

Dear Honorable Members,

I refer to the Bills Committee meeting held on Monday October 31 where Hon Members discussed the various proposals under the Smoking (Public Health) (Amendment) Bill.

At the meeting, some members including yourself have raised a few questions about WHO's Framework Convention on Tobacco Control (FCTC). One key issue Hon Members were interested in was how the Smoking (Public Health)(Amendment) bill should be amended in order for Hong Kong to comply with the FCTC - in particular the proposal to further tighten tobacco advertising affecting newspaper hawkers. I trust the information below would be useful in your consideration of the Bill.

1. What is meant by "comprehensive ban" on advertising under the FCTC?

To understand the spirit of the FCTC, one needs to look back in history. During the discussion on advertising ban, the WHO came up with two options back in 2000 (ref: WHO Paper A/FCTC/INB1/2 dated 26 July 2000):

- (i) To prohibit tobacco advertising, marketing, promotion and sponsorship targeted at children and adolescents, and regulate or prohibit those targeted at others; OR
- (ii) To impose appropriate restrictions on the advertising, marketing and promotion of tobacco products, with the aim in particular of reducing the appeal to these products to children and adolescents. (see below attachment page 13)

Eventually, the WHO adopted this in 2003:

"Each Party, shall in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship ... subject to the legal environment and technical means available... In this respect, within the period of five years after entry into force of this Convention for that Party, each Party shall undertake appropriate legislative, executive, administrative or other means and report accordingly in conformity with Article 21." (Article 13 (2), FCTC) (see below attached, page 11)

In other words, the original words "to prohibit" were replaced with "undertake a comprehensive ban". Our understanding is that "prohibit" would mean a total ban with no exemption whatsoever while a "comprehensive ban" is relatively less restrictive but not as lax as "impose appropriate restrictions" which is the wording used in Option (ii).

Also in the current final version of the FCTC, Article 13 (4) (d) states that

"(each Party shall) require, if it does not have a comprehensive ban, the disclosure to relevant governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship not yet prohibited."

Clearly, the WHO does not expect all member countries to have a comprehensive ban let alone total prohibition. We understand that certain countries such as the US which guarantees the freedom of speech under the country's constitution (including commercial speech i.e. advertising) may not be able to totally prohibit tobacco advertising because of constitutional reasons.

2. When should Hong Kong have comprehensive ban in order to comply with FCTC?

Another important point to note is the requirement to adopt measures to comprehensively ban advertising within 5 years after the entry into force of FCTC for that particular Party. In the case of China which ratified the FCTC this month, the FCTC will enter into force in China three months later i.e. January 2006. In other words, as long as China (including Hong Kong) introduces legislation before January 2011 to comprehensively ban tobacco advertising, China (and Hong Kong) will be in compliance with the FCTC.

I hope you'd find the above useful. Please do not hesitate to contact me if you need further information.

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# WORLD HEALTH ORGANIZATION

INTERGOVERNMENTAL NEGOTIATING BODY  
ON THE WHO FRAMEWORK CONVENTION  
ON TOBACCO CONTROL

A/FCTC/INB1/2  
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## **Proposed draft elements for a WHO framework convention on tobacco control: provisional texts with comments of the working group**

1. By resolution WHA52.18, the Fifty-second World Health Assembly established an Intergovernmental Negotiating Body to draft and negotiate the proposed WHO framework convention on tobacco control and possible related protocols. In order to prepare for the work of the Negotiating Body, the Health Assembly, in resolution WHA52.18, also established a working group on the WHO framework convention on tobacco control. The working group, in meetings held in October 1999 and March 2000, prepared proposed draft elements for a framework convention. The Fifty-third World Health Assembly considered the proposed draft elements of the convention, together with comments made at the second meeting of the working group. The present document contains texts and the comments of the working group (in indented italics). The comments made at the Fifty-third World Health Assembly pertaining to the proposed draft elements are contained in an addendum to the present document.

2. The provisions contained in this document are entirely optional. Member States will formulate a draft text of the framework convention on tobacco control during the course of negotiations, and in so doing they may wish to draw upon portions of the provisional texts. Alternative versions of texts are identified either as "Options" or by successive portions of text enclosed in square brackets, and also in the comments made at the second meeting of the working group on the proposed draft elements. The word "insert" in square brackets [INSERT] indicates that additional text could be inserted in view of future negotiations if the specific draft provision is considered for inclusion in the proposed framework convention. Alternative options are not placed in any particular order. Explanatory notes are inserted in bold type throughout the text as a guide to specific sections of the document.

3. The provisional texts of proposed draft elements and the comments from the second meeting of the working group on each element are presented in the following order: Part I. Preamble, definitions, objective and guiding principles; Part II. Obligations; Part III. Institutions; Part IV. Implementation; Part V. Development of the Convention; Part VI. Final clauses. General comments on the proposed draft elements made during the second meeting of the working group precede Part I.

## PROVISIONAL TEXTS WITH COMMENTS OF THE WORKING GROUP

### *General comments*

*Participants made a number of general comments on the framework convention as a whole and gave their views on the elements in section I, covering the preamble, definitions, objective and guiding principles. Speakers considered that the document provided a valid basis for the negotiation stage.*

*Several delegations commented on the balance between the framework convention and possible protocols; the protocols should be complementary to the convention. The view was expressed that the convention should be tough and set standards for countries. It was also suggested that the obligations should be seen as minimum standards, countries being encouraged to adopt higher standards at domestic level. There appeared to be sufficient consensus on a number of areas such as protection of youth, prevention of smuggling, and proper labelling of tobacco products. However, a number of countries pointed out that too many specific obligations in the convention itself could deter countries from supporting it. A majority of delegations favoured a strong but general convention so that as many Member States of WHO as possible could accede to it. In general, it should focus on broad, comprehensive and inclusive principles, giving countries necessary flexibility, though it was suggested that the degree of specificity in the convention might depend on the nature of the topic. Some speakers felt that it was premature to decide at this stage whether issues should be dealt with in the convention or the possible protocols. One suggestion was that the convention might be completed first, beginning with the objectives and obligations; working groups could then be appointed to prepare the protocols.*

*Participants noted that tobacco control measures were a matter for countries. Both the convention and possible protocols should allow for the specific circumstances of countries and differences between developed and developing countries; countries of different types should be accountable in different ways. Although support should be provided for strong country programmes, tobacco growing was a highly political matter and governments needed flexibility.*

*Some participants stated that special emphasis should be laid on vulnerable groups such as women, children and the poor. A gender perspective should be integrated throughout. Although growth in tobacco use should be addressed, the current prevalence was already a major problem in many countries.*

*A number of delegations stressed that tobacco control required a multisectoral approach, involving all national departments. The comprehensive mix of measures set out in the document was welcomed. However, several participants suggested that the main focus should be on transnational measures, in such domains as cross-border advertising, sponsorship and smuggling. Thus the convention would complement national and local legislation and identify responses that required international cooperation. Other participants emphasized that the convention should embrace both national and cross-border issues. Further discussion within countries would be needed.*

*Some speakers stressed that the important role of nongovernmental organizations should be emphasized in the convention and that those organizations should be involved in the*

*negotiation process. Others expressed the view that provisions contained in the convention should be cost effective and that barriers to tobacco control needed to be identified.*

*The view was expressed that further research was needed on trade policy and tobacco law. In general, the text should give more clarity to the relationship between the convention and other international agreements. It was suggested that developing countries should be protected from the effects of international trade in tobacco products and that developed countries exporting tobacco products and/or leaves to them should be held accountable.*

*A number of speakers considered that the text showed insufficient regard for the interests of developing countries; more emphasis should be laid on financial and technical support for countries incurring losses in the future as a result of implementation of the convention. Details of financing mechanisms to support such countries should be clear before the convention was adopted. The economies of some countries depended on tobacco, but little had been done to identify alternative crops or livelihoods; such countries should be exempted from the provisions of the convention pending support from FAO and the World Bank. Moreover, all stakeholders, including growers, should be involved in the consultations concerning the convention. A further view was that the possible negative impact on developing countries should be taken seriously, but that all countries stood to benefit from the convention.*

## **I. PREAMBLE, DEFINITIONS, OBJECTIVE AND GUIDING PRINCIPLES**

### **A. Preamble**

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

The Parties to this Convention,

1. Recognizing that the tobacco epidemic is a global problem that calls for the widest possible international cooperation by all countries and their participation in an effective, appropriate and coordinated international response, and determined to promote such cooperation,
2. Seriously concerned about the global spread of the tobacco epidemic and the increase in the worldwide consumption and production of cigarettes and other tobacco products, particularly in developing countries,
3. Seriously concerned also about all direct and indirect advertising, marketing, promotion and other practices on the part of the tobacco industry aimed at encouraging the use of tobacco,
4. Reflecting the concern of the international community about the devastating worldwide health, social and economic consequences of the tobacco epidemic,<sup>1</sup>
5. Deeply concerned about the illegal transboundary traffic in cigarettes and other tobacco products and recognizing that coordinated action is necessary to eradicate illicit traffic,

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<sup>1</sup> Tobacco is responsible for one in 10 adult deaths; by 2030 the figure is expected to be one in six, or 10 million deaths per year – more than any other cause of premature death. If current trends persist, about 500 million people alive in 2000 will eventually be killed by tobacco, half of them in productive middle age, losing 20 to 25 years of life. See *Curbing the epidemic: governments and the economics of tobacco control*, Washington, D.C., the World Bank, 1999, pp. 22-23.

