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FIRST MEETING

Monday, 30 April 2001, at 9:30

Chair: Mr C.L. NUNES AMORIM (Brazil)
Later: Ms J. BENNETT (Australia)

1. OPENING OF THE SESSION AND ADOPTION OF THE AGENDA: Item 1 of the Provisional Agenda (Document A/FCTC/INB2/1)

The CHAIR declared open the second session of the Intergovernmental Negotiating Body on the WHO framework convention on tobacco control. The task of providing the international community with an effective legal instrument that would prevent the increase of tobacco-related diseases while addressing legitimate social concerns was both an urgent and a delicate one. Considerable progress had been made during the first session, enabling him to present a text that he hoped would expedite the formulation of a document representing the collective wishes of all participants.

The DIRECTOR-GENERAL, after welcoming the participants, pointed out that in the current year more than two million of the annual global tobacco death toll of four million would occur in the developing world. By 2030, the total annual death toll would have reached 10 million, and seven million of those deaths would take place in developing countries. New data also showed that children were taking up smoking at an increasingly young age: in some countries 10-year-olds were addicted to tobacco. Every obstacle placed in the way of curbing such an epidemic had to be seen against that public health reality, making the establishment of a set of global rules to control tobacco use a matter of extreme urgency.

There had been a series of regional consultations on the framework convention on tobacco control. The first had been held in Johannesburg, South Africa, and Member States of the African Region had used the occasion to call on the Intergovernmental Negotiating Body to ensure that the final negotiated text prioritized public health and that particular attention was devoted to the needs of African countries which were facing a double burden of disease. Similarly, at the recent South-East Asia regional consultation in Jakarta, Member States from the Region had stressed the pivotal public health dimension of the exercise. Member States from the Caribbean had also met, and had committed themselves to intensified action in preparation for implementation of the convention. The Eastern Mediterranean Region had taken the lead in a new area by holding the first WHO International Consultation on Litigation and Public Inquiries as Public Health Tools for Tobacco Control.

A global community of policy-makers, scientists and advocates calling for responsibility in public health had created an environment in which WHO could consider using a global treaty-making process for the purpose of control of tobacco use. Social scientists, economists, public health experts, women’s groups and lawyers had worked together with WHO during the past three years to deliver accurate information to that process, and had taken public health science and research to the highest levels of political decision-making. In the formulation of laws and regulations, informative and accurate feedback ensured that each new version was better than the last: the Chair’s text was unanimously recognized as an excellent start, which would undoubtedly be further improved upon during the forthcoming negotiations.

The CHAIR suggested that the method of work and timetable as set out in document A/FCTC/INB2/DIV/4 should be considered in conjunction with the provisional agenda contained in document A/FCTC/INB2/1. In accordance with the request made by several delegations, the timetable had been devised to ensure that working groups would not meet simultaneously. However, it was a
provisional arrangement, and two regular Bureau meetings had been provided for to allow suggested changes to be addressed.

The agenda and timetable were adopted.

2. SECRETARIAT UPDATE: Item 2 of the Agenda (Documents A/FCTC/INB2/4 and A/FCTC/INB2/5)

Dr DA COSTA E SILVA (Tobacco Free Initiative) said that in preparation for the second session, South Africa and Indonesia had convened consultative meetings earlier in the year to review the Chair’s text article by article, with a view to preparing regional negotiating positions in areas where consensus could be reached and to making proposals based on the text. Twenty-one countries had taken part in the African regional group meeting and eight in that convened by the South-East Asia group. Following the consultations, each group had adopted political declarations, known respectively as the Johannesburg and Jakarta declarations. PAHO had also convened a meeting of Caribbean countries in order to strengthen participation in the treaty-making process.

The United Nations Ad Hoc Interagency Task Force on Tobacco Control had held its third session via videoconference in December 2000, with the participation of eight agencies. It had been reported that plans were under way to organize an international technical consultation focusing on economic transition in tobacco manufacturing and agriculture in Kobe, Japan, in December 2001.

The WHO International Consultation on Litigation and Public Inquiries as Public Health Tools for Tobacco Control had been convened by the Eastern Mediterranean Region and held in Amman in February 2001. It had been recommended at that consultation that information on successful litigation experiences in the United States of America be disseminated to other countries; that different forms of litigation, legal action and public inquiries be identified in the light of specific national needs and specific legal frameworks; and that WHO should support interested Member States, civil society and regional initiatives in respect of tobacco litigation and public inquiries.

The second meeting of the Scientific Advisory Committee on Tobacco Products Regulation had been held in Atlanta, Georgia, from 31 January to 2 February 2001. Its aim had been to facilitate access by WHO to scientific information and to advise on international policy development in the area of tobacco product regulation. Deliberations at the meeting had focused on testing methods, on so-called “light” and “mild” labelling concerns, and on developing a common regulatory framework for tobacco products.

Lastly, a WHO workshop of international legal experts on international legal liability had been held in Geneva in April 2001 to explore the nature and scope of potential liability and compensation provisions in the proposed framework convention.

3. PARTICIPATION OF NONGOVERNMENTAL ORGANIZATIONS: Item 3 of the Agenda (Documents A/FCTC/INB2/6 and A/FCTC/INB2/6 Add.1)

Dr KEAN (External Cooperation and Partnerships) recalled that the first session of the Intergovernmental Negotiating Body had encouraged the Executive Board to expedite review of applications of nongovernmental organizations seeking to participate in the negotiations. The Executive Board, at its 107th session, had decided to institute a procedure whereby such organizations meeting the criteria for admission into official relations could be admitted to provisional official relations by the Chairman of the Board and the Chairman of the Board’s Standing Committee on
Nongovernmental Organizations. Those provisional relations would be reviewed by the Board at its subsequent January session.

As indicated in document A/FCTC/INB2/6 Add.1, Infact and the International Non-Governmental Coalition Against Tobacco (INGCAT), which met the required criteria, had been admitted to provisional official relations. They had therefore been invited to designate representatives to participate in the second session as nongovernmental organizations in official relations with WHO.

4. **DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 4 of the Agenda (Documents A/FCTC/INB2/DIV/1, A/FCTC/INB2/2 and A/FCTC/INB2/3)

The CHAIR recalled that, as agreed at the first session, he had undertaken to draft a Chair’s text, which was set out in document A/FCTC/INB2/2. That text, together with document A/FCTC/INB2/DIV/1, explaining how it had been prepared, had been distributed to Member States in January 2001.

The distribution of elements among the three working groups agreed to at the first session had been organized by subject area based on the proposed draft elements contained in document A/FCTC/INB1/2. However, in the Chair’s text, some of the proposed draft elements had been rearranged or merged, and one new element arising from the discussions during the first session, namely licensing, had been added. To ensure the two texts corresponded, there had had to be some renumbering as well as minor editorial changes, in addition to the inclusion of the new topic. It had been decided to distribute the provisions regarding general obligations and guiding principles among the three working groups, in order to move the negotiating process more speedily from the plenary to the working group stage. Following consultations with the Bureau and the Co-Chairs, a comparative table had been prepared and made available to the working groups. He took it that the groups could agree to begin their deliberations on the basis of that arrangement, bearing in mind that further refinements might have to be made during the course of the discussions.

Ms BILLUM (Sweden), speaking on behalf of the European Union and its Member States, stressed that tobacco control and the creation of the convention was a policy objective of the first importance for the European Community. Although an overall approach had to be taken during the negotiating process because tobacco use had social and economic, as well as health, implications, priority should be given to public health protection in view of the extent of the health problems arising from tobacco consumption. While recognizing the need to be realistic, she believed that the content of the future convention should provide a qualitative step forward in the struggle against tobacco use and addiction. To that end, she looked forward to a continued fruitful discussion and to the early conclusion of the negotiations. The obligations to be laid down in the convention should cover product regulation, the setting of international norms, price policy and its application, and the prevention and cessation of tobacco use.

Mr DANGOL (Nepal) said the current negotiations were the result of a long and rigorous series of initiatives, notably the Tobacco Free Initiative of 1998. He was confident that they would mark a significant milestone in the fight against tobacco use.

In Nepal, smoking was culturally accepted for both men and women, particularly in mountainous and hilly areas. The prevalence of tobacco use was as high as 74% among adults aged 20 years and over in such areas, and 17% among those between 15 and 64 years of age in the plains, and its control was therefore a major challenge for his country.

His Government supported all WHO initiatives for a tobacco-free society and was committed to taking action at the national level. A bill to control tobacco use had already been drafted, but a great deal of social mobilization and strong advocacy, based on evidence, would be needed if it was to be
adopted by Parliament. Alternatives to tobacco cultivation as a source of tax revenue would have to be developed and administrative instruments put in place for enforcement of the legislation. Over the next two years, his Government would be launching an information campaign against tobacco promotion and introducing rules and regulations for the control of tobacco use. A levy had been introduced on tobacco products which would be gradually increased, the revenues generated being used for health promotion.

He welcomed the opportunity to participate in the negotiations, and thanked WHO and other development partners for their support for health development in his country.

Mr MORA GODOY (Cuba) said his country was particularly concerned by issues relating to human health. In order to deal with problems caused by tobacco use, it was implementing a policy of legislative and practical action based on experience gained at national level, with the active participation of government ministries and institutions and of the whole of Cuban society. The aim was to reduce both active and passive tobacco consumption by means of education campaigns, priority being given to children and young persons, and by training health care personnel, particularly those at primary health care level.

Cuba had followed WHO’s work in the field with great interest since its inception, and was sure it would be an important step towards reducing the high incidence of diseases linked to tobacco addiction. It would also set an important precedent for combating other scourges, such as HIV/AIDS and other communicable diseases, which every year cost the lives of millions of human beings, chiefly in the developing countries. He regretted that the commendable initiative aimed at adoption of an international legal instrument had not initially focused on those diseases, which were more pressing from a human point of view and easier to resolve in practical and legal terms.

Nevertheless, Cuba unreservedly supported that initiative, and would work to achieve a well-balanced text, based on broad, global principles, which would form the basis of a truly universal convention. However, he warned that the proposed instrument should not be binding in other areas which did not lie within the competence of WHO, since that might directly affect complex negotiations being conducted in other international organizations.

Ms KUNADI (India) expressed appreciation for the admirable contribution made by the Chair in developing a consolidated text based on the deliberations of the first session. That text greatly advanced the negotiating process by providing a well-structured basis for discussion which would make it possible to move further along the path towards consensus.

She endorsed the proposed distribution of work between the working groups, provided that there was sufficient flexibility to make any adjustments which might be required.

Dr SILVA GOLDFARB (Brazil) welcomed the Chair’s text, and congratulated WHO on the manner in which it had collected and collated the country proposals. The new text was clearer and more objective than the one discussed during the first session in October 2000.

The Brazilian Inter-Ministerial Commission on Tobacco, when preparing Brazil’s position on the issue, had taken into consideration the points of view of various sectors, including the tobacco industry, politicians and nongovernmental organizations. In March 2001, the Commission had received 437 submissions, mostly focusing on two principal points: apprehension at the possible eradication of tobacco crops, and the need for governmental support for alternative crops.

The Brazilian position on the draft text was thus based on a democratic process, the aim of which was to improve the health of the Brazilian population, while at the same time taking into account the interests of the various sectors involved. Brazil favoured a comprehensive and strong convention, with protocols being discussed in parallel.

Mr SELIM-LABIB (Egypt) said that his delegation welcomed the initiative of developing the proposed framework convention and fully endorsed the comments made by earlier speakers.
concerning the difficulties which had to be overcome in advancing towards the third session of the Intergovernmental Negotiating Body. In supporting the development of an international instrument to control tobacco use his country laid emphasis on the need to serve humanity and preserve health. The Egyptian Ministries of Health and Foreign Affairs attached great importance to controlling tobacco use and had carried out a thorough study of the subject which served as a basis for the comments that he would be making in the Working Groups. He also welcomed the draft text of the proposed convention submitted for discussion.

His country approved the declaration made by countries participating in the Consultative Meeting of the African Region on The Framework Convention on Tobacco Control, held at Johannesburg in March 2001, and particularly its sections relating to the social and economic structure of the continent. It was important to develop mechanisms capable of controlling all those who promoted and encouraged the consumption of tobacco. Africa needed financial and technical assistance to combat tobacco consumption in a concerted manner which would make it possible to preserve economic development and ensure the availability of substitute crops. Indeed, his country would support any initiative to encourage coordination at the regional level for the development of an international instrument. Egypt was interested in the Workshop of International Legal Experts on International Legal Liability and in the Secretariat’s report on the outcome of the Workshop. In that connection, he looked forward to collaborating with the New Zealand delegation in chairing the Third Working Group.

The recommendations made at a national conference held one week earlier in his country concerning measures to control tobacco and drug use demonstrated his Government’s efforts for the development of the proposed framework convention. The national conference had been chaired by Mrs Mubarak, wife of the Egyptian President, and had recommended that publicity for tobacco consumption should be curtailed and that the sale of tobacco products to persons under the age of 18 should be regarded as a crime. Mrs Mubarak had also announced the launching of a national campaign to combat tobacco and drug use, in cooperation with the WHO Office in Cairo. In conclusion, Egypt appealed to all Member States present to collaborate in a constructive manner so that the initiative could be crowned with success and to ensure that the proposed convention was both acceptable and broadly implemented.

Mrs ROVIROSA PRIEGO (Mexico), after welcoming the draft text prepared by the Chair, explained that the importance accorded by Mexico to the negotiation of the proposed framework convention had led to the creation of an inter-secretarial commission for its analysis, with a view to seeking negotiated positions between the various parties concerned. Her country’s priorities with regard to the proposed convention and its possible protocols were that the convention should adopt an integrated approach to the theme of controlling tobacco use, taking into account the various aspects of the problem, such as public health and the economic implications relating to the consumption and production of tobacco, including the development of commercial policies. The convention would need to adopt a balanced approach which took account of the positions of both active and passive smokers, as well as producers. The instrument should contain a section on definitions of such terms as financial cooperation and nicotine addiction, according to the usage of WHO and other parties. In addition, the convention should reflect, as a minimum, the progress made in her country in various areas of combating tobacco use. The framework convention on tobacco control would have to be compatible with the provisions set out in other international agreements, particularly those of the World Trade Organization. It would need to contain traditional legal structures and procedures, including clear mechanisms for its revision. Mexico also considered it very important for the convention to be accompanied by a protocol or catalogue of indicators for each aspect of the problem, including criteria for measuring the impact of tobacco consumption on health and the economy.

Ms DJAMALUDDIN (Indonesia) said that her delegation acknowledged the progress made in the draft text of the convention prepared by the Chair and welcomed the convening of the second session of the Intergovernmental Negotiating Body. The proposed text was thoughtful, well-structured
and comprehensive and addressed most of the concerns and strategic issues raised during the first session.

Although the political and social climate in Indonesia could not support legislative changes on tobacco control for the time being, her Government continued to endorse the development of the framework convention with a view to achieving a better quality of life for the nation in the future. To reaffirm its commitment to tobacco control in developing countries, Indonesia, together with some other Member States in the South-East Asia Region, had adopted the Jakarta Declaration.

Although she welcomed and supported most of the items included in the Chair’s text of the proposed convention, her delegation had submitted several points for consideration, relating to the objective of the convention, the role of WHO and advertising and licensing systems for retailers of tobacco products.

In conclusion, taking into consideration the progress made in the formulation of the framework convention, she expressed confidence that the second session of the Intergovernmental Negotiating Body would achieve meaningful results in the development of an effective and timely instrument.

Mr LIU TIENAN (China) drew attention to the position expressed by his delegation during the first session of the Intergovernmental Negotiating Body and supported the initiative taken by WHO to promote the process of negotiating the framework convention. His country’s position in that respect had not changed. It should be emphasized that China not only supported WHO efforts at the international level, but also accorded special attention to policy-making and policy coordination at the national level. His delegation would cooperate in ensuring a successful outcome to the work of the current session of the Intergovernmental Negotiating Body.

Mr RI SI HONG (Democratic People’s Republic of Korea) said that his delegation welcomed the text of the framework convention prepared by the Chair and WHO, which provided an excellent basis for consultation. His Government had recently organized activities and campaigns at national level with a view to persuading people, especially the young, to stop smoking, and those efforts had enjoyed broad support. His delegation looked forward to participating fully in working group meetings.

Dr MUGA (Kenya) congratulated the Chairman on pushing the agenda to the point at which draft consensus had been reached and thanked the Director-General for her recent visit to Kenya to officiate at World Health Day in Nairobi with a team of mental health officers, whose concerns included tobacco problems. His country was committed to protecting its young people and other vulnerable groups from the hazards of smoking and had drafted a bill to enforce tobacco control across the board, from tobacco growing to its impact on health. It was essential to take action to control the increasing use of tobacco at once, before the epidemic reached the proportions of the HIV/AIDS disaster scenario in Sub-Saharan Africa. It was to be hoped that a full consensus would be reached by the end of the current session of the International Negotiating Body.

Professor HUSSEIN HAMAD (Sudan) said that his delegation fully supported the framework convention, which it hoped would prove to be a success. Sudan was working on its tobacco legislation, which had been in force since 1988, and had also initiated a publicity campaign to inform young people and women about the effects of smoking. His country wished to cooperate more closely with WHO in its endeavours to control tobacco use, particularly in the technical and information areas.

Mr EMMANUEL (Saint Lucia) expressed his delegation’s appreciation for the Chair’s text, which fell just short of being a panacea. In 1993, St Lucia had adopted a policy of banning smoking in all health care institutions and health administration buildings and the following year that policy had been extended to cover all public buildings. The framework convention was a welcome instrument which would provide a mechanism enabling the Government of St Lucia to adopt measures to
safeguard the health of its population. As an island State with few resources other than tourism and bananas, St Lucia considered that the framework convention would protect vulnerable States from the cigarette-dumping activities of multinational corporations and would provide a strong foundation for enabling future generations to enjoy an environment less polluted by tobacco smoke.

Dr STOJILJKOVIC (Yugoslavia) said that his delegation appreciated the opportunity of participating in the current negotiations, particularly because of the numerous problems in the health sector that the Government had to face following the recent democratic changes in his country. The Tobacco Control Initiative was particularly important in a country where 8% of the 7- to 14-year-olds were already trying to smoke and where laws on advertising control had so far not been respected. The results of the current deliberations would be very useful for the recently established national commission on tobacco control.

Dr BASSAM HIJAWI (Jordan) said that his Government was in full agreement with the draft text of the framework convention and with the information it had received in that connection. In the course of a conference held on tobacco-producing companies, sponsored by Her Majesty Queen Rania, his country had set up a commission on tobacco control and was now working on legislation at the national level. Jordan considered that WHO had an important role to play and hoped that the framework convention would be successfully implemented.

Dr MBAIONG (Chad) said that his delegation welcomed the Director-General’s salutary initiative encapsulated in the framework convention on tobacco control and appreciated the work she had unstintingly carried out to improve health throughout the world. The framework convention constituted a powerful weapon for protecting the health of young people and women and his Government therefore strongly supported the initiative. Chad further adhered to the resolutions adopted by the countries of the African Region at their meeting held in Johannesburg during March 2001. With the assistance of WHO, his Government had undertaken a survey which had shown that a high proportion of smokers were young people and some of them were women. As a result of those findings, measures were being adopted to implement the framework convention in his country.

Dr ILKHAMOV (Uzbekistan) said it was gratifying that a great deal of ground had been covered since work on the framework convention had first begun. With the support of the WHO European Office, his country was cooperating actively with the CIS countries on tobacco control. As a tobacco-producing state, Uzbekistan attached special importance to the framework convention. The Chair was to be thanked for all his valuable work and it was to be hoped that the structure of the current session, in the form of working groups, would accelerate the common effort towards agreement on a final text.

Mr MORALES (Bolivia) said that his country was undergoing a period of reforms in the areas of education and health which would enable Bolivia to incorporate the promotion of public health in several of its projects. Unfortunately, the Bolivian Government did not enjoy the full support of economic sectors in the country and was encountering certain difficulties, but it was to be hoped that the framework convention would provide a new stimulus for national efforts in his country, especially in favour of the protection of young people’s health.

Dr GRACIELA DE CACERES (Paraguay) said that her region was firmly committed to tobacco control and that her country was about to set up a national inter-institutional commission to study the framework convention and to maximize the use of scarce resources for tobacco control. At the initiative of Brazil, tobacco had been discussed at the meetings of ministers of health of MERCOSUR at which several recommendations had been formulated, emphasizing the fact that adoption of the framework convention required a regional consensus. Paraguay consequently recommended that each country should set up a national inter-institutional commission, modelled on
the example of Brazil, so that work could be conducted more efficiently. Her Government had also recommended the specific insertion of a number of topics to be examined at a meeting of ministers of health in June 2001. Joint activities within the region would include the improvement of national policies to prevent young people from beginning to smoke, protection from passive smoke and help with cessation programmes. A study was also required on such aspects as smuggling and the financial aspects of smoking, all of which could be tackled more easily if a convention existed.

Ms MAYSHAR (Israel) expressed her delegation’s appreciation of the progress made in the drafting of a convention and stressed that major sustainable advances in tobacco control could only be achieved through cooperation. For the framework convention to make a meaningful contribution to tobacco control, it was important to strive for a document which could serve as a springboard for advance, leading to limitations on tobacco consumption. Israel had recently enacted new tobacco legislation relating to advertising limitation, smoking in public places, as well as annual reporting on the status of tobacco use in Israel and its consequences. It was to be hoped that a change in the international environment regarding tobacco use, including advertising and especially its impact on the public image of smokers, would be conducive to progress in that domain.

Mrs THIBELI (Lesotho) said that her country, which was hard hit by numerous communicable diseases, was unable to afford the additional burden caused by preventable smoking-related diseases. Her delegation therefore highly commended the efforts undertaken by the Tobacco Free Initiative in formulating the first global legal instrument aimed at curbing smoking at the international level. She urged the Initiative to provide speedy technical assistance in developing tobacco control legislation in her country. Lesotho had undertaken a successful tobacco-free schools initiative, which had encouraged schools to revise their regulations and ensure enforcement. In some schools, examination results had consequently improved. In addition, teachers and health workers were increasingly giving up smoking as more public places were declared smoke-free. The convention would provide valuable assistance to all countries in creating a smoke-free, healthier environment for their citizens.

Dr SEKABARAGA (Rwanda) welcomed the draft framework convention since his Government was preparing legislation for tobacco. The Rwandan Government fully supported the resolution adopted at the Consultative Meeting of the African Region on the Framework Convention on Tobacco Control held in Johannesburg, 13-14 March 2001, at which it had been represented, and would cooperate with governments on other continents in formulating and implementing the convention.

Dr THINLEY (Bhutan) congratulated the Chair and the Secretariat for the preparatory work carried out at the global and regional levels since the first session of the Negotiating Body. His country was making excellent progress in tobacco control, as 19 out of 20 districts were smoke-free. He looked forward to worldwide cooperation to prevent tobacco-related deaths.

Dr SHAFIE (Malaysia) welcomed the Chair’s text. His Government supported all effective moves for tobacco control and any strategy that would result in a better quality of life for all. He thanked WHO for giving his country the opportunity to participate in a number of its committees. He considered that the framework convention would lead to better tobacco control, and he would participate actively in the current negotiations.

Dr AL MULLA (Qatar) thanked WHO for organizing the International Consultation on Litigation and Public Inquiries as Public Health Tools for Tobacco Control, which had revealed the action taken by tobacco companies in undermining tobacco control in the Eastern Mediterranean Region.

After the first session of the Intergovernmental Negotiating Body, a consultative council had been set up in Qatar which had approved draft legislation for tobacco control, including banning
smoking in public places and by persons under the age of 18. With a view to health education, documents had been prepared, and the first Arabic language website on tobacco control had been launched.

Dr ARMADA (Venezuela) expressed his hope that progress would be made at the current session in formulating a clear and coherent convention. Health was a fundamental social right. To strengthen measures in force since the 1980s, his country was formulating new legislation aimed at reducing inequalities in health provision, including various measures for restricting the consumption and advertising of tobacco products. In view of the influence of international tobacco advertising, the convention should be designed to make a real contribution to the health of all peoples.

Mrs BOBYLIOVA (Ukraine) was grateful for the opportunity to take part in the discussions on the extremely important document that was before the Body, which was intended to protect human health. Her country had set up an interdepartmental council for tobacco control, which incorporated a youth programme. She considered that that aspect should be emphasized in the framework convention.

Dr KANYESIGYE (Uganda) reaffirmed his Government’s support for a strong convention with a public health focus. He thanked all those who had come to his country’s assistance during the recent epidemic of Ebola haemorrhagic fever which had cost 179 lives, including those of about 20 health workers. Indeed, it was thanks to WHO’s role in successfully combating the epidemic that he had been able to attend the current session.

Dr HUSEYNOV (Azerbaijan) commented that adoption of the framework convention would change tobacco control throughout the world. His Government had worked out a tobacco control strategy, and Parliament had adopted a tobacco control law banning the advertising of tobacco products and destined to reduce tobacco consumption among young people.

Mrs DE PALMA (Guatemala) said that her Government had passed a law to control tobacco advertising. Much remained to be done in that area, however, despite a certain degree of compliance by tobacco companies it should not be forgotten in drafting the convention that small countries were vulnerable to smuggling. The convention should provide for technical cooperation in both the replacement of tobacco crops and the control of smuggling.

Dr LEWIS-FULLER (Jamaica) thanked the Director-General for continuing the fight against tobacco use. At a preparatory meeting on the framework convention held in Kingston, Jamaica, the delegates had reaffirmed their commitment to implementing the convention. Tobacco use was the most important preventable cause of death from cancer and heart disease, and the countries of the Caribbean would join the rest of the world in fighting that scourge.

Ms J. Bennett took the chair.

Dr PALOMO ESCOBAR (El Salvador) said that more than 65% of his country’s population was in the age group that was vulnerable to tobacco addiction and the negative effects of tobacco use. His country had no effective tobacco control legislation, and sufficient research on the health effects of tobacco use or the extent of smoking among the population, had not been conducted. A national committee had recently been formed in El Salvador to elaborate a tobacco control strategy, a matter of interest to all Government institutions. He thanked WHO for its technical and financial assistance that had enabled his country to share in formulation of the convention. He was confident that the convention would correct the negative impact of tobacco addiction.

Dr JIRON ROMERO (Nicaragua) welcomed the documentation prepared for the session. He was in agreement with the terms of the draft convention and was gratified that it took account of
matters such as individual freedom, free trade, bioethics and human rights. In participating in the negotiations, he would strive for a balanced text that could serve as an international instrument.

Mr Nunes Amorim resumed the chair.

Mr BARRY (Guinea) outlined measures taken by the Ministry of Public Health in his country, with the cooperation of a Guinean nongovernmental organization, for the establishment of anti-tobacco clubs in schools. The aim was to create awareness of the evil effects of tobacco use among pupils and staff and to serve as the focus for that ministry and WHO in promoting a tobacco-free world. As part of that campaign, wide distribution was given to a declaration of the Director-General in which she affirmed that, as a doctor, she knew that tobacco was a killer and that it was wrong to advertise its use, subsidize its production or create a mystique. Information had also been provided about the proposed framework convention.

Draft legislation had been submitted to the National Assembly, advocating restrictions on tobacco use and advertisements and bans on smoking in public places and on radio and television advertising. A national workshop was to be held with representatives of the educational sector, for adoption of a programme to combat tobacco use in schools, and an event linking tobacco use to cancer was to be organized.

Mr KANTEH (Gambia) emphasized his Government’s commitment to health promotion and its efforts to make The Gambia a tobacco-free society. A law banning smoking in all public places had been passed. A tobacco-free school initiative had been launched and was being expanded to other educational institutions. He expressed his Government’s full support for the draft framework convention.

Ms VILIAME (Fiji) said that her country supported the negotiations for a framework convention and related protocols. Following the adoption of Fiji’s Tobacco Control Act in 1999, the relevant regulations had entered into force at the beginning of the current year and an enforcement committee had been established to monitor activities. Most of the issues of concern in Fiji’s existing legislation were reflected in the Chair’s text, and the framework convention and its protocols would enable Fiji’s national legislation to be amended accordingly. The convention would allow for a concerted effort against tobacco use.

Dr MOGNE (Mozambique) said that her country had made slow but progressive improvements in the area of tobacco control, including an increase in primary prevention activities and intersectoral collaboration with nongovernmental organizations. Nevertheless, there had been a marked increase in tobacco advertising, smuggling and consumption by young people. It was to be hoped that the health reform currently under way and the country’s political commitment to reduce smoking would ultimately result in effective legislation. The draft framework convention would be of great importance in that regard.

Professor SIMUNIĆ (Croatia) said that his country fully supported the development of the framework convention. Out of a total population of 4.5 million, one or two people died each year from AIDS, 30-40 died from the use of illegal drugs and some 600 died as a result of traffic accidents. Suicides and alcohol-related deaths amounted to about 1000 and 2500 respectively. By contrast, 14 000 people died each year as a result of smoking. It was therefore to be hoped that the framework convention would be ready in final form in one or two years’ time.

Mr BEN SALEM (Tunisia) said that the text before the Intergovernmental Negotiating Body provided an excellent basis for discussion. Although Tunisia had adopted anti-smoking legislation in 1998, it needed the help and cooperation of the international community in combating tobacco use and
in particular in enhancing awareness of its ill-effects. The economic consequences of tobacco control, especially for tobacco growers, would also need careful consideration.

Mr DJONDO (Togo) said that the Togolese Government had passed legislation in the 1980s, which had proved to be effective, banning the use of tobacco in public places, transport, schools, colleges and universities. The work of the Intergovernmental Negotiating Body and the results of the Consultative Meeting of the African Region on the Framework Convention on Tobacco Control in Johannesburg in March 2001 should make it possible to arrive at a consensus, ultimately resulting in a tobacco-free world.

Dr BOVET (Seychelles) expressed appreciation for the Chair’s text, which was being used by the Seychelles’ recently established National Committee for Tobacco Control as a guide in the preparation of a comprehensive bill on tobacco control for consideration by Parliament. The Seychelles was in favour of a strong tobacco control convention for the effective advancement of public health both in its own country and worldwide.

Dr HOMASI (Tuvalu) commended the progress made with the framework convention and welcomed the comprehensive texts prepared for the current session. The participation of nongovernmental organizations was important in ensuring a strong multilateral approach. Like many Pacific island nations, Tuvalu welcomed the draft convention and looked forward to the results of the deliberations of the second session.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) expressed the hope that the framework convention would ultimately be strong, particularly in relation to the responsibilities of the tobacco manufacturers.

The United Nations had estimated the damage resulting from the unjust war in his country and the systematic pillage at over US$ 700 thousand million. That war had left over three million dead, several million displaced, and over 90% of the population either without work or underpaid. The country had been divided into three occupation zones, but the circulation of goods and individuals as decided by the United Nations pursuant to the Lusaka Agreement was not yet fully under way. The constant stress and suffering caused by those conditions had driven up the consumption of tobacco and tobacco products, a situation seized upon by the tobacco manufacturers to promote sales with offers of valuable items such as houses, televisions and videos, mobile phones, clothing and T-shirts. Aware that 3% of 10-19-year-olds were addicted to tobacco, the Government had responded by creating a programme to control use of tobacco, alcohol and hard drugs, aimed at prevention and the care of addicts. The tobacco manufacturers were represented on the programme’s council so that they could listen to the accusations made against them and be implicated in any actions to be taken.

The Democratic Republic of the Congo attached great importance to a successful outcome of the work of the Intergovernmental Negotiating Body and hoped that in two years’ time it would provide the world with effective legal, technical and financial means to control tobacco use and regulate advertising. His country had been unable to participate in the meeting in Johannesburg in March 2001 for reasons beyond its control, but he thanked WHO for making it possible for him to attend the current meeting.

Ms LAMBERT (South Africa) commended the text that had been prepared for the second session and expressed appreciation for the administrative support provided by WHO for the Johannesburg meeting. She also commended the African countries for the work they had done thus far in achieving an African consensus position, which would be articulated during the working group meetings by various African states. The position adopted was not the final African position but was an evolving one that would be developed in the working groups. She recognized the work of the nongovernmental organizations represented and supported the multisectoral approach.
Dr MALAKAI’AKE (Tonga) said the Tobacco Act that had been passed by the Parliament of Congo one week before the first session of the Intergovernmental Negotiating Body had been signed by the King on 27 February 2001. Its purpose was to prohibit the advertising and promotion of cigarettes and other tobacco products, regulate the labelling of tobacco packaging, restrict the nicotine and tar content of cigarettes, prohibit the sale of tobacco products to young people, and restrict smoking in public places, including public transport. The Act was due to be proclaimed on 3 September 2001 to give the authorities time to educate the population. He would report on the progress made in implementing the Act at the third session of the Intergovernmental Negotiating Body.

The CHAIR said that the discussion had demonstrated a positive climate for the work of the second session. It had been important to have an initial exchange of views before individual countries and groups of countries put forward their proposals in the working groups. The proposed date for the next session, namely 19-24 November 2001, should be discussed within regional groups in order to avoid lengthy discussion on the item during plenary at the end of the current session.

The meeting rose at 11:40.
1. **DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL**: Item 4 of the Agenda (continued)

The CHAIR invited the Co-Chairs to submit the reports of the working groups.

Professor GIRARD (France), Co-Chair of Working Group 1, said that four meetings had been required to consider Articles G and H, together with part of Article I (Elimination of sales to and by young persons) and paragraph 2 of Article K, which dealt with research to provide back-up for the draft convention. Working Group 1 had also considered the guiding principles contained in Article D, paragraphs 1 and 2 and the general obligations contained in Article E, paragraphs 1 and 2. Many delegations had spoken and a large number of proposals had been put forward. The Group’s task had been greatly simplified by the quality of the Chair’s text.

Mr AISTON (Canada), Co-Chair of Working Group 2, said that a wide variety of views had been expressed and a large number of proposals put forward within the Working Group, which had dealt with parts of Articles F, I and K on the questions of surveillance, exchange of information, price and tax measures to reduce the demand for tobacco, government support for tobacco manufacturing and agriculture, illicit trade in tobacco products and licensing.

Mr FARRELL (New Zealand), Co-Chair of Working Group 3, after drawing attention to the reports contained in the Group’s Conference Papers, said that it had been agreed that substantial discussions on compensation and liability (Article J), development of the convention (Article S) and final clauses (Article T) would be postponed until the third session of the Intergovernmental Negotiating Body, at which time all three items would be treated similarly. Delegations had also agreed that for those three articles regional or other country groups, as well as individual country delegations, would submit textual proposals or comments, which would then be circulated to delegations. It had been agreed that texts for discussion should be submitted not less than 60 days before the opening of the third session.

The CHAIR thanked the Co-Chairs for their reports. No further comment was required from him, since all delegations had participated in the working groups and, moreover, any remarks he made might inadvertently ascribe particular importance to one topic at the expense of others.

Mr NOVOTNY (United States of America) thanked the Chair, the Working Group Co-Chairs and the Bureau for facilitating discussion on the Chair’s text. His delegation had been prepared to offer texts for a number of possible protocols, and would await the Chair’s guidance about when they could be submitted for discussion. He emphasized that his delegation’s position on many related issues would become clear only in relation to its proposals on the protocols, which would in turn affect a number of provisions in the Chair’s text. He hoped that that situation had not led to erroneous conclusions about his country’s overall approach, which remained strongly supportive of a treaty and protocols.

It was so agreed.
The CHAIR, replying to a question from Dr WINAI SWASDIVORN (Thailand), said that although he and the Working Group Co-Chairs might be carrying out some inter-sessional editorial work on the existing draft text, there was no intention to produce any separate texts before the Negotiating Body’s next session.

Mr CASTILLO SANTANA (Cuba), noting that some outstanding matters had not yet been discussed, pointed out that any countries, regions or groups that wished to hold discussions on such matters before the next session had every right to do so. Any resultant proposals should be tabled at the next session on an equal footing with others.

Ms KERR (Australia) said that her delegation shared with many others the desire to achieve a strong, effective convention. To that end, its preparations for the next session would focus not only on substantive obligations but on the convention’s structure: it was important that a full debate be held on that issue at the next session. In particular, Australia would be considering the proposed guiding principles. Although those already set out provided a useful framework for negotiations, the problem was that, if they were retained in the convention as discrete provisions, questions would arise about their possible effect on the interpretation of operative provisions. There was also the question whether guiding principles would achieve anything that could not be achieved equally effectively by a combination of the preamble, statement of objectives and specific obligations, and the question of how such principles had been set forth in similar international agreements. Other delegations should take such matters into consideration before the next session, so that an informed discussion could be held.

Another major issue was whether protocols could be useful in setting out technical details for implementing or elaborating the obligations under the convention, or whether the first task should be to consider whether a single, integrated text would suffice, bearing in mind that the practice relating to many instruments was to make protocols optional rather than binding on all Parties. Both those issues would need to be fully discussed at the next session.

Dr BETTCHER (Coordinator), in reply to a question from Dr AL-LAWATI (Oman), said that all documents prepared for the sessions of the Intergovernmental Negotiating Body had been included on the WHO web site as would all future documentation.

Ms BILLUM (Sweden), speaking on behalf of the European Union and its Member States, said that the contributions had provided a sound basis for further work. Key issues were clearer, and actual negotiations should be able to begin at the next session. She believed that the constructive views expressed augured well for future consensus.

One issue that would require particular attention at the next session was the sequence of negotiations on the body of the convention and its protocols. In that regard, promotion of public health should be seen as the convention’s main objective, and if that was to be achieved the momentum gained by the wide participation in the current session must be maintained, and efforts should be made to arouse the widest possible interest on the part of the general public and the media. The countries she represented intended to make the most positive possible contribution to the work of the coming session, and she urged all others to do likewise, with a view to reaching early agreement.

Mr AKRAM (Pakistan) agreed that the current session had been most useful. The next session should address the issues that had not yet been tackled, such as compensation, liability, development of the convention and the final clauses. It was also important not to lose sight of the convention’s focus on health, a focus which his delegation would seek to have reflected in the guiding principles. He warned that caution would be required when drafting provisions on issues such as surveillance and taxation, in order to avoid any infringement of State sovereignty or national jurisdiction.
Mr BAHARVAND (Islamic Republic of Iran) agreed that the convention should focus on health issues. Noting that provisions concerning development of the convention and final clauses were formulated on similar lines in many international conventions, he requested the Secretariat to develop a draft text for Articles S and T, in order to provide a basis for negotiations at the third session.

The CHAIR said that that request had been noted.

Mrs THIBELI (Lesotho) said that Lesotho was committed to ensuring that the negotiating process achieved its desired goal, and pledged her delegation’s support to that end.

Mr LIU Tienan (China) expressed his satisfaction that negotiations had gone smoothly, despite some differences of opinion which were inevitable in developing a framework convention whose scope was broader than the mandate of WHO. China would study outstanding issues closely before the third session, with a view to achieving a successful conclusion to the negotiations.

Dr TUUAU-POTOI (Samoa) suggested that, in view of the possibility of a future ratification of the framework convention by the United Nations General Assembly, the Secretariat of the framework convention should remain within WHO in order to ensure that its focus on health was maintained.

Mr SEKOBE (South Africa), speaking on behalf of countries in the WHO African Region, said he welcomed the opportunity to address not only the health aspects but also the economic aspects of tobacco use. The dependence of many African countries on tobacco revenues was a relic of the region’s colonial past. Securing consensus on the framework convention was not going to be easy because of the many entrenched interests involved, but he was sure that by joint efforts success could be achieved.

Mr SAKA (World Customs Organization), speaking at the invitation of the CHAIR, said that the discussions had highlighted many concerns shared by his organization (WCO) and WHO, in the quest for tobacco control.

The customs community had accumulated considerable experience in combating the crime of cigarette smuggling, and was continuing to combat it with the support of new partners. WCO had launched a number of initiatives, including an enforcement programme, guidelines on measures to be taken by customs services, a strategic plan incorporating administrative, legal and operational measures and a worldwide cigarette smuggling risk assessment project. It maintained a worldwide database on cross-border cigarette smuggling, including harmonized customs tariffs, customs procedures related to the importing and exporting of cigarettes, and a worldwide exchange of information. WCO and WHO had already agreed to discuss mechanisms for further technical cooperation, which should make a significant contribution to the objective of the convention. In that regard, he emphasized the importance of including a reference to “competent international organizations” in Article D.7 and Article M.5 of the convention in order to avoid duplication of work and to harmonize measures to be taken by the international community.

Mr NAVARRO (Infact), speaking at the invitation of the CHAIR, said Infact was concerned that the impact of the transnational tobacco companies extended beyond the sphere of public health. In addition to the deaths of 4 million people every year, a figure that would double in the next 20 years if current trends continued, there was the environmental damage caused by the use of toxic pesticides and the loss of biodiversity as a consequence of monoculture plantations and of deforestation caused by the use of wood for the curing of tobacco. To make matters worse, the environmental damage and loss of life took place chiefly in impoverished countries of the south, while most of the corporations that benefitted from tobacco addiction were based in developed countries of the north.

He held tobacco companies responsible for the deaths caused by tobacco addiction because they took advantage of the psychological vulnerability of young people in order to addict them. He
endorsed the position held by many governments that a total ban on tobacco advertisement and promotion should be imposed, and that public health should be given priority over trade. Countries should be required to protect public health policy from undue influence by the tobacco transnationals, and the latter should be required to bear the costs associated with tobacco addiction.

In his view the current deliberations on tobacco control were not so much concerned with public health as with the continuing struggle between peoples and the tobacco companies. The question was which side governments would take. He hoped that the decisions taken would be in the interests of humanity and not in the interests of increasing the wealth of the tobacco corporations.

Ms CALLARD (Commonwealth Medical Association), speaking at the invitation of the CHAIR, said that effective measures to protect health through tobacco controls could only be achieved through well-conceived, strategic investment in research, education and country capacity. In particular, the engagement of civil society needed to be ensured. She urged all those countries that had not yet done so to contribute to the development of such controls, and reminded them that there were many international nongovernmental structures in place which could assist in those efforts.

2. **NEXT SESSION OF THE INTERGOVERNMENTAL NEGOTIATING BODY:** Item 5 of the Agenda

The CHAIR proposed that the next session should take place from 22 to 28 November. The proposed dates had been the subject of extensive consultations owing to a variety of constraints, including the fact that they coincided with some major international health conferences as well as with the month of Ramadan. He therefore thanked delegates, particularly those from the Islamic Member States, for their cooperation.

Dr ZARIHAH (Malaysia) said that holding of the next session during the month of Ramadan should not pose any problems for Islamic delegates, who were in any event required to continue working normally at that time. However, she would request that during the session appropriate catering and prayer facilities should be provided for Islamic delegates to permit them to observe Ramadan, and that information on such facilities be made available to them in advance.

Mr SEDDIK (Egypt) and Dr ALBADAH (Saudi Arabia) endorsed that request.

On that understanding, the dates of the next session were agreed.

3. **CLOSURE OF THE SESSION:** Item 6 of the Agenda

The SECRETARY apologized for the fact that owing to a clerical error the names of the delegates of Qatar and Tajikistan had been omitted from the list of participants. The revised list of participants would be forwarded to Member States together with other post-session documents.

Dr YACH (Executive Director), speaking on behalf of the Director-General, thanked participants in the Intergovernmental Negotiating Body for their work during the current session, and also thanked WHO and other staff involved. He looked forward to a strong international response to World No-Tobacco Day, scheduled for 31 May 2001, the focus of which would be on passive smoking. He would welcome information on national events planned in that connection to share with
other Member States. WHO was committed to enhancing capacity-building for tobacco control at national level, including at Headquarters and at regional and country offices.

He welcomed the participation during the current session of two more nongovernmental organizations and one more intergovernmental body, the World Customs Organization, as well as the presence of the World Bank, FAO and WTO. He looked forward to further discussion at the forthcoming World Health Assembly and the third session of the Intergovernmental Negotiating Body.

The CHAIR noted that the current session had been characterized by the broad and active participation of WHO Member States, nongovernmental organizations and intergovernmental bodies, keen press interest, and free and open discussion, all of which should contribute towards a truly effective convention. However, in view of the fact that new issues were continuously being raised, notably regarding protocols and definitions, consideration might need to be given at the next session to ways and means of expediting the work so as to ensure that the deadline for the approval of a definitive text could be met.

Following the customary exchange of courtesies, the CHAIR declared the session closed.

**The meeting rose at 16:30.**
PART TWO: SUMMARY RECORDS OF WORKING GROUP MEETINGS
WORKING GROUP 1

FIRST MEETING

Monday, 30 April 2001, at 15:00

Chair: Professor J.-F. GIRARD (France)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 4 of the Agenda (Documents A/FCTC/INB2/DIV/1, A/FCTC/INB2/DIV/6, A/FCTC/INB2/2 and A/FCTC/INB2/3)

The CHAIR welcomed the participants on behalf of the Co-Chair Dr Hatai Chitanondh (Thailand) and himself, and looked forward to making substantial progress in preparing the draft framework convention on tobacco control. He drew attention to document A/FCTC/INB2/DIV/6, which summarized the division of responsibilities among working groups. Working Group 1 had been requested by the Intergovernmental Negotiating Body, at its first session, to deal with the following topics: research, regulation of tobacco product disclosures, tobacco sales to youth, packaging and labelling, treatment of tobacco dependence, media, communications and education, exposure to tobacco smoke, regulation of the contents of tobacco products and advertising, promotion and sponsorship. Document A/FCTC/INB2/DIV/6 provided a table showing the location of those subjects in the proposed draft elements for a WHO framework convention on tobacco control (document A/FCTC/INB1/2), discussed at the first session and their corresponding location in the Chair’s text (A/FCTC/INB2/2) to be discussed at the present session. The rearrangement conformed to the request made by the Intergovernmental Negotiating Body at the first session. Despite some changes in the order, numbering and even some subject titles, there were no alterations of substance in the division of tasks among the working groups. With reference to the Chair’s text, Working Group 1 would be dealing with the whole of Article G, paragraphs 1 and 2 of Article H, paragraphs 8 and 12 of Article I and paragraph 2 of Article K. In addition, it was proposed that the sections dealing with Guiding principles and General obligations, not previously assigned to any working group, should now be distributed between the three groups according to their specific areas of interest; on that basis, Working Group 1 should deal with Guiding principles 1 and 2 (under Article D) and General obligations 1 and 2 (under Article E). The Co-Chairs proposed that the working group should postpone consideration of those two sections until the specific technical issues assigned to it had been dealt with, especially in view of the substantial redrafting undertaken since the first session which required review.

The Chair’s text contained no specific draft under Article B, Definitions, and the Co-Chairs suggested that the working group should confine itself, at the current session, to listing those terms which it considered warranted further discussion, with a view to subsequent agreement on working definitions for the scope and purpose of the framework convention. The list of terms provided by each group could be dealt with as an intersessional project and reported to the Intergovernmental Negotiating Body at its third session.

In the absence of any objections, he took it that the meeting agreed: to deal first with the technical issues contained in the draft Articles G to K, following the sequence and numbering shown in the Chair’s text; to then take up the relevant parts of Articles D and E; and to confine itself, for the time being, to listing required definitions, which would be taken up at a later stage in accordance with whatever decisions were taken in Plenary.

It was so agreed.
The Chair reminded the working group that it would meet three more times, on Tuesday 1 May, Wednesday 2 May and Thursday 3 May. The two Co-Chairs would share the responsibility of chairing those meetings. It was proposed that the working group should review the draft of the Chair’s text article by article, and paragraph by paragraph. Proposed amendments should be submitted to the Secretariat in writing on the forms provided. They would then be consolidated and issued in the form of conference papers for further review by the working group at a later meeting.

He recalled that, in accordance with decision EB107(2) taken by the Executive Board at its 107th session, its Chairman, acting jointly with the Chairman of the Standing Committee on Nongovernmental Organizations, had been authorized to admit nongovernmental organizations into official relations with WHO on a provisional basis in specified conditions and subject to review by the Executive Board at its January session subsequent to their admission. Two nongovernmental organizations had been admitted under this arrangement, the aim of which was to promote the more effective participation of nongovernmental organizations. Intergovernmental and nongovernmental organizations would attend meetings of the working groups, which functioned as committees of the whole. They would have an opportunity to make statements at the end of the meeting, provided that they handed in written statements beforehand.

He invited questions and comments on the methods of work of Working Group 1.

Ms BALOCH (Pakistan) requested that, in order for the working group to be entirely clear as to how it should proceed, the text of the Chair’s comprehensive introduction should be circulated to the participants and the texts of draft amendments should be made available to the regional groups.

Mr BAHARVAND (Islamic Republic of Iran) asked whether arrangements could be made for Working Group 1 to meet in room 1, since room 2 was rather cramped for so many participants.

Dr NOVOTNY (United States of America) supported the proposal to have the text of the Chair’s statement circulated to participants. While his delegation would try to provide texts for any amendments it made, Member States should have the right to have amendments accepted verbally since that was part of the negotiating process.

Professor ZELTNER (Switzerland) supported the proposals made by the delegate of Pakistan. Noting the proposal that definitions were to be determined only following the present session, he requested clarification as to how the text of the framework convention would be revised to take those definitions into account.

Dr REN Minghui (China) said that, while he was convinced of the value of the participation of nongovernmental organizations, drafting was the responsibility of government delegations alone. He requested further clarification in that regard.

Dr AL-LAWATI (Oman) supported the proposals made by the delegates of Pakistan and the Islamic Republic of Iran. He suggested that confusion would be avoided if the working group’s discussions focused solely on the sections of the Chair’s text, as listed in the second column of the table in document A/FCTC/INB2/DIV/6.

The CHAIR said that the matters raised in document A/FCTC/INB2/DIV/6 were indeed complicated, but the right-hand column of the table relating to Working Group 1, which summarized those sections of the Chair’s text (document A/FCTC/INB2/2) to be discussed by the working group, provided a basis on which to work. The problem mentioned by the delegate of Switzerland relating to definitions could be approached only pragmatically but it should be noted that the text agreed at the present session would be subject to further review. With regard to nongovernmental organizations, the predominant view at the previous session had been that they should be permitted to attend plenary
meetings but not technical groups. Since, however, the working groups were meetings of the whole, it had been concluded that such organizations could be admitted and could be given the floor, but only delegations could participate in drafting. He reiterated that all proposed amendments should be submitted in writing.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) suggested that the current structure of the Chair’s texts, which included letters and numbers for the various articles, paragraphs and subparagraphs, should be simplified, using numbers only, to avoid confusion. He requested the provision of sufficient copies for each delegation of the form for the submission of proposals and amendments.

The CHAIR said that he would raise those points with the Chair of the Intergovernmental Negotiating Body.

The CHAIR invited the working group to consider Article G of the Chair’s text (document A/FCTC/INB2/2), paragraph by paragraph.

G. Non-price measures to reduce the demand for tobacco

Paragraph G.1

Professor LYNCH (Canada), referring to the first two sentences of paragraph 1, remarked that qualifying language, as found in the phrase “to the extent possible within the means at its disposal and its capabilities”, was not found in any other multilateral instrument and should be deleted: it might result in asymmetrical obligations for the signatories to the convention and there would be no way of evaluating compliance. Further, the adjectives “legislative, executive and administrative” before the word “measures” should be moved into the section on definitions. Finally, it would be appropriate to introduce the term “prevalence of tobacco use”. She therefore suggested that the first sentence should be amended to read: “Each Party shall adopt measures, and cooperate with other Parties in developing appropriate non-price policies, in order to reduce tobacco consumption, prevalence of tobacco use and exposure to tobacco smoke.”

Dr MBAIONG (Chad) supported those amendments.

Ms LAMBERT (South Africa), speaking on behalf of WHO’s African Region, supported the deletion of the phrase “to the extent possible within the means at its disposal and its capabilities”.

Mr TAKAKURA (Japan) endorsed the deletion of the qualifying language in the introductory sentence, although he wished to see it developed if necessary in the relevant subparagraphs.

Ms BALOCH (Pakistan) suggested leaving the phrase “to the extent possible within the means at its disposal and its capabilities” in brackets until an alternative form of wording had been agreed.

Dr NOVOTNY (United States of America), seeking to emphasize the non-mandatory nature of certain provisions, suggested replacement of the word “shall” by “should”, in the first two sentences, and “to the extent possible within” by “taking into account”, and “harmonizing” by “developing” in the first sentence.

Dr AUNG (Myanmar), reflecting the consensus among the countries of the South-East Asia Region, supported the deletion of “to the extent possible within the means at its disposal and its capabilities”.

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Ms BILLUM (Sweden), speaking on behalf of the Member States of the European Union, endorsed the proposal to replace the word “harmonizing” by “developing”. She further suggested inserting the words “including measures to combat illicit traffic” after the words “non-price policies”.

Ms KERR (Australia) said that qualifying phrases, such as “to the extent possible within the means at its disposal and its capabilities”, rendered the article ambiguous; she would submit her suggested amendment in writing.

Mr CASTILLO SANTANA (Cuba) supported the proposal made by the delegate of Pakistan that “to the extent possible within the means at its disposal and its capabilities” should be retained in brackets for the time being. Similarly, the words “adopt legislative, executive and administrative measures” should be retained in brackets pending submission of an alternative form of wording.

Professor GOJA (Uruguay) agreed that the phrase “to the extent possible within the means at its disposal and its capabilities” was somewhat ambiguous and might give rise to minimum compliance; it should be retained in brackets pending further discussion.

Dr MUGA (Kenya), speaking on behalf of the African Group, expressed the wish to retain the word “shall” in the first two sentences in order to avoid diluting the provisions.

Dr REN Minghui (China) preferred retention of “to the extent possible within the means at its disposal and its capabilities” in brackets for the time being. He suggested deletion of the word “executive”, since “executive measures” were included under “administrative measures”. The words “appropriate non-price policies” should be replaced by “non-price policies, as appropriate”.

Dr ROA (Panama) would prefer to see section G placed under section F and the title of that section amended to read “Public health measures to reduce the demand for tobacco”. Endorsing previous speakers’ comments, she also wished to insert a commitment to reducing the prevalence of tobacco use, nicotine addiction and exposure to tobacco smoke.

Dr ANDEN (Philippines) approved the deletion of the phrase “to the extent possible within the means at its disposal and its capabilities”. She suggested replacing the word “harmonizing” by “adhering to international standards set by WHO” and retaining the word “shall”.

Ms VILLAMIZAR (Venezuela) supported Canada’s endeavours to simplify the text. She suggested leaving the phrases concerned in brackets until they had been reworded, and wished to see the word “harmonizing” replaced by “developing”.

Dr BOVET (Seychelles) said that the paragraph was wordy and therefore ambiguous. He preferred to delete the phrases concerned altogether.

Mr VARELA (Argentina), while understanding the reasons underlying Canada’s proposal, nevertheless wished to retain some reference to countries’ capabilities and preferred to leave the phrase “to the extent possible within the means at its disposal and its capabilities” in brackets pending further discussion. “Developing” was a more appropriate term than “harmonizing”.

Dr AL-LAWATI (Oman), endorsing Canada’s suggestions, said that he would submit a written text to the effect that each Party should take effective measures and should cooperate with other Parties in order to reduce tobacco consumption and exposure to tobacco smoke. The text would include two specific measures.
Mr BATIBAY (Turkey) endorsed the wording suggested by the delegates of Canada and Sweden.

