

# WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL



**FCTC**

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## FOREWORD

The WHO Framework Convention on Tobacco Control (WHO FCTC) is the first treaty negotiated under the auspices of the World Health Organization. The WHO FCTC is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. The WHO FCTC represents a paradigm shift in developing a regulatory strategy to address addictive substances; in contrast to previous drug control treaties, the WHO FCTC asserts the importance of demand reduction strategies as well as supply issues.

The WHO FCTC was developed in response to the globalization of the tobacco epidemic. The spread of the tobacco epidemic is facilitated through a variety of complex factors with cross-border effects, including trade liberalization and direct foreign investment. Other factors such as global marketing, transnational tobacco advertising, promotion and sponsorship, and the international movement of contraband and counterfeit cigarettes have also contributed to the explosive increase in tobacco use.

From the first preambular paragraph, which states that the “Parties to this Convention [are] determined to give priority to their right to protect public health”, the WHO FCTC is a global trend-setter.

The core demand reduction provisions in the WHO FCTC are contained in articles 6-14:

Price and tax measures to reduce the demand for tobacco, and

Non-price measures to reduce the demand for tobacco, namely:

- Protection from exposure to tobacco smoke;
- Regulation of the contents of tobacco products;
- Regulation of tobacco product disclosures;
- Packaging and labelling of tobacco products;
- Education, communication, training and public awareness;
- Tobacco advertising, promotion and sponsorship; and,
- Demand reduction measures concerning tobacco dependence and cessation.

The core supply reduction provisions in the WHO FCTC are contained in articles 15-17:

Illicit trade in tobacco products;

Sales to and by minors; and,

Provision of support for economically viable alternative activities.

Another novel feature of the Convention is the inclusion of a provision that addresses liability. Mechanisms for scientific and technical cooperation and exchange of information are set out in Articles 20-22.

The WHO FCTC opened for signature on 16 June to 22 June 2003 in Geneva, and thereafter at the United Nations Headquarters in New York, the Depositary of the treaty, from 30 June 2003 to 29 June 2004. The treaty, which is now closed for signature, has 168 Signatories, including the European Community, which makes it one of the most widely embraced treaties in UN history. Member States that have signed the Convention indicate that they will strive in good faith to ratify, accept, or approve it, and show political commitment not to undermine the objectives set out in it. Countries wishing to become a Party, but that did not sign the Convention by 29 June 2004, may do so by means of accession, which is a one-step process equivalent to ratification.

The Convention entered into force on 27 February 2005 -- 90 days after it has been acceded to, ratified, accepted, or approved by 40 States. Beginning on that date, the forty Contracting Parties are legally bound by the treaty's provisions. For each State that ratifies, accepts or approves the Convention or accedes thereto after the conditions set out in paragraph 1 of Article 36 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. For regional economic integration organizations, the Convention enters into force on the ninetieth day following the date of deposit of its instrument of formal confirmation or accession.

The global network developed over the period of the negotiations of the WHO FCTC will be important in preparing for the implementation of the Convention at country level. In the words of WHO's Director General, Dr Jong-wook LEE:

"The WHO FCTC negotiations have already unleashed a process that has resulted in visible differences at country level. The success of the WHO FCTC as a tool for public health will depend on the energy and political commitment that we devote to implementing it in countries in the coming years. A successful result will be global public health gains for all."

For this to materialize, the drive and commitment, which was so evident during the negotiations, will need to spread to national and local levels so that the WHO FCTC becomes a concrete reality where it counts most, in countries.

## ***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;

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

## ***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.

## **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***

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.
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 Depositary.

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 Depositary, who shall circulate it to all Parties for acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. 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 Depositary 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 Depositary 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 Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary 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 twenty-first day of May two thousand and three.

## **Annex 1: WHA 56.1 WHO Framework Convention on Tobacco Control**

The Fifty-sixth World Health Assembly,

Recalling 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>2</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>2</sup> Document A56/INF.DOC./7 Rev.1.

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 to 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 World 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 in order 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 2: History of the WHO FCTC process**

The idea of an international instrument for tobacco was initiated with the adoption of Resolution WHA 48.11 in May 1995, requesting the Director-General to report to the Forty-ninth Session of the World Health Assembly on the feasibility of developing an international instrument such as guidelines, a declaration, or an international convention on tobacco control.

