

The Framework Convention on Tobacco Control

A Primer



***The FCTC is no ordinary convention.
It is potentially a Public Health
Movement***



World Health Organization



Tobacco Free Initiative

The spectacular rise and spread of tobacco consumption around the world is a challenge and an opportunity for the World Health Organization. The challenge comes in seeking global solutions for a problem that cuts across national boundaries, cultures, societies and socio-economic strata. The unique and massive public health impact of tobacco provides the WHO an opportunity to propose to the world a first comprehensive response to deal with the silent epidemic as the tobacco menace has often been called. The Tobacco Free Initiative (TFI) has begun preliminary work in this direction. On 24 May 1999, the World Health Assembly (WHA), the governing body of the World Health Organization (WHO), paved the way for multilateral negotiations to begin on a set of rules and regulations that will govern the global rise and spread of tobacco and tobacco products in the next century. The 191-member WHA unanimously backed a resolution calling for work to begin on the Framework Convention on Tobacco Control (FCTC) – a new legal instrument that could address issues as diverse as tobacco advertising and promotion, agricultural diversification, smuggling, taxes and subsidies. A record 50 nations took the floor to pledge financial and political support for the Convention. The list included the five permanent members of the United Nations Security Council, major tobacco growers and exporters as well as several countries in the developing and developed world which face the brunt of the tobacco industry's marketing and promotion pitch. The European Union and 5 NGOs also made statements in support of the Convention and the Director-General's leadership in global tobacco control.

The FCTC's benefits to countries are many. The most significant one is that with the Convention as a pathfinder and coordination vehicle, national public health policies, tailored around national needs, can be advanced without the risk of being undone by transnational phenomena (e.g. smuggling).

While framework conventions obligate States to cooperate in key areas, the process also serves to forge important links between countries and other potential partners. Countries can participate in the central framework while still deferring a decision on whether to participate in protocols.

Framework Convention on Tobacco Control (FCTC) - A Primer

1. What is the FCTC?

The Framework Convention on Tobacco Control (FCTC) will be an international legal instrument that will circumscribe the global spread of tobacco and tobacco products. This is the first time that the WHO has activated Article 19 of its constitution, which allows the Organization to develop and adopt such a Convention. **In fact, the FCTC negotiations and the adoption of**

the Convention should be seen as a process and a product in service of public health.

This instrument will be developed by WHO's 191 Member States so that their concerns are adequately reflected throughout the process. In fact, the framework convention/protocol approach will allow Member States to proceed with the process of crafting this piece of international legislation in incremental stages:

- ◆ The Framework Convention will establish the legal parameters and structures of the public health tool. It's a little like laying the foundation of a building.
- ◆ The Protocols will be separate agreements that will make up the substantive part of the agreement - building on the foundation.

2. When will it be completed ?

World Health Assembly Resolution WHA 52.18 maps out a process for developing the WHO FCTC and possible related protocols. This Resolution, which was adopted unanimously by the World Health Assembly in May 1999, foresees the adoption of the Framework Convention and possible related protocols by the World Health Assembly no later than May 2003. Each negotiating process is unique and has its own momentum. The FCTC can be completed earlier if WHO's Member States so decide. Much depends on political will and a sustained commitment to the cause of public health. One option would be to negotiate one or more protocols simultaneously with the Framework Convention.

In one case, for example, three Protocols were negotiated along with the main body of the Framework Convention¹.

¹ Reference is made to the "Convention on the prohibition and restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects" (1980).