6. Recognizing that cigarettes are among the most highly engineered consumer products, designed to create and maintain addiction, that many of the compounds they contain are pharmacologically active, toxic, mutagenic and carcinogenic, and that tobacco use is separately classified as a disorder in the International Classification of Diseases (ICD-10),
7. Recognizing also that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke are causally linked to numerous causes of death, disease and disability,
8. Acknowledging that there is also clear scientific evidence that prenatal exposure to tobacco smoke causes adverse health and developmental conditions,
9. Recognizing further that the negative impact of increased prevalence of tobacco use may not be apparent in the short term, as a consequence of the time lag between the exposure to smoking and other uses of tobacco products and the onset of tobacco-related diseases,
10. Deeply concerned about the escalation in smoking and other forms of tobacco consumption by indigenous populations and other minority groups worldwide,
11. Acknowledging the competence of the World Health Organization and its leadership role within the United Nations system in the field of tobacco control and calling on international organizations also concerned with such control to coordinate efforts with that Organization,
12. Recalling the resolutions of the World Health Assembly on “Tobacco or health” and taking into account the relevant treaties, recommendations, declarations, and other instruments on or relevant to tobacco control issues adopted within the United Nations system and by other international and regional organizations,
13. Recalling the preamble to the Constitution of the World Health Organization, which affirms that “[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”,
14. Recalling the pertinent provisions of the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and deeply concerned about the escalation in smoking and other forms of tobacco consumption by children and adolescents worldwide,
15. Recalling also the pertinent provisions of the Convention on the Elimination of All Forms of Discrimination against Women adopted by the United Nations General Assembly on 18 December 1979, and deeply concerned about the escalation in smoking and other forms of tobacco use by women and young girls worldwide, which requires the implementation of gender-specific tobacco control strategies,
16. Recognizing the vital leadership role that women provide in tobacco control efforts and affirming the need for the full participation of women in tobacco control at all levels of policy-making and implementation,
17. Acknowledging that tobacco control at all levels is seriously underfunded compared to the burden of disease it causes, and that new and additional financial and technical resources can be expected to make a substantial difference in the world’s capacity to address the tobacco epidemic,

18. Recognizing the need to develop appropriate mechanisms to address the long-term social and economic implications of successful tobacco demand reduction strategies, and particularly their impact on tobacco workers,
19. Recognizing also that the measures taken to understand and address the global tobacco epidemic will be most effective if they are based on relevant scientific, technical and economic considerations and are continuously re-evaluated in the light of new findings in these areas,
20. Emphasizing the special contribution of nongovernmental organizations, including health professional bodies, women's, youth and environmental groups, academic institutions, private industry, hospitals and other stakeholders in civil society to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts,

Have agreed as follows: .....

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

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

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

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

*incentives from other endeavours of the tobacco industry to promote and increase consumption in developing countries”.*

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

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

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

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

## **B. Definitions**

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

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

1. smoking tobacco:

(a) cigarettes:

- (i) regular tobacco (manufactured or hand-rolled);
- (ii) kreteks (containing clove);
- (iii) bidis;



- (b) cigars:
  - (i) large cigars;
  - (ii) small cigars;
  - (iii) cigarillos;
- (c) for pipes:
  - (i) clay;
  - (ii) wooden;
  - (iii) hubble-bubbles;

2. non-smoking/smokeless tobacco

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

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

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

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

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

**C. Objective**

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

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

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

or

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

or

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

or

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

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

**D. Guiding principles**

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

1. reducing the current impact and halting the growth of the tobacco epidemic is of critical importance in protecting individuals as well as national and global public health and requires comprehensive multisectoral national actions and coordinated international responses;
2. everyone should be fully informed about the addictive and lethal nature of tobacco consumption and non-smokers should be guaranteed protection from passive smoking;

3. the special circumstances of some countries, in which public health resources are limited or economic circumstances are overwhelming, may require that technical assistance be furnished to assist them to establish and implement effective tobacco control programmes;
4. trade policy measures for tobacco control purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade;
5. the tobacco industry should be held accountable for past, present and future public health harm caused by its products worldwide;
6. present and future generations of humankind must be protected from the negative health, economic and social impact of tobacco consumption and exposure to tobacco smoke.

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

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

## **II. OBLIGATIONS**

### **A. General obligations**

1. Each Party shall develop, implement, periodically update and enforce, where appropriate, comprehensive multisectoral national tobacco control strategies, plans, programmes, policies, legislation and other measures in accordance with the provisions of this Convention and, as relevant, its Protocols.
2. To this end each Party shall, as far as possible in accordance with the means at its disposal and its capabilities:

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

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

*(Tobacco taxes)*

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

- ensure that excise tax is at least two-thirds of the package price of tobacco products;
- apply tobacco taxes to all tobacco products;
- increase tax to keep pace with the rate of inflation;
- remove tobacco from the consumer price index;

**(Explanatory note: As reflected in the report of the first meeting of the working group (document A/FCTC/WG1/7, paragraph 22), some participants suggested that specific issues related to pricing could be considered for inclusion in the proposed convention.)**

*(Tobacco sales to youth)*

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

*(Exposure to tobacco smoke)*

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

or

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

- in the indoor premises of day-care centres for children and of educational institutions intended for students, and in their outdoor areas primarily intended for persons under the age of [INSERT];
- in the indoor premises of cafes, restaurants and other establishments where the serving of food and/or beverages is the main activity of the establishment;
- in the indoor premises of bars, discothèques and similar establishments;

- in the indoor premises of government agencies and authorities and comparable public bodies intended for the public and clients;
- at public events arranged indoors to which the public has unrestricted access;
- inside public means of transport; and
- in the joint and public premises of workplaces and in their premises intended for clients;

*(Regulation of the contents of tobacco products)*

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

*(Regulation of tobacco product disclosures)*

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

or

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

*(Tax-free and duty-free sales)*

- (vi) prohibit tax-free and duty-free sales of tobacco products; and
- (c) gradually eliminate subsidies and government support for tobacco and promote alternative viable economic activities for tobacco growers, undertaking necessary research into alternative livelihoods and alternative uses for tobacco.

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

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

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

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

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

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

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

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

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

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

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

*The banning of tax-free and duty-free sales enjoyed great support. This was linked with harmonization of taxation under national legislations as well as international treaties, and the prevention of smuggling. Another view was that sections on taxation, pricing and duty-free sales*

*should not be included in the convention, bearing in mind the economic problems of economies in transition.*

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

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

*It was pointed out that it would be very difficult for most countries to verify whether the tobacco industry was complying with possible product regulation measures in the convention or a related protocol. Therefore, WHO should establish or support regional centres to collaborate with countries in the analysis of contents of tobacco products.*

## **B. Advertising, promotion, and sponsorship**

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

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

or

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

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

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

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

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

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

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

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

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

### **C. Treatment of tobacco dependence**

1. The Parties, in accordance with the means at their disposal and their capabilities, undertake to establish effective programmes for the treatment of tobacco dependence.
2. Each Party shall take all practical, effective and cost-effective measures to treat tobacco dependence and to promote cessation of tobacco use, taking into account local circumstances and priorities.
3. Taking into account local circumstances, each Party shall undertake the following measures:
  - (a) promotional and education campaigns aimed at encouraging tobacco cessation;
  - (b) integration of the treatment of tobacco dependence into reproductive health programmes such as “safe motherhood” programmes, routine advice on cessation of tobacco use, and support by health professionals, including physicians, health practitioners, nurses, pharmacists, community workers and social workers, based on primary care.  
**(Explanatory note: These provisions are also included in document A/FCTC/WG2/4 as possible basic obligations among the proposed technical components of a Protocol on the treatment of tobacco dependence.)**
4. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures in the area of the treatment of tobacco dependence.  
**(Explanatory note: If participating States choose to negotiate a Protocol on the treatment of tobacco dependence at the same time as they negotiate the convention, this paragraph will not be necessary.)**

*There was general agreement on the importance of this topic and its inclusion in the convention. Treatment should be viewed as part of a broader cessation strategy integrated within primary health care. Support was expressed for the establishment of cost-effective*



*strategic programmes, including routine advice and behavioural and pharmacological treatment, tailored to countries' circumstances. Attention was drawn to the need for extensive international cooperation to study cost-effective methods for treating use of smoking tobacco so that smokers could receive the benefits of treatment. Due account should be taken of human rights issues and the need for confidentiality. Women, children, indigenous people and other ethnic groups or minorities should receive special attention.*

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

*A proposal was made to redraft paragraph 1 to read: "The Parties, in accordance with the means at their disposal and their capabilities, undertake to establish ongoing and effective programmes for the treatment of tobacco dependence by all means". Another proposal was that paragraphs 1 and 2 should be reviewed to avoid redundancy. It was considered that paragraph 3(b) needed redrafting for greater clarity. It was suggested that treatment of tobacco dependence should be incorporated into all health sector programmes, not just reproductive health. A further proposal was to add a new paragraph 3(c) on making nicotine replacement products easily available and accessible.*

#### **D. Measures to eliminate smuggling**

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

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

or

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

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

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

- (a) improve cooperation between different national administrations;

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

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

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

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

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

*It was proposed that the essential elements for a possible protocol<sup>1</sup> should be included in the convention itself. The preparation of a protocol on the subject was supported. Existing international agreements and the activities of other international organizations would need to be taken into account.*

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

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

#### **E. Packaging and labelling**

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

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

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

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

or

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

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

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

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

## ***F. Surveillance***

### **Option 1:**

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

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

- (a) prevalence of tobacco use:
  - (i) brand-specific prevalence of tobacco use in youth;
  - (ii) prevalence of tobacco use in health professionals;
  - (iii) prevalence of tobacco use in adults by brand, age group, gender and social class;
- (b) expenditures on and sales of tobacco products by brand name;
- (c) knowledge of the health risks associated with tobacco use and attitudes towards tobacco control measures by age group, gender and social class;
- (d) tobacco prices and tax structures;
- (e) patterns and trends in tobacco-attributable morbidity and mortality by age, gender and social class;
- (f) tobacco production and trade;
- (g) intention to cease tobacco use and access to methods for the treatment of tobacco dependence;
- (h) percentage of youth able to purchase tobacco products;
- (i) value and quantity of tobacco advertising and sponsorship by advertising/sponsorship types and by tobacco products;
- (j) estimated price elasticity of tobacco products by age group, gender and social class.

