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PROGRAMME ON  
**SUBSTANCE  
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INTERNATIONAL  
STRATEGY FOR  
TOBACCO CONTROL

by

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## ABSTRACT

The enormity and the gravity of the present and future worldwide tobacco epidemic make urgent the adoption and implementation of an international instrument for tobacco control. Although 91 countries have enacted national tobacco control legislation, many countries still have weak or no legislation and limited response to the dangers of tobacco use. The aggressive marketing practices of the multinational tobacco companies threaten the lives and health of the people in both developing and industrialized countries.

An international instrument for tobacco control is justified by an incontrovertible science base demonstrating that tobacco use is the largest single cause of preventable, premature death and disease. The political feasibility of achieving an international instrument for tobacco control depends to a great extent on its content. Considering World Health Assembly (WHA) resolutions, existing national legislation on tobacco control, and recommendations of the Ninth World Conference on Tobacco and Health, the authors suggest priorities for legislation and economic policies (para. 17).

The legal authority of World Health Organization (WHO) and the United Nations (UN) General Assembly to sponsor, adopt, and implement an international instrument for tobacco control is set forth. The various options for an international instrument are analyzed, including the advantages and disadvantages of each. Non-binding instruments include (i) intergovernmental resolutions, and (ii) intergovernmental codes of conduct. Legally binding instruments include (i) comprehensive treaties or conventions, (ii) the convention-protocol approach, and (iii) international regulations. Precedents for each of these types of international instrument are described.

A brief exploration of the impact of the General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO) on an international instrument for tobacco control concludes that GATT/WTO obligations should not interfere with the capacity of states to adopt and enforce national measures in accord with an international tobacco control instrument.

Strategies for implementing an international instrument for tobacco control are reviewed, including (i) a system of national monitoring and reporting and (ii) an international tobacco control fund. The important roles of other international agencies and nongovernmental organizations in the implementation process are noted.

Finally, after a summary of the issues to be decided, a proposal is submitted for a feasible and effective combination of international instruments - non-binding instrument sponsored by the General Assembly of the UN and a legally binding framework-protocol convention sponsored by the World Health Organization.

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## I. INTRODUCTION

1. In response to the global tobacco epidemic, the Forty-eighth World Health Assembly adopted WHA48.11, which, *inter alia*, requests the Director-General to report to the Forty-ninth World Health Assembly on the feasibility of developing an international instrument for tobacco control (Annex 1). On 30 November 1995, the Director-General submitted his report, "The feasibility of developing an international instrument for tobacco control," to the Ninety-seventh Session of the Executive Board (Annex 1A). On 23 January 1996 the Executive Board of the World Health Organization adopted the following resolution (EB97.R8).

### **An international framework convention for tobacco control**

The Executive Board,

Having considered the Director-General's report on the feasibility of developing an international instrument for tobacco control<sup>1</sup>,

RECOMMENDS to the Forty-ninth World Health Assembly the adoption of the following resolution:

The Forty-ninth World Health Assembly,

Recalling resolutions WHA29.55, WHA31.56, WHA33.35, WHA39.14, WHA43.16 and WHA45.20, all calling for comprehensive, multisectoral, long-term tobacco control strategies;

Noting with satisfaction that the Director-General has prepared a report on the feasibility of developing international instruments for tobacco control, as requested by resolution WHA48.11, and that this report concludes that the development of such instruments is feasible,

1. URGES all Member States, and, where applicable, agencies of the United Nations system and other international organizations to implement progressively comprehensive tobacco control strategies that include the measures referred to in resolutions WHA39.14 and WHA43.16 as well as other appropriate measures;
2. URGES Member States to contribute the necessary extrabudgetary resources to permit the implementation of this resolution;
3. REQUESTS the Director-General:
  - (1) to initiate the development of a framework convention in accordance with Article 19 of the WHO Constitution;
  - (2) to include as part of this framework convention a strategy to encourage Member States to move progressively towards the adoption of comprehensive tobacco control policies and also to address tobacco control issues that transcend national boundaries;
  - (3) to inform the Secretary-General of the United Nations of this initiative, and to request the collaboration of the United Nations system, coordinated through the United Nations focal point on tobacco;
  - (4) to keep the Health Assembly informed of the development of the framework convention in his biennial reports to the Health Assembly on the progress and effectiveness of Member States' comprehensive tobacco control programmes, as called for in resolution WHA43.16.

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<sup>1</sup> Document EB97/INF.DOC./4

In support of the above resolution, this document, prepared in July-August 1995, provides further information on an international strategy for tobacco control. It sets forth the urgent need for an international instrument; the possible content of such an instrument; the various kinds of international instruments that might be adopted, including the advantages and disadvantages of each; issues and alternatives; strategies for implementation; and the authors' proposal.

