Provisional report of the sixth session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control

Moscow, Russian Federation, 13–18 October 2014
1. OPENING OF THE SESSION

1. The sixth session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control (WHO FCTC COP6) was held at the World Trade Centre (Moscow, Russian Federation) from 13 to 18 October 2014. Representatives of XX Parties to the Convention took part. Also present were representatives of XX States non-Parties, as well as XX nongovernmental organizations and XX intergovernmental organizations accredited as observers. For the agenda of the meeting, see Annex 1 of this report. For the list of documents, see Annex 2.

2. The session was opened by the President of the COP, Professor Chang-jin Moon (Republic of Korea).

3. Ms Veronika Skvortsova, Minister of Health of the Russian Federation, welcomed participants and conveyed a message from the President of the Russian Federation, Vladimir Putin, in which President Putin commended the role of the Convention in the consolidation of international efforts to curb tobacco use and wished the Conference every success.

4. Minister Skvortsova briefly reviewed the situation of tobacco control in the Russian Federation, including the adoption of the national anti-tobacco policy concept (2010) and the federal law to protect citizens from the effects of secondhand smoke (2013). The Russian Federation was currently preparing the legislation required for ratification of the Protocol on Illicit Trade in the near future.

5. The full text of Minister Skvortsova’s address, including the message from President Putin, is reproduced in Annex 3 of this report.

6. Dr Margaret Chan, Director-General of WHO, addressed the COP, emphasizing the need to resist the attempts of the tobacco industry to undermine tobacco control by means, for example, of litigation and interference in the process of government policy-making. The Convention, as well as bringing immediate and long-term health benefits, provided an important model for collaboration between various sectors of government and United Nations agencies. The full text of the Director-General’s address is reproduced in Annex 4 of this report and was subsequently published as document FCTC/COP/6/DIV/4.

7. The President welcomed the new Head of the Convention Secretariat, Dr Vera Luiza da Costa e Silva, and paid tribute to her predecessor, Dr Haik Nikogosian. Since the previous session of the COP, El Salvador, Ethiopia and Tajikistan had become Parties to the Convention, bringing the total number of Parties to 179, and Gabon, Mongolia, Nicaragua and Uruguay had acceded to the Protocol on Illicit Trade in Tobacco Products. A number of challenges remained, however: raising awareness of the Protocol, resisting the interference of the tobacco industry and ensuring appropriate, evidence-based approaches are taken to novel and emerging tobacco products such as electronic cigarettes, smokeless tobacco products and waterpipes.

1.1 Adoption of the agenda and organization of work

Documents FCTC/COP/6/1 Rev.2 and FCTC/COP/6/1 (annotated) Rev.1

8. The COP adopted the provisional agenda, contained in document FCTC/COP/6/1 Rev.2, without amendment. The agenda is reproduced in Annex 1 of this report.
9. The COP appointed two committees, which worked concurrently from the second day of the session. Committee A considered agenda item 4, and Committee B agenda items 5 and 6. The remaining items were considered in plenary session.

10. The following representatives were elected to serve as the officers of Committees A and B, pursuant to Rule 28 of the Rules of Procedure of the COP (decision FCTC/COP6(3)):

Committee A:

Dr Nuntavarn Vichit-Vadakan (Thailand), Chair.
Dr David Acurio, (Ecuador) and Mr Behzad Valizadeh (Islamic Republic of Iran), Vice-Chairs.

Committee B:

Mr Andrew Black, (United Kingdom of Great Britain and Northern Ireland), Chair.
Dr Ivanhoe Escartin (Philippines) and Dr Welani Chilengwe (Zambia), Vice-Chairs.

1.2 Credentials of participants

Document FCTC/COP/6/2

11. In accordance with Rule 19 of the Rules of Procedure of the COP, the COP agreed at its first plenary meeting that the Bureau of the COP, with the assistance of the Convention Secretariat, would examine the credentials of the delegates and would report thereon to the COP during the session. The report was duly produced, as document FCTC/COP/6/2, on 15 October. The COP adopted the relevant decision (FCTC/COP6(4)), Credentials of the Parties) at its 4th plenary meeting on 15 October (see Annex 6).

1.3 Election of a member of the Bureau to represent the Region of the Americas, in replacement of the representative of Canada

12. In accordance with Rules 21.1 and 24.1 of the Rules of Procedure, the Region of the Americas was invited to put forward a new candidate to replace Mr Choinière for the remainder of his term of office. Through the draft decision contained in document FCTC/COP/6/P/Conf.Paper No.1 the Conference was asked to consider the candidacy of Dr Reina Roa from the Ministry of Health of Panama to replace Dr Choinière. As there were no objections, it was decided to elect Dr Roa as member of the Bureau until the closure of this session. At its 1st plenary meeting, on 13 October, the COP adopted decision FCTCC/COP6(1) on this matter.

2. APPLICATIONS FOR THE STATUS OF OBSERVER TO THE CONFERENCE OF THE PARTIES

Documents FCTC/COP/6/3, FCTC/COP/6/3 Add.1 and FCTC/COP/6/4

13. The COP considered applications for observer status from one intergovernmental organization, the East African Community (see document FCTC/COP/6/3) and four nongovernmental organizations:
the Zimbabwe Framework for Tobacco Control Trust, the World Farmers’ Organization, the Southeast Asia Tobacco Control Alliance (see document FCTC/COP/6/3) and the Campaign for Tobacco-Free Kids (see document FCTC/COP/6/3 Add.1). It further considered the application by the International Criminal Police Organization (INTERPOL) (see document FCTC/COP/6/4).

14. Representatives of Parties in the WHO African Region expressed reservations about the applications by the East African Community and the Zimbabwe Framework for Tobacco Control Trust. Representatives of Parties in the WHO African Region said that the Trust was a recently formed organization whose activities and affiliations were not well known in the Region.

15. Many Parties likewise expressed reservations about the application by the World Farmers’ Organization in that, in the past, many farmers’ associations had been shown to have links with the tobacco industry.

16. Parties of the WHO South-East Asia Region expressed support for the application by the Southeast Asia Tobacco Control Alliance.

17. Many Parties welcomed the application by the Campaign for Tobacco-Free Kids, which had supported many of them in the development of national tobacco control policies and implementation of the Convention.

18. The COP decided to reject the applications by the Zimbabwe Framework for Tobacco Control Trust and the World Farmers’ Organization, and defer consideration of the application by the East African Community until its next session. It further decided to grant the status of observer to the Southeast Asia Tobacco Control Alliance and the Campaign for Tobacco-Free Kids.

19. Pursuant to decision FCTC/COP5(2), the Bureau had liaised with INTERPOL to seek clarification on considerations relating to its application for observer status, taking into account Rule 30 of the Rules of Procedure, in particular in relation to Article 5.3 of the Convention. Information about the Bureau’s interactions with INTERPOL was contained in document FCTC/COP/6/4.

20. Participants appreciated INTERPOL’s work on combatting international crime and illicit trade. Nonetheless, its acceptance of funding from Philip Morris International Inc. ran counter to the spirit of Article 5.3. The COP therefore did not wish to grant observer status to INTERPOL.

21. At its 1st plenary meeting, on 13 October, the COP adopted decision FCTC/COP6(2).

3. ADDRESS BY THE HEAD OF THE CONVENTION SECRETARIAT AND REPORT ON GLOBAL PROGRESS IN IMPLEMENTATION OF THE WHO FCTC, FOLLOWED BY A GENERAL DEBATE

Documents FCTC/COP/6/5 and FCTC/COP/6/DIV/3

22. In her address (Annex 5), Dr da Costa e Silva, Head of the Convention Secretariat, paid tribute to her predecessor for his dedicated work over the previous seven years. Since COP5 the Secretariat

1 Subsequently published as document FCTC/COP/6/DIV/3.
had conducted 16 needs assessments with Parties’ governments and had received reports from 130 Parties in the 2014 reporting cycle. An open-ended intersessional drafting group had developed guidelines for implementation of Article 6 of the Convention, on price and tax measures, while the Secretariat had also convened two meetings of Party-nominated experts to consider Article 19 on liability. There were currently four Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products, and its entry into force before COP7 would be one of the Secretariat’s priorities.