As a result of Resolution WHA48.11, WHO was requested to draft a feasibility study which was presented by the Director-General to the Ninety-seventh Session of the WHO Executive Board ("The Feasibility of an International Instrument for Tobacco Control" (EB97/INF.DOC.4)). During that same session, the Executive Board adopted Resolution EB97.R8, "International framework convention for tobacco control."

Later that year, the Forty-ninth Session of the WHA adopted Resolution WHA49.17, "International framework convention for tobacco control", requesting the Director-General to initiate the development of a Framework Convention on Tobacco Control. As a result of this resolution, WHO's first treaty-making enterprise was formally launched.

In 1998 newly-elected WHO Director-General, Dr Gro Harlem Brundtland made global tobacco control a priority through the establishment of a Cabinet Project, the Tobacco Free Initiative, to focus international attention, resources and action upon the global tobacco epidemic. New multisectoral partnerships reflecting the nature of the action were developed. More importantly, Dr Brundtland worked with Member States to secure a negotiating mandate for the Framework Convention on Tobacco Control and set about the task of mobilizing public and political opinion in favour of global rules for tobacco control.

In May 1999 the Fifty-second World Health Assembly paved the way for multilateral negotiations on the WHO Framework Convention on Tobacco Control and possible related protocols. Resolution WHA52.18 established two bodies to draft the framework convention, to complete negotiations and to submit the final text for consideration by the Fifty-sixth World Health Assembly. These two bodies included a technical working group to prepare the proposed draft elements of the Framework Convention; and an intergovernmental negotiating body to draft and negotiate the proposed Framework Convention and possible related protocols. Both bodies were open to all Member States and regional economic integration organizations to which their Member States had transferred competence over matters related to tobacco control.

The working group held two sessions in Geneva (25-29 October 1999 and 27-29 March 2000). Its output was a document with provisional texts of proposed draft elements for the Framework Convention, submitted to the Fifty-third World Health Assembly with

the comments of the working group<sup>1</sup>. In Resolution WHA53.16, the Health Assembly called upon the Intergovernmental Negotiating Body to commence negotiations with an initial focus



on the draft Framework Convention without prejudice to future discussions on possible protocols, to report progress to the Fifty-fourth World Health Assembly, and to examine the question of extended participation by nongovernmental organizations as observers.

The first session of the Intergovernmental Negotiating Body (Geneva, 16-21 October 2000) was preceded by a public hearing on issues surrounding the Framework Convention. The Director-General convened this hearing in order to provide a forum for the public health community, the tobacco industry and farmers' groups to submit their case; records of the proceedings were made available to the Negotiating Body and, through the WHO web site, to the public. At the first session, Ambassador Celso Amorim of Brazil was elected as Chair, and a bureau was established with Vice-Chairs from Australia, India, Islamic Republic of Iran, South Africa, Turkey and the United States of America. The provisional texts of the proposed draft elements for a WHO Framework Convention on Tobacco Control <sup>2</sup>, which had been prepared by the working group, were accepted as a sound basis for initiating negotiations. Subsequently, Ambassador Amorim prepared a Chair's text of the Framework Convention on Tobacco Control <sup>3</sup>; this first draft was released in January 2001 as a basis for further negotiations at the second session.

A report on participation of nongovernmental organizations in the work of the Negotiating Body was presented to the Executive Board at its 107th session in January 2001<sup>4</sup>. In accordance with the provisions of decision EB107(2) of the Executive Board, the Chairman of the Board acting jointly with the Chairman of the Standing Committee on Non-Governmental Organizations admitted two nongovernmental organizations, the International Nongovernmental Coalition Against Tobacco and Infact, into official relations with WHO as of 26 April 2001<sup>5</sup>.

In further preparation for the second session of the Negotiating Body, regional intersessional consultations were convened in most regions and subregions. Additional regional and subregional intersessional consultations took place in preparation for each of the subsequent sessions of the Negotiating Body.

At the second session of the Negotiating Body (Geneva, 30 April – 5 May 2001), responsibility for consideration of the proposed draft elements was divided between three working groups. The principal output was the set of three Co-Chairs' working papers, an inventory of textual proposals made at the session merged with the Chair's original text. These working papers became the rolling draft text of the Framework Convention.