### **Urgent need for an international instrument for tobacco control**

2. The worldwide tobacco epidemic is responsible for the current global total of about 3 million deaths each year (2 million in industrialized countries, 1 million in developing countries), a toll that will rise by the year 2025, if current smoking patterns persist, to about 10 million each year (3 million in industrialized, 7 million in developing countries).<sup>1</sup> Although it is generally known that smoking is dangerous to health, the magnitude of the worldwide premature disability and death caused by tobacco use has not been sufficiently appreciated. This totally preventable epidemic poses a global health challenge of the utmost urgency - a challenge that calls for vastly strengthened national action and an international response mobilizing the strongest possible collaborative, multilateral action.

3. As of the 1990s, at least 91 countries have enacted national tobacco control legislation, and subnational legislation is common. Faced with the persistence of the tobacco pandemic, many countries have strengthened their statutes. Many governments have raised taxes and therefore prices of tobacco products, some allocating a percentage of the increased revenues to education on tobacco use. Evidence on the dangers of environmental tobacco smoke has led to vastly expanded restrictions on smoking in public places, workplaces and public transport. Recognizing the risk of nicotine addiction in children and adolescents, governments are acting to prevent young people from taking up smoking.<sup>2</sup>

4. But the challenge ahead is daunting. Many developing countries have weak legislation or none at all, while the multinational tobacco companies, faced with declines in smoking in industrialized countries, are targeting the developing, newly industrialized, and formerly socialist countries as lucrative markets.<sup>3</sup> As development occurs, as transition to market economies proceeds, and as incomes rise, the populations of these countries will become increasingly vulnerable to the aggressive and deceptive marketing practices of the multinational tobacco companies. At the same time, the risk to the people of industrialized countries continues, unless current smoking practices change.

### **WHO's leadership**

5. WHO's leadership has been pivotal in the global battle against tobacco. The resolutions of the World Health Assembly from 1970 to 1995 (discussed below in paragraph 15a), the WHO Expert Committee reports on tobacco, the information provided in WHO publications, the establishment of World No-Tobacco Day, the important work of WHO Regional Offices, and the consultations and technical assistance provided by the WHO Programme on Tobacco or Health have developed strategies and energized national governments to combat the tobacco epidemic. WHO has reached out to other agencies in the UN system and to nongovernmental organizations to enlist and support their anti-tobacco efforts.<sup>4</sup>

### **Need for stronger action**

6. But even stronger action is needed. Global tobacco trade and international tobacco investment have promoted the tobacco epidemic in several ways. Aggressive advertising by the multinational tobacco conglomerates and targeting of susceptible populations, including women<sup>5</sup> and young people,<sup>6</sup> increase domestic demand globally. Export subsidies and political pressure by the major exporting nations, particularly the USA, to open the markets of developing countries to transnational tobacco interests, has led to changes in importing countries that, collectively, reduce the price and increase the demand for cigarettes.<sup>7</sup> Increases in tobacco import quotas, lower tariffs on tobacco products, and proliferation of new foreign brands increase the supply of cigarettes and lead to lower retail prices and increased demand.<sup>8</sup>

7. The tobacco epidemic has worldwide repercussions not only for the developing, newly industrialized, and formerly socialist countries but for industrialized countries as well. With some transnational conglomerates making up to 60% of their profits from sales in developing nations, some authorities have stated that "these profits are being used, at the very least, to attempt to maintain current levels of consumption in developed countries through targeting some vulnerable groups, including young people and ethnic minorities."<sup>9</sup>

8. Objective conditions of international life, reflected in the rapid rise of the international mass communications media, further indicate the ever-increasing urgency and interdependence of global tobacco control efforts. For example, certain nations, including Iceland and Italy, which have banned tobacco advertising, have experienced the problem of advertising "overspill" from other countries.<sup>10</sup> Foreign magazines and newspapers and new mass communications media, such as cable and satellite television, restrict the ability of nations to control tobacco advertising within their sovereign borders. For example, one type of tobacco advertising that is generally allowed, even in countries with total bans, is advertising in foreign publications. Hence the question of controlling tobacco advertising and promotion is really an international one. Tobacco advertising in any country will not be truly regulated until it is controlled in all nations.

