



WORLD HEALTH ORGANIZATION

OPEN-ENDED INTERGOVERNMENTAL
WORKING GROUP ON THE
WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL
Geneva, 21-25 June 2004

A/FCTC/IGWG/1/8

Draft report of the first session of the Intergovernmental Working Group

INTRODUCTION

1. By resolution WHA56.1, the Fifty-sixth World Health Assembly in May 2003 established an open-ended intergovernmental working group to consider and prepare proposals on a number of issues identified in the WHO Framework Convention on Tobacco Control. Recommendations and proposals by the Working Group will be submitted for consideration by the Conference of the Parties at its first session.
2. With the participation of 129 Member States, and one regional economic integration organization, the Working Group met in Geneva from 21 to 25 June 2004. In accordance with paragraph 7 of resolution WHA56.1, its agenda included draft rules of procedure and draft financial rules for the Conference of the Parties; a draft budget for the first financial period; potential sources and mechanisms of support; and options for the designation of the permanent secretariat and arrangements for its functioning.
3. The interim secretariat, provided by WHO in accordance with Article 24 of the Framework Convention, has prepared a draft report of the first session of the Working Group summarizing the discussions held on each of the agenda items.
4. Annex 1 to this report sets out the draft rules of procedure of the Conference of the Parties, including criteria for participation of observers; proposed amendments put by participating Member States and the regional economic integration organization are shown in bold type.

Agenda item 1. Opening of the session

5. The Secretary opened the first session of the Intergovernmental Working Group.

Agenda item 2. Election of officers

6. Mr Luiz Felipe de Seixas Corrêa (Brazil) was elected Chair of the session by consensus.
7. Six Vice-Chairs, one from each WHO region, were elected by consensus, representing South Africa, the United States of America, India, Turkey, the Islamic Republic of Iran and Japan, to establish the Bureau of the meeting (see Annex 2).

Agenda item 3. Adoption of the agenda (Document A/FCTC/IGWG/1/1 Rev.1)

8. The agenda was adopted.

9. At the proposal of the Chair it was decided that the agenda items should be divided into two groups, items 6 and 10, being procedural and items 7, 8 and 9, being financial. Discussions were arranged around those groups. The Working Group agreed to this method, as reflected in the indicative programme of work.

Agenda item 4. Activities of the Secretariat since the adoption of the WHO Framework Convention on Tobacco Control (Document A/FCTC/IGWG/1/2)

10. In the course of the discussion, several points were emphasized: there was a need for WHO support for national or regional surveys in order to provide the evidence base for effective tobacco control strategies; the necessary financial, human and other resources for such programmes should be clearly defined; and further research was needed to define the epidemiology of tobacco use, the economic impact of tobacco control on health and development, the effects of tobacco other than in cigarettes, the reasons for tobacco use, especially in developing countries, and the association between tobacco use and narcotics addiction. The importance of the WHO awareness-raising workshops for ratification of the Convention was emphasized by a number of speakers, and extension of that activity was requested. One representative asked for annual reports on progress in implementing the Convention and one representative asked for a review similar to that provided in document A/FCTC/IGWG/1/7, describing mechanisms that had been used elsewhere for implementing treaties.

11. The Director, Tobacco Free Initiative, said that attempts had been made to build capacity and raise awareness in all regions. Pilot studies on the health and economic effects of tobacco control were being conducted in several areas. A unit to address tobacco control had been created at IARC and opportunities would be explored within the agency to advance their tobacco-control research agenda. The role of tobacco control in meeting the United Nations Millennium Development Goals had been raised in various forums, including the United Nations Economic and Social Council and UNCTAD. The participation of WHO collaborating centres and regional advisers was being sought.

12. The Director-General said that the adoption of the Convention had been an important step; nevertheless, it was important to remain vigilant, as tobacco consumption and deaths from tobacco-related diseases were still increasing. The precedent set in Ireland and Norway, which had banned smoking in all public places, reinforced the message that strong measures must and could be taken. He reiterated WHO's willingness to provide technical, legal and institutional support to countries in applying the provisions of the Convention.

Agenda item 5. Status of the WHO Framework Convention on Tobacco Control
(Document A/FCTC/IGWG/1/3)

13. Chad, Kazakhstan, Lesotho, Mauritania, Papua New Guinea, Saudi Arabia, Suriname and the United Arab Emirates signed the Framework Convention during the meeting. Afghanistan, Democratic Republic of the Congo, Iraq, Liberia, Micronesia (Federated States of), Romania and Switzerland were due to sign before the deadline. The Working Group commended those States and urged other Member States that had not ratified or signed the Convention to follow their example.

14. The Coordinator, WHO Framework Convention on Tobacco Control, reported that the European Community had signed its instrument of formal confirmation of the Framework Convention.

Administrations that had not signed before the deadline could still become Parties to the Framework Convention by accession.

15. Several representatives cited steps that had been taken in their countries to implement the provisions of the Framework Convention. The ministers of health of all the South American Member States had recently issued a declaration, recognizing the need for early entry into force of the Framework Convention and expressing their determination to coordinate the fight against the tobacco epidemic.

16. A representative of the International Non Governmental Coalition Against Tobacco made a statement on behalf of the Framework Convention Alliance on Tobacco Control, an alliance of 200 nongovernmental organizations.

17. On Friday, 25 June 2004, the last day of the session, Kenya, Liberia, Romania, Switzerland and Ukraine signed the Convention taking the total number of signatories to 150. Kenya also ratified, taking the total number of Contracting Parties to 22.

Agenda item 6. Draft rules of procedure for the Conference of the Parties, including criteria for participation of observers (Document A/FCTC/IGWG/1/4)

18. The Coordinator, WHO Framework Convention on Tobacco Control, and the Senior Legal Officer, introduced the draft rules of procedure of the Conference of the Parties.

19. At the proposal of the Chair, it was decided that the draft rules should be discussed in groups relating to: issues internal to the rules, the process of organizing sessions, the substance of running sessions and miscellaneous issues. Consequently they were not necessarily discussed in numerical order.

20. Three regional groups of Member States said that the rules of procedure of the WHO Framework Convention on Tobacco Control should be specific to that Convention. They therefore commended the approach proposed. Some representatives proposed textual amendments to the rules only in writing.

Applicability and definitions (Rules 1 and 2)

21. One representative suggested that the title of Rule 1 on applicability should be changed to "Scope". It was agreed to delete the last three words of Rule 1, which were redundant. It should be made clear that the rules of procedure also applied to subsidiary bodies, and Rule 25(3) should be aligned with Rule 1 in that respect.

22. It was suggested that the definitions of suspension and adjournment of meetings currently in Rule 38(2) should be moved to Rule 2, and clearer definitions should be given of "subsidiary bodies"; "public", "private", "open" and "restricted" meetings and "open-ended" in respect of attendance at meetings.

Sessions, agenda, secretariat, and representation and credentials (Rules 3-20)

23. In response to a query on Rule 3, the Senior Legal Officer explained that the term "other appropriate arrangements" was intended to give the Secretariat flexibility in arranging conferences elsewhere than at its seat, depending on practicality and funding. There was a convergence of opinion

that the Conferences of the Parties (Rule 4(1)) should be held annually for the first four years, after which a decision could be taken on whether to hold subsequent sessions less frequently. It was also proposed that any decision taken on the periodicity of sessions should take into account costs. For Rule 4(4) regarding the scheduling of extraordinary sessions of the Conference of the Parties, most speakers agreed that the longer option, 90 days, should be retained. There was a general understanding that intervals should be given in days rather than months throughout the document. The convergence of opinion for Rule 5 was that the second option, which distinguishes between the notification period of regular and extraordinary sessions of the Conference of the Parties, should be used. However, differing views were expressed regarding what the notification period should be.

24. It was suggested that Rules 29 and 30 on observers should appear before Rule 6.

25. In Rule 6 on the provisional agenda, “President” should be replaced by “Bureau”. One regional group stressed that the Bureau should consist of six persons, including the President, representing the six WHO regions. Questions were raised with regard to the scope of the term “any item” in Rule 7(e) on items for inclusion in the provisional agenda; that Rule should be amended to ensure that the items proposed were legitimate and relevant. The same change would apply to Rule 9. The specific reference in Rule 7(a) to Article 23 of the Convention, which outlined specific tasks, could be deleted to broaden the scope of possible subjects for the agenda. The representative of one regional group suggested that two further subparagraphs be added, specifying that reports of States Parties and of subsidiary bodies should be submitted. One speaker suggested that a Rule 7(f) be added, to cover “Other business”. In Rule 8, most speakers preferred the option of 60 days for distribution of the provisional agenda. All agreed that it should also be sent to observers. In Rule 9, “President” should be replaced by “Bureau”, as proposed for Rule 7, and “supplementary agenda” should be preceded by the word “provisional”. It was suggested that the second sentence in Rule 10 on changes to the agenda could be deleted, as the Conference of the Parties was a sovereign body that made its own decisions. A number of speakers emphasized the importance of Rule 12, which instructed the Secretariat to report on the administrative, financial and budgetary implications of any substantive agenda item. One representative asked how such reports could be prepared if an item was proposed only one day before a session, as foreseen in Rule 32. The overall view was that the two rules should be harmonized.