23. All Parties would need to make concerted efforts to attain the global target (endorsed by the World Health Assembly) of a 30% relative reduction in the prevalence of current tobacco use in persons aged 15 years and older by 2025. The Convention offered Parties the tools to resist interference by the tobacco industry, to promote economically viable alternative activities to growing tobacco, and to protect the most vulnerable populations. The core operating values of the Secretariat would be partnership and coordination, not only with WHO but also with all civil society organizations and sister agencies of the United Nations system that were friends of the Convention.

24. In the debate that followed, widespread appreciation was expressed to the Russian Federation for its hospitality. The outgoing Head of the Convention Secretariat was commended for his efforts to promote tobacco control and his successor was congratulated on her appointment. Parties emphasized the need to continue and further accelerate implementation of the Convention and highlighted the need for partnerships between government and civil society as well as strong collaboration with the Convention Secretariat to that end. A number of Parties outlined measures taken at the national level to implement the Convention since COP5, including drafting legislation and raising awareness among consumers and policy-makers. Although progress had been made in reducing tobacco consumption and the associated health, economic and environmental problems, challenges remained. Several Parties highlighted the need to mobilize resources to assist countries with limited means in implementing the Convention. Many Parties drew attention to the importance of promoting the entry into force of the Protocol to Eliminate Illicit Trade in Tobacco Products, and a number indicated that the process was under way.

25. Parties emphasized the need to counter the aggressive tactics of the tobacco industry, including, in particular, legal challenges and the promotion of alternative nicotine products, and to resist industry interference in tobacco control activities. Several Parties encouraged further work to ensure that domestic public health policies with respect to tobacco control were protected from commercial and other vested interests of the tobacco industry in accordance with Article 5.3 of the Convention. It was important to promote economically viable alternatives to tobacco growing, as farmers were also under pressure from the industry. At the same time it was pointed out that tobacco-growing was a mainstay of the economy in some countries, opportunities for diversification were limited and due consideration must be given to ensuring the livelihood and welfare of farmers. Many Parties outlined the price and tax measures they had taken to reduce the demand for tobacco; in that regard, several expressed support for the draft guidelines for implementation of Article 6 of the Convention contained in the Annex to document FCTC/COP/6/7. The need to respect States’ fiscal sovereignty was underlined, however.
4. TREATY INSTRUMENTS AND TECHNICAL MATTERS

4.1 Status of the Protocol to Eliminate Illicit Trade in Tobacco Products

Document FCTC/COP/6/6

26. The Convention Secretariat introduced its report on the status of the Protocol to Eliminate Illicit Trade in Tobacco Products, adopted by COP5 in decision FCTC/COP5(1). The report outlined the activities undertaken to promote the Protocol’s entry into force. Parties were invited to complete an online questionnaire regarding what challenges they faced in ratifying, accepting, approving or acceding to the Protocol and how the Convention Secretariat could best support them in overcoming those challenges.

27. Many Parties said that they expected to accede to the Protocol before the seventh session of the COP. Many also noted their need for capacity-building assistance and support in developing laws and regulations relating to illicit trade in tobacco products. The importance of international coordination and cooperation to combat such trade and the need for regional arrangements to facilitate implementation of the Protocol after its entry into force were highlighted. Parties reported on their efforts to implement the Protocol’s provisions even before its entry into force, including through the introduction of track and trace systems and the enactment of legislation. It was suggested that the Convention Secretariat should work with the WHO regional offices to promote the exchange of information, experience and best practices in that regard. Some Parties called for ongoing capacity-building assistance to be made available through the regional offices.

28. Committee A considered a draft decision on the status of the Protocol which proposed the establishment of an open-ended intergovernmental working group to prepare a draft budget and workplan for the first financial period following the entry into force of the Protocol, as well as the draft rules of procedure and financial rules of the Meeting of the Parties. The draft decision further requested the Convention Secretariat to provide Parties with technical and legal advice to assist them in their implementation of the Protocol.

29. An amended version of the draft decision was prepared by an informal drafting group to reflect the concerns expressed by Parties, notably about the cost-effectiveness of establishing an intergovernmental working group and how such a group would be financed. Some Parties suggested that the Convention Secretariat might be entrusted with the administrative preparations for the Meeting of the Parties. The revised draft decision was further amended by Committee A to indicate that the panel of experts the Convention Secretariat had been requested to establish should, inter alia provide Parties with technical and legal advice upon request, including on customs, tax administration and enforcement. One Party said that it wished to reserve the right to comment further on the mandate and financing of the panel of experts.
4.2 Guidelines for implementation of Article 6 of the WHO FCTC: “Price and tax measures to reduce the demand for tobacco”: report by the open-ended intersessional drafting group

Document FCTC/COP/6/7

30. A Party, speaking on behalf of the Chair of the open-ended intersessional drafting group established in accordance with decision FCTC/COP5(7) introduced the report and draft guidelines proposed, which were set out in document FCTC/COP/6/7. He briefly summarized the extensive and inclusive process leading to the preparation of the draft guidelines, which had begun at COP4. He drew attention to the position statement submitted by the European Union, and supported by Canada, Guatemala and the Philippines set out in paragraph 10 of the report. Concerning use of terms, he said that “share of taxes in retail price” should read “… inclusive of all taxes, accounted for by all relevant taxes on that product”. Since the draft guidelines had already been sent to all Parties for comment, he hoped that they could be adopted without change.

31. Parties considered a draft decision on guidelines for implementation of Article 6 of the WHO FCTC.

32. They emphasized that tobacco taxation was one of the most effective tobacco control interventions and welcomed the process that had culminated in the elaboration of the draft guidelines for implementation of Article 6 of the Convention. Strong support was expressed for the adoption of the draft guidelines without change, since they did not infringe upon the sovereign right of Parties to establish their own taxation policies and drew on the best available evidence and best practices. Some Parties highlighted the need for further work by the Convention Secretariat concerning data collection and technical assistance, and for additional efforts to prohibit or restrict the sale of tobacco products in tax- and duty-free shops.

33. Several Parties, including Guatemala, Japan, the former Yugoslav Republic of Macedonia and Uruguay, expressed reservations about the provisions of section 3.2 of the draft guidelines, which some felt would infringe countries’ sovereign right to determine their own taxation policies. The reference in footnote 1 to a WHO recommendation that tobacco excise taxes account for at least 70% of the retail prices for tobacco products was considered especially problematic, and some Parties recommended its removal. Support was expressed for the position taken by the European Union, namely that a reference to a particular tax or excise rate in a WHO publication should not be understood as being a recommendation by the WHO FCTC to its Parties.

34. The delegation of Guatemala said that it could accept the draft guidelines without the removal of footnote 1, provided that its position on the matter, as reflected in document FCTC/COP/6/7, paragraph 10, was noted in the report of the COP. Guatemala was already applying a tax of 100% on some tobacco products, and a recommendation of 70% might make it appear that its policy was excessive. Guatemala also wished to reiterate its position with regard to the scope of the draft guidelines, also reflected in document FCTC/COP/6/7).

35. At its 4th plenary meeting on 15 October, the COP adopted the amended guidelines, as appended to the first report of Committee A (document FCTC/COP/6/A/R/1), as decision FCTC/COP6(5).
4.3 Implementation of Article 19 of the WHO FCTC: “Liability”: report by the expert group

Document FCTC/COP/6/8

36. At its fifth session, the COP had (in decision FCTC/COP5(9)) established an expert group on liability that was mandated to report on facts, information and options in relation to implementation of Article 19 of the WHO Framework Convention on Tobacco Control (WHO FCTC) to the sixth session of the COP. The group’s report was contained in document FCTC/COP/6/8.

37. Committee A discussed a draft decision on the implementation of Article 19. Introducing the draft decision, the Chairperson of the expert group noted that liability claims were a powerful, but currently underused, way of obtaining compensation from the tobacco industry. Such claims required painstaking preparation and were perceived as being difficult to pursue because of their legal complexity, the superior resources at the disposal of the tobacco industry and the delaying tactics it employed. Parties needed more expert advice and information about current best practices.

38. In the ensuing discussion, Parties stressed the need for generic guidance relevant to different legal systems: a model law, for instance, might not be suitable for use by all Parties.