9. Moreover, the tobacco epidemic has global environmental repercussions that affect all countries, both industrialized and developing. The ecological damage inflicted by burning large sections of rain forest in order to process tobacco leaves<sup>11</sup> and the use of firewood for tobacco curing in the developing world lead to deforestation and to what the Executive Director of the United Nations Environment Programme called in 1977 "the poor man's energy crisis."<sup>12</sup>

10. The tobacco pandemic is an international concern, calling for urgent global action, cooperation, and a global regulatory approach in order to protect the people of both industrialized and developing countries. Recognizing this critical need, the Ninth World Conference on Tobacco and Health in 1994 adopted a resolution urging national governments, ministries of health, and the World Health Organization immediately to initiate action to prepare and achieve an International Convention on Tobacco Control to be adopted by the United Nations as an aid to implementation of the International Strategy for Tobacco Control adopted by the Conference (Annex 2). In January 1995, the WHO Executive Board responded to the Conference's resolution for an international strategy for tobacco control and requested the Director-General to report to the Forty-ninth World Health Assembly "on the feasibility of initiating action to prepare and finalize an International Convention on Tobacco Control to be adopted by the United Nations, taking into account existing international trade and other conventions and treaties."<sup>13</sup> In May 1995, the World Health Assembly adopted WHA48.11, thus initiating practical consideration of the various alternatives for an effective international instrument for tobacco control.





## II. CONTENT OF AN INTERNATIONAL INSTRUMENT

11. In a world order dominated by independent nations, international organizations can have only a limited influence on the conditions that have created the tobacco pandemic. Notwithstanding this political circumstance, WHO can promote and guide governmental action through the development of international tobacco control instruments and supporting institutions. As will be discussed in Section IV, the development of international tobacco control instruments can have a meaningful impact in motivating national leaders to rethink priorities and, perhaps, direct resources to regulating tobacco through national law and policy.

12. An international instrument represents both a consensus of nations and a goal that the world community strives to achieve. Crucial to its development are (a) the science base for its adoption and (b) its political feasibility.

### Science base for an international instrument for tobacco control

13. The science base for an international instrument for tobacco control has been unequivocally established. Hundreds of scientific studies, research findings, governmental reports, and pronouncements of professional organizations agree that tobacco use is the largest single cause of preventable premature death and disease.<sup>14</sup> A series of articles in the 19 July 1995 issue of the *Journal of the American Medical Association* analyzes previously unavailable documents of the tobacco industry showing that the industry recognized more than 30 years ago that nicotine is addictive and tobacco smoke is carcinogenic but concealed this information from the public.<sup>15</sup> Concluding the series, the officers and trustees of the American Medical Association stated that "there is a massive body of evidence, derived from many scientific disciplines that tobacco is addictive and kills smokers" and called for "removal of this scourge from our nation and by so doing set an example for the world."<sup>16</sup>

### Political feasibility of an international instrument

14. The content of any international instrument that is adopted must be politically acceptable to a significant number of nations and have the potential of also becoming acceptable over time to many more. In the field of tobacco control, an international instrument faces two principal political constraints. First, the economic and political power of the multinational tobacco conglomerates and their tenacious opposition to any regulatory measures to restrict tobacco use may inhibit the adoption and implementation of an international instrument. Ranged against the power of the industry, however, is recognition of the urgent public health needs of nations. Second, tobacco producing nations, dependent on tobacco production for employment and revenue, may be reluctant to support an international instrument for tobacco control. Of the 120 tobacco-producing countries, at least 90 are developing countries for which tax revenue and hard currency from tobacco are important. This economic concern of tobacco producing countries may be lessened, however, by policies of international agencies. For example, FAO is ready, subject to availability of funds, to assist governments in investigating options for crop diversification away from tobacco. The World Bank does not lend directly or indirectly, invest or guarantee investment or loans for tobacco production, processing and marketing.<sup>17</sup>

15. The political feasibility of an international instrument involves two questions: (a) can an international instrument (non-binding or legally binding) be developed at all? (b) if so, what should be the content of such an instrument?

(a) A non-binding international instrument (resolutions or voluntary code of conduct) is probably quite feasible politically. Such an instrument does not require national governments to enact legislation or take other action but rather expresses a goal or ideal that most governments would endorse in the abstract. A binding instrument (regulations, a framework convention with protocols, or a comprehensive convention or treaty), however, will probably face the question of political feasibility. The history of UN law-making indicates that for a binding instrument to be adopted a few powerful nations need to support it initially. Also, will developing countries with a dependence on tobacco production oppose a binding instrument or rather find it of help in encouraging the enactment of national legislation?

- (b) Turning to the question of the content of an international instrument, we recognize that the more general or the more limited the content of the instrument is at least initially, the greater will be its acceptance by a larger number of governments.

### Scope of an international instrument

16. Therefore, the possible scope of the content of an international instrument may well differ for a non-binding international instrument from that for a legally binding instrument. Considering first a non-binding instrument, we may look to two sources: (a) resolutions of the World Health Assembly over the past 25 years and (b) tobacco control legislation enacted by Member States and economic policies that they have adopted to combat tobacco use.