3. How will the FCTC help international tobacco control ?

The FCTC and related protocols will improve transnational tobacco control and cooperation through the following avenues:

- ◆ The guiding principles of the Convention could encompass both national and transnational measures making it clear that: tobacco is an important contributor to inequity in health in all societies; as a result of the addictive nature and health damage associated with tobacco use it must be considered as a harmful commodity; the public has a right to be fully informed about the health consequences of using tobacco products; and the health sector has a leading responsibility to combat the tobacco epidemic, but success cannot be achieved without the full contribution of all sectors of society.
- ◆ Under the Convention, State Parties would take appropriate measures to fulfil, through coordinated actions, the general objectives which they had jointly agreed to. In this respect, the FCTC could include the following general objectives: protecting children and adolescents from exposure to and use of tobacco products and their promotion; preventing and treating tobacco dependence; promoting smoke-free environments; promoting healthy tobacco-free economies, especially stopping smuggling; strengthening women's leadership role in tobacco control; enhancing the capacity of all Member States in tobacco control and improving knowledge and exchange of information at national and international levels; and protecting vulnerable communities, including indigenous peoples.
- ◆ The protocols could include specific obligations to address *inter alia*: prices,

4. What is the difference between a treaty, a convention, a protocol and a resolution ?

- ◆ A **treaty** is an international legal agreement concluded between States in written form, and governed by international law;
- ◆ A **convention** (and also a framework convention) is a different name for a treaty;
- ◆ A **protocol** is also a form of treaty. It typically supplements, clarifies, amends or qualifies an existing international agreement, for example, a framework convention;
- ◆ A **resolution** is an expression of common interest of numerous states in specific areas of international cooperation.

smuggling, tax-free tobacco products, advertising/sponsorships, Internet advertising/trade, testing methods, package design/labeling, information sharing, and agricultural diversification.

Unless national and transnational dimensions of tobacco control are addressed in tandem, even the best comprehensive national control programs can be undone. The national and global thrusts of the Convention, by the way, are interdependent.

The process of developing and adopting the FCTC and related protocols will also help to: mobilize national and global technical and financial support for tobacco control; raise awareness among several ministries likely to come into the loop of global tobacco control, as well as various sectors of society directly concerned with the public health aspects of tobacco; strengthen national legislation and action; and mobilize NGOs and other members of civil society in support of tobacco control.

In the run-up to the adoption of the FCTC, the WHO and its Regional Offices will work with NGO's, media and civil society in countries to focus on tobacco in all its dimensions.

5. Which of the above is legally binding ?

Treaties are legally binding. The framework convention usually entails more general or limited obligations, while the protocols involve more specific legal obligations.

A resolution is non-binding and does not normally entail any substantive commitments of a legal nature.

6. In this case wouldn't a resolution suffice ?

A resolution is not sufficient to deal effectively with the public health threats associated with the tobacco trade, its marketing, and use. Over the past 25 years, the World Health Assembly has adopted 16 resolutions on several aspects of tobacco control with varying degrees of success. Some Member States have sharpened these resolutions domestically giving them more focus and bite. This piece-meal approach, however, is too informal to be of any major consequence, especially for tobacco control where the international dimension of the problem has a direct bearing on how the issue is addressed domestically. However,

resolutions adopted in other international fora will undoubtedly support and act as a catalyst for the FCTC process.

The Framework Convention is about tobacco control in the long run. The FCTC's principal advantage is that it will allow the WHO and its extended family - which includes individual countries and individuals in countries - to reap the public health benefits resulting from the control of tobacco and its spread through society. **This is a legal instrument in service of health.**

7. What happened to the process started in 1996? Wasn't there a work plan then ?

In May 1996, the World Health Assembly adopted WHA Res. 49.17 calling upon the Director-General of WHO "to initiate the development of a Framework Convention in accordance with Article 19 of the WHO Constitution." This was the first time the WHO was activating its constitutional mandate (Article 19) to develop a convention. There were no precedents for developing a detailed work plan. Between 1996-1998 some preparatory technical work was undertaken, but no detailed work plan was agreed to. As part of that work, a preliminary timetable was circulated during the 51st World Health Assembly in May 1998. The Tobacco Free Initiative took the relevant parts of that initial process into consideration before developing this detailed work plan which reflects the political and technical requirements for negotiating the FCTC.

