The World Health Organization Framework Convention on Tobacco Control (WHO FCTC)

The First Global Public Health Treaty

Kratika Gupta, Research Scholar
Mody University of Science and Technology.
Lakshmangarh, District- Sikar, Rajasthan, India

Abstract: As a UN organization, the WHO has a constitutional mandate to initiate the development and facilitate the adoption of international treaties, such as a framework convention. The WHO has been encouraging the adoption of national laws and regulations for tobacco control for a long time but this was the first time it used its constitutional mandate to facilitate the creation of an international framework convention specifically focusing on the global public health issue of tobacco control. The WHO FCTC is the first ever international public health treaty of any kind. The Indian Act, whose enactment preceded the adoption of the WHO FCTC by the World Health Assembly, goes beyond the obligations set out in the WHO FCTC in many respects. It provides clearly prescribed requirements in key areas such as on prohibition of smoking in public places, ban on advertising of tobacco products, packaging and labeling and sale to minors. The article highlights the importance of the WHO FCTC and discusses its key provisions to control the use of tobacco and also enlightens about the obligations on the part of member countries of WHO.

Keywords: WHO FCTC, Tobacco Control, MPOWER, Global Public Health Treaty

I. INTRODUCTION

The WHO Framework Convention on Tobacco Control (WHO FCTC) is the first global public health treaty. It is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. The WHO FCTC was developed by countries in response to the globalization of the tobacco epidemic. It aims to tackle some of the causes of that epidemic, including complex factors with cross-border effects, such as trade liberalization and direct foreign investment, tobacco advertising, promotion and sponsorship beyond national borders, and illicit trade in tobacco products.[1]

To address global burden of tobacco, the international community came together under the auspices of World Health Organization to negotiate and begin a collective war against the impending public health risk. The 52nd World Health Assembly in 1999 called for work on the WHO FCTC to begin. The first global public health treaty finally got endorsed by the 56th World Health Assembly in 2003 to come into force 90 days after the 40th ratification on February 27, 2005. This treaty presents a blueprint for countries to reduce both the supply of and

[1]Overview of WHO FCTC: WHO FCTC
Available at http://www.who.int/fctc/WHO_FCTC_summary_January2015_EN.pdf Last assessed June 19, 2018.

the demand for tobacco. The WHO FCTC establishes that international law has a vital role in preventing disease and promoting health.[2]

II. OBJECT AND PURPOSE OF TREATY

A framework convention is an international legal instrument that contemplates progressive development of international law by establishing a general system of governance for a specific issue. It lays down general requirements for countries (Member States of WHO), with respect to the measures they need to take in the area covered by the convention. It does not spell out the specific rules to be enacted or implemented through national law but indicates the nature of legal, administrative, regulatory and other measures that need to be taken in accordance with the national law.

It is expected that the Parties to the Convention would modify existing laws or develop new national laws which would reflect the commitments they have undertaken with respect to the Convention. At the international level, more specific commitments and institutional arrangements for implementing them would be developed and adopted through specific protocols which cover some of the key areas identified by the Convention. Thus, the follow-up process involves actions both at the national and international levels.[3]

The object and purpose of the convention, as stated in Article 3 is *"to protect present and future generations form the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke."* This concern over the social, economic, and environmental consequences of tobacco is reflected throughout the preamble, in which the parties express their serious concern "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."[4]

It then notes the scientific evidence for the harm caused by tobacco, the threat posed by advertising and promotion, and illicit trade, and the need for cooperative action to tackle these problems. Other paragraphs of the preamble note the role of civil society, and the human rights that the Convention aims to support.

[2] Arora, M., Reddy, K. S., Stigler, M. H. & Perry, C. L. 2008. Associations between tobacco marketing and use among urban youth in India. Am J Health Behav, 32, 283-94.

[3] Reddy KS, Gupta PC. Report on Tobacco Control in India. Ministry of Health and Family Welfare, New Delhi, Government of India,2004

[4] U.S. Dept. Health & Human Services, Reducing Tobacco Use: A Report of the Surgeon General 194 (2000); *see also* WHO Framework Convention on Tobacco Control, *adopted* 21 May 2003, art. 3, *available at* http://www.who.int/tobacco/fctc/text/final/en/ [hereinafter FCTC] (restricting advertising, promotion and sponsorship); *see also* WHO, Fatal Deception: The Tobacco Industry's "New" Global Standards for Tobacco Marketing (2001), *available at* http://www.who.int/tobacco/media/en/fatal_deception.pdf (for a discussion of the tobacco industry's interest in pursuing "voluntary advertising regulations".