26. One speaker pointed out that Rule 14 referred to the “head of the Secretariat”, which had not hitherto been defined. The additional functions of the Secretariat, under Rule 15(f), should be more specific.

27. Several speakers said that authority to issue credentials to representatives (Rule 18) should not be limited to a Head of State or Government or the Minister for Foreign Affairs. One speaker suggested that the words “or by the Minister of Health through the Minister for Foreign Affairs” be added to the sentence; that specification might obviate the naming of a Minister of Trade, for instance, as a country representative. It was proposed to amend Rule 19 on examining and reporting on credentials to read “The Bureau shall examine ...” to cover meetings of subsidiary bodies.

Observers (Rules 29 and 30)

28. Regional groups noted that three categories of observers should be specified: Member States that were not Parties to the Convention, nongovernmental organizations and intergovernmental organizations. A separate paragraph should be introduced under Rule 29 to define each. The Chair suggested that a fourth category might be introduced, of Member States that had signed the Convention but not yet ratified it. The second version of Rule 29 was preferred by most speakers, as it would encourage Member States that had not yet ratified the Convention to attend conferences and

might incite them to become States Parties. Representatives who spoke for the first option considered that the Rules of Procedure of the World Health Assembly should be followed.

29. The proposals to amend Rules 29 and 30 met with general support. One regional group suggested that the paragraph dealing with nongovernmental organizations should specify “nongovernmental organizations which have communicated to the Secretariat their desire to attend sessions of the Conference of the Parties as observers”. The paragraph should further state that, when considering the accreditation of such organizations, the Conference of the Parties should take into account the seventeenth and eighteenth preambular paragraphs of the Convention, and possibly also Article 5(3) in respect of the tobacco industry.

30. With regard to Rule 30, most speakers considered that the Conference of the Parties itself should decide which organizations were to be admitted as observers. Although the Health Assembly had much experience in the selection of nongovernmental organizations, those recognized by WHO were not necessarily the same as those concerned with tobacco control. Furthermore, the WHO process of screening for accreditation was long and complicated, and the existing rules were being revised and could therefore not be used as a model. Preference was expressed for the second option, which would streamline the process while allowing Parties to refuse the admission of any organization about which there was concern. One representative noted that some nongovernmental organizations which had sought official relations with WHO had been found to have links with the tobacco industry. The independence of nongovernmental organizations from the tobacco industry should be reiterated. National nongovernmental organizations should be mentioned specifically in the text and comments were made regarding whether the participation of national nongovernmental organizations should be treated in the same way as that of international nongovernmental organizations.

31. The Chair said that requests for admission as observers to the first meeting of the Conference of the Parties could be considered at the preparatory meeting for that Conference.

Officers and subsidiary bodies (Rules 21-28)

32. Opinions converged that the Bureau should be composed of a President and five Vice-Presidents, i.e. one member from each of the six WHO regions (Rule 21). One regional group wanted six Vice-Presidents, citing the precedent set by the Intergovernmental Negotiating Body.

33. It was generally understood that officers of the Conference of the Parties should not be allowed to serve two consecutive terms, in order to preserve the principle of rotation of posts among the WHO regions. One representative asked whether the same principle would apply to the officers of subsidiary bodies. It was felt by some delegations that Vice-Presidents should serve in the alphabetical order of their country, not in the order designated by the President.

34. The representative of one regional group suggested that, in Rule 25(2) on determining the matters to be considered by subsidiary bodies, the Conference of the Parties should be called upon to decide the mandate, objectives, duration and budget of the subsidiary bodies. The Chair asked whether subsidiary bodies would, in fact, have their own budget. Replying to a representative’s question, he said that subsidiary bodies might take on a number of forms (e.g. long-term standing committees or groups of fixed duration) and it was therefore important to remain flexible.

35. Some delegations felt that the chairmen of subsidiary bodies should be elected by the Conference of the Parties, while others considered that they should be elected by the subsidiary bodies themselves. Many representatives felt that chairmen of subsidiary bodies should not have the right to vote, as a State or region might thus obtain an extra vote. A number of representatives felt that the

chairmen of subsidiary bodies should not be members of the Bureau ex officio, since that would disturb the regional balance, and they therefore suggested that Rule 21(5) on the inclusion of the Chairman of a subsidiary body in the Bureau should be deleted. The Chair suggested that the Bureau might invite them to attend its meetings where appropriate.

36. One representative suggested that officers of the subsidiary bodies should be elected with due regard to the balance between developed and developing countries, as well as equitable geographical distribution more generally. One representative, commending the high degree of gender sensitivity displayed by the authors of the draft rules of procedure, suggested that equitable gender balance should be taken into account in the composition of subsidiary bodies in cases where members were elected in their personal capacities rather than as representatives of Parties.

37. There was a convergence of opinion that meetings of the subsidiary bodies should be held in public, with due respect for the need to guard against commercial interests of the tobacco industry, as stated in Article 5(3) of the Convention. One representative felt strongly that they should be held in private, since that was more appropriate for the negotiation of intergovernmental agreements on substantive issues.

Conduct of business and voting (Rules 31-55)

38. Some representatives suggested changes in the order of Rules 31-55.

39. Rule 31 provided for meetings of the Conference of the Parties to be held in public. One representative called for the inclusion of a reference to Article 5(3) of the Convention, as had been suggested for Rule 27. Another representative felt strongly that meetings should be held in private.

40. One representative suggested that proposals and amendments should not be considered if they had been submitted less than 24 hours before the meeting (Rule 32). Another representative suggested that they should be considered, with the Parties' consent. The Senior Legal Officer said that a balance should be struck between the need for flexibility and the orderly conduct of proceedings.

41. One representative suggested that amendments should be circulated to observers as well as Parties (Rule 32). One representative suggested that, in Rule 34(1), "no representative" should be replaced by "no one". It was suggested that two representatives should speak for the adjournment of the debate (including the proposer of the motion), and two against.

42. One representative asked about the status of the Member States of the European Union for the purposes of determining a quorum (Rule 33(2)). He felt that only those States actually present at the meeting should be counted. In reply, the representative of the European Commission said that, if the European Community was party to a treaty or convention, its representative would normally represent the number of States Parties which were members of the Community, for both quorum and voting purposes. Either the European Community or the individual States Parties would vote, but not both. The Senior Legal Officer informed the Working Group that, under the rules of the Codex Alimentarius Commission, a member organization such as the European Community represented the number of its Member States which were present at the time of establishment of the quorum.

43. Some delegates said that the Secretariat should be allowed to speak only at the invitation of the President (Rule 35).

44. All representatives stressed that every effort must be made to take decisions by consensus. Representatives made various suggestions relating to voting in cases where a consensus could not be

achieved. One suggested that two different majorities might be required, depending on the article of the Convention concerned. For votes related to Articles 21-25, for example, a two thirds majority might be required, while for votes on more important articles, e.g. Articles 7, 9, 19(3) or 26, a three quarters majority might be required. A three quarters majority was provided for in Article 28(3) of the Framework Convention.

45. One representative said that Rule 41, on the priority for dealing with proposals or motions, should be made subject to Rule 37, which allowed for the raising of a point of order.

46. Representatives asked that Rules 43, 44 and 47, relating to voting, be revised to make their meaning clearer. Queries were raised about the provisions for voting in elections and, in particular, whether ballots should continue until a clear winner emerged or whether the President should decide between two candidates by drawing lots.

47. Replying to a question, the Senior Legal Officer said that there were precedents both for rejecting a motion on which a vote was equally divided, in matters other than elections, as suggested in Rule 49(4), and for repeating the vote. The matter would require further discussion.

48. The representative of one regional group suggested that explanations of vote should be given only with the President's permission (Rule 51(2)).

Languages and records (Rules 56-61)

49. The representative of one regional group suggested that the list of official languages should be replaced by "the official languages of the United Nations"(Rule 56).

50. Replying to a question from a representative, the Secretary said that the six official languages would also be the working languages of the Conference of the Parties, used for interpretation in meetings, documents and correspondence. One representative suggested that an explicit statement to that effect should be included in Rule 59(1).