Mr OGANOV (Russian Federation) considered that the basic idea of “to the extent possible within the means at its disposal and its capabilities” should be retained even if the actual wording were changed, since the introductory paragraph covered several subparagraphs and the idea applied to all.

Dr GRACIELA DE CACERES (Paraguay) said that the paragraph referred to issues of public health. She understood the concerns of her fellow delegates, but the document was a normative one and must be drafted accordingly. Ambiguous wording must be removed. A paragraph might be inserted indicating that each country’s process would be respected. For example, using the form “shall”, it might say that each country would adopt measures and cooperate with other countries in an increasing and progressive way, thus allowing each country to progress within its capabilities while expressing a clear intent. It would continue that countries should develop appropriate policies in concert; otherwise, matters might just remain as they were. The phrase in the fourth line should read “shall include”, since the paragraph went on to deal with three vital public health concerns: smoke-free environments, the protection of children and expectant mothers, and regulation. She would submit her proposal in writing.

Ms BALOCH (Pakistan) asked whether it was technically possible to edit the text immediately so as to show the various amendments on the screen.

The CHAIR said that, although he was attracted by the idea in theory, he could not give an immediate reply.

Mr BAHARVAND (Islamic Republic of Iran) supported the deletion of the phrase “to the extent possible within the means at its disposal and its capabilities”, since all countries were doing their best. He suggested adding the words “inter alia” after the word “include”.

The CHAIR, summing up, said that five main points had emerged during the discussion. The first, which had prompted the greatest number of comments, was the phrase “to the extent possible within the means at its disposal and its capabilities”. Some – perhaps the majority – were in favour of its deletion, while others, who had some doubts on the subject, wanted it to be placed between brackets. It was a matter that must be decided, and some felt that it would be easier to do so later in the consideration of the text and that it might be appropriate to include it in a subsequent paragraph.

Secondly, questions had been raised in connection with the phrase “legislative, executive and administrative measures”, which was interpreted differently in various languages and thus required definition.

Thirdly, there was little support for changing the tense of “shall” and using the conditional. Fourthly, there was support for Sweden’s proposal to use “developing” instead of “harmonizing”. Fifthly, several delegations considered it appropriate to include a reference to illicit trafficking in the first sentence. He drew the Iranian delegate’s attention to the use of the word “notamment” in the French version of the second sentence, which clearly indicated that the measures and policies in question were not exhaustive.

Several written proposals had been received. He would refer the main points of discussion on the paragraph to the Chair of the Plenary, noting that they had been commented on by many delegations.

Mr SANDAGE (United States of America), speaking on a point of order, said that he was somewhat confused. Earlier the Chair had stated that a point made by one delegation need not be made or supported by another. Yet he had just said that some proposals had received little support. Those
two approaches could not be reconciled. At that very early stage in the proceedings it was essential for all delegations to have the opportunity to outline their position, and the Chair should not attempt to draw hasty conclusions regarding the majority view. At a later stage, however, some effort might be made to reach some consensus. If the Chair continued to proceed in that manner, each delegation would need to comment on every point raised, which hardly seemed advisable.

The CHAIR said that with four meetings scheduled for the working groups delegations would all have ample opportunity to state their views. As for his summing up, when a proposal had been made by one delegation but contested by several others, he had nevertheless included it among the five points to be forwarded to the Chair of the Plenary.

Mr CASTILLO SANTANA (Cuba) said that the first main point outlined in the Chair’s summing up of the discussion on paragraph 1 had not been entirely accurate, since in fact three basic proposals had been made: to delete part of the paragraph, to place part of the text between brackets, and to retain the text as it stood. Cuba supported the last proposal. It was essential that all the points of view expressed were taken into account and treated on an equal footing in the Chair’s summing up.

The CHAIR pointed out that his summary was by no means conclusive, but merely intended to reflect the tenor of the debate with a view to making headway. Any decision regarding the text lay with the Plenary. In addition, written texts were also required.

**Paragraph G.1(a) (Passive smoking)**

Dr REDDY (India) suggested the deletion of the word “enclosed” before “public places”, since enclosed public places did not for example include sports arenas, where large numbers of people were confined for long periods of time and subjected to the risks of passive smoking. While he recognized the need to protect children and pregnant women, he considered that the last phrase, which read “with particular attention to special risk groups such as children and pregnant women”, should be deleted, since it might convey a misleading public health message to other groups of people who felt less at risk.

Dr HETLAND (Norway) noted that no mention was made of people suffering from chronic diseases. He therefore suggested that “special risk groups” should be replaced by “special sensitive groups”. Also, further examples of public places should be listed thus the latter half of the subparagraph should be reworded: “indoor workplaces, restaurants, bars, cafes and other public places and public transport, with particular attention to special sensitive groups”.

Mr KATENE (New Zealand) said that little provision was made for the protection of non-smokers. He therefore suggested that the title of paragraph G.1(a) should be amended to read “Protection of the non-smoker”. The reference to the need for protection from exposure to tobacco smoke in indoor workplaces should be strengthened by the addition of the words “to the greatest extent practicable for all workplaces and in particular those workplaces where use of space is shared”.

Ms KERR (Australia) expressed support for the paragraph but considered it inappropriate to refer to the means of implementing the obligation, i.e. through the “implementation of legislation and other effective measures”. It was important to retain the reference to “systematic” protection; the term “systematic” suggested a legislative approach to regulating smoking in public places which Australia believed was the best practice approach to passive smoking regulation. She drew attention to the need for definitions of “enclosed public places” and “public transport”.

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Mr RAHMAN (Bangladesh) said that it was not clear whether “systematic protection” was intended to mean effective gradual measures or system-wide protection. He therefore suggested that the word “systematic” should be replaced by “progressive”. He endorsed India’s proposal for the deletion of the last phrase.

Dr FARÍAS ALBUQUERQUE (Peru) proposed the insertion of the phrase “and crowded places” between “enclosed” and “public places”.

Ms BILLUM (Sweden), speaking on behalf of the European Union and its Member States, said that the health impact of environmental tobacco smoke was now recognized as an issue of significance. It was therefore preferable to refer to “environmental tobacco smoke” not “passive smoking” and the title of the paragraph should be amended accordingly. She welcomed the emphasis on the need to provide appropriate protection in the workplace and to focus on different groups of special concern.

“Appropriate” rather than “systematic protection” would be a more realistic and effective goal for the convention. Some countries had chosen to deal with protection against environmental tobacco smoke through legislation, others by means of voluntary agreements or similar measures. National differences must be taken into account in deciding which measures were appropriate. Mention might also be made in the text of the possibility of voluntary agreements reducing exposure to tobacco smoke; the goodwill of restaurant and bar owners and their associations could make a difference.

Professor LYNCH (Canada), while expressing support for the intent of the paragraph, suggested simplifying the text by deleting of the words “legislation and other effective” before “measures”, which required some definition. She shared other speakers’ concerns regarding the term “systematic protection”, the scope of which was unclear. She also endorsed the deletion of the reference to special risk groups, since the aim of the subparagraph was to protect all people from passive smoking. As for India’s proposal regarding public places other than enclosed ones, she believed that each State Party should designate places appropriate to its own situation, without identifying some – but not all – spaces in the convention.

Ms BALOCH (Pakistan) said that since the introductory part of paragraph G.1 referred to legislative, executive and administrative measures, the reference to legislation and other effective measures in paragraph 1(a) seemed unnecessary. She too had doubts about the term “systematic protection”, which should either be deleted or placed between brackets. She would welcome a definition of “enclosed public places”.

Ms ROVIROSA PRIEGO (Mexico) said that the places to be protected from exposure to tobacco smoke should also include health units and schools. That should also be taken into account when enclosed or open public places were defined.

Dr SILVA GOLDFARB (Brazil) said that paragraph 1(a) was important, since it clarified how actions to reduce passive smoking could help to lower the demand for tobacco products. She proposed the insertion of the words “prohibit indoor tobacco smoking in order to stimulate smokers to quit, non-smokers not to begin and overall to before “provide for systematic protection from exposure to tobacco smoke in indoor workplaces, enclosed public places and public transport”. She further suggested that in the last phrase “special risk groups” should be replaced by “vulnerable groups”.

Mr TAKAKURA (Japan) proposed the deletion of the qualifying phrase “legislation and other” before “effective measures”, subject to possible further modifications at a later date. In Japan passive smoking had been significantly reduced without recourse to legislation, through a combination of measures, including administrative ones.
Professor GRANGAUD (Algeria) proposed, in line with proposals made in Johannesburg in March 2001 by the Member States of the African Region, the deletion of the words “indoor” and “enclosed” before “workplaces” and “public places”.

Dr NOVOTNY (United States of America), while recognizing the importance of considering passive smoking in the convention, proposed that paragraph 1(a) should be placed between brackets, pending input on the subject to be provided at a later date.

Mr BAHARVAND (Islamic Republic of Iran) drew attention to the possible legal problems arising from the use of the term “governmental”. The convention would be binding on States, not governments. Perhaps it would be wiser to delete the reference to governmental and to reformulate the beginning of the paragraph to the effect that Parties to the convention should take measures to protect against exposure to tobacco smoke and so on. As for the proposed deletion of the words “indoor” and “enclosed”, he believed that an overall ban on smoking in public places would be difficult to enforce and that the designation of smoking and non-smoking areas in public places and the workplace would be preferable. Perhaps one suitable term to convey the basic meaning of the two adjectives could be found.

Ms BALOCH (Pakistan), speaking on a point of order, sought reassurance, in the light of the United States’ proposal to place paragraph 1(a) between brackets, that unbracketed text would not be considered as having been agreed upon. It was her understanding that nothing was final until discussion of the text as a whole had been completed.

The CHAIR gave his assurance that the debate was by no means closed and that all views expressed were open to subsequent comment. It was not possible at that juncture to anticipate the outcome of such debate or indeed the definitive text.

Mrs MORALES ALLYÓN (Bolivia) suggested that the words “places of study”, specifying “schools and universities” be inserted after “indoor workplaces”. In her country, volunteers with whom she worked had informed her that students were forced to inhale the smoke from professors who smoked: in response, a youth committee to combat the use of tobacco had been formed. She requested also that the words “retail food outlets” be inserted after “enclosed public places”.

Dr MUGA (Kenya), speaking on behalf of the African Group, proposed the deletion of the words “indoor” and “enclosed” before “workplaces” and “public places”.

Professor SIMUNIC (Croatia) said that in his country some 70% of children lived in families where smoking was prevalent: those children were therefore passive smokers from birth. It was important to stress the issue of smoking in the family environment in paragraph 1(a), as children learned to smoke by following their parents’ example.

Ms SUH (Republic of Korea) suggested that, in order to reflect the serious harm caused by indirect smoking, the phrase “with particular attention to special risk groups” be replaced by “and prohibition of smoking in areas frequented by special risk groups”. Further reference to the concept of a complete ban on smoking should also appear in the relevant protocol at a later date.

Dr GRACIELA DE CACERES (Paraguay) was in agreement with the text as amended by Peru. She emphasized that the purpose of the text was to defend the rights of non-smokers, who were in the majority, against an invasive minority of smokers. The purpose of the convention was to protect the right to life and the right to health. Voluntary agreements took too long to produce satisfactory results and, in her experience, self-regulation tended to defend the particular interest of certain economic
groups, rather than the rights of the majority. She was concerned that special risk groups such as children and women, upon whom thousands of millions of dollars were spent in other health areas, should remain a priority in regard to tobacco use. Children were particularly vulnerable: if they were subjected to passive smoking in homes and public places, studies had shown that they were more likely to become smokers themselves. In addition, research published in the United States of America had shown that those children were likely to develop conditions that could lead to lung cancer.

Mr VARELA (Argentina) said that it was important to emphasize the vulnerable position of all high-risk groups, for the reasons mentioned by the delegates of the Islamic Republic of Iran and Paraguay. She suggested therefore, that the word “including” should replace the words “such as” before “children and pregnant women” in order to allow a wider definition of special risk groups.

Mr BEN SALEM (Tunisia) said that the term “enclosed” rather than the word “indoor” most accurately reflected the meaning intended in paragraph G.1(a) and he suggested that the paragraph be rephrased accordingly. He further suggested that specific reference should be made to categories of “enclosed public places” such as health institutions and educational establishments, thus ensuring that the provisions of the convention could be interpreted in a similar manner, irrespective of the country of application.

Dr ROA (Panama), referring to the same paragraph, agreed that specific reference to special risk groups such as children and pregnant women should be deleted as they could be understood to be included in a reference to adequate and systematic protection of family health. In addition, it would seem important, as the delegate of Peru had suggested, to include a reference to enclosed public spaces where large crowds might gather and to define those places in an annex to the convention or a chapter on definitions.

Mr OGANOV (Russian Federation) said that public education had a major role to play in combating passive smoking and therefore it would be appropriate to make a reference to educational measures in the text. He favoured retaining the reference to special risk groups such as children and pregnant women.

Dr SEKABARAGA (Rwanda) wished to clarify further the position of the African Region in regard to the definition of “indoor workplaces” and “enclosed public places”. There was concern that those who were employed on work sites or who attended sporting events also had a right to be protected. The references to “indoor” and “enclosed” should therefore be deleted.

In using the term “passive smoking” there was a tendency to refer only to tobacco smoke, although it was possible that the unborn child could be affected by tobacco products passing through the placenta and that newborn infants could receive those products through the mother’s milk: he queried whether passive smoking was therefore the correct term.

Mr CASTILLO SANTANA (Cuba) supported the text of paragraph 1(a) as given in the Chair’s text. He recalled that that text had resulted from much discussion and was flexible. Referring to the remarks of the delegate of Argentina, he observed that the text made reference to groups at risk, to pregnant women and to children.

Dr AL-LAWATI (Oman) requested that the words “appropriate governmental level” be deleted as some nongovernmental institutions also monitored public places. He queried the value of the word “systematic” and requested that it, too, be deleted. He further suggested that the words “in particular” be placed before “in indoor work places” and that the reference to special risk groups be deleted, as the entire population should benefit from protection. The definitions of enclosed public places and public transport should be included in the list of definitions.
Mr EMMANUEL (Saint Lucia) said that family members could be exposed to agents in environmental tobacco smoke that could be prejudicial to health. A reference to family members should therefore be included in the text. The world “homes” should be included before “indoor workplaces”.

Ms BALOCH (Pakistan) responding to the previous speaker, said that what took place in the home was a private matter on which the state could not regulate in the context of smoking. She requested therefore that the word “homes” be placed in brackets.

The CHAIR noted that the inclusion of a paragraph on “passive smoking” had received wide support. One delegation had requested that the paragraph be placed in brackets: that position had been neither endorsed nor contested. The word “systematic” had not received the approbation of all delegates and words such as “progressive” or “appropriate” had been put forward as alternatives. The use and definition of the words “indoor” and “enclosed” had been contested by a number of delegates.

In regard to the debate on the question of special risk groups, it might be more appropriate to focus on the places frequented by those risk groups than on the groups themselves. Opinion appeared to be divided as to whether to make specific mention of the special risk groups.

Two delegates had made reference to smoking in the home, although, as the delegate of Pakistan had pointed out, it was difficult to take collective measures against individual behaviour in the home.

Finally, although the expression “passive smoking” had been called into question and alternative terms put forward, it needed to be borne in mind that “passive smoking” was widely used and clearly understood.

Paragraph G.1(b) (Regulation of the contents of tobacco products)

Mr RAJALA (European Community) said that, in the context of setting international standards, there was a need to avoid duplication of regulations. To that end, he recommended that the International Organization for Standardization (ISO) be consulted. ISO standards should take public health standards into consideration rather than focusing on the concerns of the manufacturers. He would submit a text to reflect those points.

Dr MBAIONG (Chad) queried whether WHO should seek to regulate the composition of tobacco products as they were commercial products. He indicated that he would submit a new proposed text.

Ms KERR (Australia) said that while the heading of the paragraph G.1(b) referred to the regulation of the contents of tobacco products, the contents covered almost the entire cigarette production process. She would submit a more appropriate text.

Dr WINAI SWASDIVORN (Thailand) said that he wished to replace the wording from “cooperation” to “standards” with “cooperation with the Parties to this agreement to prepare a protocol on tobacco product regulation to define and implement best practice in the setting of such standards”. He explained that no standards existed at that time in Thailand.

Mrs THIBELI (Lesotho) explained that, by agreeing to a common platform prior to the meeting, the African delegates had saved time: she urged other delegations to do likewise. Any contribution by an African delegation could be taken as being endorsed by all African Member States.
Dr REN Minghui (China) agreed with the approach suggested by the representative of the European Commission: it was for ISO to adopt standards, not for any other body. He therefore suggested that the following phrase should be added at the end of the paragraph:

... encouraging the International Organization for Standardization to take into account the health indicators suggested by the World Health Organization while adopting such standards.

Dr ESPINOZA MURRA (Honduras) said that at a recent workshop in central America it had been stated that the tar and nicotine content of tobacco products could not be precisely determined. While supporting the principle that standards should be developed and harmonized under WHO auspices, therefore, his delegation considered that for the time being such standards should apply most particularly to tar and nicotine. He suggested the following form of words: “the adoption of standards to regulate the content of tobacco products and in the first instance of tar and nicotine.”

Dr SILVA GOLDFARB (Brazil) suggested that paragraph 1(b) was misplaced; it should be included within the scope of Article K (Surveillance, research and exchange of information), as it was important to monitor consumption, relating it with impact on morbidity and mortality.

Mrs TRAN Thu Thuy (Viet Nam) supported the text as it stood. Her country looked forward international standards to be developed and harmonized by WHO.

Ms SINIRLIOGLU (Turkey) said that her delegation supported the view expressed by the representative of the European Commission concerning the role of ISO in determining the contents of tobacco products.

Ms BOBYLIOVA (Ukraine) said that the importance of the paragraph was such that, in order to avoid subsequent disagreements over international standardization in documents, the following words should be added: “in cooperation with international organizations for standardization”.

Mr MBUYU MUTEBA (Democratic Republic of the Congo), after apologizing for the fact that his delegation had been unable to participate in the Johannesburg meeting of the African Group and was unaware of what decisions had been reached, said that the text would be clearer if the order of words were changed and an extra phrase inserted. It would thus read:

(b) the adoption, under the auspices of the World Health Organization and in cooperation with other specialist institutions, of standards for the regulation of the contents of tobacco products, including standards for testing and measuring, designing, manufacturing and processing such products.

Ms DJAMALUDDIN (Indonesia) said that while mainly supporting the position, there were two points to raise: first, regulation would often also involve disciplines other than public health. She therefore suggested that the phrase “under the auspices of” should be replaced by the phrase “in consultation with”. Secondly, there should be a provision that the costs of implementing the relevant measures should be fully borne by the manufacturers of tobacco products.

Ms LLORENTE DIAZ (Cuba) suggested that the phrase “under the auspices of the World Health Organization” should be replaced by the phrase “under the auspices of the relevant international bodies”, given that ISO and the Centro Cooperativo de Investigaci ón Cientifica sobre el Tabaco (CORESTA) were as involved in such activities as WHO.
Professor LYNCH (Canada) said that her delegation, while supporting standards and technical regulation based on widely accepted scientific evidence, was concerned that, as it stood, the paragraph was difficult to understand. Standards organizations could be encouraged to develop methodologies drawing on the experience of countries which were establishing strong standards for the testing and measuring of tobacco emissions, including the selected toxic contents of smokeless tobacco, but the public health implications of ingredients and additives might be better measured by addressing the issue of emission: setting standards for ingredients might give rise to a false sense of reassurance. Equally, there were no standards relating to processing and manufacture that could make such products safe. She would submit an alternative text.

Dr ENYIME (Cameroon) said that his country was trying to raise awareness of the dangers of tobacco use and to regulate their composition. It was difficult to convey these messages to such groups as pregnant women and children, especially in view of the revenue gained from the sale of tobacco products. His delegation therefore had some reservations about the paragraph under discussion, and would deal with the matter within the African group.

Dr HETLAND (Norway) said that both tobacco products and their smoke were hazardous. He therefore suggested that the words “and exposures thereof” should be inserted after the words “contents of tobacco products” and that the words “and harmonization” should be deleted. The efforts to develop neutral standards and best practices under the auspices of WHO were supported.

Mr KATENE (New Zealand) said that, while his delegation generally supported paragraph 1(b), it believed that the regulation of tobacco product constituents should be based on “best practice”, that international standards should be developed for consistency and that changes in tobacco products should not give rise to other safety or health concerns.

Mr GREEN (United States of America) supported the establishment of international programmes to develop model standards for Member States to consider adopting. The list of possible standards should therefore be deleted from the paragraph, so as not to prejudice any discussion of an appropriate work programme, which could be developed under a separate protocol. His delegation would also support the establishment of domestic science and health-based regulatory agencies with enforcement authority. He would provide an alternative text.

Mr RAHMAN (Bangladesh) said that, when an organization was competent in a particular field, such as the Codex Alimentarius Commission, it was necessary to involve ISO. Similarly, WHO had been the driving force behind the draft convention and, while acknowledging the value of collaborating with other organizations, his delegation would be unhappy to see its responsibility diluted. Moreover, ISO although an intergovernmental body, might not give due emphasis to the public health aspects and any standards it might establish could be favourable to the tobacco industry. He therefore suggested that the following phrase should be added at the end of the paragraph: “in consultation with other standard-setting organizations, including ISO”.

Ms BALOCH (Pakistan) said that paragraph 1(b) linked two disparate issues: the first part dealt with measures which came under national competence and the second part had a multilateral context. She therefore suggested that the word “national” should be inserted in the phrase “adoption of standards”. It would be hard for her government to accede to an instrument referring to international standards that were not yet in place. It would be better to separate the issues. The provisions on international standards could perhaps be moved to Article M.

Mr GBOMOR (Sierra Leone) said that the text, good as it otherwise was, would be more effective if the word “standards” was varied by the occasional use of the word “measures”.
Dr MUGA (Kenya) said that it was appropriate for WHO to set the standards: nicotine was, after all, a drug, like others certified by the Organization. ISO was less directly concerned with public health and any standards issued by countries under its auspices risked being manipulated by the tobacco industry.

Mr VARELA (Argentina) supported the suggestion made by the Brazilian delegation, that the issue should more properly be addressed under Article K rather than Article G since it did not particularly relate to measures to reduce demand for tobacco products.

Dr LEWIS-FULLER (Jamaica) said that, while aware of the rationale behind the development of standards and adherence to them, she feared that support by WHO and governments for standards relating to tobacco products could be perceived as ambivalent or even hypocritical, if manufacturers could claim that they were making cigarettes in accordance with WHO specifications. Governments could not adopt the most desirable course and ban tobacco products outright although they would not hesitate to ban other poisonous substances. The emphasis of the convention should be on strict disclosure by tobacco manufacturers, along with intensive public education on the harmful effects of tobacco.

Mrs SHAHAR-BEN AMI (Israel) said that the provision governing the regulation of the contents of tobacco products should cover the implementation of standards as well as their adoption. In addition, any standard established should be regarded as a minimum which States would be encouraged to exceed. Her delegation would submit an appropriate text.

Ms SUH (Republic of Korea) said that, while agreeing with the need for standards to control the ingredients of tobacco products, her delegation considered that adopting the same standards for manufacturing and processing infringed the freedom of corporate activities. It therefore suggested that the phrase “manufacturing and processing such products” should be deleted.

Professor WARNER (World Bank) pointed out that the regulation of tobacco products was not primarily a measure to reduce demand for tobacco products but was a condition of supply. It would therefore appear more appropriately in Article I. The situation would be changed only if demand was reduced by removing nicotine from tobacco products or if cigarettes were made unpalatable.

Ms TAYLOR (International Union against Cancer) speaking at the invitation of the CHAIR, supported the proposed deletion of the words “to the extent possible within the means at its disposal and its capabilities” from the first line of paragraph G.1. Her organization would also support the replacement of the word “harmonizing”, in that paragraph and in paragraph G.1(b), with the word “developing”. Paragraph G.1(b) required further consideration generally. Responsibility for standards should not be delegated to ISO, which had no public health remit.

The CHAIR said that it was important not to confuse the classification of final products, which could be the subject of standards, with the methods used to make such products. There would need to be further clarification of that issue. He noted that there was a division of opinion on whether WHO could legitimately carry out such work alone. Others, meanwhile, did not wish to entrust the task only to ISO.

The meeting rose at 18.00
WORKING GROUP 1
SECOND MEETING
Tuesday, 1 May 2001, at 19:40

Chair: Dr HATAI CHITANONDH (Thailand)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 4 of the Agenda (Documents A/FCTC/INB2/DIV/1, A/FCTC/INB2/2 and A/FCTC/INB2/3) (continued)

The CHAIR drew attention to document A/FCTC/INB2/WG1/Conf.Paper No.1 which set out the amendments to Article G, paragraphs G.1 and G.1(a)-(b) of the Chair’s text of the framework convention proposed at the first meeting of Working Group 1. He requested that any corrigenda be submitted in writing to the Secretariat for reflection in a subsequent addendum. He reminded participants that any amendments proposed should be submitted in writing no later than 30 minutes after the end of each meeting.

Dr NOVOTNY (United States of America) pointed out that the text proposed by the United States relating to environmental tobacco smoke set out in document A/FCTC/INB2/WG1/Conf.Paper No. 1 had not been placed within square brackets as requested. He indicated, however, that the brackets could be removed and that the United States would produce an additional substantive text on that very important issue.

Ms LAMBERT (South Africa) said that the two references to “Text proposed by Kenya” in the same document should be followed by “(co-sponsored by Member States of the WHO Africa Region)”. African delegates who spoke did so on behalf of all Member States of that Region and she wished that to be reflected in any subsequent conference papers.

Dr SILVA GOLDFARB (Brazil) drew attention to the fact that her delegation’s proposal to move paragraph G.1(b) to Article K had not been included in the conference paper.

G. Non-price measures to reduce the demand for tobacco

Paragraph G.1

Paragraph G.1(c) (Regulation of tobacco-product disclosures)

Dr WINAI SWASDIVORN (Thailand), speaking on behalf of the Member States of WHO’s South-East Asia Region proposed the insertion of “by brand” after “all manufacturers”. She would submit a text.

Mr TAKAKURA (Japan) did not have a textual proposal but said that the inclusion in the convention of tobacco-product disclosures could be a very important tool in regard to public education. However, it would be necessary to clarify the feasibility of actual procedures for implementation, the type of wording to be used and the technical definition of such terms as “all ingredients and additives” and “major constituents”. Without a clear common understanding of the meaning of such terms, implementation of the provision would be very difficult.
Mr SHRESTHA (Nepal) supported the amendment proposed by the delegate of Thailand.

Ms KERR (Australia) supported the principle of full disclosure by tobacco manufacturers along with promoting the public availability of the disclosures. The title of the obligation would be more accurate if it read “Regulation of tobacco-product content disclosures”.

Professor LYNCH (Canada) supported the intention of the proposal and felt that the language of the article should include reference to approved testing and measuring methods to be used in obtaining accurate estimations of tobacco contents and constituents of smoke. The provision of information to the public was best regulated by domestic law governing trade secrets and privacy. In addition, “within its territory” would better describe the intent of the text and the scope of an obligation of that nature than the present wording “under its jurisdiction”. It would also be consistent with other provisions such as that in subparagraph G.1(d)(iv)(3) which referred to “territory”. She therefore proposed that paragraph G.1(c) be amended to read “implementation and taking of necessary steps to enforce measures for tobacco-product disclosures by all manufacturers, utilizing where appropriate approved test methods, including all ingredients and additives, and major constituents of smokeless tobacco and tobacco smoke. Parties shall, consistent with domestic law, ensure that this information is made available to the public. Each Party shall apply these measures to all tobacco products manufactured or sold within its territory”.

Ms MORALES AYLLÓN (Bolivia) said that the messages on cigarette packages did not all have the same import and she advocated that in relation to “promotion of availability of such information to the public” emphasis should be placed on the damage that tobacco could cause. She would submit additional wording to that effect.

Dr NOVOTNY (United States of America) said he would prefer the paragraph under consideration to be hortatory rather than mandatory. The mandatory information disclosures in the provision as currently drafted would raise constitutional issues for his country and the public disclosure of confidential trade secret information would raise proprietary issues. He proposed that the text should be amended to include the words: “regulate the disclosure of the toxic ingredients and additives and major constituents of both tobacco products and tobacco smoke”. The disclosure requirement in the existing text would apply to products manufactured solely for export. As formulated, it raised a concern that United States government agencies could be responsible for regulatory or law-enforcement duties for products not used by United States citizens or that other countries or parties could have standing to sue in the United States judicial system to enforce requirements that applied to products sold only in other countries. An exception for products sold solely for export would address the issue. Alternatively, language restricting the requirements to tobacco products manufactured, distributed or sold within the United States could also address the issue. He would submit appropriate text to that effect.

Dr FARIAS ALBURQUEQUE (Peru) endorsed the paragraph in principle and suggested an amendment, which had much in common with that made by the delegate of Bolivia: the last sentence should be replaced by “This information shall appear both on the packets offered for sale and in tobacco advertising”. He would submit a text in writing.

Mr MBUYO MUTEBA (Democratic Republic of the Congo) said that he wished to propose amendments which would combine paragraphs G.1(c) and (d) and which would require a new heading “(Information, labelling, packaging and language)”. He would submit the text in writing.

Ms SUH (Republic of Korea) said that the disclosure of all ingredients and additives of tobacco products presented technical problems. It was desirable that the Conference of the Parties designate the
specific toxic component and mandate their disclosure. She would submit an appropriate amendment in writing.

Dr AL-LAWATI (Oman) said that disclosure should be to the general public, not only to governments. Furthermore, parties should share disclosure information. All the costs incurred in generating and disseminating such information should perhaps be borne by the tobacco industry on the principle that the polluter pays. He would submit written proposals.

**Paragraph G.1(d) (Packaging and labelling)**

Mr ODOKO (Japan) suggested that subparagraph G.1(d)(i) should be deleted since the terms mentioned related to registered trade names which, in accordance with the register of trade names, were authorized for exclusive use under the relevant national and internal laws. That matter was dealt with under the auspices of WTO. Furthermore, paragraph 5 of Article D, Guiding principles, in the chair’s text stated that tobacco-control measures should not constitute a means of arbitrary or unjustifiable discrimination in international trade.

Mr RAJALA (European Community), said that the regulation of misleading descriptors was an issue that had recently been considered of prime importance in avoiding smokers being given a wrong picture of the health effects of particular products. Research had demonstrated the importance of such descriptors in consumer choice, where smokers often selected a “light” or “mild” product rather than attempting to stop smoking altogether. Such products were no less dangerous because they encouraged deeper inhalation to achieve the same nicotine dose. Misleading descriptors were already regulated for other consumer products, so it would be logical to do likewise for tobacco, given the enormous health damage caused by smoking. The European Community and its 15 Member States suggested a more general wording for the provision, in order to cover a full range of possible descriptors and to avoid possible linguistic problems when the convention was implemented, and would submit a text.

Ms MAYSHAR (Israel) suggested deletion of the word “similar” in subparagraph G.1(d)(i), which might narrow the scope of the proposed prohibition. In addition, in order to remove any doubt, she proposed that any term implying that a tobacco product was less harmful than others should not be used on tobacco products themselves or on unit packets or packages.

Dr WINAI SWASDIVORN (Thailand), speaking on behalf of the Member States of the South-East Asia Region, said that support for the text of subparagraph G.1(d)(i) had already been expressed at the Jakarta consultation and he would therefore like to retain the text as it stood.

Dr SEKABARAGA (Rwanda) said that the import of the text underlay the entire anti-tobacco campaign since manufacturers used those terms precisely to mislead smokers. All possible action should therefore be considered to combat the deception. If the text were deleted, manufacturers could continue to make misleading statements. His delegation and – he thought – other African countries therefore urged that the text be retained to show manufacturers that they must not mislead smokers.

Mr LAGOS PIZZATI (El Salvador) agreed with the comments made by the delegate of Israel in relation to the use of terms conveying the impression that a particular product was less harmful than others. Efforts should be directed at indicating that tobacco was harmful whatever its composition, as scientific research had shown. He suggested that subparagraphs G.1(d)(i) and (ii) be merged since both related to false and misleading information that might give the impression that tobacco was not harmful to health. He would submit a text on the matter.
Dr TIMTCHEVA (Bulgaria) said that she supported the suggestion made by the representative of the European Commission that the subparagraph should be expressed in more general terms and should also include such items as trademarks, pictograms and any other signs that might suggest that any particular product was less harmful than others.

Professor LYNCH (Canada) said that, like the delegate of the European Commission, her country was very concerned about the potential of specific words to lead consumers to assume erroneously that some products were safer than others. In that regard, Canada was currently reviewing the use and impact of such terms as “light” and “mild” and consumer response to them. In the context of a multilateral agreement, she expressed concern that the wording of the article as proposed would prove too limited. The terms cited were only a few of those that could be used for similar effect and focusing on them could lead to the industry moving rapidly to other terms and methods not defined in the text. She would therefore prefer more general wording and looked forward to seeing the proposal to be submitted by the representative of the European Commission.

Dr FARÍAS ALBURQUEQUE (Peru) said that, on the basis of Peru’s experience in relation to other products such as food stuffs where the terms “light” and “ultra light” were also used in marketing, he would prefer to retain the text as it stood, although it could be altered slightly by deletion of the word “similar” to avoid the use of words that manufacturers could claim were not similar to “light” and “ultra light”.

Mr LISKIA (Papua New Guinea), while expressing full agreement with the intention of the subparagraph, endorsed the proposal to delete misleading terms such “light” or “mild” and suggested that the subparagraph be retained, with minor amendments to ensure its general publication.

Dr LEWIS-FULLER (Jamaica) fully supported the measures set out in the subparagraph and proposed inserting “or more beneficial” after the phrase “less harmful”.

Dr AL-LAWATI (Oman) considered that the text should not only cover the prohibition of terms such as “low tar”, “light”, etc. but should include package messages that discouraged smoking. He would submit a proposed text to the Secretariat.

Dr ALMULLA (Qatar), stressing that all tobacco products were harmful whether they were “low tar” or “light” was in favour of retaining subparagraph G.1(d)(i) as it stood.

Mr GBOMOR (Sierra Leone) said that, whereas WHO’s main concern was health, that of the tobacco industry was profit, and it was clear that tobacco control policies were being undermined through deceptive messages implying that certain brands of cigarettes were better than others. He stressed the importance, especially for the African countries, of retaining subparagraph G.1(d)(i). The paragraph should remain as it stood, especially as the phrase “or any other similar term” precluded the use of misleading terms as a whole.

Mrs SINIRLOIOGLU (Turkey) supported the proposal by the representative of the European Community to use wording of a more general nature in the subparagraph.

Dr NOVOTNY (United States of America) expressed a clear preference for negotiating specific commitment on packaging and labelling in a separate protocol, as the provisions in paragraph G.1(d) were too prescriptive for inclusion in the framework convention. He therefore supported the proposal made by the representative of the European Community. It would be better to consider the various provisions concerning labelling that appeared in the Chair’s text as a whole, in order to avoid overlapping and repetition. He would submit a revised text in support of prohibiting false, misleading
or deceptive claims, for inclusion in the framework convention itself. He was not in favour, however, of including over-specific terms such as “low tar” and “light”, which could raise serious constitutional issues related to free speech in the United States.

Dr SILVA GOLDFARB (Brazil), referring to subparagraphs G.1(d)(i) and (iv) said that Brazil already had regulations ensuring that health warning messages appeared on tobacco product packaging, including indications that there were no safe levels of consumption of substances such as tar, nicotine and carbon monoxide. The use of terms such as “mild” and “light” was also prohibited. She therefore supported subparagraph G.1(d)(i) and suggested that subparagraph G.1(d)(iv) be amended to read “each unit packet or package of tobacco products carries some different rotative health warnings and/or a general health warning”, the rest of the paragraph remaining unchanged.

Professor SIMUNIC (Croatia), fully endorsing the views of the delegate of the European Community, proposed that the subparagraph should refer to the adoption of measures prohibiting the direct or indirect use on tobacco product packaging of any term which gave the impression that a particular tobacco product was less harmful than others. Further relevant details should be set out in an additional protocol.

Ms BALOCH (Pakistan) requested clarification as to whether the legal obligations set out in the text referred to exporters, importers or local producers. Depending on that clarification she might suggest a stronger wording covering exports and local production.

Professor GOJA (Uruguay) said that, while supporting the provision on the whole, she would prefer clear and unequivocal terminology which ensured that no terms used in packaging implied that one tobacco product was less harmful than another.

Dr ANDEN (Philippines) strongly supported the inclusion of a general provision in the convention concerning measures to regulate the use of terms which were intended to mislead smokers and potential smokers. There were no safe cigarettes. She supported the proposal by the delegate of the United States to place more explicit provisions in a separate protocol but considered that a general provision should appear in the Chair’s text.

Dr ZARIHAH (Malaysia), supporting the previous speaker’s view, said that the convention text should refer to the regulation of the use of terms such as “low tar”, with more specific details being set out in a separate protocol.

Dr STAMPS (Zimbabwe) said that his delegation considered that the question of “light” or “safer” cigarettes had no place in the convention, which must make it clear that tobacco smoking remained tobacco smoking, regardless of tar or nicotine levels. He supported the views of the delegate of the Philippines.

The CHAIR invited the working group to consider subparagraph G.1(d)(ii).

Dr NOVOTNY (United States of America) proposed the deletion of the last part of subparagraph G.1(d)(ii) from the phrase “or that are likely to create” to the end of the sentence, which he considered redundant given the general provisions.

Dr SORICHETTI (Argentina), expressing support for the elimination of misleading descriptions on tobacco products, was in favour of a more general description in subparagraph G.1(d)(i), with greater detail in a separate protocol, and considered that subparagraph G.1(d)(ii) should be combined with subparagraph G.1(d)(i) or else deleted, in the interests of avoiding repetition.
The CHAIR invited consideration of subparagraph G.1(d)(iii).

Dr STAMPS (Zimbabwe) stressed that each unit packet or package of tobacco products, especially packets of cigarette sticks, must not only carry the health information specified but also must be tamper-proof on account of their sale by children to sustain the incomes of poor families.

Ms DJAMALUDDIN (Indonesia) referring to subparagraph G.1(d)(iv) recommended the adoption of appropriate, cost-effective measures, including health warnings on each unit package and the prohibition of sales of tobacco products to persons under the age of 18. She therefore strongly supported the proposal to retain all the main elements set out in the Chair’s text, but had no objection to an additional protocol covering those issues.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) suggested a rewording of subparagraph G.1(d)(iii) and would submit a revised text.

Mr CASTILLO SANTANA (Cuba) said that his delegation would submit an amendment to subparagraph G.1(d)(iv), with the view to including the word “universal” (“universal” in Spanish) before the word “pictogram” so as to produce a single pictogram which would be clearly understandable and acceptable in all countries. His delegation also proposed rewording subparagraph G.1(d)(iv)(1) using the definition of minor as set out in the United Nations Convention on the Rights of the Child, as the age of maturity varied from one national legislation to another.

Professor LYNCH (Canada) described recently introduced pictorial health warnings on cigarette packages in her country as an effective way of conveying health information to all consumers on a repetitive basis. Her delegation strongly supported the aim of the proposed text but suggested that the effectiveness of the proposed health warning would be enhanced by the addition of relevant health information on the package. She also considered that the wording and contents of the health warning and health information should be developed domestically. Without the proposed annex to the text it was difficult to know whether the article was complete or whether the annex could be deleted in favour of a more detailed text. Until that point was settled she suggested the following amendment: the inclusion of the phrase “and health information” after the words “health warning” and the placing of square brackets around the phrase “in accordance with Annex [INSERT]”.

Mr EMMANUEL (Saint Lucia) warned against putting out messages which were not in keeping with the objectives of the framework convention on tobacco control. Subparagraph G.1(d)(iv) mentioned, for example, a general health warning. One such warning read: “Smoking by pregnant women may result in fetal injury, premature birth and low birth weight”. That might nevertheless be misleading since it could convey the message that tobacco use did no harm to men. He therefore proposed that the general health message should be specified by WHO and should be a universal message in order to leave no doubt as to what the public should know. Subparagraph G.1(d)(iv) should therefore be reworded: “each unit packet or package of tobacco products carries a general health warning (as specified by WHO), including a picture or pictogram illustrating the harmful consequences of tobacco consumption, and exposure to second-hand smoke, in accordance with Annex [INSERT]; these warnings shall:”.

Mr OGANOV (Russian Federation) observed that subparagraph G.1(d)(iv) contained two affirmations, one being a warning of the harm caused by tobacco use and the second the desirability of including a pictogram. His delegation considered that the warning should obviously be compulsory but the pictogram could be an optional supplement. It would consequently be submitting a small amendment in writing.
Dr SORICHETTI (Argentina) said her delegation agreed with the spirit of subparagraph G.1(d)(iv) but felt that the general health warning and the pictogram should be on a rotating or alternating basis. When a warning or message remained unchanged over a certain period of time, it tended to go unnoticed. That warning should be approved by the national health authorities.

Mr TAKAKURA (Japan) said that his delegation was in full agreement with the spirit of the subparagraph under discussion but wished to request that part of the text be placed in square brackets: [, including a picture or pictogram illustrating the harmful consequences of tobacco consumption, in accordance with Annex [INSERT]].

His delegation wished to evaluate the concrete content of the Annex, not yet on the table, before reaching its overall judgement on the issue.

Mr GBOMOR (Sierra Leone), speaking on behalf of the African Region, said that the Member States concerned considered subparagraph G.1(d)(iv) to be very important in view of the deceptive practices of tobacco companies. The right approach was therefore needed to ensure that national tobacco control policies were not undermined. The subparagraph should therefore be amplified: “each unit packet or package of tobacco products carries clearly visible and legible general health warning messages and health information messages, including a picture or pictogram ...”. His delegation would submit a written proposal.

Subparagraph G.1(iv)(1) should also be amplified, since tobacco companies could use the services of minors to sell tobacco products, thus: “(1) clearly indicate the prohibition of sales of tobacco products to and by persons under the age of 18”.

Dr REDDY (India) said that, while generally welcoming the provisions under review, his delegation wished to propose some additions to improve their clarity and coverage. In subparagraph G.1(iv)(2) the words “where applicable” should be added after “actual measurements of smoke yields”, since several categories of tobacco products were consumed in non-smoking forms in India and elsewhere.

His delegation also suggested the addition of a new subparagraph G.1(iv)(3) with subsequent numbers changing accordingly: “in case of admixed products containing tobacco, clearly indicate the percentage of tobacco and its toxic contents”. The amendment was required because some manufacturers had been adding tobacco to several other products orally used, such as betel nut powder and sometimes even tooth powders, in order to exploit the addictive nature of tobacco and increase sales of their principally non-tobacco products. The full proposals would be submitted in writing.

Dr LEWIS-FULLER (Jamaica), echoing the comments of the delegate of Zimbabwe, spoke of the widespread practice in some Caribbean countries of selling one or a few cigarettes from open packets. Even heavy smokers might therefore never see the packet so that the value of messages on such packets would be lost. She wondered what remedial action was possible since attempts to make the sale of whole packets compulsory had proved ineffective, with continuing under-the-counter and roadside sales of single cigarettes.

She agreed with the previous speaker on the need for a new subparagraph G.1(d)(iv)(3) for non-tobacco products, and suggested that the present G.1(iv)(3) and (4) could be merged as suggested by the delegate of Argentina since they basically expressed the same sentiments, becoming a new subparagraph G.1(d)(iv)(4).

Dr FARSHAD (Islamic Republic of Iran) expressed the view that religious and historical messages should also be included. His delegation therefore proposed the following amendment to subparagraph G.1(d)(iv): “each unit packet or package of tobacco products carries a general health warning and a message discouraging smoking; these warnings and messages shall:”.

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Professor GOJA (Uruguay) said that her delegation, while generally endorsing the substance of subparagraph G.1(d)(iv), agreed with the proposed use of rotating or alternating health warnings since, in addition to making them more effective, it would ensure that the messages reached different communities of smokers.

Dr ZARIHAH (Malaysia) said that her delegation strongly supported the provisions of subparagraph G.1(d)(iv) but wished to amplify subparagraph G.1(d)(iv)(2) thus: “provide clear information about the toxic contents of the tobacco product and tobacco smoke, specifically tar, nicotine and carbon monoxide, including actual measurements of smoke yields”.

With respect to the clarity of messages her delegation considered that a new subparagraph G.1(d)(iv)(4) should indicate that such messages should cover at least 30% of the front of each unit pack or package of tobacco products.

Mr JU Yuanshan (China) said that his delegation was, in principle, in favour of subparagraph G.1(d)(iv) but suggested that the words “including a picture or pictogram illustrating the harmful consequences of tobacco consumption” should be deleted from subparagraph G.1(d)(iv).

Speaking of the need to respect domestic laws and customary practices regarding the question of pictures or pictograms, he observed that Chinese legislation made it compulsory to include a health warning covering 10% of the area of packages.

Mr KATENE (New Zealand) said that his delegation supported the principle that as much material as possible on packaging and labelling should be in the framework convention on tobacco control, both in the main text and further developed in a separate protocol. It also strongly supported the development of internationally effective tobacco packaging and labelling and noted with interest the recently legislated graphic health warnings currently in use in Canada.

His delegation considered subparagraph G.1(d)(iv)(1) to be of questionable value: there was too much of a focus on youth; the product was harmful to people of all ages; limiting a product’s use to people over 18 merely made it more attractive; the message would also detract from the rest of the health warnings on the packet; and it would unnecessarily take up valuable space. For all those reasons subparagraph G.1(d)(iv)(1) should be deleted.

Dr STAUMPS (Zimbabwe) said that, contrary to the view just expressed, the African community knew that the handling of tobacco products by persons under 18 was a major mechanism for promoting tobacco use by the young, especially young women and girls. His delegation therefore strongly supported the amendment agreed to by the African community, which required that the sale of tobacco products to and by persons under the age of 18 should be totally prohibited.

In subparagraph G.1(d)(iv)(3), his delegation supported the comments made by the delegates of India and Malaysia, but would want also to ensure that people using only indigenous languages should be properly informed. Such warnings should appear in the principal language or languages and indigenous languages of the country in whose territory the product was placed on the market.

Ms MAYSHAR (Israel) said her delegation felt it important, with respect to subparagraph G.1(d)(iv), that both unit packets and packages of tobacco products should carry a health warning. It therefore proposed replacing the word “or” by “and”.

Her delegation felt that the health warning should be specific. The word “general” should therefore be removed from subparagraph G.1(d)(iv) adding a requirement to provide a specific warning regarding various health risks. Her delegation agreed with that of New Zealand and suggested deleting the prohibition of sales to minors since it could have the opposite effect to that intended, as evidenced by the fact that some tobacco companies voluntarily used that labelling.
Dr NOVOTNY (United States of America), referring to subparagraph G.1(d)(iii) said that his delegation would prefer to have the matter handled in a protocol. Great care was needed to ensure that product information and labelling provisions in the smuggling sections were coordinated with the aspects currently under consideration.

With respect to subparagraph G.1(d)(iv), although his delegation supported a requirement for clear, conspicuous and prominent health warnings, it opposed any requirement for specific language or disclosures in the warnings, since each country must decide which approach would work best for its own population. Messages should indeed be crafted for the target and cultural audience. He suggested the addition of the words “and may include” before the reference to pictograms. His delegation would also support additional provisions encouraging States to require information on cessation and other health information packages.

Dr GRACIELA DE C.;CERES (Paraguay) said that subparagraph G.1(d)(iv) appeared to be a key provision for supervision of children and young people, whom it was crucially important to protect. Sales to and by persons under 18 should be prohibited since in Latin America children aged four or five could be found selling single cigarettes in buses and elsewhere. There was a real problem of smoking-related illnesses in children, with some 70% of 18-year-olds smoking in Latin America.

Universal principles had to be worked out, she concluded, adding that the assistance of the international community was needed for the purpose.

Dr CARIS (Chile) supported the proposal that the health warnings in subparagraph G.1(d)(iv) should be carried on a rotating basis, with the removal of the word “general”. He further suggested that all information on the packet or package should be authorized by the health authority. In that way, it would be possible to limit the deceptive advertising of tobacco companies which presumably could not be permitted by a national health authority. There should be a provision that cigarettes could only be sold in packets, to avoid the sale of single sticks. Subparagraph G.1(d)(iv)(2) should also clearly cover inclusion in the different warnings of the dangers of both smoking and of passive smoking.

Dr HETLAND (Norway) said that there was reason to believe that the warning on tobacco products that they should not be used by persons under 18 years old, provided by the tobacco industry, was considered to increase tobacco product sales to minors. In other words, such a warning might be counter-productive. He therefore agreed with the delegates of New Zealand and Israel that subparagraph G.1(d)(iv)(1) should be deleted. The prohibition of sales to minors would have to be clearly stated in section I(8).

Mr LISKIA (Papua New Guinea) said that his country supported subparagraph G.1(d)(iv) of the Chair’s text and particularly with its reference to a picture or pictogram illustrating the harmful consequences of tobacco consumption, as used in Canada. The low literacy rate in his country made the use of such pictures beneficial. In his view a general health warning alone, as was the case in his country’s current legislation, had proved to be ineffective. His country also supported the proposed amendment to subparagraph G.1(d)(iv)(1) regarding the prohibition of sales of tobacco products “to and by” persons under the age of 18. Lastly, he regretted the omission of reference to the sale of single tobacco sticks, which was a big problem in his country. He wondered how that issue could be covered by the convention.

Ms VILIAME (Fiji) expressed her agreement with the delegate of Papua New Guinea regarding the problem raised by illiteracy and supported the suggestion that the health warning should include pictures to enable illiterate smokers and potential smokers to better understand the dangers.

Professor LYNCH (Canada) expressed agreement with the delegates of New Zealand, Norway and Israel that subparagraph G.1(d)(iv)(1) should be deleted. Regarding the next subparagraph,
Section G.1(d)(iv)(2), her country supported the intention but considered the text to be incomplete since it referred only to the toxic contents of the tobacco products whereas consumers also needed to be informed about the toxicity of what was inhaled. The wording should reflect both the contents of smokeless tobacco and the constituents of smoked tobacco. The characteristics of each were different; monitoring of emissions should be specific to the nature of the product and the mode of use. She suggested the following wording: “provide clear information about the toxic contents of smokeless tobacco, specifically nitrosamines, nicotine and lead, and the toxic emissions in the smoke of tobacco products, specifically tar, nicotine and carbon monoxide, including measurements of smoke yields.”

In regard to subparagraph G.1(iv)(3), the Chair’s text appeared to introduce an unintended ambiguity. The health warning obligations generally required States Parties to ensure that such warnings were included on tobacco products sold in their territories but the words “language or languages of the country in whose territory the product is placed on the market” appeared to require the exporting country to provide health warnings in the language or languages of the importing State. That was more properly the legal responsibility of the importing State. She therefore proposed the wording: “appear in its principal language or languages when the product is sold on its market”, the word “its” referring to “each Party” in the first sentence of paragraph G.1.

Dr HAMAD (Sudan), referring to subparagraph G.1(d)(iv)(2) suggested that the wording be amended to improve clarity. It would be better to refer to the fact that when tobacco products were burnt, toxic products such as carbon monoxide that threatened human health were released into the air.

Mr MANETOALI (Solomon Islands) said that his country imported most of its cigarettes from developed countries and that the health warnings were printed mainly in English, which only a few nationals could read. For that reason, the words “general health warning” in subparagraph G.1(d)(iv) should cover health warnings in the official language or languages of the country where the tobacco products were sold.

Mr ESPINOZA FARFÁN (Guatemala) stressed the importance of giving consumers clear information on the content of toxic substances in tobacco products. Packets and packaging should display warnings that smoking led to cancer and cardiovascular diseases. Such warnings were important as many consumers in Guatemala did not understand the implications of terms such as nicotine or tar. He also supported the use of pictograms owing to the high rate of illiteracy in his country.

Mr RAJALA (European Community) said that the European Community and its Member States would comment on age limits later, during the discussion of Article I of the Chair’s text. Its comments earlier on the setting of agreed international standards on smoke yields applied in the present case. The European Community would propose amendments to the text in that regard.

Mr CASTILLO SANTANA (Cuba) said that if a new text for subparagraph G.1(d)(iv) were proposed including the phrase “on a rotating basis”, that phrase should be placed in square brackets. His country did not favour such specific health warnings within the convention. It was the responsibility of each government, in terms of its resources and possibilities, to decide the kind of health warning needed.

Ms SUH (Republic of Korea) said that, in subparagraph G.1(d)(iv)(2), the words “specifically tar, nicotine and carbon monoxide” should be deleted since such phrases on tobacco packets should be decided in a protocol. Her government also suggested that the words “low tar”, “light”, “ultra light”, “mild” or any other similar term in subparagraph G.1(d)(i) should also be deleted.
Mrs BOBYLIOVA (Ukraine) supported the proposed measures on packaging and labelling and the need for clear warnings on packets regarding the health risks arising from the toxic constituents of tobacco products. In subparagraph (iv)(2), however, use of the words “including actual measurements of smoke yields” required further study in view of the difficulty of measuring yields for specific packets.

Dr ANDEN (Philippines) expressed her country’s general support for subparagraph (iv) but agreed with New Zealand and other countries that subparagraph (iv)(1) should be deleted. At the end of subparagraph (iv)(2), the words “and indicate the hazardous effects of each toxic content” should be added. She also suggested the addition of a new subparagraph (iv)(4) to read “appear prominently in big bold letters on the upper portion of the front panel of the tobacco package (or carton) and occupy not less than 25% of such front panel”.

Dr STAMPS (Zimbabwe) was strongly opposed to the omission of a prohibition of sales of tobacco products to persons under the age of 18. That was the way retail tobacconists throughout the world induced young people to smoke tobacco and cigarettes. Zimbabwe reiterated its position that the sale to or buying by persons under the age of 18 of any tobacco product should be prohibited.

Mr SHRESTHA (Nepal), referring to the comments by the delegates of Jamaica and Papua New Guinea concerning the sale of single cigarettes, suggested that a health warning could be displayed at the place of sale. He therefore proposed the addition of a new subparagraph (v) worded as follows: “(v) health warnings as mentioned in subparagraph (iv) shall be displayed clearly in places where tobacco and tobacco products are sold”.

Dr BETTCHER (Tobacco Free Initiative) said that the delegate of Pakistan had raised an interesting and complex issue in relation to article G.1(d)(i), which appeared to be relevant to the whole of paragraph G.1(d) on packaging and labelling. Which State was responsible for complying with the provisions of the convention in the case of imported tobacco products – the exporting or the importing State? He tended to agree with the delegate of Pakistan that there might be some ambiguity concerning some of the obligations of exporting and importing States as defined in the present draft. In other convention contexts, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989), it had been recognized that exporting and importing States should share responsibility.

Ms BALOCH (Pakistan) asked the Chair to ensure that the ambiguity concerned and the Secretariat’s opinion be reflected in the report of the Working Group and reported to the plenary.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) said that the problem was avoidable to the extent that countries adopted national legislation to implement measures required under the convention and introduced them into the certification system imposed on all imports. Labelling would have to be in the languages of the country of consumption. If not, the products would be sent back. The only problem concerned smuggling, in which case the goods could be confiscated by the importing State.