39. Many Parties considered that, given the technical nature of the subject, it would be better to continue work on the issue of liability by renewing and expanding the mandate of the existing expert group. Others preferred the proposal in the draft decision to establish a working group of governmental representatives, with technical support from the Convention Secretariat.

40. An amended version of the draft decision was prepared by an informal drafting group. The drafting group had decided that it would be preferable to renew the mandate of the expert group as set out in decision FCTC/COP5(9), but to ask the group to focus mainly on civil liability, not criminal liability, as there had been few tobacco-related criminal cases to date and therefore little information on criminal liability was available; at the same time, much work remained to be done in order for the expert group to complete its mandate in relation to civil liability.

41. Several Parties felt strongly that the expert group’s mandate should continue to include criminal liability. It was pointed out in that regard that the provisions of Article 19 of the Convention relate to both civil and criminal liability and that the expert group had not completed its mandate with regard to criminal liability, either.

42. After further informal consultations a compromise solution was proposed whereby the COP would renew the mandate of the expert group in accordance with decision FCTC/COP5(9) and request the group, prior to COP7, to complete its work and provide a final report on approaches that might assist Parties to strengthen civil liability mechanisms across a variety of legal systems. It was noted that the group would thus retain its original mandate, which encompassed work in respect of both criminal and civil liability.

43. The draft decision was amended to incorporate Parties’ views and discussed further by Committee A. It was agreed that the expert group would comprise three experts and two observers from each of the WHO regions. The members would be nominated only by Parties, and the observers by either Parties or non-Parties: attendance by the observers would have no financial implications for
the COP. Equitable representation of all WHO regions would be ensured. The report of the expert group to COP7 should cover all areas of its mandate, including any work done on criminal liability.

### 4.4.1 Smokeless tobacco products

*Document FCTC/COP/6/9*

44. At its fifth session, the COP requested the Secretariat (in decision FCTC/COP5(10)) to invite WHO to examine several issues in relation to smokeless tobacco and electronic nicotine delivery systems, and to report on the outcome at COP6. The report contained in document FCTC/COP/6/9 described the outcome of the previous two years’ work, and requested the COP to provide further guidance.

45. Committee A discussed a draft decision on smokeless tobacco products. Parties emphasized the fact that smokeless tobacco products posed a genuine and fast-growing public health problem, not least because the great diversity of products on the market made it difficult to recommend universally applicable countermeasures. Several Parties reasserted their view that Article 4.4 of the WHO FCTC applied to all tobacco products, including smokeless products, and said that the latter should be regulated with the same rigour as traditional tobacco products. Some Parties called for a comprehensive ban on both existing and new smokeless products.

46. Concern was expressed about the growing involvement of the tobacco industry in the marketing of smokeless tobacco products, including its unproven claims that they were less harmful to health. Parties requested technical assistance in their efforts to combat the use of such products, notably the imposition of price and tax measures, and for the creation of a formal mechanism (e.g. a knowledge hub) to promote the collection and sharing of data on their chemical composition, health effects, patterns of use and attractiveness to young people. Some Parties supported a proposal to establish an expert group to prepare a draft global strategy to counter the involvement of the tobacco industry in the marketing of smokeless tobacco products, for consideration at COP7. An amended version of the draft decision, incorporating Parties’ suggestions, was prepared by an informal drafting group.

47. Some Parties supported a proposal to establish an expert group which would prepare a draft global strategy to counter the involvement of the tobacco industry in the marketing of smokeless tobacco products, for consideration at COP7.

48. An amended version of the draft decision, incorporating Parties’ suggestions, was prepared by an informal drafting group. This was further amended by Committee A to reflect the wish of some Parties to specify areas for which product-specific policies and regulations might be developed (e.g. packaging, advertising, tax measures) and the need to take into account the provisions of the WHO FCTC. The discussion on the suggestion that the policies and regulation in question might take into account a Party’s international obligations as well as its domestic law was eventually resolved by including a reference to “applicable legal provisions”. A separate subparagraph on possible policies and regulations for public health measures (education, awareness-raising) was added.
4.4.2 Electronic nicotine delivery systems, including electronic cigarettes

Document FCTC/COP/6/10 Rev.1

49. At its fifth session the COP had requested the Convention Secretariat to invite WHO to examine emerging evidence on the health impacts of the use of electronic nicotine delivery systems (ENDS) and to identify options for their prevention and control for consideration at the sixth session of the COP. Document FCTC/COP/6/10 Rev.1 incorporated deliberations and scientific recommendations on ENDS by the WHO Study Group on Tobacco Product Regulation and analysis from a recent WHO survey on tobacco products, and requested the COP to provide further guidance.

50. Committee A considered a draft decision on prevention and control of electronic nicotine delivery systems, including electronic cigarettes, which, inter alia, invited Parties to consider taking measures to minimize potential health risks to ENDS users and non-users and requested the Convention Secretariat jointly with WHO to form an expert group to report to the COP at its seventh session with an update on the evidence of the health impacts of ENDS.

51. Parties welcomed the draft decision, but some considered that it should be worded more strongly and that its scope should be broadened to cover other similar electronic delivery systems. Some parties outlined the approaches they were taking with respect to ENDS, and a number expressed support for a complete ban on the sale, manufacture, import and export of ENDS. The need for further scientific evidence and research was highlighted, including on the health risks to users and non-users, the efficacy of ENDS as a smoking cessation aid, and the impact of such delivery systems on tobacco-control efforts and as a gateway to nicotine addiction. Some Parties said that WHO should provide an updated report on those issues to COP7, and others emphasized that the expert group should be composed of independent scientific experts and policy-makers.

52. While some Parties called for ENDS to be regulated as tobacco products, another Party indicated that it could not support their classification as tobacco products.

53. A representative of the WHO Secretariat indicated that the report contained in document FCTC/COP/6/10 Rev.1 was also intended to cover non-nicotine electronic delivery systems.

54. A representative of the WHO Office of the Legal Counsel said that the official documentation provided by the Secretariat had been submitted for guidance and advice and, due to time constraints, would not be subject to correction by the Committee.

55. A representative of a nongovernmental organization called for immediate and concerted action to regulate ENDS and for further research on the health impacts of ENDS use.

56. The draft decision was revised by an informal drafting group to reflect the concerns expressed by Parties and discussed further by Committee A. Parties were in agreement on the majority of the revised text. However, several Parties were of the view that the title of the decision should mention both nicotine and non-nicotine products in order to make it clear that electronic delivery systems could be used with both types of products and to highlight the need to regulate both. Other Parties felt that it was sufficient to mention in the text of the decision and in a footnote that some products vaporized by electronic nicotine delivery systems might not contain nicotine. Several Parties also stressed the need
for consistency between the terminology used in the draft decision and in the report of the open-ended intersessional drafting group (document FCTC/COP/6/7).

57. After further consultation among the interested Parties, it was agreed to change the title to read “Electronic nicotine delivery and electronic non-nicotine delivery systems” and to insert the abbreviation “ENNDS” (non-nicotine delivery system) after “ENDS” throughout the text.

58. Several Parties were concerned about a request in the draft decision to the Convention Secretariat to invite WHO to prepare an expert report on, inter alia, the effectiveness of ENDS for smoking cessation, which might suggest that there was currently evidence that ENDS were effective for that purpose. In addition, referring only to smoking cessation might be interpreted to mean that other forms of nicotine consumption were acceptable. Following consultation among the interested Parties, it was agreed to substitute the wording “their potential role in quitting tobacco usage”.

59. Some Parties favoured removing wording that, in their view, might be construed to mean that it was acceptable to make unproven health claims about ENDS as long as they were not made by means that were false, misleading, deceptive or likely to create an erroneous impression about their characteristics, health effects, hazards or emissions. It was subsequently agreed to use wording similar to that appearing in the drafting group’s report: “prevent unproven health claims from being made about ENDS”.

60. The delegation of the Russian Federation suggested that ENDSS should not be regarded as consumer products and that therefore a reference in the decision to their regulation as consumer products should be removed. The delegation agreed to retain the reference to consumer products, provided its views were noted in the report of the COP.

