

D 3 .2 Tobacco control: moving governments from inaction to action

The ability of the tobacco industry to stay healthy while its customers get sick is one of the more amazing feats of the last century. In the fifty years since it was first established that cigarette smoking causes lung cancer, worldwide tobacco use has increased. Addiction, corporate power, government indifference and poorly informed consumers are among the factors responsible for the spread of the tobacco epidemic.

Every effort to regulate the industry has been met with an equal or greater effort to evade regulation. The industry has delayed, diluted or derailed tobacco control efforts in country after country. Rival companies have coordinated their efforts in opposing legislation, so that the same tactics, arguments and hired consultants have appeared in places as far flung as Canada, Hong Kong, South Africa and Sri Lanka (Saloojee and Dagli 2002).

The global strategy of the tobacco industry has elicited a global public health response. In May 2003, the World Health Assembly (WHA) adopted its first ever treaty – the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC). The Convention reflects agreement among WHO member states on a set of international minimum standards for the regulation of tobacco use and the tobacco trade. Its basic aim is to stimulate governments worldwide to adopt effective national tobacco control policies. Another aim is to promote collective action in dealing with cross-border issues like the illicit trade in tobacco, Internet sales and advertising.

The WHO sees the Convention as a major weapon in its counterattack against a problem that, if left unchecked, will kill 450 million people in the next fifty years. With 70 per cent of future deaths likely to occur in lower-income countries, the treaty is particularly important for these nations.

TABLE D3.2.1 An outline of tobacco industry tactics

Tactic	Goal
Intelligence gathering	Monitor opponents and social trends to anticipate future challenges.
Public relations	To mould public opinion using the media to promote pro-industry positions.
Political funding	Use campaign contributions to win votes and legislative favours from politicians.
Lobbying	Cut deals and influence political process.
Consultancy programme	To produce 'independent' experts critical of tobacco control measures.
Smokers' rights groups	Create impression of spontaneous, grassroots public support.
Creating alliances	Mobilise farmers, retailers and advertising agencies to influence legislation.
Intimidation	Use legal and economic power to harrass and frighten opponents.
Philanthropy	Buy friends and social respectability – from arts, sports and cultural groups.
Litigation	Challenge laws.
Bribery	Corrupt political systems; allow industry to bypass laws.
Smuggling	Undermine tobacco excise tax policies and increase profits.
International treaties	Use trade agreements to force entry into closed markets.

The WHO FCTC has become one of the most widely embraced treaties in the history of the United Nations. By January 2008, 152 parties had ratified the Convention, representing more than 80 per cent of the world's population. This chapter looks at the background to the treaty and its potential role in halting and reversing the tobacco epidemic.

Non-mandatory WHA resolutions

The WHO has long tried to get states to control tobacco. Since 1970, the WHA has adopted twenty resolutions on tobacco and repeatedly called upon member states to take action, but outcomes have been far from optimal. By 2000, about ninety-five countries had legislation regulating tobacco but most states had weak laws. Bans on sales to minors, vague health warnings on tobacco packs, or restrictions on smoking in health

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facilities are measures commonly adopted. For the most part, such laws are inconsequential, neither seriously threatening the market for, nor affecting the profitability of, tobacco. On the other hand, a handful of countries with comprehensive policies did succeed in reducing tobacco consumption rapidly and significantly.

It is against this background that the WHO changed tack in 1996 by electing to use its treaty-making powers to regulate tobacco. International conventions to reduce marine pollution or to protect the ozone layer had helped states overcome powerful, organised industry resistance to regulation. Such successful environmental pacts served as precedents for the FCTC (Taylor and Roemer 1996).

The negotiations

Formal negotiations on the FCTC commenced in October 2000. The talks were arduous and highly political. An effective treaty could have quickly and readily emerged, if the talks were simply guided by the scientific evidence. Instead, it was clear early on that WHO member states had conflicting interests and obtaining agreement would be difficult. Countries that were host to the major tobacco transnationals argued for optional rather than mandatory obligations, which would significantly weaken the treaty (Assunta and Chapman 2006). As the treaty was to be finalised by consensus, the challenge for health advocates was to find the highest common denominator – to devise a treaty with meaningful policy measures that would also win wide support.

African, Southeast Asian, Caribbean and Pacific Island countries emerged as the champions of a robust treaty that incorporated international best practice. It is these countries that will bear the future brunt of the epidemic and thus it is appropriate that the FCTC reflect their needs.

Some of the keenest debates were on issues like a tobacco advertising ban and on trade. The United States, Germany and Japan opposed a total ban on tobacco advertising and promotion, arguing that it would not be permitted by their respective constitutions. Early drafts of the treaty only prohibited advertising aimed at youth. The majority of countries rejected this proposal as unworkable and ineffective.

This issue was resolved in the final hours of the negotiations, when a compromise championed by the NGO community was accepted. Tobacco advertising and promotion were banned but with a narrow exemption for countries with constitutional constraints. These states were required to take the strongest measures available, short of a total ban.

The final treaty contains significant recommendations on demand,

supply and harm-reduction strategies. Among its many measures, the treaty requires countries to increase tobacco taxes; establish clean indoor air controls; impose restrictions on tobacco advertising, sponsorship and promotion; establish new packaging and labelling rules for tobacco products; and strengthen legislation to clamp down on tobacco smuggling (WHO 2003). Mechanisms for scientific and technical cooperation, the exchange of information and reporting were also included.

Making the FCTC work

Experience with other treaties demonstrates that the dynamics of negotiation, peer pressure, creating a commonality of purpose, global standard setting and establishing institutional mechanisms all contribute to effective implementation of treaties.