III. HISTORY OF THE WHO FCTC PROCESS

The history of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) is public health history in the making. As the first global health treaty negotiated under the auspices of WHO, the WHO FCTC has given a new legal dimension to international health cooperative.

By the 1990s, the tobacco epidemic was a public health problem of epic proportions. It was a leading cause of premature death. The escalation of smoking and other forms of tobacco use worldwide had resulted in the loss of at least 3.5 million human lives in 1998 and was expected at that time to cause at least 10 million deaths a year by 2030 if the pandemic was not controlled, with 70% of these deaths occurring in developing countries.[5]

The WHO Framework Convention on Tobacco Control originated in 1993 with a decision by **Ruth Roemer** and **Allyn Taylor** to apply to tobacco control Taylor's idea that the WHO should utilize its constitutional authority to develop international conventions to advance global health. In 1995, Taylor and Ruth Roemer proposed various options to WHO, recommending the framework convention-protocol approach conceptualized by Taylor. Despite initial resistance by some WHO officials, this approach gained wide acceptance.

In 1996, the World Health Assembly voted to proceed with its development. Negotiations by WHO member states led the World Health Assembly in May 2003 to adopt by consensus the WHO Framework Convention on Tobacco Control— the first international treaty adopted under WHO auspices. The treaty formally entered into force for state parties on February 27, 2005.[6]

The WHO framework convention on tobacco control (WHO FCTC) is a global public health treaty developed as a global response to the globalization of the tobacco epidemic, which aims at reducing the burden of disease and death caused by tobacco. It was adopted by the World Health Assembly in May 2003, and India was the eighth country to ratify it on 5 February 2004. The WHO FCTC embraces scientific evidence based approaches that have shown effectiveness in reducing tobacco consumption. It does not lay down a law, but sets out guidelines for various national and international measures that would encourage smokers to quit and restrain nonsmokers from taking the habit.

IV. NEED OF WHO FCTC

Tobacco use has devastating health, social, environmental and economic consequences. It represents a major

[5] Resolution WHA52.18, Towards a WHO framework convention on tobacco control, *In The Fifty-second World Health Assembly*,22-27 May,1999, Volume I, *Resolutions and Decisions*, Geneva, World Health Organisation,1999 (WHA52/1999/REC/1). Available at http://www.who.int/tobacco/framework/wha_eb/wha52_18/en/ Last assessed : June 19, 2018

[6] Am J Public Health. 2005;95: 936–938. doi:10.2105/AJPH. 2003.025908

barrier to sustainable development that impacts health, poverty, global hunger, education, economic growth, gender equality, the environment, finance and governance.[7]

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.

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.

V. ROLE OF WHO FCTC

The WHO Framework Convention on Tobacco Control (WHO FCTC)[8] provides a strong, concerted response to the global tobacco epidemic and its enormous health, social, environmental and economic costs. It obliges Parties to implement comprehensive, effective tobacco control measures. Through its 181 Parties, the WHO FCTC covers more than 90% of the world's population. The WHO FCTC combines measures to reduce both demand for and supply of tobacco products, and includes other key provisions, such as a requirement that Parties act to protect public health policies from interference by commercial and other vested interests of the tobacco industry. The treaty's scope covers the full chain of tobacco production and distribution, from farm to factory to point of sale.[9]

The global progress reports, and the implementation database maintained by the Convention Secretariat, demonstrate the achievements as well as the areas in which more progress needs to be made. Parties to the WHO FCTC have committed themselves to protecting the health of their populations by joining the fight against the tobacco epidemic.