4.4.3 Waterpipe tobacco smoking (item proposed by two Parties)

Document FCTC/COP/6/11

61. This agenda item had been proposed by two Parties in accordance with Rule 7 of the Rules of Procedure of the COP. Waterpipe tobacco smoking accounts for a significant and growing share of tobacco use globally. The COP was invited to note the information provided in document FCTC/COP/6/11, which outlines key facts about waterpipe tobacco products and reviews the prevalence, economics and environmental aspects of these products as well as Parties’ experiences; the report also addresses the need to identify best practices and promote and support strategies and policies to prevent and control waterpipe use and promote collaboration among Parties where waterpipe use is a major public health concern.

62. A representative of the Convention Secretariat introduced the report, highlighting the growing prevalence of waterpipe tobacco use around the world, especially among young people; the factors contributing to this rising prevalence, in particular the addition of flavourings, which increase the appeal of waterpipe tobacco products; the health risks associated with their use; and the need to strengthen knowledge and research on all aspects of the problem.

63. Committee A considered a draft decision proposed by a Party, which aimed to enhance surveillance of waterpipe use and strengthen implementation of the WHO FCTC in relation to waterpipe tobacco products. The draft decision also proposed to expand the mandate of the working
group on Articles 9 and 10 to agree on methods to test the content and emissions of tobacco used in waterpipes.

64. Parties affirmed the need for increased research, especially qualitative research in order to understand why people use waterpipe products and design effective interventions to discourage their use. Parties also noted the need to educate people about the risks and harmful effects of the use of such products and dispel misconceptions about their safety. The need to strengthen regulations and standards in respect of such products was highlighted. Some delegations favoured the inclusion of a provision calling for a ban on the import, distribution and sale of waterpipe tobacco products, but others felt that such a provision would render the decision unacceptable to many Parties, and after discussion it was decided not to include it. Several amendments were suggested in order to clarify or strengthen certain aspects of the draft decision.

65. The delegation of the Russian Federation indicated its intention to submit a proposed amendment to the report concerning the risk of infectious disease transmission as a result of waterpipe use.

66. The draft decision was amended by an informal drafting group and then discussed further by Committee A. It was agreed that the use of waterpipe tobacco products should be taken into account by the COP’s working groups, especially the working group on Articles 9 and 10 dealing with the regulation of the contents of tobacco products. Information on waterpipe tobacco products should be incorporated into existing knowledge hubs; there was no need to create a dedicated new hub. One Party highlighted the potential risks associated with all products used in waterpipes, whether they contained tobacco or not.

4.5 Economically sustainable alternatives to tobacco growing (in relation to Articles 17 and 18 of the WHO FCTC): report by the working group

Document FCTC/COP/6/12

67. At its fifth session, the COP had (in decision FCTC/COP5(8)) requested the working group established in decision FCTC/COP3(16) to continue to work, under a new mandate, and to conclude that work by its sixth session. The report by the working group, containing draft policy options and recommendations, was set out in document FCTC/COP/6/12.

68. Parties commended the efforts of the working group and some emphasized that the COP, which had been considering the issue since 2007, must adopt draft policy options and recommendations on economically sustainable alternatives to tobacco control at its current session. However, it was pointed out that the draft policy options and recommendations contained in the Annex to document FCTC/COP/6/12 required further refinement. For example, while the involvement of tobacco growers in policy development was important in order to achieve a viable solution, some Parties considered that Guiding Principle 2 could leave policy development vulnerable to interference from the tobacco industry.

69. It was noted that tobacco growing was a major source of revenue for a number of countries and that a sudden shift could upset the national economic balance. In that regard, the importance of international cooperation and information sharing was highlighted, and the Convention Secretariat was requested to provide examples of successful sustainable alternatives to tobacco growing.
70. An informal group was established to work, as a priority, on the draft policy options and recommendations in the light of the concerns expressed by Parties. The group prepared an amended version of the draft policy options and recommendations, which Committee A approved with no further changes. In the accompanying draft decision, Parties called for a report on the implementation of the decision to be submitted to COP7, incorporating case-studies and Parties’ experiences both before and since the decision’s adoption.

4.6 Further development of the partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC: “Regulation of the contents of tobacco products” and “Regulation of tobacco product disclosures”: report by the working group

Documents FCTC/COP/6/13, FCTC/COP/6/14 and FCTC/COP/6/14 Add.1

71. At its fifth session, the COP had adopted further partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC and had, in decision FCTC/COP5(6), mandated the working group that had originally been established in decision FCTC/COP1(15) and had received mandates at subsequent COPs, to continue its work in that area. One of the key facilitators introduced the report by the working group on progress on further development of the partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC contained in document FCTC/COP/6/13. The working group had not yet been able to reach consensus on draft text on testing and measuring nicotine and tobacco specific nitrosamines (TSNAs) or on the definition of “constituents” and sought further guidance from the COP.

72. A representative from the WHO Secretariat gave a brief overview of work being undertaken by WHO pursuant to decision FCTC/COP/5(6) in relation to Articles 9 and 10 of the WHO FCTC (document FCTC/COP/6/14). A report on progress of the validation of analytical chemical methods for testing and measuring cigarette contents and emissions was contained in document FCTC/COP/6/14 Add.1.

73. Committee A considered a draft decision on further development of the partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC, which, inter alia, requested the Convention Secretariat to invite WHO to assess, within two years, the applicability of the standard operating procedures to tobacco products other than cigarettes, and mandated the working group to continue elaborating guidelines.

74. One Party underscored the importance of achieving an agreed definition of “constituents”, and called for further scientific evidence regarding the correlation between nicotine levels and dependence. There was also a need for further scientific research on the impact of reduced ignition propensity cigarettes and on the nine toxicants recommended for mandated lowering. The delegation of Jamaica and one other Party expressed concern regarding deficiencies in ISO methods for testing cigarette emissions and considered that the working group should be mandated to submit a progress report on the disclosure, testing and measuring of contents and emissions to COP7 rather than draft partial guidelines.

75. In response to a comment from some Parties, the Head of the Convention Secretariat confirmed that matters relating to the workplan and budget and the proportion of activity cost covered by voluntary assessed contributions or extrabudgetary funds would be addressed by Committee B. COP7
would discuss the expediency of including in decisions wording requesting the Convention Secretariat to provide assistance and to make the necessary arrangements, including budgetary arrangements.

76. Parties commended the activities of the working group and WHO’s work in relation to Articles 9 and 10. One Party said that the working group should consider other tobacco products such as cigars and cigarillos, but it was pointed out that standardized methods to test and measure their contents and emissions did not yet exist. Several amendments were made to clarify and strengthen certain aspects of the draft decision and reflect the concerns expressed by Parties, notably the need for WHO to assess whether the standard operating procedures for nicotine and TSNAs in cigarette contents and emissions were applicable or adaptable to waterpipe tobacco products, and for further information on the toxic contents and emissions of waterpipe and smokeless tobacco products.

4.7 Impact assessment of the WHO FCTC

Document FCTC/COP/6/15

77. The Convention Secretariat introduced its report on impact assessment of the WHO FCTC, which had been prepared pursuant to decision FCTC/COP5(12). The report outlined options, with associated cost implications, for conducting an impact assessment of the WHO FCTC after its first 10 years of operation. The COP was requested to provide further guidance, in particular on the options and timeline.

78. Committee A considered a draft decision put forward by a Party, which called for an impact assessment to be conducted by a small independent expert group, with the group’s report to be submitted to COP7. The proposed purpose of the assessment would be to examine the impact of the WHO FCTC on the implementation of tobacco control measures and on the effectiveness of that implementation in order to assess the impact of the Convention as a tool for reducing tobacco consumption and prevalence after its first 10 years of operation. The group would be mandated to examine the Convention’s impact in selected Parties at different levels of economic development.

79. Parties generally supported the idea of an impact assessment, although some felt that the added value of such an assessment had yet to be clearly demonstrated and cautioned that, if an assessment was to be undertaken, it must have a clear focus and not overlap with existing evaluation tools. Those who favoured the idea were of the view that an impact assessment would yield important evidence for strengthening policies, planning future tobacco control activities and gaining support for the implementation of the Convention. It was considered important that the assessment should look not only at the Convention’s impact on the implementation of tobacco control measures, but also its health, social, economic and environmental impacts and its effects on socioeconomically disadvantaged groups and on children; additionally, it should take into account gender considerations. It was also suggested that the expert group should be mandated to propose indicators and methodologies for assessing prevalence and consumption.