2. Each Party shall integrate, to the extent feasible, tobacco surveillance programmes into its national health surveillance programmes.

or

**Option 2**

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

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

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

*Numerous delegations expressed the view that the section was very detailed, and that agreement should first be reached on common definitions, approaches and priorities for surveillance. The general preference was for option 2, or a combination of the two options. A delegation that preferred option 1 proposed inclusion of a biannual prevalence study. A supporter of option 2 proposed the addition of the words "Financial support should be provided to carry out these functions".*

**G. Research**

1. The Parties undertake to promote and encourage research that contributes to reducing tobacco consumption, particularly in developing countries, in accordance with decisions of the Conference of the Parties [**Option:** taken upon recommendations of the subsidiary mechanism for provision of scientific and technical advice].
2. The Parties undertake to develop and coordinate, as far as possible, national research programmes relating to tobacco control. To this end, the Parties shall, in accordance with their capabilities and means at their disposal, initiate and cooperate in, directly or through competent international bodies, the conduct of research and scientific assessments

**Option 1:** elaborated in Annex [INSERT].

or

**Option 2:** on the following:

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

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

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

**H.**

**Option 1: Media, communications and education**

OR

**Option 2: Education, training and public awareness**

1. Each Party shall:

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

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

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

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

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

***I. Cooperation in the scientific, technical and legal fields***

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

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

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

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

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

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

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

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

***J. Liability and compensation***

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

**Option 1:**

1. The Parties shall endeavour to formulate and adopt appropriate procedures for determining liability and compensation for damage caused by natural or juridical persons related to [INSERT].

2. Each Party shall ensure that recourse is available in accordance with its legal system for prompt and adequate compensation or other relief in respect of damage caused by natural or juridical persons related to [INSERT].



3. With the objective of assuring prompt and adequate compensation in respect of all damage caused to public health by [INSERT], the Parties shall cooperate in the implementation of applicable rules of international law and the further development of international law relating to compensation and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation.

or

**Option 2:**

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

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

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

**K. Information exchange**

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

1. The Parties, in accordance with their national legislation and without prejudice to their obligations under applicable international agreements, shall, within the framework of the Conference of the Parties and bilaterally, promote and cooperate in the full, open and prompt exchange of scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry, relevant to this Convention (as elaborated in Annex [INSERT]).

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

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

## **L. Financial resources**

1. Each Party shall provide, in accordance with its capabilities, financial support and incentives in respect of national activities intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.
2. Developed country Parties may also provide, and developing country Parties may avail themselves of, financial resources related to the implementation of this Convention through bilateral, regional and other multilateral channels.
3. The Parties recognize that countries that export manufactured tobacco products have a special responsibility to provide technical support to developing countries to strengthen their national tobacco control programmes.

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

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

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

## **III. INSTITUTIONS**

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

### **A. Conference of the Parties**

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

1. A Conference of the Parties is hereby established. The first session of the Conference of the Parties shall be convened by the Director-General of the World Health Organization no later than one year after the entry into force of this Convention. Thereafter, ordinary sessions of the Conference [of the Parties] shall be convened as and when necessary by the Director-General.

2. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one-third of the Parties.
3. The Conference of the Parties shall agree upon and adopt by [**Option 1:** simple majority vote or **Option 2:** a two-thirds majority vote] rules of procedure [and financial rules] for itself and for any subsidiary bodies it may establish.
4. The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and its Protocols, and shall take, within its mandate, the decisions necessary to promote the effective implementation of these instruments. To this end, it shall:
  - (a) periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objective of the Convention, the experience gained in its implementation, and the evolution of scientific and technological knowledge, as well as prevailing socioeconomic conditions;
  - (b) promote and facilitate the exchange of information pursuant to Article II.K above;
  - (c) facilitate, at the request of two or more Parties, the coordination of measures adopted by them relevant to the implementation of this Convention and its applicable Protocols;
  - (d) promote and guide the development and periodic refinement of comparable methodologies, in addition to those provided for in Article II.F and Annexes [INSERT], relevant to the implementation of this Convention and its Protocols;
  - (e) promote, in accordance with Article II, the harmonization of appropriate strategies, plans, programmes, policies, legislation and other measures;
  - (f) promote and carry out programmes to assist Parties in implementing their obligations pursuant to Article II;
  - (g) assess, on the basis of all information made available to it in accordance with the provisions of this Convention and its Protocols, their implementation by the Parties, the overall effects of the measures taken pursuant to these instruments, and the extent to which progress towards the objective of this Convention is being achieved;
  - (h) consider and adopt regular reports on the implementation of the Convention and its Protocols and arrange for their publication;
  - (i) make recommendations to the Parties, the World Health Organization, and other international organizations and bodies on any matters necessary for the implementation of the Convention and its Protocols;
  - (j) seek to mobilize financial resources to support secretariat services pursuant to Article [III.B] and to support implementation of this Convention in accordance with Articles [II.L and III.F];
  - (k) establish such subsidiary bodies as it deems necessary for the implementation of the Convention, review their reports, and provide guidance to them;

(l) seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent intergovernmental and nongovernmental organizations and bodies;

(m) exercise such other functions as are required for the achievement of the objective of this Convention, as well as all other functions assigned to it under this Convention.

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

### ***B. Secretariat***

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

1. The secretariat shall be a unit of the World Health Organization's Secretariat designated for that purpose by the Director-General of the Organization. The Director-General shall designate the head of that unit.

2. The functions of the secretariat shall be:

(a) to make arrangements for sessions of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;

(b) to compile and transmit reports submitted to it;

(c) to facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;

(d) to prepare reports on its activities and submit them to the Conference of the Parties;

(e) to ensure the necessary coordination with the secretariats of other relevant international bodies;

(f) to enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(g) To perform the other secretariat functions specified in the Convention and in any of its Protocols and such other functions as may be determined by the Conference of the Parties.

**C. *Subsidiary mechanism for provision of scientific and technical advice***

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

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

**D. *Subsidiary body for implementation***

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

**Option 1:**

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

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

3. Under the guidance of the Conference of the Parties, this body shall:

- (a) consider the information communicated in accordance with Article [INSERT], to assess the overall aggregated effect of the steps taken by the Parties;
- (b) consider the information communicated in accordance with Article [INSERT] in order to assist the Conference of the Parties in carrying out the reviews required by Article [INSERT];
- (c) assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.

4. The body shall be [elected by the Conference of Parties] [appointed by the director of the secretariat]. The Conference of the Parties shall, at its first session, determine the terms of reference of this body.

or

**Option 2:**

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

**E. Support of the World Health Organization**

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

**F. Financial mechanism**

1. A mechanism for the provision of financial resources on a grant or concessional basis, including the transfer of technology, is hereby established. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programmes and priorities, and on eligibility criteria related to this Convention. Its operation shall be entrusted to [**Option 1:** the secretariat or **Option 2:** one or more existing international entities].
2. Pursuant to the objective of this Convention, the Conference of the Parties shall determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for access to and utilization of the financial resources, including regular monitoring and evaluation of such utilization. The Conference of the Parties shall decide on the arrangements to give effect to paragraph 1 above after consultation with the body entrusted with the operation of the financial mechanism.

*It was suggested that the creation of institutions should be discussed at a later stage, once the scope and requirements of the convention were known. The level and status of the possible institutions should be carefully examined, bearing in mind the financial implications. It was considered that full use should be made of existing mechanisms; for example, the Health Assembly could review reports submitted under section IV and WHO could provide the*

*secretariat. A delegation suggested that the United Nations drug conventions could provide a model for a cost-effective institutional scheme.*

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

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

## **IV. IMPLEMENTATION**

### **A. Reporting**

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

- (a) information on tobacco control institutions, strategies, plans, programmes, policies, legislation and other measures initiated or implemented in accordance with the provisions of Article [III], together with information on enforcement where appropriate;
- (b) information on steps taken to carry out financial obligations in accordance with Articles [III.L and III.F];
- (c) information on the economic, social and other consequences of various response strategies adopted to implement this Convention and its Protocols;
- (d) description of steps taken or envisaged by the Party to implement this Convention in addition to those described above;
- (e) any other information that the Party considers relevant to the achievement of the objective of this Convention and suitable for inclusion in its report on implementation.

2. Each Party shall make its initial communication within one year of the entry into force of the Convention for that Party and, thereafter, every [INSERT]. The Subsidiary Body for Implementation may request further information from a Party.

3. Starting at its first session, the Conference of the Parties shall arrange for the provision to developing country Parties of technical and financial support, on request, in compiling and communicating information under this Article. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate.