**Paragraph G.1(e) (Education, training and public awareness)**

Dr CHITANONDH (Thailand), Co-Chair, invited the Working Group to consider paragraph G.1(e) as a whole.

Dr MUGA (Kenya), speaking on behalf of the Member States of the African Region, stressed the importance of paragraph G.1(e), especially in developing countries with low literacy rates and
inadequate access to proper information. Some smokers were even unable to interpret pictograms. He therefore emphasized the importance of providing education, training and public awareness at various levels – in schools and in clinics and among women’s groups, for example – to counter the misleading information provided by the tobacco industry and its efforts to recruit new smokers. The countries of the African Region therefore proposed a new introductory text for paragraph (e) and a new subparagraph (i) concerning a political declaration and commitment on the dangers of tobacco and measures taken by political leaders at all levels. The present subparagraph (i) would become (ii) and the present subparagraph (ii) would be deleted. There were also amendments to subparagraph (iii) and a new subparagraph (vii), all of which he would submit in writing.

Ms BILLUM (Sweden), speaking on behalf of the European Union, said that the Chair’s text provided a good basis for the discussion of education, training and public awareness. Such preventive actions should be directed towards priority groups, including pregnant women and children.

In paragraph G.1(e), it would be preferable not to refer to “counter-advertising”, since that term would become devoid of meaning if restrictions were placed on tobacco advertising and promotion, as proposed elsewhere in the text. She would submit a text in that respect.

Lastly, while subparagraph (e)(iii) concerning the facilitation of access to information on the tobacco industry was useful, it might be more appropriate to specify the type of information to be covered. The regular company reports required under national law might constitute a basis for essential information on the activities of the industry. Mention might also be made of the product information to be provided by companies such as details of additives. In view of the volume of such information, it might be disseminated by means of information technology. A text addressing those ideas would be submitted.

Dr HETLAND (Norway) said that the word “campaigns” in the first line of paragraph G.1(e) implied that public awareness of tobacco could be changed by means of short-term measure. He suggested replacing it by the phrase “programmes/interventions”, which implied long-term commitment, including an evaluation of the results achieved.

Ms KERR (Australia) said that paragraph G.1(e) should be made clearer and any unnecessary duplication should be removed. For example, subparagraph (iii) should be deleted as it was arguable whether facilitating public access to information on the tobacco industry would reduce the demand for tobacco, and it was not clear how the relevant measures would be applied. She would submit a text in that regard.

Dr NOVOTNY (United States of America) supported the facilitation and strengthening of education, training and public awareness campaigns on the health risks of tobacco consumption and exposure to second-hand smoke. Experience had shown that such programmes could have a real effect on individual behaviour and public support for tobacco control. In his Government’s view, any discussion of education and public awareness should include the promotion of effective education campaigns on the subject of smoke-free homes and other environments, and special attention should be given to health effects on the most vulnerable such as children and pregnant women; he would be submitting a text in that regard.

An important component of tobacco control programmes was the monitoring of their effectiveness, and a provision encouraging countries to take steps in that regard should be incorporated in the framework convention.

Lastly, subparagraph (e)(v) might already be covered under the “comprehensive educational programmes” referred to in subparagraph (e)(i) and could be deleted. Its inclusion might pose problems for his country because of its federal structure.
Mr EMMANUEL (Saint Lucia) said that the words “the media” should be inserted in subparagraph (e)(vi) after “public agencies”. The media played a very important role in education, and countries in the Caribbean subscribed to the Caribbean Charter For Health Promotion, which encouraged the development of a strong alliance with the public sector, with an emphasis on the media.

Ms ROVIROSA PRIEGO (Mexico) said that education, training and public awareness campaigns were important prevention measures against nicotine addiction. In subparagraph (e)(ii) a reference should be added to “nicotine addiction”. She would submit that and a linguistic amendment in writing.

The CHAIR, said that, in view of the late hour, he would now give the floor to other organizations, including nongovernmental organizations; the remaining countries that wished to speak on paragraph G.1(e) and its subparagraphs could do so at the next meeting of the working group.

Professor WARNER (World Bank), referring to subparagraph (d)(iv), said that warnings to date had been largely ineffective in influencing demand for cigarettes; in some cases they had even proven counterproductive by affording protection to United States tobacco companies in liability lawsuits. As the delegate of the Philippines had said, the size and prominence of the warnings were crucial, and he suggested that the words “an effective” should be inserted before “general health warning”.

He was concerned at the very specific content of subparagraphs (d)(iv)(1) and (2). As individual needs of countries would vary, it might be preferable to give countries the opportunity to decide at their own discretion what to include in the labelling.

Dr STAMPS (Zimbabwe), speaking on a point of order, said that he was greatly concerned about the fact that international and nongovernmental organizations were being permitted to speak before Member States. Those organizations had their own agendas; they had no obligations to the Convention or to any Party to the Convention, and should be permitted to speak only at the end of the discussion of an issue when all Member States had had their say.

Mr TOPPING (Legal Counsel) recalled that, at the first session of the Intergovernmental Negotiating Body, it had been decided to give nongovernmental organizations an opportunity to speak at the end of each meeting in accordance with paragraph 6.1(i) of the Principles Governing Relations between the World Health Organization and Nongovernmental Organizations. The Chair had been acting in accordance with that decision, which had been extended to include an intergovernmental organization.

Ms BALOCH (Pakistan), speaking on a point of order, requested the Legal Counsel to read out paragraph 6.1(i) of the Principles Governing Relations between the World Health Organization and Nongovernmental Organizations. Any point of order should be followed by a ruling from the Chair, not merely by an explanation from the Legal Counsel.

Mr TOPPING (Legal Counsel) said that the relevant part of paragraph 6.1(i) of the Principle Governing Relations between the World Health Organization and Nongovernmental Organizations read as follows: ... a nongovernmental organization “at the invitation of the chairman of the meeting or on his acceding to a request from the organization, shall be entitled to make a statement of an expository nature ...”. While he had previously given an opinion, it was up to the Chair to agree or disagree.

The CHAIR said that he concurred with the Legal Counsel’s opinion and wished to proceed if there was no further objection.
Dr STAMPS (Zimbabwe), speaking on a point of order, said that he strongly objected to nongovernmental organizations being given the floor at the present juncture, but would reluctantly go along with the Chair’s decision.

The CHAIR, referring to section 2 of the provisional summary record of the ninth meeting of the first session of the Intergovernmental Negotiating Body (document A/FCTC/INB1/3, page 155), pointed out by way of further clarification that it had been agreed that “nongovernmental organizations in official relations with WHO should have access, as observers, to the plenary and working groups that functioned as committees of the whole. Nongovernmental organizations might be invited by the Chair ... to make presentations in order to clarify issues of relevance to the discussions”.

Mr VUILLÈME (Switzerland) suggested that nongovernmental organizations should be permitted to speak only on issues that had already been addressed by the working group, i.e., up to and including paragraph G.1(d)(iv)(3).

Ms BALOCH (Pakistan) expressed concern at the way the Principles Governing Relations between the World Health Organization and Nongovernmental Organizations were being interpreted. Such organizations could be invited to speak, but a delegate had objected strongly to their being given precedence over a Member State. She therefore urged the Chair to reconsider this ruling.

The CHAIR reiterated that nongovernmental organizations and international organizations could intervene on an issue only after it had been discussed by the working group.

Dr STAMPS (Zimbabwe) said that he had particularly objected to the fact that one organization had already been permitted to speak on an issue that was still current in the working group.

Mrs WILKENFELD (International Union against Cancer), speaking at the invitation of the CHAIR, said that there was an overwhelming scientific consensus that the introduction of low tar and nicotine products and their uptake by smokers had not reduced morbidity and mortality from tobacco use, and had stopped millions of people from giving up with the false promise of reduced risk. It was therefore essential that terms such as “light”, “low” and “mild” and other terms that implied reduced risk were banned, and that statements on packaging clearly indicated the risks of smoking. No credence should be accorded to tar and nicotine yields produced using the flawed ISO method, nor should such numbers be required or permitted to appear on packaging.

Dr RAMSTRÖM (International Council on Alcohol and Addictions), speaking at the invitation of the CHAIR, referred to paragraph G.1(d)(iv)(2) of the Chair’s text. He emphasized that printing figures on cigarette packages to indicate measured yields of nicotine or tar was not only meaningless, but also directly misleading. While those figures purported to inform the consumer how much of the different substances were being taken in, they actually provided nothing more than the amount yielded to a smoking machine operated according to a specific protocol. However, human smokers adopted different smoking protocols that influenced the amounts taken in, and it would be appropriate to indicate on the cigarette package that nicotine intake would vary within a specified range depending on the way in which the cigarette was smoked. The smoker would then no longer be under the false impression that everything was determined by the cigarette.

With regard to health-damaging smoke constituents such as tar or carbon monoxide, the characteristics of the cigarette were more important, since the intake of tar was associated with the amount of tar that came with each milligram of the nicotine intake determined by the smoker. It might therefore be appropriate to indicate on the package the amount of tar and carbon monoxide taken in...
with each milligram of nicotine. Such information might help the consumer to find a brand that minimized the amount of health-damaging substances.

Mr COLLISHAW (Commonwealth Medical Association) speaking at the invitation of the CHAIR, welcomed the proposal to end the use of deceptive packaging descriptors such as “light” and “mild”, which would constitute a significant advance in consumer health protection. Many smokers remained confused and misled by such terms, and he thanked all those who had supported the measure, in particular the European Union for its leadership and the priority it had attached to correcting such misleading labelling.

The meeting rose at 22:15.
SECOND SESSION OF THE INTERGOVERNMENTAL NEGOTIATING BODY

WORKING GROUP 1

THIRD MEETING

Wednesday, 2 May 2001, at 15:00

Chairman: Dr HATAI CHITANONDH (Thailand)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 4 of the Agenda (continued) (Documents A/FCTC/INB2/DIV/1, A/FCTC/INB2/2 and A/FCTC/INB2/3)

G. Non-price measures to reduce the demand for tobacco (continued)

Paragraph G.1 (continued)

The CHAIR invited delegates to continue their consideration of paragraph G.1(e) (Education, training and public awareness).

Dr MOOSA (Maldives), speaking on behalf of the countries of WHO’s South-East Asia Region proposed that the word “electronic” should be inserted before “and audiovisual media” in subparagraph G.1(e)(i).

Dr RANAWIERTA (Sri Lanka) endorsed the proposal made by the delegate of the Maldives. Speaking on behalf of the same regional grouping and on the same subparagraph he proposed the insertion of the words “in any form” after “tobacco consumption”. Also “tobacco cessation” should replace “smoking cessation”, since the benefits of the former applied to both smoking and non-smoking forms of tobacco consumption.

Dr LI Xinhua (China), referring to subparagraph G.1(e)(iv), said that government officials should set a good example for the public and be involved in effective and appropriate training programmes on tobacco control. Moreover, a clear definition of governments’ sphere of competence was required. His delegation would submit written proposals covering those two points.

Dr KACZAMAR (Argentina) proposed that in the first sentence of paragraph G.1(e), the word “facilitation” should be replaced by “promotion”, so as to highlight greater commitment by States Parties. She would submit a proposal in writing with respect to the phrase in G.1(e)(ii): “and about the benefits of smoking cessation and tobacco-free lifestyles”.

Professor LYNCH (Canada) said she agreed with the delegate speaking on behalf of the European Union that the term “counter advertising” used in paragraph G.1(e) required clarification. While she endorsed the intent of subparagraph G.1(e)(i), she was not satisfied with the current wording. It was unrealistic to expect States Parties to ensure universal access to programmes on the health risks of tobacco consumption and exposure to tobacco smoke. Activities in that area should be as broad and accessible as possible and not confined to the use of specific media. She would submit a written amendment in that connection.

Similarly, the goals set in subparagraph G.1(e)(ii) would be more easily achieved and measured if the words “take steps to” were inserted before “ensure”.

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With respect to subparagraph G.1(e)(iii), she said that documentary disclosures on the tobacco industry’s marketing practices and public affairs management activities were crucial to the effective oversight and regulation of the tobacco industry. However, the intent of the subparagraph needed to be clarified, by the addition of the phrase: “which it is permissible to disclose under domestic law”. She expressed support for subparagraph G.1(e)(vi), stressing the importance of nongovernmental organizations in mobilizing support for government tobacco control activities.

Mr KATENE (New Zealand) said that his country agreed on the importance of strengthening education, training and public awareness initiatives and believed that emphasis must be placed on measures to discourage smoking. Knowledge must be matched with action. Referring to subparagraph G.1(e)(ii), he drew attention to the phrase “vulnerable groups”. He suggested that it should be added to the list of definitions and should encompass indigenous peoples. It was essential that the convention should recognize the importance of education, training and public awareness initiatives for indigenous peoples too. Likewise he suggested that the phrase “concerned persons” at the end of subparagraph G.1(e)(iv) required clarification and should also be added to the list of definitions. Referring to subparagraph G.1(e)(vi), he expressed support for the participation of nongovernmental organizations in the development of tobacco control strategies.

Mr SHRESTHA (Nepal), speaking on behalf of countries in the South-East Asia Region, said that it was not clear from the text of subparagraph G.1(e)(v) what was intended by “promotion and prevention measures for tobacco control”. The text also failed to recognize the needs of young people outside formal education. He therefore proposed that the subparagraph should be re-worded: “develop and implement effective and appropriate educational interventions for promoting tobacco control in students at various levels of education as well as other young persons.”

Ms LLORENTE DIAZ (Cuba) said that as it stood subparagraph G.1(e)(iii) was rather ambiguous and might be construed as promoting good production methods for the tobacco industry, which was not the case. She therefore proposed that it should be reformulated: “facilitate public access to information on the tobacco industry that is publicly available and useful to national tobacco control programmes”.

Dr VARABHORN BHUMISWASDI (Thailand) expressed support for the amendment introduced by the delegate of Nepal to subparagraph G.1(e)(v), and proposed the insertion after “students” of the words “and young people”. The smoking habit was easily acquired but difficult to give up on account of nicotine addiction.

Dr ZARIHAH (Malaysia) expressed support for the Chair’s text for paragraph G.1(e), subject to the addition of two further subparagraphs, which should read:

“(vii) recoup the costs for education, training programmes and public awareness campaigns from earmarked tobacco taxes;
(viii) ensure that the tobacco industry does not participate in any of the education, training and public awareness activities.”

Mr MOON (Republic of Korea) said that the term “tobacco industry” as used in subparagraph G.1(e)(iii) was too broad in meaning. Since the disclosure of information on tobacco product ingredients and advertising and promotion were covered in other paragraphs of the convention, he proposed that the subparagraph should either be deleted, or clarified by a suitable amendment.

Dr ROA (Panama) proposed that paragraph G.1(e) should be reworded to indicate that the Parties shall undertake to facilitate and strengthen “the development of educational training and public awareness programmes and activities, including the use of mass media, the implementation of
educational methods appropriate to the population targeted by those messages and mechanisms for assessing the impact of such activities”. She further proposed that subparagraph G.1(e)(v) should be amended to read: “develop and implement effective and appropriate educational measures for health promotion, prevention control and treatment of active and passive tobacco consumption and nicotine addiction. Such measures shall be aimed at young people, students at various levels of education, and the general public as a whole”. She also proposed the inclusion of an additional subparagraph G.1(e)(vii), which should read: “involve parents in the development of educational activities for the promotion of smoke-free lifestyles and for the prevention and control of tobacco consumption, passive exposure to tobacco and nicotine addiction.”

Ms TRAN THU THUY (Viet Nam) said that, while she basically endorsed the intent of paragraph G.1(e), too much emphasis was laid on young persons; attention should also be paid to preventing smoking among adults, whom young people usually tried to emulate.

Ms TKACHENKO (Russian Federation) said that she was not satisfied with the text of the introductory paragraph to G.1(e), at least in the Russian translation, and in particular with reference to the words “campaigns, including counter-advertising”. The basic intent of the paragraph should be the introduction of educational programmes, for it was only through such targeted programmes that attitudes towards smoking, especially among young people, could be changed. Moreover such programme should also be developed at international level through cooperation and exchange of experiences, she would provide a written text on those points.

Ms ROVIROSA PRIEGO (Mexico) shared the concern expressed by the delegate of Cuba and others about ambiguity in subparagraph G.1(e)(iii). She would welcome some clarification as to exactly what type of information on the tobacco industry was being sought.

Dr CARIS (Chile), referring to introductory paragraph G.1(e), stated his preference for “programmes” in place of “campaigns”, since the latter implied something short term rather than long term. He proposed that subparagraph G.1(e)(v) should be broadened in scope: “develop and implement effective and appropriate promotion, prevention and training measures for tobacco control designed for the entire population especially children and young people”. He also proposed the inclusion of an additional subparagraph G.1(e)(vii), which should read: “develop qualitative and quantitative evaluations of the promotion and prevention so as to promote those which are successful in tobacco control programmes.” With reference to subparagraph G.1(e)(vi), he underlined the important role of nongovernmental organizations in raising public awareness on the need for tobacco control. He would be submitting a textual proposal in connection with the need to involve those organizations in the development of strategies in that area.

Professor GOJA (Uruguay) was generally supportive of the paragraph, but proposed that under subparagraph G.1(e)(ii) the phrase “smoking cessation” should be replaced by “giving up tobacco consumption”, which was a harder habit to break.

Mr DILEMRE (Turkey) proposed that subparagraph G.1(e)(iii) should be qualified by adding text to the effect that information on the tobacco industry could be collected in accordance with each State Party’s commercial law.

Mr BAHARVAND (Islamic Republic of Iran), referring to subparagraph G.1(e)(v), suggested that in the context of activities targeted at students, the phrase “training programmes” might be more appropriate than “prevention measures”.
Mr VUILLÈME (Switzerland), referring to subparagraph G.1(e)(ii) said that information on the risks of passive smoking should be provided to the population as a whole and attention should not be focused solely on children, young people, and vulnerable groups. He therefore proposed that the first part of the subparagraph should be reworded: “ensure that the public is fully informed about the health risks …”.

Dr FARÍAS ALBURQUEQUE (Peru) agreed with previous speakers that in paragraph G.1(e) the word “campaigns” should be replaced by the word “programmes”, which he understood as being broader in scope and longer in duration. He proposed the insertion at the end of subparagraph G.1(e)(i) of the words: “aimed particularly at avoiding the taking-up of consumption” in line with Peru’s basic education programme.

Mr GRBEŠA (Croatia) said that, although he had no specific proposal to put forward, he would stress that various programmes referred to in G.1(e) must be based on scientific studies and manuals which were recognized as being specialized in the appropriate field.

Mr ESPINOZA FARFÁN (Guatemala) said it was of vital importance for tobacco control to facilitate and strengthen education, training and public-awareness programmes targeted at the general public on the health risks of tobacco consumption and exposure to tobacco smoke. In that connection, he expressed support for the initiative described by the delegate of New Zealand, to facilitate access to such programmes for indigenous peoples.

Mr HAMAD (Sudan), referring to subparagraph G.1(e)(ii), said that it was important to ensure coordination between the different health programmes on which tobacco consumption had a bearing, including programmes on cancer, diabetes, and cardiovascular and respiratory diseases.

Dr GRACIELA DE CACERES (Paraguay) said that the working group might consider defining the term “promotion” as used in subparagraph G.1(e)(v). In her view, the term “health promotion” would be more apt in the context. The concept had changed considerably since its inception, and currently meant enabling people in the case in point, children and young people, to assume responsibility for their health.

Paragraph G.2 (Advertising, promotion and sponsorship)

Dr REDDY (India) speaking on behalf of the South-East Asia Region, said that children were especially vulnerable and should be shielded from the nefarious influence of tobacco advertising. He advocated a comprehensive ban on advertising both because it could be guaranteed that children would not be exposed to advertisements intended for adults and because all available data indicated that partial bans were ineffective in controlling tobacco consumption. He therefore proposed that paragraphs G.2(a) and G.2(b) be merged and reworded thus: “prohibiting all forms of tobacco advertising, both direct and indirect, including through sub-brands, promotion and sponsorship including incentives such as gifts, coupons, rebates, competitions and frequent-purchaser programmes; with the aim of reducing the appeal of tobacco products to all segments of society”. He further suggested that paragraphs G.2(c) through to G.2(f) be deleted, although the principles contained in them could be included in the proposed protocol. He believed that the amendment he had put forward would minimize the loopholes that could be exploited by the tobacco industry to target children through purportedly adult advertising. He did not believe that children could be protected by using selective strategies.

Ms MAYSHAR (Israel) suggested that, for practical and legal reasons, the words “targeted at” should be replaced with “likely to influence” in paragraph G.2(a). In regard to adult advertising, she
believed that the strictest possible restrictions on advertising, including a total ban wherever feasible, should be imposed.

In regard to the issue of constitutional law, she put forward the view that the need to protect public health should prevail over any potential infringement of freedom of commercial speech and proposed that the Guiding principles should include language to that effect. The list of types of promotions at the end of paragraph G.2(b) was potentially limiting. She suggested that it be deleted, as a detailed list could be more appropriately included in a protocol on advertising. Her delegation proposed the following: “imposing strictest possible restrictions on, and ban as feasible, all forms of direct and indirect tobacco advertising, promotion and sponsorship;”. Turning to paragraph G.2(c), she said that it would be preferable to specify disclosure of expenditures related to both “direct and indirect advertising” promotion.

In addition to specifying the phasing out of sponsorship of sporting events, general language of “other events” should be used rather than the provision limiting cultural events. She indicated that her delegation would submit a text of proposed amendments.

Dr NJALSSON (Iceland) was strongly in favour of a ban on advertising, promotion and sponsorship, considering that step to be a successful tobacco control intervention. He suggested that any reference to age in paragraph G.2 should be deleted as young adults and children would inevitably be exposed to advertising directed towards the adult market and, indeed, might find it particularly appealing.

Noting the global nature of the tobacco trade, he pointed out that the Internet provided a way for the tobacco industry to avoid national advertising bans. He therefore proposed the addition of a new paragraph G.2(g) to read: “banning any direct or indirect Internet advertising for tobacco products or tobacco-related items, such as logos”. The proposed amendments would be submitted in writing.

Mr SANDAGE (United States of America) said that his delegation supported, to the extent permitted under the domestic law of each Member State, the elimination of those messages in the advertising, sponsorship and promotion of tobacco that had particular appeal for children and adolescents. In particular, he supported banning outside advertising of tobacco products, that was focused on or targeted at children, such as that which lay within a specified distance of places providing services to children, such as schools and libraries.

He also supported the requirements for health warnings on any tobacco product advertising. Any print advertising that was accessible to children should be in black and white. He supported a prohibition on false, misleading and unsubstantiated claims in any tobacco product advertising. There should be provisions obligating Parties to require tobacco companies to report annual advertising, marketing and promotional expenses and annual sales to the public in the aggregate. However, his delegation could not accept proposals to ban all forms of tobacco advertising as that would be contrary to his country’s Constitution. Nevertheless, significant progress had been made in the United States of America due in part to the extensive restrictions imposed on television and radio advertising. In addition, counter-advertising campaigns, supported by many of the States and by nongovernmental organizations had proved effective counterbalances to industry advertising. He indicated that he would submit proposed amendments to the paragraph in writing. Any remaining specific obligations could be held for the negotiation of a protocol in the area of tobacco advertising, promotion and sponsorship as outlined in paragraph G.3.

Dr MBAIONG (Chad) gave his strong support to the banning of advertising, promotion and sponsorship targeted at persons under the age of 18 in regard to the sale and use of tobacco. He proposed that paragraphs G.2(a) and G.2(b) be merged. He would submit a text giving a proposed amendment. He suggested that the phrase “and make those figures available to the public” was redundant and could therefore be deleted from paragraph G.2(c).
Dr SORICHETTI (Argentina) said that in the Spanish version at paragraph G.2(b) the words “menores” should be deleted to bring the paragraph in line with the other language versions. She endorsed the view that the list of incentives in paragraph G2(b) should be deleted. While restricting advertising was an extremely effective measure for reducing the demand for tobacco products, some Member States including Argentina, would not be able to impose a complete ban on advertising for legally traded products as it would be contrary to their constitutions. She proposed that, should the paragraphs be retained as they stood in the final text of the convention, a clause exempting those States that were unable to comply with that provision, should be included. Such States would be expected to restrict advertising so far as was legally possible.

Ms KERR (Australia) said that Australia recognized the pervasive nature of tobacco advertising globally and the long-lasting impact that it could have in particular because it encouraged uptake by young people and could act as a barrier to cessation by sustaining established smoking behaviour. Australia’s comprehensive Tobacco Advertising Prohibition Act had recently been strengthened by an amendment to phase out by 2006, tobacco advertising and sponsorship at international sporting events hosted by the country.

She joined with previous speakers in indicating concerns about the feasibility and practicality of prohibiting advertising targeted at people under the age of 18. She suggested that the reference to targeting persons 18 and under be deleted from paragraph G.2(a) and that paragraphs G.2(a) and (b) be merged to result in a single but strong obligation. In principle, Australia would support a provision that obliged parties to progressively phase out all forms of direct and indirect advertising, promotion and sponsorship. The definition of advertising and promotion was a major issue that required attention. The phase-out obligations could include timeframes by either specifying an end date to the phase-out and/or obliging parties to report progress periodically.

Mr ZHAO Jian (China) said that China agreed that restrictions should be imposed on tobacco advertising in accordance with the national legislations of different countries. Although he supported the text of paragraph G.2(a), he pointed out that it might be difficult to determine whether advertising, promotion or sponsorship was targeted at persons under the age of 18. He endorsed paragraph G.2(b) in principle, but wanted the list of incentives to be deleted. The convention should reflect the principle of restricting advertising while remaining concise in its descriptions; a detailed list could be included in a related protocol. Lastly, he proposed that paragraph G.2(c) be deleted as it infringed the rights of the tobacco companies. In addition, and from a practical standpoint, it would not be possible to check whether the figures were accurate, and he questioned the advisability of WHO associating itself with the publication of figures that might be misleading. He intended to submit his proposals in writing.

Mr MOON (Republic of Korea) questioned the extent to which it would be necessary and meaningful to require disclosure of advertising expenditure figures item by item as there were general means of measuring tobacco advertisement, promotion and sponsorship already provided for in the convention. However, he supported the aim of protecting young persons. He could accept paragraph G.2(c) if it were amended to read “requiring that tobacco companies disclose total expenditures as an aggregate on advertising and promotion make those figures available to the public”.

Dr ARMADA (Venezuela) endorsed the view that advertising, promotion and sponsorship of tobacco products should be extensively restricted. He supported the banning of any type of publicity directed towards persons under the age of 18 or to which they had access. He also supported a convention that prohibited any form of indirect advertising and the distribution of free tobacco products in the guise of advertising or promotion. It was important to establish concrete deadlines for restrictions such as those set down in G.2(e), to be imposed.
Dr YEHOROU (Ukraine) supported the provisions in paragraph G.2 relating to the promotion of tobacco. However, paragraphs G.2(c) and (e) required further drafting. Paragraph G.2(c) overlapped with subparagraph G.1(e)(iii), and the provision in paragraph G.2(e) was too general. Lastly, he proposed that the words “with the exclusion of professional printed publications” should be inserted at the end of paragraph G.2(f).

Dr AL-LAWATI (Oman) remarked that it would be difficult to differentiate between advertising, promotion and sponsorship targeted at those over and under 18 years of age. Paragraphs G.2(a) and (b) should therefore be merged and he would submit a proposal in writing to that end. Furthermore, paragraph G.2(c) could be suppressed as it served no useful purpose.

Mr KATENE (New Zealand) expressed support for stringent and comprehensive restrictions on tobacco advertising, promotion and sponsorship given the potential for global health gains. New Zealand was exposed to off-shore tobacco sponsorship activities through television, advertising in off-shore magazines, and the promotion of smoking through films and television, hence the need for a global approach.

Referring to paragraphs G.2(a) and (b), he said that it was important to look further than advertising aimed at your people. In his experience, restrictions on tobacco advertising and promotion targeting persons under the age of 18 were neither realistic nor feasible. Any promotion of tobacco would have an effect on young people but since tobacco companies denied that they promoted their products to young people, proof would be very difficult to find. A total ban had proved workable in New Zealand with a near perfect compliance rate and he believed that the experience of his country could be used as an international yardstick. He therefore proposed that “targeted at persons under the age of 18” should be deleted from paragraph G.2(a) and suggested the merging of paragraphs G.2(a) and (b). He would provide text to that effect.

Dr URDAL (Norway) said that prohibition of all forms of tobacco advertising had proved to be effective in reducing tobacco consumption in several countries. Repeated research had shown that advertising targeted at adults had a strong impact on children. She therefore endorsed the view, that the last part of paragraph G.2(a) referring to persons under the age of 18 should be deleted and that paragraphs G.2(a) and (b) should be merged. It was important to avoid sending conflicting messages to youth and adults. She further proposed that a time limit should be added to paragraphs G.2(e) and (f) by inserting “within five years after the convention has entered into force” at the end of each paragraph in order to strengthen the obligations contained in those paragraphs.

Professor LYNCH (Canada) said that paragraph G.2 was an extremely important component of the convention. Canada supported strong restrictions on the advertising of tobacco products and prohibited sponsorship promotion. Restrictions should ensure that advertising did not appeal to youth in any way. They should also protect youth, as much as possible, from exposure to any advertising. For instance, in Canada, roadside billboards were not allowed.

Canada supported the intent of paragraphs G.2(a), (b) and (e) but believed it could be better reflected by grouping the actions of concern in order to strengthen and clarify the provisions. The concepts of all forms of direct and indirect advertising could be better encompassed by the single term of “promotion” which should be defined in Article B, Definitions. The issue in regard to sponsorship lay in the effect of the promotion of that sponsorship; the fact that the tobacco industry could use sponsorship as a tool to promote its products was problematic.

She proposed that the current wording of paragraphs G.2(a), (b) and (e) should be deleted and replaced with a new paragraph G.2(a) to read as follows:

(i) prohibiting incentives for the purchase of tobacco products such as gifts, coupons, rebates, competitions, frequent-purchaser programmes, prizes, etc.;
(ii) prohibiting promotion of tobacco products by means of lifestyle and advertising or advertising that could be reasonably construed as appealing to young persons;
(iii) prohibiting the promotion of tobacco products by way of sponsorship promotion;
(iv) strictly restricting all other forms of tobacco promotion.

In regard to paragraph G.2(c), she agreed with previous speakers that the relevant information to be disclosed was the aggregate amount of advertising or promotion expenditure for all tobacco products. In addition, countries might be constrained, on legal grounds, regarding the limits of that which could be disclosed. She therefore proposed that the paragraph should be replaced by: “requiring that tobacco companies disclose aggregate advertising and promotion expenditure data and make those figures available to the public consistent with domestic laws”.

She was in agreement with the wording of paragraph G.2(d).

She agreed with the intent of paragraph G.2(f). However, in her experience, current, cross-border advertising problems could be exacerbated by a spillover effect of weak domestic regulation. Proposed solutions should not inappropriately shift the burden for controlling tobacco advertising from countries with weak regulation to those that already had strong regulations. She therefore proposed that the paragraph should be amended by replacing “adopting national measures and cooperating in order to phase out” with “adopting strict national measures and cooperating in order to reduce the extent of”.

Ms BILLUM (Sweden), speaking on behalf of the 15 Member States of the European Union and on behalf of Bulgaria, Slovakia and Slovenia, said that the provisions on advertising, sponsorship and promotion would form one of the most important parts of the convention. She stressed the importance of finding a model for the text of the convention that could be accepted by most contracting parties. It might be that certain extensive obligations, such as a total ban on advertising, which would cause problems to a certain number of States, could be dealt with in another way. The essential point was that the convention should place advertising and promotion under control and subject to restrictions. The more detailed rules could be developed in a protocol.

She proposed that several of the elements in the draft text should be combined into a more concise form. The paragraph could refer to appropriate restriction on all forms of advertising, marketing, promotion and sponsorship of tobacco products including a ban on cross-border advertising. The convention would be without prejudice to stricter national rules, with the aim, in particular, of reducing the appeal of those products to children and adolescents. The reference to an age limit, and the examples suggested of promotion carriers such as frequent-purchaser programmes were perhaps unnecessarily detailed, and did not adequately take into account the very different circumstances which the convention sought to cover. She proposed that paragraphs G.2(a), (b), (e) and (f) should be replaced by “imposing appropriate restrictions on all forms of advertising, marketing, promotion and sponsorship of tobacco products, including a ban on cross-border advertising and without prejudice to stricter national rules, with the aim in particular of reducing the appeal of these products to children and adolescents”.

Turning to paragraph G.2(c), she preferred to leave the question of declaration of publicity and advertising expenditure by the tobacco industry until a later stage. She had not heard any convincing arguments to justify its inclusion thus far. The obligation to make declarations might, however, be useful in cases where the restriction on advertising was only partial.

Dr AL MULLA (Qatar) expressed opposition to all forms of tobacco advertising and favoured the merging of paragraphs G.2(a) and (b). He would submit a text to that effect. He attached great importance to paragraph G.2(c). Paragraph G.2(e) required strengthening to ensure the elimination of tobacco sponsorship of sporting and cultural events.

Mr TADEVOSYAN (Armenia) said that it was meaningless to single out advertising targeted at those under 18; the phrase “targeted at persons under the age of 18” in paragraph G.2(a) should
therefore be deleted. The arts, especially cinema and television, wielded enormous influence in the sphere of tobacco advertising. Ministries of culture of the States Parties should pay due regard to this. Film stars, sportsmen, fashion models and other celebrities should be enlisted in the campaign against smoking. Provisions to that effect should be included in the text and he would submit a proposal in writing.

Mr PAVELSONS (Latvia), speaking on behalf of three Baltic States, Estonia, Latvia and Lithuania, expressed general support for the proposals put forward by the delegate of Sweden, as a formulation that could be accepted by most delegations. The wording of paragraphs G.2(a) and (b) should, however, be strengthened by a greater emphasis on efforts to attain a total prohibition of all forms of advertising, promotion and sponsorship related to tobacco products whatever the age group targeted. Proposed wording would be submitted to the Secretariat.

Ms ROVIROSA PRIEGO (Mexico) expressed strong support for the provisions set out in paragraph G.2. However, the thrust of the provisions would be clearer if the word “non-price” were deleted from the first sentence as well as from the title of article G and the first sentence of paragraph G.1. There was no point in referring to a category of measure that was not covered. Similarly, in paragraph G.2(b), given the difficulty of defining a “frequent purchaser”, it would be desirable to delete the word.

Dr FARÍAS ALBURQUEQUE (Peru) said that, despite his country’s ban on tobacco publicity targeted at those under 18 and on any radio or television advertising over the past five years, tobacco companies had found other ways of achieving their purpose by, for example, associating themselves with other products or blurring various lines of demarcation. He therefore welcomed the great step forward represented by paragraph G.2; the provisions which it contained were among the most significant of the whole convention, since they held out the possibility of a total ban on tobacco advertising. He would be submitting a proposal to strengthen the wording of paragraph G.2(a).

Dr PÁVA (Hungary) said that advertising targeted at one section of the population easily reached others. She therefore proposed that the convention should strengthen the right of all the parties to introduce stricter national rules, in accordance with the proposal made by the delegate of Sweden. Her delegation had already submitted a text to that effect.

Dr ANDEN (Philippines) said that, being against all direct tobacco advertising, her delegation would favour the deletion of the words “targeted at persons under the age of 18” in paragraph G.2(a) and endorsed the merger of paragraphs G.2(a) and (b). It would submit a text to that effect.

Ms DJAMALUDDIN (Indonesia) said that it was simply impossible to prohibit tobacco advertising targeted specifically at those under 18. In any case, the aim should be to reduce tobacco consumption throughout the population. Tobacco was harmful to human health and that consideration should take precedence over matters of trade. She therefore disagreed with the Chair’s text for paragraph G.2. The prohibition should be total and, indeed, global. Domestic law alone would not have a significant impact. She conceded, however, that a period of transition might be necessary.

Mr GBOMOR (Sierra Leone), speaking on behalf of the Member States of WHO’s African Region, said that advertising, promotion and sponsorship influenced all age groups, encouraging adolescents to take up smoking and adults to continue. The ultimate aim of the convention and indeed of any tobacco control programme was that adults should stop smoking. He therefore suggested a merger of paragraphs G.2(a) and (b), the amended text to read “prohibiting all forms of direct and indirect tobacco advertising, promotion and sponsorship, including incentives such as gifts, coupons, rebates, competitions and frequent-purchaser programmes, with the aim of reducing the appeal of
tobacco products to all segments of society”. Paragraph G.2(c), which would become paragraph G.2(b) should be amended to read “enact legislation that shall require tobacco companies to disclose all expenditures on advertising and promotion while promotion and advertising are being phased out”.

Mr CASTRILLÓN (Ecuador) said that the word “prohibiting” should be avoided, as it required precision as to what was being prohibited. Paragraph G.2(a) should therefore be deleted in its entirety. In paragraph G.2(b) the words “gifts, coupons, rebates, competitions and frequent-purchaser programmes” should be deleted, with a view to making the provision more comprehensive and universally applicable.

Dr AL-HAJJAWI (Jordan) said that in paragraph G.2(e), “progressively” should be deleted. Moreover, the restrictions on tobacco sponsorship should not be limited to sporting and cultural events but should extend to religious and national celebrations. He would submit a text to that effect.

Dr JIRÓN ROMERO (Nicaragua) said that the requirement in paragraph G.2(c) that tobacco companies disclose all expenditures on advertising and promotion were not acceptable to his delegation, since costs incurred by enterprises in his country were strictly confidential and the state had no power to require their disclosure.

Mr LIPAND (Estonia) said that the formulation “tobacco advertising” should be put on the list of definitions, since a ban even on direct advertising did not prevent tobacco companies from showing brand names and trademarks, which amounted to advertising. Moreover, “tobacco advertising” had a different meaning in different languages. He would submit a text of his proposal.

Mr VUILLÈME (Switzerland) said that it was worth repeating that advertising targeted at adults could also appeal to the young. Moreover, experience in various countries had shown that reducing advertising targeted at the young did not lead to a corresponding reduction in the number of those taking up smoking. The Internet in any case played havoc with notions of age limits: young people could access virtually any site. In common with others, his delegation would therefore favour the deletion of any mention of age in the context of restrictions on advertising.

Mr CASTILLO SANTANA (Cuba) endorsed the view that there should be no reference to specific ages in paragraphs G.2(a) and (b). He would submit written proposals to that effect.

Mr HAROON (United Kingdom of Great Britain and Northern Ireland) said that, owing to national and cultural variations, it was right that the convention should refer to “appropriate” restrictions without prescribing their precise form. His Government believed that a comprehensive ban on advertising could significantly reduce smoking and was therefore bringing forward legislation to that effect, with certain limited exceptions. It was estimated that in the long term, the ban would reduce consumption – and tobacco-related deaths – by 2.5%, which would translate into 3000 lives saved every year. The proposed legislation would cover advertisements in the press, advertising on the Internet within the United Kingdom’s jurisdiction, sponsorship and brand sharing. National bans, however, could not be a complete answer; the more countries that adopted restrictions on transnational promotion of tobacco products, the more effective each country’s restrictions would be.

Dr GRACIELA DE CACERES (Paraguay) said that, while it had been agreed that education was effective in reducing smoking, it was not enough. It was crucial that the convention should highlight the cost-effectiveness of a full ban on tobacco advertising. For developing countries, in particular, it was important to have a legal framework in place containing a clear demonstration of that cost-effectiveness, because the vast expenditure of establishing a ban would otherwise come under attack. Cross-border advertising, which vitiated individual countries’ efforts, should also be covered.
Deadlines for introducing prohibition should be realistic but should show a real political will to achieve a total ban.

Dr VARABHORN BHUMISWASDI (Thailand), after endorsing the view that advertising targeted at those under 18 could not be banned in isolation, drew particular attention to the importance of paragraph G.2(f) which covered cross-border advertising. Her Government had imposed a comprehensive ban on tobacco advertising in 1992, but it could not protect its young people from marketing directed at them from abroad.

Dr OCHABA (Slovakia), recalling that his delegation had endorsed the statement made by the delegate of Sweden, supported the strict restrictions on advertising contained in the convention. Indeed, in April 2001, his Government had enacted legislation prohibiting all forms of tobacco advertising in all the media in Slovakia.

Dr LEWIS-FULLER (Jamaica) agreed with others that paragraphs G.2(a) and (b) were not compatible as drafted and should be combined to read “prohibiting all forms of direct and indirect tobacco advertising, promotion, sponsorship and incentives of any kind, with the aim of reducing the appeal of tobacco products to all segments of society”.

The sums spent on advertising and marketing were already disclosed in company financial statements in some countries. What was needed, however, was to know how that expenditure was made. Paragraph G.2(c) should therefore be amended to read: “requiring that tobacco companies disclose all expenditures on advertising, marketing and promotion, giving a detailed breakdown of such expenditures and making those figures available to the public”.

Paragraph G.2(d) added little and should be deleted. Paragraph G.2(e) could also be deleted, since its content had already been incorporated into the merged paragraphs G.2(a) and 2(b).

Paragraph G.2(f) should be reformulated to signal that strong international support and cooperation was needed for measures designed to curtail cross-border advertising. A timeframe should also be included. The paragraph should be amended to read: “formulating and adopting international/global, regional and national measures and cooperation in order to phase out cross-border advertising, marketing, promotion, sponsorship and incentives of any kind, including inter alia, tobacco advertising, promotion and sponsorship on cable and satellite television, the Internet, newspapers, magazines and other private media.”

Ms LAMBERT (South Africa) said that her delegation endorsed the position of the African Region concerning advertising expressed by the delegate of Sierra Leone. It made no sense to attempt a distinction in the effects of advertising according to a person’s age. Advertising could assume insidious forms and target any age group; for example, football jerseys bearing a tobacco advertisement and sized for small children were widely available in her country. Such indirect promotion of tobacco products could be combated only through a total ban on all possible forms of advertising.

Dr ESPINOZA MURRA (Honduras) said that his delegation would submit a proposal concerning subparagraphs G.2(a) and (b), which should be modelled differently from the Chair’s text.

Dr RANAWEERA (Sri Lanka) said that his delegation supported the call for a total ban on advertising. It endorsed the proposals made by the Indian delegation, since retention of subparagraphs 2(a) and 2(b) as they stood would still leave opportunities for manipulative advertising. He hoped that the tobacco industry would not be in a position to celebrate at the end of the negotiations on the framework convention.
Dr CASTILLO CAMINERO (Dominican Republic) said that his delegation fully agreed with the delegations of Peru and South Africa regarding a total ban on advertising, which he considered to be one of the most, if not the most, important part of the convention. He would submit a proposal in that regard.

Mr BATIBAY (Turkey) recalled that, at the Intergovernmental Negotiating Body’s first session, his delegation had spoken in favour of a total ban, which it still thought the only feasible way of achieving the desired aim. It also supported the Swedish delegation’s proposals on the banning of cross-border advertising.

Dr BENAVIDES COTES (Colombia) said that her delegation was in favour of restrictions on tobacco advertising promotion and marketing; her country already applied restrictions in that regard, for example on television broadcasting times. With regard to subparagraph G.2(e), her delegation preferred retention of the Chair’s text. Subparagraph G.2(f) should include a reference to radio broadcasting, and her delegation would submit a text in that regard.

Ms ALEXIS-THOMAS (Trinidad and Tobago) supported the Jamaican and other delegations that advocated a total advertising ban. But to achieve such a ban would require the establishment of effective mechanisms to ensure that new forms of advertising could not be developed.

Dr SEKABARAGA (Rwanda) said that his delegation supported the position of the South-East Asia and African regions for a total ban on advertising, without any age stipulation. Counter-advertising for public health, and specifically tobacco control could be greatly enhanced if governmental and nongovernmental organizations were given the requisite authority and resources.

Dr HAMAD (Sudan) was concerned lest the wording of the Chair’s text should give the impression that all the efforts proposed were intended only to protect people under the age of 18; any reference to an age limit should be deleted. His delegation supported the Canadian delegation’s proposal as well as the statements by the delegations of Australia, New Zealand and other parties in that connection.

Dr ZARIHAH (Malaysia) said that the tobacco industry in her country insisted that its various measures, in the media and elsewhere, were not a contravention of the relevant domestic anti-tobacco legislation but merely matters of trademark diversification. Problems in that regard might be avoided if the word “indirect” could be clearly defined.

Mr EMMANUEL (Saint Lucia) said that his delegation supported the prohibition of all tobacco advertising and sponsorship, direct and indirect, and endorsed the Jamaican delegation’s proposal about a timeframe for a global ban on advertising.

Dr MUGA (Kenya) said that the tobacco industry had consistently targeted the developing countries in particular. For that reason, his delegation was in favour of a total ban on advertising and supported the statements made by the delegations of Sierra Leone and South Africa. In that regard, he hoped a suitable accommodation could be reached with states whose position was not the same, with a view to reducing the impact of advertising, especially on developing countries.

Mr ODKO (Japan) said his delegation agreed that it was impractical to differentiate between age groups. While the possibility of a total ban on advertising should certainly be considered, a number of constitutional problems could be foreseen; in that regard, his delegation would be interested to see the proposals made on behalf of the European Community, and its Member States and by the United States of America.
Paragraphs G.3 and G.4

Ms MAYSHAR (Israel) said that her delegation would prefer the text in paragraph 3 and 4 to reflect more definite action regarding a protocol and proposed that, in both paragraphs, the words “initiate the preparation of” should be replaced by “adopt”.

Professor LYNCH (Canada) said that a protocol should be prepared only after the framework convention had been established. Therefore, paragraphs 3 and 4 should be drafted as a general clause, moved to Section F and discussed under that Section.

Mr CASTILLO SANTANA (Cuba) agreed that it was too early to consider preparation of a protocol and suggested that paragraphs 3 and 4 should be placed in square brackets until the all-important contents of paragraph 2 had been decided upon. All the comments could be taken into account and considered by a later plenary meeting.

Mr TAKAKURA (Japan) said he shared the Canadian delegation’s view but thought that any reference to a protocol should appear in the Preamble.

Ms KERR (Australia) supported the Canadian delegation’s proposal to move paragraphs 3 and 4 to section F.

H. Demand reduction measures concerning tobacco dependence and cessation

Dr URDAL (Norway) proposed that in subparagraphs H.2(a) and (b) the word “campaigns” should be replaced by “programmes and intervention”, in line with the proposal relating to subparagraph G.1(e). She also proposed to include the word “teachers” in subparagraph H.2(b) and to add a new subparagraph H.2(b bis), reading: “inclusion of research-based knowledge of tobacco prevention and cessation methods based on best practice in basic and postgraduate education of health personnel and teachers”.

Dr VARABHORN BHUMISWASDI (Thailand) said that her delegation wished to replace the term “tobacco dependence” in both paragraphs of section H by “nicotine addiction”.

Mr TADEVOSYAN (Armenia) said that the text outlined a variety of plans and strategies, which included tobacco control measures, but he suggested that reference be made in subparagraph H.2(b) to WHO recommended forms of treatment with habit-breaking drugs that were being developed and becoming available.

Dr SILVA GOLDFARB (Brazil) said that Section H should reflect measures based on local and worldwide scientific evidence and take into account the economic, social and cultural characteristics of each Party. Accordingly, her delegation would submit a proposed new title.

Ms ÖDMAN (Sweden), speaking on behalf of the European Union, Bulgaria, the Czech Republic, Latvia, Romania, Slovakia and Slovenia, supported the text of Section H, which stressed integration of cessation into health programmes and the training of health professionals, since much could be done by means of routine advice from doctors and other trained personnel. The framework convention should stress not only prevention but also means of overcoming addiction. She suggested that the phrase “all national health programmes” in subparagraph H.2(b) should be reworded as “different national health programmes”, since the latter should be seen as examples rather than as an exhaustive list.
Dr SORICHETTI (Argentina) said that the scope of the text should be wider. She was concerned that the reference to national plans and strategies might lead to insufficient regard for or exclusion of strategies at other jurisdictional levels, such as states within a federal system.

Dr ARRIAGA WEISS (Mexico) considered that the enumeration of health programmes in subparagraph H.2(b) was too detailed; only primary health care programmes should be mentioned. His delegation would submit a proposed amendment accordingly; the latter would also refer, in connection with subparagraph H.2(c), to the importance of dentists and health centres in providing auxiliary medical advice and treatment of tobacco dependence.

Ms WELLS (Australia) said that her delegation proposed that subparagraphs H.2(b) and (c) should be combined to read “integration of routine advice on cessation of tobacco use and treatment of tobacco dependence into health programmes in all health care settings and involving all health professionals”.

Professor LYNCH (Canada) said that her delegation appreciated the intention of Section H but would like to see definitions of the terms “integration” and “treatment”. It also suggested that paragraph H.1 should be amended to read: “each Party shall take evidence-based measures to treat tobacco dependence and to promote cessation of tobacco use”. Her delegation supported the proposals to replace the word “campaigns” by “programmes and intervention” in subparagraph H.2(a) and to include a reference in subparagraph H.2(b) to teachers, other professionals and para-professionals.

Professor GOJA (Uruguay), agreeing with the general tenor of section H, suggested that the pharmaceutical industry be added to the list of bodies providing support in paragraph H.2(b), in order to reduce the cost of treatment for tobacco dependence for countries such as her own.

Dr CARIS (Chile) said that health professionals would require continuous training in relation to tobacco dependence and cessation, and that should be mentioned in paragraph H.2(b). The framework convention should refer to measures designed to foster scientific progress and allow information on new forms of treatment to be disseminated for incorporation into national programmes. Chile had private and public health care systems, and the treatment of tobacco dependence should be available in both. Thus, the words “all national health programmes” should be broadened to include the private sector.

Dr ROA (Panama) proposed replacing the words “tobacco dependence” in the title of section H by “nicotine addiction”. She also proposed replacing “campaigns” by “programmes” in paragraph H.2(a). In subparagraph H.2(c), she proposed inserting “hospitals and rehabilitation centres” after the words “health centres”, and “tobacco-free lifestyles” after the words “tobacco dependence”. She asked WHO to establish technical and financial cooperation for studying cost-effective methods for the treatment of nicotine addiction. Attention should be drawn to the problem of nicotine addiction, and she urged WHO to set up mechanisms for negotiating with pharmaceutical companies to lower the prices of nicotine-replacement drugs and rehabilitation programmes.

Mr KATENE (New Zealand) said that his delegation would propose wording to ensure that methods for tobacco cessation were appropriate to the needs of vulnerable groups. He supported Canada’s call for measures based on best practices and the suggestion to replace the words “tobacco dependence” by “nicotine addiction”.

Mr TAKAKURA (Japan) endorsed the intention of section H but he considered that simplified, consolidated language should be used rather than the enumerative approach, which omitted certain
areas, such as local programmes, on which great emphasis was placed in Japan, and medical institutions other than health centres.

Mrs THAN THU THUY (Viet Nam), voicing her support for section H, said that her country had recently adopted a tobacco control policy which reflected many aspects of the framework convention, including support for smoking cessation, training of health professionals with regard to appropriate, affordable methods for each target group and involving individuals, families and communities in encouraging smokers to stop.

Dr GHANEM (Egypt) submitted a written proposal for an amendment to paragraph H.2 with a view to expanding the role of health centres in the diagnosis of tobacco dependence and providing treatment and advice.

Dr KIENENE (Kiribati) suggested that the term “health centres” in paragraph H.2(c) was restrictive and that it be replaced by “health facilities”.

Dr KIIMA (Kenya) said that tobacco companies advertised with impunity in the African Region, and he therefore supported section H. However, he suggested that the examples listed after the word “strategies” in paragraph H.2(b) be deleted. Immediate action was necessary, since children made up half the population of Africa and many became tobacco-dependent.

Dr HAMAD (Sudan) also queried whether specific programmes needed to be mentioned in paragraph H.2(b).

Dr PALOMO ESCOBAR (El Salvador) agreed with previous speakers that the word “programmes” be substituted for “campaigns” in subparagraph H.2(a) and that subparagraphs H.2(a) and (b) be merged. He suggested that a new subparagraph be added, referring to training of health professionals to implement programmes for treating tobacco dependence and for tobacco cessation.

Mrs LLORENTE DIAZ (Cuba) queried the reference to “all” national health programmes, plans and strategies in subparagraph H.2(b). Tobacco dependence should certainly be part of national strategies, but some health care programmes covered diseases unrelated to tobacco use.

Dr SILVA GOLDFARB (Brazil) said her delegation agreed with Canada’s proposal. Moreover, in subparagraph H.2(b), she suggested that the words “counselling and” be added after the word “routine”. Counselling was a valuable strategy in developing countries; moreover, studies in which pharmacological therapy had been shown to be effective could not rule out an effect of counselling.

Ms TKACHENKO (Russian Federation) suggested addition of the words “based on international experience” after the word “measures” in paragraph H.1. In the second sentence of subparagraph H.2(b) she suggested inserting “through a government policy creating optimum conditions for work on preventing tobacco use and the treatment of tobacco dependence and by” after the words “shall be provided”.

Dr AL MULLA (Qatar) said that his delegation wished to add a reference to “cultural programmes” in paragraph H.2(a). He agreed that subparagraphs (b) and (c) should be merged and simplified. All medical centres should be involved in treatment of tobacco dependence.

Professor WARNER (World Bank), referring to paragraph G.2, said that the Bank’s study published as Curbing the Epidemic, called for a comprehensive ban on all forms of advertising, promotion and sponsorship. Limited bans had little effect on tobacco consumption in view of the...
industry’s creativity in finding new means to promote its products. A comprehensive ban might reduce tobacco consumption by about 7% in the developed countries studied, which would be a great achievement in public health terms. In the United States of America, the figures referred to in subparagraph G.2(c) had been collected on a brand-by-brand basis for years, and total expenditure by type of advertising and promote had been published. Those data had been extremely useful to the public health community and to the Federal Trade Commission in actions against tobacco companies for violations of advertising restrictions. In 1999, the tobacco industry had spent US$ 8000 million on advertising and promotion, despite the restrictions.

Ms WYKLE-ROSENBERG (Infact), speaking at the invitation of the CHAIR to subparagraph G.1(e), reported that some transnational tobacco companies, in an endeavour to convince governments that they did not wish young people to smoke, had introduced youth smoking prevention programmes, including advertisements, on popular television channels. Such advertising had proved ineffective and might even have the opposite effect. Given their obvious conflict of interest, tobacco companies should not be involved in programmes for smoking prevention, as they might even reinforce the messages in tobacco advertising.

Dr HIRSCH (International Nongovernmental Coalition against Tobacco), speaking at the invitation of the CHAIR to paragraph G.2, called for a total ban on all forms of advertising, sponsorship and promotion. The countries of the African Region and numerous other developed and developing countries shared that view. If the convention were to take account of all real or imagined constitutional constraints, it would be toothless or limited to restrictions on cross-border advertising directed at children. The States Parties must find a form of wording that met the need for a total ban, while allowing countries to respect the limits of their constitutions.

Ms MOLINARI (International Union against Tuberculosis and Lung Disease), speaking at the invitation of the CHAIR to paragraph G.2, said that tobacco advertising killed millions of people. The World Bank had stated that a ban on advertising would reduce consumption by 7%. That was a modest figure in relative terms, but it meant the saving of 70 million lives, on the basis of the estimate of one thousand million tobacco-related deaths in the century.