80. Clarification was sought regarding the scope of the assessment and the Parties in which the Convention’s impact would be examined. It was proposed that three Parties should be selected from each of the four income categories used by the World Bank: low income, lower middle income, upper middle income and high income. The assessment would focus only on area 1 as identified in paragraph 24 of the Convention Secretariat’s report (document FCTC/COP/15). Area 2 would not be included because it was considered that there was already ample evidence of the health impacts of tobacco use.
In areas 3 and 4, on the other hand, data were insufficient. The assessment would comprise an initial phase of desk research, followed by more detailed data collection, policy analysis and interviews with key stakeholders in the selected Parties. The total cost was estimated at US$ 250 000.

81. An amended version of the draft decision was prepared by an informal drafting group and discussed further by Committee A. Some Parties maintained that the group’s independence, from both the COP and the Convention Secretariat, was more important than strict observance of equitable representation of all WHO regions, while others thought that members should be nominated by their governments in compliance with the principle of equitable representation. Several Parties stressed the importance of involving representatives of nongovernmental organizations, academics and other members of civil society.

82. It was agreed that the independent expert group would comprise seven experts, to be selected by the Bureau of the COP from candidates nominated by Parties and nongovernmental organizations accredited to the COP. The independent expert group, in consultation with the Bureau, would select the three Parties which would undergo the first impact assessments from the group of Parties which had expressed their willingness to do so.

4.8 Implementation of Article 5.3 of the WHO FCTC: evolving issues related to interference by the tobacco industry (item proposed by a Party)

Document FCTC/COP/6/16

83. A Party to the WHO FCTC proposed the inclusion of this item on the agenda of COP6, in accordance with Rule 7 of the Rules of Procedure of the COP. The aim was to address evolving issues regarding tobacco industry interference nationally and internationally. Document FCTC/COP/6/16 was prepared by the Convention Secretariat to support consideration of the item, providing a snapshot of the progress made in implementation of Article 5.3 of the Convention, examples of perceived tobacco industry interference, and a review of recent work by the Secretariat and its partners to assist Parties in implementation of this article. It also identifies potential areas in which implementation of measures under Article 5.3 of the Convention could be strengthened.

84. During the consideration of the item by COP6, a draft decision was put forward by a Party, urging Parties, inter alia, to strengthen their implementation of Article 5.3 and intensify collaborative action to address tobacco industry efforts internationally. The draft decision also proposed the establishment of an expert group mandated to undertake several activities aimed at furthering the implementation of Article 5.3, including investigating tobacco industry engagement in key international organizations that are in a position to contribute to WHO FCTC implementation and preparing a report on their impact on multisectoral collaboration for the implementation of the Convention; developing a model policy for international organizations to reject any contributions from the tobacco industry; elaborating on the specific roles of various ministries and international organizations with respect to the implementation of Article 5.3; promoting and developing reporting and related tools to encourage timely voluntary sharing of information to enhance monitoring of tobacco industry interference; and providing further options and strategies for support, raising awareness, international cooperation and exchange of information in order to strengthen implementation of Article 5.3. The proposed expert group would be asked to report on its findings to COP7.
85. In the discussion of the item within Committee A, broad support was expressed for the proposed decision. Parties described attempts by the tobacco industry to derail their tobacco control efforts and affirmed the need for strong international cooperation to prevent industry interference in the formulation of public health policies and measures relating to tobacco control and advance the implementation of Article 5.3 of the Convention.

86. It was suggested, and the COP agreed, that the functions of the expert group should include providing Parties with the guidance they need in order to accelerate the implementation of Article 5.3 through a report to COP7 on best practices, concrete experiences, tools and barriers to implementation. Parties called upon the Convention and WHO Secretariats to engage with international and regional organizations and seek their support in resisting interference from the tobacco industry. Parties were urged to adopt policies in line with the Article 5.3 guidelines for all levels of government, with particular emphasis on tobacco industry interference in diplomatic missions.

5. REPORTING, IMPLEMENTATION ASSISTANCE AND INTERNATIONAL COOPERATION

5.1 Reporting arrangements under the WHO FCTC: Establishment of a mechanism to facilitate review of Parties’ reports

Document FCTC/COP/6/17

87. In line with decision FCTC/COP5(11), the Convention Secretariat had prepared recommendations on the establishment of a mechanism to facilitate review of Parties’ reports by the COP. The Convention Secretariat presented document FCTC/COP/6/17, which contained proposals for the composition and mandate of such a mechanism, and introduced a draft decision on its establishment for the COP’s consideration.

88. Parties expressed support for the establishment of an expert body on strengthening implementation, which would be especially useful if it provided feedback and guidance that took account of the specific situations and needs of each Party. Several representatives inquired after the budgetary arrangements for the new expert body: had provisions already been made, and from what part of the budget would the body be financed? It was important to ensure that COP7 would review the expert body’s work and issue a decision on whether to prolong its mandate and whether any changes in composition or function would be required. Questions were raised with regard to how the expert members of the group would be appointed, whether they would be government representatives conducting peer review, or independent experts, and what precautions would be taken to avoid conflicts of interests. Particular concern was raised regarding the use of the term “intergovernmental expert group”. According to WHO practice, intergovernmental bodies took definitive decisions, whereas the recommendations made by the group would need to be discussed subsequently by the COP. The word “intergovernmental” should therefore not be used in reference to the expert group. The draft decision should be revised accordingly.

89. The Convention Secretariat explained that in the proposed workplan and budget for the financial period 2016–2017, funds had been allocated from voluntary assessed contributions to cover the costs of the work of the group.
The representative of the WHO Office of the Legal Counsel agreed that the term “intergovernmental” should not be applied to the expert group.

One Party suggested that rather than establishing a group of independent experts appointed by governments, a group of WHO technical experts would be better equipped to review implementation and provide guidance to Parties. While some Parties supported that suggestion, others felt that implementation of the Convention should remain under the aegis of the COP, and that the group should therefore comprise experts from Parties. WHO technical experts could, however, be invited to provide guidance and expertise.

The draft decision was amended to incorporate Parties’ views and discussed further in Committee B. Parties welcomed the amended draft decision and acknowledged the work done to reconcile differing opinions; nonetheless, one Party reiterated the view that the review of reporting arrangements should be a Party-led process and result in feedback to the Parties from the Convention Secretariat. In that context, experts should be appointed to the group by Parties, and the expression “independent expert group” should therefore be avoided. The proposed participation of one member of the working group on sustainable measures to strengthen the implementation of the Convention was welcomed; that member could be selected by the working group itself. In addition, WHO could be requested to designate one expert as a member of the expert group. The mandate of the expert group could begin before 2016.

An informal drafting group met to revise the draft decision, which was resubmitted to Committee B for further deliberations. A number of amendments to the text were proposed.

Subject to those amendments, Committee B approved the draft decision to be submitted to the COP for adoption.

### 5.2 International cooperation for strengthening implementation of the WHO FCTC

Document FCTC/COP/6/18

In decision FCTC/COP5(14), the COP had requested the Convention Secretariat inter alia to continue to cooperate with relevant departments and offices of WHO and to engage with WHO in the convening of annual meetings of the United Nations Ad Hoc Inter-Agency Task Force on Tobacco Control. In decision FCTC/COP5(13), the COP had further requested the Convention Secretariat to continue its work in promoting South–South and triangular cooperation, to implement a number of demonstration projects and to submit an implementation report to COP6.

The Head of the Convention Secretariat reported on the status of the four demonstration projects that were being implemented. In addition, knowledge hubs had been established at the McCabe Center for Law and Cancer (Melbourne, Australia), the National Institute of Health and Welfare of Finland and the Ministry of Public Health of Uruguay; potential hubs in other regions were being discussed. Details of ongoing cooperation with international and nongovernmental organizations were contained in the document under consideration.