The FCTC negotiations raised the profile of tobacco control among governments to a level never seen before. States that had previously ignored the issue were exposed to the scientific evidence on the health and economics of tobacco control, other countries' experiences and counter-arguments to the industry's positions on core issues. They actively debated options and agreed the content of the treaty. This generated new understandings, greater political commitment and shifts in behaviour.

The negotiations also galvanised non-governmental organisations (NGOs). Truly global NGO coalitions – the Framework Convention Alliance and the Network for Accountability of Tobacco Transnationals – emerged incorporating health, consumer, environmental and legal groups from North and South. The NGOs provided technical support, supplied detailed analyses of the draft texts and advocated key policy positions. They also played a watchdog role, by naming and shaming, or praising delegations.

To ensure that the momentum is maintained, an intergovernmental body, the Conference of the Parties (COP), is responsible for overseeing the Convention. The COP will take decisions in technical, procedural and financial matters relating to the implementation of the treaty, such as the funding and financial support and monitoring and reporting on implementation progress, and the possible elaboration of protocols, among others.

The impact of the FCTC

In international law, states are the most important actors. It is they who have to translate a treaty into national laws and develop enforcement mechanisms. International treaties provide blueprints for action, but it is

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not until lawmakers get busy putting decisions into practice at home that lives will be saved.

Public monitoring of compliance with the treaty can provide a powerful incentive for countries to act. As President Mbeki of South Africa noted: ‘No head of state will go to the UN and say he or she is for global warming or against the landmine treaty. However, upon returning home from New York or Geneva, under the everyday pressures of government they are likely to forget their treaty commitments.’ President Mbeki suggested that it was the task of NGOs to hold governments accountable for their international obligations, so as to make a treaty a reality on the ground.

Already, several states have used the Convention as an umbrella either to introduce new legislation or to revise current laws to bring them into line with the treaty. In 2004, Ireland made history as the first country to implement a total smoking ban in indoor workplaces, including restaurants and pubs. The policy has been remarkably successful, and started a global rush to introduce comprehensive bans on indoor smoking by, among others: England, Estonia, France, Iran, Italy, Montenegro, the Netherlands, New Zealand, Norway, Scotland, Spain, Sweden and Venezuela.

In 2000, Canada became the first country to require picture-based health warnings on tobacco packaging. Countries that have since developed picture-based warnings include: Australia, Belgium, Brazil, Chile, Canada, Hong Kong, India, Jordan, New Zealand, Romania, Singapore, Switzerland, Thailand, the United Kingdom, Uruguay and Venezuela.

Other examples of legislative action in various countries include:

- In 2004, Bhutan banned the sale of tobacco products throughout the Himalayan kingdom. The predominantly Buddhist nation is the first country in the world to impose such a ban.
- Brazil has introduced anti-smuggling measures, including a mechanism for ‘tracking and tracing’ tobacco products.
- In Cuba, smoking was banned on public transport, in shops and other closed spaces from 7 February 2005. Cuban leader Fidel Castro kicked the habit in 1986 for health reasons.
- France raised the price of cigarettes by 20 per cent in October 2003, provoking a tobacconists’ strike.
- India has banned direct and indirect advertising of tobacco products and the sale of cigarettes to children. The law originally included a ban on smoking in Bollywood films.
- In Kenya, a new Tobacco Act was passed in 2007. Among its provisions are a tax increase on tobacco and a ban on smoking in churches, schools, bars, restaurants and sports stadiums.

- South Africa is set to become the first country in the world to have a national ban on smoking in cars when children are present. The country is also set to join New York State and Canada in introducing self-extinguishing cigarettes to reduce the fire risks from tobacco smoking.
- In July 2003, Tanzania banned the selling of tobacco to under 18s and advertising on radio and television and in newspapers. Public transport, schools and hospitals were declared smoke-free zones.

A major challenge in implementing the Convention is that nations will interpret the treaty in different ways. The treaty establishes a set of minimum standards, while encouraging countries to go beyond these. Further, some treaty articles are mandatory and others are discretionary. There is therefore a danger that not all countries will adopt comprehensive tobacco control laws based on best practice, but that a diversity of laws will emerge providing uneven protection for the citizens of different countries and creating potential loopholes that the industry can exploit.

Recognising this problem, the COP will provide guidelines to support countries in drafting more stringent laws. The second meeting of the COP, held in Bangkok in July 2007, adopted guidelines for development of smoke-free legislation. The guidelines recommend the complete elimination of smoking in all indoor public places and workplaces within five years. In addition agreement was also reached to:

- begin work on a protocol to address tobacco smuggling;
- develop guidelines for eliminating tobacco advertising and sponsorship or, where this is not constitutionally permissible, regulating advertising;
- develop guidelines for cigarette warning labels;
- begin work towards guidelines on monitoring the tobacco industry, public education, and helping tobacco users quit;
- to continue initial work on tobacco product testing standards and economically viable alternatives to tobacco growing.

To help countries comply with their legal obligations the Convention includes mechanisms to share information, technology, training, technical advice and assistance. Many lower-income countries had hoped for a global fund to support them in implementing the FCTC, but after intense negotiations the donor countries resisted this idea and instead opted for a bilateral approach to funding. This is less than satisfactory from a developing-country perspective. The European Union (EU), for instance, will fund tobacco control as part of development aid. However, few lower-income countries consider tobacco to be a developmental problem, and not a single country has asked the EU to support its tobacco control programmes as

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part of its development agenda. Unless donors specifically earmark funds for tobacco control activities, the latter will remain a poor cousin of other developmental aid programmes.

Conclusion

Tobacco control involves both politics and science, and until recently science has taken a back seat to politics. The FCTC promotes evidence-based measures to control tobacco. Massive challenges still lie ahead in delivering on the promise of the FCTC, but it is safe to assume that business will not get any easier for the tobacco industry.

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