Mrs WILKENFELD (International Union against Cancer), speaking at the invitation of the CHAIR to paragraph G.2, on behalf of her organization and the World Heart Federation, said that a ban on advertising targeted at persons under the age of 18 would not work. Although tobacco companies claimed not to address advertisements to that age group, it was impossible to define the age group that an advertisement appealed to. The ubiquity of advertising convinced people of all ages that tobacco was part of normal adult life. There was even a danger that the current text would be worse than ineffective, since it would have the authority of an international treaty and would effectively block measures that would work. The only effective measure was a total ban on advertising, sponsorship and promotion of tobacco products.

Mr COLLISHAW (Commonwealth Medical Association), speaking at the invitation of the CHAIR to paragraphs G.2 to G.4, welcomed the support for a total ban on advertising, particularly the united stand of the countries of the African Region. The distinction between advertising targeted at young people and at adults was meaningless in the context of public health. The framework convention should commit and authorize States Parties to ban all forms of advertising and promotion within the limits imposed by their constitutions. It should also contain provisions to prevent the flow of tobacco advertising across national borders.

Dr RAMSTRÖM (International Council on Alcohol and Addictions), speaking at the invitation of the CHAIR to paragraph H.2, was pleased to note the clear focus on dependence in paragraph H.2.
Nevertheless, health professionals needed training in treating dependence. He proposed that a new subparagraph be added, reading: “establishing in curricula for basic and continued training of health professionals strong elements of methodology for interventions aimed at prevention and treatment of tobacco dependence”. He had used the term tobacco dependence, in preference to nicotine addiction, since it corresponded to the terminology in WHO’s International Classification of Diseases, reflecting the fact that tobacco dependence consisted of both pharmacological and psychological components.

The meeting rose at 18:00.
DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 4 of the agenda (documents A/FCTC/INB2/DIV/1, A/FCTC/INB2/DIV/6, A/FCTC/INB2/2 and A/FCTC/INB2/3) (continued)

The CHAIR said that the working group had to complete consideration of part of Article I and part of Article K of the Chair’s text (A/FCTC/INB2/2). He called for comments on paragraphs I.8-12.

I. Measures related to the supply of tobacco

Paragraphs 8 to 12 (Elimination of sales to and by young persons)

Dr REDDY (India), speaking on behalf of the Member States of WHO’s South-East Asia Region, said that, given the difficulties of restricting access to tobacco-vending machines by persons under the age of 18, it would be better if such machines were totally prohibited. The presence of tobacco-vending machines would in any event be at variance with the intent of subsequent provisions in which the sale of tobacco products to minors was declared to be a punishable offence. He therefore proposed that the word “all” be inserted after “prohibit” in subparagraph 8(b) and that the words “in locations accessible to any person under the age of 18” in the same paragraph be deleted. The paragraph would then read: “(b) prohibit all tobacco-vending machines.”

Ms DJAMALUDDIN (Indonesia) said that, although the reduction of tobacco consumption by young persons was an important target, there was no credible evidence that the measures set out in paragraph 8 would have a significant impact on youth smoking. Furthermore, it would not be feasible to implement such a regulation in a large developing country like Indonesia, where the cost would outweigh the benefits. The provision in question had no place in the convention, but it should be left to individual countries to incorporate them in their own legislation. Her delegation therefore proposed that subparagraph 8(a) be deleted.

Ms BALOCH (Pakistan) said that, while in theory it would be possible to enact legislation prohibiting tobacco sales to persons under the age of 18, it would be very difficult for subparagraph 8(a) to be implemented in poor States with large and scattered populations particularly since many people could show no formal identity papers. Pakistan therefore proposed that the second sentence of paragraph 8 be amended to read: “To this end, each Party shall, within the means at its disposal and its capabilities in accordance with its national law ...”.

Dr SODNOMPIL (Mongolia) said that his delegation fully supported the opening text but proposed that subparagraph 8(b) should be amended to the effect that all tobacco-vending machines should be prohibited for persons of all ages.

Dr REN Minghui (China) emphasized the difficulty of prohibiting access to tobacco-vending machines in public locations by people under the age of 18. Experience had shown that such machines
were a very important means of access to tobacco by young persons so that prohibiting the machines would be an effective method of tobacco control among young people. China therefore suggested that subparagraph 8(b) be amended to the effect that countries and regions which had no tobacco-vending machines should prohibit their installation and that in countries and regions which already had tobacco-vending machines, measures should be taken gradually to eliminate them.

Dr ARRIAGA WEISS (Mexico) said that, since the provisions of subparagraph 8 would be very useful in efforts to prevent tobacco consumption by persons under the age of 18, his delegation supported the essence and spirit of the paragraph, but wished to make an addition to the text in line with its own national legislation and regulations, in order to prevent access to tobacco products in centres frequented by young people below the age of 18 where such products were distributed free of charge. A written proposal for a new subparagraph 8(c) would be submitted to the Secretariat.

Mr SHRESTHA (Nepal) said that his delegation also considered that it would be very difficult to control access to tobacco-vending machines by persons under 18 and consequently supported the proposal made by India on behalf of the Member States of the WHO South-East Asia Region.

Dr WINAI SWASDIVORN (Thailand) supported the India proposal to prohibit all tobacco vending machines, since they not only supplied cigarettes but also acted as advertising machines.

Ms KERR (Australia) said that sellers should be required to take all reasonable steps to ensure that buyers of tobacco products were aged 18 and over. Paragraph 8(a) as it stood would require purchasers, even those clearly over the age of 18, to provide proof of age, regardless of age. Her delegation therefore proposed that subparagraph 8(a) be amended to read: “(a) require that all sellers of tobacco products take all reasonable steps to ensure that buyers are 18 and over”.

Dr AL-LAWATI (Oman) said that his delegation agreed with earlier speakers concerning the difficulties of controlling accessibility to tobacco-vending machines by persons under the age of 18 and in particular concurred with the view that all reference to age limits should be deleted. Paragraph 8(b) should simply read: “prohibit tobacco-vending machines”.

Mr ADSETT (Canada) said that his delegation supported the intention of paragraph 8 but believed that the “sale” or “sales” should be broader throughout the convention. It therefore suggested that it be replaced by the expression “furnish” which meant to sell, lend, assign, give, send or barter or deposit with another person for the performance of a service. A consequential amendment would be required in the opening text where the word “sales” should be replaced by “furnishing” and in subparagraph 8(a) where the word “sellers” should be replaced by “furnishers”. A written proposal would be submitted.

Ms LLORENTE DIAZ (Cuba) said that the elimination of sales to and by young persons was one of the most important objectives of the convention, together with the measures on advertising. Although her delegation supported the essence of paragraphs 8-12, in order to be consistent with international instruments already in force, such as the Convention on the Rights of the Child which defined a child as a person below the age of 18, and to leave open the possibility of other definitions being included in national legislation, Cuba proposed that the words “persons under the age of 18” be replaced by the word “minors” throughout the convention.

Dr PALOMO ESCOBAR (El Salvador) said his delegation fully supported paragraph 8, as it was consistent with the situation in El Salvador where a high percentage of adult smokers sent their children out to buy cigarettes, a practice which undoubtedly induced and promoted tobacco consumption among young people. Moreover, young persons of 15 or even children of 12 or younger
could freely buy any brand of cigarettes they wished but could not legally buy any alcoholic beverages. While subparagraph 8(b) was somewhat controversial, he agreed with the delegates of Thailand and India that it would be difficult to control access to some places by young persons below the age of 18, and therefore endorsed the idea that tobacco-vending machines should be totally prohibited, bearing in mind also that the intent of the convention was to reduce accessibility to tobacco.

His delegation also endorsed the Cuban proposal that the word “minors” should replace the phrase “persons under the age of 18”, since adulthood was attained at different ages in different countries. A written proposal would be submitted to the Secretariat.

Dr HAMAD (Sudan) said that his delegation supported the proposal to prohibit all tobacco-vending machines outright. Only persons over the age of 18 should be able to buy or sell cigarettes, particularly in view of the extent to which children were exploited in many developing countries by being forced to sell cigarettes.

Dr ILKHAMOV (Uzbekistan) emphasized the importance of paragraph 8, since only stringent measures would end the sale of tobacco products to young persons. His delegation supported the opening text as it stood, but wished to insert at the end of subparagraph 8(a) the phrase “and prohibit the sale of tobacco products to persons who have not reached the age of 18”.

It also wished to replace subparagraph 8(b) by a new text reading: “(b) prohibit the retail sale of tobacco products through vending machines”.

Dr NOVOTNY (United States of America) said that the elimination of sales of tobacco products to youth was a high priority topic in his country which sought to restrict young people’s access to such products to the greatest extent possible. In conjunction with other components of a tobacco-control programme, limited access could help prevent youth from starting to use tobacco. To that end, his delegation was in favour of stronger provisions concerning age verification for purchasers and in respect of vending machines. Specifically, sellers of tobacco products should be required to verify the age of the purchasers, rather than simply requesting evidence of age. His delegation agreed with the speakers who considered that there should be a total ban on tobacco-vending machines rather than having restricted areas to which persons under the age of 18 did not have access. A written amendment would be submitted to that effect.

Dr SILVA GOLDFARB (Brazil) said that her delegation was in favour of a total ban on vending machines and considered that tobacco sales should be prohibited in supermarkets, mini-markets, convenience shops and similar establishments, in order to minimize access to tobacco products by minors. Brazil’s national commission had recently prepared draft regulations on that subject.

Dr BOVET (Seychelles), speaking on behalf of WHO’s African Region, supported the view expressed by many delegations that the phrase “in locations accessible to any person under the age of 18” should be deleted, as it would be difficult to implement any measure that was not an outright ban.

His delegation also proposed a new subparagraph 8(c) aimed at providing relevant information on the health hazards of cigarettes to prospective consumers, including young people. That text would read: “(c) post signs at the point of sale that carry a health warning and indicate that the sale of cigarettes to children under the age of 18 is prohibited.”

Ms BILLUM (Sweden), speaking on behalf of the European Union and its Member States and on behalf of the associated countries Bulgaria, Czech Republic, Hungary, Poland and Romania, said that one of the most important aspects of an effective tobacco-control policy was to prevent children
and young people from starting to use tobacco. The provisions of paragraph 8 were consequently important.

The Member States of the European Union and the associated countries strongly supported efforts to restrict access by young people to tobacco products. In most cases, the requirements proposed in the text appeared to be adequate, although some elements would be ineffective if set at the international level, in view of the wide variation in situations and approaches at the national level. To accommodate such different situations, the European Community and associated countries wished to amend the wording in respect of the elimination of sales to and by young people, to emphasize the appropriate national measures for restricting tobacco sales as determined in national law. Examples of such measures would also be included, namely, the requirement that all sellers of tobacco products should establish that purchasers had reached the age for purchase set, where appropriate, by national law and the prohibition of tobacco-vending machines in locations accessible to under-age purchasers or the regulation of access to such machines, to equivalent effect. The prohibition of Internet sales of tobacco products was even more important, given the increasing use of information technology, especially by the young, and its potential for tax evasion.

Furthermore, if an age limit was appropriate for the purchase of tobacco products, the same limit should apply in respect of tobacco sales. As elsewhere in the text, it would be inappropriate to include provisions on penalties, as those were essentially matters to be decided at the national level.

Measures should also be established to prohibit sales of individual cigarettes or of “kiddy packs” of less than 20, since that was often a marketing ploy to encourage under-age smokers by providing seemingly cheaper access to the product. An exception might be made in the case of vending-machine sales, however, where smaller packets were sometimes used to avoid changing the sale price of the product in the machine.

A full written text of paragraphs 8 to 12, amended along those lines, would be submitted.

Professor GOJA (Uruguay) said that, although her country already had legislation prohibiting the sale of tobacco products to persons under the age of 18, the law was difficult to implement and measures needed to be taken to ensure that the regulations were enforced. Her delegation therefore preferred the text as it stood.

Mr LIPAND (Estonia) said that experience in his country had shown that it was not possible in practice to set up tobacco-vending machines in places that were inaccessible to under-age persons. His delegation would therefore prefer subparagraph 8(b) to read: “prohibit the sale of tobacco products from automatic vending machines”.

Mr PAVELSONS (Latvia), speaking on behalf of the delegation of Estonia, Latvia and Lithuania, said that the Baltic States generally supported the text of paragraphs 8-12 put forward by the delegate of Sweden, but considered that the word “restrict” in the opening sentence of paragraph 8 made for an unduly broad formulation and proposed that that word be replaced by “prohibit.”

Mr OGANOV (Russian Federation) emphasized the importance of paragraph 8 in the tobacco control strategy. His delegation supported the opening text of paragraph 8 but considered that the existing text of subparagraph 8(a) gave the impression that the identity documents of all young persons would have to be checked. The paragraph should therefore be amended to the effect that a check was needed in cases of doubt. Paragraph 8(b) would ideally prohibit all tobacco-vending machines, a measure that it would clearly be difficult to implement in practice. His delegation therefore supported the Mongolian suggestion that all possible measures should be taken for the gradual elimination of tobacco-vending machines.

Mr CULLEN (Argentina) expressed support for the total prohibition of tobacco-vending machines but agreed that it would be difficult to ensure that all locations were inaccessible to minors.
His delegation did not share the reservations expressed concerning the difficulty of confirming the age of those wishing to buy cigarettes. The solution was a simple one: sales should be refused in cases of doubt.

Mr MOON (Republic of Korea) said that his delegation supported paragraph 8 but suggested that the text should be amended to read: “Each Party shall take appropriate measures to prohibit tobacco sales to young persons. To this end, each Party shall: ...”.

Dr ALBADDAH (Saudi Arabia) said that, although tobacco-vending machines did not exist in Saudi Arabia, there were vending machines for food products and soft drinks that had attracted a criminal element. His delegation fully supported paragraph 8 as it stood but proposed that subparagraph 8(b) be deleted and that subparagraph 8(a) be amended to convey the idea of total prohibition of the creation of premises for the sale of tobacco products. An alternative solution would be to create shops for the sale of tobacco products that would only be open to people over the age of 18.

With regard to the number of cigarettes a packet should contain, he suggested that the number should be set at exactly 20, since packets containing less than 20 cigarettes would attract young people with limited means and those containing more would encourage all categories of smokers.

Mr EMMANUEL (Saint Lucia) said that the convention must empower young people to make the decision not to consume tobacco products, but that subparagraph 8(a) seemed to be protecting young people by placing the onus on the seller, whereas the onus should be on both the seller and the buyer. He therefore proposed the addition of the following wording at the end of the first sentence: “and shall adopt appropriate measures to prohibit persons under the age of 18 from purchasing tobacco products”, and continuing “All sellers of tobacco products request that each tobacco purchaser provide appropriate evidence of having reached the age of 18.”

Consideration must be given to preventing countries that did not have vending machines from introducing such machines and to the gradual removal of vending machines where they existed.

Mr RI Si Hong (Democratic People’s Republic of Korea) expressed general support for the intention of paragraph 8, but agreed that subparagraph 8(b) should provide for a total ban on tobacco-vending machines. Tobacco sellers should be adults older than 18 years.

Dr RANAWEERA (Sri Lanka) strongly supported the submission made by India on behalf of the countries of the South-East Asia Region, because virtually all locations in his country were accessible to persons under 18. Paragraph 8(b) should be amended so as to prohibit all tobacco-vending machines, regardless of their location.

Dr CASTILLO (Dominican Republic) said that in his country, as in other Latin American countries, it was difficult to control sales and purchases of tobacco products by minors. The existing legislation was not fully applied and in many places problems were encountered in ensuring proper compliance with the law.

There were some tobacco- and cigarette-vending machines in his country to which minors had access, though they were small in number. He therefore proposed that the first sentence of paragraph 8 should read: “Each State shall prohibit tobacco sales to minors.” In subparagraph 8(a), the words “of having reached the age of 18” should be replaced by “that they have reached the age of majority” and subparagraph 8(b) should read “prohibit tobacco-vending machines throughout the national territory”.

Ms MORALES (Bolivia) expressed full support for paragraph 8 and for the suggestions made by the Mexican delegation. Her delegation also proposed the addition of a new subparagraph 8(c) stating that the importation of cigarette-vending machines in countries that did not yet have them
should be prohibited. There should be cooperation with the International Customs Council and other related bodies. Once machines had been imported and licences granted, it would be very difficult to impose restrictions and countries that did not yet have automatic vending machines should be warned of that danger. Unfortunately there were still no regulations on the subject in her country, but there was still time to put the suggestion into practice. On her return from the meeting, she would do her utmost to raise those issues with the legislative bodies.

Dr ZENKEVICH (Belarus) said that his delegation did not think it was a good idea to request sellers to check the identification documents of all purchasers, and therefore proposed that wording should be added to the effect that, if sellers doubted whether the purchaser had reached the age of 18, they would be entitled to demand an identification document. With regard to subparagraph 8(b), Belarus supported the proposal of a number of delegations that tobacco-vending machines should be totally prohibited.

Mr KIENENE (Kiribati) said that his delegation supported paragraph 8, but considered that 8(a) needed to be refined. As a number of speakers had pointed out, it was impossible to request every tobacco purchaser to provide identification, especially in a developing country where not everyone carried an identity document. Kiribati therefore proposed that the words “request that each tobacco purchaser provide appropriate evidence of having reached the age of 18” be replaced by: “take all necessary steps to ensure that all buyers are 18 years and over and to display in their premises a clear message or warning to that effect”. With regard to subparagraph 8(b), Kiribati supported a complete ban on vending machines.

Dr AL MULLA (Qatar) said that, in view of the difficulty of controlling tobacco-vending machines, it would be preferable to prohibit them totally.

Mr GRBEŠA (Croatia) said that his delegation supported paragraphs 8 and 8(a) and associated himself with delegates who considered that subparagraph 8(b) should provide for a total ban on vending machines. That was in line with the Croatian law on the limitation of the consumption of tobacco products, which had been adopted at the end of 1999.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) supported the proposal to eliminate automatic vending machines that had been presented by the Seychelles’ delegation on behalf of the African Region. There were hardly any automatic vending machines in his country and there was not yet any appropriate legislation. Tobacco products were sold in kiosks, private houses and in the open air, often by minors. Control through suppliers was indeed possible, but that would encourage smuggling. His delegation proposed the addition of a new subparagraph 8(c) providing for the penalization of the supplier or owner of the brand if persons under 18 years of age were found in possession of, or selling, tobacco. That seemed to be the only possible procedure.

Ms DE PALMA (Guatemala) said that it would be unrealistic to demand that a purchaser should present evidence of his or her age since any adolescent wishing to obtain cigarettes could use false documents. The problem in her country was that cigarettes were sold everywhere, on the streets and even in pharmacies and markets. She believed that subparagraph 8(b) should impose a ban on all vending machines, and that a further subparagraph should be added providing for the control of distributors. That was because the number of vending machines in her country was limited, and there was need to stop cigarettes being sold by anyone anywhere.

Ms RUPNIK POTOKAR (Slovenia) supported the proposal by the delegate of Sweden. The issue of vending machines had been solved in Slovenia in 1996, when an Act on restricting the use of
tobacco products had been adopted and had entered into force. The Act prohibited the sale of tobacco products from automatic vending machines.

Mr VASILIEV (Moldova) said that his country attached great importance to the question of controlling tobacco sales to minors. However, with regard to subparagraph 8(b), he pointed out that tobacco-vending machines were better than uncontrolled street trade. He therefore considered that the original wording should be retained.

Ms SINIRLIOGLU (Turkey) said that, in the view of the Turkish delegation, the elimination of sales to and by young persons was a crucial part of the convention. With regard to subparagraph 8(a), she supported the proposal of the United States of America that sellers of tobacco products should require rather than request all purchasers to provide evidence of having reached the age of 18.

With regard to subparagraph (b), she associated herself with the Indian and other delegations on the need for a total ban on vending machines, because of the practical difficulties of restricting access to such machines.

Mr TADEVOSYAN (Armenia) said that he supported paragraph 8 but found it strange that the working group should be discussing prohibition without dealing with the question of where sales should be prohibited. The convention should specify that tobacco products should not be sold in restaurants, educational establishments, discos, cinemas, etc., and should specify that access by minors to places where tobacco products are on sale should be restricted. It was also necessary to specify that vending machines could be installed only in certain shops to which young people had no access.

Mr KATENE (New Zealand) said that he fully supported the elimination of sales to and by young persons. The first sentence of paragraph 8 could be considerably strengthened by the addition of the words “and supply” after the word “sales”.

If such a regulation were introduced, it would not be necessary to prove that a sale or profit had been made but only that cigarettes had been given to persons under the age of 18. In that way, persons over the age of 18 would be discouraged from purchasing cigarettes for persons under that age.

Mrs YAGDOROVA (Tajikistan) said that she too supported paragraph 8, but was not sure that the requirement of subparagraph (a) for proof of age would be realistic. As to subparagraph (b), there were no vending machines in her country but there was a flourishing street trade, as well as a trade in schools and colleges. She proposed that subparagraph (b) should also prohibit street trade in tobacco products. She suggested that paragraphs 8 and 9 should be combined.

Mr LISKIA (Papua New Guinea) said that paragraph 8 was a vital means of controlling tobacco sales to young persons and adolescents. He fully supported proposals made by earlier speakers, particularly the delegates of Canada and New Zealand, for the use of terminology other than “sellers”, because in Papua New Guinea many young persons shared tobacco products with others.

He also supported the proposal by Australia and the United States of America that subparagraph (a) be amended to require tobacco sellers to take all reasonable steps to ensure that buyers of tobacco products were over minority age, as well as the proposal for the total prohibition of tobacco-vending machines. Currently, there were no such machines in Papua New Guinea, but their presence would not be desirable. He suggested that in subparagraph (b) the words “in locations accessible to any persons under the age of 18” should be deleted. Lastly, he endorsed the proposal that the provision should also cover street trade.

Dr ROA (Panama) said that her delegation supported proposals for the total prohibition of tobacco-vending machines. However, a time limit should be set for the withdrawal of such machines from the market once Parties had ratified the convention.
Dr CARIS (Chile) proposed that the words “and gifts” should be added after the word “sales” in paragraph 8. A new subparagraph 8(c) should be added, to the effect that each Party should prohibit any promotion and gifts of tobacco products to persons under the age of 18 within its territory.

Dr AL-HAIJAWI (Jordan) said that in Jordan contraband cigarettes were sold everywhere by street vendors, who did not know the age of the buyers. Fortunately, there were no tobacco vending machines, but such machines might be introduced in the future. He therefore suggested that subparagraph (b) should prohibit the introduction of tobacco vending machines, as well as street trade in tobacco products.

Dr GHANEM (Egypt) suggested that subparagraph (a) should include a requirement that vendors should prominently display notices in their premises stating that it was prohibited to sell cigarettes to persons under 18 years of age. That would make it possible to enforce the prohibition.

Ms DJAMALUDDIN (Indonesia) said that her delegation’s position was that subparagraph (a) should be deleted. However, it supported the proposal that subparagraph (b) should prohibit all tobacco-vending machines.

Ms TRAN Thu Thuy (Viet Nam) proposed that paragraphs 8 and 9 should be combined and that the word “everywhere” should be added after “machines” in subparagraph 8(b). Paragraph 10 should be deleted, because it would be very difficult to put into practice in Viet Nam.

Mr TAKAKURA (Japan) said he supported paragraph 8 in principle, with some reservations regarding language. He would like time to study the various proposals made, since any restrictions on economic activity required careful examination. Japan already had a law that prohibited smoking by persons under the age of 20, and retailers who sold tobacco products to persons under that age knowing that they were for the buyer’s own consumption were penalized. Japan also had a licensing system for retailers under which the location of shops and vending machines were controlled.

Ms VILIAME (Fiji) suggested that subparagraph (a) be amended so as to make implementation more practical, particularly for small countries. After the words “to tobacco products”, the text would read: “demand on reasonable grounds that a tobacco purchaser provide appropriate evidence of having reached the age of 18”.

Mrs BOBYLOVA (Ukraine) said her delegation fully supported the prohibition of sales of tobacco products to persons under the age of 18. Subparagraph 8(a) should be made more specific by an addition to the effect that the seller should bear responsibility for selling tobacco products to minors. There should also be a new subparagraph prohibiting the free distribution of tobacco products to minors.

Mrs KONDAJ (Albania) said that she agreed fully with the thrust of paragraph 8. The rights of children should be defended, they should be protected from tobacco use, and their education should be safeguarded. Many children in her country aged between 9 and 15 years of age were selling cigarettes on the streets. They were orphans or children of divorced parents and poor families who had left school to work, and nothing was being done to help them. It was the obligation of governments to establish national regulations in conformity with international standards in order to protect children, reduce tobacco use and promote public health.

Ms TKACHENKO (Russian Federation) said he could support paragraphs 9 and 10, but thought that paragraph 12 should be deleted. Paragraph 11 should be reworded to the effect that each Party should take all necessary legislative measures with respect to sellers and distributors who violated...
measures prohibiting sales of tobacco products to persons under the age of 18. The term “distributor” should be defined, as well as the term “free distribution of tobacco products”.

Dr REDDY (India), speaking on behalf of Member States of the South-East Asian Region, proposed that paragraphs 11 and 12 should be subsumed in a redrafted paragraph 10 which would read: “Each Party shall, to the extent possible within the means at its disposal and its capabilities, implement appropriate legal and other measures to verify compliance with paragraphs 8 to 10 above. Such measures shall include penalties against sellers and distributors for the violation of measures prohibiting sales of tobacco to and by persons under the age of 18, and to this end each Party shall take appropriate legal and other measures to ensure that no criminal penalties are imposed against persons under the age of 18 for buying and selling tobacco products.” He feared that prohibiting the sale of cigarettes in packets of less than 20 might cause manufacturing problems for countries where cigarettes were traditionally sold in packets of 10.

Ms MAYSHAR (Israel), referring to paragraph 10, proposed the deletion of the words “to the extent possible within the means at its disposal and its capabilities”. In addition, she considered that prohibition should cover the distribution, as well as the sale, of cigarettes individually or in packets of fewer than 20. She would prefer paragraph 12 to be deleted, since it should be for national authorities to decide on penalties in accordance with their own definition of the age of criminal liability.

Professor AUNG (Myanmar), speaking on behalf of the South-East Asia Region, proposed the deletion of paragraph 10, which would be very difficult to implement. He further proposed that paragraphs 11 and 12 be merged.

Dr BOVET (Seychelles), speaking on behalf of Member States of the African Region, suggested that the words “to the extent possible within the means at its disposal and its capabilities” be deleted from paragraph 10. He believed that the convention should set out guiding principles for controlling tobacco use in a concise and meaningful way.

Dr HAMAD (Sudan) proposed the addition of a new paragraph under Article I that would also prohibit the manufacture and sale of sweets in a form that resembled tobacco products.

Mr CASTILLO SANTANA (Cuba) said that in paragraph 10 he would like the words “to the extent possible within the means at its disposal and its capabilities” to be retained within square brackets. He proposed the addition of the words “in accordance with national legislation” in paragraph 11, and proposed that “persons under the age of 18” be replaced by “minors” in both paragraph 11 and paragraph 12.

Mr MOON (Republic of Korea) suggested that paragraph 9 should be strengthened by being amended to read “Each Party shall prohibit any kind of supply of tobacco products to and by persons under the age of 18.” In the heading to paragraphs 8-12 the word “sales” should be replaced by the word “supply”, and since paragraph 9 in its amended form was now the principle paragraph it should be placed before paragraph 8. In paragraph 10 he proposed the replacement of the word “sale” by the word “supply” and in paragraph 11 the replacement of “sellers and distributors” by “providers” and of “sales” by “supply”.

Dr SANNER (Norway) proposed that paragraph 10 should be strengthened by placing the words “to the extent possible within the means at its disposal and its capabilities,” between square brackets. He also supported the suggestion by Sudan regarding prohibiting the manufacture of sweets in a form that resembled tobacco products.
Ms KATENE (New Zealand) considered the elimination of sales to and by young persons to be crucial. However, even though in her country many tobacco retailers had been prosecuted for sales to persons under the age of 18, young people still reported having little difficulty in purchasing cigarettes. She therefore proposed the addition of a new paragraph in Article I, reading “Each Party shall take appropriate measures to place tobacco products for sale at retail level largely out of sight of the consumer.” That should make it more difficult for young people to buy their first packet of cigarettes, and should reduce impulse buying.

Professor LYNCH (Canada) pointed out that her suggestion that the terms “sales” and “selling” should be replaced by “furnishing” applied throughout Article I. She considered that paragraph 9 should be deleted, as it could limit employment opportunities for young people in establishments such as convenience stores. She was concerned that paragraph 12 in its current formulation could be interpreted as an incentive to organized crime by encouraging the use of young people to facilitate criminal offences related to the illicit tobacco trade. On the assumption that the intention was to avoid penalizing young persons addicted to tobacco, she suggested that paragraph 12 be reworded as follows: “Each Party shall ensure that no criminal penalties are imposed against persons under 18 for buying tobacco products for personal use”.

Ms KERR (Australia) concurred with other delegates that the phrase “to the extent possible within the means at its disposal and its capabilities” weakened paragraph 10 and should be deleted. She proposed that paragraph 8(a) be amended to read “require that all sellers of tobacco products take all reasonable steps to ensure that buyers are 18 and over”. With regard to paragraph 12, she supported the concept of not criminalizing underage purchasers of tobacco for personal consumption. However, the paragraph did not address the issue of underage buyers of tobacco products whose purpose was to sell on or supply tobacco to other young persons under 18. She therefore proposed a reformulation worded: “Each Party shall ensure that no criminal penalties are imposed against persons under the age of 18 for buying and/or possessing tobacco products for personal consumption”.

Ms ALEXIS-THOMAS (Trinidad and Tobago) pointed out that even though it was illegal to sell tobacco products to young persons under 16 in her country, a recent survey had revealed that one in three adolescents between 13 and 15 were able to buy cigarettes. With regard to paragraphs 9, 10 and 11, she would welcome the introduction of a licensing system governing sales. She proposed the addition of a new heading entitled “Licensing”, to be followed by two new paragraphs, the first reading “Each Party shall take appropriate and other measures to ensure that the holders of licences for tobacco products are over the age of 18”, and the second reading “Each Party shall ensure that part of the licensing system includes: (i) prohibition of the sale of cigarettes individually or in packets of fewer than 20 cigarettes (ii) penalties for sales to persons under 18.”

Mrs YAGDAROVA (Tajikistan) expressed support for paragraphs 10, 11 and 12, as well as for the comments of the delegates of Cuba and the United States of America.

Dr ILKHAMOV (Uzbekistan), referring to paragraph 10, proposed the insertion of “and free distribution” between “sale” and “of”. With regard to paragraph 11, she supported the Chair’s text as it stood.

Dr REN Minghui (China) proposed that paragraphs 9 and 11 should be combined to read as follows: “Each Party shall take appropriate measures to prevent wholesalers and retailers of tobacco products from selling or distributing tobacco products to young persons under 18 and shall impose penalties on those who violate this regulation.” She also proposed the deletion of paragraph 12.
Dr Al-LAWATI (Oman) proposed the deletion of “to the extent possible within the means at its disposal and its capabilities” from paragraph 10. He also supported New Zealand’s suggestion for the addition of a new paragraph under Article I.

Ms DJAMALUDDIN (Indonesia) endorsed India’s comments on the impracticability of prohibiting sales at the retail level of cigarettes individually or in packets of fewer than 20 in developing countries. She therefore proposed the deletion of paragraph 10.

K. Surveillance, research and exchange of information

Mr MAKONO (Zambia), speaking on behalf of the African Region, said that paragraph K.2 was of particular concern to African countries. He proposed the addition of two new subparagraphs, to read “(c) promote and encourage research activities designed to accelerate diversification of alternative crops, especially in developing countries;” and “(d) promote research activities on behaviour and attitudes.”

Dr ARRIAGA WEISS (Mexico) also considered that Article K was important because it would lead to a better understanding of tobacco use. In his view, subparagraph K.2(b) should contain some reference to research into the economic and social impact of tobacco consumption, and he proposed the insertion of the words “and its economic and social impact” after the words “tobacco use”.

Ms BELSIS LLORATE (Cuba) said that in principle Cuba supported paragraph K.2, and particularly subparagraph (a), although she wished to reserve the right to make proposals when the Annex came to be discussed.

Ms MORALES AYLLÓN (Bolivia) proposed the deletion of the words “as far as possible” in the first sentence of paragraph K.2.

Dr FARSHAD (Islamic Republic of Iran), also referring to the opening of paragraph K.2, proposed that the words “particularly in the areas of youth, women and passive smoking” should be added after the words “for the purpose of this convention”.

Dr ROA (Panama) endorsed the principles contained in paragraph K.2(a) and (b), but considered that an addition should be made to the effect that the Parties would undertake research on the impact of educational and other preventive measures for the control and reduction of tobacco consumption and passive smoking.

Ms BALOCH (Pakistan) proposed that the first sentence of paragraph K.2 should be reformulated to read “The Parties undertake to develop and promote national research programmes and to contribute, as far as possible, to international research activities for the purpose of this convention.”

Dr NOVOTNY (United States of America) noted that the United States had already submitted a proposal in Working Group 2 for amendment of the opening text of paragraph K.2. However, he wished to express support for subparagraphs K.2(a) and (b) as they stood.

Mrs MBONGWE (Botswana) said she supported the amendments put forward by Zambia. She proposed the deletion of the words “in accordance with the means at its disposal and its capabilities” from the second sentence of paragraph K.2.
Mr OGANOV (Russian Federation) pointed out that paragraph K.2 was mainly concerned with research on the effects of tobacco use on health. He therefore proposed the insertion, either in subparagraph 2(b) or as a separate subparagraph, of a formulation worded: “encourage and provide resources for scientific research devoted to the assessment of the effectiveness of communal and individual programmes which are intended to reduce tobacco consumption.”.

Dr CARIS (Chile) concurred with other delegates that the words “as far as possible” should be deleted from the first sentence of paragraph K.2, and supported the suggestion made by Panama. She proposed the addition in subparagraph 2(a) of a reference to cooperation at international level which would enable countries to compare the results of their research. She also proposed the addition of “and training in research” after the word “research” in subparagraph 2(b).

Ms KERR (Australia) reiterated the suggestion already made by Australia in Working Group 2 that subparagraph 2(b) might be more appropriately dealt with in that working group.

Mr GRBEŠA (Croatia), referring to paragraph 2(b), proposed the addition of the words “and countries with economies in transition” after “developing countries”.

Dr MALAKAI’AKE (Tonga) supported the proposal put forward by Zambia. Research should be carried out to discover the reasons why people smoked, with a view to developing effective methods of preventing tobacco use.

Ms GOJA (Uruguay) proposed the deletion of the words “in accordance with the means at its disposal and its capabilities” in the second sentence of paragraph K.1.

Dr HAMAD (Sudan) supported the proposal made by Zambia in respect of paragraph K.2.

Dr CASTILLO (Dominican Republic), speaking as the delegate of a tobacco-producing country, proposed the addition of a new subparagraph (c) which would read “promote and stimulate research and technical and financial assistance for the development of alternative crops in tobacco-producing countries and for the assessment of the profitability of the new crops.”

Dr REDDY (India) expressed support for the proposal made by the delegate of Pakistan.

The CHAIR, in closing the discussion, noted the broad support for the principle set out in paragraph K.2 and the proposals put forward for its amendment, particularly with regard to research into alternative crops.

D. Guiding principles

Paragraphs D.1 and D.2

The CHAIR, introducing the discussion of paragraphs D.1 and 2, recalled that it had been agreed to consider those two paragraphs after a review of the more detailed provisions proposed later in the text.

Ms MAYSHAR (Israel) proposed the insertion of the words “of the tobacco epidemic and the phasing out” before “of tobacco consumption” in paragraph D.1. The intention was to ensure that the convention’s first guiding principle was the recognition of the existence of the tobacco epidemic and the need to combat it until it was ultimately phased out.
Moreover, in view of the likelihood that the implementation of many of the measures called for in the convention would be challenged in the Parties’ courts on constitutional grounds, she believed that it was essential to add a statement to the guiding principles on the balance of the competing interests of the protection of public health and commercial interests. She therefore proposed the addition of a new paragraph 2, which would read as follows: “The devastating effect of the use of tobacco products on public health requires the implementation of stringent measures, as set forth in this convention, designed to diminish tobacco use as far as feasible, and these measures, of necessity, should prevail over commercial interests and rights.”

Dr REDDY (India), speaking on behalf of the Member States of the WHO South-East Asia Region, said that both national actions and international responses had to be comprehensive, multisectoral and coordinated, since national actions had to be coordinated between various ministries, and international responses had to be multisectoral across health, trade, agriculture, the media and law enforcement. He therefore suggested that the last part of paragraph D.1 should read: “and requires comprehensive multisectoral and coordinated national actions and international responses”.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, as well as the associated States Bulgaria, the Czech Republic, Latvia, Poland, Romania, Slovakia and Slovenia, expressed appreciation of the new approach to the general principles taken in the Chair’s text. He would propose changes to emphasize the meaning of some of the principles. With regard to paragraph D.2, language that was excessively general should be avoided. For example, the term “every person” could be expressed more specifically by referring to “members of the general public, at-risk target groups and individuals”. An amendment would be submitted in writing.

Dr THINLEY (Bhutan) endorsed the proposal made by the Indian delegate on behalf of the Member States of the South-East Asia Region.

Dr ILKHAMOV (Uzbekistan) expressed support for the first part of paragraph D.1 and for paragraph D.2, but proposed the addition of the words “taking into account national interests” at the end of paragraph D.1.

Ms BALOCH (Pakistan) noted that while paragraph D.1 referred to halting the growth of tobacco consumption, it made no mention of halting tobacco production and trade. She therefore proposed that paragraph D.1 should read as follows: “Reducing the current impact, and halting the growth of tobacco consumption, production and trade including international trade, is crucial in protecting the health of individuals, as well as national and global public health, and requires comprehensive multisectoral actions and coordinated international responses”.

Professor LYNCH (Canada) supported the Chair’s text of paragraph D.1. With regard to paragraph D.2, it would be difficult to ensure that every person was fully informed of the harmful nature of tobacco consumption. However, it was not necessary to attain the ideal standard of total public awareness in order to achieve the objectives of the convention. She therefore proposed that the paragraph should read as follows: “Everyone should be provided access to information to become aware of the addictive and lethal nature of tobacco consumption, and non-smokers should be adequately protected from exposure to tobacco smoke.”

Mr CASTILLO SANTANA (Cuba) expressed support for the basic principles set out in paragraphs D.1 and D.2. With reference to proposals made by previous speakers that paragraph D.1 should refer to other aspects of tobacco production and trade, in addition to tobacco consumption he recalled his delegation’s earlier statement that Article D contained the guiding principles of the
convention, which should be focused on the themes of health, combating tobacco consumption and the illnesses related to tobacco use. References to grade and other aspects should not be included in the guiding principles of a convention with health objectives.

Dr ARRIAGA WEISS (Mexico) also endorsed the Chair’s text of paragraphs D.1 and D.2. However, paragraph D.2 should be made more precise by referring to the “lethal consequences”, rather than the “lethal nature”, of tobacco consumption.

Dr SANNER (Norway) emphasized that environmental tobacco smoke (ETS) was the third most important cause of premature death. In the light of the severity of the problem, he proposed to sharpen the focus of the convention on the detrimental effects of ETS by introducing a new paragraph in the guiding principles. The new paragraph, to be inserted after paragraph D.1, would read: “Every person has the right to smoke-free air and hence adequate protection from exposure to environmental tobacco smoke.”

References to the effects of ETS in the Chair’s text were focused only on non-smokers. However, recent data suggested that ETS might be even more harmful for smokers than for non-smokers. It had been reported that smokers exposed to ETS either at home or at work spent more days away from work and more days in bed than smokers not exposed to ETS. Moreover, ETS enhanced the risk of lung cancer among smokers, as demonstrated in several studies. Paragraph D.2 should therefore include information on the hazards of environmental tobacco smoke. He proposed that it should read be amended follows: “Every person should be fully informed about the addictive and lethal nature of tobacco consumption and about the hazards of exposure to environmental tobacco smoke”.

Ms ALEXIS-THOMAS (Trinidad and Tobago) proposed the inclusion of references to preventing the initiation of tobacco use and exposure to second-hand smoke in paragraph D.1. The paragraph would therefore read as follows: “Preventing the initiation of tobacco use, reducing the current impact, and halting the growth, of tobacco consumption and exposure to second-hand smoke, is crucial in protecting the health of individuals, as well as national and global public health, and requires comprehensive multisectoral national actions and coordinated international responses.”

Dr CARIS (Chile) noted speakers’ frequent references to young persons and proposed the addition of the words “young persons and” before the words “non-smokers” in paragraph D.2.

Dr DE CERES (Paraguay) agreed that references to the production and sale of tobacco should not be included in paragraph D.1; their mention would be inconsistent with other parts of the convention that sought to promote other uses of tobacco. The problem was not the cultivation of tobacco, but its use and people’s consequent dependence; the idea of the text was to halt the growth in tobacco consumption for tobacco-dependent persons. No opening should be left for the question of the production and sale of other tobacco products – for example, for pharmaceutical purposes – to be used to block the article.

Ms KERR (Australia) said that many of the principles contained in the guiding principles were of an aspirational and contextual nature, and it was difficult to see how they differed from preambular statements. She therefore suggested that consideration be given to placing the guiding principles, with appropriate modification, in the preamble. She proposed that the whole text of the guiding principles be placed in square brackets pending discussion of the preamble.

Dr ANDEN (Philippines) proposed that paragraph D.1 should be reworded to read: “It should be the paramount concern of this convention to protect the health of all peoples, and thereby reduce
the current impact, and halt the growth of tobacco consumption through comprehensive multisectoral national actions and coordinated international responses”.

Dr FARΘAS ALBUQUERQUE (Peru), on behalf of the Minister of Education of his country, called for a change in paragraph D.2 to recognize the role of education in promoting the development of elements that protect and build resistance against the use of tobacco.

Mrs THIBELI (Lesotho), speaking on behalf of the Member States of the African Region, emphasized the importance of ensuring that the convention contained strong guiding principles. In that regard, she proposed that, in paragraph D.1, the words “in protecting” should be replaced by the words “for promoting”. Paragraph D.2 should be amended to read: “The entire population should be fully informed about the addictive, harmful and lethal nature of tobacco consumption”. Finally, prominence should be given to non-smokers by making the latter part of the text in paragraph D.2 into a new paragraph D.3, which would read: “Non-smokers should be adequately protected from involuntary exposure to tobacco smoke”.

Ms ELLUL (Malta), expressing support for the Chair’s text of Article D, emphasized the serious health implications for non-smokers of exposure to environmental tobacco smoke. She therefore proposed that the phrase concerning non-smokers in paragraph D.2 should read as follows: “non-smokers should be fully protected from exposure to tobacco smoke”. That proposal was made in the awareness that there was no safe level of exposure to the carcinogens present in environmental tobacco smoke.

Mr KATENE (New Zealand) proposed an additional guiding principle on the importance of tobacco control research and development. The experience of New Zealand showed that current tobacco control methods, although effective, needed to be strengthened and further diversified to accelerate the reduction of tobacco use. He also expressed support for the Norwegian proposal for a separate guiding principle on the right of individuals to smoke-free air.

Ms TKACHENKO (Russian Federation) pointed to a contradiction between the two sections of paragraph D.2, which appeared to imply that being informed somehow protected non-smokers. She proposed that the present text should be divided into two paragraphs. The first would deal with informing the population about the potential danger of smoking and breathing tobacco smoke through mass media programmes, school programmes, clear warning notices, and so forth. The second of the paragraphs should then cover the protection of non-smokers through the use of legislative and other measures.

Mr BAHARVAND (Islamic Republic of Iran) agreed with previous speakers that the concept of the protection of non-smokers should be redrafted and placed in a separate new paragraph D.3.

Dr ROA (Panama) proposed the addition of a new guiding principle related to paragraph G.1(e), which would read as follows: “In view of the duty and right of individuals and families to care for their health through the adoption of healthy lifestyles and environments, it is necessary for the Parties to carry out systematic educational and information activities aimed at the whole of the population”.

Dr LEWIS-FULLER (Jamaica) supported the Trinidad and Tobago delegate in emphasizing the importance of prevention. She proposed the inclusion of a new paragraph D.1, so as to place prevention first and foremost before any other principles. The new paragraph would read: “Taking all necessary action to prevent the consumption of all tobacco products, their promotion, development and trade in order to prevent the burden of disease, disability and death caused by tobacco use, and in keeping with public health principles.”
Mr EMMANUEL (Saint Lucia) expressed support for paragraph D.2, but proposed the addition of the words “and exposure to tobacco smoke” after the word “consumption”.

Dr SILVA GOLDFARB (Brazil), with a view to reaffirming the importance of the environmental damage caused by tobacco, proposed that paragraph D.2 should be reworded as follows: “Every person should be fully informed about the environmental damages caused by tobacco production, the addictive and lethal nature of its consumption, and non-smokers should be adequately protected from exposure to tobacco smoke.”

Dr KIENENE (Kiribati), while endorsing the wording of paragraph D.2, proposed the replacement of the word “lethal” by “harmful”. He associated the term “lethal” with weapons of a biological or nuclear nature. He expressed support for the amendment proposed by the delegate of Chile to include a reference to young persons, who required special consideration. While adult non-smokers could walk away from tobacco smoke, young persons could not.

Mr MBUYU MUTEBA (Democratic Republic of the Congo), endorsing the statement made by the delegate of Lesotho on behalf of the African Region, suggested that in the French text of the proposed new paragraph 3 the word “correctement” should be replaced by “suffisamment”.

The CHAIR pointed out that such adverbs had no force in law: it was enough simply to say “be protected”.

Mr MOON (Republic of Korea) stressed the importance of controlling smoking among young people and proposed that a new paragraph be inserted after paragraph D.2, to read as follows: “The importance of efforts and various measures to control tobacco smoking of young persons should be recognized.”

E. General obligations

Paragraphs E.1 and E.2

Mr BEN SALEM (Tunisia) said that the word used in the Arabic text for “obligations” in the heading was inaccurate; he asked for the wording to be aligned with the other language versions.

Mr ODOKO (Japan), referring to paragraph E.2, said that the use of the phrase “to the extent possible within the means at its disposal and its capabilities” had been criticized when it had appeared in other parts of the text and there had been suggestions to delete it. He considered the phrase to be unclear, but expressed his appreciation for the underlying idea, which left room for Member States to introduce measures based on their particular circumstances at their discretion, without thereby violating the obligations of the convention. Such circumstances had to be taken into account when introducing measures to regulate tobacco production and marketing, which meant that Member States could not implement the regulations in a uniform manner. To sum up, the convention should make allowance for different States to achieve the same objective by diverse means.

Dr REDDY (India), speaking on behalf of the Member States of the South-East Asia Region, expressed support for paragraphs E.1 and E.2(a). However, he considered that paragraph E.2(b) was too vague, since it did not define what was meant by “appropriate policies”. He proposed that subparagraphs 2(b) and 2(c) be merged to read as follows: “adopt legislative, executive and administrative measures and cooperate with other Parties in harmonizing appropriate policies for reducing tobacco consumption and exposure to tobacco smoke”. Subparagraph 2(c) of the Chair’s text would then be redundant.
Dr THINLEY (Bhutan) supported the drafting proposal made by the delegate of India on behalf of the South-East Asia Region.

Ms BILLUM (Sweden), speaking on behalf of the European Union and the associated States Bulgaria, the Czech Republic, Poland, Romania, Slovakia and Slovenia, said that she would submit a series of proposed amendments to Article E, which she regarded as important. Some of them concerned paragraph 2. In her view, questions concerning the financing of national mechanisms for tobacco control were of a different character and should not be raised in an article on general obligations, but should be dealt with in the section of the convention dealing with financial resources. She also proposed that the word “harmonizing” be replaced by “developing” in subparagraph 2(b). She would submit a revised draft text in writing.

Ms ROVIROSA PRIEGO (Mexico) suggested the following amended version of paragraph E.1, in order to be consistent with the phrase “where appropriate”, and to avoid an attempt to be exhaustive: “Each Party shall develop, implement, periodically update and enforce, where appropriate, national strategies, policies, legislation or other measures for the control of tobacco use, in accordance with the provisions of this convention and, as relevant, its protocols”.

Mr CASTILLO SANTANA (Cuba) agreed that in paragraphs E.1 and E.2(a) the phrase “tobacco control” should be amended to “control of tobacco use”. With regard to paragraph E.2(c), he suggested the deletion of the words “and, as relevant, its protocols”; there was no need at the present stage to refer to possible future protocols.

Dr ZENKEVICH (Belarus) considered the concept of a “national coordinating mechanism”, referred to in paragraph E.2(a), to be rather broad and complex. Some States might feel under an obligation to set up a special mechanism. To make the text clearer, he proposed replacing “national coordinating mechanism” by “national measures”.

Ms KERR (Australia) commented on the structure of Article E. She suggested that the general obligations could be streamlined by separating out the types of obligations. That would involve some reorganization of domestic and international obligations, as well as of issues relating to implementation of the convention.

Professor LYNCH (Canada) said that in paragraph E.1 the words “such as standards” might be understood to be included in “other measures”. She consequently proposed the deletion of the words “such as standards”, and drew attention to the need to define the term “standards” wherever it was used in the text.

Referring to paragraph E.2, she proposed that, as suggested in the discussions on other sections, the words “to the extent possible within the means at its disposal and its capabilities” should be deleted. In subparagraph 2(c), she proposed the insertion of the words “the prevalence of tobacco use,” before “tobacco consumption”. She would submit the proposals in writing.

Mr MAKONO (Zambia), speaking on behalf of the Member States of the African Region, proposed that in the first part of paragraph E.2 the words “to the extent possible within the means at its disposal and its capabilities” should be deleted. He proposed the following alternative text: “To this end each Party shall, subject but not limited to the financial mechanisms contained herein, undertake to”. He further proposed that subparagraph 2(b) should be replaced by the following text: “adopt legislative, executive and administrative measures and cooperate with other Parties in harmonizing appropriate policies upwards to the highest standard”.

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Dr NOVOTNY (United States of America) observed that paragraph E.1 suggested a commitment to standards developed in accordance with the provisions of the convention and its protocols. His and other delegations had expressed support for a convention that facilitated model national standards rather than instituted international standards.

He proposed a modification to subparagraph 2(a), as it seemed to contain a commitment to future funding and actions of organizations for which some national governments might not be responsible. The amended text would read: “establish or, where it already exists, reinforce a national coordinating mechanism for tobacco control and provide an opportunity for public input”. He would submit the text of both amendments in writing.

Mr MOON (Republic of Korea) proposed the insertion of the words “taking into account its specific circumstances” after “Each Party”.

Mr CULLEN (Argentina) said that paragraph E.2 concerned the implementation of the provisions of paragraph E.1 and was consequently redundant, especially since section E dealt with general obligations. Subparagraph 2(c) was particularly inappropriate, in that it stipulated the reduction of tobacco consumption as an obligation. However, the convention could only require that Member States adopt adequate policies; it could not impose an obligation for the policies to succeed.

Ms ELOVAINIO (Finland) supported the statement by the delegate of Sweden on behalf of the European Union. Finland stressed the importance of a comprehensive, multisectoral antismoking policy involving the whole of society, not only the public health sector. That was the only way to create sufficient power and synergy for the work. She was convinced that the results achieved in Finland during the past 25 years demonstrated that a systematic, comprehensive policy could be effective. A sharp decrease in the incidence of and mortality from tobacco-related major diseases had been observed in her country.

Dr PALOMO ESCOBAR (El Salvador) supported the Mexican delegate’s proposal to delete the words “comprehensive, multisectoral” and “such as standards” in paragraph E.1. He proposed the addition of the words “and regularly evaluate” in the line reading “Each Party shall develop, implement, periodically update and enforce”.

Dr SILVA GOLDFARB (Brazil) considered that the term “national coordinating mechanism” in paragraph E.2(a) required clarification. She agreed that it was possible for nongovernmental organizations to facilitate implementation in countries where there was no government involvement. However, in Brazil’s experience, programmes could not be successful if there were no government commitment to support them. She therefore proposed the insertion of the words “coordinated by a government organism, preferentially by the Health Ministry” after the word “control”.

Ms MORALES AYLL[N (Bolivia) supported the wording of paragraph E.1. She proposed that subparagraphs 2(a) and 2(b) should be amended to read as follows:

(a) establish in the near future and/or, where it already exists, reinforce with adequate financing a national coordinating mechanism for tobacco control, with inputs from relevant government, civil society and funding agency resources;
(b) adopt legislative, executive and administrative measures and cooperate with other Parties in developing and harmonizing appropriate policies for health promotion that encourage healthy lifestyles and habits.

She further supported the deletion of the words “and, as relevant, its protocols” in subparagraph 2(c).
Mr CASTILLO SANTANA (Cuba) expressed his displeasure that one of the most important sections of the convention, on general obligations, was being discussed in haste, when the room was almost empty. He did not wish the negotiations to become an endurance race, with victory to the strongest. Small delegations were particularly vulnerable. He therefore asked the Chair to be fair to everyone.

The CHAIR said that he understood and shared the Cuban delegate’s view.

Professor WARNER (World Bank), speaking at the invitation of the CHAIR, referred to paragraph 8. The World Bank applauded the spirit of the paragraph, which made a strong statement about the dangers of smoking and governments’ concern about the issue. Nevertheless, he would not want delegates to be optimistic that such measures would in fact substantially reduce tobacco use by young people. In many high-income countries, where such restrictions had existed for some time, research had shown them to be relatively ineffectual. They could readily be circumvented by informal networks of distribution. Furthermore, in the few instances in which they had proved successful, enormous resources had been required for enforcement.

It was noteworthy that youth access restrictions were supported by the tobacco industry, often with its own programmes. Many veterans in the tobacco control field were convinced that industry supported such programmes because it was convinced that the measures were ineffectual. In contrast, any policy measures strongly opposed by the tobacco industry, such as tax increases and advertising bans, were likely to be effective. The World Bank had also noted that in low-income countries, the necessary systems, infrastructure and resources for implementing such restrictions and enforcing them were much less widely available than in the high-income countries.

The meeting rose at 13:20.
WORKING GROUP 2
WORKING GROUP 2

FIRST MEETING

Tuesday, 1 May 2001, at 10:10

Chair: Professor E. AISTON (Canada)
later: Dr T.J. STAMPS (Zimbabwe)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 4 of the Agenda (Documents A/FCTC/INB2/DIV/1, A/FCTC/INB2/DIV/6, A/FCTC/INB2/2 and A/FCTC/INB2/3)

Opening of the meeting

The CHAIR opened the meeting, indicating that the working procedures developed by Working Group 1 the previous day would serve as a guide for Working Group 2. Participants should note that textual changes to the text (A/FCTC/INB2/2) proposed by the Chair of the session should be submitted in writing, on the forms provided, no later than 30 minutes after the end of the meeting.

He suggested the following order of work: price and tax measures to reduce the demand for tobacco (paragraphs F.1 and F.2(a),(c)); price and tax measures to reduce the demand for tobacco (paragraph F.2(b)); government support for tobacco manufacturing and agriculture (paragraph I.15); illicit trade in tobacco products (paragraphs I.1-7); licensing (paragraphs I.13-14); surveillance (paragraph K.1); and exchange of information (paragraph K.3).

