

POLICY BRIEF

GLOBAL HEALTH INSTRUMENTS: THE CASE OF THE WHO FCTC

WHO FRAMEWORK CONVENTION OF TOBACCO CONTROL (FCTC) A UNIQUE GLOBAL HEALTH INSTRUMENT

The negotiation, entering into force and implementation of the WHO Framework Convention of Tobacco Control (FCTC) is a significant milestone in the history of global public health. It is the first international health treaty negotiated under the auspices of WHO and one of the most widely and rapidly embraced treaties in the history of the United Nations. Furthermore, it was under the auspices of the FCTC itself that the second global health treaty, the Protocol to Eliminate Illicit Trade in Tobacco Products, was recently negotiated and adopted.



In the words of Professor Dr. Haik Nikogosian, First Head of the Convention Secretariat, WHO Framework Convention on Tobacco Control (2007-2014) the FCTC represents a model of how a global legal instrument is used to respond to the negative health effects of globalization.

Although a health treaty, the convention has a mechanism of implementation that lies, at large, also outside the health sector. This

leads to a series of challenges and opportunities that can only be met by having a cross-sectional dialogue with a multitude of stakeholders which do not include the tobacco industry.

Analyzing the negotiations and implementation of such a global health instrument represented the objectives of the Executive Course on Global Health Instruments: The Case of the WHO FCTC, organized by the Global Health Programme at the Graduate Institute of International and Development Studies in Geneva Switzerland from 3-5 June 2014.

FCTC AND GLOBAL GOVERNANCE

Tobacco is produced and marketed by an industry that transcends national boundaries - it is exemplary of the global forces and capital flows that are hard to address only by domestic actions. The nature of tobacco asks for states to view prevention of tobacco use as a common challenge. The strong international response to fight the tobacco epidemic by agreeing to create a global policy instrument as the FCTC is an expression of smart sovereignty. This has been described as boldly reforming and strengthening global institutions in order to ensure that they can deal reliably - and with legitimacy - with globalization and global crisis. The negotiations leading to the adoption of the convention are a perfect example of employing global health diplomacy to establish stronger instruments of global governance for health.

“Global Health diplomacy in the multilateral context means negotiating for health in the face of other interests, including economic, foreign policy, trade and development.”

Professor Ilona KICKBUSCH
Director, Global Health Programme

A GLOBAL RESPONSE TO A GLOBAL EPIDEMIC

Trade liberalization, increased foreign direct investments, transnational advertising and promotion, illicit international trade and consolidation of transnational industry are among the challenges to health that preceded the FCTC. The nature of all these aspects required a global response. Considering the growing problem of global proportions that tobacco consumption represented, the dominant role of transnational factors and the fact that the existing instruments were considered not to be sufficient in addressing the epidemic the best solution was identified to be a convention, a transnational instrument that would also address the political and legal dimensions of the issue at hand. This was made possible

through applying the provision in the WHO constitution, for the first time, which enables adoption of international conventions in public health.

The unique characters of the FCTC have led to a paradigm shift in terms of addressing a public health problem. The FCTC does not focus only on demand and supply reduction but provided strong measures for multisectoral and international cooperation as well as one of the biggest challenges the FCTC faces which is protection from tobacco industry interference.

MULTISECTORAL APPROACH AND INTERNATIONAL COOPERATION

The negotiations of the FCTC as well as its implementation highlight the considerations given to the multisectoral approach as well as the international cooperation. In preparing for the negotiations the acknowledgement of the cross-ministerial implications of tobacco control at a country level, demanded a high level commitment by states. Besides health, involvement of ministries such as foreign affairs, justice, finance/trade/economy, customs, interior needed to be considered. The role of other ministries such as education, agriculture, environment, culture and youth & sport is also important, thereby a whole of government approach is encouraged.

In thinking of the multisectoral approach in implementation the diversity of engaged actors is great. These can be in addition to the relevant government ministries, media representatives, civil society- including umbrella groups and professional networks, trade unions, faith-based organizations, traditional leaders, academia. In addition and the role of UN bodies and other international organizations and bodies, as well as of national parliaments is critical in supporting multisectoral approach. One approach is how to organize a national coordination mechanism that would most efficiently implement the FCTC. There is no clear-cut formula as the best approach is context-sensitive, however it is agreed that an inclusive board leading to ownership and better implementation of tobacco control laws, policies and programmes would be desirable provided that there is high-level political commitment and a backup technical mechanism/body for the day-to-day follow up.



Professor Dr. Ilona Kickbusch, Director, Global Health Programme, The Graduate Institute, Geneva explaining that the whole of government approach should be a result of a thorough analysis of the benefits that the government would gain by acting collectively in achieving their health goals. The analysis would need to pay attention to the political position of the government, the political culture of the country, the existing agreements, the precedent that

would be set by adopting a piece of legislation as well as a comprehensive stakeholders analysis that would capture the hidden interests of various actors.