To help countries fulfill the promise of the WHO FCTC and turn this global consensus into a global reality, **MPOWER** – a policy package introduced in 2008 that builds on the measures of the WHO FCTC that have been proven to reduce smoking prevalence. It has a set of six cost– effective and high-impact measures that help countries reduce demand for tobacco. These measures include:

• **monitoring** tobacco use and prevention policies;

[7] World No Tobacco Day 2017. Tobacco threatens us all: protect health, reduce poverty and promote development. Geneva: World Health Organization;2017 (WHO/NMH/PND/17.2).
[8] WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2003.
[9] World No Tobacco Day 2018: Tobacco breaks hearts – choose health, not tobacco. Geneva: World Health Organization; 2018 (WHO/NMH/PND/18.4).

• **protecting** people from tobacco smoke;

• **offering** help to quit tobacco use;

• **warning** about the dangers of tobacco;

• **enforcing** bans on tobacco advertising, promotion and sponsorship;

• **raising** taxes on tobacco.

FCTC	
Framework for national action	Framework for international cooperation
• Comprehensive ban on advertising • Protection against secondhand smoke • Prohibition of youth access . • Prominent health warnings. • Testing and regulation of contents . • Increase in tobacco taxes. • Cessation programmes • Alternative crops. • Surveillance .	• Ban on cross-border advertising • Prevention of illicit trade • Scientific and legal cooperation • Technical assistance • Financial support for FCTC implementation (bilateral and multilateral channels) • Monitoring
Requires partnerships within countries	Requires partnerships among countries

Table1.1Framework for national action and international cooperation

VI. KEY PROVISIONS OF WHO FCTC

The WHO FCTC, thus, does not clearly lay down a law which shall be universally applicable, but sets out guidelines for various national and international measures that would encourage smokers to quit and restrain non-smokers from taking to the habit. It promotes smoke-free environment policies, banning of advertisements, increase in taxes, reduced youth access to tobacco products as well as education and media campaigns to increase awareness about the health hazards of tobacco consumption and the health benefits of tobacco

cessation. It envisages international cooperation, including promotion and transfer of technical, scientific and legal expertise, and technology, for assisting in the development of a strong legislative foundation and technical programmes for protection from exposure to tobacco smoke and other tobacco products. Each Party to the WHO FCTC is expected to implement these provisions, in accordance with its capacity and constraints.[10]

The text of the WHO FCTC does not impose on the Parties any significant obligations that are prescriptive in nature. Given the divergence of interests of the Parties negotiating the convention, it was difficult to secure universal consent, which was necessary to establish binding rules.

The WHO FCTC has some provisions which are mandatory (.Parties shall....) and other provisions which are recommendatory (.Parties should....). Many of the provisions have qualifying phrases, such as 'where appropriate', 'in accordance with its [a Party's] capacity/ capability', 'as far as possible' and 'in accordance with its [a Party's] national law'. These phrases provide the Parties with a large degree of operational flexibility in implementing the measures recommended by the WHO FCTC. The WHO FCTC, however, explicitly encourages countries to implement measures that are stronger than the minimum standards required by the treaty.[11] A brief description of key provisions is illustrated here[12]-

Taxation and duty-free sales

- Tax policies should aim to help tobacco control.
- Tax and price policies to promote tobacco control recommended for national-level action
- Duty-free sales are discouraged.
- Countries may prohibit/restrict duty-free sales and importation

Second-hand smoke (Article 8)

Non-smokers must be protected from exposure to tobacco smoke. Such protection must extend to

- Indoor workplaces
- Public transport
- Indoor public places
- Other public places, as appropriate

Product regulation and ingredient disclosure (Articles 9 and 10)

Tobacco products are to be regulated.

[10] *Supranote* 4
[11] *Id.*
[12] WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2003.

- The COP shall propose guidelines for testing and measuring the contents and emissions of tobacco products and for further regulation of these contents and emission
- Countries shall adopt and implement measures for such testing, measuring and regulation
- Ingredients are to be disclosed
- Manufacturers and importers shall disclose, to governmental authorities, information on contents and emission
- Measures for public disclosure of information about toxic constituents and emissions

Packaging and labeling (Article 11)

Large health warning labels are required.

- Rotating warnings
- Large, clear, visible and legible
- Should be 85% of the principal display areas
- May be in the form of or include pictures/pictograms
- Deceptive labels must be prohibited.
- False/misleading term, descriptor, trademark or any other sign shall be prohibited (e.g. 'mild', 'low tar', 'light')

Education, communication, training and public awareness (Article 12)

Each party shall promote and strengthen public awareness of tobacco control issues.