The order of work was approved.

F. Price and tax measures to reduce the demand for tobacco

Paragraph F.1

Ms LAMBERT (South Africa), speaking on behalf of Member States of the African Region proposed that the word “measures” in the first line of paragraph F.1 be replaced by “increases”, since it was the increase in the price of tobacco that reduced demand for it and the term “measures” was therefore too vague.

She also proposed that the word “upward” be inserted before “harmonization” and that the words “product prices” be replaced by “excise taxes”. In that connection, where several countries shared common borders, more effective action could be taken to reduce demand for tobacco by harmonizing excise taxes at the regional and subregional levels.

Dr TATA (India) said that, although price increases indeed represented an important step in controlling tobacco consumption, the term “price harmonization” used in the Chair’s text was not only vague but also slightly ambiguous and subject to misinterpretation. If it meant “price equalization” it would be an impractical suggestion, since the prices of the various commodities were based on a variety of factors, including currency differentials, the purchasing power of the population and other economic factors. Product pricing was a commercial decision which could only be influenced by the State through taxation. Although the equalization of tobacco prices through taxation would reduce transborder illicit trade, it would be impractical to aspire to global equalization of tobacco prices for that purpose. Should such an equalization occur, it would only create a mechanism whereby tobacco
products would flow from developed to developing countries. Moreover, the aspect of cooperation in combating the illicit trade in tobacco products was covered by Article I. India therefore proposed the following wording for paragraph F.1: “The Parties recognize that price increases are an effective mechanism to reduce tobacco consumption and recommend a policy of progressively increasing taxation of tobacco products intended to stimulate and sustain a steady decline in tobacco consumption.”

Mr RAJALA (European Community), speaking also on behalf of the Member States of the Community, supported the proposal to include in the convention a section on price and tax measures to reduce the demand for tobacco. Nevertheless, the approach adopted in the proposed text of paragraph F.1 could be misleading and could lead to difficulties of application. In particular, the reference to the progressive harmonization of tobacco product prices was not a feasible objective for the proposed convention, in view of the considerable differences in the economic levels of future Contracting Parties. It would be preferable to state that the Parties recognized price measures to be an effective mechanism for reducing tobacco consumption among various sectors of the population, although such measures should be accompanied by effective interventions to combat illicit trafficking in tobacco products. The relevant changes would be submitted in writing.

Dr FARSHAD (Islamic Republic of Iran) believed that two important points should be included in the proposed convention with regard to price and tax measures to reduce the demand for tobacco. In the first place, there should be a real increase in tobacco prices. Secondly, the problem of tax-free and duty-free shops should be addressed. He therefore proposed that the second part of paragraph F.1 should read as follows: “... and that progressive real increases in the price of tobacco products and prohibition of tax-free and duty-free tobacco products will contribute to a reduction in disease caused by tobacco use.”

Dr AL-LAWATI (Oman) drew attention to the Arabic translation of the word “effective” and called for a review of the Arabic version of the Chair’s text. He endorsed the changes proposed by the previous speaker and said that Oman would submit similar changes in writing.

Mr ODOKO (Japan) said that his country reserved its position on paragraph F.1 for the reasons which he would put forward during the discussion of paragraph F.2.

Dr ABOU-ALZAHAB (Syrian Arab Republic) proposed that the word “recognize” be replaced by “decide” and that the words “among children and young people” be inserted after “tobacco consumption”. The reason for that amendment was that increased prices had a greater impact on tobacco consumption among children and young persons.

Ms SÁNCHEZ-REYES (Nicaragua) emphasized that the prices of tobacco products were established by the industry itself and that, in the case of Nicaragua, legal provisions only existed for regulating the prices of pharmaceutical products and, in the event of emergencies, of basic products. She therefore expressed certain reservations concerning the proposed text of paragraph F.1.

Dr NOVOTNY (United States of America) said that his Government viewed the issue along the same lines as the European Community with regard to the practical difficulties relating to the goal of harmonizing taxes. The United States generally supported goals aimed at setting tax levels liable to reduce consumption of tobacco products, as well as the goal of imposing taxes on all tobacco products. Action to further those objectives, combined with robust measures to curb smuggling and other illicit activities, offered a better approach to the issue. Written amendments consistent with those goals would be submitted to the Secretariat.
Ms NOFTLE (Canada) said that her country supported the underlying principles reflected in the proposed text of Article F in the belief that price and tax increases could complement an effective health policy strategy aimed at reducing tobacco consumption and prevalence. Canada nevertheless considered that all aspects of the design of specific prices and tax measures rested with individual Member States and therefore proposed the deletion of any reference to the progressive harmonization of tobacco product prices, so that paragraph F.1 should read as follows: “The Parties recognize that price and tax measures can be an effective component of a comprehensive effort to reduce tobacco consumption.”

Ms KERR (Australia) supported the Canadian proposal.

Mr CULLEN (Argentina), while recognizing the importance of Article F, said that in order to achieve its objective, reference should be made to the need to harmonize or coordinate prices at the regional and subregional levels, since a point of great concern was how to combat smuggling, which was closely related to price-fixing at the national level. A reference to regional or subregional harmonization might therefore be included in either of the first two paragraphs of Article F, or more detailed provisions on price harmonization might be set out in an additional protocol or in practical guidelines.

Dr HATAI CHITANONDH (Thailand) said that emphasis should be placed on price measures as one of the most efficient mechanisms of reducing tobacco consumption and supported proposals to delete references to the progressive harmonization of tobacco product prices and to the illicit traffic in tobacco products.

Mrs ROVIROSA PRIEGO (Mexico) said that, although her delegation agreed with earlier speakers that price measures were effective mechanisms in reducing tobacco consumption, it considered that the progressive harmonization of tobacco product prices was a responsibility that rested with the State and therefore supported proposals to delete that reference from the draft text.

Ms QU Meiyu (China) noted that paragraph F.1 involved the idea of recognizing the importance of price measures but mentioned no concrete measures. Her delegation agreed with the representative of the European Community that price measures were effective mechanisms, but considered that countries with different levels of economic development and consumption would need specific consideration.

Mrs BOBYLIOVA (Ukraine) said that her delegation supported a policy of a gradual increase in prices as a sound strategy for curbing tobacco consumption, but believed that the objective of the progressive harmonization of tobacco product prices needed deeper analysis and study. In that context, the convention should take national interests and legislation into account.

Ms TRAN THU THUY (Viet Nam) said that her country endorsed the use of price and tax measures to reduce the demand for tobacco. Since tobacco was a harmful product, the consumption of which should not be encouraged, taxes imposed on tobacco products should be at a high level. Moreover, governments should regulate the prices of tobacco products so as to prevent dumping practices.

Dr CASTILLO (Dominican Republic) agreed with the delegate of Mexico that the concept of harmonization should be deleted from paragraph F.1. Although increasing the price of cigarettes was definitely a means of curbing tobacco consumption, the wide differences in economic and social conditions between the highly industrialized countries and developing countries made it necessary for
sovereign governments to determine the level of taxation and the appropriate price structure for tobacco products, taking their needs and objectives into account.

Professor AUNG (Myanmar) said that, while his delegation recognized that price measures were an effective mechanism for reducing tobacco consumption, it supported the deletion of the reference to the progressive harmonization of tobacco product prices, since it would be difficult to implement such harmonization between countries at different levels of social and economic development.

Dr ROA (Panama) proposed that paragraph F.1 should read as follows: “The Parties recognize that increasing prices is an effective means of reducing tobacco consumption and recommend a progressive increase in taxes in accordance with the framework of national legislations. The Parties undertake to develop effective measures of regional and subregional coordination for the control of illicit traffic in these products.”

Mr LISKIA (Papua New Guinea) agreed that price and tax increases were an effective mechanism for reducing tobacco consumption and supported the text proposed by the delegates of Australia and Canada.

Dr AL MULLA (Qatar) also agreed that price and tax increases were among the most effective means of reducing tobacco consumption. His delegation therefore believed that the word “harmonization” should be replaced by the term “increase the price of tobacco products”.

Mr TADEVOSYAN (Armenia) said that his delegation regarded tax measures as important mechanisms for promoting public health and reducing demand for tobacco products and therefore strongly supported paragraph F.1.

Dr ZENKEVICH (Belarus) drew attention to a certain contradiction in the last part of paragraph F.1. His delegation considered that increasing the prices and taxes on tobacco would not in practice discourage illicit traffic in tobacco products, but indeed would tend to encourage it, and therefore proposed that the paragraph should end with the words “to reduce tobacco consumption”.

Mr NJALSSON (Iceland) proposed that paragraph F.1 should read as follows: “The Parties recognize that progressive price increase of tobacco products is an effective mechanism to reduce tobacco consumption.”

Dr MUGA (Kenya) said that his delegation recognized price and tax measures as important mechanisms in reducing the demand for tobacco and therefore supported the wording proposed by the delegate of South Africa on behalf of the African Region.

Dr FARÍAS ALBURQUEQUE (Peru) said that, since price and tax measures to reduce the demand for tobacco had both public health and economic aspects, the text of paragraph F.1 should be clarified to include the concept of contributing to a reduction in diseases related to tobacco consumption. The text should also recognize that the harmonization of prices at the subregional, regional and international levels would contribute to the prevention of the illicit traffic in tobacco products.

Dr ANDEN (Philippines) pointed out that the text of paragraph F.1 should recognize both price and tax measures as an effective mechanism to reduce tobacco consumption. Moreover, the concept of the progressive harmonization of tobacco product prices needed further clarification.
Dr TIMTACHEVA (Bulgaria) agreed with the representatives of the European Community and the United States of America that the progressive harmonization of tobacco product prices would be a very difficult objective to achieve. Her delegation therefore supported the deletion of the second part of the paragraph.

Mr OGANOV (Russian Federation) agreed with speakers who considered it inappropriate to refer to the progressive harmonization of tobacco product prices in view of the different levels of economic development of the various countries, which would make the implementation of the paragraph very difficult for many countries.

Dr DE CÁCERES (Paraguay) emphasized that the underlying issue in paragraph F.1 was the cost-benefit effects of increasing the prices of tobacco products, and that such increases would not lead to financial losses for governments. National governments sought the common good, in which economic aspects took on great importance. She referred to World Bank reports which demonstrated that price increases led to gains, rather than losses, in public revenue, in the short and medium term. Where national legislation was not appropriate, measures should be taken to strengthen it at the subregional and regional levels with a view to reducing the illicit traffic in tobacco products resulting from price increases.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) endorsed the statement made by the delegate of South Africa on behalf of the African Group and expressed the view that the harmonization of prices was beneficial, as it might help to curb illicit frontier traffic. Although increased tobacco prices represented an important source of revenue for many countries, including his own, where substantial income was also derived from the taxation of tobacco products, such price increases might also have a negative impact by encouraging illicit trafficking, which was all the easier in the Democratic Republic of the Congo with its nine neighbouring States and some 7000 kilometres of frontiers. In conclusion, the term “progressive harmonization” was too vague and his delegation therefore proposed that the word “progressive” be deleted.

Dr PALOMO ESCOBAR (El Salvador) said that his delegation agreed with speakers who had suggested that the first part of the paragraph should refer specifically to price increases, rather than merely to price measures. With regard to the second part, while a progressive increase in taxes might indeed serve to reduce tobacco consumption, it would not necessarily be conducive to discouraging illicit traffic, but might even have the opposite effect. The working group should therefore consider whether the phrase in question should not be deleted.

Dr HAMAD (Sudan) proposed that the second part of the paragraph should be deleted, in view of the difficulty of implementing the harmonization of tobacco prices because of national differences.

Mr MANETOALI (Solomon Islands) said that his delegation shared the view of speakers who considered that price and tax measures would help to reduce tobacco consumption, but believed that progressive harmonization of tobacco product prices was not feasible in practice.

Dr SOVINOVÁ (Czech Republic) proposed that the second part of paragraph F.1 be reworded as follows: “The Parties recognize that price measures are an effective mechanism to reduce tobacco consumption for various sections of the population and that they must be combined with effective measures to combat illicit traffic in tobacco products.”

The CHAIR, summing up the debate on paragraph F.1, said that there had been a general consensus on the importance of price measures, although they needed to be modulated in some areas. References had also been made to the potential of such price measures to generate unintended illicit
activity. There was overall agreement that harmonization was impractical, owing to social and economic discrepancies and to the prerogatives of national governments in that respect. The proposals to delete the second half of paragraph F.1 would be taken into account, together with the requirement for upward rather than downward harmonization. Some speakers had referred to specific groups that would benefit from price measures and from a reduction in tobacco consumption.

**Paragraph F.2**

Ms BALOCH (Pakistan) said that, since tax policies were an essential prerogative of States, it was difficult to harmonize regulations between States with different economic and political systems. Her delegation therefore proposed the deletion of the phrase “and cooperate with other Parties” in paragraph 2.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, advocated the same approach as that adopted for paragraph 1, and proposed that the convention should concentrate on encouraging a fiscal policy, taking account of public health imperatives both at the national level and in the negotiation of international instruments. The convention should also provide a mechanism for exchanging information on the taxation of tobacco products, methods of calculation and the impact of tax on consumption, thereby providing a valuable tool for justifying such measures on a factual basis. The convention should also cover the exchange of available information on the impact of tax and duty-free sales, also including details of links between such sales and transit and illicit traffic.

With regard to the prohibition of duty-free and tax-free sales, it would be recalled that such sales had already been phased out in the European Community for travellers in its territory, although they were still allowed for third-country travel and for certain categories, such as diplomats. A worldwide prohibition would require careful analysis of existing international agreements which would have to be taken into account. Although it would not be possible to find a solution for such problems in the context of the current negotiations, it would be useful to include a paragraph on information exchange on the impact of tax and duty-free sales of tobacco products, including their links with transit and illicit traffic. The adoption of other unspecified tax measures seemed to be excessive and hardly conducive to transparency. The European Community would be submitting a text to cover those points.

Dr ZARIHAH (Malaysia) said that his delegation agreed with the general view, already expressed with regard to paragraph 1, that increased taxation was an effective way of reducing tobacco consumption. He proposed the deletion of the phrase “to the extent possible within the means at its disposal and its capabilities”. He further suggested that the word “harmonizing” should also be deleted, as it was ambiguous: if it were retained, a time-frame (perhaps two years from the entry into force of the convention) should be set, for the reasons discussed in connection with paragraph 1.

Dr TATA (India) said he agreed with speakers who maintained that tax laws were a sovereign right of nations and were not subject to regulation by international agreements, but only by national authorities. India therefore recommended that paragraph 2 be reworded to read as follows: Each Party shall adopt legislative and administrative measures for developing and implementing appropriate national tax policies, in order to reduce tobacco consumption and exposure to tobacco smoke. Such measures and policies shall include prohibition of tax-free and duty-free sales of tobacco products. Subparagraphs (b) and (c) would then become redundant and could be deleted.

Mr ODOKO (Japan) said that if tax measures were to be introduced to reduce demand for tobacco, the measures referred to in paragraph 2 would have to be implemented effectively. Such measures would entail adjustment of the tax rate every year, which was not a realistic proposition.
Subparagraph (a) implied that products were taxed in the country in which they were sold and not in the exporting country, which might give rise to problems of double taxation, in both the producing and the marketing countries. His delegation disagreed with subparagraph (c), which implied that the Parties would undertake a legal commitment without knowing what the Conference of the Parties would ultimately recommend. Japan reserved its position on paragraphs F.1 and F.2 until it was convinced that the measures provided for in subparagraph (c) were effectively implemented.

Mr CASTILLO SANTANA (Cuba) was concerned that the provision on price and tax measures would also have an impact on areas other than health, such as tariffs. Such measures might contravene bilateral preferential agreements and entail social and economic consequences for both sides. He therefore proposed deletion of the last phrase of paragraph F.2, and thus of subparagraphs (a), (b) and (c), so that governments would be in a position to adopt the measures they considered appropriate. He noted that the importance of price measures in reducing tobacco consumption was addressed in paragraph F.1.

Dr ISHAGH (Mauritania) considered that the words “within the means at its disposal and its capabilities” in paragraph F.2 should be deleted.

Mr OGANOV (Russian Federation) agreed in general with the wording of paragraph F.2, but considered that it was expressed rather too much in the form of an obligation and that the tone should be softened. The last phrase should be amended to read: “Such measures and policies could include the following.” Subparagraph (a), instead of proposing “prohibition”, should be amended to indicate that States should attempt to abolish tax-free and duty-free sales of tobacco products.

Dr NOVOTNY (United States of America) proposed two basic changes to paragraph F.2, which he would be submitting in writing. His amendments made provision for constitutional issues raised by the relationship between national governments and subnational entities in federal systems, such as that of the United States, and the fact that the harmonizing of tax policies might create price-fixing problems. In regard to subparagraph (a), he considered that measures specifically targeted to prevent smuggling might be more effective. With reference to subparagraph (c), he pointed out that under its Constitution, the United States Government could not cede tax policy to any international body. He therefore proposed deletion of subparagraphs (a), (b) and (c).

Dr ESPINOZA MURRA (Honduras) considered that the subject matter of paragraph F.1 and the first sentence of paragraph F.2 was similar and that they should be combined with amended wording, as follows: “The Parties recognize that price measures are an effective mechanism to reduce tobacco consumption, and legislative, executive and administrative measures should be adopted.” The last phrase and the three subparagraphs would follow.

Ms SUH (Republic of Korea) said that her Government agreed in principle that a tobacco pricing policy was a useful measure for controlling tobacco demand. However, since the selection and implementation of tax policies should reflect the specific circumstance of each country, it was necessary to be circumspect. She accordingly proposed deletion of subparagraphs (a), (b) and (c).

Dr AL-HAJJAWI (Jordan) proposed deletion of the words “to the extent possible within the means at its disposal and its capabilities”, which would give governments unnecessary flexibility, as well as taking the sting out of the proposed measures.

Ms NOFTLE (Canada) said that, consistent with the proposal of the European Community and with her proposal with regard to paragraph F.1, her Government supported an approach in which each State Party would have the level of flexibility in tax policy appropriate to its circumstances. Within
that context, she proposed that paragraph F.2 be redrafted to encourage States Parties to adopt a comprehensive domestic tax structure and to incorporate an illustrative set of measures that might be considered the coelements of such a structure. The Canadian proposal included measures relating to domestic taxation of tobacco products, the imposition of an effective export tax structure, and the narrowing of price differentials in other areas. That proposal would also serve as Canada’s position on subparagraphs (a), (b) and (c), as currently drafted. After conclusion of the discussion on paragraph F.2, Canada would propose a new paragraph F.3.

Professor GOJA (Uruguay) proposed deletion of the words “to the extent possible with the means at its disposal and its capabilities”. She reserved the option to select a different version of the text once it was available.

Professor GRANGAUD (Algeria), speaking on behalf of the African Region, said that, at the Consultative Meeting held in Johannesburg, the African countries had reached a consensus on deletion of the words “to the extent possible with the means at its disposal and its capabilities”.

Dr ABOU-ALZAHAB (Syrian Arab Republic) suggested that reference should be made in paragraph F.2 to the allocation of a certain percentage of taxes on tobacco products to bodies responsible for combating illicit traffic in such products. That would pave the way for imposition of higher taxes on tobacco in the future.

Ms LIN Ling (China) proposed that the words “tax policies” in paragraph F.2 were too restrictive. In order to give States Parties greater flexibility, she suggested that they be changed to read “principles underlying tax policies”. She agreed with the wording of subparagraphs (a) and (b), but considered that subparagraph (c) would be superfluous if her first proposed amendment were adopted.

Dr AL-LAWATI (Oman) said that the reference to harmonization was unnecessary and should be deleted, as should the phrase “to the extent possible within the means at its disposal and its capabilities”. In subparagraph (b), he proposed that the word “periodically” be inserted after “tobacco products”. A written text containing his suggestion would be submitted.

Mr ESPINOZA FARFÁN (Guatemala) agreed that price and tax increases would help to reduce tobacco consumption and exposure to tobacco smoke, as would legislative and administrative measures. Harmonization of tax policies, however, would be a difficult and complex matter. Like other delegates, he was concerned that excessive tax increases would only result in increased smuggling and corruption.

Dr ENYIME (Cameroon) fully supported the need for price and tax measures to reduce tobacco demand and agreed with Canada’s suggestions that appropriate tax measures and policies should be developed by individual countries. It might be appropriate in paragraph F.2 to propose that the resources deriving from such fiscal measures be used, at least in part, to defray the cost of disease caused by tobacco products.

Mr BAHARVAND (Islamic Republic of Iran) supported the proposal to delete the phrase “to the extent possible within the means at its disposal and its capabilities”. Insertion of the words “to the extent possible” before “cooperate with other Parties” might meet the concerns of those delegations that had emphasized the difficulties of harmonizing tax policies.

In addition, in order to bring paragraph F.2 into line with the title of section F, he proposed that the words “reduce tobacco consumption” should be replaced by the phrase “increase the price of tobacco products with the aim of reducing tobacco consumption”.

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Mr Ri Si Hong (Democratic People’s Republic of Korea) supported the proposals to delete the phrase “to the extent possible within the means at its disposal and its capabilities”, and to replace “harmonizing” by “developing”, since the development of tax policies was the best way of reducing smuggling and illicit trade. He also agreed that subparagraph (c) should be deleted.

Mr EMMANUEL (Saint Lucia) proposed that paragraphs 1 and 2 of section F should be combined to read: “The Parties recognize that price increases are effective mechanisms to reduce tobacco consumption and exposure to tobacco smoke and that each Party shall, to the extent possible within the means at its disposal and its capabilities, adopt legislative, executive and administrative measures.” Subparagraphs (a), (b) and (c) should then be deleted.

Mrs SHAHAR-BEN AMI (Israel) said that her delegation favoured the imposition of price and tax measures to reduce the demand for tobacco products. Those and other trade-related measures were crucial to the achievement of the goals of the framework convention. Elimination of tax-free and duty-free tobacco sales and worldwide increases in tobacco prices could be achieved effectively only through an international instrument. Her delegation therefore accepted the principle expressed in section F. She suggested, however, that subparagraph (b) call for a continuous reduction in tobacco consumption, whether it were stable or irregular. To that end the words “stable and” should be deleted.

Dr SILVA GOLDFARB (Brazil) said that the whole of paragraph F.2 should be retained as it contained important details. In subparagraph (b), she proposed that the words “continuously related to a country’s inflation rates” should be inserted after “tobacco products”.

Mr KATENE (New Zealand) supported the proposal of the delegate of Canada to redraft the first sentence of paragraph F.2. His country had found from experience that tobacco taxation benefited both revenue and health and was a vital plank in national tobacco control programmes. However, as it was not appropriate to agree to implement as yet unknown taxation initiatives, New Zealand supported deletion of subparagraph (c).

Mrs THIBELI (Lesotho) said that her country reaffirmed the African position that the phrase “to the extent possible within the means at its disposal and its capabilities” should be deleted throughout the text.

Dr CASTILLO (Dominican Republic) proposed that paragraph F.2 should read: “Each Party shall adopt legislative, executive and administrative measures and adopt appropriate tax policies in order to reduce tobacco consumption and exposure to tobacco smoke.” Those same provisions were included in an act passed in his country in July 2000.

He supported the World Bank recommendation that packages of tobacco products should be marked as tax and duty free. A system of tax-free sales, provided it was carefully regulated, monitored and applied, should prevent the diversion of tax-free products and significantly reduce smuggling and criminal activities. He also supported the recommendations of customs authorities for automated systems to control the movement of products on which tax had not been paid, to help them monitor shipments and reduce the opportunities for fraud and for diverting untaxed products to the domestic market. Regulators had no evidence of any link between black-market sales and smuggling and the sales of tobacco products through tax-free outlets, as the volume of such sales was very low, accounting for only 1% of world sales. Very few international travellers making duty-free purchases were minors.

Mrs KONDAJ (Albania) proposed that paragraph F.2 should read: “Each Party shall adopt legislative, executive and administrative measures and cooperate with other Parties in harmonizing at the highest level possible appropriate tax policies, in order to reduce tobacco consumption and
exposure to tobacco smoke. Such measures and policies could include: ‘...’ Subparagraph (a) should then be deleted and subparagraph (b) and (c) retained as drafted.

Professor AUNG (Myanmar) said that, as taxation was the prerogative of sovereign States, subparagraph (c) should be deleted.

Ms ALEXIS-THOMAS (Trinidad and Tobago) proposed that paragraph F.2 should read: “Each Party shall adopt legislative, executive and administrative measures and cooperate with other Parties in implementing appropriate tax policies in order to prevent initiation of tobacco use and to achieve continuous reduction in tobacco consumption and exposure to tobacco smoke.” Subparagraphs (a), (b) and (c) should be deleted and left to the competence of States Parties.

Dr ZARIHAH (Malaysia) was in favour of retaining subparagraphs (a), (b) and (c), with certain amendments. Subparagraph (a) would read: “Prohibition of tax-free and duty-free sales of tobacco products within two years of the entry into force of this convention, without exceptions or allowances to travellers, diplomats and military or government personnel.”

She suggested that a clause on affordability might usefully be included in subparagraph (b), which would then read: “imposition of taxes on tobacco products so as to ensure that tobacco products do not become more affordable over time and thereby to achieve a continuing reduction in tobacco consumption.”

Subparagraph (c) would remain as it stood.

Mr CULLEN (Argentina) agreed with the proposal of delegates of African countries that the phrase “to the extent possible within the means at its disposal and its capabilities” should be deleted. Subparagraph (c) should also be deleted because it referred to measures that were the prerogative of individual States and that might therefore cause difficulties at the ratification stage. In both paragraphs F.1 and F.2, it should be made clear that harmonization should be both regional and subregional.

Mr CASTILLO SANTANA (Cuba) said that if the text was to be acceptable to all, or at least to the great majority of States Parties, it should be based on respect for diversity. He therefore suggested that rather than deleting the phrase “to the extent possible within the means at its disposal and its capabilities”, it should remain in the text in square brackets.

The CHAIR assured the Cuban delegation that the original text would be retained as part of the basic document and that all suggestions would be added in some form or other once there was a clear sense of the way in which the working groups would proceed.

Dr CHAOUKI (Morocco) proposed that the beginning of paragraph F.2 should read: “Each Party shall adopt legislative, executive and administrative measures and cooperate with other Parties in applying appropriate tax policies ...”. The rest of the text would remain unchanged.

Dr DyRLER (Switzerland) said that his delegation understood that existing legislative provisions guaranteeing tax-free and duty-free sales should be respected and that a general prohibition of such sales of tobacco products, as proposed in subparagraph (a), might contradict provisions in existing treaties of international law. In that connection he shared the concerns expressed by the European Community on behalf of the Member States of the European Union. He considered that subparagraph (c) was too vague and could be deleted.

Mr LISKIA (Papua New Guinea) supported proposals whereby paragraph F.2 would be amended to read: “Each Party shall adopt legislative, executive and administrative measures and cooperate with other Parties in developing and implementing appropriate tax policies in order to
reduce tobacco consumption and exposure to tobacco smoke.” The rest of paragraph F.2 and subparagraph (a) would remain unchanged. The words “stable and” in subparagraphs (b) and (c) would be deleted.

Mr CARIS (Chile) suggested, in an effort to incorporate the various views expressed and to arrive at a simpler text, that the ideas contained in paragraphs F.1 and F.2 should be combined into a single paragraph, which would read:

The Parties recognize that price measures are an effective mechanism to reduce tobacco consumption. Each Party shall adopt legislative and administrative measures to develop appropriate national tax policies for tobacco in order to reduce tobacco consumption and exposure to tobacco smoke. Such measures and policies shall include provisions for tobacco sales and taxes that are consistent with regional and subregional agreements in order to discourage illicit traffic in tobacco products.

Dr ANDEN (Philippines) agreed to the proposed deletion of the phrase “to the extent possible within the means at its disposal and its capabilities” and agreed with the Malaysian and other delegations that subparagraphs (a), (b) and (c) should be retained. She suggested that subparagraph (a) should be implemented within an agreed time-frame.

Mr BAHARVAND (Islamic Republic of Iran) said that his delegation considered that subparagraph (a) was simple and clear and should therefore be retained.

Ms ROVIROSA PRIEGO (Mexico) proposed that, in the light of comments made by previous speakers, subparagraph (a) should be deleted.

Ms BALOCH (Pakistan) suggested that subparagraph (a) should refer to tobacco as well as to tobacco products.

Mr TADEVOSYAN (Armenia) said that in his view the existing wording should be retained, because all countries had tax regulations regarding tobacco products.

Mr DILEMRE (Turkey) supported the view expressed by the delegate of the European Community. Arrangements to provide information on tax-free and duty-free sales of tobacco products could be achieved more easily than the harmonization of tax policies.

Dr TATA (India) reiterated his support for the prohibition of duty-free and tax-free sales of tobacco products. However, subparagraphs (b) and (c) were unnecessary.

Mr BAHARVAND (Islamic Republic of Iran) proposed that the words “stable and” in the first line of subparagraph (b) be deleted. He considered that subparagraph (c) should be retained, and that, in order to give more flexibility to a future Conference of the Parties, the words “in order to reduce tobacco consumption” should be added at the end.

In reply to the argument that tax measures were a prerogative of States, he pointed out that the adoption of a convention was also such a prerogative.

Ms ROVIROSA PRIEGO (Mexico) agreed that it was desirable to give some flexibility to the future Conference of the Parties. She therefore suggested that the word “adoption” at the beginning of subparagraph (c) be replaced by the word “evaluation”.

Ms BALOCH (Pakistan) regretted that she could not support the view expressed by the delegate of Iran. She continued to favour deletion of subparagraph (c).
Dr TATA (India) pointed out that while the Conference of the Parties could recommend principles that should guide national tax policies, any recommendations regarding specific tax measures would infringe national sovereignty. Both subparagraphs should therefore be deleted.

Mr TADEVOSYAN (Armenia) reiterated his proposal that Parties be urged to ensure that tax revenue from sales of tobacco products was used for health, educational and cultural purposes.

Mr RI Si Hong (Democratic People’s Republic of Korea) said he maintained his view that subparagraph (c) should be deleted.

Ms NOFTLE (Canada) proposed that, for the sake of clarity, a new paragraph 3 be added, to read: “The provisions of this convention shall not restrict in any manner the authority of a Party to establish and amend its domestic tax policies or laws.”

The CHAIR, summarizing the discussion, said that some delegates had referred to national prerogatives regarding tax policy, and some had drawn attention to the link between tax policy and public health. Reference had also been made to the need for exchange of tax information. Suggestions for deletion or retention of wording, or for amendments, would be reflected in the final document, which would also reflect the balance of the discussion. In particular, one Region had suggested that the phrase “to the extent possible within the means at its disposal and its capabilities” should be deleted throughout the text. That proposal would be relayed to the other working groups. Several delegations had referred to the potential negative effects of price increases, while others had urged that tax revenues should be used to benefit those who had to deal with the effects of smoking. All observations would be reflected in the summary produced by the working group.

Professor WARNER (World Bank) said that it was essential that Article F should emphasize the need to link tax increases to an inflation index. He noted that there was evidence to show that price differentials between countries were not in fact the chief cause of tobacco smuggling. Lastly, he endorsed the view that a reference should be included in the text to price increases as a means of preventing initiation of smoking.

Mr COSTI SANTAROSA (Brazil) pointed out that his delegation had already submitted a proposal to the effect that taxes on tobacco products should be linked to rates of inflation.

Ms BALOCH (Pakistan) asked whether the position of one regional group regarding the deletion of the phrase beginning “… to the extent possible” was to be taken as the position of the working group as a whole. She would prefer that phrase to be retained.

The CHAIR said that that would not be the case. The whole range of views expressed would be reflected in the summary.

Dr Stamps took the Chair.

I. Measures related to the supply of tobacco

Paragraph I.15 (Government support for tobacco manufacturing and agriculture)

Mr RYAN (European Community) said that the Community and its Member States attached great importance to the question of tobacco-growing subsidies. Community rules imposed a limitation on production by means of a series of quotas, and a quota buy-back system enabled producers to move
to other activities. A 2% levy on tobacco-growing subsidies was used to provide information on the health dangers of smoking, and also to carry out research into alternative livelihoods and cultures.

The European Community would therefore like emphasis to be laid in the text on reconversion to alternative activities.

Dr TATA (India) suggested that a definition of the term “subsidy” be included in the paragraph. It might be possible to take as a basis the definition contained in the WTO Agreement on Subsidies and Countervailing Measures, and to adapt it to the needs of the convention. He pointed out that the convention should address not only government subsidies, but also subsidies provided by the tobacco industry to tobacco growers in various forms. The definition should therefore cover tax exemptions and rebates offered on a selective basis.

Mr CULLEN (Argentina) said that the elimination of subsidies was a matter of concern to his delegation, as was the question of how alternative crops were to be introduced and the economic impact on producers alleviated. In its present form, the text did not seem to be in line with the health objectives of the convention, and might encroach on the province of WTO.

Ms LAMBERT (South Africa), speaking on behalf of countries of the African Region, suggested that the paragraph should be amended to read “Each Party shall promote alternative economic activities for tobacco growers and workers”. A new paragraph 16 should then be added, reading “Each Party shall gradually eliminate subsidies for tobacco growing and manufacturing of tobacco products”.

Dr ABOU-ALZAHAB (Syrian Arab Republic) suggested that a separate protocol on the subject of subsidies should be drafted.

Dr NOVOTNY (United States of America) pointed out that WTO was currently engaged in negotiations on the subject of subsidies, under an agreed work programme that reflected a carefully crafted balance of interests, and inclusion of subsidies in the framework convention might upset the agreement that had already been achieved. He therefore recommended deletion of the paragraph.

Mr ODOKO (Japan) said that in the light of the situation of tobacco growers and manufacturers in his country he would need to devote further study to the paragraph before he could accept it.

Mr ADSETT (Canada) fully supported the paragraph, and agreed with the delegate of India that it should include a definition of “subsidy”.

Dr SILVA GOLDFARB (Brazil) said that as it stood the wording of the heading might be misleading. She suggested that it be replaced by “Eliminating subsidies and creating governmental support for alternative crops”.

Dr HAMAD (Sudan) supported the proposal for the establishment of a separate protocol on subsidies for tobacco growers, and suggested that the words “Each Party shall gradually eliminate subsidies” be replaced by the words “Each Party shall take the necessary action to prevent any increase in the tobacco cultivated area and to reduce it gradually”.

Mr TADEVOSYAN (Armenia) pointed out that the issue was very important to countries with economies in transition. A large part of his own country’s meagre budget came from the tobacco-growing and manufacturing sectors. He suggested that the text should be split into two parts, one part dealing with subsidies and the other with alternative economic activities.
The CHAIR suggested that the delegate of Armenia should consult with the South African delegate with a view to finding an appropriate form of words.

Dr AL-LAWATI (Oman) drew attention to the need to set a deadline for the elimination of subsidies for tobacco growing and manufacturing. He proposed that after the words “tobacco products” the text should be amended to read “within a maximum period of [5] five years from the date of the ratification of this convention, and to promote alternative economic activities taking into account the recommendations of FAO”.

Ms SÁNCHEZ REYES (Nicaragua), supported by Ms QU Meiyu (China), endorsed the elimination of subsidies, which encouraged tobacco consumption. However, it was important to refer in paragraph 15 to the need for international technical cooperation in promoting alternative economic activities for tobacco workers and growers.

Ms BALOCH (Pakistan) endorsed the proposal by the delegate of South Africa that paragraph 15 should be divided into two parts. As to the wording, she suggested that paragraph 15 should read “Each Party shall gradually eliminate subsidies for tobacco growing and manufacture of tobacco products”. A new paragraph 16 should read “Each Party shall promote, in accordance with the means at its disposal and its capabilities, alternative economic activities for tobacco workers and growers with the financial and technical support of donors and relevant international organizations.”

Dr SEKABARAGA (Rwanda) fully supported the proposal put forward by the delegate of South Africa. Given that the cultivation of tobacco was a major source of income for many African countries, the issue of promotion of alternative economic activities for tobacco workers and growers should come before the issue of elimination of subsidies.

Mr DILEMRE (Turkey) noted that the question of tobacco subsidies was already being dealt with in WTO negotiations. Although countries should be free to choose the means by which they controlled tobacco growing, the convention should encourage them to promote alternative economic activities.

Dr CARIS (Chile) endorsed the proposal put forward by the delegate of South Africa. However, she would prefer paragraph 16 to read “Each Party shall, with the support of the international agencies and developed countries, promote alternative economic activities for tobacco workers and growers.”

Mr MBUYA MUTEBA (Democratic Republic of the Congo) said that despite his country’s desire to curb tobacco consumption, its need for external funding had hitherto made it difficult to oppose investment in the tobacco industry. However, tobacco growing and manufacture represented only a small part of the economy and it should therefore be possible to promote alternative economic activities. He expressed support for the text proposed, but noted that if it was to be successfully implemented, technical cooperation would have to be provided by the international community. He therefore suggested that the phrase “in accordance with the means at its disposal and its capabilities” should be replaced by “as far as possible”.

Mr BAHARVAND (Islamic Republic of Iran) proposed that, in the heading, “Reduction of” should be inserted before “Government support”. He endorsed the view expressed by Chile, Pakistan and other delegates that international organizations should provide support for the elimination of subsidies. Paragraph 15 should be broken down into several subparagraphs, one of which should refer to the need to curb the future expansion of tobacco manufacturing.

Dr ANDEN (Philippines) agreed with previous speakers that it would be better to deal with the question of providing alternative economic activities for tobacco growers and farmers, especially in
developing countries, separately from the question of elimination of subsidies on tobacco growing and manufacturing. The paragraph on subsidies could be placed in brackets, pending clarification of its definition and of developments within relevant international organizations, particularly WTO.

Dr CASTILLO (Dominican Republic) agreed that there was need to promote alternative economic activities in producer countries, and that international cooperation was vital to that end. The new paragraph 16 should also mention the need to carry out studies of the marketing and profitability potential of such activities.

Dr RAMALLO (Venezuela) said he would prefer paragraph 15 to be retained as it stood.

Ms LLORENTE DIAZ (Cuba) said her country did not subsidize tobacco growing and she considered that the issue of subsidies lay within the purview of WTO rather than WHO. She was also concerned lest any kind of compromise relating to crop substitution be adopted without taking into account research currently being carried out in Cuba into other possible uses for tobacco products. She therefore proposed that paragraph 15 be deleted.

Ms MORALES AYLLÓN (Bolivia) supported the Brazilian proposal for the amendment of the heading of paragraph 15. However, it was appropriate to retain the wording “gradually eliminate”, bearing in mind that the elimination of subsidies for tobacco growing could not be achieved overnight. She proposed the addition of a sentence referring to the need to take into account the economic situation of producing countries, and to safeguard jobs through alternative investment and employment policies for workers.

Mr ESPINOZA FARFÁN (Guatemala) agreed that the paragraph should be divided into two parts. He also supported the view that for the promotion of alternative economic activities to be successful there would have to be international technical and scientific cooperation mechanisms to ensure their profitability.

Professor AUNG (Myanmar) proposed that the words “including tax exemption and rebates” should be inserted between “subsidies” and “for tobacco growing”.

Dr ROA (Panama) endorsed the proposals put forward by Brazil and South Africa respectively that the heading should be amended and the paragraph divided into two parts. She proposed that paragraph 16 should read: “Each Party shall promote alternative economic activities for tobacco workers and growers, to which end developed countries, in particular the tobacco producers and cooperation agencies, in so far as they are able, shall support the Parties that so require with technical and financial resources.” She wished to make it clear that Panama was not a tobacco-growing country. However, in order to reduce tobacco consumption there was need to control supply, and she considered that paragraph 15 was an important element in the convention.

Dr SILVA GOLDFARB (Brazil) said that paragraph 15 should contain a definition of “subsidy” if one had not been included in Article B. Other mechanisms for providing financial support, such as grants, should also be taken into account.

The CHAIR, in his summing up, noted that several speakers had supported the concept contained in paragraph 15. Brazil, Chile, Guatemala, Iran, Pakistan, South Africa, representing the African Region, and others, had been in favour of dividing the paragraph into two. Emphasis had been placed on crop modification and on the need to ensure alternative economic activities for tobacco growers and workers. The suggestion by Brazil, supported by Iran and other participants, that the heading should be reworded would be examined. Sudan’s suggestion that each Party should seek to
reduce the area devoted to tobacco cultivation would also be examined in the context of the protocol proposed by Syria. Oman had suggested the setting of a deadline for the withdrawal of subsidies, while Armenia had expressed concern as to social implications. There had been general consensus regarding the elimination of subsidies, although some speakers had been of the view that they were a matter for WTO. However, WTO had no mandate to consider the public health implications of the issue.

Professor WARNER (World Bank) pointed out that paragraph 15 was likely to have only a minimal impact on the demand for tobacco products. However, it was an important political component of tobacco control.

Mr BATES (International Union Against Tuberculosis and Lung Disease), speaking at the invitation of the CHAIR, said that there was no justification for an indefinite subsidy for a product that caused economic, welfare and public health harm. The framework convention should require Parties to switch subsidies from growing tobacco to transition and restructuring, with the goal of phasing out support for tobacco growing and developing other economic activities. The amount of subsidies for tobacco growing were enormous and, if redeployed and gradually phased out, could make a substantial difference to public health and economic development. Merely transferring a tiny fraction of the amount to worthwhile activities was no substitute for proper reform, and was unfair to developing countries that grew tobacco without subsidies. A ban on duty-free sales would be an extremely effective anti-smuggling measure.

The meeting rose at 12:50
WORKING GROUP 2
SECOND MEETING
Wednesday, 2 May 2001, at 10:00
Chair: Mr E. AISTON (Canada)
later: Dr T. STAMPS (Zimbabwe)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 4 of the Agenda (Documents A/FCTC/INB2/DIV/1, A/FCTC/INB2/DIV/6, A/FCTC/INB2/2 and A/FCTC/INB2/3) (continued)

I. Measures related to the supply of tobacco (continued)

Illicit trade in tobacco products

Paragraph I.1

Mr MURDOCK (Canada) said that he fully supported the paragraph, but, with a view to ensuring a comprehensive convention, he wished to propose two additions to the text. First, following the words “illicit trade in tobacco products”, the words “and raw leaf tobacco” should be inserted. Failure to include raw leaf tobacco in that paragraph would provide those involved in the illicit tobacco trade with a readily available supply of legal tobacco, thereby creating opportunities for illicit use. Secondly, the words “illicit manufacturing” should be inserted after the word “smuggling”. While smuggling currently dominated the illicit tobacco trade at international level, Canadian experience had shown that illicit manufacturing was also a considerable problem. He would subsequently submit a proposed definition of “illicit manufacturing”.

Ms QU Meiyu (China) stressed the importance of the elimination of illicit trade in tobacco products. She therefore proposed adding the words “in particular” between “including” and “smuggling”.

Dr NOVOTNY (United States of America) said that his Government supported strong measures to eliminate smuggling. The most effective way to achieve the desired result was through a protocol on the subject: the framework would address smuggling in general terms, while the specific mechanisms for eliminating it would be contained in the protocol. The United States was aware of the concerns of other delegations that the framework should not be too general, thereby conveying an impression of weakness. He therefore proposed that the framework and protocol should be negotiated concurrently, with appropriate guarantees to ensure consistency between the two. Such an approach would send a clear signal of WHO’s resolve on that issue.

One tool used by his Government in combating smuggling was licensing, which might be appropriate for inclusion in the protocol. However, a focus on licensing at retail level might be misplaced, and could create problems. First, in federal states such as his own, such licensing could raise issues of national and subnational competencies in jurisdictional issues, and his Government would not wish to sign an agreement that might be successfully challenged in its courts. Secondly, there were practical concerns at different levels in the tobacco distribution chain, which involved a wide variety of retailers, ranging from department stores to street vendors. The resources required to enforce licensing regimes might prove to be astronomical, and it would be advisable to focus on the
higher levels of the distribution chain, where numbers were fewer and there was less diversity. He would be submitting a text for a protocol, together with amendments to the Chair’s text. The battle to eliminate illicit trade would be long and difficult, but a strong protocol might help to turn it in WHO’s favour.

Dr TATA (India) expressed his agreement with paragraph I.1. He asked for definitions of the words “smuggling” and “counterfeiting”.

Ms LAMBERT (South Africa), speaking on behalf of the African Region, said that she was in favour of the strongest possible measures to combat illicit trade in tobacco products. She did not wish to propose any amendments to Article I.

Ms KERR (Australia) said that it was important that the convention should contain strong measures to curb illicit trade in tobacco products, since such measures were an important component of an integrated tobacco control programme. While she supported the intent of paragraph I.1, she considered that as currently expressed it was simply a statement of principle which did not impose any obligation on the Parties. She suggested that it would be more effective for the text to be incorporated in the preamble to the convention.

Mr OGANOV (Russian Federation) proposed that after the words “smuggling and counterfeiting” the words “and the improvement and harmonization of national legislation to control the illegal trade in tobacco products” should be inserted.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, said that he supported the inclusion of provisions on illicit trade. He had no specific comments on paragraph I.1.

Paragraph I.2

Dr TATA (India) said that the prevention of smuggling constituted a top priority for many nations. It was not only a threat to public health, but also caused considerable loss of revenue, and consequently it was a national as much as an international obligation. He therefore proposed the insertion of the words “national and” before the words “international obligations”.

Mr ATWOOD (Australia) agreed that measures to curb illicit trade in tobacco products should be non-discriminatory and transparent. However, it was not clear what would be the advantage of requiring that such measures should be implemented in accordance with each Party’s international obligations.

Dr AUNG (Myanmar) supported the amendment proposed by the delegate of India.

Dr LEWIS-FULLER (Jamaica) considered that the wording of the paragraph was unduly general and not sufficiently specific. She was not clear as to the meaning of the terms “non-discriminatory” and “international obligations”. If the latter related to WTO regulations, they would have to be analysed to ascertain how they might be reconciled with the convention’s objectives. On the other hand, she was certainly in favour of discriminating against the tobacco trade.

Paragraph I.3

Dr ILKHAMOV (Uzbekistan) suggested that in the first sentence after the words “ensure that”, the text should be amended to read “… the outside packaging of all unit packets or packages of
tobacco products for retail or wholesale use is produced in conformity with national legislation on consumer information in force in the country in which the tobacco product is sold”. Subparagraphs (a) and (b) should be deleted.

Professor GRANGAUD (Algeria), speaking on behalf of Member States of the African Region, proposed that after the words “under its jurisdiction” the words “are hermetically sealed. They should also:” should be added. He further proposed the addition of a subparagraph (c), to read “carry a general health warning, as stipulated in Article G.1(d)(iv)”.

Dr ZENKEVICH (Belarus) objected to the words “under its jurisdiction” in paragraph 3. He suggested that they be replaced by the words “in areas subject to its national legislation”.

Mr MOON (Republic of Korea) said he supported paragraph 3 in principle, and welcomed the inclusion of a requirement for a statement indicating the name of the manufacturer and country of origin on packages of tobacco products. However, with respect to the other requirements, more careful consideration of technical problems, such as the limited space available on some packaging was needed. He suggested that after the word “jurisdiction” the words “carry a statement indicating the name of the manufacturer and the country of origin, and any other statement decided by the Conference of the Parties” should be added.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, said that the convention should include rules for the marking of tobacco packs so as to enable the origin of the product to be identified, and to ensure that it could be traced and the time and place of manufacture determined. That could be accomplished by means of some form of batch numbering. The form of words would have to be flexible enough to ensure that illicit trade in tobacco products was made more difficult, and that the objective of the provision was achieved. It would consequently be superfluous to require that products could only be placed for sale on a particular market. He proposed that subparagraphs (a) and (b) should be replaced by the following text: “... carry a marking in any appropriate manner in order to enable the origin of the product to be identified, to ensure traceability and to enable the place and time of manufacture to be determined such as through the use of approved batch numbering or equivalent”.

Mrs SHAHAR-BEN AMI (Israel), while endorsing paragraph 3, expressed concern regarding subparagraph (b), since the advantages of labelling for the purposes of discouraging illicit trade might be outweighed by the possible prestige attributed to it. Furthermore, it should be borne in mind that those engaged in illicit trade would probably also be able to counterfeit such labelling. She proposed that the subparagraph be deleted.

Ms ROVIROSA PRIEGO (Mexico) supported the inclusion of subparagraph (a), but had reservations as to subparagraph (b), since in her view manufacturers did not have any responsibility for regulating the ultimate consumption of their products.

Dr AL-LAWATI (Oman) proposed that subparagraph (a) be amended to read: “… indicating the names of the manufacturer and the importer in the importing country … etc.”.

Mr MURDOCK (Canada) supported the opening text of paragraph 3. Canada’s experience had been that overt markings assisted in preventing the diversion of tobacco products while in transit, made it easier for authorities and consumers to identify contraband tobacco products, and further deterred the open display of contraband tobacco products in a retail setting. In the interests of ensuring that all tobacco destined for consumption was readily identified as legitimate, he proposed that the words “and raw leaf tobacco” be inserted before the words “for retail or wholesale use”. He also
proposed the replacement of the words “under its jurisdiction” by the words “in its territory”, which more clearly indicated the scope of the obligation, as well as being more appropriate for a legal requirement.

Dr AL-HAIJAWI (Jordan) endorsed the amendment proposed by the delegate of Algeria to subparagraph (b).

Mr CULLEN (Argentina) said that he shared the concerns expressed in regard to subparagraph (b), which could be difficult to implement. For instance, with regard to duty free sales, it would be absurd if every person buying a cigarette pack at an airport had to indicate the country to which it was to be taken. The subparagraph would have to be considered in conjunction with other provisions concerning duty-free sales.

Dr SILVA GOLDFARB (Brazil) said that she was in favour of a comprehensive convention, as well as a separate protocol on illicit trade in tobacco products. She suggested that as each country had its own geopolitical, administrative and subnational structures, subparagraph (b) should be amended to read: “carry the statement: ‘Sales only allowed [in the country, subnational, regional or federal unit where the product is to be placed on the market].’”

**Paragraph I.4**

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, said he considered that provision should be made for packaging information to be presented either in the form of a written text or some other approved form, in order to cover cases where batch numbers were used instead of a written text.

Ms LLORENTE DIAZ (Cuba) proposed that the reference to languages be inserted in paragraph 3(b) which would then read: “carry the statement: ‘Sales only allowed [in the country where the product is to be placed on the market], ensuring that the information appears in the principal language or languages of the country in which the product is placed on the market.’” Paragraph 4 could then be deleted.

**Paragraph I.5**

Mr REDDY (India) speaking on behalf of the Member States of the South-East Asia Region, said that the use of the expression “criminal legislation” in subparagraph (b) was unnecessarily restrictive. While some of the offences were undoubtedly covered by criminal legislation, others, particularly those relating to production, could be dealt with under other laws. He therefore proposed that the word “criminal” should be deleted.

Mr RAJALA (European Community) speaking on behalf of the European Community and its Member States, said that it was not appropriate for the draft convention to refer to criminal legislation or to appropriate penalties, since these were matters of national competence. In order to avoid possible misinterpretations, he proposed that subparagraph (b) should read: “prohibition of production of counterfeit tobacco products, trade in contraband tobacco products, and taking of appropriate steps to enforce such prohibition;”.

Referring to subparagraph (c), he pointed out that some jurisdictions had provisions permitting contraband tobacco products to be placed on the market after payment of the relevant taxes. The paragraph might therefore be reworded to cover that possibility, which did not in itself pose a public health problem. He proposed the wording “appropriate steps to ensure that all confiscated counterfeit
cigarettes and other tobacco products are destroyed and that contraband tobacco products are either destroyed or are placed on the market according to national legislation”.

Mr BEN SALEM (Tunisia) said that subparagraph (b) would be inadequate to combat illicit trade in tobacco products in its present form. He proposed that the words “including the prohibition of counterfeiting and initiating the external packaging of such products” be added.

Mr MURDOCK (Canada) recalled that at the previous session his delegation had proposed that “measure” should be defined as “any law, regulation, procedure, requirement or practice of a legislative, executive, or administrative nature”. He therefore suggested the deletion of the words “legislative, executive and administrative” from the opening text of paragraph I.5, and the addition of the words “and raw leaf tobacco” at the end.

Mr CHAVES SELL (Costa Rica) said that the use of the word “counterfeit” in subparagraphs (b) and (c) might appear to be intended to protect the interests of the industry rather than the interests of governments. He therefore proposed that the word “counterfeit” be deleted.

Ms VILLAMIZAR (Venezuela) proposed the addition at the end of subparagraph (a) of the phrase: “and exchanging information among customs and tax authorities concerned with the trade”. That would help reduce contraband by facilitating the monitoring of merchandise from its point of origin to its destination.

Dr HAMAD (Sudan) said that subparagraph (b) as it stood was too weak. He proposed that it should be amended to read: “enactment and strengthening of strict criminal legislation with deterrent penalties and prohibiting the production of and trade in counterfeit and contraband cigarettes and other such tobacco products, and taking of appropriate steps to enforce such prohibition”.

Ms MAYSHAR (Israel) said she fully supported subparagraph (c), which reflected a provision already applied in Israel in respect of the destruction of confiscated tobacco products. It was unseemly for governments to be in the position of marketing such products.

Dr SEKABARAGA (Rwanda) agreed with the delegation of Israel in respect of subparagraph (c). Subparagraph (b) needed to be more strongly worded if it was to halt or prevent illegal activity.

Dr ABOU-ALZAHAB (Syrian Arab Republic) endorsed that view.

Mrs TRAN THU THUY (Viet Nam) suggested that subparagraph (b) should be amended to read: “taking strict measures to prevent and handle the production and consumption of fake tobacco products and fake cigarette brands”.

Ms WELLS (Australia) said that she could support the substance of the provision, on the understanding that it would not require public disclosure of sensitive law enforcement information or activities. Australia had adopted a national illicit tobacco strategy that contained a range of measures to deal with the problems associated with the growing, dealing, distribution and sale of illicit tobacco. In her view it was unnecessary for the convention to prescribe that measures should take legislative, executive and administrative forms, since methods of implementation could vary across jurisdictions. She therefore proposed that the words “the following legislative, executive and administrative ...” be deleted.
Mr DILEMRE (Turkey) associated his delegation with the proposal made by the delegate of the European Community in respect of subparagraph (c).

Ms DJAMALUDDIN (Indonesia) speaking on behalf of the Member States of the South-East Asia Region, supported the Chair’s text for subparagraph (c).

Mr MURDOCK (Canada) said he fully supported the intent of subparagraph (a), but considered its scope should be expanded to ensure that an accurate picture of the entire tobacco market was obtained. He therefore proposed that the subparagraph should be amended to read: “establishing data-collection mechanisms to ensure that information on the production and subsequent distribution of all tobacco products and raw leaf tobacco, including imports and exports, is collected and analysed”.

He also supported the obligation in subparagraph (b). Canada’s experience had shown that criminal provisions, complemented by a strong regulatory regime, were valuable tools in combating the contraband tobacco market. A combination of criminal offences and regulatory measures with effective penalties and sanctions acted as a general deterrent. In addition, civil remedies were often less costly than criminal prosecutions. To ensure that that obligation had the maximum impact on the illicit tobacco trade, the text should make specific reference to regulatory measures. He therefore proposed that the subparagraph should be amended to read: “enacting criminal legislation and other measures, with appropriate penalties and civil remedies, to prohibit the illicit tobacco trade, including illicit manufacturing, smuggling, counterfeiting and contraband”.