8. The WHO already has a mandate to commence negotiations. Why are you seeking it again ?

WHA Res. 49.17 gives the Director-General a mandate to start work on developing a Framework Convention in accordance with

Article 19, but **DOES NOT** provide a mandate to the Director-General to commence negotiations. The FCTC negotiation is a prerogative of sovereign States, and requires the establishment of a formal negotiating body. Only the World Health Assembly has the legal authority to launch the negotiating process. The accelerated work plan and the draft resolution proposed by the Secretariat suggests that an Intergovernmental Negotiating Committee be established by the Assembly to proceed with formal negotiations. The role of the WHO Secretariat in this process is to provide technical support and advice to Member States in the negotiation of the FCTC and related protocols.

9. What are the roles of the FCTC Working Group and the Intergovernmental Negotiating Body ?

World Health Assembly Resolution WHA 52.18, which describes the FCTC Working Group and Intergovernmental Negotiating Body, maps out an integrated process for developing the FCTC and possible related protocols with the full participation of Member States. During the May 1999 World Health Assembly, Member States established both a FCTC Working Group and an Intergovernmental Negotiating Body. The mission of the FCTC Working Group, which will be open to participation by all WHO Member States and regional economic integration organizations, will be to prepare proposed draft elements of the FCTC and to submit a report to the Fifty-Third World Health Assembly. The first meeting of the FCTC Working Group is planned to take place in Geneva, October 1999. Formal negotiations will commence with the convening of the first meeting of the Intergovernmental Negotiating Body by the Director-General, which is expected to occur in May 2000. The Intergovernmental Negotiating Body which will be open to participation by all WHO Member States

and regional economic integration organizations, will be charged with the responsibility of negotiating the text of the Convention and possible related protocols. In addition, the States, organizations and entities referred to in paragraph 3 (6) of Resolution WHA 52.18 will be invited to participate as observers in the FCTC Working Group and the Intergovernmental Negotiating Body.

10. Who is going to pay for the FCTC ?

The budget for the FCTC will, initially, need to be financed through extra-budgetary funding. These costs will include WHO technical support, support for intergovernmental technical and negotiation meetings, and support for the establishment of FCTC national commissions to provide support for the process within countries. In the medium to long-term regular budget funds will be required to ensure sustained implementation.

In particular, developing countries will require financial and technical assistance to participate in the process of formulating the FCTC. In this regard, the recent technical consultation in Vancouver recommended that WHO establish a separate Trust Fund for this purpose.

Resources will also be required during the implementation phase. Funds will be necessary to help countries build capacity and participate in global and national tobacco control activities. In this respect, provision should be made in the FCTC for the establishment of a Multilateral Trust Fund, with contributions from governments, international agencies, and private sources.

11. Will resources from on-going tobacco control be diverted to the FCTC process ?

New extra-budgetary funds will need to be committed to the FCTC process, but no

previously allocated funds for tobacco control will be diverted to support the FCTC process. Support to the FCTC should be seen as an integral part of supporting national and global tobacco control. In reality, the successful adoption of the FCTC will likely result in a marked increase in financial resources for tobacco control both within countries and at the international level. The FCTC, when adopted, will ensure that tobacco control is given a higher political profile. The adoption of the FCTC represents a barometer of success or failure in placing tobacco control front and centre on the global stage.

The environmental movement has been successful in having numerous multilateral binding agreements adopted at the international level, and as part of some of these agreements, for example the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, significant financial resources have been made available to assist developing countries. Similarly, the FCTC could facilitate global cooperative actions, including the flow of additional financial resources.

12. What will happen to economies that depend on tobacco ?

The widely held perception that tobacco control will lead to loss of revenues is really a perception! In reality, the numbers are heavily in favor of moving away from tobacco cultivation. Recent economic analyses, for example World Bank data to be published this year, as well as the publication, *"The Economics of Tobacco Control: Towards an optimal policy mix"*, show that the social and health costs of tobacco far outweigh the direct economic benefits that may be possible because of tobacco cultivation.

The tobacco industry relies on the argument that there are no real crop or other

substitution options. It is reasonable to assume that consumers who stop smoking will reallocate their tobacco expenditure to other goods and services in the economy. Therefore, falling employment in the tobacco industry will be offset by increases in employment in other industries. However, in the short-term, for countries which rely heavily on tobacco exports (i.e. the economy is a net exporter of tobacco), economic/agricultural diversification will likely entail employment losses.