#### **B. Settlement of disputes**

1. If a dispute arises between two or more of the Parties concerning the interpretation or application of this Convention or of any of its Protocols, those Parties shall consult among themselves with a view to resolving the dispute by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of such a character not so resolved shall, with the consent in each case of all parties to the dispute, be referred for settlement [**Option 1:** to arbitration or **Option 2:** to the International Court of Justice or to arbitration]; however, failure to reach agreement on reference [**Option 1:** to arbitration or **Option 2:** to the International Court of Justice or to arbitration] shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 above.

**(Explanatory note: If Option 2 is selected, it should be noted that disputes involving regional economic integration organizations cannot be submitted to the International Court of Justice but only to arbitration.)**

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

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

## **V. DEVELOPMENT OF THE CONVENTION**

### **A. Proposals**

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

- (a) an amendment to this Convention;



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

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

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

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

#### ***B. Simplified adoption of proposals***

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

2. A Party making a proposal as provided in Article V.A.2 may, except as otherwise provided in the Protocol to which the proposal relates, at the same time propose that the provision be adopted by the following simplified procedure. The secretariat shall promptly circulate the proposal to all Parties to the Protocol with an indication that it is doing so pursuant to this simplified procedure. If within 12 months from the date of such circulation no such Party has objected to either the proposal or its adoption by this simplified procedure, it shall be considered adopted; if any Party makes an objection within the 12-month period, the proposal shall be considered in accordance with Article V.C.

#### ***C. Normal consideration and adoption of proposals***

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

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

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

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

#### **D. Entry into force**

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

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

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

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

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

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

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

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

## VI. FINAL CLAUSES

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

### A. Reservations

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

or

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

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

### B. Signature

This Convention shall be open for signature by

**Option 1:** States

or

**Option 2:** all Member States of the World Health Organization

or

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

and by

**Option 1:** regional economic integration organizations

or

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

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

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

**C. Ratification, acceptance, approval, accession**

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

1. *Ratification, acceptance or approval*

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

**Option 1:** regional economic integration organizations.

or

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

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

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

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

2. *Accession*

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

**Option 1:** regional economic integration organizations.

or

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

Instruments of accession shall be deposited with the depositary.

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

**D. *Entry into force***

1. *Threshold for entry into force*

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

or

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

2. *Entry into force of Protocols*

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

or

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

or

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

3. *Entry into force for Parties joining after the requirements for the entry into force of the Convention or of a Protocol have been met*

(a) For each Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the [INSERT] instrument of ratification, acceptance, approval or accession, it shall enter into force [on the ... day] [... months] after the date of deposit by such Party of its instrument of ratification, acceptance, approval or accession.

(b) Any Protocol [, except as otherwise provided in such Protocol,] shall enter into force for a Party that ratifies, accepts or approves that Protocol or accedes thereto after its entry into force pursuant to paragraph [INSERT] above, [on the ... day] [... months] after the date on which that

Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which this Convention enters into force for that Party, whichever shall be the later.

4. *Participation by regional economic integration organizations for purposes of entry into force of the Convention and Protocols*
  - (a) For the purposes of paragraphs [insert the number of the paragraphs on the conditions for the entry into force of the Convention and its Protocols] above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

***E. Withdrawal or denunciation***

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

1. *Denunciation of, or withdrawal from, the Convention or Protocols at any time*
  - (a) Any Party may [denounce this Convention] [withdraw from this Convention] by written notification to the depositary at any time.
  - (b) [Except as may be provided in any Protocol] any Party to a Protocol can [denounce it] [withdraw from it] by written notification to the depositary at any time.
2. *Denunciation of, or withdrawal from, the Convention or Protocols subject to time limitations*
  - (a) At any time after [INSERT] years from the date on which this Convention has entered into force for a Party, that Party may [denounce] [withdraw from] this Convention by giving written notification to the depositary.
  - (b) [Except as may be provided in any Protocol,] at any time after [INSERT] years from the date on which [such] [a] Protocol has entered into force for a Party, that Party may [denounce] [withdraw from] the Protocol by giving written notification to the depositary.
3. *Effects of denunciation or withdrawal*
  - (a) Any such [denunciation] [withdrawal] shall take effect upon expiry of [INSERT] after the date of its receipt by the depositary, or on such later date as may be specified in the notification to the depositary.
  - (b) Any Party which [denounces] [withdraws from] the Convention shall be considered as having [denounced] [withdrawn from] any Protocol to which it is a Party.  
**(Explanatory note: If negotiating States intend to make participation in the Convention conditional upon participation in one or more Protocols, the following provision may be considered.)**

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

#### ***F. Relations between the Convention and its Protocols***

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

##### **Option 1:**

1. No one may become a Party to this Convention unless it becomes at the same time a Party to at least one of its Protocols. No one may become a Party to a Protocol unless it is, or becomes at the same time, a Party to this Convention.
2. Any protocol to this Convention shall be binding only on the Parties to the Protocol in question.

or

##### **Option 2:**

1. Ratification, acceptance or approval of any of the Protocols to this Convention, or accession thereto, shall be optional for each Party, provided that at the time of the deposit of its instrument of ratification, acceptance or approval of this Convention or of accession thereto, that Party shall ratify, accept or approve, as the case may be, any [INSERT] or more of these Protocols, or accede thereto.
2. At any time after the deposit of its instrument of ratification, acceptance or approval of this Convention or of accession thereto, a Party may deposit with the depositary an instrument of ratification, acceptance or approval of any Protocol by which it is not already bound, or of accession thereto.

#### ***G. Relationship with other international conventions***

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

1. The provisions of this Convention shall not affect the rights and obligations of any Party deriving from any existing international agreement [, except where the exercise of those rights and obligations would .... (insert reference to a prejudicial effect to be avoided)].

2. Contracting Parties shall implement this Convention with respect to [subject matter] consistently with the rights and obligations of States under [INSERT].

#### **H. Depositary**

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

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

#### **Option 1:**

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

or

#### **Option 2:**

1. The Secretary-General of the United Nations shall assume the functions of depositary of this Convention and any Protocols.
2. The depositary shall inform the Parties, in particular, of:
  - (a) the signature of this Convention and of any Protocol, and the deposit of instruments of ratification, acceptance, approval or accession in accordance with Articles [INSERT] and [INSERT];
  - (b) the date on which the Convention and any Protocol will come into force in accordance with Article [INSERT];
  - (c) notifications of [denunciation] [withdrawal] made in accordance with Article [INSERT];
  - (d) amendments adopted with respect to the Convention and any Protocol, their acceptance by the Parties and their date of entry into force in accordance with Article [INSERT];
  - [(e) all communications relating to the adoption and approval of Annexes and to the amendment of Annexes in accordance with Article [INSERT];]
  - (f) notifications by regional economic integration organizations of the extent of their competence with respect to matters governed by this Convention and any Protocols, and of any modifications thereof.

....



## **I. Authentic texts**

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

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

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

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

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**FIFTY-SIXTH WORLD HEALTH ASSEMBLY**

**WHA56.1**

**Agenda item 13**

**21 May 2003**

## **WHO Framework Convention on Tobacco Control**

The Fifty-sixth World Health Assembly,

Recalling its resolutions WHA49.17 and WHA52.18 calling for the development of a WHO framework convention on tobacco control in accordance with Article 19 of the Constitution of WHO;

Determined to protect present and future generations from tobacco consumption and exposure to tobacco smoke;

Noting with profound concern the escalation in smoking and other forms of tobacco use worldwide;

Acknowledging with appreciation the report of the Chair of the Intergovernmental Negotiating Body on the outcome of the work of the Intergovernmental Negotiating Body;<sup>1</sup>

Convinced that this convention is a groundbreaking step in advancing national, regional and international action and global cooperation to protect human health against the devastating impact of tobacco consumption and exposure to tobacco smoke, and mindful that special consideration should be given to the particular situation of developing countries and countries with economies in transition;

Emphasizing the need for expeditious entry into force and effective implementation of the convention,

1. ADOPTS the Convention attached to this resolution;
2. NOTES, in accordance with Article 34 of the Convention, that the Convention shall be open for signature at WHO headquarters in Geneva, from 16 June 2003 to 22 June 2003, and thereafter at United Nations headquarters in New York, from 30 June 2003 to 29 June 2004;
3. CALLS UPON all States and regional economic integration organizations entitled to do so, to consider signing, ratifying, accepting, approving, formally confirming or acceding to the Convention at the earliest opportunity, with a view to bringing the Convention into force as soon as possible;

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<sup>1</sup> Document A56/INF.DOC./7.