Lastly, while Canada also supported the intent of the obligation in subparagraph (c), it considered that its effect would be enhanced if Parties were compelled to adopt measures providing enforcement and regulatory bodies with the express authority to confiscate contraband tobacco products. He proposed that the text should be amended to read: “by adopting measures to enable authorities to seize as forfeit contraband tobacco products, including raw leaf tobacco, and other offence-related property, such as tobacco manufacturing equipment and conveyances and to ensure that forfeited tobacco products are destroyed”.

Ms BALOCH (Pakistan) asked who would benefit from the civil remedies referred to by the Canadian delegation.

Mr MURDOCK (Canada) replied that his delegation’s proposal was based on the assumption that civil remedies would benefit the State rather than the manufacturers. However, the issue would require further discussion.

The CHAIR suggested that the delegations of Canada and Pakistan should pursue that discussion on an informal basis with any other interested delegations.

Dr SILVA GOLDFARB (Brazil) proposed that subparagraph (c) should be amended to read: “appropriate steps to ensure that all confiscated counterfeit and contraband cigarettes and other such tobacco products are destroyed using non-polluting methods”.

Dr NOVOTNY (United States of America) said that the provision contained in subparagraph (c) was too broad. Cigarettes seized in the United States as contraband were sold, and the proceeds paid into a Treasury forfeiture fund in order to provide funding for law enforcement activity aimed at reducing, or eliminating, smuggling and diversion crimes. Since the cigarettes were sold on the condition that they were placed in lawful distribution channels, their sale would not run counter to the objectives of the convention. He proposed that subparagraph (c) should be deleted.

Professor GOJA (Uruguay) said that a major campaign against contraband, including tobacco products, had been initiated in Uruguay. However, whereas legislation in her country contained provisions for the destruction of illicit drugs, it had no provision for the destruction of tobacco
products which were sold legally. It would consequently be extremely difficult for Uruguay to implement subparagraph I.5(c).

Ms QU Meiyu (China) proposed that subparagraph (c) be deleted.

Dr CASTILLO (Dominican Republic), referring to the destruction of counterfeit tobacco products, said that it was important to bear in mind the possibility of counterfeiters adding substances other than those normally found in the products in order to encourage addiction. Such products should not be sold under any provision or agreement.

Dr ABOU-ALZAHAB (Syrian Arab Republic), referring to subparagraph (c), said that, in view of the divergence of views on the destruction of cigarettes, the decision would best be left to each country. The convention should, however, state which non-polluting methods of destruction should be used.

**Paragraph I.6**

Mr RAJALA (European Community) speaking on behalf of the European Community and its Member States, said that it would be not appropriate to refer to investigations, judicial prosecutions and legal proceedings relating to illicit traffic in tobacco products, in the framework convention. Many of those matters were covered in other international agreements and fora, and it was doubtful whether there was anything to be gained by including them in paragraph I.6.

Mr SEKOBE (South Africa), speaking on behalf of the Member States of the African Region, expressed support for the text as it stood, in view of the need for cooperation between national and international agencies in promoting investigations to ensure that illicit trade was not conducted.

Mr PAVELSONS (Latvia), speaking on behalf of the Baltic States of Estonia, Latvia and Lithuania, supported the proposal made on behalf of the European Community and its Member States. In addition, he proposed that special emphasis should be placed on cooperation at regional and subregional levels as the most effective means for combating smuggling and the illicit trade of tobacco products. An exact formulation would be submitted.

Ms WELLS (Australia) expressed support for paragraph 6 and welcomed the focus on international cooperation. Illicit trade involved a range of cross-border issues for which such cooperation and coordination were essential. Her country would not, however, be in a position to finalize its views on paragraph 6 until the text of the proposed annex was considered.

Ms ROVIROSA PRIEGO (Mexico) agreed with the spirit of paragraph 6 in view of the importance of international cooperation in combating the scourge of illicit trade. Exchange of information was also needed to anticipate illegal cross-border flow of those products and gain insight into national and international smuggling operations. Regional cooperation should therefore be given particular emphasis.

Ms DJAMALUDDIN (Indonesia), speaking on behalf of the Member States of the South-East Asia Region, emphasized the importance of retaining paragraph 6, as the strength of the framework convention would lie in its provisions on cross-border issues.

Mr LISKIA (Papua New Guinea) fully supported paragraph 6 as amended by insertion of the word “regional” before “and international agencies”. While it was true that the issues could be dealt
with under other international conventions, the provisions contained in paragraph 6 should also be part of the framework convention.

Dr ZATOŃSKI (Poland) expressed support for paragraph 6 and the statement of the delegate from the European Community. Interregional collaboration was particularly important to a country like Poland which was surrounded by many other countries.

Mrs SHAHAR-BEN AMI (Israel) agreed in principle with the position of the European Community that paragraph 6 should be retained. She suggested, however, that it would be more readily applicable with insertion of the phrase “In accordance with their national legislation and their commitments under international treaties” at the beginning of the paragraph.

Ms MORALES AYLLÓN (Bolivia) agreed with the spirit of paragraph 6 but suggested that the last sentence be amended to read: “The Parties shall further cooperate to promote the full exchange and wide dissemination of information ...” in order to counteract the effects of large-scale advertising of tobacco products. To that end the judgements and results of judicial proceedings should also be widely advertised.

**Paragraph I.7**

Mr ODOKO (Japan) said that his delegation was reluctant to accept provisions that created a legal obligation requiring governments to initiate the preparation of protocols. The intention of the Intergovernmental Negotiating Body to formulate a protocol on a particular issue should be incorporated in non-legally binding form, such as a resolution, summary record or recommendation and not in the framework convention.

Professor GRANGAUD (Algeria), speaking on behalf of the countries in the African Region, said that the paragraph and the footnote were acceptable as drafted. He was supported by Dr NGABA (Central African Republic).

Mr LOM (United States of America) supported adoption of the paragraph and the footnote. He reiterated the usefulness of protocols on specific matters in the present case addressing the elimination of smuggling. His remarks were supported by Dr NGABA (Central African Republic).

Ms QU Meiyu (China) asked whether the proposed protocol would be specific or comprehensive in its scope. She would prefer a general, comprehensive protocol covering all subjects within the purview of the convention rather than a number of protocols on separate subjects. Stronger measures against illicit trade should be specified in the framework convention.

Mr ATWOOD (Australia) said that inclusion of the paragraph would raise an important structural issue, namely, the relationship between the convention and any proposed protocols. He reiterated the view of his delegation that the end-product of the negotiations should be a single international instrument setting out an integrated, comprehensive programme to address tobacco control at national, regional and global levels. The effectiveness of the multifaceted approach of the framework convention might be weakened if its provisions were distributed among a number of protocols, particularly if accession to them were optional. He therefore proposed that paragraph I.7 be placed in square brackets.

Dr FARSHAD (Islamic Republic of Iran) proposed insertion of a new paragraph I.8 to read: “Each Party shall prohibit international delivery or sending of tobacco products, and mail order sales and Internet sales, unless the delivery or sending is within the tobacco trade.”
Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, supported the proposal for a separate protocol on smuggling, owing to the special importance of the question. Negotiations on the protocol could begin before the end of the negotiations on the framework convention. He would submit a proposal to that effect in writing.

Mr CASTILLO SANTANA (Cuba) looked forward to studying the proposal that would be submitted by the European Community. Nevertheless, his delegation, a small one from a developing country, had some reservations about the advisability of negotiating two highly important legally-binding texts simultaneously.

Mr LOM (United States of America) said that, if there were concurrent negotiations, there should be mechanisms to ensure consistence and avoid conflict between the two texts. He would submit a written proposal to that effect.

Ms QU Meiyu (China) pointed out that the question of simultaneous negotiation of the framework convention and protocols needed further study.

Mr MURDOCK (Canada) said that his delegation considered that an effective means of discouraging participation in illicit tobacco trade was to deprive traders of their proceeds. He therefore proposed the addition of the following text to paragraph I.5: “adopting measures to enable the confiscation of proceeds derived from the commission of criminal offences related to the illicit tobacco trade”.

The existence of free-trade zones exacerbated the difficulties of controlling the distribution and movement of duty-free and tax-free tobacco products. Control of the international movement of tobacco products and effective monitoring and auditing of tobacco products entering and leaving free-trade zones would help to prevent diversion to the contraband market. He therefore proposed insertion of the following text in paragraph I.5: “adopting measures to monitor, document and control the distribution and movement of duty-free and tax-free tobacco products, including raw leaf tobacco”.

The CHAIR, reviewing the discussion on Article I, paragraphs 1-7, noted the proposal that raw leaf tobacco be included as an item of illicit trade. He assumed that delegations that had proposed definitions would provide appropriate wording. There had been some discussion about the inclusion of references to national texts, obligations and law. The question of discrimination against tobacco had been raised, but the importance of maintaining the public health focus of the convention had been stressed.

With respect to paragraph I.3, there had been considerable discussion about the packaging of tobacco products and the various approaches to the labelling and sealing of packages, particularly of the difficulty of applying them in national contexts. It had been proposed that the wording of references to the origin and identity of products should be reviewed by the Conference of the Parties.

A new text had been proposed for paragraph I.4; there had also been proposals to delete the paragraph or to merge it with subparagraph I.3(b).

Paragraph I.5 had elicited a full discussion on the advantages and disadvantages of criminalizing illicit trade in tobacco products. Questions had been raised regarding the definitions of the terms “counterfeit” and “contraband”. Proposals had been made to the effect that, rather than destroying tobacco products, they should be sold and the proceeds used for other purposes. It had been urged that any method of destruction should be non-polluting. Discussion of paragraph 6 had centred on whether investigative procedures should form part of section I.

Paragraph I.7 had raised the issue of the relationship of protocols to the framework convention, the relative strengths of the convention and protocols and the timing of negotiations on protocols.
A new paragraph I.8 had been proposed to prohibit the sale of tobacco products by mail order or through the Internet. He looked forward to receiving the text of that proposal. New items had been proposed to deal with confiscation of contraband goods and restrictions on duty-free and tax-free sales of tobacco products.

Dr Stamps took the chair.

Paragraphs I.13 and I.14 (Licensing)

Mr KATENE (New Zealand) said that his country considered that an effective licensing system was important. However, it did not license its thousands of retailers, as it considered that that was not essential for tobacco control; his country did support the licensing of manufacturers, distributors and importers as part of a real effort to curb illicit trade in tobacco products. He would provide a text to that effect.

Dr URDAL (Norway) expressed the support of the Norwegian delegation for the proposals contained in I.13 and I.14. Licensing was an important tool for preventing tobacco sales to children. In Norway, 40% of 13- and 14-year-old children succeeded in buying cigarettes, despite the legal limit of 18 years. Although the Norwegian Government had cooperated with retail organizations over the previous two years, there had been no reduction in sales to minors. He acknowledged the need to establish legislative and administrative measures to license all tobacco retailers.

Ms DJAMALUDDIN (Indonesia) said that establishing a licensing system for retailers was unrealistic, particularly in a large developing country such as Indonesia. If such a system were introduced in her country, it would be necessary to license more than one million retailers in more than 300 autonomous local government areas. That would only impose an insurmountable administrative burden, with no benefit. She therefore proposed that the concept be eliminated from the framework convention.

She acknowledged that licensing was an important tool but said that it would be more realistic and effective to focus on higher levels of the distribution chain, such as manufacturers, importers, exporters and the wholesale trade.

Ms BILLUM (Sweden), speaking on behalf of the European Union and its Member States, said that the Union recognized that a licensing system for tobacco retailers was only one mechanism for curbing illicit trade and traffic and preventing sales of tobacco products to children; there were other ways of exercising efficient control over tobacco retailers, for example, by a tax registration system or by reinforcing administrative measures to identify and regulate the retail trade and to verify access to wholesale suppliers. What was important was that there be effective control and that compliance with legal requirements could be verified. The framework convention should not contain detailed provisions concerning the content of national legislation on the retail trade: that should be left for each State Party to decide, according to local circumstances.

The European Union therefore proposed new wording for paragraphs I.13 and I.14, as follows:

(Licensing or registration)

13. The Parties recognize that an effective licensing or registration system for retailers of tobacco products can be one important mechanism to curb illicit trade in tobacco products and to prevent sales of tobacco products to children and young persons, subject to local conditions.

14. Each Party shall, to the extent possible within the means at its disposal and its capabilities, adopt legislative, executive and administrative measures to exercise efficient control over all tobacco retailers, for example by means of a licensing or tax registration system, or provide other means to identify and regulate the retail trade in these products.
The CHAIR noted the intent to eliminate detail in one direction, although it was added in another direction.

Mr MURDOCK (Canada) said that his delegation recognized that licensing was an important mechanism for curbing the illicit trade in tobacco products, as it would allow governing authorities to impose conditions and limitations on licensees. To ensure effectiveness, any licensing regime should be broad and inclusive.

Ms LAMBERT (South Africa), speaking on behalf of the African Region, said that licensing was an essential tool both in the prevention of sales of tobacco products to persons under the age of 18, and in curbing the illicit trade in tobacco products. She proposed that paragraph I.13 be amended to read: “The Parties recognize that an effective licensing system for wholesalers and retailers of tobacco products is an important mechanism to curb illicit trade in tobacco products and to prevent the sales and supply of tobacco products to young persons under the age of 18.”

Ms BILLUM (Sweden), speaking on a point of order, said that any remarks made by the Chair regarding individual interventions should be of a neutral nature.

Dr TATA (India) observed that paragraphs I.13 and I.14 relating to the licensing of retailers would be unimplementable in his country and in other large developing countries. Furthermore, implementation of a licensing system would lead to the creation of a new, costly bureaucracy with no effect on tobacco sales. Decisions on measures to control tobacco use were best left to individual countries, which were better placed to assess the feasibility and cost-effectiveness of such measures. He therefore recommended that paragraphs I.13 and I.14 be deleted.

Ms ROVIROSA PRIEGO (Mexico) considered that paragraphs I.13 and I.14 were covered by Article 11 of the General Agreement on Tariffs and Trade, since they imposed restrictions on cigarette imports.

Dr WINAI SWASDIVORN (Thailand) supported retention of paragraph I.13 as it stood, as he was of the opinion that licensing prevented retailers from selling tobacco products to persons under 18 years of age.

Dr AL-HAJJAWI (Jordan) said that there were many retailers of tobacco products in his country. Young people commonly bought cigarettes singly. He proposed that paragraph I.13 would be strengthened by addition of a phrase prohibiting the sale of single units, and he would submit text to that effect. The CHAIR pointed out that the issue was covered in paragraph I.10.

Dr ENYIME (Cameroon) endorsed the position of the African Region that any licensing system should apply to manufacturers, wholesalers and major importers, as in most countries of the Region, cigarettes were sold by street vendors as part of the fight against poverty. Licensing would thus be extremely difficult to apply. The strategy should be to curb the availability of tobacco products by introducing a licensing system for manufacturers and importers.

Ms QU Meiyu (China) said that although licensing was proving to be effective in China, there were still many illicit producers and distributors. The Chinese authorities were doing their best to eliminate those practices. She noted that the wording in paragraph I.14 “… to licence all tobacco-product retailers” could be interpreted as including illicit operators. The phrase should be clarified.

Ms ALEXIS-THOMAS (Trinidad and Tobago) said her delegation supported the principles contained in paragraphs I.13 and I.14 but considered that their scope should be broadened. She proposed that paragraph I.13 should be divided into paragraphs I.13 and I.14. The first would read:
“The Parties recognize that an effective licensing system for manufacturers, importers, exporters, distributors and retailers of tobacco products is an important mechanism to curb illicit trade in tobacco products.” The new paragraph I.14 would read: “The Parties recognize that an effective licensing system is an important mechanism to prevent sales of tobacco products to persons under the age of 18 years”. That had proved to be an effective mechanism in her country. A new paragraph I.15 would read: “Each Party shall adopt legislative, executive and administrative measures to license manufacturers, importers, exporters, distributors and retailers of tobacco products.” If the licence included a requirement to ask for proof of age, the number of young people buying cigarettes would be reduced.

Dr ARMADA (Venezuela) expressed support for a licensing and registration system for tobacco-product retailers, which was an effective means both of limiting sales to children and of preventing smuggling. It would also be appropriate to extend the system to include distributors and importers. The money raised from payment of licences by retailers could be used for both tobacco control and to encourage community participation.

Mr EMMANUEL (Saint Lucia) asked that the term “young person” be defined. On the assumption that a young person was someone under the age of 18, he proposed that the word “children” be deleted from paragraph I.13.

The objectives contained in paragraph I.13 would be easier to achieve when complemented by the provisions for strong education, training and public awareness campaigns outlined in subparagraph G.1(e).

Dr SEKABARAGA (Rwanda) endorsed the textual proposals put forward by South Africa on behalf of the African Region. However, in addition to introducing a licensing system, education campaigns should be mounted to inform small retailers and street vendors, who were responsible for most tobacco sales in his country, of the dangers of tobacco use to public health.

Mr LOM (United States of America) said that he believed that licensing should properly be addressed in the smuggling protocol. Although licensing had proved to be an effective tool for combating smuggling in the United States, implementing a licensing regime at the retail level could present legal problems; moreover, for countries with federal systems of government like the United States, such implementation could lead to a conflict between national and subnational competencies, particularly in the area of smuggling. In practical terms, licensing was more effective and less costly to implement if introduced at the level of distributors and manufacturers, as they were far less numerous than retailers.

Dr ESPINOZA FARFÁN (Guatemala) said that developing countries would only be able to undertake the complex task of implementing a licensing system if the international community was prepared to provide scientific and technical cooperation and the transfer of technology.

Dr ILKHAMOV (Uzbekistan) stressed the importance of licensing both in curbing sales of tobacco products to young persons under 18 years of age and in combating smuggling. His delegation nevertheless considered that paragraph I.14 needed to be strengthened and proposed the deletion of the phrase “to the extent possible within the means at its disposal and its capabilities” and the insertion of the words “wholesalers and” between “tobacco-product” and “retailers”.

Dr ABOU-ALZAHAB (Syrian Arab Republic) said that it was essential for both wholesalers and retailers, as well as tobacco growers, manufacturers, importers and all individuals and entities involved in the tobacco industry, to be subject to licensing. Furthermore, the convention did not contain any provisions relating to health and safety parameters for tobacco growers and manufacturers.
Mr LISKIA (Papua New Guinea) recognized that an effective licensing system would be an important tool for curbing illicit trade in tobacco products and for preventing their sale to young people. His delegation therefore strongly supported the inclusion of provisions on licensing in the convention and supported the proposals of earlier speakers, especially the delegates of South Africa and the Syrian Arab Republic.

Dr AL-LAWATI (Oman), referring to paragraph I.13, proposed the insertion of the words “wholesalers and” between “for” and “retailers”. The terms “retailers” and “wholesalers” should also be clearly defined. Oman also proposed the deletion of the phrase “to the extent possible within the means at its disposal and its capabilities” from paragraph I.14.

Dr ZARIHAH (Malaysia) said that her delegation concurred with speakers who had advocated the retention of paragraphs I.13 and I.14 on licensing but proposed that the phrase “to the extent possible within the means at its disposal and its capabilities” be deleted from paragraph I.14 and that the words “manufacturers, wholesalers, importers, exporters and warehouse operators” be inserted between “tobacco-product” and “retailers” in that clause.

Dr NGABA (Central African Republic) strongly supported the proposals put forward by South Africa, as well as the amendment by the European Community on tax registration, which would give some developing countries more effective control over the introduction of certain tobacco products.

Ms WELLS (Australia) said that her country was currently researching the feasibility of licensing and the costs and benefits of a national best practice approach to licensing with a view to identifying a model or models for implementation at national, state and territory levels. Australia recognized that licensing regimes had an important place in controlling sales of tobacco products, particularly to children, and therefore favoured retention of paragraphs I.13 and I.14.

Mr DRAGANOV (Bulgaria) and Dr SOVINOVÁ (Czech Republic) supported the proposal put forward by the European Community on the need for an effective licensing or tax registration system or some other means of regulating the retail trade in tobacco products.

Dr GBOMOR (Sierra Leone), referring to paragraph I.13, endorsed the amendment proposed by South Africa, despite the initial bureaucratic problems that licensing would create.

Dr ANDEN (Philippines) strongly supported the positions adopted in paragraphs I.13 and I.14 and endorsed the amendment by Malaysia. However, she proposed the addition of “traders” and “all other individuals and entities who engage in business in tobacco and tobacco products” to the list of those to whom licensing would apply in Malaysia’s reformulation of the wording. The wording “to the extent possible and within the means at its disposal and within its capabilities” should also be deleted.

Dr ZENKEVICH (Belarus) said that licensing in his country had been effective, since the possibility of retailers losing their licences was an effective deterrent. Although he agreed with the wording in paragraphs I.13 and I.14, he suggested that in the Russian text the term “trader” be replaced by “vendor”.

Professor GRANGAUD (Algeria), speaking on behalf of the Africa Region in relation to paragraph I.14, concurred with earlier speakers that “to the extent possible within the means at its disposal and its capabilities,” should be deleted and that the words “manufacturers, wholesalers and” should be inserted between “tobacco-product” and “retailers”.

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Dr AL-HAJJAWI (Jordan) suggested that to be effective the proposed licensing system should also cover the individual sale of cigarettes.

Mr DJONDO (Togo) expressed his delegation’s support for the position presented by the delegates of Algeria and South Africa on behalf of the Member States of the African Region. He also supported the position of the European Union, with its emphasis on the value of the registration of actors in the tobacco industry as an effective means of monitoring tobacco products. Togo also appealed for prevention and education campaigns to alert young people in Africa about the dangers of smoking.

Dr MUGA (Kenya) also supported the position outlined by the delegates of Algeria and South Africa. An effective licensing system was indeed an important mechanism to curb tobacco consumption with a view to the overall public good worldwide. With regard to the difficulties involved in giving effort to licensing systems, efforts must be made to find a mechanism which would make the implementation of licensing and registration systems possible. Kenya therefore supported the retention of paragraphs I.13 and I.14.

Mr CASTILLO SANTANA (Cuba) supported the existing wording of paragraphs I.13 and I.14, as contained in the Chair’s text.

Dr JIRÓN ROMERO (Nicaragua), noting the broad support for the statement that an effective licensing system for retailers of tobacco products was an important mechanism to curb illicit trade in tobacco products, asked whether the statement was based on a broad analysis of the available evidence. Since public health standards were normally based on such evidence, it would be interesting to have some information on the studies which had been undertaken on the subject.

The CHAIR observed that the delegate of Australia had referred to such studies.

Dr PÁVA (Hungary) said that, while her delegation agreed that an effective licensing system was an important mechanism in curbing the illicit trade in tobacco products, it considered that other measures were also important in exercising control over retailers and therefore supported the statement made by the European Union.

Ms TKACHENKO (Russian Federation) explained that her country had not acquired much legal experience in the licensing of retailers and believed that emphasis should be placed on the licensing of producers and wholesalers of tobacco products. The licensing of retailers would present many difficulties for the Russian Federation, as well as for many other developing and developed countries. Her delegation therefore supported paragraphs I.13 and I.14, which emphasized the importance of licensing retail trade and created the obligation to develop the system.

Mr MBUYU MUTEBBA (Democratic Republic of the Congo) endorsed the position of the Member States of the African Region, as presented by the delegate of South Africa, and raised the question of the authority which would be empowered to issue licences to retailers of tobacco products. In his country, the Ministry of Health issued licences for drugs, but for products such as tobacco, licences were currently issued by the Ministry of the Economy. If responsibilities were to be transferred on the grounds of the harmful nature of tobacco and the need to control its health effects, legislative problems might arise in harmonizing the areas of competence of other ministries with the view to entrusting licensing arrangements to the Ministry of Health.
The CHAIR, summarizing the discussion on paragraphs I.13 and I.14, said that there seemed to be general consensus, with a few exceptions, that some form of licensing, registration or identification of those involved in the tobacco industry would be valuable in dealing with the tobacco epidemic.

Dr NOVOTNY (United States of America), speaking on a point of order, recalled that it was not appropriate to speak of consensus at the current meeting. The purpose of the meeting was not to identify or establish consensus, but to allow the Member States to make points without rushing to any conclusion. He therefore called upon the Chair not to suggest that consensus had been achieved on anything until there had been an opportunity to negotiate the actual language and elements at a later date.

Ms BILLUM (Sweden), speaking on behalf of the European Union and its Member States, endorsed the comments made by the delegate of the United States of America. It was premature to draw conclusions on a consensus at the current stage of the negotiations.

Mr COLLIN (International Union Against Tuberculosis and Lung Disease), speaking at the invitation of the Chair, emphasized that smuggling currently accounted for one-third of all international trade in tobacco products, amounting to over 350 billion cigarettes a year on the black market. That figure represented a remarkable penetration by organized crime, which justified a serious intergovernmental response. Tobacco-industry documents showed that some tobacco companies had orchestrated smuggling in their own commercial interests and that that had led to serious racketeering litigation against the companies by Canada, Colombia, Ecuador, the European Union and nine of its Member States. The problem was not driven by the differences in tax rates in different countries. Indeed, if all taxation and pricing were to be harmonized globally, there could still be as much smuggling. Smugglers profited by avoiding all taxes, not by exploiting tax differences.

The main problem consisted of a trading system set up to facilitate smuggling and to prevent enforcement and detection. The Chair’s text made welcome proposals for identifying the destination market and using markings to facilitate tracking and tracing. A ban on duty-free products would also help. Such important starting points needed to be included in the convention. The real challenge, however, was to hold the manufacturers responsible for ensuring that the products were sold legally and to hold them liable if they were sold on the black market. That would profoundly change the way in which manufacturers did business, in favour of law-abiding and tax-paying sales, rather than working hand in hand with organized crime. While the idea was ambitious, it should be seen as the central goal of a smuggling protocol to the convention.

K. Surveillance, research and exchange of information

Dr NOVOTNY (United States of America) said that, although his delegation was in favour of State cooperation on national systems of epidemiological surveillance of tobacco consumption, in addition to accord on the surveillance data elements to be collected, agreement was needed also on the definitions of such elements. Regional and local comparisons of State-based data would only be possible if the data elements were comparable. It would therefore be necessary to establish good cooperation on the survey instruments and to ensure that the populations surveyed were representative. His delegation would propose some amendments in support of State-based surveillance definitions to allow cooperation on comparable data collection and aggregation.

Ms MAYSHAR (Israel) drew attention to the proposal made by her delegation at the first session of the Intergovernmental Negotiating Body, to the effect that the word “surveillance” in the title of Article K and throughout the text should be replaced by “monitoring”, which had a more neutral connotation.
Ms LAMBERT (South Africa), speaking on behalf of the Member States of the African Region, expressed support for surveillance, research and the exchange of information, which would provide valuable scientific evidence on the magnitude, patterns, determinants and consequences of tobacco consumption. Nevertheless, the African States believed that the text should include firm commitments and that the phrase “in accordance with the means at its disposal and capabilities” should therefore be deleted.

Ms BALOCH (Pakistan) said that monitoring and surveillance should be carried out at the national level, not at the regional or global levels, and therefore proposed the deletion of the words “joint or complementary” and of the words “regional and global” throughout paragraph K.1. Exchange of information and experience could take place at conferences of States Parties, but the establishment of joint surveillance or monitoring systems should be avoided.

Ms ROVIROSA PRIEGO (Mexico) said that her country attached great importance to epidemiological surveillance and drew attention to her delegation’s statement in the general debate concerning the significance for the implementation of the convention of identifying specific indicators of the health and economic impact of tobacco consumption. Mexico considered that the Intergovernmental Negotiation Body should try to make progress in identifying such indicators.

Dr CARIS (Chile) said that her country was committed to the development of surveillance and monitoring strategies. Chile proposed the deletion of the words “to the extent possible” in the second sentence of paragraph K.1 and of the words “in accordance with the means at its disposal and its capabilities” in the third sentence, since surveillance and monitoring were so important that countries which did not have the capacity or the necessary resources to undertake the appropriate programmes should receive support from international organizations and institutions. Each country should attain a sufficient level of surveillance and monitoring of the situation at the national level and countries where the appropriate means were not available should be assisted by international organizations and developed countries.

Ms ALEXIS-THOMAS (Trinidad and Tobago) supported the proposed text, but suggested that paragraph K.1 should be strengthened by the deletion of the words “in accordance with the means at its disposal and its capabilities”. Further, her delegation proposed that the first part of paragraph K.1 should read as follows:

1. The Parties shall establish programmes for national, regional and global surveillance of the magnitude, determinants and consequences of tobacco consumption, including exposure to second hand smoke. To this end, each Party shall:
   (a) establish and maintain a national system for the epidemiological surveillance of tobacco consumption and exposure to second-hand smoke which must include:
      (i) periodic update of economic indicators to include loss of productivity;
      (ii) periodic update of health indicators to include evaluations of public health communication campaigns.

Dr MOGNE (Mozambique) said that endorsing the idea that the Parties should establish joint and complementary surveillance, research and exchange of information programmes, different national situations and the lack of human, technical and material resources in some developing countries must be taken into account. Many countries experienced great problems in the collection of data and knowledge gathering and therefore surveillance and research programmes were needed at the national, regional and global levels.
Dr RODRÍGUEZ BALZAR (Venezuela) emphasized the importance of the compilation of information, which provided an essential basis for combating tobacco consumption in all countries, particularly in developing countries, which suffered from major weaknesses in the organization of public health teams. Venezuela therefore proposed the addition of a subparagraph 1(c), to read as follows: “promote and strengthen, with the support of international organizations, the capacity-building and training of multidisciplinary teams for the progressive development of surveillance, research, intervention and control programmes to combat tobacco consumption.”

Mr CULLEN (Argentina) expressed agreement with speakers who had supported the inclusion of a reference to joint programmes at the national, regional and global levels. He drew attention to his delegation’s earlier statements concerning the importance of adopting a regional focus and emphasized that such a focus should clearly be maintained in an area as important as that of surveillance, research and the exchange of information.

Ms BILLUM (Sweden), speaking on behalf of the European Union and its Member States, expressed support for the Chair’s text of Article K, emphasizing that epidemiological surveillance and monitoring of developments were of the greatest importance as a basis for preparing further strategies to combat tobacco use. Article K would help contracting parties individually and collectively to determine whether the convention was meeting its objectives. In conclusion, the importance of cooperation with international bodies and between countries must be emphasized.

Dr CHAOUKI (Morocco) said that his delegation joined those of Chile and Mozambique in emphasizing the importance of the comparability of epidemiological data relating to tobacco consumption and therefore supported the retention of the words “national, regional and global”. Nevertheless, Morocco considered that the phrase “in accordance with the means at its disposal and its capabilities” weakened the text and should be deleted.

Dr DE CÁCERES (Paraguay) endorsed the statements made by earlier speakers from her region. Paraguay was a developing country that was experiencing great difficulties in its public health system and, with technical assistance, was endeavouring to improve its system of surveillance and to restructure its information system. In that regard, it was attempting to incorporate the surveillance of noncommunicable diseases, including those related to tobacco use. Such measures were possible in developing countries when technical assistance was forthcoming and information was exchanged. It was therefore important for surveillance, research and exchange of information to be conducted at the regional and global levels as a means of combining efforts and optimizing resources, particularly within regions with similar socio-cultural and political conditions.

Dr PALOMO ESCOBAR (El Salvador) agreed with speakers who had emphasized the importance of surveillance and research in controlling tobacco use and had urged the deletion of the words “in accordance with the means at its disposal and its capabilities”. Developing countries merited the support and technical assistance of international organizations and industrialized countries to ensure that systems of surveillance and research were established in the near future and strengthened as a basis for a real process of surveillance and research, leading to preventive and corrective measures to control tobacco use.

Dr ESPINOZA MURRA (Honduras) said that the words “the magnitude, patterns, determinants and consequences” in paragraph K.1 were ambiguous and should therefore be deleted.

Ms MORALES AYLLÓN (Bolivia) endorsed the statements made by earlier speakers from her region and considered that little could be achieved without international support. Bolivia also supported the proposal of the preceding speaker.
Mr TAKAKURA (Japan) agreed with the speakers who had emphasized the importance of surveillance and research activities and of the inclusion of a provision on that subject in the convention, but drew attention to an apparent ambiguity in the Chair’s text since his country had several health surveillance programmes, including those covering infectious diseases, basic nutrition and also tobacco consumption, it was not clear what was meant by the integration of tobacco surveillance programmes into health surveillance programmes. Moreover, Japan would reserve its final position on Article K until it had examined the Annex which remained to be added.

Ms KERR (Australia) said that, although her country supported Article K in principle, it noted some shortcomings in the texts of paragraphs 1 and 3, which were composed of a mixture of obligations and statements of principle, as well as a mix of domestic obligations and matters of regional and international cooperation. Moreover, the various qualifiers and caveats needed to be removed and a simple list developed of the areas which constituted domestic obligations and international cooperation. Consistent with the approach adopted in the Chair’s text, Australia considered that all the elements of paragraphs 1-3, including that on research, which was scheduled for discussion in Working Group 1, should be brought together in the same Article. The combination would result in more streamlined and precise obligations that could be implemented without ambiguity and would more clearly delineate domestic and other obligations. In addition, some of the statements currently contained in Article K were aspirational and should be transferred to the Preamble.

Australia proposed that the title of Article K should be changed to “Monitoring, surveillance, research and exchange of information” to reflect the scope of the Article more clearly. In conclusion, paragraph K.4 should be incorporated in Article P.

Ms THIBELI (Lesotho) said that her delegation agreed with the position of the Member States of the African Region, as outlined by the delegates of Algeria and South Africa. Lesotho attached great importance to joint surveillance and monitoring programmes, particularly for the implementation of the current common and joint legal effort to curb tobacco consumption. Countries could not successfully monitor issues of tobacco consumption by themselves. Since regional collaboration on a number of developmental issues had proved to be successful, Lesotho believed that the same applied to the control of tobacco consumption, particularly because of the importance in that context of electronic media, which was not confined by political borders. Her delegation therefore endorsed the concept that surveillance programmes should be undertaken from a national, regional and global perspective.

The meeting rose at 13:10.
K. **Surveillance, research and exchange of information** (continued)

**Paragraph K.1** (continued)

Ms BALOCH (Pakistan) said it seemed that the word “surveillance” in paragraph K.1 was not being interpreted in the same way by all delegates. She therefore proposed that definitions should be formulated for “surveillance” and “monitoring”, the latter word having been proposed by some delegations. She was not otherwise changing her position on the provision as stated at the previous meeting.

Dr YANG Gonghuan (China) expressed support for paragraph K.1 because her delegation considered surveillance to be a necessary means of monitoring implementation of the convention. National, regional and global machinery was consequently needed but, owing to the differing levels of development from one country to another, global machinery should include only basic indicators. In that connection, and since common definitions were required for the specific proposals, China would make a submission in due course.

Dr ZENKEVICH (Belarus), referring only to the Russian text, said his delegation would like the word “epidnadzor”, an abbreviation for “epidemiological surveillance”, to be written out in full both in the heading and elsewhere. He also requested that any other abbreviations be avoided.

Dr LEWIS-FULLER (Jamaica) suggested an amplification of subparagraph 1(a) with the insertion of “and its sequelae” after “epidemiological surveillance of tobacco consumption”, to cover monitoring of the undesirable health effects of consumption.

Dr ROA (Panama) expressed support for the epidemiological surveillance also of tobacco-related diseases. It would also be fitting to include a provision indicating the need to establish surveillance with more or less homogeneous indicators permitting a genuine analysis of the current world situation.

Dr SEKABARAGA (Rwanda) emphasized the fact that the provisions in Article K related to the establishment of national systems by the Parties to the Convention. Provisions should also be formulated with a view to action by the Conference of the Parties or the convention secretariat to set up a surveillance system incorporating those national systems.
Ms BALOCH (Pakistan) proposed the insertion in subparagraph 1(a) of “if required” after “tobacco consumption”, and “national” before “economic and health indicators”. She further proposed the deletion of subparagraph 1(b) since arbitrary international indicators developed by WHO or any other body were not appropriate.

**Paragraph K.3**

Professor GRANGAUD (Algeria), speaking on behalf of the Member States of the WHO African Region, supported paragraph K.3 since the exchange of information between countries of one and the same subregion was very important. He proposed the deletion of “in accordance with the means at its disposal and its capabilities” in the third sentence of paragraph K.3, as had been proposed on several occasions during the session.

Mr MURDOCK (Canada) supported the obligation but proposed that the introductory sentences be amended, for the sake of clarification and simplicity, to read: “The Parties shall, in accordance with their domestic legislation and taking into account the special needs of developing countries, facilitate through the Secretariat of the Convention the exchange of scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry relevant to this Convention. Each Party shall:”.

With respect to subparagraph 3(a), Canada proposed replacement of the words “national and subnational” with “domestic”. In subparagraph 3(b) “database” should replace “base of data”; the obligation also required clarification as it was important to indicate the appropriate contents of the database to be compiled and maintained.

Mr BAHARVAND (Islamic Republic of Iran) proposed the insertion of “and cultivation” after “practices of the tobacco industry” in the second sentence of paragraph K.3.

Mr CASTILLO SANTANA (Cuba) expressed general agreement with the drafting of paragraph K.3 and proposed the insertion in the second sentence of “where appropriate” after “national legislation”, and “publicly available” after “legal information”. He further proposed the insertion of a new paragraph, between the present paragraphs K.3 and K.4, along the following lines: “Regional and international health bodies shall provide technical and financial support to the developing countries in the field of information in meeting their obligations regarding the exchange of information, especially in compiling and maintaining a database”. A written proposal to that effect would be submitted.

Ms BALOCH (Pakistan) proposed the insertion of “relevant” before “international agreements” in the second sentence of paragraph K.3. In subparagraph 3(a) “and subnational” should be deleted and “with the mutual consent of all concerned” should be inserted after “cooperate”. Subparagraph 3(b) should be deleted.

Mr ALAYUTDINOV (Russian Federation) proposed the addition in the first sentence of paragraph K.3, of “as well as countries requiring such information” after “developing countries”.

Dr REDDY (India) observed that, as far as the Conference of the Parties was concerned, nations were clearly bound by their obligations. It was, however, questionable whether that should be extended to the bilateral domain, as implied in the second sentence of paragraph K.3. He therefore proposed the deletion of “and bilaterally” from that sentence.

Mr HOHMAN (United States of America), agreeing with some of the views just expressed by the delegate of India, said that while he attached considerable importance to exchanging information
relevant to the convention, and certainly with due regard to the needs of developing countries, the current text was somewhat complicated. He would be submitting a simpler formulation in writing.

D. Guiding principles

Paragraph D.4

Dr REDDY (India), speaking on behalf of the Member States of WHO’s South-East Asia Region, said that, in its present form, paragraph D.4 did not include the mechanisms for financial assistance, did not identify the special needs of the developing countries and linked such financial assistance to a future displacement of tobacco growers and workers. The countries he represented believed that assistance to persons engaged in farming and manufacture of tobacco was no feeble rehabilitation exercise to be undertaken at an undetermined future time, but an urgent priority to ensure their prompt redeployment. As the demand for tobacco fell more rapidly in the developed than in the developing countries and the international market was aggressively captured by tobacco transnationals, the large tobacco-crop surpluses were increasingly finding an internal market in the developing countries. That was another reason for reducing tobacco production rapidly through a wide variety of market support mechanisms for alternate farming and industrial activities. Furthermore, the environmental degradation caused by tobacco farming and processing could not be allowed to continue until a future date when tobacco farming would ultimately have to respond to the market mechanisms of reduced demand. It was necessary to intervene proactively to limit the health and environmental consequences of continued tobacco production and usage. The mechanisms for international financial assistance, such as the creation of a global fund, also needed to be clearly indicated to ensure that the promise of financial assistance materialized. He therefore proposed that paragraph D.4 should read: “The importance of financial assistance, including the creation of a global fund mechanism, to enable and aid the economic transition of persons engaged in tobacco farming and manufacture of tobacco products, in the developing countries, should be recognized”.

Mr COSTI SANTAROSA (Brazil) expressing broad agreement with the proposal presented by the delegate of India, suggested the insertion of “assuring” after “importance of”.

Mr CASTILLO SANTANA (Cuba) proposed that the paragraph should be amended to provide a text that was more flexible and general in scope, which should read “The importance of financial assistance to meet the adverse social and economic consequences for tobacco growers and workers that may occur in the future as a consequence of successful tobacco-control programmes should be recognized.”

Mr SHRESTHA (Nepal) expressed support for the amendment to paragraph D.4 proposed by India. The importance of financial assistance was especially pertinent for the least developed countries to help them meet the commitments and obligations laid down by the convention. He therefore proposed that the words “especially in the least developed countries” should be added after the words “in developing countries” in the amendment to paragraph D.4 proposed by India.

Professor GRANGAUD (Algeria), speaking on behalf of the Member States of the WHO African Region, approved the spirit of paragraph D.4 but considered it insufficient merely to recognize the importance of assistance. Both financial and technical assistance should be addressed. He would submit a proposal for the amendment of the paragraph.

Mr HOHMAN (United States of America) said that paragraph D.4 should be more general in scope. Where smooth transition to alternative activities was not possible, governments should be able to give the support and assistance needed to help growers make the transition. The Chair’s text as it
stood implied that financial assistance itself constituted a guiding principle. In his country’s view, the guiding principle should be the recognition that governments could and should assist growers whenever transition threatened their well-being. He would submit a text to that effect.

Dr RAO (Panama) proposed the addition at the end of the paragraph of a reference to financial resources for the development of public health activities. If provision were not made for public health educational and other activities, the measures provided for under the convention would be ineffective.

Mr VARELA (Argentina) stressed the importance of paragraph D.4 which, as it stood, reflected a number of concerns of his country, and was similar to a proposal submitted by it at the first session of the Intergovernmental Negotiating Body. Nevertheless, Argentina considered that the amendments proposed by India, Cuba and Brazil enriched the text. It was very important to emphasize the principle laid down in that paragraph and ensure that it was reflected in the convention both under guiding principles and in the articles dealing with operational matters.

Mr BEN SALEH (Tunisia) said that the paragraph needed to be clarified in order to show the source of financial assistance. It would make a great difference, especially for countries with limited resources, whether it came from the budget of the country concerned or the international community. Financial assistance should be provided to encourage tobacco growers and workers to seek alternative activities as well as to help migrants or displaced workers.

Ms QU Meiyu (China) agreed with previous speakers that financial assistance should be provided by the international community. A reference to the importance of international financial assistance should therefore be added to paragraph D.4. A reference to technical assistance and cooperation should also be included. Her country would submit a written amendment to that effect.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) said that reference had been made to the need for redeployment of tobacco growers and workers. Many other people, especially young people, earned their living from trading in tobacco products, so action was also needed to steer them to other activities. While he supported the statement made on behalf of the Member States of the African Region, he suggested the creation of a fund to guarantee financial assistance to facilitate the economic transition of tobacco growers and workers displaced as a result of tobacco control programmes as well as the financing of programmes to assist young people to move into other economic sectors. He would submit an amendment to that effect.

Dr LEWIS-FULLER (Jamaica) also expressed concern about the need to support economic transition in the tobacco industry. However, tobacco growers would not be the only ones affected. Countries would be faced with political economic, social and cultural challenges as the tobacco industry declined. It was imperative that they be helped to meet such challenges. Her country was committed to the eventual eradication of tobacco but recognized the need to be practical in dealing with the various consequences of a declining industry. She therefore suggested that paragraph D.4 be amended to read: “It is imperative that the necessary financial and technical support be provided to assist with the political, social, economic and cultural transition brought about by the decline in all aspects of the tobacco industry.” She would submit the text in writing.

Mr RAMALLO (Venezuela) suggested that the words “national and international” should be inserted before “financial assistance”.

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Paragraph D.5

Mr RAJALA (European Community), speaking on behalf of the Member States of the European Community and also the Czech Republic, Poland and Romania, said that the guiding principle in paragraph D.5 was highly significant and referred to interaction between the provisions of the tobacco convention under consideration and other international treaties, in particular but not exclusively those within the ambit of WTO. The European Community considered that paragraph D.5 should be worded with great care and uphold the priority of public health protection whenever tobacco control measures provided for by the convention were examined for compatibility with other international instruments. Tobacco control measures should not constitute a means of arbitrary and unjustifiable discrimination in international trade between countries where the same conditions applied. He would submit a text relating to those concerns.

Dr WINAI SWASDIVORN (Thailand) said that Thailand was experiencing a technical barrier to trade through WTO owing to its tobacco measures on such subjects as ingredient disclosure, health warnings and labelling. The current wording of paragraph D.5 was based on the language used in Article XX General Exceptions of the General Agreement on Tariffs and Trade (GATT) and its bullet point (b). It subjected tobacco to the same trade agreements and rules as other products and placed the burden of proof on governments to prove that tobacco control measures were justifiable and not arbitrary. Such language would greatly reduce the effectiveness of the framework convention and, in the case of tobacco, a most harmful product, such conditions were unacceptable. Thailand proposed a different wording for paragraph D.5 that ensured that tobacco control measures were not undermined by international trade agreements. It would empower the Parties to the convention to adopt tobacco control measures and put an end to practices by governments to promote tobacco product exports and tobacco use. The paragraph should read:

5. The Parties agree to take all necessary measures to ensure that no person acting on their behalf shall attempt to
   (a) remove, weaken, undermine or otherwise interfere with tobacco control measures in force or under consideration in another State;
   (b) promote tobacco exports or tobacco use in another State;

Thailand also proposed two additional paragraphs to read “In the event of a conflict between this Convention or any of its protocols and any other international agreement, this Convention and its protocols shall prevail.” and “It is scientifically certain that tobacco causes many diseases that result in needless disability and early death. Lack of full scientific certainty regarding the efficacy of specific tobacco control measures shall not be used as a reason for postponing measures to control tobacco or for challenging such measures taken by other States.” She would submit the proposed amendments in writing.

Mr PAVELSONS (Latvia), speaking on behalf of the three Baltic States, Estonia, Latvia and Lithuania, said that those States considered that paragraph D.5 placed too great a restriction on the application of tobacco control measures since the words “arbitrary and unjustifiable discrimination” were open to broad interpretation. The wording proposed by the European Community, on the other hand, would ensure that public health protection prevailed over other norms in international law. The Baltic States therefore supported the proposal put forward by the European Community.

Dr AL-LAWATI (Oman) associated himself with the views expressed by the European Community and Thailand. As it stood, the Guiding principle in paragraph D.5 continued to subject tobacco to the same agreements and rules as any other commodity. Moreover it required governments to prove that tobacco control measures were justifiable. That greatly impeded such measures and was
therefore unacceptable from a public health point of view. It was also unacceptable that the text should subordinate the framework convention to other standard-setting conventions or treaties. The paragraph needed to be rewritten and he would submit a text to that effect.

Dr TATA (India), speaking on behalf of the Member States of the South-East Asia Region said that some provisions in the proposed convention concerned matters covered by other conventions with the result that action taken in pursuance of the obligations of the present convention might be treated as a breach of obligations under others. To avoid confusion he proposed that paragraph D.5 should be amended to read: “Tobacco-control measures taken to protect human health should not be deemed as constituting a means of arbitrary or unjustifiable discrimination in international trade.” He would submit his proposal in writing.

Dr ALBDAH (Saudi Arabia) said that the paragraph had serious implications and should be deleted. In his view, the convention should not contain a provision to make it compatible with any other international commitments. No other international convention should have precedence over the framework convention on tobacco control.

Dr URDAL (Norway) also proposed that paragraph D.5 should be deleted because it was unclear and might cause contradictory interpretations. It might imply that some tobacco control measures taken by countries could be considered unjustifiable and imposed too high a burden of proof on countries in defending tobacco control measures.

Ms GASH (United States of America) said that there existed no inherent conflict between trade and health policies, which were not mutually exclusive, and no trade-off was necessary between the rules of the international trading system and a health-based framework convention committing countries to strong tobacco control measures. Such a conflict should not be invented in order to weaken the general principles of WTO or create exceptions to its rules on the grounds that the objectives and purposes of the framework convention could not be fully accomplished without doing so. The present convention focused on measures against tobacco as a category of product and the intent of the guiding principle set out in paragraph D.5 was to ensure that measures applied to that end did not discriminate between countries where the same conditions prevailed. It was an important distinction: tobacco was only one of many legally traded products classified as harmful to human health yet covered by WTO. Such products were often heavily regulated domestically to minimize their adverse effects on human health; in her country’s view, that could be done domestically and under the convention in ways consistent with WTO rules, which provided ample scope to pursue health policies, including those relating to tobacco products. Indeed, contrary to popular misconception, WTO recognized the rights of governments to establish levels of protection for human health that were higher than those in international standards. Health-based measures were therefore consistent with WTO affirmative obligations and did not need to rely on the creation of exceptions for their legitimacy. WTO even recognized the need in certain circumstances to impose health-based measures that would otherwise be contrary to its rules. Such provisions allowed for legitimate health-based measures while guarding against protectionist abuse. The United States thus supported the intent of paragraph D.5 and considered its position to be fully consistent with its support for a strong framework convention on tobacco control.

Ms QU Meiyu (China) said that, since the purpose of the convention was to preserve public health, the reference to trading problems was not, in her country’s view, in accordance with the aims of the convention. She therefore proposed that the paragraph be deleted or amended entirely and she would submit a text to that end.
Mr BAHARVAND (Islamic Republic of Iran) said that paragraph D.5 should be deleted. Priority should be given to public health and he would submit a written proposal on the question.

Ms TKACHENKO (Russian Federation) said that paragraph D.5 reflected an unjustified concern about the tobacco industry, which was not consistent with the purposes of the convention. It would therefore be preferable if the text were amended to read “Tobacco-control measures should take into account the rules of international trade.”

Dr JOHNS (South Africa), speaking on behalf of the Member States of the African Region, said that for reasons already outlined, paragraph D.5 should be reworded along the lines suggested by the delegate of the European Community, and he would be submitting a text in that connection. The African Region proposed some additional paragraphs to be incorporated in Article D, and he requested guidance as to how they could be introduced.

The CHAIR said that any delegation could submit, in writing, proposals for additional paragraphs to be included in Article D.

Dr LEWIS-FULLER (Jamaica) said that, notwithstanding the explanation provided by the delegate of the United States of America, she remained confused about paragraph D.5. As it currently stood, the paragraph appeared to water down the whole principle of the convention, which was to give precedence to tobacco control in the international arena. Paragraph D.5 should therefore be deleted or reworded to indicate that tobacco-control measures should not be unduly constrained or discriminated against by international laws.

Professor GOJA (Uruguay) said that paragraph D.5 should be reworded with a view to ensuring that the right to human health and life prevailed over commercial interests. Tobacco and its products had a number of health, economic, social and environmental consequences, and could not be treated in the same way as other traded goods.

Ms BALOCH (Pakistan) said that, for the purposes of transparency, it would be useful to ascertain the source of paragraph D.5 and its background. It was disconcerting that one of the guiding principles of the convention appeared to run counter to the purposes of the convention.

Dr BETTCHER (Tobacco Free Initiative) replied that similar treaty language was contained in a number of multilateral environmental agreements, including the Rio Declaration on Environment and Development, the United Nations Framework Convention on Climatic Change, and protocols to the Convention on Long-Range Transboundary Air Pollution. Various textual proposals on paragraph D.5 had been put forward at the first session of the Intergovernmental Negotiating Body, and on the basis of the discussions that had taken place, the Chair of the Intergovernmental Negotiating Body had prepared the compromise draft wording currently under consideration.

Ms BALOCH (Pakistan) asked whether similar language had occurred in relation to the guiding principles of the instruments to which he had referred.

Dr BETTCHER (Tobacco Free Initiative) said that the similar wording had occurred in different parts of the aforementioned instruments, including in sections on guiding principles, substantive obligations and preambular paragraphs.

Mr ADSETT (Canada) said that the discussions should be guided by the need to craft a strong convention that focused on the public health aspects of tobacco control, and to ensure that the obligations to be assumed by the Parties could be implemented by all in conformity with international
obligations. The issues raised in paragraph D.5 were also mentioned in paragraph I.2, and both paragraphs should be considered further. He therefore suggested that paragraph D.5 should be placed in brackets.

Dr RANAWEERA (Sri Lanka) said that the point under consideration was of the utmost importance and could make or break the convention in the long term. Endorsing the view of those speakers who considered that the tobacco-control measures undertaken in implementation of the convention should not be undermined by other international trade agreements, he expressed support for the amendment to paragraph D.5 proposed by the delegate of India.

Paragraph D.7

Mr RAJALA (European Community), speaking on behalf of the European Community, its Member States and the associated countries, the Czech Republic, Poland and Romania, said that it should be emphasized that successful implementation of the convention would necessitate the active participation of nongovernmental organizations – that fact should be reflected in the convention. He would be submitting a text in that regard.

Professor GRANGAUD (Algeria), speaking on behalf of the countries of the African Region, said that while he supported paragraph D.7, the wording should reflect the fact that tobacco manufacturers were not to be included in the elements of civil society to which the paragraph referred. Also, the word “objective” should be replaced by “goal”. In fact, that amendment was related to the title of Article C, which had not yet been discussed, but which should likewise be amended. He would be submitting his proposals in writing.

Ms BALOCH (Pakistan) said that, although she fully supported the content of paragraph D.7, she was concerned that the guiding principles were basically a summary of the convention. Furthermore, she had some difficulty in distinguishing between Article D, Guiding principles and Article E, General obligations, and requested clarification of the distinction to be drawn between those two articles and of the implications of the guiding principles.

The CHAIR said that, as he understood the matter, the most important distinction to be drawn between Articles D and E was that Article D referred to guiding principles in the abstract, while Article E to the Parties.

Mr SZASZ (Tobacco Free Initiative) explained that Article E set out the general obligations incumbent on the Parties to the Convention, whereas Article D set out the principles on the basis of which the entire convention was drafted, and was intended to guide States in negotiating and adopting the convention. There was a progression in the text from the title through the preamble, definitions and objective to the guiding principles, which indicated with increasing detail the reasons why the convention was written as it was. The guiding principles helped to provide a framework for interpreting the convention and the general and specific obligations incumbent on the Parties.

Ms BALOCH (Pakistan) said that, in the light of that useful explanation, paragraph D.7 should not be considered as a guiding principle and should be placed within brackets. She would be submitting her suggestion in writing.

Mr BAHARVAND (Islamic Republic of Iran) said that it would be impossible to achieve the objectives of the convention without the participation of civil society and nongovernmental organizations since tobacco control could not be achieved by governments alone. Paragraph D.7 should be retained, and might even be worded more strongly.
Mr MBUYU MUTEBA (Democratic Republic of the Congo) endorsed the comments of the delegate of Pakistan and agreed that the guiding principles constituted the terms of reference whereas the obligations constituted the commitments of the Parties. Responsible participation by all – namely the State, the tobacco-producing companies and civil society – was essential in achieving the objectives of the convention, and he would be submitting a proposal text along those lines.