51. Replying to a question from a representative, the Senior Legal Officer said that, pursuant to Article 23(3) of the Convention, the rules of procedure were to be adopted by consensus. Any amendments to them should, accordingly, also be adopted by consensus (Rule 60).

Agenda item 7. Draft financial rules for the Conference of the Parties (Document A/FCTC/IGWG/1/5)

52. Most representatives said that they would be unable to make any firm decisions about the draft financial rules until other matters had been decided, including the financing of the Conference of the Parties and the arrangements for a permanent secretariat.

53. Two positions emerged. One was that the financial rules should follow those of WHO as closely as possible, with new rules when necessary, and that the activity should be financed from the WHO regular budget. The other, which was reflected in the document, was that the rules should be simpler than those of WHO, although following the same structure, and that the budget should be separate from that of WHO. The financial rules should not automatically be based on those of WHO. Those adopted for other conventions might be more appropriate.

54. The representative of one regional group said that the financial rules and rules of procedure should reflect the autonomous status of the secretariat. One representative said that it had been

difficult to see how the financial documentation provided related to the specific tasks involved in implementing the Convention.

Agenda item 8. Draft budget for the first financial period (Document A/FCTC/IGWG/1/6)

55. The Chair said that a realistic, cost-effective budget was essential if the Conference of the Parties was to live up to the international community's high expectations.

56. Most representatives considered that it would be difficult to make any firm decision about the budget until issues such as funding and a permanent secretariat had been decided. Requests were made for financial information which might give some indication of the likely costs of implementing the Convention and the possible level and structure of the budget, for example:

- a breakdown of the expenditure of WHO's Tobacco Free Initiative over the previous five years, showing any differences between the original budget headings and the ways in which the funds had actually been spent;
- the proposed budget allocations of WHO's Tobacco Free Initiative for the biennium 2006-2007;
- estimates for the six budget headings listed in the document;
- estimates for the functions of the Secretariat laid down in Article 24(3) of the Framework Convention;
- the interim secretariat's proposed budget for the first session of the Conference of the Parties;
- estimated contributions which would be required from the current Parties to the Convention if the United Nations scale of assessments were applied; and
- separate estimates for tobacco control in developing countries, many of which would need help in finding alternative crops to tobacco.

57. The Director, Office of the Director-General, said in response to a question that, if the secretariat were autonomous but used the services of WHO staff, the charge for those services would have to be the subject of a separate agreement.

58. The Convention should have a stable source of core funding. Questions were raised about the use of the United Nations scale of assessments to finance an autonomous secretariat, especially as, at least initially, there would be only some 40 States Parties. In that case, at least some use should be made of the WHO regular budget.

59. One representative suggested that the interim secretariat might make use of the results-based budgeting approach recently adopted by WHO.

60. The Coordinator, WHO Framework Convention on Tobacco Control, said that the interim secretariat could provide some estimates of the costs of meetings of the Conference of the Parties, based on experience gained in the meetings of the Intergovernmental Negotiating Body. The figures would vary depending, for example, on whether extra support was provided for low-income and low-

middle-income countries. A secretariat that was independent of existing structures was likely to have much higher operating costs.

61. The Director, Tobacco Free Initiative, said that, at present, that Initiative was responsible for building national capacity in tobacco control, promoting the Framework Convention and providing the interim secretariat functions. It provided support for the WHO Framework Convention on Tobacco Control and national capacity building, which complemented one another usefully. It would be difficult to envisage the future relationship between the Tobacco Free Initiative and the permanent secretariat of the Conference without further guidance from Member States. Replying to a representative's question, she said that the budget of the Tobacco Free Initiative in 2002-2003 had been about US\$ 18 million; it was likely to be similar or slightly lower in 2004-2005, since the level of extrabudgetary contributions was much lower than expected.

62. The Chair said that the document dealt only with secretariat costs, which were relatively easy to estimate. It would be difficult to estimate the costs of implementing substantive programmes under the Convention, especially since the demand for such programmes was likely to increase rapidly.

63. The Working Group was advised that mechanisms existed to calculate the assessments payable by Parties on the basis of their contributions to other institutions such as the United Nations. In the case of conventions which had few parties as yet, voluntary contributions could be invited from the signatory States pending ratification.

64. The Director, Office of the Director-General, said that there had been no regular budget allocation for the meetings of the Intergovernmental Negotiating Body or the current Working Group, which had been financed by funds diverted from other WHO programmes. Financing was still potentially available to fund a session of the Conference of the Parties before the end of 2005. The actual amount available would depend on factors such as currency exchange rates and unused funds available from other WHO programmes. Costs would also be affected by decisions about payment of travel costs and per diem. For comparison and planning, the cost of the current session of the Working Group amounted to approximately US\$ 400 000, including travel. The funds allocated to tobacco control within WHO were likely to increase considerably in the biennium 2006-2007, but they would not necessarily be available to finance the Conference of the Parties.

Agenda item 9. Potential sources and mechanisms of support (Document A/FCTC/IGWG/1/INF.DOC./1)

65. Regional groups emphasized that predictable, adequate, sustainable, unconditional support was needed for implementation of the Framework Convention. They stressed the importance of transparent financing to prevent interference by groups with interests contrary to those of the Framework Convention. Support would be needed in particular to countries in which the economy was heavily dependent on revenues from tobacco growing, to assist them in diversifying their economies and changing to alternative crops. One group suggested that WHO should include tobacco control in all health promotion programmes.

66. Several representatives called for a more detailed study of existing sources of support, including actual sums provided, types of projects that had been funded and the strengths and weaknesses of the various sources. The report should also describe how developing countries could gain access to funding. For instance, the World Bank and the European Union provided financial and technical support only when the activity for which funds were being requested had been identified as a priority in a country's plans. One regional group said that a mechanism should be found to consolidate all existing forms of financial and technical support, to ensure adequate, effective, long-term

implementation of the Framework Convention. One representative indicated that the United Nations Ad Hoc Interagency Task Force on Tobacco Control, which was led by WHO, might be a suitable body for such an integration mechanism.

67. After a discussion in which some representatives said that Article 26(5)(c) of the Framework Convention provided for a focus only on the adequacy of existing mechanisms, it was understood that the words “potential sources” in that Article also covered the possibility of establishing a global fund. The study should therefore also include information on how existing global funds obtained resources and how they functioned. Document A/FCTC/INB6/INF.DOC./1, which had been produced for the sixth session of the Intergovernmental Negotiating Body contained a review of different funds both within and external to WHO, and might serve as a basis for that study. One representative said that the review of global funds should also examine their predictability and sustainability, in view of the fact that they were based on voluntary contributions. The study should nevertheless be objective and factual, presenting all the options and leaving the Conference of the Parties to decide whether setting up a global fund was suitable. One representative suggested that the phrase “but does not evaluate the relevance and availability of any given financial or other arrangement” in paragraph 2 of the report submitted by the Secretariat would be inappropriate in the report sent to the Conference of the Parties.

68. Representatives suggested several sources of information for the study, including a UNDP-led task force to explore financing for information and communication technology and OECD’s Development Assistance Committee.

69. One regional group and the European Community submitted proposals for the terms of reference of the study.

70. Statements were made by representatives of several nongovernmental organizations: Infact (also on behalf of the Network for Accountability of Tobacco Transnationals), the International Union against Cancer, Consumers International, the International Federation of Medical Students’ Associations and the International Non Governmental Coalition against Tobacco. It was suggested that countries that received income from corporate taxes on tobacco transnationals bore a responsibility to help tobacco-dependent countries develop viable alternative economies, and the tobacco companies themselves should provide funds to help cover tobacco-related health costs and implementation of the Framework Convention. Nevertheless, tobacco corporations, their subsidiaries and affiliates and countries that were not Parties to the Convention should have no role in decisions on its funding.

Agenda item 10. Options for the designation of the permanent secretariat and arrangements for its functioning (Document A/FCTC/IGWG/1/7)

71. There was a convergence of opinion that the secretariat should be part of WHO but there were a range of views regarding the appropriate degree of autonomy the permanent secretariat should exercise. The technical and administrative aspects of its work could be based on the example of the parent Organization. It should be under the authority and guidance of the Conference of the Parties with regard to policy and budget decisions. The arrangements for the functioning of the secretariat could be reviewed if the Conference of the Parties considered it necessary. If the secretariat were based in Geneva, country representatives based there permanently could attend its meetings.

72. One regional group suggested a hybrid structure, whereby administrative and financial matters were dealt with by WHO personnel, but technical, substantive and political matters were overseen by the head of the secretariat and three or four officers selected by the Conference of the Parties. That would protect the secretariat from subordination to or influence by the Health Assembly or the Executive Board, where some Member States might not be States Parties. One representative

suggested that the Director-General should nominate the senior officers, the appointments being confirmed by the Conference of the Parties. An appropriate geographical and gender balance should be maintained.