A representative of the WHO Secretariat noted that in 2013 the Economic and Social Council had requested the United Nations Secretary-General to establish the United Nations Inter-Agency Task Force on the Prevention and Control of Non-Communicable Diseases by expanding the mandate of the
United Nations Ad Hoc Inter-Agency Task Force on Tobacco Control. Progress reports on implementation of the Convention had been submitted to the recently established Task Force at its second and third meetings. An aspirational global target on strengthening implementation of the Convention in all countries had been included in the report of the Open Working Group of the General Assembly on Sustainable Development Goals (document A/68/970).

98. A representative of the McCabe Center for Law and Cancer described the work being done by that knowledge hub.

99. Committee B considered a draft decision on achieving the global voluntary target on reduction of tobacco use. Parties commended the prominence given to the Convention in work on control of noncommunicable diseases and welcomed the clear objectives contained in the draft decision. A mechanism should be established to ensure technical, practical and financial support for the coordination of tobacco control measures at country and intercountry levels.

100. The draft decision, revised by an informal drafting group, was subsequently approved by Committee B with further minor amendments.

5.3 Sustainable measures to strengthen implementation of the WHO FCTC: report by the working group

Document FCTC/COP/6/19

101. In decision FCTC/COP5(14), the COP had established a working group on sustainable measures to strengthen implementation of the Convention. Introducing the item in Committee B, the Chairperson of the working group reported that the group had met twice, in October 2013 and April 2014, and had organized its work in five sections: mechanisms of assistance; resource mobilization; multisectoral coordination; international cooperation; and the visibility of the Convention in wider international forums. For each of those sections, its report contained background information, key findings, suggested actions and recommendations, and details of key stakeholders. In view of the fact that the mandate of the working group could not be completely fulfilled, a draft decision had been prepared, in which the COP would urge Parties to take action on the working group’s recommendations and would extend its mandate until COP7.

102. Parties commended the work done and the recommendations made by the working group and supported the proposal to extend its mandate. With regard to the draft decision, Parties asked for an operative paragraph to be included concerning a mechanism (to be operated jointly with WHO) for promoting measures against tobacco use by women and girls. Clearer reference should also be made to securing sustainable implementation of the Convention by including it in the post-2015 development agenda. Emphasis should be placed on the importance of a user-friendly methodological tool for assessing the economic impact of tobacco use. Work on developing options for a “coordination platform” to strengthen collaboration between Parties and international, intergovernmental, nongovernmental and other organizations, as called for in the draft decision, could start immediately after COP6.

103. The draft decision, revised by an informal drafting group to reflect the concerns expressed by Parties, was subsequently approved by Committee B with one further amendment.
5.4 Trade and investment issues, including agreements, and legal challenges in relation to implementation of the WHO FCTC

Document FCTC/COP/6/20

104. In decision FCTC/COP5(15), the COP had requested the Convention Secretariat to continue to cooperate with WHO, the World Trade Organization (WTO) and the United Nations Conference on Trade and Development (UNCTAD) on tobacco control, international trade and investment issues, and the provision of technical support to Parties; to facilitate the sharing of information by Parties on trade-related issues; to encourage communication and information-sharing between Parties’ trade and health officials; to monitor tobacco control-related trade issues; and to report regularly to the COP on those activities. In document FCTC/COP/6/20, the Convention Secretariat duly provided information on key activities since COP5. A draft decision had been prepared inter alia encouraging Parties to cooperate with one another in exploring all legally feasible options to prevent the tobacco industry from abusing international trade and investment rules. A second draft decision was also submitted, proposing that an expert group be established to deal with various matters relating to Article 27 of the Convention.

105. Parties emphasized the importance of State sovereignty and the need for States to abide by all their international legal obligations, but views differed as to whether there was a conflict between the provisions of the Convention and other existing agreements, notably those concluded under the auspices of WTO. Several Parties stated that there was no hierarchy in international law; on the other hand, some considered that, from a moral perspective, health concerns should take precedence over trade. Developing and low-income countries faced difficulties in balancing the health and economic needs of their populations, making them particularly vulnerable to pressure in negotiating trade agreements. It was suggested that improved implementation of other aspects of the Convention, such as promoting alternative livelihoods for tobacco growers, would obviate the need to tackle trade and investment issues and was a necessary precursor to action on trade and investment.

106. Some Parties expressed concern at attempts to exclude tobacco from future trade negotiations or to deal with tobacco products uniquely; others highlighted the unique nature of tobacco products and their harmful effects. Tobacco was the only commodity to be covered by a legally binding international agreement. In that regard, attention was drawn to a WTO decision accepting that tobacco products could be treated as an exception under the General Agreement on Tariffs and Trade, provided that the principle of non-discrimination was respected. While concern was expressed at the effect on tobacco control measures of legal challenges mounted by the tobacco industry and others, the need to ensure due process in trade dispute settlement procedures was also underlined. Dispute settlement mechanisms should not be seen as legal obstacles in and of themselves. It was important to share information on domestic and international legal disputes faced by Parties with regard to their tobacco control measures.

107. While a number of Parties expressed support for the establishment of a group of experts on Article 27 of the Convention, there was considerable discussion as to the potential scope of its work. Questions were raised concerning the cost-effectiveness of an expert group and whether its proposed area of work more properly fell within the purview of the COP. Several Parties emphasized that effective mechanisms for settling trade disputes already existed and that conflict with such mechanisms should be avoided. In response, it was pointed out that Article 27 of the Convention concerned the resolution of any dispute between Parties on the interpretation or application of the
Convention itself, and that the mandate of the proposed group of experts would not be restricted to trade and investment matters. Furthermore, the main purpose of the proposed expert group would be to study an appropriate and effective way of implementing Article 27.2 of the Convention.

108. In reply to questions, the Convention Secretariat gave an assurance that Parties would be kept informed of WTO decisions that affected tobacco control and a representative of the WHO Office of the Legal Counsel said that, if an expert group on Article 27 were established, it would need to consider mechanisms available in other forums to ensure that Parties could meet all their obligations.

109. With regard to the first draft decision, some Parties supported the text as drafted, some proposed specific amendments, and some indicated that they could not accept the draft as it stood. Certain reservations were expressed on the second draft decision but it also enjoyed some support. A number of amendments to the text were proposed.

110. Both draft decisions were revised by informal drafting groups to reflect the concerns expressed by Parties.

111. Committee B’s discussion of the revised version of the first draft decision focused largely on whether mention should be made of Parties’ sovereign right to exclude tobacco from trade and investment agreements. While some held that Parties would be able to use such text to bolster their arguments in support of that right, most felt it inappropriate to include a specific reference to it. The effects of such a provision would be unclear, particularly as it could only apply to future agreements; moreover, the international law of treaties and the interaction between different instruments must be taken into account. It was also pointed out that there was an inherent contradiction in seeking to influence how sovereign rights should be exercised. The need for decisions of the COP to set out clear deliverables was highlighted.

112. In discussing the revised version of the second draft decision, Parties touched on various aspects of the relationship between WTO and the Convention and its Secretariat. Attention was drawn to the public health safeguards contained in the Doha Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Public Health. The importance of avoiding wording COP decisions in such a way that the tobacco industry might be able to use them to its advantage was emphasized.

113. In reply to a question about ad hoc arbitration of disputes between Parties, a representative of the WHO Office of the Legal Counsel explained that all decisions of the COP should be read in the light of the text of the Convention.

114. Discussion on both draft decisions continued in informal drafting groups.

115. Further revised versions of the two draft decisions were subsequently approved by Committee B with some amendments.
6. BUDGETARY AND INSTITUTIONAL MATTERS

6.1 Performance report for the 2012–2013 workplan and budget

Document FCTC/COP/6/21


117. A Party welcomed the detailed information provided in the report and congratulated the Secretariat on the accomplishment of its activities. All Parties should strive to meet their reporting obligations and their financial commitments.