Mr ESPINOZA FARFAN (Guatemala) supported the paragraph and, for the purpose of strengthening the text, suggested replacing the word “elements” by “members” and “objective” by “objectives”.

Mr ADSETT (Canada) said that he was grateful for the elaboration on the paragraph provided by the Secretariat. He echoed the comments made by Iran and favoured strongly the retention of paragraph D.7 since experience had illustrated that civil society had a crucial role to play.

Dr CARIS (Chile) endorsed some of the views of the previous speaker and considered that the participation of all members of civil society, especially nongovernmental organizations was essential for the success of the convention. The participants of the international organizations would also be needed and should be mentioned.

Dr ARRIAGA WEISS (Mexico) considered it important to maintain the paragraph, especially since it reflected a proposal made by his delegation at the first session of the Intergovernmental Negotiating Body. He pointed out that in various parts of the Chair’s text the elements of civil society and nongovernmental organizations were requested to support efforts towards education and prevention as well as activities related to the treatment of tobacco-related problems. For example, the convention explicitly requested nongovernmental organizations to participate in tobacco-control strategies. The paragraph should therefore be retained as a guiding principle in Article D.

Dr BELLO DE KEMPER (Dominican Republic) supported the retention of the paragraph. Nongovernmental organizations played a fundamental role in society, for example in the issue of environmental protection, and their participation would also be important in the context of the framework convention under consideration.

Mr VARELA (Argentina) also acknowledged the importance played by civil society in tobacco control and considered it an essential element in achieving the objectives of the convention. Nevertheless, discussions in the working group and the Secretariat’s replies on the differences between guiding principles and general obligations had led him to conclude that paragraph D.7 did not constitute one of the former, although it should be retained in the convention. The most appropriate place for it was probably as a general obligation requiring the Parties to encourage and take into account all elements of civil society as essential players in achieving the objectives of the convention. He would submit a text in that regard.

Dr DÜRLER (Switzerland) said that he also was of the view that civil society, particularly the nongovernmental organizations, had a key role to play in the implementation of the convention. It was therefore essential that the paragraph be retained, and even strengthened. He would submit a text to that effect.

Mr EMMANUEL (Saint Lucia) expressed support for the spirit of the guiding principle and proposed that the word “active” be inserted before “participation” and that the word “objective” be placed in square brackets. An appropriate text would be provided.
Ms BALOCH (Pakistan) supported the Argentine proposal that paragraph D.7 should constitute a general obligation under which States would be required to ensure the participation of civil society for implementing the convention or achieving its objectives. The Constitution of her country contained principles of policy, used when an interpretation of that instrument was needed, which were somewhat similar to the guiding principles under discussion, and she therefore considered that paragraph D.7 was out of place among the guiding principles, since it did not fulfil such a function.

Dr JOHNS (South Africa) presented the main threads of the additional proposals that the Member States of the African Region wanted to make under “Guiding principles”. Those States considered that the issue of economic transition went beyond that reflected earlier in paragraph D.4 and wanted to see it broadened to include such considerations as access to markets and the provision of appropriate technology. The second proposal dealt in a general sense with the issue of political will and commitment at the highest possible level within Member States in order to make the convention a success. The next proposal dealt with the need to monitor the tobacco industry in order to assess the effectiveness of action taken in terms of the convention. The fourth additional proposal related to the development of a framework whereby intersectoral consultative bodies could coordinate the task of various governmental and nongovernmental organizations. Textual proposals amplifying the outline he had given would be submitted in due course.

Dr PALOMO ESCOBAR (El Salvador) endorsed the views expressed by the delegates of Argentina and Pakistan that participation by all sectors of civil society in achieving the objective of the convention was of such great importance that the text should constitute a general obligation rather than a guiding principle. An amendment to that effect would be submitted.

E. General obligations

The CHAIR called for comments on paragraph E.3.

Ms ROVIROSA PRIEGO (Mexico) said that her delegation was in favour of the deletion of paragraph E.3 since it was incompatible with Mexico’s commitments, especially in the framework of WTO and of its domestic legislation relating to foreign trade.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States as well as the associated countries of Bulgaria, the Czech Republic, Poland, Romania, Slovakia and Slovenia, which associated themselves with the statement, considered that the provision was important and that the existing text was not entirely adequate and could even be counter-productive. He therefore suggested that the choice of available standards should be widened. For example, the manufacturing countries’ domestic standards could be applied to their exports, or the importing countries’ domestic standards, or indeed, the future standards to be established under the convention. The key requirement, however, should be that the choice of the standard to be applied should be the one giving the highest level of public health protection. In European Community legislation, for example, in the absence of internationally agreed rules, Member States’ own product rules were applied to exports. That could change, however, if the convention established higher standards. A text addressing those concerns would be provided.

Mr DILEMRE (Turkey) said that there were currently some difficulties in determining global and uniform standards for international trade in tobacco products. Exports of tobacco or tobacco products could be processed in accordance with the standards of importing or exporting countries if there were no contrary provisions. The need for cooperation among countries to work on commonly accepted standards relating to tobacco products, as referred to in paragraph E.4, seemed to be an important issue for the next few years. Taking into account existing differences and willingness to
cooperate among countries, Turkey believed that imposing any restriction at the present stage would be unnecessarily binding and premature and therefore suggested the total deletion of paragraph E.3.

Professor GRANGAUD (Algeria), speaking on behalf of the countries of the African Region, approved the wording of paragraph E.3 but considered that the provision should be extended to packaging and therefore proposed that the words “and packaging” be inserted after “export”.

Dr DE C;CERES said that it was important to look to the future with regard to tobacco products, since the concept of tobacco control should apply to products for human consumption that were harmful to health but not to products that might be developed as pesticides or for other uses. She suggested that the text be amended to read: “The Parties undertake to adopt in a progressive and sustained manner legislative, executive and administrative measures to regulate and to prohibit the export of tobacco products intended for human consumption and entailing the risk of tobacco addiction, which do not conform to international public health standards.”

Dr DÜRLER (Switzerland) proposed the insertion of a new paragraph after paragraph E.3, reading as follows: “The Parties shall adopt and ensure satisfactory implementation of measures to protect public health policy from undue interference by tobacco companies, their subsidiaries and affiliated parties.” The proposal would serve as a counterpart to paragraph D.6, which would remain void without a corresponding obligation by the Parties.

Dr URDAL (Norway) said that her delegation supported the position of the European Community and proposed that paragraph E.3 be placed in square brackets.

Mr COSTI SANTAROSA (Brazil) said that his country, which favoured strong public policies of tobacco control, was concerned that provisions such as paragraph E.3 might discourage exporting countries from adopting those policies in the hope of retaining export benefits. It would therefore be advisable to place paragraph E.3 in square brackets for the time being.

K. Surveillance, research and exchange of information (resumed)

The CHAIR invited Working Group 2 to consider paragraph K.4, which had not been assigned to any working group.

Dr REDDY (India) proposed that paragraph K.4 be amended to read as follows: “Information to be exchanged pursuant to Article [INSERT] above shall be determined by and provided to the Conference of the Parties”, as the existing wording gave no indication of the nature of the data to be exchanged. A written text would be submitted.

B. Definitions

The CHAIR reminded the meeting that delegations had been invited to submit their representations on the words that required appropriate definition and to provide an approximate definition.

Ms BALOCH (Pakistan) reiterated her delegation’s request that the words “surveillance” and “monitoring” be defined.

Mr CASTILLO SANTANA (Cuba) said that, although his delegation had no specific proposal to make at the moment concerning Article B, it would give careful consideration to any proposals put forward and would indicate its conclusions thereon. He reiterated his delegation’s concern over
attempts to redefine the term “developing” and “developed” countries, which were of particularly long standing.

The CHAIR said that all requests concerning definitions would be taken into account by the Secretariat and all definitions could be amended at subsequent sessions of the Intergovernmental Negotiating Body or indeed on other occasions.

Statements by representatives of intergovernmental and nongovernmental organizations

Professor WARNER (World Bank), speaking at the invitation of the CHAIR, referred to paragraph 4 of Article D on guiding principles. He considered that the emphasis on financial assistance to aid the economic transition of tobacco growers and workers was misplaced. As successful tobacco control in developing countries would at first only slow up or stop growth in tobacco use, few, if any, tobacco farmers and workers would be displaced in the vast majority of countries. Tobacco consumption was likely to decline gradually, as it had in the developed countries that had already begun to achieve tobacco control success and normal attrition due to deaths and retirements would thus determine the transition of the work force. Financial assistance might, however, be warranted in the case of the few countries in which tobacco growing was important to employment. His main concern was that the guiding principles did not refer to the very real need for financial assistance that the developing countries would face as they attempted to implement and enforce the often costly provisions of the framework convention and the specific protocols. Technical and financial assistance would be required for carrying out annual, scientifically sound surveys and for establishing and enforcing restrictions on youth access. The guiding principles should, in his view, acknowledge that need for financial assistance to implement and enforce provisions of the framework convention and the protocols, rather than, or in addition to, the concerns reflected in paragraph D.4.

The CHAIR pointed out that the Member States of the African Region had submitted additional wording on that point.

Mr GUPTA (Commonwealth Medical Association), speaking at the invitation of the CHAIR, expressed concern with regard to the guiding principle set out in paragraph D.5, which in his opinion rendered public health profoundly vulnerable. As currently worded, the principle meant that the framework convention would be subordinate to international commercial agreements, including those negotiated through WTO, which could demand that tobacco control measures should be fully justified and should not restrict trade. Those responsible for negotiations both in the Intergovernmental Negotiating Body and in WTO should develop texts that reflected the reality of the existence of a structural conflict between trade liberalization and public health, particularly in the case of tobacco products. The benefits of liberalized trade – increased access to improved and cheaper consumer products – applied in reverse to cigarettes, as public health was harmed when cigarettes were made more efficiently and inexpensively and became more attractive and more readily available. Resolving the conflict between trade liberalization and public health must be a priority of the Intergovernmental Negotiating Body, yet the text given in paragraph D.5 did not resolve that conflict but rather exacerbated it. He therefore commended the wording proposed by the delegation of Thailand.

Ms WYKLE-ROSENBERG (Infact), speaking at the invitation of the CHAIR, expressed support for the negotiators of the framework convention. In April 2001, Infact (Network for Accountability of Tobacco Transnationals), Consumers International, World Vision International and Friends of the Earth International had submitted a joint letter to the Chair of the Intergovernmental Negotiating Body outlining some areas of concern raised by the draft text, in particular the absence of measures to protect national and international public health policies from the undue political influence of tobacco transnationals. The framework convention provided a major opportunity for making the
political activities of the tobacco transnationals and their front groups transparent, prohibiting inappropriate practices such as gift-giving and sponsoring trips for government officials and establishing a global monitoring mechanism so that those institutions were more accountable to governments and to people. She expressed deep concern at the fact that Philip Morris and other tobacco transnationals continued to interfere in public health policy at the national and international levels, even while the convention was being negotiated. Recent reports, including one from the WHO Committee of Experts on Tobacco Industry Documents, and national and regional studies from the Middle East and Switzerland, indicated that the tobacco transnationals respected no boundaries in seeking to shape public health policy for private gain. The annual revenue of Philip Morris was larger than the gross domestic product of many countries, including the Czech Republic, New Zealand, Pakistan and Peru. Even in the wealthiest countries, the tobacco corporations had an impact on governments’ ability to apply tobacco control legislation. A recent Infact survey among health advocates in 31 countries had shown that more than 70% of those countries had no laws requiring tobacco corporations to disclose even the most basic information about their lobbying activities or political contributions. In March 2001, health officials from 21 African countries had issued the Johannesburg Declaration stating their concern about the tobacco industry’s efforts to undermine tobacco control policies in Africa and had expressed support for including in the framework convention a global mechanism for monitoring the activities of tobacco transnationals. Infact supported governments that had proposed strengthening the framework convention by addressing the question of the political influence of the tobacco transnationals because it was central to the success of the convention and to the ability of governments to protect the public health of their peoples.

Ms ASSUNTA (Consumers International), speaking at the invitation of the CHAIR, said that her organization wished to stress the importance of preventing the tobacco industry from influencing tobacco control measures, which required a strong surveillance and monitoring system. In many countries the tobacco industry demanded to be consulted on and even to participate in tobacco control measures, a state of affairs which could only result in weakened and ineffective measures. Moreover, the tobacco companies claimed that they had a right to lobby on public health policies. Consumers International strongly believed that as part of the surveillance activities it should be explicitly stated that the industry should be excluded from all tobacco control initiatives and should disclose all politically motivated activities including political contributions. Past records had shown that nongovernmental organizations had been in the forefront of tobacco control activities in many countries particularly through monitoring, investigation and surveillance activities which had been valuable in exposing the tactics of the tobacco industry. She therefore hoped that Consumers International would be involved in monitoring and surveillance activities, with enhanced participation in overall tobacco control initiatives.

Mr BLANKE (International Union against Tuberculosis and Lung Disease), speaking at the invitation of the CHAIR, said that his organization strongly supported the Swiss proposal to reword Article E with a view to increasing the visibility of the tobacco industry’s influence in the policymaking process. The recent report by the WHO Committee of Experts on Tobacco Industry Documents had shown the astounding scale and sophistication of the secret channels of influence which the tobacco industry had used to undermine WHO’s past work, influences which would surely be used to sabotage the implementation of the framework convention. If the negotiations were to succeed, the framework convention must make fully transparent any tobacco industry influence in the implementation process. He encouraged Member States to include the strongest possible language in the text for that purpose.

Mr HAMMOND (International Union against Cancer), speaking at the invitation of the CHAIR, said that his organization and the World Heart Federation, which he was also representing, appreciated the opportunity to clarify the relationship between the framework convention and other international
agreements and fully supported the proposal to redraft the Guiding principle set out in paragraph D.5. The nations of the world were negotiating a framework convention on tobacco control because of the unique and lethal nature of that product, which normally killed one half of its long-term users. It should therefore be recognized that normal trade rules designed to promote expanded trade and its benefits did not apply to tobacco. The sovereign right of governments to protect the public health of their people through strong tobacco control measures should be established beyond doubt. The States drafting the framework convention should ensure that the guiding principle in paragraph D.5 was replaced by a text providing that the framework convention took precedence over other international trade agreements; that signatories of the framework convention were given the widest possible latitude to design and execute tobacco control measures tailored to the unique social and cultural sensitivities of their populations; and that States agreed not to challenge the tobacco control measures of other nations or support the export of tobacco products.

The meeting rose at 21:45.
WORKING GROUP 3
WORKING GROUP 3

FIRST MEETING

Tuesday, 1 May 2001, at 15:00

Chair: Mr I. SEDDIK (Egypt)

later: Mr R. FARRELL (New Zealand)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 4 of the Agenda (Documents A/FCTC/INB2/2, A/FCTC/INB2/3, A/FCTC/INB2/5, A/FCTC/INB2/DIV/1 and A/FCTC/INB2/DIV/6) (continued)

The CHAIR welcomed delegates to the first meeting of Working Group 3 and reviewed the working arrangements. He announced that Working Group 3 would discuss the following Articles: Conference of the Parties (M), Secretariat (N), Support by the World Health Organization (O), Reporting and implementation (P), Settlement of disputes (R), Compensation and liability (J), Development of the convention (S) and the Final clauses (T) (noting that no provisions for S and T had been drafted in the Chair’s text and the text was therefore to be formulated at a later session of the Intergovernmental Negotiating Body) together with aspects of Article D (Guiding principles paragraphs 3, 6 and 8) and of Article E (General obligations paragraphs 4 to 7). He suggested that, under Article B, on Definitions, a list comprising only those terms which warranted further discussion be handed to the Secretariat at the end of the week. The Secretariat would then prepare a draft for consideration at the third session of the Intergovernmental Negotiating Body.

Mr FARRELL (New Zealand, Co-Chair) said that the two Co-Chairs intended to work closely together and would both be present throughout all meetings. He proposed a sequential reading of the Chair’s text, drawing on, where necessary, draft elements from the first session of the Intergovernmental Negotiating Body. The aim was to produce a text that could be considered at the next session of the Intergovernmental Negotiating Body. He requested delegates to submit textual proposals in writing. Intergovernmental and nongovernmental organizations would be invited to make statements at the end of each meeting.

J. Compensation and liability

Mr KEBBON (Sweden) asked for clarification on the preparation of the draft for consideration at the third session of the Intergovernmental Negotiating Body.

Mr FARRELL (New Zealand, Co-Chair) emphasized that, for the preparation of a consolidated document, delegates must hand in written texts. It would take time to prepare that document, perhaps even continuing after the end of the working group session. A draft incorporating the proposed amendments would be distributed as soon as possible.

Mr YI Xianliang (China) said that it was not appropriate to start the discussion on Article J, in respect of which there were no clear provisions. The issue of compensation was delicate. Since the other two working groups had not completed their deliberations, discussion of Article J was premature. He suggested starting with Article L or M.
Mr KEBBON (Sweden) asked about the process of compilation and the responsibility for the composite text after the session. Would all three working groups adopt the same approach?

Mr FARRELL (New Zealand, Co-Chair) said that he would report back to the working group after discussing the matter within the Bureau.

Mr SNYDER (Canada) said that he had reservations about some of the texts used in earlier drafts of the convention, which were complex and might have more options than were strictly necessary. In order to achieve a better outcome it might be better to consider some other models in addition.

Mr BAHARVAND (Islamic Republic of Iran) said that he had been present at the meeting of the panel of legal experts convened by WHO in April 2001 at the request of the Intergovernmental Negotiating Body at its first session. His delegation’s view, expressed at that meeting, was that there was a simple legal issue of recognizing liability where harm had been inflicted. Compensation was one possible consequence of liability, at the discretion of the courts. International law already contained many provisions which were acceptable to all parties and which might apply to the issue of compensation and liability in the convention. It would not be difficult to draft a textual proposal regarding such provisions. The Islamic Republic of Iran would be honoured to host a regional meeting, or meeting of experts, to deal with Article J of the draft convention in order to discuss the issue and would present a textual proposal to be taken up by the Intergovernmental Negotiating Body at its third session.

Professor GIRARD (France) replying to the delegate of Sweden and speaking in his capacity as Co-Chair of Working Group 1, emphasized the aims of transparency and democracy in the proceedings, and said that the method adopted in Working Group 1 had been to distribute a list of amendments as complete as possible, 12 hours after the meeting. Working Group 2, and presumably Working Group 3, would do the same. The future procedure would be agreed at the meeting of the Bureau that evening.

Ms BALOCH (Pakistan) endorsing the comments made by the delegate of China said that it would only complicate the issue to discuss compensation and liability without a text. She was not happy with the output of the panel of legal experts contained in document A/FCTC/INB2/5 and did not want to see that report used as a basis for discussion. She asked which document was to be used and how the working group intended to proceed.

Dr REDDY (India) also endorsed the proposal by the delegate of China and others to defer discussion of Article J, and to proceed to discuss Article L.

Ms LAMBERT (South Africa) supported the suggestion not to discuss compensation and liability without a proper text, and therefore welcomed the suggestion by the Islamic Republic of Iran to convene a further meeting in order to draft an initial text.

Dr AL MULLA (Qatar) also endorsed the proposal by the Islamic Republic of Iran to hold a regional meeting, in order to provide useful background for the discussion. Echoing the comments by the delegates of China and India he preferred to postpone discussion of Article J.

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1 WHO Consultation on potential liability and compensation provisions for the framework convention on tobacco control, 9-10 April 2001, Geneva.
Professor ZELTNER (Switzerland) shared the view that discussion of Article J should be deferred and endorsed the proposal to hold a special meeting on the subject of compensation and liability. Nevertheless, such a meeting should not be organized at regional level, but should be open to all interested State Parties; Switzerland would be interested. The questions of compensation and liability were crucial to the convention and therefore warranted careful consideration.

Mr SANDAGE (United States of America) said that he failed to understand why compensation and liability should be treated differently; he did not see the need for a further special meeting on the subject. WHO had already brought together a panel of eminent legal experts from around the world, at considerable expense, which had drawn a number of conclusions, although they might not necessarily be acceptable to all Member States. He had come to the present meeting ready to discuss the matter, but if other delegations wished to defer it, he would have no objection. He would be in favour of holding discussions in an open-ended working group, but not on the basis of conclusions from a regional group.

Mr BAHARVAND (Islamic Republic of Iran) explained that the special meeting in question was a national initiative, although regional experts would be invited to participate. His country was preparing textual proposals to the convention for submission to the third session of the Intergovernmental Negotiating Body, on which all delegations would have the opportunity to comment.

Mr CASTILLO SANTANA (Cuba) said that from the report on the WHO Consultation on potential liability and compensation provisions for the framework convention on tobacco control contained in document A/FCTC/INB2/5 it was clear that the legal experts had not reached any agreement on the issue of compensation and liability, but had merely expressed different points of view on the subject. His delegation had specific views on the matter and reserved the right to outline them at a later stage, if it was decided to defer discussion, given the absence of a suitable text. It would be difficult to consider the matter without first defining the substantive issues at stake.

Mr TVEITAN (Norway) said that preliminary discussions on the matter would need to take place at some point. He therefore supported the proposal by the delegate of the United States of America to hold such discussions forthwith.

Mr VARELA (Argentina) agreed with previous speakers that it was difficult to discuss Article J without an appropriate text. Although the report on the meeting of the panel of legal experts was interesting, clearly it could not form the basis for the working group’s discussion. Since several delegations had indicated that they wished to make proposals on the subject, he suggested that they should submit them in writing to the Secretariat, which should distribute them as conference papers as soon as possible. On the basis of those texts, the working group could take up the matter at a subsequent meeting.

Professor ZELTNER (Switzerland), responding to the comments by the delegate of the United States of America, said that the problem with Article J was the absence of a text from the Chair. Discussion and proposal of appropriate amendments could take place only on the basis of such a text. Commenting on the proposal by the delegate of the Islamic Republic of Iran he supported the idea of an open-ended working group, recognizing the need for substantive discussion on the subject of compensation and liability. As to how to get out of the current procedural impasse, the working group had three basic options. First, on the basis of written input provided to the Secretariat, the Chair could prepare proposals over the next few days for discussion at a subsequent meeting. Secondly, the Chair could draft a text on the basis of proposals tabled during the current meeting. Thirdly, discussion on
the subject could continue outside the framework of the current session, as suggested by the delegate of the Islamic Republic of Iran.

Mr ADSETT (Canada) said that he was in favour of the second option. An exchange of initial views on the subject would be useful, on the understanding that debate would continue beyond the current meeting. With regard to the proposal by the delegate of the Islamic Republic of Iran, like the delegate of Switzerland, he believed that the group entrusted with the task of drafting a text should be open-ended in nature, although regional groups and individual Member States would be welcome to submit proposals.

Ms DJAMALUDDIN (Indonesia) observed that the working group had spent nearly one hour discussing procedural matters. In her view a substantive discussion could only be conducted on the basis of a text from the Chair and there had been plenty of suggestions made as to how that could be prepared. She therefore urged the working group to make headway in its work.

Mr SANDAGE (United States of America) said that he agreed with most of the comments made by the delegate of Canada. Given the sensitivity of the subject matter it was unreasonable to expect the Chair to draft a text without first hearing the views of Member States. When and where such a debate took place was not important.

The CHAIR said that there seemed to be consensus to defer consideration of Article J pending consultation on the subject with the Chair of the Intergovernmental Negotiating Body. A text from the Chair was required as a basis for discussion and Member States were invited to submit written proposals in that connection.

It was so agreed.

Mr Farrell took the chair.

L. Scientific, technical and legal cooperation

Mr ADSETT (Canada) said that the working group might consider incorporating some or all of the material in Article L under Article Q on Financial resources, given its relevance to that subject.

Mr KEBBON (Sweden), speaking on behalf of the European Union and its Member States, supported the Chair’s text for Article L, subject to one amendment: the addition of the phrase “and promoting the cessation of tobacco use” at the end of paragraph L.1(b)(i).

Ms BALOCH (Pakistan) said that given the importance of Article L in the convention its wording ought to be strengthened. She proposed that the phrase “in accordance with its national laws, regulations, practices and international obligations, and taking particular account of the needs of developing countries” should be removed from the introductory sentence of paragraph L.1 and incorporated as a separate clause elsewhere in the Article. Furthermore under subparagraph 1(a) a reference should be included to capacity building in developing countries through scientific and technical cooperation.

Mr VARELA (Argentina) said that, although on the whole he was satisfied with the text of Article L, the phrase “in accordance with its national laws, regulations, practices and international obligations” should be deleted, and the question of the needs of developing countries should be reserved for the end of the paragraph. He underlined the importance of subparagraphs (b)(ii) and (iii) concerning assistance to tobacco workers and growers, who would be affected by a dramatic
production in the demand for tobacco. He expressed interest in the proposal by the delegate of Canada regarding Article Q, since there was no reference to the financial aspects of cooperation in the article under consideration.

Mr ODOKO (Japan) said that, as currently worded, paragraph 2 implied that a new mechanism to promote and facilitate scientific, technical and legal cooperation would be established. He considered that existing mechanisms should be used for that purpose.

Ms ROVIROSA PRIEGO (Mexico) proposed that in subparagraph 1(c), the words “training programmes for appropriate personnel” should be replaced by “suitable and appropriate training programmes for specific personnel”. Under subparagraph 1(d), she proposed the addition after the word “equipment” of the words “and material”, in view of the requirements for written and video material to promote control of the use of tobacco. Those proposals would be submitted in writing.

Mr SANDAGE (United States of America) said that his country had always supported international cooperation in the scientific, technical and legal spheres and would endorse a provision that enabled each State Party to foster, in accordance with its national laws and practices and taking into particular account the needs of developing countries, the promotion of scientific, technical and legal cooperation to establish and strengthen national tobacco control programmes. However, like Japan, the United States was not in favour of setting up a new mechanism for that purpose and intended to submit an amendment along those lines.

Mr ADSETT (Canada), referring to subparagraph 1(b)(i), said that confining the treatment of tobacco dependence to building a strong legislative foundation was too restrictive. To broaden the scope of the provision, he proposed that it should be reworded to read: “building, as appropriate, a strong legislative, regulatory or programmatic foundation for the treatment of tobacco dependence”.

Mr CASTILLO SANTANA (Cuba) proposed that paragraph 1(b) and its subparagraphs should be replaced by the following: “provision of technical, scientific, legal and other expertise to establish and strengthen national tobacco-control programmes and policies, create a solid legislative foundation and assist in the treatment of tobacco dependence as well as other activities to achieve the objectives of the convention”.

Mr YI Xianliang (China), while broadly supporting the text of the Article, agreed with the Canadian delegate’s comments with regard to the reference to a strong legislative foundation in subparagraph 1(b)(i).

Dr HAMAD (Sudan) suggested that subparagraph 1(c) be reworded to read: “support for the establishment of appropriate training programmes for personnel or for those working in the area of tobacco control”.

M. Conference of the Parties

Paragraph M.1

Mr YI Xianliang (China) agreed with the substance of the paragraph, but questioned whether it would be necessary to hold a session of the Conference of the Parties every year. Perhaps a session could be held every year for the first three or four years, after which every two years would suffice; subsidiary bodies might meet every year. He would submit a text to indicate his delegation’s position.
Ms BENNETT (Australia) acknowledged the need for a Conference of the Parties but stressed that existing structures within WHO should be used to the fullest extent so that there was no unnecessary duplication of mechanisms.

Dr FARSHAD (Islamic Republic of Iran), speaking on behalf of the Member States of the Eastern Mediterranean Region, said that it might be premature to hold a detailed discussion on the Conference of the Parties as the obligations of the contracting Parties as enshrined in the convention and related protocols had still to be examined. The Conference requirements might change once the substance of the convention had been agreed. He suggested that other matters, such as financial resources, be examined in detail prior to discussion on the Conference.

Mr KEBBON (Sweden), speaking on behalf of the European Union, agreed that the elaboration of and final agreement on a set of provisions relating to institutions and implementation of the framework convention would be difficult until Parties’ substantial obligations under the convention had been identified more clearly. Although a general discussion could be held on questions relating to institutions and implementation at the current meeting, the European Union believed that the meeting should focus on making progress on the parts of the convention relating to the substantial obligations.

As to the point raised by the delegate of Australia, the European Union favoured establishing a mechanism that would ensure the effective functioning and implementation of the framework convention without being unnecessarily burdensome and costly. As far as possible, use should be made of existing mechanisms within WHO, thereby allowing all available resources to be devoted to concrete programmes, notably those dedicated to cooperation for implementation of the convention by developing countries.

The European Union supported the proposal that the Conference of the Parties should meet every year unless otherwise decided by the Conference, rather than when called upon by the Director-General. It also supported the proposal that the Conference should be convened in conjunction with the World Health Assembly (WHA), which would save valuable time and resources. He proposed that the text in square brackets be moved to the end of the paragraph so that the convening of the Conference in conjunction with the Health Assembly was not qualified by the phrase “unless otherwise decided by the Conference”.

Ms MACMILLAN (New Zealand) agreed that there was a need for a continuing Conference of the Parties, which would play a valuable role in the regular review of the tobacco control programmes set up under it. She was not convinced, however, that an annual meeting would be necessary; she would prefer the wording to remain general, indicating that the first Conference should take a decision on the matter.

Dr AL-LAWATI (Oman) agreed with the delegates of China and New Zealand that it might not be necessary to hold a Conference every year. He also agreed that the first Conference of the Parties should decide on the matter. However, he was not in favour of convening the Conference in conjunction with the World Health Assembly, and proposed that the text in square brackets be deleted.

Mr SNYDER (Canada) agreed with earlier speakers on the importance of defining institutions in a way that would both further the convention and be cost-effective, relying to the extent possible on existing institutions such as WHO. On a legal note, he noted that the Conference of the Parties would be a separate institution and that an agreement between the Conference and the Organization in regard to the sharing of common services would be needed. He concurred with the delegates of China and Oman that the Conference would not necessarily meet every year or in conjunction with the World Health Assembly; those were decisions for the first Conference to take.
Mr SANDAGE (United States of America) associated his delegation with the views expressed by the delegates of China, Australia, New Zealand, Oman and Canada. While he supported the convening of a Conference of the Parties, it was not clear that it would be necessary to convene the Conference on an annual basis. The Conference would be voluntarily funded and costs would need to be evaluated before a commitment to meet was given. He asked whether WHO could provide an estimate of the costs of convening such a meeting, before any decisions were taken on the matter.

Ms ROVIROSA PRIEGO (Mexico) agreed that a Conference of the Parties should be established as it would be the appropriate mechanism to evaluate application of the provisions of the convention. She concurred with the delegate of Canada that the Conference of the Parties would be an independent legal entity; thus an arrangement would need to be reached with WHO for convocation and for logistic support. The financial implications of sessions of the Conference would also need to be considered.

Mr VARELA (Argentina) supported the idea that a Conference of the Parties be established with meetings convened annually. For reasons of economy and practicality, it seemed appropriate to hold the Conference in conjunction with the World Health Assembly. He therefore suggested that the square brackets be removed. He also proposed that the phrase “unless otherwise decided by the Conference” be deleted, since it weakened the first part of the paragraph and amounted to saying that meetings would not be held annually, but whenever the Conference wished.

Mr ODOKO (Japan) did not object to the establishment of a Conference of the Parties once the convention had entered into force. However, the text referred to the convening of the first session not later than one year after the entry into force of the convention. The timing of the first session should be decided in the light of the provisions governing entry into force. There would need to be time for sufficient ratifications and accessions to enable a substantial number of contracting parties to participate.

Dr GHANEM (Egypt) said that he accepted the establishment of a Conference of the Parties. In addition to the reference to annual sessions of the Conference, provision should be made for the convening of extraordinary sessions if circumstances so warranted.

Professor ZELTNER (Switzerland) concurred with the need to establish a Conference of the Parties. However, he agreed with previous speakers that the convening of a session every year was not required. In line with the comments of the United States’ delegate, he emphasized that the sessions should be held in a cost-effective manner and it should be clear which body was to make decisions on the financing of the Conference. He asked which body would decide on the financing of the secretariat and for estimates of potential costs. It appeared that the provision of services by the WHO Secretariat to the Conference would be funded by voluntary contributions. He asked for information on the mechanisms for cooperation between WHO and the Conference.

Paragraphs M.2 and M.3

Dr SANGALA (Malawi), supported by Mr BASSE (Senegal), said that, in the view of the Member States of the African Region, the second sentence of paragraph M.3 should be deleted. The Conference of the Parties should have the same rules of procedure as the World Health Assembly.

Mr SNYDER (Canada) said that the Conference of the Parties would be a different institution from the World Health Assembly. Thus, although it might subsequently find that the latter’s Rules of Procedure were appropriate, it should not be bound by them from the outset. The rules governing access by nongovernmental organizations, for example, might be different for the two bodies. His
delegation would favour the deletion of the first sentence and the retention of the second, including the square brackets currently in place.

Mr YI Xianliang (China) agreed that the Conference of the Parties should have its own rules of procedure. The fact was, however, that those of the Health Assembly were the most appropriate and could be adopted at the first session of the Conference. He would submit a text to that effect.

Mr KEBBON (Sweden), speaking on behalf of the European Union, said that the rules of procedure and the financial rules should be adopted by the Conference by a two-thirds majority, not by a simple majority. The Legal Counsel might be invited to consider whether “two-thirds” related to all Parties to the convention or to the Parties present and voting. Given the major differences in function and structure between the convention and the World Health Assembly, the European Union doubted the viability of applying the Health Assembly’s Rules of Procedure to the Conference of the Parties. However, they could be used in drafting as a point of departure.

Ms DJONEVA (Bulgaria) supported the European Union’s position.

Ms MACMILLAN (New Zealand), supported by Ms BALOCH (Pakistan), said that, since the Conference of the Parties would comprise sovereign Member States, it should adopt its own financial rules and rules of procedure, even though there was room for considerable synergy with the Health Assembly.

Mr VARELA (Argentina) considered that the first sentence of paragraph M.3 should be deleted. No decision need yet be made about the square brackets in the second sentence. As for the point concerning access by nongovernmental organizations to the Conference of the Parties, the solution would be to remove the square brackets round paragraph M.5; as an integral part of the convention, the provisions of that paragraph would take precedence over any rules of procedure, thus safeguarding the role of such organizations.

Ms BENNETT (Australia) agreed with previous speakers that the Conference of the Parties should adopt its own rules of procedure and financial rules, wherever possible by consensus. Her delegation would submit a text containing that concept, while retaining the square brackets for the time being in respect of majority voting when a consensus could not be achieved.

Mr SANDAGE (United States of America) agreed with the delegates of New Zealand and Sweden concerning the rules of procedure and financial rules, which should be adopted by a two-thirds majority vote.

Ms KULICHENKO (Russian Federation) said that the Conference of the Parties should have its own rules, being a distinct entity. However, she would prefer their adoption to be by a simple majority.

**Paragraph M.4**

Dr REDDY (India) said that substantive provisions, such as those relating to the implementation of mechanisms to provide financial assistance to developing countries, should be incorporated into the Chair’s text as they were developed. Subject to that understanding, he was in general agreement with the provisions of paragraph M.4. Subparagraph (c), however, should be deleted, since the coordination of measures between two or more Parties was the function of the secretariat and should not be imposed on the Conference of the Parties.
Ms BALOCH (Pakistan) said that, as the delegate of the Islamic Republic of Iran had pointed out, there was much that could not be decided until the obligations of States Parties had been defined. She agreed with the delegate of India that subparagraph (c) should be deleted. Secondly, it was too early to speak of protocols to the convention; square brackets should therefore be placed round the words “and its protocols” in the second line of the paragraph. Lastly, there would be a need for a standing committee or review body to monitor implementation of the convention. She would make a proposal to that effect in due course.

Mr KEBBON (Sweden), speaking on behalf of the European Union, said that while the Conference of the Parties could promote the mobilization of resources to support the implementation of the convention, the task of raising funds for secretariat services should not be borne by the Conference. Rather, funds should be made available under the regular budget of WHO. He therefore proposed that in subparagraph (j) the phrase “to support secretariat services pursuant to Article [Secretariat] and” should be deleted. His other proposed amendments were less crucial. First, in subparagraph (b), “by the most cost-effective and appropriate means” should be inserted after “information”. Secondly, in subparagraph (e), “harmonization” should be replaced by “development and evaluation”. Thirdly, in subparagraphs (k) and (m), the phrase “and its protocols” should be inserted after the word “convention”. Lastly, in subparagraph (m), the phrase “as well as all other functions assigned to it thereunder” should also be deleted, since paragraph 4 should in any case contain an exhaustive list of functions.

Ms DJAMALUDDIN (Indonesia), speaking on behalf of the Member States of the South-East Asia Region, endorsed paragraph M.4 in general but expressed reservations about subparagraph (k). It was a doubtful provision, both in terms of cost effectiveness and because it would be appropriate to empower WHO to carry out monitoring and evaluation functions under the convention.

Mr ADSETT (Canada) questioned whether the Conference of the Parties should examine the obligations of the Parties to the protocols unless the latter specifically requested that. He therefore favoured the deletion of the phrase “and its protocols” in the opening sentence of paragraph M.4 and in subparagraphs (e), (d), (g), (h), (i), (j) and (l). He suggested that phrase in square brackets in the opening sentence of paragraph M.4 should be moved to Article S, where it was more relevant. In subparagraph (g), the current wording did not allow for a broad enough range of sources of information. He therefore suggested that it should be amended to read: “assess the implementation of the provision of this convention by the Parties, on the basis of information made available to it, including that provided by the Parties and in accordance with guidelines to be established by the Conference of the Parties”. In the interest of transparency, subparagraph (h) should be amended to read: “consider, adopt and publish regular reports on the implementation of the convention and arrange for the distribution of such reports to all Parties”. Finally, in subparagraph (i), “necessary for the implementation of the Convention and its protocols” should be replaced by “related to the implementation of the Convention”. He had noted the comments made on subparagraph (j). The mobilization of the necessary financial resources was an important question that would require further consideration at some point.

Mr YI Xianliang (China) suggested, first, that in subparagraph (a), the word “periodically” was too vague: a more specific timeframe should be set out and he would submit a written proposal to that end. Also the word “implementation” should be followed by the words “particularly in developing countries”. A similar change should be made to subparagraph (j): “implementation” should be followed by the words “by developing countries”. He endorsed the proposal by the delegates of India and Pakistan that subparagraph (c) should be deleted. In subparagraph (e), “strategies, plans” and “legislation” should be deleted. Lastly, he endorsed the views of the delegate of Sweden regarding
subparagraph (j): in addition to the phrase mentioned by that delegate, he proposed that “in accordance with Articles [Financial Resources: Reporting and Implementation]” should be deleted.

Mr BASSE (Senegal), speaking on behalf of the Member States of the African Region, said that the Conference of the Parties should encourage coordination between Parties and that that was the effect of subparagraph (c). The paragraph should therefore be retained and the square brackets removed. The same applied to subparagraph (e), which should give more prominence to legislation and should therefore be amended by replacing “appropriate strategies, plans, programmes, policies, legislation and other measures” by “legislation and other strategic, planning, programme and policy measures”. He would submit written proposals to that effect. Lastly, the square brackets should be removed from subparagraph (k). Part of the mandate for the Conference of the Parties was to ensure the implementation of the convention; for that they might need a subsidiary body, and the provisions should offer the necessary flexibility to allow for that.

Mr ODOKO (Japan) endorsed the earlier concern expressed about the use of “and its protocols” in paragraph M.4. The protocols would be an important part of the convention, whose negotiation and adoption should be open also to Members of WHO that were not Parties to the convention. Amendment of the convention and annexes was a different matter, to be dealt with by the Parties to the convention alone. He expressed strong reservations about the provisions contained in subparagraphs (a) and (g). He was not sure whether the Conference of the Parties should be assigned such a strong regulatory role, and was concerned about subsequent measures it might take after identifying non-compliance.

Dr SEKABARAGA (Rwanda) said that he did not fully agree with the previous speaker since it was essential to monitor compliance by Member States acceding to the convention. If that task was not performed by the Conference of the Parties, it would be necessary to establish a separate regulatory body to do so if the convention was not to become a dead letter. Subparagraphs (a), (g) and (h) used the terms “periodically examine”, “assess”, and “consider and adopt regular reports on”, respectively. It was important to be precise about the periodicity of the assessment in order to encourage compliance with the convention.

Dr GHANEM (Egypt) expressed concern that the provision of information by nongovernmental organizations for monitoring purposes, as indicated in subparagraph (1), might give rise to problems and proposed that the words “and nongovernmental” should be deleted.

Dr HAMAD (Sudan) said that the Conference of the Parties could not possibly carry out all the duties set forth in paragraph M.4 because it would not be in permanent session; a permanent secretariat or executive body would be required for that purpose and to prepare for meetings of the Parties, as proposed earlier by the delegate of Pakistan.

Mr ARRIAGA WEISS (Mexico) stressed the importance of subparagraph (g), which would not only enhance the commitment involved in accession to that instrument but would provide guidelines for any necessary adjustments. With regard to subparagraph (d), the tasks involved would not arise immediately when the Conference of the Parties had been established but would rather develop as indicators were identified that would enable comparisons. A list of indicators would need to be drawn up, as indicated by his delegation at the first plenary meeting.

Mr CASTILLO SANTANA (Cuba) said that it would have been preferable for the discussion on the role of the Conference of the Parties to have taken place at a later stage. He agreed with previous speakers that care should be taken in referring to “protocols” in the provisions of the convention. He supported the deletion of subparagraph (c), or at least the retention of the square brackets.
Subparagraph (1) should be deleted, as should subparagraph (e) since it dealt with matters contained elsewhere in the text. Having heard various comments on subparagraph (k), he doubted its usefulness and stressed that subsidiary bodies should be established only if essential. UNCTAD should be mentioned in subparagraph (i), because of its role in analysing economic impacts of implementation of the convention especially on the developing countries.

Professor AUNG (Myanmar) proposed that subparagraph (k) should be amended to read “establish a subsidiary body to monitor implementation of the Conference of the Parties”.

Dr NOVOTNY (United States of America) noted that Working Group 3 had the task of considering paragraphs 4 to 7 of Article E, General obligations, and indicated that his delegation would submit a further paragraph along the same lines.

Paragraph M.5

Mr BASSE (Senegal), speaking on behalf of the Member States of the African Region, proposed that the text should remain as it stood.

Mr SNYDER (Canada) supported that proposal and suggested that the square brackets should be removed.

Ms BALOCH (Pakistan) disagreed, stating that it should be up to the Conference of the Parties to draw its own rules of procedure and representation. The paragraph should be deleted.

Dr REN Minghui (China) said that if entities not Parties to the convention were to be listed in order, non-party States should appear first, followed by specialized agencies of the United Nations, regional economic integration organizations – if they were deemed necessary, which he questioned – and then nongovernmental organizations.

Mr SOLARI (Argentina) supported the deletion of the square brackets; the observer status proposed in the text should be part of the framework convention.

Mr BATIBAY (Turkey) also supported deletion of the square brackets, adding that other relevant, competent international organizations not under the United Nations umbrella, such as Interpol and the World Customs Organization, should be mentioned in the text. He therefore proposed that the words “other competent international organizations” should be inserted after “specialized agencies of the United Nations”.

Mr TADEVOSYAN (Armenia) stressed the importance of extending representation to nongovernmental organizations and States not Parties to the convention.

Ms ROVIROSA PRIEGO (Mexico) and Mr ESPINOZA FARFÁN (Guatemala) supported deletion of the square brackets. United Nations organizations, regional economic integration organizations and nongovernmental organizations with relevant experience could make a positive contribution to the meetings of the Conference of the Parties and strengthen the convention.

Mr SZASZ (Tobacco Free Initiative), responding to earlier questions about financial implications, said that financing the costs of international bodies created by treaties adopted by the United Nations were normally either assessed on the Parties concerned or borne by the United Nations regular budget. The core functions of an international organization were almost always financed from assessed contributions, while other activities, such as technical support, might be funded by voluntary
contributions. In the case of treaty bodies or other separate bodies established by the General Assembly, costs were normally met by the Parties themselves rather than the United Nations as a whole; environmental and disarmament bodies were an example. In the case of human rights bodies, costs were sometimes borne by an assessment on all the parties, sometimes by the United Nations, and sometimes through a sharing arrangement. Because of some past delays in payments, the General Assembly had recently proposed amendments to some human rights instruments in order to transfer all the cost-bearing to the United Nations – simpler arrangement, particularly since most United Nations Members were Parties to the treaties concerned.

Dr BETTCHER (Tobacco Free Initiative), referring to the convening of sessions of the Conference of the Parties, said that the costs would depend on factors such as whether they were held in conjunction with a World Health Assembly, whether special sessions would be required, the number of parties to the convention and whether the United Nations’ practice of providing financial support for developing countries would apply for sessions and special sessions.

The meeting rose at 17:50.
DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 4 of the Agenda (Documents A/FCTC/INB2/DIV/1, A/FCTC/INB2/2 and A/FCTC/INB2/3) (continued)

The CHAIR said that the textual amendments submitted following the working group’s previous discussion of Articles L and M would be reflected in document A/FCTC/INB2/WG3/Conf.Paper No.1. He reminded delegates that textual proposals should be submitted on the appropriate form and handed to the Secretary of Working Group 3 no later than 30 minutes after the end of that evening’s meeting.

At the previous meeting, two questions raised had been discussed subsequently between the Chair of the Intergovernmental Negotiating Body and the Co-Chairs of the working groups in order to define a unified approach. The first question concerned procedure with the text. Textual amendments submitted would be reproduced in the form of a Conference Paper, to which delegates could make any relevant corrections. The Co-Chairs and the Secretariat would incorporate those amendments into the Chair’s text but without making any judgement on the content of the amendments. Some, but perhaps not all, of the amended Articles would be distributed by the fourth meeting of the working group. The Chair of the Intergovernmental Negotiating Body had indicated that he did not intend to produce a new Chair’s text after the present session. The text would henceforth be developed by the delegations through the intergovernmental process.

J. Compensation and liability (continued)

The CHAIR recalled that the second question concerned Article J (Compensation and liability) for which no text as yet existed. Textual proposals would be welcome, including input from any regional or group meetings that might be held by delegations later on the topic. Discussion of that input would need a subsequent meeting, possibly immediately before or during the third session of the Intergovernmental Negotiating Body, and within the framework of Working Group 3. Proposed texts should be forwarded to WHO well in advance of the third session.

Dr BENAVIDES COTES (Colombia), speaking also on behalf of the Group of Countries of Latin America and the Caribbean (GRULAC), said that the Group considered that Article J should not be given different treatment from the other articles but should be discussed at the same level and in the same way as all other aspects of the framework convention, in accordance with the accepted methods of work of the Intergovernmental Negotiating Body.

Dr AL-LAWATI (Oman) expressed concern that texts put forward by delegates following the discussions of the previous day might be biased in favour of their national interests and lead the debate along a different path. He did, however, support the proposal made by the delegate of Iran in the first
meeting. It was also important that deadlines for submission of texts allowed time for incorporation in the Chair’s text before the third session of the Intergovernmental Negotiating Body.

Mr VARELA (Argentina), supporting the statement made by the delegate of Colombia on behalf of GRULAC, requested clarification concerning the proposed meeting to be held either before or during the third session of the Intergovernmental Negotiating Body and the justification for treating Article J differently from the other equally controversial articles.

The CHAIR said that the Chair of the Intergovernmental Negotiating Body would give consideration to the timing of the meeting, which would clearly be an integral part of the third session.

Dr HETLAND (Norway) welcomed the Chair’s clarifications on procedural matters, which corresponded to his delegation’s position on the matter.

Ms BALOCH (Pakistan) said that her delegation considered that Article J should not be given any special treatment and that the discussion should be postponed until a text was available. She supported the Chair’s suggestion.

Dr BELLO DE KEMPER (Dominican Republic) considered that any meeting held should take place during and not before the third session of the Intergovernmental Negotiating Body, as it was important to ensure the presence of all Member States.

Ms BENNETT (Australia) supported the proposed process for receiving textual proposals from delegations and acknowledged the need for a clear deadline for submission of texts sufficiently in advance of the opening of the third session of the Intergovernmental Negotiating Body to enable delegations to brief themselves for that meeting. She requested clarification concerning the proposed separate meeting of the working group which, if held before the third session of the Negotiating Body, would still apparently be part of that session.

The CHAIR said that, although it had been proposed to hold such a meeting, there could clearly be no separation between that meeting and the Intergovernmental Negotiating Body process.

Dr AUNG (Myanmar) stressed that the discussion on Article J should be part of the third session of the Intergovernmental Negotiating Body.

Mr CASTILLO SANTANA (Cuba), supporting the statement made on behalf of GRULAC, said that his delegation considered that all Articles should be dealt with in the same manner and in the same place. He expressed concern about a proposed separate meeting. Discussions concerning Article J should remain within the framework of the Intergovernmental Negotiating Body and should be accessible to all delegations, with timely distribution of the relevant documentation.

Mr YI Xianliang (China) noted a certain divergence of views, with proposals on the one hand to hold a special meeting to discuss Article J and on the other hand to request delegations to submit proposals in writing before a certain date. He requested clarification concerning the date of such a meeting and whether that meeting would indeed be an integral part of the third session of the Intergovernmental Negotiating Body.

The CHAIR, noting the concern expressed by several delegations, said that it was his understanding that any discussion on Article J would be integrated in the third session of the Intergovernmental Negotiating Body. He would request the Chair of the Intergovernmental
Negotiating Body to set reasonable deadlines for receiving texts so as to enable delegations to consult their governments before the debate.

Mr BAHARVAND (Islamic Republic of Iran) supported the Chair’s proposal, provided that discussions were held within the process of the third session of the Intergovernmental Negotiating Body. The question of compensation and liability required in-depth discussion which could make a valuable contribution to public and private international law. He suggested that it was not necessary to establish a new deadline for submission of texts, as proposals could be submitted no later than half an hour after the closing of the meeting of the working group.

The CHAIR said that although amendments could be submitted immediately after the meeting, appropriate arrangements should be made for delegations and groups wishing to provide input for a basic text of Article J.

Dr TATA (India) said that discussion of Article J would be impossible without a basic text and that text could not be produced without discussion. He therefore suggested that delegations submit proposals immediately after the present meeting of the working group; regional meetings might then be held and the results of the discussions forwarded to the Secretariat, which would subsequently be responsible for preparing a draft provision on compensation and liability, for distribution to delegations well in advance of the third session of the Intergovernmental Negotiating Body.

Mr SANDAGE (United States of America), supporting statements of previous speakers that Article J be treated like all other articles in the framework convention, said that he had difficulty in accepting the suggestion put forward by the delegate of India. He therefore supported the Chairman’s suggestion.

Mr AISTON (Canada) endorsed the statement made by the delegate of Colombia on behalf of GRULAC. He recalled that certain clarifications were to be made as to how the questions raised concerning scientific, technical and legal cooperation at the previous day’s meeting were to be handled.

Dr BELLO DE KEMPER (Dominican Republic) did not favour the holding of the proposed meeting on Article J before the third session of the Intergovernmental Negotiating Body. The presence of Member States at such a meeting was important, as had been seen at the meeting of legal advisers on the question of liability and compensation following the first session of the Intergovernmental Negotiating Body at which the contributions from the legal experts had proved most useful. Article J should be dealt with as an integral part of the third session of the Intergovernmental Negotiating Body.

Ms BALOCH (Pakistan) said that, on account of the divergence of views between the delegates of India and the United States of America, the Chair of the Intergovernmental Negotiating Body should be requested to present a draft text on compensation and liability in the light of input from Member States on that matter. She had no objections to raise concerning the timing of the proposed meeting on Article J.

Dr AL-LAWATI (Oman) did not accept that all articles had to be treated in the same way: Article J was different from the other articles, as there was no written text upon which to base the discussions.

Mr SANDAGE (United States of America), in response to the delegate of Pakistan, said that the Chair of the Intergovernmental Negotiating Body was not in a position to prepare a text because there
had been no substantive debate at the present session. If no such debate were held at the present session, he would be against producing any text.

Dr TATA (India) pointed out that the Chair’s text relating to the other articles had been prepared on the basis of Member States’ discussions. In the present case, there was no draft text and the Chair would therefore have to prepare a text based on Member States’ suggestions, otherwise any further discussion would be impossible.

The CHAIR said that he would convey the views expressed in the meeting to the Chair of the Intergovernmental Negotiating Body for further reflection. He noted that in the discussion the notion of individual contributions from Member States through the Secretariat had not been ruled out and that there was general agreement that the discussion on Article J would have to be part and parcel of the third session of the Intergovernmental Negotiating Body.

N. Secretariat

Ms DJAMALUDDIN (Indonesia), commenting on Articles N and O as being interrelated, observed that the role of WHO and the secretariat of the convention was limited to routine administrative functions, which gave the impression that WHO’s work would be over once the framework convention on tobacco control was put into effect. High commitment and more responsibility of WHO should be part of the implementation stage, although not in the operational aspects, which were the responsibility of Member countries.

WHO’s stimulating and catalytic role should be part of the framework convention to ensure continuity of commitment and the dynamic of the process, as well as to prevent widening the gap between Member countries. That should be clearly described in the convention and indeed the issue could not be separated from the objective as stated in the Chair’s text.

She expressed surprise that the ultimate objective was only to provide a framework convention on tobacco control and not directly to reduce the prevalence of tobacco use. That unclear definition of the objective appeared to give WHO a low-profile role. Her delegation, supported by the other Member countries in the South-East Asia region, therefore proposed to rephrase the ultimate objective in a form of words that would be submitted in writing.

Mr KEBBON (Sweden), speaking on behalf of the European Union, Poland and Turkey, said that the text under consideration well reflected the comments made at the first meeting of the Intergovernmental Negotiating Body. The proposed text stipulated that the secretariat of the convention should be provided by WHO. It was not necessary to specify in any greater detail in the convention how WHO should organize that function.

In line with what had been suggested in connection with the chapter on the Conference of the Parties, the European Union and its Member States, with Poland and Turkey, wanted to make it clear that WHO should make the necessary funds available for the secretariat services. He consequently proposed the addition at the end of paragraph N.1 of the words: “, which should make the necessary funds available”.

Ms O’SHEA (Canada) observed that as the Conference of the Parties was a separate entity from WHO, it would be sensible to have an agreement between the two institutions.

Mr SANDAGE (United States of America) said that, while paragraph 2 adequately set forth the secretariat functions, it was too early to decide, as provided in paragraph 1, that WHO should provide the secretariat of the convention. Since there were good arguments for and against, the option should be kept open until later in the process.
Dr SOVINOV; (Czech Republic) said that her country also wanted to be associated with the statement made on behalf of the European Union, Poland and Turkey.

Ms BALOCH (Pakistan), expressing agreement with the delegate of the United States of America about the prematurity of a decision about the secretariat, asked for clarification about the kind of support being sought from WHO in paragraph 1. Would it be a separate secretariat or an organ within WHO?

Dr AUNG (Myanmar) said that, in common with Indonesia, his delegation felt that the technical and administrative support of WHO would still be required in the implementation of the convention and its protocols.

Dr BETTCHER (Tobacco Free Initiative), responding to the delegate of Pakistan, said that his interpretation of paragraph 1 was that the secretariat of the convention would be provided by an organ, as yet undefined, within WHO.