73. All representatives stressed that the secretariat must be cost-effective.

74. Clarification was requested on the future relation between WHO's Tobacco Free Initiative and the permanent secretariat, how other expertise in WHO (e.g. legal and financial) would be used, and the existence of a precedent for the hybrid structure that had been proposed. The Director, Office of the Director-General, and the Senior Legal Officer provided clarifications at the request of delegations. They emphasized, in particular, that WHO's Constitution and Staff Regulations granted the Director-General the authority to appoint and manage the staff. Proposals to the effect that the Framework Convention's secretariat should be appointed by, and accountable to, the Conference of the Parties will have to be assessed carefully in that respect.

75. One representative noted that, if WHO were to be appointed as the secretariat of the Conference of the Parties, it would be able to take advantage of the activities and experience of the Tobacco Free Initiative, and vice versa. The representative of one regional group said that the documentation before the Working Group reflected a view of the relationship between the future secretariat and WHO which his group did not share.

76. The following nongovernmental organizations spoke: Infact (also on behalf of the Network for Accountability of Tobacco Transnationals); the Framework Convention Alliance on Tobacco Control (comprising the International Non Governmental Coalition against Tobacco, the International Union against Cancer and the International Union against Tuberculosis and Lung Disease); and the International Organisation of Consumers Unions (Consumers International). The need for adequate and innovative funding, strong financial mechanisms and the autonomy of the secretariat to ensure the success of the Framework Convention were emphasized.

Agenda item 11. Identification of next steps

77. The Working Group discussed ways of finalizing its recommendations to the Conference of the Parties. The Director, Office of the Director-General, described the financial and logistical constraints involved. The Chair suggested that the Working Group might wish to entrust the preparation of the recommendations to an interregional drafting group, which would transmit a report on its behalf to the Fifty-eighth World Health Assembly, where it would be noted and subsequently forwarded to the Conference of the Parties.

78. Following extensive informal consultations, all regional groups expressed a preference for at least a second meeting of the full Working Group. The Chair recalled that an organizational meeting could be held shortly before the Conference of the Parties.

79. The Working Group decided that at least a second meeting was necessary (see Annex 3).

80. The regional groups reiterated their positions with regard to the agenda items, and recommendations were made for reports that should be prepared for the next meeting of the Working Group, as follows:

Potential sources and mechanisms of support

(a) The representative of a regional economic integration organization said that it was her understanding that the interim secretariat was to conduct a study of existing and potential sources and mechanisms of support, which it would present to the Conference of the Parties for discussion at its first session.

(b) The representative of three regional groups outlined their position with regard to the terms of reference for the study to be conducted within the context of the provisions of Article 26(5)(d). The interim secretariat should: review existing sources and mechanisms of support in consultation with other United Nations bodies and relevant international institutions; outline the modalities for accessing the existing sources and mechanisms, including any conditions; evaluate modalities for better coordination, integration and mainstreaming of existing, relevant sources of financial and technical support; analyse experiences with existing global funds; evaluate the modalities of establishing a global fund; and analyse and review experiences with similar appropriate mechanisms.

(c) A study based on those terms of reference would allow the Conference of the Parties to make an informed decision and thus to concentrate on its important work of implementing the Framework Convention.

(d) The Chair said that at its next meeting the Working Group should reach a consensus on the terms of reference for the study, taking into consideration all the suggestions that had been made.

Draft budget for the first financial period

(e) Several representatives asked for a more detailed report than that contained in document A/FCTC/IGWG/1/INF.DOC./2 for the next meeting of the Working Group. It should include proposed budgets for the first, second and possibly the third financial periods of the Conference of the Parties; a list of proposed activities with their costs; an indication of the contribution to those costs from the WHO regular budget, and anticipated differences between the cost of the interim secretariat and of a permanent secretariat. That information would make it easier to estimate the shortfall that would have to be made up by voluntary or mandatory contributions from Member States.

Draft rules of procedure for the Conference of the Parties, including criteria for participation of observers

(f) One representative proposed that nongovernmental organizations should be allowed to participate in meetings of the Conference of the Parties and in all related meetings. They were recognized experts in the field of tobacco control, and were often of greater assistance to ministers of health than were other members of the government. He suggested that the criteria for participation of a nongovernmental organization should be that they had status with the United Nations or specialized agencies and national approval according to the regulations of the country in which they were based. They should be active, independent of the tobacco industry and supportive of government activities in tobacco control.

(g) One representative said that the issue of national approval of nongovernmental organizations was controversial, and his administration would have difficulty in accepting a statement of that kind.

(h) Another representative said that nongovernmental organizations should be permitted to participate in the same way as they had at the present meeting. She drew attention to a proposed revision to Rule 30 of the draft rules of procedure which had been submitted by her regional group; it read: "Nongovernmental organizations, competent in matters falling within the purview of the Convention, and whose aims and activities are in conformity with the spirit, purposes and principles of the Convention may, taking into account guidance given by the Conference of the Parties, be invited to attend sessions of the Conference of the Parties as observers". The criteria for admittance of a nongovernmental organization should be included in the rules of procedure.

(i) The representative of another regional group said that the proposed revision would need further amendment.

(j) The Chair said that nongovernmental organizations had made active, positive contributions to tobacco control. The next Working Group should take into consideration all the suggestions made and make a recommendation to the Conference of the Parties on how nongovernmental organizations might participate in meetings.

Options for the designation of the permanent secretariat and arrangements for its functioning

- (k) The representative of three regional groups stated their joint position:
- "The permanent secretariat shall be housed within WHO.
 - Taking into account the mandate of WHO regarding public health issues in general and tobacco control specifically, there shall be mutual supportiveness and complementarity between the activities of the permanent secretariat and those of WHO.
 - The collaboration referred to in the two points above could be formalized through a Memorandum of Understanding or any similar agreement as may be relevant between the Conference of the Parties and WHO.
 - The permanent secretariat shall be accountable to the Conference of the Parties.
 - The Conference of the Parties shall recruit and appoint the head of the permanent secretariat in collaboration with WHO.
 - The head of the permanent secretariat shall recruit and appoint other staff members of the secretariat, within the guidelines provided by the Conference of the Parties. The guidelines shall take into account technical expertise, equitable geographical representation, gender balance and balance between developed and developing countries.
 - The permanent secretariat shall be autonomous and have an independent budget."

(l) One representative, agreeing with that position, said that there appeared to be convergence of opinion on the basic structural elements for the secretariat. The interim secretariat should therefore examine the financial implications associated with an autonomous or semi-autonomous secretariat within WHO.

(m) The representative of one of the three regional groups said that the modalities of cooperation with WHO in appointing the head of the secretariat should be decided upon by the Conference of the Parties, and requested that models based on the data set out in document A/FCTC/IGWG/1/INF.DOC./3 should be prepared for the next meeting of the Working Group. It would also be useful to have copies of memoranda of understanding between WHO and other bodies.

- (n) The representative of another regional group summarized its position as follows:
- “The permanent secretariat should be located in WHO, so that it could use administrative and financial resources and the expertise of WHO in the most cost-effective way.
 - The budget of the Convention should be funded from the regular budget of WHO. The financial rules and regulations of WHO, with some necessary modifications, would then apply to administration of the Convention’s budget.
 - All efforts should be made to reach consensus on substantial issues at the Conference of the Parties, and the budget of the Convention should be adopted by consensus.
 - While the idea of a ‘hybrid’ type of secretariat needs further exploration, a fully separate secretariat should not be created, nor should any unnecessary layers of bureaucracy be added within WHO.
 - The Conference of the Parties should not micromanage the permanent secretariat. The head of the secretariat should be nominated by the Director-General of WHO, and the nomination should be confirmed by the Conference of the Parties. After that confirmation, the Director-General of WHO should formally appoint the head of the secretariat.”

He understood that UNEP had a unique arrangement and asked for a study on the arrangements used in other agencies of the United Nations system.

81. The Working Group was assured that the studies and reports that had been requested would be prepared for the next meeting of the Working Group.

CLOSURE OF THE MEETING

82. Two statements were given by representatives of nongovernmental organizations: one on behalf of Infact and the Network for Accountability of Tobacco Transnationals, and the other on behalf of the International Union against Cancer, the International Non Governmental Coalition against Tobacco, the International Federation of Medical Students Associations and the International Union against Tuberculosis and Lung Disease. The session was then declared closed.

ANNEX 1

DRAFT RULES OF PROCEDURE FOR THE CONFERENCE OF THE PARTIES

(Square brackets denote proposed deletions and alternative text. Bold face denotes language or brackets proposed during the first session of the Working Group. Only those proposals that were submitted to the secretariat in writing during the session have been included.)