The FCTC takes a long-term view of agricultural diversification. The framework-protocol approach provides for an evolutionary approach to developing an international legal regime for tobacco control, and thus all issues will not need to be addressed at the same time. Further, the need for a multilateral fund to assist those countries which will bear the highest adjustment cost needs to be established. The FCTC will probably be the first instrument seeking global support for tobacco farmers.

Also, it is worth noting that the current 1.1 billion smokers in the world are predicted to rise to 1.64 billion by 2025, mainly due to population increases in developing countries. Therefore, tobacco growing countries are extremely unlikely to suffer economically from any tobacco control measures such as the FCTC.

13. Which ministries are expected to be involved in the negotiations ?

In addition to the leading role of the Ministries of Health, Ministries of Foreign Affairs typically take a lead role in the negotiation of conventions/treaties. Ministries of Finance, Environment, Labour, Justice, Foreign Trade, Education and Agriculture will also be expected to come into the ambit of the negotiations at some point.

14. Do internationally binding conventions/treaties lead to action and tangible results ?

Adopting an international agreement can make a significant difference. For example:

- ◆ Production and consumption of substances that deplete the stratospheric ozone layer have declined dramatically over the last decade, as a result of the Montreal Ozone Protocol.
- ◆ The General Agreement on Tariffs and Trade has brought down trade barriers and promoted the expansion of international trade.
- ◆ Arms control agreements have limited nuclear weapons proliferation and have led to a substantial reduction in the arsenals of the nuclear powers.

Can international agreements affect the behaviour of States? In some cases, international agreements establish meaningful enforcement mechanisms, such as the World Trade Organization's dispute settlement system. But even in the absence of such mechanisms, an international agreement can:

- ◆ establish review mechanisms that focus pressure on States by holding them up to public scrutiny;
- ◆ articulate legal rules that may be enforceable in domestic courts;
- ◆ provide supporters within national governments with additional leverage to pursue the treaty's goals.

Thus, while treaties rarely cause a state to immediately reverse its behaviour, they can produce significant shifts in behaviour, both because they change a State's calculation of costs and benefits, and because most states feel that they ought to comply with their promises.

15. Why should the FCTC be developed and negotiated under the auspices of the World Health Organization, rather than, for example, under the umbrella of the United Nations ?

The World Health Organization is the only international multilateral organization that brings together the technical and public health expertise necessary to serve as a platform for the negotiation and effective implementation of the Framework Convention on Tobacco Control. Although the United Nations also has the legal authority to sponsor the creation of international instruments on tobacco control, the UN has neither the specialized technical expertise nor, perhaps, the time to engage in negotiating complex standards on tobacco control, particularly if extensive negotiation of the Convention is required.

Complex technical standards on tobacco control should be established and monitored by WHO, the primary specialized agency in public health. In WHA 49.17 Member States recognized the unique capacity of WHO to serve as a platform for the adoption of the FCTC by calling upon the Organization to initiate the development of the Convention. However, in so far as the ultimate goal of

global tobacco control may require the regulation of areas falling within the mandate of other United Nations' Bodies establishment of a joint negotiating mechanism, especially with regard to possible specialized protocols, could be considered as an option.

16. What linkages will the work on the FCTC have with other regional /international agreements, which could have added value for the FCTC ?

Under the WHO/UNICEF project, "*Building alliances and taking action to create a generation of tobacco-free children and youth*", supported by the United Nations Foundation, a review of the Convention on the Rights of the Child with respect to tobacco control, is currently being conducted. Also, with respect to TFI's work on strengthening the role of women in global tobacco control, possible links between the FCTC and the United Nation's Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), will be considered. Links between the FCTC and other international treaties addressing issues such as smuggling will also be examined. Furthermore, all efforts will be made to build on proposed and existing regional tobacco control agreements.

The Tobacco Free Initiative is a new WHO cabinet project created with the express aim of focusing international attention and resources on the global tobacco epidemic - the cause of a vast and entirely avoidable burden of disease.