- Broad access to effective and comprehensive educational and public awareness programmes on
- Health risks of tobacco consumption
- Risks of exposure to tobacco smoke
- Risk of addiction
- Benefits of tobacco cessation
- Public access to a range of information on the tobacco industry
- Training or sensitization and awareness programmes to various stakeholder groups
- Public awareness and access to information on the health, economic and environmental consequences of tobacco production and consumption

Advertising, promotion and sponsorship (Article 13)

A comprehensive ban is required.

- Restriction regime is permitted only for countries with constitutional barriers
- Minimum package of measures prescribed
- Direct and indirect advertising and promotion covered
- Cross-border advertising subject to ban and penalty
- Protocol on cross-border advertising recommended

Tobacco dependence and cessation (Article 14)

Parties shall take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence.

- Design and implement effective tobacco cessation programmes in such locations as educational institutions, health care facilities, workplaces and sporting environments
- Include diagnosis and treatment of tobacco dependence and counseling services on cessation of tobacco use in national health and education programmes, plans and strategies
- Establish tobacco cessation programmes in health care facilities and rehabilitation centres
- Facilitate accessibility and affordability for treatment of tobacco dependence including pharmaceutical products

Smuggling (Article 15)

Action is required to eliminate tobacco smuggling.

- Origin and final destination must be indicated on the packaging
- Develop a practical tracking/tracing regime
- Confiscate products and proceeds of illicit trade
- Cooperate with one another in anti-smuggling, law enforcement and litigation efforts

Sales to and by minors (Article 16)

- Parties shall prohibit the sale of tobacco products to persons under the age set by national law, or eighteen years of age
- Parties shall prohibit or promote the prohibition of the distribution of free tobacco products
- Curbs on or prohibition of tobacco vending machines
- Prohibition of sale by minors, as per national law

Financing (Article 26)

Parties have committed themselves to promote funding for global tobacco control

- Mobilize financial assistance from all available sources for developing countries and economies in transition
- Encourage regional and international intergovernmental organizations to contribute
- Strengthen existing mechanisms for bilateral and multilateral contributions
- COP will consider proposals for a global fund

Support for economically viable alternatives (Article 17)

Parties shall promote, as appropriate, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers.

Liability (Article 19)

Legal action is encouraged as a tobacco control strategy.

National coordinating mechanism (Article 5)

Each Party shall establish or reinforce and finance a national coordinating mechanism or focal point for tobacco control.

Participation of non-governmental organizations (Articles 12, 20)

Parties shall promote awareness and participation of non-governmental organizations, not affiliated with the tobacco industry, in developing and implementing intersectoral programmes and strategies for tobacco control (Article 12) and cooperate with nongovernmental agencies in regional and global tobacco surveillance and exchange of information (Article 20).

Treaty Oversight (Article 23)

A COP will oversee the implementation of the Treaty.

Secretariat (Article 24)

COP will designate a Permanent Secretariat. WHO will act as the Interim Secretariat.

Settlement of Disputes (Article 27)

Parties shall settle disputes through negotiation, mediation or conciliation failing which arbitration will be resorted to as prescribed by the COP.

In addition, measures also exist to control tobacco supply. The Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO FCTC is the key policy tool to reduce tobacco use and its health and economic consequences. Other measures, such as supporting viable alternatives to tobacco production, and restricting

access of children and youth to tobacco products, are effective, especially as part of a comprehensive strategy to reduce tobacco use.

The WHO FCTC does not clearly lay down a law which shall be universally applicable, but sets out guidelines for various national and international measures that would encourage smokers to quit and restrain non-smokers from taking to the habit.[13]

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.[14]

VII. CONCLUSION-

To make the whole world free from disease and disability caused by tobacco, all countries should mandate the following steps:

- Fully implement the WHO FCTC.
- Encourage countries that are not Parties to look to the WHO FCTC as the foundational instrument in global tobacco control.
- Implement the MPOWER measures at the highest level in line with the WHO FCTC, as these are most impactful and cost-effective in reducing tobacco use.

[13] *Supranote* 4

[14] http://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=F4BD66AE9908429DC6538D77E2897102?sequence=1