118. The COP took note of the report contained in document FCTC/COP/6/21.

6.2 Interim performance report for the 2014–2015 workplan and budget

Document FCTC/COP/6/22

119. In line with decision FCTC/COP5(19), the Head of the Convention Secretariat introduced an interim performance report on the workplan and budget for the financial period 2014–2015, contained in document FCTC/COP/6/22, which provided information on the status of implementation of the first six months of the workplan and budget. An addendum to the document was made available, containing an update on financial implementation as at 30 September 2014. She drew particular attention to Annex 2, which outlined outstanding contributions and urged all Parties that had not yet done so to pay their arrears. Some activities planned for the biennium would not take place, such as the Meeting of the Parties (MOP) to the Protocol to Eliminate Illicit Trade in Tobacco Products. The Secretariat would appreciate the COP’s guidance on how to use the funds that had been set aside to finance that meeting.

120. The report was welcomed and the significant role of the Secretariat in the work of the United Nations Interagency Task Force on the Prevention and Control of Noncommunicable Diseases was commended. Regarding the reassignment of funds that had been set aside for the organization of the first MOP, the Head of the Secretariat said that US$ 180 000 would be allocated to holding two workshops for four representatives from relevant sectors in each country – law enforcement, health, customs, foreign affairs, among others – to promote the entry into force of the Protocol. The remaining funds would be used to allow the proposed expert panel on the Protocol to begin its work on promotion and awareness raising as soon as possible.

121. As to why the funds available as at 31 December 2013 as reported in document FCTC/COP/6/21 differed considerably from the funds available as at 1 January 2014 as reported in document FCTC/COP/6/22, the Head of the Secretariat explained that the closing balance at 31 December 2013 referred to the real funds available, whereas the opening balance at 1 January 2014 referred to the funds that would have been available if all dues, including outstanding voluntary assessed contributions and pledged extrabudgetary funds, had been paid.
122. Committee B approved a draft decision prepared by the Convention Secretariat concerning the reassignment of funds that had been set aside for the organization of the first MOP.

6.3 Voluntary assessed contributions

Document FCTC/COP/6/23

123. In accordance with decision FCTC/COP/5(17), the Secretariat presented a report, contained in document FCTC/COP/6/23, on the feasibility of changing from voluntary assessed contributions to assessed contributions and other possible incentives for Parties that continued to default in their payments. Paragraphs 20–23 of the report provided questions for the COP’s consideration.

124. During Committee B’s deliberations, while several Parties considered that the term “voluntary” should no longer be used, others expressed concern that contributions would then become obligatory for all Parties. A sense of obligation might, however, encourage Parties in arrears to make some of their contributions. Although the capacity of the Secretariat had hardly changed since its establishment, its workload had increased considerably. Despite the high level of commitment, that situation would not be tenable; financial resources were therefore crucial. Decisions changing the nature of Parties’ financial commitments should be approached with caution, particularly since the original decision to refer to the contributions as “voluntary” had been negotiated very carefully by COP1. Any such decision should be acceptable to all stakeholders.

125. Responding to a question on whether WHO FCTC programme support costs could be harmonized with those of WHO, the Secretariat responded that assessed contributions levied by the World Health Assembly did not have programme support costs applied to them. That was not the case for contributions levied by the COP. The COP could choose to maintain the current rate of 13 per cent, or alternatively it could either choose to itemize all costs, or apply a flat percentage to some services and itemize others. Referring to the principles applied in respect of other treaties, the Secretariat explained that there were two models: obligatory assessed contributions, and “an indicative scale of contributions decided by the COP that each party intends to pay”. Although the word “obligation” was not used in the latter case, the broad understanding was that there was an expectation of payment.

126. Following a request to suspend the discussions to allow for informal consultations, one Party proposed a draft decision for consideration, which would request the Convention Secretariat to undertake appraisals of those Parties that had arrears in their payments of voluntary assessed contributions, and in so doing identify the challenges those Parties were facing and consider what support could be given to them to assist them in meeting their financial and reporting responsibilities. Those appraisals would be submitted to COP7 for consideration and a decision could be made as to whether further action was required, including reassessing the voluntary nature of Parties’ financial contributions. In the ensuing discussion, some Parties expressed support for making assessed contributions mandatory.

127. Committee B approved the draft decision to be submitted to the COP for adoption.
6.4 Proposed workplan and budget for the financial period 2016–2017

Documents FCTC/COP/6/24 Rev.1, FCTC/COP/6/INF.DOC./1 and FCTC/COP/6/INF.DOC./2

128. In accordance with Article 23.4 of the Convention, the COP was required to adopt the budget for the financial period until its next ordinary session. Committee B discussed the proposed workplan and budget for 2016–2017 prepared by the Convention Secretariat (document FCTC/COP/6/24 Rev.1), together with the detailed information contained in an explanatory note (document FCTC/COP/6/INF.DOC./1).

129. With regard to travel support, the COP had decided at its fifth session (in decision FCTC/COP5(18)) that until and including COP6 it would finance the per diem of least developed countries from voluntary assessed contributions (VAC); continue to finance travel for low- and lower-middle-income countries on the budget financed by VAC; and cover the costs of the corresponding per diem with resources available from extrabudgetary funds. The Convention Secretariat had also been requested to take account of that decision in its proposed workplan and budget for 2016–2017 and to prepare a report to COP6 containing all available information on travel support to the Parties since the entry into force of the Convention. The relevant information was duly submitted to the COP in document FCTC/COP/6/INF.DOC./2.

130. The Head of the Convention Secretariat drew Committee B’s attention to the fact that the proposed workplan and budget for 2016–2017 had been prepared on the basis of zero nominal growth in VAC funding, while extrabudgetary funds were expected to be some US$ 1.5 million higher than in the 2014–2015 budget. The proposed workplan and budget for 2016–2017 had been divided into two parts: Part I covered activities to be undertaken in relation to the Convention, while Part II related to those to be carried out by the Convention Secretariat in the interim period until the entry into force of the Protocol to Eliminate Illicit Trade in Tobacco Products. Part I was composed of six areas of work, in general following the 2014–2015 workplan, and Part II consisted of three main areas of work. The indicative costs for core Convention Secretariat staff (to be financed from VAC) amounted to US$ 5.3 million, while additional staff costs (pending extrabudgetary funding, secondments and entry into force of the Protocol) were US$ 5.1 million. Core staff costs had been held as close as possible to the level in the 2014–2015 workplan. Possible additional staff could include one professional staff member or consultant support in each of the six WHO regional offices. The proposed activities and budget figures would doubtless need to be reviewed in the light of decisions taken at COP6, notably concerning the use of the budget allocation proposed for the first session of the Meeting of the Parties to the Protocol (MOP).

131. In the ensuing discussion, Parties supported the approach of aiming for zero nominal growth in VAC funding and of presenting the workplan and budget in two parts. They expressed concern, however, at the high proportion of costs attributed to staff and programme support and suggested that innovative steps should be taken to increase VAC. In reply to questions raised, Parties were informed that decentralization of funds through WHO regional and country offices could facilitate the implementation of activities at country level. Notwithstanding doubts about sustainability, the placement of Convention Secretariat staff at regional level would strengthen cooperation with WHO and capacity for providing support to countries. It was also explained that the increased budget for the first session of the MOP arose from a more realistic estimate of costs, taking account of elements such as travel and interpretation, and that all Convention Secretariat staff would be engaged in work to promote ratification of the Protocol.
132. Parties believed that it was risky to propose financing activities in the fourth area of work on the Convention exclusively from extrabudgetary funds, given that the core business of the Convention Secretariat lay in continuing to assist Parties in meeting their obligations under the Convention. Despite welcoming the provision for closer cooperation with civil society in the fifth area of work, they therefore proposed that VAC funding be shifted to the fourth area of work from there, as well as from area of work 6.3 (coordination with relevant departments and offices of WHO). Furthermore, they proposed that the funds allocated for the first session of the MOP in the 2014–2015 budget be used to cover activities in the first area of work in Part II of the proposed workplan and budget for 2016–2017 (preparing the entry into force of the Protocol). Similarly, they suggested that the resources being set aside to fund Convention Secretariat staff positions at regional level could be used to fund activities in the fourth area of work. To avoid the Convention being exposed to irregular sources of funds, the COP was urged to resolve that extrabudgetary funding should be from sources that did not breach the principles of Article 5.3 of the Convention.

133. Several Parties proposed the adoption of a decision establishing an FCTC policy on travel support, consisting of the provision of an economy air ticket and payment of per diem for one representative of each low- and lower-middle-income Party.