[APPLICABILITY] / [SCOPE]

Rule 1

These Rules of Procedure shall apply to any session of the Conference of the Parties to the convention convened in accordance with Article 23 of the Convention [and these Rules].

DEFINITIONS

Rule 2

For the purposes of these Rules:

1. “Convention” means the WHO Framework Convention on Tobacco Control, adopted at Geneva on 21 May 2003;
2. “Parties” means Parties to the Convention;
3. “Conference of the Parties” means the Conference of the Parties established by Article 23 of the Convention;
4. “session” means any regular or extraordinary session of the Conference of the Parties convened in accordance with Article 23 of the Convention and these Rules;
5. “regional economic integration organization” means an organization as defined in Article 1(b) of the Convention;
6. “President” means the President of the Conference of the Parties elected in accordance with Rule 21, paragraph 1 of these Rules;
7. “Secretariat” means the Secretariat established by Article 24, paragraph 1, of the Convention;
8. “subsidiary body” means any body established pursuant to Article 23, paragraph 5(f) of the Convention;
9. “Parties present and voting” means Parties present at the meeting in which voting takes place and casting a valid affirmative or negative vote. Parties abstaining from voting shall be considered as not voting.

SESSIONS

Rule 3

The sessions of the Conference of the Parties shall be held at the seat of the Secretariat, unless the Conference of the Parties decides otherwise [and][or] other appropriate arrangements are made by the Secretariat in consultation with the Parties.

Rule 4

1. [Unless otherwise decided by the Conference of the Parties, regular sessions of the Conference of the Parties shall be held once every [year] / [two years].]

or

[Unless otherwise decided by the Conference of the Parties, the second, [and] third [and fourth] regular sessions of the Conference of the Parties shall be held yearly[, and thereafter, regular sessions shall be held every two years **[unless otherwise decided by the Conference of the Parties].**] **[On the occasion of its fourth regular session, the Conference of the Parties will decide upon the periodicity of the following regular sessions].**]

2. At each regular session, the Conference of the Parties shall decide on the date and duration of the next regular session. The Conference of the Parties should endeavour not to hold such a session at a time which would make the attendance of a significant number of delegations difficult.

3. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, **[to deal with urgent and important matters]** provided that, within six months of the request being communicated to them by the Secretariat of the Convention, it is supported by at least one third of the Parties.¹

4. Extraordinary sessions held at the written request of a Party, shall take place not more than [ninety] / **[sixty]** / [thirty] days after the date at which the request is supported by at least one third of the Parties in accordance with paragraph 3 above.

Rule 5

[The Secretariat shall notify all Parties of the dates and venue of regular and extraordinary sessions at least [sixty days] before the session is due to commence.]

or

[The Secretariat shall notify all Parties of the dates and venue at least [sixty] / [ninety] days in advance of a regular session, and at least thirty days in advance of an extraordinary session.]

¹ Article 23.2 of the Convention.

AGENDA¹*Rule 6*

In [consultation] / **[agreement]** with the [President] **[Bureau]**, the Secretariat shall prepare the provisional agenda for each session.

Rule 7

The provisional agenda for each regular session shall include, as appropriate:

(a) items arising from the Articles of the Convention, including those [specified in its Article 23] / **[items proposed by one or more Parties and received by the Secretariat prior to circulation of the provisional agenda];**

(b) items the inclusion of which has been decided at a previous session;

(c) items referred to in Rule 13;

(d) the proposed budget and all questions pertaining to the accounts and financial arrangements;

[(e) the reports of the Parties, which shall be presented in accordance with Article 21 of the Convention;

(f) [the] reports of / [from] the subsidiary bodies; and]

[(e)] / [(g)] [any item] / [any other item relevant to the implementation of the Convention] proposed by a Party and received by the Secretariat prior to circulation of the provisional agenda.

Rule 8

For each regular session, the provisional agenda, together with other conference documents, shall be distributed in the official languages by the Secretariat to the Parties, [and to observers invited to attend the session in accordance with Rules 29 and 30], at least [six weeks] / [sixty days] before the opening day of the session.

Rule 9

The Secretariat [shall] / **[may]**, in consultation with the [President] / **[Bureau]**, [include in a supplementary] / **[add to the provisional]** agenda any item proposed by [a Party] / **[one or more Parties]** which reaches the Secretariat between the dispatch of the provisional agenda for a regular session and **[10 days before]** the opening day of the session[, **provided that it falls within the scope of Rule 7(a) to (d) of the Rules of Procedure.**]

¹ It has been proposed that Rules 29 and 30 (Observers) come before the section on Agenda so that the Rules regarding Observers are defined before being mentioned in the Rules regarding the Agenda.

Rule 10

[**The Conference of the Parties shall examine the provisional agenda together with any supplementary provisional agenda.**] When adopting the agenda for a regular session, the Conference of the Parties may decide to add, delete, defer or amend items. [Only items that are considered by the Conference of the Parties to be urgent and important may be added to the agenda.]

Rule 11

The provisional agenda for each extraordinary session shall include only those items proposed for consideration by the Conference of the Parties at a regular session or in [the] / [**in a Party's written**] request for the holding of the extraordinary session. It shall be distributed to the Parties at the same time as the notification of the extraordinary session.

Rule 12

1. The Secretariat shall report to the Conference of the Parties on the administrative, financial and budgetary implications of all substantive agenda items submitted to the session, before they are considered by the Conference.
2. Unless the Conference of the Parties decides otherwise, no such substantive agenda item shall be considered until at least forty-eight hours after the Conference of the Parties has received a report from the Secretariat on its administrative, financial and budgetary implications.

Rule 13

Any item on the agenda of a regular session, that has not been considered or completed at the session, shall automatically be included in the provisional agenda of the next regular session, unless otherwise decided by the Conference of the Parties.

SECRETARIAT¹*Rule 14*

1. The head of the Secretariat, or the representative of the head of the Secretariat, shall act in that capacity in all sessions of the Conference of the Parties and of its subsidiary bodies.
2. The head of the Secretariat shall arrange for the provision of staff and services required by the Conference of the Parties and its subsidiary bodies, within available resources, and shall manage and direct such staff and services and provide appropriate support and advice to the Bureau of the Conference of the Parties and its subsidiary bodies.

Rule 15

In addition to the functions specified in the Convention, in particular in Article 24, the Secretariat shall, in accordance with these Rules:

¹ It has been proposed that the sections on Representation and credentials, Officers, and Subsidiary bodies come before the section on the Secretariat.

- (a) arrange for interpretation at the session;
- (b) collect, translate, reproduce and distribute the documents of the session;
- (c) publish and distribute the official documents of the session;
- (d) prepare and keep the records of the session;
- (e) arrange for the custody and safekeeping of the documents of the session; and
- (f) perform [all other] tasks **[that may be]** required [in connection with the work of] / **[by]** the Conference of the Parties.

REPRESENTATION AND CREDENTIALS

Rule 16

Each Party participating in a session shall be represented by a delegation consisting of a head of delegation and such other accredited representatives, alternate representatives and advisers as it may require.

Rule 17

An alternate representative or an adviser may act as a representative upon designation by the head of delegation.

Rule 18

The credentials of representatives, as well as the names of alternates and advisers shall be submitted to the Secretariat if possible no later than twenty-four hours after the opening of the session. Any subsequent change in the composition of the delegation shall also be submitted to the Secretariat. Credentials shall be issued either by the Head of State or Government or by the Minister for Foreign Affairs or, in the case of a regional economic integration organization, by the competent authority of that organization.

Rule 19

The Bureau of [the session] / **[any meeting]** shall examine the credentials and report thereon to the Conference of the Parties.

Rule 20

Representatives shall be entitled to participate provisionally in the session, pending a decision by the Conference of the Parties to accept their credentials.

OFFICERS

Rule 21

1. At the first regular session of the Conference of the Parties, a President and [five]¹ Vice-Presidents, one of whom shall act as Rapporteur, shall be elected from among the representatives of the Parties present at the session. These officers shall constitute the Bureau of the Conference of the Parties. Each of the WHO regions shall be represented by [one] Bureau member. The President and Vice-Presidents shall remain in office until the closure of the second regular session of the Conference of the Parties, including for any intervening extraordinary session.
2. Before the end of the second and subsequent regular sessions of the Conference of the Parties, officers shall be elected from among the Parties to constitute the Bureau for the following session. These officers shall commence their term of office at the closure of the session and shall serve until the closure of the following regular session of the Conference of the Parties, including for any intervening extraordinary session.
3. The offices of the President and Rapporteur shall [normally] be subject to rotation among the WHO regions.
4. The President shall participate in sessions of the Conference of the Parties in that capacity and shall not at the same time exercise the rights of a representative of a Party. The Party concerned shall designate another representative to represent the Party in the sessions and to exercise its right to vote.
- [5. The Chairman of any subsidiary body established in accordance with Article 23.5(f) of the Convention shall be a member ex officio of the Bureau.]

or

[5. The Chairperson of a subsidiary body may be invited by the Bureau for a specific purpose.]

or

[5. The Chairman of any subsidiary body established in accordance with Article 23.5(f) of the Convention may be invited to attend meetings of the Bureau for a specific purpose.]