O. Support by the World Health Organization

Ms DIALLO (Senegal), speaking on behalf of the Member States of the African Region, pointed out the dialectic relationship set out in the Article between the Conference of the Parties and WHO, with the possibility not just of WHO providing support to the Conference of the Parties but also of either body taking initiatives to strengthen cooperation in the implementation of the convention. Since that covered the nature and scope of relations between the two structures, the Member States of the African Region suggested that the title of Article O should be “Relations with the World Health Organization”, and that the words “and its partners” be inserted after “the World Health Organization” in the first sentence of paragraph O.1.

The CHAIR asked for a written proposal to that effect.

Ms BALOCH (Pakistan) said her delegation was unclear about the double relationship and expressed concerns about possible duplication. If the secretariat of the convention was to be an organ within WHO making all necessary arrangements for implementation of the convention, what kind of extra support would be needed from WHO?

Mr SNYDER (Canada), expressing agreement with the delegates of Pakistan and the United States of America, said that in terms of substance there was a good argument for making full use of the services and expertise of WHO. In terms of process and legalities, however, the Conference of the Parties and WHO were two separate organizations. In the context of the convention, therefore, there would have to be a formal agreement between the two.

Mr BAHARVAND (Islamic Republic of Iran) said that he shared the concerns just expressed by the delegates of Canada and Pakistan. His delegation was unclear about the kind of relationship envisaged with the decision-making organs of WHO and the financial implications. If the secretariat of the convention was to be an organ with WHO, which department would be concerned? He agreed with the delegate of the United States of America that the issue required more thought.

Mr CASTILLO SANTANA (Cuba), seeking clarification on paragraph 2(a) of Article N, said that his delegation felt that it was premature to talk about subsidiary bodies or prescribe their future existence. Since there was no alternative text for that subparagraph, his delegation had taken note of the views expressed and was reserving the right to revert to the issue at a later stage when there was more certainty about where and for what purpose subsidiary bodies were going to be established.
Mr SANDAGE (United States of America) said that the whole relationship of the framework convention and its Conference of the Parties with WHO was potentially complicated. The text appeared to assume that the convention would remain somehow yoked or even subsidiary to WHO. Such a decision needed great care since, as his delegation had consistently maintained, the framework convention could only succeed as a member-driven process and not one completely dependent upon WHO. He therefore requested that the paragraphs under Article O be placed in square brackets.

Mr KEBBON (Sweden), speaking on behalf of the European Union and its Member States, in addition to Bulgaria, the Czech Republic, Poland, Romania and Turkey, expressed support for the text as proposed. However, it needed to be made clear that paragraph 2 concerned the provision of technical cooperation in achieving the objective of the convention or in connection with questions falling within its mandate arising out of the application of the convention and its protocols. He therefore proposed insertion of the words “on this matter” after “proposals”.

Dr SANGALA (Malawi) agreed with the statement by the delegate of Senegal, but argued that the words “technical and financial” needed to precede “support” in the second sentence of paragraph 1.

Mr VARELA (Argentina) underlined the complexity of the question. First, there was a need to clarify the relationship between the convention and its subsidiary bodies, especially the Conference of the Parties and WHO, bearing in mind that the convention represented an initiative under Article 19 of the Constitution of WHO. The extent to which the Conference of the Parties would be an independent body and its subsequent relationship to WHO were not clear. What was clear was that the convention could not oblige WHO to provide technical cooperation; paragraph 1 stated merely that WHO may be called upon to do so. The text, as several other delegates had observed, needed more careful analysis.

Mr ARENALES FORNO (Guatemala) said that the Conference of the Parties should be able to request technical and scientific cooperation from WHO and other specialized United Nations agencies. That possibility would be of great importance for the implementation and follow up of the framework convention.

Mr OGANOV (Russian Federation) suggested the addition, at the end of paragraph 1 after the word “resources”, of the words “and also to assist in the quest for extrabudgetary resources for countries in need”.

Dr YACH (Executive Director), responding, said that, since it was first necessary to decide whether WHO would provide the secretariat of the convention, it was premature for the Organization to indicate how it should ensure independence between that function to the Conference of the Parties and its ongoing mandate in tobacco control. Once that decision had been taken by Member States, WHO could seek their advice and guidance on how such independence could be guaranteed. He drew attention to the fact that, within the United Nations system, WHO chaired, at the request of the Secretary-General, the United Nations Ad Hoc Interagency Task Force on Tobacco Control, which brought together FAO, the World Bank, IMF and many other United Nations bodies.

Mr BURCI (Office of the Legal Counsel), in order to clarify some of the institutional issues raised, said that it had become common practice for treaties adopted by the United Nations to set up a Conference of the Parties. It had also become common practice, for conventions adopted by international organizations, to entrust certain secretariat functions to the secretariat of the organization that had sponsored the convention. That was why WHO had been mentioned in Article N. The Conference of the Parties would be institutionally distinct from WHO because it would be established by an international treaty rather than by the Health Assembly. But the Conference of the Parties would
not be a fully fledged international organization with a separate international personality. As Canada had noted, an international treaty cannot automatically create obligations for WHO. It would therefore be necessary for the Health Assembly to authorize WHO to perform functions assigned to it by the convention. Under Article N those functions were basically administrative but they might also include recommendations to provide technical assistance to States. He observed that the United Nations General Assembly had authorized the Secretary-General to perform secretariat functions for treaties adopted under the aegis of the United Nations. Such a procedure would give a solid legal basis for WHO to perform secretariat functions for the Conference of the Parties and avoid any contradiction from a policy point of view. With regard to financing, the normal practice would be to use assessed contributions on the Parties to pay for the tasks performed by WHO for the Conference of the Parties, but funding under the regular budget of the sponsoring organization and the sharing of expenses were alternatives that could be considered.

Ms BALOCH (Pakistan), referring to the statement that the Conference of the Parties would be established by the convention and not by the Health Assembly, sought further clarification in regard to Article 19 of the Constitution of WHO which stated: “The Health Assembly shall have authority to adopt conventions or agreements”. So the Health Assembly would be required to adopt the present convention. In other words, would the convention be adopted by the Health Assembly or by the States Parties?

Mr BURCI (Office of the Legal Counsel) stated that there was no contradiction. The constitutions of several international organizations enabled their plenary organ to adopt conventions, the purpose being to use an already existing institution for the negotiation and adoption of a convention. The framework convention on tobacco control could be adopted by the Health Assembly – an organ composed of States – and the States themselves would then individually sign, ratify or accede to the convention in accordance with its final clauses. In other words, the States would, through the Health Assembly, adopt the text of the convention in the same way as the United Nations General Assembly adopted conventions.

Mr YI Xianliang (China), noting the statement that the convention would be adopted by the Health Assembly, pointed out that it could be adopted by a special diplomatic conference since the content of the convention in general exceeded the mandate of WHO. The matter should not be prejudged at the present stage of negotiations.

Mr Seddik took the chair.

P. Reporting and implementation

The CHAIR invited discussion of the provision of information to the Conference of the Parties (paragraph P.1) and the reports to be submitted to that Conference (paragraph P.2).

Mr NDIAYE (Senegal), speaking for the Member States of the WHO African Region, said that his intervention concerned not paragraphs 1 and 2, but the creation of a new paragraph. A major handicap of the reporting mechanism foreseen in Article P was the lack of provision for the creation or designation by each Party of one or more organisms to be responsible for regular reporting on all aspects of implementation of the convention. The designation of such a structure at the national level would have the double advantage of facilitating coordination at that level but above all of assisting the coordination and harmonization of policies at the national, subregional, regional and international levels. It would also avoid the dilution of responsibilities in regard to the preparation of national reports since the body concerned would be identified in advance. Moreover, allowing the States Parties to create or designate such a structure would introduce an element of flexibility into the
convention and avoid the high costs involved in creating new administrative structures. In consequence, the Member States of the African Region proposed a new, additional opening paragraph for Article P that would read: “Each State Party shall create or designate one or more organizations that would be responsible for collecting and communicating information relating to surveillance, research, and the technical, socioeconomic, commercial and legal aspects of tobacco production and tobacco-control programmes and to progress in the implementation of all the provisions of the convention.”

Mr YI Xianliang (China) said that his country agreed in principle with the contents of paragraphs 1 and 2 but suggested some minor amendments. In paragraph 1(a) the word “strategies” should be deleted. In paragraph 1(c) the word “strategies” should be amended to “measures”. In paragraph 2 the words “and each other Party” should be deleted, as it was not clear what other kind of Party would be involved.

Mr KEBBON (Sweden), speaking on behalf of the European Union and its Member States, the Czech Republic, Poland, Romania and Turkey, said that it was important to have a reporting mechanism to ensure the proper follow up of implementation of the framework convention but which should not become a heavy burden on Parties to the convention. To lighten the reporting obligation, Sweden proposed that in paragraph 1(a) the words “institutions, strategies, plans, programmes,” be deleted and the words “as well as measures planned for the implementation of the convention” added after the word “implemented”. The words at the end of the same subparagraph “together with information on enforcement, where appropriate” should be deleted. In paragraph 1(c) the words “economic, social and other” should be deleted, as should subparagraphs (d) and (e). With regard to the frequency of reporting (paragraph 2), the European Union and its Member States considered that the provision requiring an initial report within six months of entry into force was too short a deadline. Moreover, a differentiated reporting obligation might not be the best way to ensure effective monitoring of the implementation of the convention’s objectives. It would be preferable to revert to the corresponding paragraph in the document A/FCTC/INB1/2 stating “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]”.

Ms BENNETT (Australia) proposed that the reporting obligation currently located in Article K.4 should be relocated to Article P because it concerned reporting to the Conference of the Parties. Her country also associated itself with the changes to paragraph P.2 suggested by Sweden.

Mr ODOKO (Japan) drew attention to an apparent inconsistency: paragraph 2 spoke of the frequency of reporting the information listed in paragraph 1. He therefore proposed a minor change to the first sentence of paragraph 1 which should read “In accordance with guidelines agreed upon by the Conference of the Parties, each Party shall submit to the Conference a report on the implementation of the national programme of tobacco control. The report may include …”.

Mr VARELA (Argentina) raised no objection to the Chair’s text in general but, in order to clarify the wording, he suggested an amendment similar to that proposed by Sweden since, in his view, reference to “strategy, plans, programmes, policies” might be confusing because the meaning of those categories could depend on the context; it might be better to simplify the list. Secondly, the inclusion of the words “and other measures” in subparagraph (a) made subparagraph (d) superfluous. Subparagraph (e) could also be deleted if the measures planned by the Party were incorporated into subparagraph (a). He therefore proposed that subparagraph (a) should read: “information on tobacco control institutions, policies, legislation and any other measures …” and that subparagraphs (d) and (e) be deleted.
Mr Snyder (Canada) said that he fully endorsed the comments made by the delegate of Sweden concerning the burden of reporting on countries, in particular the proposed amendment to subparagraph (c) in order to make reporting as straightforward as possible for countries and to allow the Parties to determine what protocols and information should be developed as a result of the convention. He suggested deletion of the words “and its protocols” from subparagraph (c) and would be submitting a text in that regard.

Mrs Shahar-Ben Ami (Israel) said that her delegation agreed in principle with the text of Article P, but suggested the addition of “including national tobacco control targets” at the end of subparagraph (e). She also proposed a new subparagraph 1(f) reading “information on imported, exported and nationally manufactured tobacco products and data on consumption and smoking rates”, since such data would provide an effective tool in tobacco control efforts. Lastly, she suggested extending the timeframe given in paragraph 2 for developed-country Parties to make their initial reports from six months to one year.

Mr Castillo Santana (Cuba) supported the amendments that had been proposed concerning paragraph 1, and said that in paragraph 2 the words “and each other Party included in Annex” should be deleted. Furthermore, the timeframe provided for “Each Party not so listed” to submit its initial report should be extended from two to four years in view of the new commitments to be entered into under the convention and the time required to implement the provisions at the national level.

Dr Zenkevich (Belarus) said that, for the purposes of clarity, subparagraph 1(c) should read “various strategies …” rather than “various response strategies”.

Dr Reddy (India) referring to paragraph 2, asked what criteria were to be used for including other Parties in an annex, and whether inclusion was to be voluntary. In the absence of clear-cut criteria for the inclusion of countries, it would be difficult to set timeframes for the submission of initial reports.

Dr Bello de Kemper (Dominican Republic) upheld the words “economic, social and other consequences” in subparagraph (c); developing countries that produced tobacco and manufacturers of tobacco products should be aware of the consequences associated with the implementation of the convention.

Dr Ghanem (Egypt) said that it was important to be specific about the nature of the consequences referred to in subparagraph (c). The words “social and other” were too broad and should be deleted. Such a lack of definition might enable people to seek additional compensation.

Mr Ben Salem (Tunisia) asked why subparagraph (b) contained separate provisions for the implementation of the Article on financial resources when those were covered by subparagraph (a).

Ms Baloch (Pakistan) said that her delegation had some difficulty with the words “entry into force for that Party of this Convention” in paragraph 2. The convention would enter into force on one particular date, and it might therefore be more appropriate to refer to ratification.

Dr Anden (Philippines), agreeing in principle with the text of paragraph 1, expressed reservations about subparagraph (c). It would be difficult for her country to comply as no mechanisms currently existed to generate the information requested. Turning to paragraph 2, she endorsed comments of the delegate of India regarding the criteria to be used for including Parties in the annex.
Mr BURCI (Office of the Legal Counsel), replying to the comments of the delegate of Pakistan, said that the wording about entry into force in paragraph 2 was appropriate. It was only when the convention entered into force for a particular State that the obligation to report arose for that State. Conventions usually entered into force after ratification by a specific number of States; if the term “ratification” were used in the present text, all States that had ratified would be obliged to report before the convention actually entered into force. A separate date of entry into force was established for those States that became Parties to a convention after its entry into force – usually a given time after the deposit of the instrument of ratification or accession.

Dr LEWIS-FULLER (Jamaica) said that she shared the concerns expressed by the delegate of India concerning criteria, and called for clarification of the points he had raised. Paragraph 1 should be amended to include information on constraints or barriers encountered in the implementation of the provisions of the convention and her delegation would be submitting a text in that regard.

Ms BALOCH (Pakistan) said that she had thought that the convention would enter into force for all States at the same time. She had expressed a preference for “ratification” as that term would be more appropriate for those States that had become Parties to the convention some time after it had entered into force.

The CHAIR, recalling that the delegate of Senegal had suggested a new first paragraph, invited comments on paragraphs P.3 to P.5.

Dr NOVOTNY (United States of America) said that he would be submitting a series of amendments to paragraphs 3-5. As it currently stood, paragraph 3 was too prescriptive; the type of subsidiary body to be established should not be specified. Paragraph 4 should be amended to take into account the complicated relationship between the Conference of the Parties and WHO. He would be submitting texts for those proposed amendments and for a minor change, relating to financing, to paragraph 5. In the light of earlier discussions, he would also be submitting a minor amendment to Article N (Secretariat).

Mr KEBBON (Sweden) speaking on behalf of the Member States of the European Union, the Czech Republic, Poland, Romania and Turkey, suggested that, in order to provide for effective monitoring of the implementation of the convention without establishing an overly complex and costly mechanism, WHO could assist directly the Conference of the Parties, thus obviating the need for a subsidiary body. Accordingly, paragraph 3 could be deleted. Existing procedures should be used for the establishment of ad hoc panels, and “taking into account the rules and practices” in paragraph 4 should be amended to read “according to the rules and practices”. Also, the penultimate sentence of paragraph 4 should be deleted.

Mr SNYDER (Canada) said that he supported the views expressed by the delegate of the United States of America concerning paragraphs 3 and 4 and the proposed amendments. As members of the ad hoc panels referred to in paragraph 4 were to serve in their personal capacity, they should provide information only, and accordingly the words “and advice” should be deleted.

Mr ODOKO (Japan) expressed concern that the framework convention might go beyond the mandate given by the Constitution of WHO. The intent of paragraph 4 was to establish a subsidiary body of the Conference of the Parties. In order to prevent it exceeding the mandate of the latter and to avoid other such complexities, he strongly opposed the idea of experts serving in a personal capacity and argued that the body must consist of governmental experts. In that case, no recommendation was needed from the Director-General of WHO as the experts should be appointed by the Parties, in a democratic manner to be decided by the latter.
Dr HAMAD (Sudan), observing that the Arabic text of paragraph 5 was unclear, proposed that the beginning of the text be amended to read “The Conference of the Parties, starting at its first session, shall make the necessary arrangements to provide to developing country Parties …”.

Ms DJAMALUDDIN (Indonesia), speaking on behalf of Member States in the South-East Asia Region, maintained that the establishment of a new subsidiary body would create an additional administrative burden and would not be cost effective. Thus she proposed to delete the reference to such an action in paragraph 3. She further proposed that the task of undertaking such monitoring and reporting functions should be delegated to WHO. She would submit a detailed text to that effect.

Mr BEN SALEM (Tunisia) said that the last part of paragraph 5 was not legally correct. He proposed that it should read “The Conference of the Parties, starting at its first session, shall provide the necessary measures for developing countries, upon request, to have technical support for compilation and communication under this Article.” The rest of the paragraph should be deleted since technical support and aid provided by other organizations did not need to be stipulated in the text.

Dr BETTCHER (Tobacco Free Initiative), replying to the question raised by the delegate of India, said that terms such as “developed countries” and “regional economic integration organizations” needed to be defined within the convention. Similarly, the specific criteria for designation as a “developed-country Party” per se would have to be addressed in the negotiations. Responding to the comment made by the delegate of Pakistan, he explained that the language used in paragraph P.2 had been based substantially on that in paragraph 5 of Article 12 (communication of information related to implementation) of the framework convention on climate change.

Mr Farrell took the chair.

Mr CASTILLO SANTANA (Cuba) said that a definition of the terms “developed and developing countries” in various contexts, had existed for many years. He wondered why further definition of “developing country” in the current convention was needed.

Dr BETTCHER (Tobacco Free Initiative) replied that the Chair’s text had offered no definition of the terms; if this text were eventually adopted by Member States, one would be included in the Annex referred to in paragraph P.2. The criteria for the designation of a country would be a matter for the Member States within the Intergovernmental Negotiating Body.

Q. Financial resources

The CHAIR invited the meeting to broaden its discussion to include Article Q.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, and the associated countries the Czech Republic, Poland and Romania, which had aligned themselves with the statement, supported the clear-cut obligation, as formulated in the Chair’s text, for each Party to provide financial support and incentives for national activities in pursuance of the objectives of the convention.

Dr AL-LAWATI (Oman) said that each State Party undertook to provide the necessary financial support for national activities under the convention. He would submit an amendment that would so qualify that support.

Dr NOVOTNY (United States of America) said that he would propose an amendment that would restructure and condense the existing four paragraphs of Article Q. His Government supported
an undertaking by each Party to provide financial support for its national activities to carry out the objectives of the convention. It also recognized the important role that bilateral, regional and other channels could play in achieving the objectives of the convention. It encouraged Parties to provide voluntary funding through such channels for comprehensive tobacco-control programmes. Because parties would have to make their own decisions about the level of support they would provide through existing mechanisms to assist developing countries or others as they deemed appropriate, his delegation was unable to support paragraph Q.4.

Dr RAO (Panama) requested clarification on the differentiation between developed and developing countries in paragraph Q.4 and on relevant criteria used.

Dr BETTCHER (Tobacco Free Initiative) recalled that differential reporting, as discussed in relation to paragraph P.2, was common in such conventions. The underlying basis appeared to be the capability of particular State Parties to undertake such activities. Special provisions might apply, for example, to developing countries.

Dr GHANEM (Egypt) suggested making an amendment to paragraph P.5 to the effect that countries with tobacco-control programmes of proven success should give assistance to other countries.

Dr TATA (India) repeated his request for clarification about the inclusion of other, non-developed countries, in the annex referred to in paragraph P.2. What would be the criteria for inclusion, who would develop them, and when? Would there be a voluntary mechanism for inclusion or would a decision be made by the Conference of the Parties?

Dr BETTCHER (Tobacco Free Initiative) replied that many different criteria existed, such as World Bank classifications or those based on gross national product, and could be negotiated in various ways. If the wording in the Chair’s text were retained, then such definitions and the criteria used would be purely a matter for negotiation by the Member States.

Dr TATA (India) asked whether he was to understand that the criteria would be set by the Conference of the Parties?

Dr BETTCHER (Tobacco Free Initiative) replied that, as the definitions could appear in the convention with classifications of countries included in an annex (as was the case with the Framework Convention on Climate Change), they would be decided on within the Intergovernmental Negotiating Body.

Dr LEWIS-FULLER (Jamaica) said that she shared the concerns of India. It appeared that the Secretariat was not prepared to answer the questions but she emphasized that delegations should be given a more detailed reply. There was a certain arbitrariness about the matter, which she suggested should be re-examined in a structured way.

Returning to Article Q, Mr ADSETT (Canada) said that he supported the important undertaking and obligation to provide financial support set out in paragraph Q.1, but he considered that the term “incentives” was open-ended and unclear; moreover it was unnecessary since the term “financial support” was sufficiently encompassing. With regard for the phrase “achieve the objective of”, he remarked that “fulfil its obligations under” constituted more appropriate wording. He would provide the texts to the Secretariat.
Mr ODOKO (Japan) said that his comments would have been similar to those made by the delegate of the United States of America. At the present stage of negotiations, he considered that the new mechanisms for the provision of financial resources needed further examination. He found the provisions in paragraph Q.4 difficult to accept.

Mrs BOBYLIOVA (Ukraine), while supporting the aim of paragraph Q.1, suggested an amendment to the effect that the undertaking should be made by countries having the necessary resources. She would provide the text in writing to the Secretariat.

Mr BEN SALEM (Tunisia) said that paragraph Q.4 related to technical support that could be provided by developed countries. As technical support had been dealt with in Article P, he considered that Article Q should restrict itself to financial resources.

Dr TATA (India), speaking also on behalf of the Member States of the South-East Asia Region, made a general statement on a matter that those countries considered to be of the utmost importance in arriving at an effective and comprehensive framework convention acceptable to all countries. Some countries present at the meeting had significant numbers of people employed in tobacco farming and, if progress towards the convention were to be made in a constructive manner, the question of long-term assistance to help them to convert to alternative crops and products must be seriously addressed. Assured and adequate provision of international financial assistance to developing countries was needed in order to hasten that transition. That was essential since the differential decline in tobacco consumption between developing and developed countries was resulting in a large unexported tobacco surplus in the developing countries, which was rapidly expanding the internal market with grave health consequences. One could not simply await the day when the reduced demand would automatically drive down the supply; one must proactively and progressively foster other economically viable channels. That transition required support through research as well as initial market support mechanisms. He proposed substantial changes in paragraphs Q.2 and Q.4, and would submit a detailed text.

The meeting rose at 22:05.
DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 4 of the Agenda (Documents A/FCTC/INB2/DIV/1, A/FCTC/INB2/2 and A/FCTC/INB2/3) (continued)

Q. Financial resources (continued)

Paragraph Q.1 (continued)

Mr VARELA (Argentina) endorsed the views expressed by the delegation of India on the need to establish a funding mechanism that took into account the specific needs of developing countries that produced tobacco. He looked forward to seeing the amendments put forward by that delegation.

Ms BENNETT (Australia) supported the text of paragraph Q.1 with the amendments suggested by the delegation of Canada. She particularly favoured removal of the words “and incentives” as that would accord with the view that States Parties take seriously their domestic obligations under the convention.

Dr WINAI SWASDIVORN (Thailand) said that his delegation supported the proposal by India that a global fund be established. He believed that such a fund would help to reduce tobacco growing and, at the same time, provide technical support for developing countries.

Mr YI Xianliang (China) pointed out that there two outstanding questions: where the financial resources were to come from and how they were to be used. The paragraph on financial resources would also be the appropriate place to outline how a Secretariat would be established and funded. In principle, he could agree to the text of paragraph Q.1, however, he queried whether deletion of the words “and incentives” might discourage some countries from joining the convention.

Paragraph Q.2

Mr SNYDER (Canada) said that his delegation recognized that financial support for capacity building for developing countries was essential. The convention envisaged a number of significant obligations that many countries would be hard-pressed to fulfil on their own. Canada was prepared to provide financial backing, as it had to other international tobacco control activities. Although a voluntary fund might be the best mechanism, due account needed to be taken of other possible structures.

Although it was possible that there would be a significant relationship between the Conference of the Parties and WHO, the paragraph appeared to draw rather hasty conclusions about the nature of that relationship, and further discussion was required.
He echoed the interest expressed by the delegation of China in seeking clarification on the source of funding for the core activities of the Secretariat. That was usually assured from assessed contributions to ensure stable and secured funding.

Mr RAJALA (European Community), speaking on behalf of the European Community, its Member States and Bulgaria, the Czech Republic, Poland, Romania, Slovakia and Slovenia, recognized the importance of all forms of cooperation, particularly those between developed and developing countries, such as the financial assistance required to support implementation of the convention. However, the need for establishing a new financial mechanism, as opposed to making use of existing ones, had not yet been sufficiently demonstrated.

Dr SANGALA (Malawi), speaking on behalf of the African Region, proposed that the word “voluntary” be removed from the paragraph. He believed that that amendment would be in keeping with the views of the delegation of Canada.

Mrs DE PALMA (Guatemala) emphasized the importance of economic support from larger countries to developing countries to help them achieve the objectives of the convention. In her country, for instance, tax contributions received from the sale of tobacco products were used to help the poorer sections of society.

Dr TATA (India) reiterated that paragraphs Q.2 to Q.4 were of considerable importance if the ultimate goal of tobacco control was to be achieved. The need for a mechanism to fund alternative farming in developing countries had been discussed extensively at the previous meeting and had met with wide support. The representative of FAO to the Fifty-third World Health Assembly had stressed that crop replacement was a major factor in successful tobacco control. With that support in mind, he proposed to strengthen the wording in those paragraphs in order to reflect the needs of developing countries, in particular those engaged in tobacco production. In place of a voluntary mechanism, there should be a funding mechanism based on sustained and assured sources. The cigarette companies that reaped large profits from exporting their products to developing countries should be made to contribute to the fund through a tax on exports of finished tobacco products. The fund could be supplemented by voluntary contributions or contributions from nongovernmental sources, as might be decided by the Conference of the Parties. The fund could be used to assist the economic transition of tobacco growers and workers in developing countries and for technology transfers for tobacco cessation programmes. His detailed proposals would be submitted in that regard.

Mr TVEITAN (Norway), said that paragraph 2 raised important questions related to the financing of the administration of the framework convention but attempted to encompass different aspects. For the convention to be effective, adequate and stable funding of its institutions would be required, especially for the Secretariat to the convention and the Conference of the Parties. For those purposes, an obligatory financial mechanism had to be found and incorporated into the convention, whereas aspects of implementation of the convention and decisions made by the Conference of the Parties could be based on a voluntary mechanism. As the question of financial resources merited further discussion, he proposed that paragraph 2 be enclosed in brackets and placed on the agenda of the following meeting of the Intergovernmental Negotiating Body.

Mr YI Xianliang (China) supported the establishment of a voluntary mechanism for the provision of financial resources, which could be used to fund the secretariat. That could be decided after the nature of the relationship between WHO and the convention had been established.

The wording in regard to the transfer of technology could be strengthened, perhaps by placing it in a separate paragraph. He requested that further time be set aside to discuss that issue. He agreed on
the importance of establishing a funding mechanism for developing countries, and the relevant wording should be made clear in order to facilitate effective implementation of the convention.

Dr ARMADA (Venezuela) shared the doubts of other delegations about the advisability of establishing a voluntary funding mechanism. He viewed the concept of the transfer of technology in a positive light, but preferred to use the term “development of sustainable technologies”, which could be better adapted to the needs of individual regions.

Ms DJAMALUDDIN (Indonesia) supported the proposals for paragraphs 2-4 put forward by the delegate of India. Even if the Intergovernmental Negotiating Body succeeded in formulating a meaningful framework convention, it would be a long time before the ultimate objective of tobacco control was achieved. A guaranteed source of funding would be necessary to enable the implementation of long-term programmes: a voluntary mechanism comprised too high a risk for such an important issue. It was crucial that the convention included a mechanism, perhaps in the form of a multilateral global fund, with eligibility criteria to be discussed. If necessary, a separate protocol could be prepared.

Mrs TRAN THU THUY (Viet Nam) said that paragraph 2 contained some long and complex sentences that were difficult to understand. She requested that the framework convention be rewritten in simpler language that would be easier to follow.

Ms BALOCH (Pakistan) expressed support for India’s proposal: a fund with compulsory contributions from the tobacco-manufacturing companies should be established. She proposed deletion of the reference in paragraph 2 to WHO in connection with arrangements for the establishment of the fund; such a statement was somewhat premature.

Mr SHRESTHA (Nepal) endorsed India’s remarks and proposed amendments. The establishment of a fund was indeed necessary. However, in view of financial constraints, financial resources must be provided for the least developed countries to allow them to fulfil their obligations under the convention. He therefore proposed that in the amended text proposed by India for paragraph 2 the words “especially for least developed countries” should be added after “for developing countries”.

Mr VARELA (Argentina) said the question of financial resources, particularly for cooperation, was crucial to the convention. The funding mechanism set up for that purpose must be functional and predictable, which was unlikely to be the case with the voluntary fund proposed in the Chair’s text. The mechanism must be designed to overcome the major obstacles to achieving tobacco control, such as the heavy dependence of regions and countries, above all developing countries, on tobacco production. That should be the focus of the cooperation in question. He endorsed India’s proposed amendments.

Dr RANAWEERA (Sri Lanka) expressed strong support for the concept of a multilateral global fund. It would ensure long-term and sustained implementation of the measures laid down in the convention.

**Paragraphs Q.3 and Q.4**

Ms CALLANGAN-RUECA (Philippines) said she supported the inclusion of paragraph 4, subject to the insertion of the words “and financial” before “support”.

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Dr SANGALA (Malawi), speaking on behalf of the countries of the African Region, recalled that during the first session of the Intergovernmental Negotiating Body Malawi and other States had underlined the necessity of financial support for diversification programmes in developing countries whose economies were heavily dependent on tobacco growing. Those concerns had been addressed in the convention under Article L (Scientific, technical and legal cooperation), in subparagraphs L.1(b)(ii) and (iii). Once the relevant technical studies had been completed, financial resources would be required to implement such programmes. He therefore proposed the addition of a new paragraph in section Q, which would read: “The Parties recognize that developing countries, especially those whose national economies are dependent on tobacco growing, need support to diversify into other viable options. The Conference of the Parties will therefore through WHO and other United Nations agencies raise financial resources in order to:

(i) assist tobacco workers in developing alternative livelihoods;
(ii) assist tobacco growers in shifting to alternative crops or economically viable activities, paying particular attention to the protection of the environment.”

In current paragraph Q.4, which would become Q.5, he proposed insertion of the words “and financial” before “support” as well as the phrase “as well as to diversify to other economically viable options” after “tobacco control programmes”.

Mr PAVELSONS (Latvia), speaking on behalf of the Baltic States, proposed that paragraph 4 be amended to read: “The Parties recognize that the developed-country Parties that export manufactured tobacco products, or have branches of international tobacco companies exporting or selling tobacco products in third countries, have a special responsibility to provide technical support to developing-country Parties to strengthen their national tobacco-control programmes.”

Mr RAJALA (European Community), speaking on behalf of the European Community, its Member States and Bulgaria, the Czech Republic, Poland, Romania, Slovakia and Slovenia, said that while he endorsed the need for cooperation, he harboured doubts about the principle of developed countries which exported manufactured tobacco having a special responsibility to provide technical support to developing countries. The question should be viewed in the broader context of compensation and liability dealt with elsewhere in the convention.

Mr BAHARVAND (Islamic Republic of Iran), noting, in response to the previous speaker, that compensation and liability were two separate matters, proposed that the square brackets around paragraph 4 should be deleted.

Dr GHANEM (Egypt) said that the responsibility for providing technical support to developing country Parties should not be imposed on individual countries but should be channelled through WHO; otherwise, difficult situations might arise.

Dr PIΨON (Cuba) endorsed the view that the square brackets should be removed from paragraph 4. Moreover, support for developing-country Parties should be not only technical but also financial. He would submit a proposal to that effect.

Dr SILVA GOLDFARB (Brazil) said that paragraph 3 should also contain a reference to financial resources to be provided for alternative crops, to help developing countries which depended heavily on their tobacco crops for export. She would submit a proposal to that effect.

Mr Seddik took the chair.
R. Settlement of disputes

Mr ADSETT (Canada), supported by Mr ODOKO (Japan), said that, as in previous sections, there should be no reference to possible protocols to the convention. The phrase “or any of its protocols” should be deleted from paragraph R.1.

Mr ATWOOD (Australia) said that, while supporting the substance of the section, his delegation considered that the relationship with similar provisions in other treaties ought also to be addressed. It would submit a proposal to that effect.

Mr BAHARVAND (Islamic Republic of Iran) favoured retaining the phrase “or any of its protocols” but, by way of compromise, adding the words “where applicable”.

Mr YI Xianliang (China) said that the phrase should be retained throughout the convention, in the interests of consistency. There was no knowing how many protocols there would be or how many would address the settlement of disputes.

Dr NOVOTNY (United States of America) said that, when his Government signed a treaty, it did so with the intention of observing it. His delegation therefore welcomed the provisions of paragraphs 1-3. Compulsory dispute-settlement mechanisms, however, were not satisfactory; they tended to be expensive and divisive and to produce poor outcomes. His delegation would submit an amendment to that effect.

Ms BALOCH (Pakistan) called for deletion of the reference to protocols, which was premature.

Mrs SHAHAR-BEN AMI (Israel) echoed this proposal, saying that such reference was repetitious, given the provisions of paragraph 7.

Mr CASTILLO SANTANA (Cuba) said that his delegation considered it too soon to select a method of dealing with disputes. Other criteria might arise in the future. In any case, his delegation would, in view of its national legislation, never be in a position to recognize the competence of the International Court of Justice.

Mr YI Xianliang (China) suggested that the word “peacefully” should be inserted after the words “resolve it” in paragraph 3. Peaceful outcomes were surely desirable for all.

Mr BAHARVAND (Islamic Republic of Iran) said his delegation considered that questions of dispute settlement should be postponed until the convention was finalized. He therefore suggested that Article R as a whole should be placed in square brackets and that paragraph R.7 should be deleted. The bodies created by the convention, particularly, the Conference of the Parties, would reach their own decisions on how to proceed.

Mr Farrell took the chair.

D. Guiding principles

The CHAIR invited the working group to consider paragraphs D.3, D.6 and D.8, which were the most relevant to its terms of reference.
Mr KEBBON (Sweden), speaking on behalf of the European Union, the Czech Republic, Latvia, Poland, Romania, Slovakia and Slovenia, noted that paragraph 6 seemed to depend on the outcome of the discussions, still continuing, on the issues of compensation and liability.

Ms MORALES AYLLÓN (Bolivia) said that paragraph 3 should recognize the importance of financial as well as technical cooperation in establishing tobacco-control programmes and the need to involve young people in research and preventive action. Paragraph 4 should stress the policy of alternative activities, in accordance with regional needs. She would submit texts to that effect.

Dr WINAI SWASDIVORN (Thailand) said that, in paragraph 8, the words “should be recognized as” were not strong enough and should be replaced by the word “are”.

Dr ARRIAGA WEISS (Mexico) proposed that the word “technical” be deleted from paragraph 3: no restrictions should be placed on the types of cooperation possible. In paragraph 6, he suggested addition of the words “in accordance with each Party’s legislation”.

Dr ZENKEVICH (Belarus) suggested that in paragraph 6 the phrase “tobacco industry”, which was very vague, should be replaced by the words “tobacco companies”.

Mr ADSETT (Canada) concurred, although he preferred the words “tobacco manufacturers”. As for the point made by the delegation of Sweden, it might be preferable to place paragraph 6 in square brackets for the time being.

Mr MOON (Republic of Korea) endorsed the views of the delegates of Sweden and Canada concerning paragraph 6.

Mr YI Xianliang (China) said that paragraph 3 should provide for not only technical cooperation but also technology transfer.

Mrs SHAHAR-BEN AMI (Israel) said that in paragraph 6 the words “past, present and future” should be inserted before the word “harm”. The first sentence should end at the word “environment”, and the next sentence should read: “Each Party should consider adopting appropriate legislative measures regarding the burden of proof in relation to causation and should determine the scope of such responsibility within its jurisdiction.”

Mr RAMALLO (Venezuela) supported the proposal that reference to both technology transfer and exchange of information should be included in paragraph 3. In paragraph 4, he suggested that the words “national and international” should be inserted before the words “financial assistance”.

Dr SILVA GOLDFARB (Brazil) suggested that the following sentence should be added to paragraph 3: “Local cultural, social, economic, political and technical expertise must be taken into consideration in establishing such cooperation”.

Mr CASTILLO SANTANA (Cuba), after endorsing the statements by the delegates of Bolivia and China concerning paragraph 3, on which his delegation would submit a proposal, said that paragraph 6 should be deleted in its entirety. It would be extremely difficult to implement the principle because of the number of imponderables involved. It would have to be determined, for example, at what point an illness had begun or had become established and what level of responsibility was borne by a smoker who had voluntarily taken up the habit.
Dr NOVOTNY (United States of America), referring to paragraph D.8, said that the framework convention should lay down minimum standards and obligations, on which the Parties could build by means of further measures; his delegation would submit a proposed technical amendment in that regard. Moreover, since the paragraph seemed to overlap with paragraph E.6, his delegation would also submit a proposed amendment to the latter paragraph when it was considered.

Mr ARENALES FORNO (Guatemala) said that his delegation approved paragraph D.3. Technology transfer was an important aspect of cooperation among countries, especially with those whose resources were limited.

Dr SANGALA (Malawi) said that his delegation would submit a proposed new paragraph, which, if accepted, would involve renumbering the paragraphs in Section D.

Mr BAHARVAND (Islamic Republic of Iran) said that his delegation agreed with paragraphs 3 and 6. It had no difficulty in principle with paragraph 8 but considered that the wording “measures beyond those required by the convention” could cause confusion about the possible scope of other measures that States Parties might adopt. Perhaps the text could be amended – for example, by substituting “further to” for “beyond”.

Ms MACMILLAN (New Zealand) affirmed that the convention’s provisions should be seen as minimum standards. Perhaps the previous speaker’s concerns could be met by adding the word “domestic” before “measures”.

Ms BALOCH (Pakistan) supported that proposal and further proposed the replacement of “beyond” by “in addition to”.

Mr Seddik took the chair.

E. General obligations

The CHAIR invited the working group to consider paragraphs E.4-E.7.

Dr NOVOTNY (United States of America) said that his delegation did not envisage that the framework convention would set international standards that would be binding on the Parties, but rather model standards that Parties could adopt. He therefore proposed that the word “standards” be deleted from paragraph 4.

Dr AUNG (Myanmar), speaking on behalf of the South-East Asia Region, suggested that, in paragraph 5, the word “competent” should be replaced by “appropriate”.

Ms BALOCH (Pakistan) said that all references to protocols in section E should be deleted.

Mr BAHARVAND (Islamic Republic of Iran), referring to paragraph 4, proposed deletion of the word “agreed”.

Dr NOVOTNY (United States of America), referring to paragraph 5, said that it was not clear which international bodies were being referred to with regard to implementation of the convention. His delegation would accordingly submit an amendment to replace the paragraph by: “The Parties shall cooperate to ensure that mutual goals on tobacco control are reinforced.”
Mr YI Xianliang (China) said that paragraph 6 hardly related to general obligations and should be moved to Article T, Final clauses.

Mr KEBBON (Sweden), speaking on behalf of the European Union, Bulgaria, the Czech Republic, Poland, Romania, Slovakia and Slovenia, said that paragraph 6 invited States Parties to enhance the convention’s provisions by means of domestic measures. It might help if the areas suitable for such measures, such as health and anti-fraud, were specified. A similar provision could be made in paragraph 7.

Mr VARELA (Argentina) said that paragraph E.6 could be deleted as it was covered in paragraph D.8. Paragraph E.7, too, seemed out of place; it dealt with general principles and should appear in the appropriate part of the document, namely Article D.

Ms BALOCH (Pakistan) agreed that paragraphs E.6 and E.7 did not express general obligations. In any case, the reference in paragraph 6 to protocols should be deleted. She noted that the contents of paragraph 7 related more to international treaty law than to matters relevant to a framework convention on tobacco control. She would submit an amendment to that effect.

Mr BURCI (Legal Adviser), replying to a question from Mr BAHARVAND (Islamic Republic of Iran) relating to paragraphs 5 and 6, said that his understanding was that the reference to Parties was to protocols only, not to the convention. It was also his understanding that only States already Parties to the convention could become Parties to protocols, but that participation in the latter would remain optional.

Dr NOVOTNY (United States of America), supported by Mrs SHAHAR-BEN AMI (Israel), said that paragraph 6 was ambiguous and a duplication of paragraph D.8. It was in any case a truism in international law. It could not have any effect on existing laws, except for possible conflict between a framework convention and domestic law, in which case the “later in time” rule under customary international law would apply. Inconsistencies could be resolved in the case of sovereign States only by parliamentary ratification. Since, however, minimum standards were already set forth in paragraph D.8, paragraph E.6 should be deleted. Paragraph E.7 contradicted standard treaty practice, as it implied an unacceptable limitation on sovereign decision taking. The paragraph would be acceptable to his Government only if worded to the effect that any State entering into an agreement that conflicted with the framework convention would be required to give notice of withdrawal from the convention, which would also be a truism in international law. His delegation considered that paragraph 7 should also be deleted and it would submit a written proposal to that effect.

Mr BEN SALEM (Tunisia) agreed with other delegations that paragraphs 6 and 7 should be moved to Article T, Final clauses.

Mr YI Xianliang (China) agreed with the previous speaker about the placement of paragraphs 6 and 7. With regard to the latter, the last sentence, concerning communication of copies of agreements, should be deleted.

Mr GHANEM (Egypt) said that paragraphs 6 and 7 should be merged and reworded, as follows: “The provisions of this Convention shall in no way affect the right of the Parties to adopt domestic measures, nor the right of the Parties to enter into bilateral or multilateral agreements, provided that such measures and agreements are compatible with the provisions of the Convention.”

Mrs THIBELI (Lesotho), speaking on behalf of the countries of the African Region, said that the entire text of Article E should be retained as it stood.
Mrs MORALES AYLLÓN (Bolivia) agreed with other speakers that paragraphs 6 and 7 should be moved to Article D on Guiding principles. With regard to paragraph E.5, she proposed additional wording to the effect that implementation should be concluded within a time not exceeding one year after ratification of the convention.

Dr ARRIAGA WEISS (Mexico) said that his delegation would submit a proposal for an additional paragraph, E.8, reading “The Parties undertake to report on national progress in giving effect to the different sections of the Convention, in accordance with guidelines agreed by the Conference of the Parties.”

Mr LISKIA (Papua New Guinea) supported the proposal of the United States of America to delete paragraphs 6 and 7, the content of which was already covered by paragraph D.8.

Ms WYKLE-ROSENBERG (Infact), speaking at the invitation of the CHAIR, said that tobacco companies should be held accountable for the harm they did to public health and should be required to reimburse governments for the costs associated with tobacco use. She supported the idea of financial assistance to countries to change to more environmentally sustainable economies. She also supported the idea of assistance to ensure that all countries had the capacity to implement, monitor and enforce the provisions of the framework convention.

Replying to questions from the delegations of India and Jamaica, Dr BETTCHER (Tobacco Free Initiative) said that the wording of paragraph P.2 had been largely based on the United Nations Framework Convention on Climate Change. The provisions of that Convention were based on a distinction between groups of countries in application of the principle of common but differentiated responsibilities. The Parties listed in Annex 1 of that Convention included the countries of the Organization for Economic Co-operation and Development and some economies in transition, and “each Party not so listed” meant any other Party to the Convention. Such classifications were decided upon by the delegations of Member States, and it would be the delegations’ prerogative to define specific criteria to be used in the context of the framework convention.

The meeting rose at 17:10.
JOINT MEETING OF THE WORKING GROUPS  

Friday, 4 May 2001, at 11:00  

Chair: Mr C.L. NUNES AMORIM (Brazil)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: (Document A/FCTC/INB2/Working Paper No.1)

The CHAIR, opening the meeting, explained that he was acting not in his capacity as Chair of the Intergovernmental Negotiating Body but, at the request of the Co-Chairs of the working groups, as a kind of moderator. The members of the Regional Groups had been informed of the decision, for practical reasons, to reschedule the work of the session. Neither the current meeting nor the subsequent plenary would give an opportunity for substantive discussion. The Co-Chairs of the working groups would present their reports in the plenary, and attention could then be drawn to new issues. Any questions raised during the present joint meeting would be referred to the Co-Chairs of the working groups. The meeting would also give an opportunity to present the format of the document that would form the starting point for the third session of the Intergovernmental Negotiating Body.

The Secretariat had issued and would continue to issue conference papers and addenda containing compilations of amendments to the Chair’s text put forward by delegations in the working groups. The purpose of issuing those conference papers was to give delegations an opportunity to correct any inaccuracies in the reproduction of their proposed amendments.

It had also been considered useful to prepare a sequential compilation of all the amendments proposed in a single document rather than in many separate documents, along the lines of the examples given in document A/FCTC/INB2/Working Paper No.1. That composite document would not in any sense constitute a judgement on the merits of proposed amendments, but was merely an editorial compilation.

Dr BETTCHER (Tobacco Free Initiative), introducing document A/FCTC/INB2/Working Paper No.1, explained that it contained examples of the edited text of amendments to the Chair’s text proposed during the first meeting of each working group, as listed in Conference Paper No.1 of each of the groups. Owing to time constraints, corrections and amendments to those conference papers had been incorporated only for Working Groups 2 and 3. The typographical presentation made it possible to distinguish between proposed deletions from, and additions to, the Chair’s texts, and alternative textual proposals. The full integrated text was being produced in close cooperation with the Co-Chairs of the working groups. The format of the document was in accordance with standard treaty-making precedents, since all the proposals of Member States contained in the conference papers and addenda would be included, thus ensuring transparency and the possibility of cross-referencing.

He reiterated that Working Paper No.1 was merely an example of the proposed format for the edited text. All amendments proposed in the Conference Papers and the addenda thereto would be included in the final document.

The CHAIR said that the conference papers would be ready for distribution shortly. There would be a deadline of 10 days for submission of corrections. Working papers, which would form the basis of the discussions of the Intergovernmental Negotiating Body during its third session, would be prepared by the Co-Chairs and the Secretariat and should be ready by the end of June. With regard to Articles J, S and T, for which no text yet existed, delegates, individually or in groups, should submit their textual proposals no later than 60 days before the start of the third session, although some delegates had asked for flexibility of a week or so in the deadline.
It has been agreed that if countries wanted to submit proposals for definitions they should do so by the same deadline as that agreed for the textual proposals for Articles J, S and T. The Secretariat was currently examining the terms requiring definition that had been identified by certain delegates and noted in the summary records. It would then prepare a background paper illustrating how such terms had previously been used in international forums, scientific papers and other sources. However, no decision had yet been taken on how such definitions would be dealt with by the Intergovernmental Negotiating Body during its third session.

Mr CASTILLO SANTANA (Cuba) requested clarification regarding the deadline for submission of textual proposals for Articles J, S and T, which would take time to prepare.

The CHAIR said that, subject to confirmation in plenary, the deadline was 60 days before the start of the next session.

Mr BAHARVAND (Islamic Republic of Iran) considered that a period of 60 days was too long and might be shortened by a week. With regard to document A/FCTC/INB2/Working Paper No.1, he had found the format confusing and asked for a clearer explanation of the symbols contained in the text.

Ms BALOCH (Pakistan) expressed appreciation for the model in the working paper and the effort put into preparing it. However, she agreed with the previous speaker that the format was confusing, particularly the use of multiple brackets. She also wondered how the Secretariat had dealt with the problem of delegates adopting differing or conflicting positions over wording in the same clause, as had occurred, for example, in paragraph G.1 of the Chair’s text. Pakistan and Cuba had advocated retention of the phrase “to the extent possible within the means at its disposal and its capabilities”, while other delegations had called for its deletion. According to the definition on page 1 of document A/FCTC/INB2/Working Paper No.1, however, there had only been a proposal or proposals to delete it.

The CHAIR explained that the purpose of the document was to record proposals for textual amendments. Expressions of support for the wording as it stood within the Chair’s text were reflected in the summary records.

Dr BELLO DE KEMPER (Dominican Republic) understood from the Chair’s reply to the delegate of Pakistan that the summary records would be valuable in helping to reconstruct the debate and clarifying the working documents.

Mrs THIBELI (Lesotho) expressed the hope that consideration would be given to the issue of gender sensitivity in the arrangements for the Negotiating Body’s third session, particularly in respect of the Co-Chairs. At both first and second sessions the Chairs and Co-Chairs had been male. The negotiating process for the framework convention should align itself with the global agreement to embrace gender equality. There were without doubt enough capable women available for nomination.

The CHAIR fully supported that view.

Dr AL-LAWATI (Oman) suggested that in future, in the interests of clarity, different types of brackets should be used in the composite text.

Mr BAHARVAND (Islamic Republic of Iran) fully endorsed the suggestion by the delegate of Lesotho.
Dr LEWIS-FULLER (Jamaica) also strongly supported the call by the delegate of Lesotho for gender equality and gender balance in the Bureau and especially among the Chairs, Co-Chairs and other officers.

Turning to the consolidated text, she asked what action should be taken if a delegation’s proposed amendments had not been included.

The CHAIR replied that although the textual process had been complicated, pains had been taken to ensure that all the amendments proposed had been included in the conference papers. If any delegation found that its amendments had not been included or had been inaccurately reproduced, it should send in a written notification before the start of the third session for a corrigendum to be issued.

Ms BALOCH (Pakistan) asked whether it would be possible at the next session for simultaneous editing to be arranged instead of delegations submitting proposals at the end of the meeting and waiting for the conference papers to be issued.

The CHAIR said that it should be easy at the next session for the Secretariat to edit as the meetings progressed. The third session was expected to be more dynamic and not to focus on an aggregation of texts.

Ms MACMILLAN (New Zealand) said that the composite document was extremely useful despite being difficult to follow. As it would undoubtedly be read in conjunction with other articles within the Chair’s text, she suggested that in future specific alternatives to particular paragraphs should in some way be numbered to indicate precisely where they belonged.

Dr SANGARA (Malawi) said that he found the system of single and multiple brackets confusing, as was the system of bold and normal typeface, and he wondered whether it might be possible in future to draw a line through the text of proposed deletions.

Dr BETTCHER (Tobacco Free Initiative), replying to points raised, said that it would be possible to accommodate a numbering system in the textual process, as suggested by the delegate of New Zealand but it would not be so easy to draw a line through text proposed for deletion.

Mr SZASZ (Tobacco Free Initiative) explained that, although Working Paper No.1 had been difficult to produce, it followed the standard practice for treaty-making. A problem was that many amendments had been made to individual sections of the text. He added that the text in the working paper was not meant to be read, but merely to provide an inventory of the proposals which had been made. He was unsure of the areas in which improvements could be made to its presentation. Admittedly, some differentiation could be made between the type of brackets used for additions and deletions. Moreover, alternative proposals could be signified by the use of the word “or”. However, the use of lines through the text to indicate proposed deletions might not be practical, since many of them also included the addition of some text. In that respect, the use of different types of brackets was probably the best solution.

He recalled that the working paper had been produced under considerable pressure and might therefore incorporate errors. Where such errors were found, they should be pointed out to the Secretariat within one week so that the necessary corrections could be included in the final documents, which were due to be produced towards the end of June 2001. Another possible source of errors was the fact that some proposed changes had been submitted in handwritten form.

Finally, he noted that because of its nature, the proposed format of the text did not reflect whether the amendments proposed had been supported by many States, or just one. It would be necessary to consult the provisional summary records and the other conference papers to gain an idea of the support for each individual amendment.
The CHAIR asked delegates with practical suggestions for improving the presentation of the text to submit them to the Secretariat. He recalled that the current proposed text had no legal status of its own and was merely intended to facilitate consideration of the proposed amendments. Several of the Co-Chairs had not been particularly happy with the proposed format. However, unless the regional groups requested otherwise, it might be difficult to improve on the proposed editorial presentation, in view of the danger of overstepping their respective roles. He proposed that the Co-Chairs should meet before the next session of the Intergovernmental Negotiating Body to make editorial suggestions. In that respect, the process of developing the Chair’s text was still in progress and the third Negotiating Body session would be an extension of the second.

Ms LLORENTE DÍAZ (Cuba) was grateful for the effort made in a very short time, but trusted that endeavours would be made to improve the presentation of the text as much as possible. In the working paper’s present form, it would be very difficult for delegates to understand. She therefore hoped for improvement in such areas as the symbols used, which at present were confusing, with a view to facilitating the difficult task already faced by delegations for the next session.

The CHAIR thanked the speakers for the confidence expressed in the officers. Clearly, new symbols would have to be used and better explanations provided of their meaning, for example in a longer cover page. However, as he had already indicated, there was a limit to how far the Secretariat and the Co-Chairs could go without overstepping their role with regard to the substance of the convention.

Ms DJAMALUDDIN (Indonesia) expressed appreciation of the production of a model text within such a limited time. However, she emphasized the difficulties of working with a text presented in such a manner. Persons who had not been present at the meeting would have no possibility of understanding what was being discussed. She therefore asked for a more user-friendly model to be developed.

Mr OGANOV (Russian Federation) asked whether a new version of the Chair’s text of the proposed convention would be prepared for the next session on the basis of the proposals put forward during the current session.

The CHAIR understood the grounds for requesting a new, clean text to be prepared for the next session. However, the whole process of proposing amendments might start all over again if a uniform text were prepared. In any case, that would only be possible if the Negotiating Body were to give the Chair a mandate to do so. In his view, there was no alternative to a painstaking examination of all the suggested changes, although it might be possible to facilitate the task by using different types of brackets to clarify the text.

Ms BALOCH (Pakistan) was opposed to any proposal for a cleaner version. It was up to governments to negotiate among themselves and to decide what they wanted to include in the text. They could not delegate that work to the Chair or Co-Chairs.

Mr BAHARVAND (Islamic Republic of Iran) observed that the same weight should be given to all the proposed amendments, whether they were suggested by one or by 50 delegations.

The CHAIR pointed out that the working paper was not intended to be a complete picture of the session, but was a record of the amendments put forward. He agreed that a proposal made by a single delegation would be treated in the same way as a proposal supported by a large number of delegations. At the present stage, there was no way of assessing how much support there was for any given amendment.
Dr LEWIS-FULLER (Jamaica) suggested that it would be helpful to print the original paragraph of the Chair’s text next to the relevant paragraph of the working paper containing the suggested amendments, so that the two versions could be compared. In order to move towards reaching consensus, she further suggested that the various regional groups should meet to agree on a draft. That consolidated text would then be fed back into the system, so as to shorten the deliberation process.

The CHAIR agreed that it saved time when the regional groups spoke with one voice. However, it was up to the groups themselves to reach such a decision. He saw no problem in the Jamaican proposal to issue a composite text reproducing the various paragraphs of the Chair’s draft together with the edited text containing the suggested amendments.

In the absence of further comments, he declared the joint meeting closed.

**The meeting rose at 12:30.**