HOW CAN UN AGENCIES SUPPORT FCTC IMPLEMENTATION?

The international cooperation dimension offers a variety of opportunities for states to meet their national goals. The FCTC gives special consideration to international cooperation by having several articles referencing this. The UN Interagency Task Force and Secretary General's reports and resolutions of ECOSOC are some of the UN mechanisms that promote cooperation for

tobacco control. The relevant ECOSOC resolutions encourage the utilization of United Nations Development Assistance Frameworks (UNDAFs) and emphasizes the multisectoral assistance of UN funds, programmes and specialized agencies in regards to the prevention and control of NCDs.

With this regard, UNDP supports governments in implementing the multisectoral and development dimensions of the Convention as part of the UN-wide coherence in tobacco control called upon by the ECOSOC, and in line with Article 5 of the Convention - General Obligations.

The FCTC integration into national development plans and UNDAFs as well as articulating an inclusive and well-funded national coordinating mechanism are key areas of action. Thereby positioning the FCTC as a treaty on the UN agenda at a country level and making sure that the UN country representative and teams are aware of the country's obligations and needs under the convention will lead to additional support to the states.

Several arrangements for better international cooperation, mandated by the Conference of the Parties (COP)- the governing body of the FCTC, are available. Among these we find the regional meetings to promote inter-country exchanges and best practices South-South Cooperation projects, FCTC resources database, implementation database and information platform as well as FCTC Global progress reports. Knowledge hubs represent a relatively new mechanism in strengthening international cooperation, implementation assistance and information exchange under the Convention, such as for example the McCabe Centre for Law and Cancer, which provides support particularly with respect to legal challenges to implementation of the Convention.

The role of the World Bank, in particular with respect to Article 6 of the Convention- Price and tax measures to reduce the demand for tobacco, is another example of the valuable contribution by relevant international organizations to the intersectoral and international coordination aspects, and to overall implementation of the Convention.

HOW CAN CIVIL SOCIETY SUPPORT FCTC IMPLEMENTATION?

Another dimension of international cooperation implies making use of civil society as advised by Article 4- Guiding principles of the FCTC. More than 20 international nongovernmental organizations are accredited as observers to the COP. The Framework Convention Alliance (FCA), for example, is a global civil society actor in tobacco control; it represents a wide coalition of NGOs with the purpose of contributing to the FCTC by being involved in the further development of treaty instruments, serving as a watch-dog in regards to noticing the interference of the tobacco industry and with respect to Parties' performance of their obligations. However when engaging with various NGOs special attention should be given to the way they are financed in the respective state and to the fact that shadow reports should be used with caution.

REPORTING AND MONITORING OF FCTC

The COP meets every two years and is presented with a global progress report. This year's report will represent the analysis of the 2014 reports presented by the Parties of the Convention. Between 2014 and the previous reporting periods, a trend of improvement is constant for most

articles. 80 percent of Parties adopted new tobacco control legislation or strengthened their existing laws after ratifying the Convention. The Parties also report on challenges and needs their encounter in fully implementing the treaty.

CHALLENGES TO IMPLEMENTATION OF FCTC

The main identified challenges are:

- industry interference
- insufficient resources and capacities (human, financial, institutional)
- weak multisectoral approach and international cooperation,
- legal challenges (legal threats and lawsuits)
- failure to engage the whole-of-society
- lack of research systems, paucity of data and weak surveillance.

The industry interference has been repeatedly singled out as the main challenge in implementation of the FCTC. Counteracting this requires strong legislation, clear codes of conduct for both government and civil society, conflict of interest disclosures, training of public servants on how to avoid engaging with the tobacco industry and enlisting the Ministry of Justice in efforts to fight improper interference are possible solutions to this problem.

The lack of resources aspect is another important barrier to implementation, however often it is a question of lack of awareness of existing resources. Being aware of international cooperation possibilities will lead to better capacity building. Also this challenge could be mitigated by being attentive to how public health education is being taught, empowering people in the civil society and looking for resources in other sectors. For example making use of existing resources such as cancer registries, and household surveys would also lead to addressing the need of better surveillance and data.

Weak multisectoral approach needs to be addressed by establishing a strong mechanism with both a technical and political level. Champions that would spearhead efforts to enforce FCTC should be chosen and coordination with existing policies should be sought. Weak awareness of existing resources also hinders addressing the stronger international cooperation. States need to tap into resources such as the existing

UN agencies programmes and the information platform which will be established by the Convention's Secretariat.

The tobacco industry routinely threatens or initiates legal challenges against states' implementation of the FCTC, including such measures as health warnings, plain packaging, bans on tobacco advertising promotion and sponsorship, smoke-free laws and product regulation. Many governments face difficulties in responding to these threats and lawsuits, including a lack of technical and human resources, and challenges coordinating across different parts of government.