At the third session (Geneva, 22-28 November 2001), two working groups issued revised texts and Working Group One later drafted a text. These documents were used to further negotiations during the fourth session.

Having taken over as Permanent Representative of Brazil in Geneva in replacement of Ambassador Amorim, Ambassador Seixas Corrêa was elected as Chair of the

Intergovernmental Negotiating Body on the WHO Framework Convention on Tobacco Control during its fourth session (Geneva, 18-23 March 2002).

It was agreed that Ambassador Seixas Corrêa should prepare a new Chair's text, which would form the basis of negotiations during the fifth session of the Negotiating Body (14-25 October 2002). The text was released in July 2002. An international technical conference on illicit trade in tobacco products was hosted by the United States of America at the United Nations Headquarters in New York (30 July – 1 August 2002).

The first four sessions of the Negotiating Body had considered numerous textual alternatives. Concerted deliberations at the fifth session narrowed the options, resulting in more focused negotiations. After a first reading, in plenary, of the new Chair's text, six issues were identified and discussed in open-ended informal meetings: advertising, promotion and sponsorship; financial resources; illicit trade in tobacco products; liability and compensation; packaging and labelling; and trade and health. Informal groups also held discussions on legal, institutional and procedural issues and use of terms. Substantial advances in the negotiations were made and consensus was reached in several areas. On the basis of the outputs of the informal sessions and the intersessional consultations with various delegations and groups of delegations, Ambassador Seixas Corrêa issued a revised Chair's text of a Framework Convention on Tobacco Control on 15 January 2003.

The sixth and final session of the Negotiating Body ran from 17 February - 1 March 2003. The negotiations were intense and broad ranging. Two important issues, advertising, promotion and sponsorship and financial resources, were discussed in two informal groups. At the final plenary meeting, the Negotiating Body agreed to transmit the text to the Fifty-sixth World Health Assembly for consideration for adoption in accordance with Article 19 of the Constitution. It also agreed that the discussion of protocols should be postponed until that Health Assembly, at which there would be time for consideration of the matter. At its final plenary meeting, the Negotiating Body agreed that the Chair of the Negotiating Body should draft a resolution recommending adoption of the WHO Framework Convention on Tobacco Control by the Health Assembly<sup>6</sup>. The final draft of the WHO Framework Convention on Tobacco Control<sup>7</sup> was thus submitted to the Health Assembly for consideration for adoption, pursuant to Resolution WHA52.18.

On 21 May 2003, the 56<sup>th</sup> World Health Assembly, unanimously adopted the WHO Framework Convention on Tobacco Control<sup>8</sup>. The Convention was opened for signature, for a period of one year, from 16 June 2003 to 22 June 2003 at WHO headquarters in Geneva and thereafter at United Nations Headquarters in New York, from 30 June 2003 to 29 June 2004.

The WHO Framework Convention on Tobacco Control is a landmark for the future of global public health and has major implications for WHO's health goals. The conclusion of the negotiating process and the unanimous adoption of the WHO Framework Convention on Tobacco Control, in full accordance with Health Assembly resolutions, represents a milestone

for the promotion of public health and provides new legal dimensions for international health cooperation.

1 *Document A53/12.*

2 *Document A/FCTC/INB1/2.*

3 *Document A/FCTC/INB2/2.*

4 *Document EB107/19.*

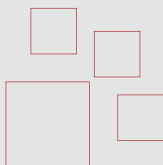
5 *Document A/FCTC/INB2/6 Add.1.*

6 *This draft resolution is contained in document A56/8/REV.1.*

7 *See document A56/8, Annex.*

8 *WHO Document WHA56.1*

The WHO Framework Convention on Tobacco Control was developed in response to the globalization of the tobacco epidemic. The spread of the tobacco epidemic is facilitated by a variety of complex factors with cross-border effects, including trade liberalization, foreign direct investment, and other activities such as global marketing, transnational tobacco advertising, promotion and sponsorship, and the international movement of contraband and counterfeit cigarettes. The WHO FCTC is an evidence-based treaty that reaffirms the right of all people to the highest standard of health.



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