Rule 22

1. In addition to exercising the powers which are conferred upon him or her elsewhere by these Rules, the President shall declare the opening and closing of the session, preside over the meetings, ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions. He or she shall rule on points of order and, subject to these Rules, shall control the proceedings and maintain order thereat.

¹ Rules of Procedure of the World Health Assembly and the Rules of Procedure of the Executive Board of the World Health Organization use this formulation. Other rules of procedure provide for different numbers and criteria of composition.

2. The President may propose to the Conference of the Parties the closure of the list of speakers, a limitation of the time to be allowed to each speaker and of the number of times a representative may speak on a question, the adjournment or closure of the debate and the suspension or adjournment of a meeting.
3. The President, in exercising the functions of that office, remains subject to the authority of the Conference of the Parties.

Rule 23

1. The President, if temporarily absent from a session or any part thereof, shall designate a Vice-President [**following the alphabetical order of the regions**] to act as President in his place. [**The designation of the Vice-President shall follow an alphabetical order.**] A Vice-President so designated shall not at the same time exercise the rights of a representative of a Party.
2. A Vice-President acting as President shall have the same powers and duties as the President.

Rule 24

1. If an officer of the Bureau resigns or is otherwise unable to complete the assigned term of office or perform the functions of that office, a representative of the same Party shall be designated by the Party concerned in his or her place for the remainder of the original term of office.
2. If the President is unable to act during the intersessional period, one of the Vice-Presidents shall act in his or her place. The order in which the Vice-presidents shall be requested to serve shall be determined by lot at the session at which the election takes place.

SUBSIDIARY BODIES

Rule 25

1. In accordance with Article 23.5(f) of the Convention, the Conference of the Parties may establish such subsidiary bodies as are necessary to achieve the objective of the Convention.
2. The Conference of the Parties shall determine the matters to be considered by each such subsidiary body[, **including its mandate, objectives, duration and budget,**] and may authorize the President, upon the request of the Chairman of a subsidiary body, to make appropriate adjustments in the allocation of work.
3. Except as provided in Rules 26-28, these Rules shall apply mutatis mutandis to the proceedings of any subsidiary bodies, subject to any modifications decided by the Conference of the Parties.

Rule 26

When a subsidiary body is not open ended, a majority of the Parties designated by the Conference of the Parties to participate therein shall constitute a quorum. When the subsidiary body is open ended, one quarter of the Parties shall constitute a quorum.

Rule 27

1. The Conference of the Parties shall decide the dates and venue of the sessions of the subsidiary bodies, with due regard for the desirability of holding such sessions in parallel with the sessions of the Conference of the Parties.
2. Sessions of subsidiary bodies shall be [public] / **[open]** / [private] unless the Conference of the Parties or the subsidiary body concerned decides otherwise. **[This rule shall be implemented in conformity with Article 5.3 of the Convention.]**¹

Rule 28

1. Unless the Conference of the Parties decides otherwise, the Chairman of a subsidiary body shall be elected by [the Conference of the Parties] / [that subsidiary body]. Each subsidiary body shall elect its own officers [[other than the] / **[and its]** Chairman] with due regard for the principle of equitable geographical representation[, **balanced representation of developing and developed countries and gender balance**]. [Officers shall not serve for more than two consecutive terms.]
- [2. The Chairman of a subsidiary body may exercise the right to vote.]

OBSERVERS

Rule 29

[Any Member State of WHO which is not a Party to the Convention, any Associate Member of WHO, or any State which is neither a Party to the Convention nor a Member State of WHO but is a Member State of the United Nations or of any of its specialized agencies or of the International Atomic Energy Agency shall, upon a request communicated to the head of the Secretariat, be invited to attend sessions of the Conference of the Parties and its subsidiary bodies as an observer. It may submit memoranda and participate in discussions without a vote.]

or

[Any Member State of the United Nations, of its specialized agencies, or of the International Atomic Energy Agency not Party to the Convention may attend meetings as observers. Such observers may, upon invitation of the President, participate without the right to vote in the proceedings of any meeting, unless at least one third of the Parties present at the meeting object.]

or

- [1. Any Member State of WHO which is not a Party to the Convention or any Associate Member of WHO may attend sessions of the Conference of the Parties as an observer.**
- 2. Any Member State of the United Nations, of its specialized agencies, or of the International Atomic Energy Agency not Party to the Convention may attend sessions of the Conference of the Parties as an observer.**

¹ It has been proposed that Rule 27(2) be merged with Rule 31.

3. Observers under this Rule shall have the right to speak after the Parties and to participate without the right to vote.]

or

[Subject to prior written notification to the Secretariat, any State or regional economic integration organization signatory to the Convention may attend meetings of the Conference of the Parties as an observer. It may submit its views in writing and participate in discussions without the right to vote.

Rule 29bis

Any other State or regional economic integration organization that has not signed the Convention or relevant intergovernmental organization may apply to the Secretariat for observer status, which shall be accorded by the Conference of the Parties. If accorded observer status, the State or organization concerned may, without taking part in the adoption of decisions on substantive or procedural matters:

- (a) attend plenary meetings of the Conference of the Parties;**
- (b) after consultations between the President and the other members of the Bureau leading to an invitation by the President, make oral statements at such meetings;**
- (c) submit its views to such meetings in writing.]**

Rule 30

[1. Subject to paragraph 2 below, the head of the Secretariat, taking into account guidance given by the Conference of the Parties, may invite global and regional intergovernmental organizations and [international] nongovernmental organizations to attend sessions of the Conference of the Parties in an observer capacity.

2. Participation of intergovernmental and [international] nongovernmental organizations in the work of the Conference of the Parties and the relations between the Conference of the Parties and such organizations shall be governed by the relevant provisions of the Constitution of the World Health Organization, the Rules of Procedure of the World Health Assembly, and by other decisions adopted by the Health Assembly in respect of relations with such organizations.^{1]}

or

[1. Any body or agency, whether national, international, governmental or nongovernmental, which is [engaged] / **[qualified]** in matters covered by the Convention and which has informed the Secretariat of its wish to attend a meeting as an observer, may be so admitted unless at least one third of the Parties present at the meeting object.

¹ Reference to the legal instruments governing WHO will only be relevant if WHO is designated as permanent Secretariat of the Convention.

2. Such observers may, upon the invitation of the President, participate without the right to vote in the proceedings of any meeting in matters of direct concern to the body or agency they represent, unless at least one third of the Parties present at the meeting object.]

or

[1. Intergovernmental organizations may be invited to attend sessions of the Conference of the Parties as observers.

2. Observers under this Rule shall have the right to speak after observers under Rule 29 and to participate without the right to vote.

Rule 30bis

1. Nongovernmental organizations [in official relations with the World Health Organization], competent in matters falling within the purview of the Convention, and whose aims and activities are in conformity with the spirit, purposes and principles of the Convention may, taking into account guidance given by the Conference of the Parties, be invited to attend sessions of the Conference of the Parties as observers.

2. Observers under this Rule shall have the right to speak after observers under Rule 30 and to participate without the right to vote.]

or

[Any nongovernmental organization whose activities are in keeping with the spirit, purposes and principles of the Convention may, after informing the Secretariat of its desire to attend sessions as an observer, be invited to attend sessions of the Conference of the Parties. For their accreditation, the Conference of the Parties shall take into account the 17th and 18th preambular paragraphs and Article 5.3 of the Convention.]

or

[1. The head of the Secretariat, in accordance with the guidelines provided by the Conference of the Parties, may invite:

- (a) global and regional intergovernmental organizations;**
- (b) international nongovernmental organizations not affiliated with or working on behalf of the tobacco industry; and**
- (c) national nongovernmental organizations, whose credentials have been certified by the representative national governments and who are not affiliated to or working on behalf of the tobacco industry;**

to attend sessions of the Conference of the Parties and its subsidiary bodies, provided such organizations have established relations with the World Health Organization or have been independently permitted accreditation by the Conference of the Parties.