4. URGES all States and regional economic integration organizations, pending entry into force of the Convention, to take all appropriate measures to curb tobacco consumption and exposure to tobacco smoke;
5. URGES all Member States, regional economic integration organizations, observers and other interested parties to support the preparatory activities referred to in this resolution and effectively encourage prompt entry into force and implementation of the Convention;
6. CALLS UPON the United Nations and invites other relevant international organizations to continue to provide support for strengthening national and international tobacco control programmes;
7. DECIDES to establish, in accordance with Rule 42 of the Rules of Procedure of the Health Assembly, an open-ended intergovernmental working group that shall be open to all States and regional economic integration organizations referred to in Article 34 of the Convention, to consider and prepare proposals on those issues identified in the Convention for consideration and adoption, as appropriate, by the first session of the Conference of the Parties; such issues should include:
  - (1) rules of procedure for the Conference of the Parties (Article 23.3), including criteria for participation of observers at sessions of the Conference of the Parties (Article 23.6);
  - (2) options for the designation of a permanent secretariat and arrangements for its functioning (Article 24.1);
  - (3) financial rules for the Conference of the Parties and its subsidiary bodies, and financial provisions governing the functioning of the secretariat (Article 23.4);
  - (4) a draft budget for the first financial period (Article 23.4);
  - (5) a review of existing and potential sources and mechanisms of assistance to Parties in meeting their obligations under the Convention (Article 26.5);
8. FURTHER DECIDES that the Open-ended Intergovernmental Working Group shall also oversee preparations for the first session of the Conference of the Parties and report directly to it;
9. RESOLVES that decisions that had been taken by the Intergovernmental Negotiating Body on the WHO framework convention on tobacco control concerning the participation of nongovernmental organizations shall apply to the activities of the Open-ended Intergovernmental Working Group;
10. REQUESTS the Director-General:
  - (1) to provide secretariat functions under the Convention until such time as a permanent secretariat is designated and established;
  - (2) to take appropriate steps to provide support to Member States, in particular developing countries and countries with economies in transition, in preparation for entry into force of the Convention;
  - (3) to convene, as frequently as necessary, between 16 June 2003 and the first session of the Conference of the Parties, meetings of the Open-ended Intergovernmental Working Group;

- (4) to continue to ensure that WHO plays a key role in providing technical advice, direction and support for global tobacco control;
- (5) to keep the Health Assembly informed of progress made toward entry into force of the Convention and of preparations under way for the first session of the Conference of the Parties.

ANNEX

**WHO Framework Convention on Tobacco Control**

***Preamble***

The Parties to this Convention,

*Determined* to give priority to their right to protect public health,

*Recognizing* that the spread of the tobacco epidemic is a global problem with serious consequences for public health that calls for the widest possible international cooperation and the participation of all countries in an effective, appropriate and comprehensive international response,

*Reflecting* the concern of the international community about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke,

*Seriously concerned* about the increase in the worldwide consumption and production of cigarettes and other tobacco products, particularly in developing countries, as well as about the burden this places on families, on the poor, and on national health systems,

*Recognizing* that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability, and that there is a time lag between the exposure to smoking and the other uses of tobacco products and the onset of tobacco-related diseases,

*Recognizing also* that cigarettes and some other products containing tobacco are highly engineered so as to create and maintain dependence, and that many of the compounds they contain and the smoke they produce are pharmacologically active, toxic, mutagenic and carcinogenic, and that tobacco dependence is separately classified as a disorder in major international classifications of diseases,

*Acknowledging* that there is clear scientific evidence that prenatal exposure to tobacco smoke causes adverse health and developmental conditions for children,

*Deeply concerned* about the escalation in smoking and other forms of tobacco consumption by children and adolescents worldwide, particularly smoking at increasingly early ages,

*Alarmed* by the increase in smoking and other forms of tobacco consumption by women and young girls worldwide and keeping in mind the need for full participation of women at all levels of policy-making and implementation and the need for gender-specific tobacco control strategies,

*Deeply concerned* about the high levels of smoking and other forms of tobacco consumption by indigenous peoples,

*Seriously concerned* about the impact of all forms of advertising, promotion and sponsorship aimed at encouraging the use of tobacco products,

*Recognizing* that cooperative action is necessary to eliminate all forms of illicit trade in cigarettes and other tobacco products, including smuggling, illicit manufacturing and counterfeiting,

*Acknowledging* that tobacco control at all levels and particularly in developing countries and in countries with economies in transition requires sufficient financial and technical resources commensurate with the current and projected need for tobacco control activities,

*Recognizing* the need to develop appropriate mechanisms to address the long-term social and economic implications of successful tobacco demand reduction strategies,

*Mindful* of the social and economic difficulties that tobacco control programmes may engender in the medium and long term in some developing countries and countries with economies in transition, and recognizing their need for technical and financial assistance in the context of nationally developed strategies for sustainable development,

*Conscious* of the valuable work being conducted by many States on tobacco control and commending the leadership of the World Health Organization as well as the efforts of other organizations and bodies of the United Nations system and other international and regional intergovernmental organizations in developing measures on tobacco control,

*Emphasizing* the special contribution of nongovernmental organizations and other members of civil society not affiliated with the tobacco industry, including health professional bodies, women's, youth, environmental and consumer groups, and academic and health care institutions, to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts,

*Recognizing* the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts,

*Recalling* Article 12 of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966, which states that it is the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

*Recalling also* the preamble to the Constitution of the World Health Organization, which states that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition,

*Determined* to promote measures of tobacco control based on current and relevant scientific, technical and economic considerations,

*Recalling* that the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979, provides that States Parties to that Convention shall take appropriate measures to eliminate discrimination against women in the field of health care,

*Recalling further* that the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, provides that States Parties to that Convention recognize the right of the child to the enjoyment of the highest attainable standard of health,

*Have agreed*, as follows:

## PART I: INTRODUCTION

### *Article 1* *Use of terms*

For the purposes of this Convention:

- (a) “illicit trade” means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct intended to facilitate such activity;
- (b) “regional economic integration organization” means an organization that is composed of several sovereign states, and to which its Member States have transferred competence over a range of matters, including the authority to make decisions binding on its Member States in respect of those matters;<sup>1</sup>
- (c) “tobacco advertising and promotion” means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;
- (d) “tobacco control” means a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke;
- (e) “tobacco industry” means tobacco manufacturers, wholesale distributors and importers of tobacco products;
- (f) “tobacco products” means products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing;
- (g) “tobacco sponsorship” means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

### *Article 2*

#### *Relationship between this Convention and other agreements and legal instruments*

1. In order to better protect human health, Parties are encouraged to implement measures beyond those required by this Convention and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions and are in accordance with international law.
2. The provisions of the Convention and its protocols shall in no way affect the right of Parties to enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant or additional to the Convention and its protocols, provided that such agreements are compatible with their obligations under the Convention and its protocols. The Parties concerned shall communicate such agreements to the Conference of the Parties through the Secretariat.

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<sup>1</sup> Where appropriate, national will refer equally to regional economic integration organizations.

## PART II: OBJECTIVE, GUIDING PRINCIPLES AND GENERAL OBLIGATIONS

### *Article 3*

#### *Objective*

The objective of this Convention and its protocols is to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.

### *Article 4*

#### *Guiding principles*

To achieve the objective of this Convention and its protocols and to implement its provisions, the Parties shall be guided, *inter alia*, by the principles set out below:

1. Every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke and effective legislative, executive, administrative or other measures should be contemplated at the appropriate governmental level to protect all persons from exposure to tobacco smoke.
2. Strong political commitment is necessary to develop and support, at the national, regional and international levels, comprehensive multisectoral measures and coordinated responses, taking into consideration:
  - (a) the need to take measures to protect all persons from exposure to tobacco smoke;
  - (b) the need to take measures to prevent the initiation, to promote and support cessation, and to decrease the consumption of tobacco products in any form;
  - (c) the need to take measures to promote the participation of indigenous individuals and communities in the development, implementation and evaluation of tobacco control programmes that are socially and culturally appropriate to their needs and perspectives; and
  - (d) the need to take measures to address gender-specific risks when developing tobacco control strategies.
3. International cooperation, particularly transfer of technology, knowledge and financial assistance and provision of related expertise, to establish and implement effective tobacco control programmes, taking into consideration local culture, as well as social, economic, political and legal factors, is an important part of the Convention.
4. Comprehensive multisectoral measures and responses to reduce consumption of all tobacco products at the national, regional and international levels are essential so as to prevent, in accordance with public health principles, the incidence of diseases, premature disability and mortality due to tobacco consumption and exposure to tobacco smoke.
5. Issues relating to liability, as determined by each Party within its jurisdiction, are an important part of comprehensive tobacco control.



6. The importance of technical and financial assistance to aid the economic transition of tobacco growers and workers whose livelihoods are seriously affected as a consequence of tobacco control programmes in developing country Parties, as well as Parties with economies in transition, should be recognized and addressed in the context of nationally developed strategies for sustainable development.
7. The participation of civil society is essential in achieving the objective of the Convention and its protocols.

**Article 5**  
*General obligations*

1. Each Party shall develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with this Convention and the protocols to which it is a Party.
2. Towards this end, each Party shall, in accordance with its capabilities:
  - (a) establish or reinforce and finance a national coordinating mechanism or focal points for tobacco control; and
  - (b) adopt and implement effective legislative, executive, administrative and/or other measures and cooperate, as appropriate, with other Parties in developing appropriate policies for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke.
3. In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.
4. The Parties shall cooperate in the formulation of proposed measures, procedures and guidelines for the implementation of the Convention and the protocols to which they are Parties.
5. The Parties shall cooperate, as appropriate, with competent international and regional intergovernmental organizations and other bodies to achieve the objectives of the Convention and the protocols to which they are Parties.
6. The Parties shall, within means and resources at their disposal, cooperate to raise financial resources for effective implementation of the Convention through bilateral and multilateral funding mechanisms.