Jonathan Liberman, Director, McCabe Centre for Law and Cancer explaining that WTO agreements and implementation of FCTC are not incompatible and states shouldn't be deterred from implementing the FCTC by claims by the tobacco industry and its supporters that tobacco control measures breach WTO agreements and other international instruments.

The tobacco industry is using law suits to delay implementation and increase implementation costs. The FCTC is a powerful legal instrument, supporting tobacco control measures under legal challenge at both international and domestic levels. Parties can also benefit by sharing experiences and expertise, including in relation to jurisprudence, evidence, expert witnesses and litigation strategies and tactics.

FCTC AND INTERNATIONAL NCD AGENDA

Tobacco control is a strong element of the growing international agenda on the prevention and control of Non-Communicable Diseases (NCDs). The Political Declaration on NCDs adopted by the UN General Assembly High Level meeting in 2011 recognized the critical importance of full and accelerated implementation of the WHO FCTC in addressing the global burden of NCDs. The increasing political and international attention to NCDs will also further promote tobacco control in the global agenda. It is however important to remember that while the NCD agenda and instruments in general are building up tobacco control is already led and governed by an international legal instrument which requires continued attention and compliance. It is therefore important that governments in general and Parties to the Convention in particular maintain their special focus on tobacco control even if it's increasingly seen as part of broader NCD agenda, due to the internationally agreed measures and legal obligations existing under the WHO FCTC. Momentum shall be kept for the significant gains made in reversing the tobacco epidemic by bringing into force and implementing the first global health treaty. This would in turn lead to significant gains in the prevention and control of NCDs.

LESSONS LEARNED IN VIEW OF NEGOTIATING FUTURE TREATIES

The WHO FCTC and its Protocol, the first health treaties of the 21st century, can be considered in a broader context of global health instruments. Would treaties be applicable in other areas of public health in the near future? Although complex, the convention's success is a result of its specificity and the fact that the subject matter is manageable and so it made sense for countries to come together in addressing discrete issues. Prior country experiences have also been a plus in adopting the FCTC. When envisaging future treaties in public health, consideration should be given to the benefits that rise from restricting the area of applicability. The principal rationale for a health treaty as an international legal instrument would be to address a problem of global proportions driven predominantly by transnational factors (although, when negotiated, the treaty would encompass also measures of mostly domestic nature to ensure the comprehensiveness of action). Also when considering a treaty, attention should be paid to the interconnectedness and holistic character of such bodies of law as well as possible synergetic relations with existing soft law. Regardless of the topic of the proposed treaty, one should never forget about the need to utilize a political window of opportunity without which all the other factors will not suffice for treaty adoption and implementation. Political commitment is critical and investing in actors such as diplomats and lawyers working on health should be considered by states.

“... This course was an initiative which opened a new environment for talking and discussing about unspoken parts of the WHO FCTC, the potential of this treaty which rarely used in international cooperation among Parties to this convention, especially among countries in developing part of the world.

I would like to thank you and Professor Ilona Kickbusch, for creating a sound dialogue by inviting the most well-known professionals and experts, relevant to the subjects of the course, from different part of the world... We hope that this initiative will be continued in a way that all Parties to the Convention could benefited from the knowledge and expertise accumulated in this movement in better understanding the international obligations of the Framework Convention on Tobacco Control and accomplishing their commitments to this Convention which is the most prominent global instrument in Global Health. ”

Behzad Valizadeh,

Senior Expert of the National Tobacco Control Headquarter and FCTC focal point, Ministry Of Health and Medical Education I.R.IRAN

“...Please convey Jamaica’s gratitude to all the course organizers and directors for such an important and insightful course that will transform the way we proceed in terms of our treaty obligations in general, and in particular, how we proceed in terms of our obligations under the FCTC. ”

Sheryl Dennis,

Legal Officer

Ministry Of Health Jamaica



SUMMARY OF KEY ISSUES

- FCTC is a unique instrument that proved the capacity of states to successfully negotiate a framework with actors and implications both inside and outside the health domain in view of attaining better health outcomes for their people
- Multi-sectoral approach and international cooperation, both key measures under the WHO FCTC, will be critical to full and sustained implementation of the Convention.
- FCTC and the Protocol to Eliminate Illicit Trade in Tobacco Products should be considered in a broader context of global health instruments to draw lessons for other areas of public health.
- International trade and investment laws should not be seen as a barrier to FCTC implementation. States should assert their sovereign rights to protect and promote the health of their people. Countries need to be particularly alert of and keep a firm public health stand against legal challenges and threats that tobacco industry brings to implementation of the Convention.
- Working to keep momentum on FCTC actions is crucial and political commitment is key in attaining this