2. Such observers may, upon the invitation of the President, participate without the right to vote, in the proceedings of any meetings of the Conference of the Parties or any of its subsidiary

bodies, in matters of direct concern to the body or agency they represent, unless at least one third of the Parties at the meeting object.]

or

[Relevant nongovernmental organizations may also apply to the Secretariat for observer status, which shall be decided by the Conference of the Parties. If accorded observer status, the organization may, without taking part in the adoption of decisions on substantive or procedural matters:

- (a) attend plenary meetings of the Conference of the Parties;
- (b) upon invitation by the President and subject to the approval by the Conference of the Parties, make oral statements at such meetings;
- (c) submit its views to such meetings in writing.]

CONDUCT OF BUSINESS¹

Rule 31

[Plenary] Sessions of the Conference of the Parties shall be held in public, unless the Conference of the Parties decides otherwise.² **[This rule shall be implemented in conformity with Article 5.3 of the WHO Framework Convention on Tobacco Control.]**

Rule 32³

Proposals and amendments to proposals shall normally be introduced by the Parties in writing, in one of the official languages, and handed to the Secretariat, which shall circulate copies to delegations. As a general rule, no proposal or amendment to a proposal shall be discussed or put to the vote at any meeting unless copies of it have been circulated to delegations not later than the day preceding that meeting. [The President may, however, permit the discussion and consideration of proposals, amendments to proposals or procedural motions, even though such proposals, amendments to proposals or motions have not been circulated, or have been circulated only the same day.]

¹ It has been proposed that the Rules in the Conduct of Business section be reordered in the following sequence: Sessions, Quorum, Procedures for speaking, Precedence, Points of order, Decisions on competence, Proposals and amendments to proposals, Order of procedural motions, Withdrawal of proposals or motions, Reconsideration of proposals.

² Although rules usually provide for sessions to be held in public, precedents such as the Basel Convention provide for sessions to be held in private.

³ It has been proposed that the order of Rules 32 and 33 be reversed.

Rule 33

1. A majority of the **[States]** Parties shall constitute a quorum for the conduct of business at plenary meetings of the Conference of the Parties. The presence of two thirds of the **[States]** Parties shall be required for any decision to be taken.¹

[2. For the purposes of determining a quorum for a decision to be taken on a matter within the competence of a regional economic integration organization, that organization shall be counted to the extent of the number of votes it is entitled to cast in accordance with Article 32.2 of the Convention.]

Rule 34

1. [No representative] / **[no one]** may address a session without having previously obtained the permission of the President. Subject to Rules 35, 37 and 41, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall maintain a list of speakers. The President may call a speaker to order if his or her remarks are not relevant to the subject under discussion.

2. During the course of a debate, the President may announce the list of speakers and, with the consent of the Conference, declare the list closed. The President may, however, accord the right of reply to any representative if a speech delivered after the list has been closed makes this desirable.

3. The Conference of the Parties may, on a proposal by the President or by any Party, limit the time allowed to each speaker and the number of times a representative may speak on a question. Before a decision is taken, two representatives may speak in favour of and two against the proposal to set such limits. When a limit has been set, and a speaker exceeds the allotted time, the President shall call the speaker to order without delay.

Rule 35

1. The Chairman or Rapporteur of a subsidiary body may be accorded precedence for the purpose of explaining the conclusions arrived at by that subsidiary body.

2. The head of the Secretariat or any member of the Secretariat designated by him or her may [at any time] / **[[upon] / [at] the invitation of the President]** make either oral or written statements concerning any question under consideration **[in order to provide background information and clarification/explanation]**.

Rule 36

The right of reply shall be accorded by the President to any representative who requests it. Representatives should in exercising this right attempt to be as brief as possible and preferably deliver their statements at the end of the meeting at which this right is requested.

¹ Alternative language, used a number of other multilateral agreements: "The President shall not declare a session of the Conference of the Parties open or permit the debate to proceed unless at least one third of the Parties to the Convention are present. The presence of two thirds of the Parties to the Convention shall be required for any decision to be taken."

Rule 37

During the discussion of any matter, a representative may at any time raise a point of order, on which the President shall immediately rule in accordance with these Rules. A representative may appeal against the ruling of the President. Such appeal shall immediately be put to the vote and the ruling shall stand unless overruled by a majority of the Parties present and voting. A representative raising a point of order may not speak on the substance of the matter under discussion.

Rule 38¹

1. During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote.
2. For the purpose of these Rules, “suspension of the meeting” means the temporary postponement of the business of the meeting and “adjournment of the meeting” the termination of all business until another meeting is convened.

Rule 39

During the discussion of any matter, a representative may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, one speaker may speak in favour of, and [one] / [two] against, the motion, after which the motion shall immediately be put to the vote.

Rule 40

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified the wish to speak. If request is made for permission to speak against closure, it may be accorded to not more than two speakers, after which the motion shall immediately be put to the vote. If the Conference of the Parties decides in favour of closure, the President shall declare the debate closed. The Conference of the Parties shall thereafter vote only on proposals moved before the closure.

Rule 41

[Subject to Rule 37,] The following motions shall have precedence in the order indicated below over all other proposals or motions, except a point of order:

- (a) to suspend the meeting;
- (b) to adjourn the meeting;
- (c) to adjourn the debate on the question under discussion;
- (d) to close the debate on the question under discussion.

¹ There is a proposal to move Rule 38.2 to Rule 2 (Definitions).

[Permission to speak on a motion falling within paragraphs (a) to (d) shall be granted only to the proposer and, in addition, to one speaker in favour and two against the motion, after which it shall be put immediately to the vote.]

Rule 42

Subject to Rule 41, any motion calling for a decision on the competence of the Conference of the Parties to discuss any matter or to adopt a proposal or an amendment to a proposal submitted to it shall be put to the vote before a vote is taken on the proposal or amendment in question.

Rule 43¹

A representative may move that parts of a proposal or of an amendment **[to a proposal]** shall be voted on separately. [If **[an]** objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against.] / **[If an objection is made to the request for division, the President shall permit two representatives to speak, one in favour of and the other against the request, after which it shall be put immediately to the vote. The President may limit the time allowed to each speaker.]** If the motion for division is carried, those parts of the proposal or of the amendment which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal or the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.²

Rule 44

When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved, the Conference of the Parties shall first vote on the amendment deemed by the President to be furthest removed in substance from the original proposal, and then on the amendment next removed therefrom, and so on, until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. If an amendment to a proposal has been accepted by the original proposer, such an amendment shall be deemed to be an integral part of the original proposal and no separate vote shall be required thereon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of the proposal. A motion which constitutes a substitution for a proposal shall be considered as a proposal.³

Rule 45

If two or more proposals relate to the same question, the Conference of the Parties, unless it decides otherwise, shall vote on the proposals in the order in which they have been submitted. The Conference of the Parties may, after each vote on a proposal, decide whether to vote on the next proposal.

¹ It has been proposed that Rules 43, 44, 45, 46 and 47 be moved to the section on Voting.

² It has been proposed that Rule 43 be divided into shorter paragraphs. A proposed formulation is to split Rule 43 into two separate paragraphs; the second paragraph would begin with "If the motion for division is carried ...".

³ It has been proposed that Rule 44 be divided into shorter paragraphs. A proposed formulation is to split Rule 44 into two separate paragraphs; the second paragraph would begin with "A motion is considered an amendment ...".

Rule 46

A proposal or motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the proposal or motion has not been amended. A proposal or motion thus withdrawn may be reintroduced by any **[other]** Party.

Rule 47

When a proposal has been adopted or rejected, it may not be reconsidered at the same session, unless the Conference of the Parties, by a two thirds majority of the Parties present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to the proposer, to one speaker in favour of and two speakers opposing the motion [against the proposal], after which it shall immediately be put to a vote. The correction of a clerical or arithmetical error in any document concerning a proposal which has already been adopted shall not be considered as requiring the reopening of the debate on such a proposal by a two thirds majority vote.

VOTING

Rule 48

1. Each Party shall have one vote, except as provided for in paragraph 2.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their Member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and vice versa.¹

Rule 49

[1. The Parties shall make every effort to reach agreement by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, decisions on matters of substance **[except budgetary issues which should be decided only by consensus]** shall, as a last resort, be taken by a two thirds majority vote of the Parties present and voting, unless otherwise provided by the Convention, by the financial rules referred to in Article 23.4 therein, or by these Rules.²] **[However, decisions of the Conference of the Parties on matters relating to Articles 7, 9, 19(3), and 26 shall be taken by consensus.] / [However, decisions of the Conference of the Parties on matters relating to Articles 7, 9, 19(3), and 26 shall be taken by three quarters majority vote of the Parties present and voting, if all efforts to reach consensus have been exhausted and no agreement has been reached.**

or

[1. The Parties shall make every effort to reach agreement by consensus.

¹ Article 32.2 of the Convention.