**PART III: MEASURES RELATING TO THE REDUCTION  
OF DEMAND FOR TOBACCO**

**Article 6**  
*Price and tax measures to reduce the demand for tobacco*

1. The Parties recognize that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons.

2. Without prejudice to the sovereign right of the Parties to determine and establish their taxation policies, each Party should take account of its national health objectives concerning tobacco control and adopt or maintain, as appropriate, measures which may include:
  - (a) implementing tax policies and, where appropriate, price policies, on tobacco products so as to contribute to the health objectives aimed at reducing tobacco consumption; and
  - (b) prohibiting or restricting, as appropriate, sales to and/or importations by international travellers of tax- and duty-free tobacco products.
3. The Parties shall provide rates of taxation for tobacco products and trends in tobacco consumption in their periodic reports to the Conference of the Parties, in accordance with Article 21.

#### ***Article 7***

##### *Non-price measures to reduce the demand for tobacco*

The Parties recognize that comprehensive non-price measures are an effective and important means of reducing tobacco consumption. Each Party shall adopt and implement effective legislative, executive, administrative or other measures necessary to implement its obligations pursuant to Articles 8 to 13 and shall cooperate, as appropriate, with each other directly or through competent international bodies with a view to their implementation. The Conference of the Parties shall propose appropriate guidelines for the implementation of the provisions of these Articles.

#### ***Article 8***

##### *Protection from exposure to tobacco smoke*

1. Parties recognize that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability.
2. Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.

#### ***Article 9***

##### *Regulation of the contents of tobacco products*

The Conference of the Parties, in consultation with competent international bodies, shall propose guidelines for testing and measuring the contents and emissions of tobacco products, and for the regulation of these contents and emissions. Each Party shall, where approved by competent national authorities, adopt and implement effective legislative, executive and administrative or other measures for such testing and measuring, and for such regulation.

#### ***Article 10***

##### *Regulation of tobacco product disclosures*

Each Party shall, in accordance with its national law, adopt and implement effective legislative, executive, administrative or other measures requiring manufacturers and importers of tobacco products to disclose to governmental authorities information about the contents and emissions of tobacco

products. Each Party shall further adopt and implement effective measures for public disclosure of information about the toxic constituents of the tobacco products and the emissions that they may produce.

**Article 11**  
*Packaging and labelling of tobacco products*

1. Each Party shall, within a period of three years after entry into force of this Convention for that Party, adopt and implement, in accordance with its national law, effective measures to ensure that:

(a) tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include terms such as “low tar”, “light”, “ultra-light”, or “mild”; and

(b) each unit packet and package of tobacco products and any outside packaging and labelling of such products also carry health warnings describing the harmful effects of tobacco use, and may include other appropriate messages. These warnings and messages:

(i) shall be approved by the competent national authority,

(ii) shall be rotating,

(iii) shall be large, clear, visible and legible,

(iv) should be 50% or more of the principal display areas but shall be no less than 30% of the principal display areas,

(v) may be in the form of or include pictures or pictograms.

2. Each unit packet and package of tobacco products and any outside packaging and labelling of such products shall, in addition to the warnings specified in paragraph 1(b) of this Article, contain information on relevant constituents and emissions of tobacco products as defined by national authorities.

3. Each Party shall require that the warnings and other textual information specified in paragraphs 1(b) and paragraph 2 of this Article will appear on each unit packet and package of tobacco products and any outside packaging and labelling of such products in its principal language or languages.

4. For the purposes of this Article, the term “outside packaging and labelling” in relation to tobacco products applies to any packaging and labelling used in the retail sale of the product.

## **Article 12**

### *Education, communication, training and public awareness*

Each Party shall promote and strengthen public awareness of tobacco control issues, using all available communication tools, as appropriate. Towards this end, each Party shall adopt and implement effective legislative, executive, administrative or other measures to promote:

- (a) broad access to effective and comprehensive educational and public awareness programmes on the health risks including the addictive characteristics of tobacco consumption and exposure to tobacco smoke;
- (b) public awareness about the health risks of tobacco consumption and exposure to tobacco smoke, and about the benefits of the cessation of tobacco use and tobacco-free lifestyles as specified in Article 14.2;
- (c) public access, in accordance with national law, to a wide range of information on the tobacco industry as relevant to the objective of this Convention;
- (d) effective and appropriate training or sensitization and awareness programmes on tobacco control addressed to persons such as health workers, community workers, social workers, media professionals, educators, decision-makers, administrators and other concerned persons;
- (e) awareness and participation of public and private agencies and nongovernmental organizations not affiliated with the tobacco industry in developing and implementing intersectoral programmes and strategies for tobacco control; and
- (f) public awareness of and access to information regarding the adverse health, economic, and environmental consequences of tobacco production and consumption.

## **Article 13**

### *Tobacco advertising, promotion and sponsorship*

1. Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.
2. Each Party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory. In this respect, within the period of five years after entry into force of this Convention for that Party, each Party shall undertake appropriate legislative, executive, administrative and/or other measures and report accordingly in conformity with Article 21.
3. A Party that is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles shall apply restrictions on all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, restrictions or a comprehensive ban on advertising, promotion and sponsorship originating from its territory with cross-border effects. In this respect, each Party shall undertake appropriate legislative, executive, administrative and/or other measures and report accordingly in conformity with Article 21.

4. As a minimum, and in accordance with its constitution or constitutional principles, each Party shall:
  - (a) prohibit all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false, misleading or deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;
  - (b) require that health or other appropriate warnings or messages accompany all tobacco advertising and, as appropriate, promotion and sponsorship;
  - (c) restrict the use of direct or indirect incentives that encourage the purchase of tobacco products by the public;
  - (d) require, if it does not have a comprehensive ban, the disclosure to relevant governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship not yet prohibited. Those authorities may decide to make those figures available, subject to national law, to the public and to the Conference of the Parties, pursuant to Article 21;
  - (e) undertake a comprehensive ban or, in the case of a Party that is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles, restrict tobacco advertising, promotion and sponsorship on radio, television, print media and, as appropriate, other media, such as the internet, within a period of five years; and
  - (f) prohibit, or in the case of a Party that is not in a position to prohibit due to its constitution or constitutional principles restrict, tobacco sponsorship of international events, activities and/or participants therein.
5. Parties are encouraged to implement measures beyond the obligations set out in paragraph 4.
6. Parties shall cooperate in the development of technologies and other means necessary to facilitate the elimination of cross-border advertising.
7. Parties which have a ban on certain forms of tobacco advertising, promotion and sponsorship have the sovereign right to ban those forms of cross-border tobacco advertising, promotion and sponsorship entering their territory and to impose equal penalties as those applicable to domestic advertising, promotion and sponsorship originating from their territory in accordance with their national law. This paragraph does not endorse or approve of any particular penalty.
8. Parties shall consider the elaboration of a protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship.

#### ***Article 14***

##### *Demand reduction measures concerning tobacco dependence and cessation*

1. Each Party shall develop and disseminate appropriate, comprehensive and integrated guidelines based on scientific evidence and best practices, taking into account national circumstances and priorities, and shall take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence.

2. Towards this end, each Party shall endeavour to:
  - (a) design and implement effective programmes aimed at promoting the cessation of tobacco use, in such locations as educational institutions, health care facilities, workplaces and sporting environments;
  - (b) include diagnosis and treatment of tobacco dependence and counselling services on cessation of tobacco use in national health and education programmes, plans and strategies, with the participation of health workers, community workers and social workers as appropriate;
  - (c) establish in health care facilities and rehabilitation centres programmes for diagnosing, counselling, preventing and treating tobacco dependence; and
  - (d) collaborate with other Parties to facilitate accessibility and affordability for treatment of tobacco dependence including pharmaceutical products pursuant to Article 22. Such products and their constituents may include medicines, products used to administer medicines and diagnostics when appropriate.

#### **PART IV: MEASURES RELATING TO THE REDUCTION OF THE SUPPLY OF TOBACCO**

##### *Article 15*

##### *Illicit trade in tobacco products<sup>1</sup>*

1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control.
2. Each Party shall adopt and implement effective legislative, executive, administrative or other measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products, and in accordance with national law and relevant bilateral or multilateral agreements, assist Parties in determining the point of diversion and monitor, document and control the movement of tobacco products and their legal status. In addition, each Party shall:
  - (a) require that unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: “*Sales only allowed in (insert name of the country, subnational, regional or federal unit)*” or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market; and
  - (b) consider, as appropriate, developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.

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<sup>1</sup> There has been considerable discussion throughout the pre-negotiation and negotiation process concerning the adoption of an early protocol on illicit trade in tobacco products. The negotiation of such a protocol could be initiated by the INB immediately following the adoption of the FCTC, or at a later stage by the Conference of the Parties.

3. Each Party shall require that the packaging information or marking specified in paragraph 2 of this Article shall be presented in legible form and/or appear in its principal language or languages.
4. With a view to eliminating illicit trade in tobacco products, each Party shall:
  - (a) monitor and collect data on cross-border trade in tobacco products, including illicit trade, and exchange information among customs, tax and other authorities, as appropriate, and in accordance with national law and relevant applicable bilateral or multilateral agreements;
  - (b) enact or strengthen legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband cigarettes;
  - (c) take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally-friendly methods where feasible, or disposed of in accordance with national law;
  - (d) adopt and implement measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within its jurisdiction; and
  - (e) adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products.
5. Information collected pursuant to subparagraphs 4(a) and 4(d) of this Article shall, as appropriate, be provided in aggregate form by the Parties in their periodic reports to the Conference of the Parties, in accordance with Article 21.
6. The Parties shall, as appropriate and in accordance with national law, promote cooperation between national agencies, as well as relevant regional and international intergovernmental organizations as it relates to investigations, prosecutions and proceedings, with a view to eliminating illicit trade in tobacco products. Special emphasis shall be placed on cooperation at regional and subregional levels to combat illicit trade of tobacco products.
7. Each Party shall endeavour to adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.