6.5 Process for appointment and renewal of the term of office of the Head of the Convention Secretariat: report by the Bureau of the Conference of the Parties

Document FCTC/COP/6/25

134. In line with decision FCTC/COP5(21) the Bureau, in consultation with the Parties, had finalized the process for appointment and renewal of the term of office of the Head of the Secretariat on a provisional basis. That process had then been followed for selection and appointment of the new Head of the Secretariat, and she had taken up her duties, as planned, in June 2014. The Bureau’s report on the matter summarized the actions it had taken and contained recommendations for the process in future.

135. Parties supported the draft decision contained in an annex to the Bureau’s report. However, one Party drew the attention of Committee B to the fact that the selection panel for appointment of the new Head of the Secretariat had consisted not only of the six members of the Bureau, as mandated by COP5, but also of two representatives of the WHO Director-General, thereby disenfranchising the regions. It accordingly suggested that the Bureau and regional coordinators should constitute the selection panel for future appointments of the Head of the Secretariat. It further suggested that each term of office of the Head of the Secretariat should be for a period of four years, renewable once, and that renewal should be subject to performance evaluation. Another Party proposed that regional coordinators should be invited to observe the complete selection process and should support the Bureau in preparing proposals concerning the process and methodology by which the performance evaluation of the Head of the Secretariat could be conducted.

136. The draft decision was revised by an informal drafting group to incorporate the proposed amendments, and resubmitted to Committee B for consideration.

137. Further to two drafting amendments submitted on behalf of the African Region, Committee B approved the draft decision to be submitted to the COP for adoption.
6.6 Review of accreditation of nongovernmental organizations with the status of observer to the Conference of the Parties

Document FCTC/COP/6/26

138. In line with Rule 31.1 of the Rules of Procedure of the COP regarding reviewing the accreditation of nongovernmental organizations (NGOs) with the status of observer, the Secretariat presented a report containing a summary analysis of the activities undertaken by the 26 accredited NGOs in support of implementation of the Convention, and the Bureau’s recommendations to the COP on whether to maintain, suspend or discontinue the observer status of those NGOs. The report also contained the Bureau’s proposals for a standard reporting questionnaire for NGOs.

139. The agenda item was referred to Committee B and a draft decision was prepared for its consideration. Two Parties welcomed the recommendations on the form at for reporting and proposed a number of amendments. One suggested that before having their observer status withdrawn NGOs should be given an opportunity to explain why they had not reported on their activities.

140. The Committee discussed the draft decision to continue observer status for 16 NGOs that had submitted a report on their activities and attended at least one session of the COP. It decided to discontinue the status of eight NGOs that had not submitted a report or attended a session of the COP and to defer its consideration of the status of the two remaining NGOs, which had attended meetings of the COP but had not submitted a report on their activities. During the discussion, further information was requested on the activities of one NGO.

141. Committee B approved the draft decision to be submitted to the COP for adoption.

6.7 Participation of members of the public in sessions of the Conference of the Parties and its subsidiary bodies (item proposed by a Party)

Document FCTC/COP/6/27

142. The question of participation of members of the public in sessions of the COP and its subsidiary bodies had been raised by a Party during COP5. The Party had formally requested inclusion of the matter on the provisional agenda of COP6. The Bureau had considered the matter and consulted the Parties to collect their views on the subject, and had subsequently drawn up the document under consideration. The Party had also proposed a draft decision requesting the Convention Secretariat (a) to require members of the public wishing to attend public meetings for the remainder of COP6 to complete a declaration affirming that they were not affiliated with the tobacco industry and (b) to adopt the procedures proposed in the document for screening and issuance of badges to members of the public, including members of the media, at COP7 and subsequent sessions.

143. In view of the urgent need to prevent the tobacco industry from exerting influence over its proceedings, COP6, at its first plenary meeting, agreed to exclude the general public from its meetings with immediate effect.

144. With regard to future meetings, clarification was requested, during subsequent discussions in Committee B, as to how the Convention Secretariat would screen applications for participation. While vigilance was welcome, it would never be possible to fully guarantee that those in attendance did not
have connections with the tobacco industry. One Party urged caution with regard to restricting public attendance, since it could lead to pressure for those representing the interests of tobacco growers to be included in national delegations. Since decisions of the COP were public, there was no reason to restrict participation in plenary meetings, unless otherwise decided in line with the Rules of Procedure. Meetings of subsidiary bodies, however, should not be public. Provisions should be made to ensure that access to meetings could be withdrawn if a member of the public in attendance was found to have connections with the tobacco industry.

145. The Secretariat explained that unlike current practice, which was for members of the public wishing to attend the public meetings of the COP to simply register their attendance at the COP meeting registration desk, a new screening procedure would require them to apply one month in advance. The Secretariat would then be able to review applications and seek any further information or clarifications it deemed necessary.

146. An informal drafting group met to revise the draft decision. Committee B considered the revised draft, pursuant to which future meetings of the COP would be held in public, unless the COP decided that they should be open or restricted. Meetings of all subsidiary bodies would be open, unless the COP decided otherwise. Members of the media would be considered as members of the public, except that they would be subject to a specific accreditation process. Members of the public would be expected to apply to attend meetings of the COP, and in doing so would be required to sign a declaration stating whether they had any affiliation with the tobacco industry. The information contained in those declarations would be made available to the Bureau, and to Parties on request.

147. In the ensuing discussion, while Parties acknowledged that transparency in the proceedings of the COP was important, opinions were divided on whether members of the public with affiliations to the tobacco industry should be allowed, unrestricted, into the plenary meetings of the COP. Although some Parties felt that public meetings should be accessible to all members of the public, others considered the admission of persons with links to the tobacco industry could hamper, or in some cases even threaten, the work of the COP.

148. In spite of further informal consultations held in an attempt to reach consensus, Committee B remained divided on the subject of allowing members of the public, who might be affiliated to the tobacco industry, to attend the plenary meetings of the COP. It was agreed that discussions on matter would be discontinued, and any Party wishing to raise the issue in future could propose it for inclusion on the agenda of a subsequent session of the COP.

6.8 Possible amendments to the Rules of Procedure of the Conference of the Parties (item proposed by a Party)

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149. Following the proposal by a Party to include the item on the agenda of COP6, the Bureau had undertaken a review of the Rules of Procedure and identified areas that either were not addressed or required further clarification. They related in particular to the role of the Bureau in the intersessional period; attendance of the public; procedures for applications for the status of observer to the COP; and the role of the regional coordinators.
150. Committee B accordingly considered a draft decision on adopting proposals for amendments to the Rules of Procedure and conducting a further review before COP7. While the clearer articulation of the roles of the Bureau and regional coordinators was welcomed, several Parties called for amendments to be made to the draft decision, inter alia allowing for regional coordinators to be involved in the further review of the Rules of Procedure and to observe meetings of the Bureau at their own expense, as well as harmonizing their terms of office with those of members of the Bureau. One Party expressed the view that States which were not Parties to the Convention, if they were granted observer status, should not have the right to speak.

151. The draft decision was revised by an informal drafting group to incorporate the proposed amendments and resubmitted to Committee B for discussion. It was suggested that the proposed amendments to the rules of procedure that had been drafted in conjunction with the draft decision on agenda item 6.7 should be deleted, since that draft decision had not been approved.

152. On that understanding, Committee B approved the draft decision to be submitted to the COP for adoption.

153. One Party proposed a further draft decision for Committee B’s consideration, proposing an amendment to Rule 18 of the Rules of the Procedure, which requested the Convention Secretariat to present to the COP and subsidiary bodies at each session a compilation of declarations of affiliations with the tobacco industry. That would require Parties, when submitting credentials, to file a declaration stating whether any members of their delegation had any form of real, perceived, or potential conflict of interest. Such an amendment to the Rules of Procedure would improve transparency in the COP’s proceedings.

154. In the ensuing discussion, while many Parties welcomed the proposal, one Party expressed reservations regarding the requirement to submit a declaration on conflict of interest. Particular concerns were raised with regard to the definitions of “real”, “perceived” and “potential” conflicts of interest. It was agreed that informal consultations would be held in the hope of finding a solution to meet those concerns and amend the text accordingly.