² Majorities required for matters of substance are the subject of debate in a number of multilateral environmental agreements adopted under the auspices of UNEP. The Rules of Procedure of the World Health Assembly and of the Executive Board of WHO (limited to decisions on important questions) and the Rules of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1993) and the WIPO Copyright Treaty (1996) provide for a two thirds majority.

2. If all efforts to reach consensus have been exhausted and no agreement has been reached, decisions on matters of substance shall, as a last resort, be taken by a two thirds majority vote of the Parties present and voting, unless otherwise provided by the Convention, by the financial rules referred to in Article 23.4 therein, or by these Rules.

2.bis If all efforts to reach consensus have been exhausted and no agreement has been reached, decisions on matters of procedure shall be taken by a majority of the Parties present and voting.]

2. Decisions of the Conference of the Parties on matters of procedure shall be taken by a majority vote of the Parties present and voting.

3. The President shall rule on any question of whether a matter is procedural or substantive. Any appeal against this ruling shall immediately be put to the vote. The President's ruling shall stand unless overruled by a majority of the Parties present and voting.

4. If a vote is equally divided on a matter other than an election, **[a second vote shall be taken. If this vote is also equally divided,]** the proposal shall be regarded as rejected.

Rule 50

1. Voting, except for elections, shall normally be by show of hands. A roll-call vote shall be taken at the request of any Party. The roll-call shall be taken in the English alphabetical order of the names of the Parties. The name of the Party to vote first shall be determined by lot.

2. The Conference of the Parties may vote on any matter by secret ballot if it has previously so decided by a majority of the Parties present and voting, provided that no secret ballot may be taken on budgetary questions. A decision under this Rule whether or not to vote by secret ballot may only be taken by a show of hands; if the Conference of the Parties has decided to vote on a particular question by secret ballot, no other mode of voting may be requested or decided upon.

3. When the Conference of the Parties votes by mechanical means, a non-recorded vote shall replace a vote by show of hands and a recorded vote shall replace a roll-call.¹

4. The vote of each Party participating in a roll-call or recorded vote shall be included in the records of the session.

Rule 51

1. After the President has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting.

2. After the voting has been completed, [a representative may] / **[the President may permit Parties to]** make a brief statement, consisting solely of an explanation of vote. [A sponsor] / **[Proposers]** of a proposal shall not speak in explanation of vote thereon, except if it has been amended. **[The President may limit the time to be allowed for such explanations.]**

¹ This proposed wording takes account of the mechanical methods of voting currently available in many facilities.

Rule 52¹

Elections shall be held by secret ballot, except that, in the absence of any objection, the Conference of the Parties may decide to proceed without taking a ballot on an agreed candidate or list of candidates. Where a ballot is required, two tellers appointed by the President from among the delegations present shall assist in the counting of votes.

Rule 53

1. When only one person or one Party is to be elected and no candidate obtains in the first ballot a majority of the votes cast by the Parties present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. [If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.] / **[If in the second ballot the votes are equally divided, the procedure shall be continued till a result emerges by a majority vote.]**

or

[Adopt procedure prescribed in Rule 52 of the Rules of Procedure of the Executive Board of the World Health Organization for election of the Director-General.]

2. When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot the largest number of votes and a majority of the votes cast by the Parties present and voting shall be elected.

3. If the number of candidates obtaining such majority is less than the number of persons or Parties to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible person or [Party] / **[delegation]**.

4. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.²

Rule 54

In an election each representative, unless he or she abstains, shall vote for that number of candidates equal to the number of elective places to be filled. Any ballot paper on which there are more or fewer names than there are elective places to be filled shall be null and void.

¹ It has been proposed that a separate section, titled "Elections", be created.

² It has been proposed that Rule 53 be divided into a number of separate rules.

Rule 55

If during an election one or more elective places cannot be filled by reason of an equal number of votes having been obtained by two or more candidates, a ballot shall be held among such candidates to determine which of them will be elected. This procedure may be repeated if necessary.

LANGUAGES AND RECORDS

Rule 56

[Arabic, Chinese, English, French, Russian and Spanish] / **[Official and working languages of the United Nations organizations]** shall be **[both]** the official **[and the working]** languages of the Conference of the Parties.

Rule 57

1. Statements made in an official language shall be interpreted into the other official languages.
2. A representative of a Party may speak in a language other than an official language if the Party provides for interpretation into one of the official languages. Interpretation into the other official languages by interpreters of the Secretariat may be based on the interpretation given in the first such language.

Rule 58

All **[resolutions,]** decisions and other official documents of the Conference of the Parties shall be made available in the **[six]** official languages.

Rule 59

1. Records of the sessions of the Conference of the Parties and the subsidiary bodies shall be **[made] / [produced] [in the six official languages]** in accordance with the Rules of Procedure of the World Health Assembly.¹
2. Recordings of the meetings of the Conference of the Parties, and, whenever possible, of the subsidiary bodies, shall be kept by the Secretariat **[in accordance with the practice of the United Nations]**.

AMENDMENT OF RULES OF PROCEDURE

Rule 60

These Rules of Procedure may be amended by consensus by the Conference of the Parties. **[If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as**

¹ This applies only if WHO is designated as permanent secretariat of the Convention.

a last resort be adopted by a three quarters majority vote of the Parties present and voting at the session.]

OVERRIDING AUTHORITY OF THE CONVENTION

Rule 61

In the event of any conflict between any provision of these Rules and any provision of the Convention, the Convention shall prevail.

ANNEX 2

**OFFICERS OF THE INTERGOVERNMENTAL WORKING GROUP ON
THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL AND
MEMBERS OF THE WHO SECRETARIAT**

Officers

Chair

Mr L.F. de Seixas Corrêa (Brazil)

Vice-Chairs

SOUTH AFRICA (Ms P. Lambert)

UNITED STATES OF AMERICA (Mr D.E. Hohman)

INDIA (Mr J.V.R. Prasada Rao)

TURKEY (Ms Ö. Sav)

ISLAMIC REPUBLIC OF IRAN (Mr P. Seadat)

JAPAN (Mr S. Sumi)

Members of the WHO Secretariat

Dr LEE Jong-wook, Director-General

Mr D.G. AITKEN, Director, Office of the Director-General

Dr B.P. KEAN, Director, Governance

Mr T. TOPPING, Legal Counsel

Mr G.L. BURCI, Senior Legal Officer, Office of the Legal Counsel

Dr V.L. COSTA E SILVA, Director, Tobacco Free Initiative

Dr D.W. BETTCHER, Coordinator, WHO Framework Convention on Tobacco Control

Dr A. ADEDE, Adviser, Tobacco Free Initiative

Dr K. KUMMER, Adviser, Tobacco Free Initiative

WHO regional offices

Dr C. MARINGO, Regional Adviser, Substance Abuse, Regional Office for Africa

Dr A. PERUGA, Regional Adviser on Tobacco, Alcohol and Drugs, Regional Office for the Americas

Dr K. RAHMAN, Regional Adviser, Tobacco Free Initiative, Regional Office for South-East Asia

Dr H. NIKOGOSIAN, Regional Adviser, Tobacco Free Initiative, Regional Office for Europe

Ms N. ABDELLATIF, Technical Officer, Tobacco Free Initiative, Regional Office for the Eastern Mediterranean

Mr B. FISHBURN, Regional Adviser, Tobacco Free Initiative, Regional Office for the Western Pacific

ANNEX 3

A/FCTC/IGWG/1/Decision 1
25 June 2004

The Open-ended Intergovernmental Working Group on the WHO Framework Convention on Tobacco Control,

Having met in Geneva at WHO headquarters, from 21 to 25 June 2004, with the participation of 129 Member States and one regional economic integration organization;

Expressing appreciation to the Secretariat for the excellent arrangements and documentation prepared for the meeting;

Having examined each item on its agenda and related documents, and having made a number of written and oral comments and proposals,

1. INSTRUCTS the Secretariat to prepare a full report covering the range of proposals and suggestions made during the debate, highlighting areas where convergence seemed to be within reach and identifying areas where further work should be conducted;
2. REQUESTS the Secretariat to prepare revised versions for the two items on which draft rules were proposed, showing the alternatives put forward during the debate;
3. DECIDES that, in order fully to discharge its mandate set out in resolution WHA56.1, paragraphs 7 and 8, and pursuant to paragraph 10.3 of the resolution, at least a second meeting will be necessary in order to finalize its report to the Conference of the Parties in accordance with paragraph 7;
4. REQUESTS the Director-General, without prejudice to the provisions of resolution WHA56.1, paragraph 10.4, to make the necessary arrangements to convene this meeting preferably in the last quarter of 2004 and to inform Member States, regional economic integration organizations, and observers through normal channels of these arrangements.

= = =