### ***Article 16***

#### ***Sales to and by minors***

1. Each Party shall adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or eighteen. These measures may include:
  - (a) requiring that all sellers of tobacco products place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors and, in case of doubt, request that each tobacco purchaser provide appropriate evidence of having reached full legal age;
  - (b) banning the sale of tobacco products in any manner by which they are directly accessible, such as store shelves;

- (c) prohibiting the manufacture and sale of sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors; and
- (d) ensuring that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products to minors.
2. Each Party shall prohibit or promote the prohibition of the distribution of free tobacco products to the public and especially minors.
3. Each Party shall endeavour to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors.
4. The Parties recognize that in order to increase their effectiveness, measures to prevent tobacco product sales to minors should, where appropriate, be implemented in conjunction with other provisions contained in this Convention.
5. When signing, ratifying, accepting, approving or acceding to the Convention or at any time thereafter, a Party may, by means of a binding written declaration, indicate its commitment to prohibit the introduction of tobacco vending machines within its jurisdiction or, as appropriate, to a total ban on tobacco vending machines. The declaration made pursuant to this Article shall be circulated by the Depositary to all Parties to the Convention.
6. Each Party shall adopt and implement effective legislative, executive, administrative or other measures, including penalties against sellers and distributors, in order to ensure compliance with the obligations contained in paragraphs 1-5 of this Article.
7. Each Party should, as appropriate, adopt and implement effective legislative, executive, administrative or other measures to prohibit the sales of tobacco products by persons under the age set by domestic law, national law or eighteen.

#### ***Article 17***

##### *Provision of support for economically viable alternative activities*

Parties shall, in cooperation with each other and with competent international and regional intergovernmental organizations, promote, as appropriate, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers.

### **PART V: PROTECTION OF THE ENVIRONMENT**

#### ***Article 18***

##### *Protection of the environment and the health of persons*

In carrying out their obligations under this Convention, the Parties agree to have due regard to the protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture within their respective territories.



## PART VI: QUESTIONS RELATED TO LIABILITY

### *Article 19*

#### *Liability*

1. For the purpose of tobacco control, the Parties shall consider taking legislative action or promoting their existing laws, where necessary, to deal with criminal and civil liability, including compensation where appropriate.
2. Parties shall cooperate with each other in exchanging information through the Conference of the Parties in accordance with Article 21 including:
  - (a) information on the health effects of the consumption of tobacco products and exposure to tobacco smoke in accordance with Article 20.3(a); and
  - (b) information on legislation and regulations in force as well as pertinent jurisprudence.
3. The Parties shall, as appropriate and mutually agreed, within the limits of national legislation, policies, legal practices and applicable existing treaty arrangements, afford one another assistance in legal proceedings relating to civil and criminal liability consistent with this Convention.
4. The Convention shall in no way affect or limit any rights of access of the Parties to each other's courts where such rights exist.
5. The Conference of the Parties may consider, if possible, at an early stage, taking account of the work being done in relevant international fora, issues related to liability including appropriate international approaches to these issues and appropriate means to support, upon request, the Parties in their legislative and other activities in accordance with this Article.

## PART VII: SCIENTIFIC AND TECHNICAL COOPERATION AND COMMUNICATION OF INFORMATION

### *Article 20*

#### *Research, surveillance and exchange of information*

1. The Parties undertake to develop and promote national research and to coordinate research programmes at the regional and international levels in the field of tobacco control. Towards this end, each Party shall:
  - (a) initiate and cooperate in, directly or through competent international and regional intergovernmental organizations and other bodies, the conduct of research and scientific assessments, and in so doing promote and encourage research that addresses the determinants and consequences of tobacco consumption and exposure to tobacco smoke as well as research for identification of alternative crops; and
  - (b) promote and strengthen, with the support of competent international and regional intergovernmental organizations and other bodies, training and support for all those engaged in tobacco control activities, including research, implementation and evaluation.

2. The Parties shall establish, as appropriate, programmes for national, regional and global surveillance of the magnitude, patterns, determinants and consequences of tobacco consumption and exposure to tobacco smoke. Towards this end, the Parties should integrate tobacco surveillance programmes into national, regional and global health surveillance programmes so that data are comparable and can be analysed at the regional and international levels, as appropriate.
3. Parties recognize the importance of financial and technical assistance from international and regional intergovernmental organizations and other bodies. Each Party shall endeavour to:
  - (a) establish progressively a national system for the epidemiological surveillance of tobacco consumption and related social, economic and health indicators;
  - (b) cooperate with competent international and regional intergovernmental organizations and other bodies, including governmental and nongovernmental agencies, in regional and global tobacco surveillance and exchange of information on the indicators specified in paragraph 3(a) of this Article; and
  - (c) cooperate with the World Health Organization in the development of general guidelines or procedures for defining the collection, analysis and dissemination of tobacco-related surveillance data.
4. The Parties shall, subject to national law, promote and facilitate the exchange of publicly available scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco, which is relevant to this Convention, and in so doing shall take into account and address the special needs of developing country Parties and Parties with economies in transition. Each Party shall endeavour to:
  - (a) progressively establish and maintain an updated database of laws and regulations on tobacco control and, as appropriate, information about their enforcement, as well as pertinent jurisprudence, and cooperate in the development of programmes for regional and global tobacco control;
  - (b) progressively establish and maintain updated data from national surveillance programmes in accordance with paragraph 3(a) of this Article; and
  - (c) cooperate with competent international organizations to progressively establish and maintain a global system to regularly collect and disseminate information on tobacco production, manufacture and the activities of the tobacco industry which have an impact on the Convention or national tobacco control activities.
5. Parties should cooperate in regional and international intergovernmental organizations and financial and development institutions of which they are members, to promote and encourage provision of technical and financial resources to the Secretariat to assist developing country Parties and Parties with economies in transition to meet their commitments on research, surveillance and exchange of information.

### **Article 21**

#### *Reporting and exchange of information*

1. Each Party shall submit to the Conference of the Parties, through the Secretariat, periodic reports on its implementation of this Convention, which should include the following:
  - (a) information on legislative, executive, administrative or other measures taken to implement the Convention;
  - (b) information, as appropriate, on any constraints or barriers encountered in its implementation of the Convention, and on the measures taken to overcome these barriers;
  - (c) information, as appropriate, on financial and technical assistance provided or received for tobacco control activities;
  - (d) information on surveillance and research as specified in Article 20; and
  - (e) information specified in Articles 6.3, 13.2, 13.3, 13.4(d), 15.5 and 19.2.
2. The frequency and format of such reports by all Parties shall be determined by the Conference of the Parties. Each Party shall make its initial report within two years of the entry into force of the Convention for that Party.
3. The Conference of the Parties, pursuant to Articles 22 and 26, shall consider arrangements to assist developing country Parties and Parties with economies in transition, at their request, in meeting their obligations under this Article.
4. The reporting and exchange of information under the Convention shall be subject to national law regarding confidentiality and privacy. The Parties shall protect, as mutually agreed, any confidential information that is exchanged.

### **Article 22**

#### *Cooperation in the scientific, technical, and legal fields and provision of related expertise*

1. The Parties shall cooperate directly or through competent international bodies to strengthen their capacity to fulfill the obligations arising from this Convention, taking into account the needs of developing country Parties and Parties with economies in transition. Such cooperation shall promote the transfer of technical, scientific and legal expertise and technology, as mutually agreed, to establish and strengthen national tobacco control strategies, plans and programmes aiming at, *inter alia*:
  - (a) facilitation of the development, transfer and acquisition of technology, knowledge, skills, capacity and expertise related to tobacco control;
  - (b) provision of technical, scientific, legal and other expertise to establish and strengthen national tobacco control strategies, plans and programmes, aiming at implementation of the Convention through, *inter alia*:
    - (i) assisting, upon request, in the development of a strong legislative foundation as well as technical programmes, including those on prevention of initiation, promotion of cessation and protection from exposure to tobacco smoke;

- (ii) assisting, as appropriate, tobacco workers in the development of appropriate economically and legally viable alternative livelihoods in an economically viable manner; and
  - (iii) assisting, as appropriate, tobacco growers in shifting agricultural production to alternative crops in an economically viable manner;
- (c) support for appropriate training or sensitization programmes for appropriate personnel in accordance with Article 12;
  - (d) provision, as appropriate, of the necessary material, equipment and supplies, as well as logistical support, for tobacco control strategies, plans and programmes;
  - (e) identification of methods for tobacco control, including comprehensive treatment of nicotine addiction; and
  - (f) promotion, as appropriate, of research to increase the affordability of comprehensive treatment of nicotine addiction.
2. The Conference of the Parties shall promote and facilitate transfer of technical, scientific and legal expertise and technology with the financial support secured in accordance with Article 26.

