. The provisions below are offered by way of example.)

1. The provisions of this Convention shall not affect the rights and obligations of any Party deriving from any existing international agreement [, except where the exercise of those rights and obligations would (insert reference to a prejudicial effect to be avoided)].
2. Contracting Parties shall implement this Convention with respect to [subject matter] consistently with the rights and obligations of States under [INSERT].

H. Depositary

(Explanatory note: Some United Nations conventions do not have a separate specific provision designating a depositary and/or spelling out its functions. This designation is implicit from other clauses in the conventions and from the provision on authentic texts, which requires their deposit. Other conventions designate a depositary but do not spell out its functions, while still other conventions list specific functions to be carried out by the depositary. The normal functions of a depositary are provided for in Article 77 of the 1969 Vienna Convention on the Law of Treaties.

Since the only proposal formulated during the first meeting of the working group was to the effect that the Secretary-General of the United Nations should serve as depositary, it has been retained for the purposes of the present report.)

Option 1:

1. The Secretary-General of the United Nations shall be the depositary of this Convention and any Protocols.

or

Option 2:

1. The Secretary-General of the United Nations shall assume the functions of depositary of this Convention and any Protocols.
2. The depositary shall inform the Parties, in particular, of:
 - (a) the signature of this Convention and of any Protocol, and the deposit of instruments of ratification, acceptance, approval or accession in accordance with Articles [INSERT] and [INSERT];
 - (b) the date on which the Convention and any Protocol will come into force in accordance with Article [INSERT];
 - (c) notifications of [denunciation] [withdrawal] made in accordance with Article [INSERT];

(d) amendments adopted with respect to the Convention and any Protocol, their acceptance by the Parties and their date of entry into force in accordance with Article [INSERT];

[(e) all communications relating to the adoption and approval of Annexes and to the amendment of Annexes in accordance with Article [INSERT];]

(f) notifications by regional economic integration organizations of the extent of their competence with respect to matters governed by this Convention and any Protocols, and of any modifications thereof.

... .

I. Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

With regard to section VI.A, participants favoured the inclusion of a provision for reservations; otherwise governments would be unlikely to ratify the convention. As to section VI.B, a delegation proposed that signature should be open to Members of WHO and other sovereign States, or a combination of options 1 and 2. Support was also expressed for options 2 and 3.

In section VI.C, the representative of a regional economic integration organization welcomed the inclusion of an option allowing for signature and ratification of the convention by such organizations. In subparagraphs VI.C.1(a) and VI.C.2(a), option 2 was preferred in both cases. Under paragraph VI.D.1, support was expressed for option 1. It was also suggested, however, that ratification by a large number of States representing a substantial percentage of tobacco consumers and producers should be required for entry into force. As to section VI.E, it was considered that a provision should be included to allow for denunciation of the convention after a reasonable period.

Under section VI.F, support was indicated for both options 1 and 2. However, it was noted that both implied linkage between the convention and its protocols. To make the convention acceptable to as many countries as possible, it was suggested that it should be independent of the protocols, and that a provision to that effect could be shown as a third option. In section VI.H (Depositary), a preference was expressed for option 1.

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