## **PART VIII: INSTITUTIONAL ARRANGEMENTS AND FINANCIAL RESOURCES**

### ***Article 23***

#### *Conference of the Parties*

1. A Conference of the Parties is hereby established. The first session of the Conference shall be convened by the World Health Organization not later than one year after the entry into force of this Convention. The Conference will determine the venue and timing of subsequent regular sessions at its first session.
2. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat of the Convention, it is supported by at least one-third of the Parties.
3. The Conference of the Parties shall adopt by consensus its Rules of Procedure at its first session.
4. The Conference of the Parties shall by consensus adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.
5. The Conference of the Parties shall keep under regular review the implementation of the Convention and take the decisions necessary to promote its effective implementation and may adopt protocols, annexes and amendments to the Convention, in accordance with Articles 28, 29 and 33. Towards this end, it shall:

- (a) promote and facilitate the exchange of information pursuant to Articles 20 and 21;
  - (b) promote and guide the development and periodic refinement of comparable methodologies for research and the collection of data, in addition to those provided for in Article 20, relevant to the implementation of the Convention;
  - (c) promote, as appropriate, the development, implementation and evaluation of strategies, plans, and programmes, as well as policies, legislation and other measures;
  - (d) consider reports submitted by the Parties in accordance with Article 21 and adopt regular reports on the implementation of the Convention;
  - (e) promote and facilitate the mobilization of financial resources for the implementation of the Convention in accordance with Article 26;
  - (f) establish such subsidiary bodies as are necessary to achieve the objective of the Convention;
  - (g) request, where appropriate, the services and cooperation of, and information provided by, competent and relevant organizations and bodies of the United Nations system and other international and regional intergovernmental organizations and nongovernmental organizations and bodies as a means of strengthening the implementation of the Convention; and
  - (h) consider other action, as appropriate, for the achievement of the objective of the Convention in the light of experience gained in its implementation.
6. The Conference of the Parties shall establish the criteria for the participation of observers at its proceedings.

**Article 24**  
*Secretariat*

1. The Conference of the Parties shall designate a permanent secretariat and make arrangements for its functioning. The Conference of the Parties shall endeavour to do so at its first session.
2. Until such time as a permanent secretariat is designated and established, secretariat functions under this Convention shall be provided by the World Health Organization.
3. Secretariat functions shall be:
  - (a) to make arrangements for sessions of the Conference of the Parties and any subsidiary bodies and to provide them with services as required;
  - (b) to transmit reports received by it pursuant to the Convention;
  - (c) to provide support to the Parties, particularly developing country Parties and Parties with economies in transition, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;

- (d) to prepare reports on its activities under the Convention under the guidance of the Conference of the Parties and submit them to the Conference of the Parties;
- (e) to ensure, under the guidance of the Conference of the Parties, the necessary coordination with the competent international and regional intergovernmental organizations and other bodies;
- (f) to enter, under the guidance of the Conference of the Parties, into such administrative or contractual arrangements as may be required for the effective discharge of its functions; and
- (g) to perform other secretariat functions specified by the Convention and by any of its protocols and such other functions as may be determined by the Conference of the Parties.

### **Article 25**

#### *Relations between the Conference of the Parties and intergovernmental organizations*

In order to provide technical and financial cooperation for achieving the objective of this Convention, the Conference of the Parties may request the cooperation of competent international and regional intergovernmental organizations including financial and development institutions.

### **Article 26**

#### *Financial resources*

1. The Parties recognize the important role that financial resources play in achieving the objective of this Convention.
2. Each Party shall provide financial support in respect of its national activities intended to achieve the objective of the Convention, in accordance with its national plans, priorities and programmes.
3. Parties shall promote, as appropriate, the utilization of bilateral, regional, subregional and other multilateral channels to provide funding for the development and strengthening of multisectoral comprehensive tobacco control programmes of developing country Parties and Parties with economies in transition. Accordingly, economically viable alternatives to tobacco production, including crop diversification should be addressed and supported in the context of nationally developed strategies of sustainable development.
4. Parties represented in relevant regional and international intergovernmental organizations, and financial and development institutions shall encourage these entities to provide financial assistance for developing country Parties and for Parties with economies in transition to assist them in meeting their obligations under the Convention, without limiting the rights of participation within these organizations.
5. The Parties agree that:
  - (a) to assist Parties in meeting their obligations under the Convention, all relevant potential and existing resources, financial, technical, or otherwise, both public and private that are available for tobacco control activities, should be mobilized and utilized for the benefit of all Parties, especially developing countries and countries with economies in transition;

- (b) the Secretariat shall advise developing country Parties and Parties with economies in transition, upon request, on available sources of funding to facilitate the implementation of their obligations under the Convention;
- (c) the Conference of the Parties in its first session shall review existing and potential sources and mechanisms of assistance based on a study conducted by the Secretariat and other relevant information, and consider their adequacy; and
- (d) the results of this review shall be taken into account by the Conference of the Parties in determining the necessity to enhance existing mechanisms or to establish a voluntary global fund or other appropriate financial mechanisms to channel additional financial resources, as needed, to developing country Parties and Parties with economies in transition to assist them in meeting the objectives of the Convention.

## **PART IX: SETTLEMENT OF DISPUTES**

### ***Article 27***

#### *Settlement of disputes*

1. In the event of a dispute between two or more Parties concerning the interpretation or application of this Convention, the Parties concerned shall seek through diplomatic channels a settlement of the dispute through negotiation or any other peaceful means of their own choice, including good offices, mediation, or conciliation. Failure to reach agreement by good offices, mediation or conciliation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it.
2. When ratifying, accepting, approving, formally confirming or acceding to the Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this Article, it accepts, as compulsory, ad hoc arbitration in accordance with procedures to be adopted by consensus by the Conference of the Parties.
3. The provisions of this Article shall apply with respect to any protocol as between the parties to the protocol, unless otherwise provided therein.

## **PART X: DEVELOPMENT OF THE CONVENTION**

### ***Article 28***

#### *Amendments to this Convention*

1. Any Party may propose amendments to this Convention. Such amendments will be considered by the Conference of the Parties.
2. Amendments to the Convention shall be adopted by the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the Secretariat at least six months before the session at which it is proposed for adoption. The Secretariat shall also

communicate proposed amendments to the signatories of the Convention and, for information, to the Depository.

3. The Parties shall make every effort to reach agreement by consensus on any proposed amendment to the Convention. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. For purposes of this Article, Parties present and voting means Parties present and casting an affirmative or negative vote. Any adopted amendment shall be communicated by the Secretariat to the Depository, who shall circulate it to all Parties for acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depository. An amendment adopted in accordance with paragraph 3 of this Article shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depository of an instrument of acceptance by at least two-thirds of the Parties to the Convention.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depository its instrument of acceptance of the said amendment.

#### ***Article 29***

##### *Adoption and amendment of annexes to this Convention*

1. Annexes to this Convention and amendments thereto shall be proposed, adopted and shall enter into force in accordance with the procedure set forth in Article 28.

2. Annexes to the Convention shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention constitutes at the same time a reference to any annexes thereto.

3. Annexes shall be restricted to lists, forms and any other descriptive material relating to procedural, scientific, technical or administrative matters.

### **PART XI: FINAL PROVISIONS**

#### ***Article 30***

##### *Reservations*

No reservations may be made to this Convention.

#### ***Article 31***

##### *Withdrawal*

1. At any time after two years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depository.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depository of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.



3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

**Article 32**  
*Right to vote*

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2 of this Article.
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.

**Article 33**  
*Protocols*

1. Any Party may propose protocols. Such proposals will be considered by the Conference of the Parties.
2. The Conference of the Parties may adopt protocols to this Convention. In adopting these protocols every effort shall be made to reach consensus. If all efforts at consensus have been exhausted, and no agreement reached, the protocol shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. For the purposes of this Article, Parties present and voting means Parties present and casting an affirmative or negative vote.
3. The text of any proposed protocol shall be communicated to the Parties by the Secretariat at least six months before the session at which it is proposed for adoption.
4. Only Parties to the Convention may be parties to a protocol.
5. Any protocol to the Convention shall be binding only on the parties to the protocol in question. Only Parties to a protocol may take decisions on matters exclusively relating to the protocol in question.
6. The requirements for entry into force of any protocol shall be established by that instrument.

**Article 34**  
*Signature*

This Convention shall be open for signature by all Members of the World Health Organization and by any States that are not Members of the World Health Organization but are members of the United Nations and by regional economic integration organizations at the World Health Organization Headquarters in Geneva from 16 June 2003 to 22 June 2003, and thereafter at United Nations Headquarters in New York, from 30 June 2003 to 29 June 2004.

**Article 35***Ratification, acceptance, approval, formal confirmation or accession*

1. This Convention shall be subject to ratification, acceptance, approval or accession by States and to formal confirmation or accession by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval, formal confirmation or accession shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes a Party to the Convention without any of its Member States being a Party shall be bound by all the obligations under the Convention. In the case of those organizations, one or more of whose Member States is a Party to the Convention, the organization and its Member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the Member States shall not be entitled to exercise rights under the Convention concurrently.
3. Regional economic integration organizations shall, in their instruments relating to formal confirmation or in their instruments of accession, declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

**Article 36***Entry into force*

1. This Convention shall enter into force on the ninetieth day following the date of deposit of the fortieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.
2. For each State that ratifies, accepts or approves the Convention or accedes thereto after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, the Convention shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.
3. For each regional economic integration organization depositing an instrument of formal confirmation or an instrument of accession after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, the Convention shall enter into force on the ninetieth day following the date of its depositing of the instrument of formal confirmation or of accession.
4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States Members of the organization.

**Article 37***Depositary*

The Secretary-General of the United Nations shall be the Depositary of this Convention and amendments thereto and of protocols and annexes adopted in accordance with Articles 28, 29 and 33.

**Article 38**  
*Authentic texts*

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

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at GENEVA this [date of month] two thousand and three.

Fourth plenary meeting, 21 May 2003  
A56/VR/4

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