(a) From 1970 to 1995, the World Health Assembly enacted 14 resolutions which demonstrate the leadership role that WHO has undertaken.<sup>18</sup> The resolutions call for bans on tobacco advertising and promotion, achieving smokefree public places, workplaces, and public transport, preventing smoking by risk groups, such as pregnant women, lactating mothers, and children, preventing smoking by young people, increasing the real price of tobacco, encouraging crop diversification away from tobacco, strengthening education concerning tobacco, and other measures. The resolutions repeatedly stress the need for information and education on the risks of tobacco use, for monitoring the prevalence of smoking, for multisectoral, comprehensive tobacco control strategies at the national level, and for collaboration with the Food and Agricultural Organization (FAO), the Economic and Social Council of the United Nations (ECOSOC), and other relevant UN and nongovernmental agencies at the international level.

(b) A clear demonstration of the political feasibility of a non-binding international instrument for tobacco control is provided by the legislation and economic policies adopted by 91 countries in the world.<sup>19</sup> Without detailing here the content of these laws and policies, we present Summary Table A showing the number of countries and territories, by WHO region, with legislation to control the production, sale, and promotion of tobacco and Summary Table B showing the number of countries and territories, by WHO region, with legislation to influence smoking practices (Annex 3).

17. In Table A, for example, it is a significant achievement that 27 countries have enacted a virtually total ban on all tobacco advertising, but only three countries in the African Region and only two in the Region of the Americas have adopted this restriction so essential to reverse the smoking epidemic among women and young people and to stop the assault of the tobacco industry on developing countries. In Table B, for example, 34 countries have enacted restrictions on smoking in the workplace, but in several regions very few countries have this protection for their workforce. Thus, significant progress shows the political feasibility of enacting tobacco controls, but the uneven, erratic action by different governments also demonstrates the urgent need for further encouragement to exercise political will on the side of health, such as would be provided by an international instrument for tobacco control.

18. Considering secondly the scope of a legally binding instrument, we may first examine the universe of possible substantive elements in a tobacco control programme recommended by the Ninth World Conference on Tobacco and Health (Annex 2) and then narrow these recommendations to the salient priorities. In the category of control of manufacture, sale and production of tobacco, the Ninth World Conference recommended:

- a ban on all direct and indirect advertising
- blocking future marketing initiatives of the industry
- effective health warnings and generic packaging
- regulation of tar and nicotine contents
- economic policies (increased taxes, abolition of subsidies, alternative economic, agricultural, and international trade policies).

In the category of changing smoking behaviour, the Conference recommended:

- legislation to prevent smoking by young people
- smoke-free public policies

- intensive health education and information to young people and adults
- aid for smoking cessation
- effective national monitoring of the tobacco pandemic.

19. Since this broad array of recommendations may not be politically feasible for many countries, particularly developing countries dependent on tobacco production, it may be advisable initially to adopt an international instrument that is more limited in scope than the recommendations of the Ninth World Conference. We therefore present the following priorities as defined by WHO resolutions and world conferences held over the years:

- legislation
- to ban all advertising, promotion, and sponsorship of tobacco products
- to achieve smoke-free public places, workplaces, and public transportation
- to prevent nicotine addiction in children and youth and prevent smoking by pregnant women
- economic policies
- to increase tobacco taxes above the level of inflation and allocate a proportion of the increased revenue to tobacco control activities
- to decrease tobacco production and protect tobacco growers through crop substitution and development of alternative off-farm employment.

20. One approach to determining the content of an international instrument is to view such an international effort as a dynamic process. Achievement of an international instrument does not necessarily mean adoption of a fully developed, comprehensive, ideal instrument valid for all time, present and future. A more feasible strategy, endorsed by the authors, may be to begin a process of gradually and incrementally developing a consensus on tobacco control measures, adopting first a non-controversial declaration of agreed-on policies and simultaneously or progressively moving to measures of wider scope and increased strength. Such a dynamic approach, if adopted in advance, would permit the process to keep pace with political realities for tobacco control in the Member States and at the same time progress systematically to the long-range goal of a smoke-free world.



### III. LEGAL AUTHORITY OF WHO AND THE UN TO DEVELOP INTERNATIONAL INSTRUMENTS

#### A. Legal authority of WHO

21. As the premier authority on world health matters, WHO has a unique capacity to serve as a platform for the creation of international instruments relevant to tobacco control. The Organization's jurisdiction is based primarily upon responsibilities assigned by relevant international instruments, including the United Nations Charter and WHO's Constitution.

22. The foundation of WHO's unique authority to encourage the development and implementation of an international tobacco control instrument is the Organization's affiliation with the United Nations system as the premier specialized agency in health matters. The structure of the relationship between the United Nations and WHO is grounded in the United Nations Charter,<sup>20</sup> and, in particular, on those sections that describe the objectives of the United Nations. Article 55 of the United Nations Charter describes the goals that the United Nations has pledged to promote among its members, including "solutions of international economic, social, health and related problems...."<sup>21</sup> As the specialized agency with the primary constitutional directive of acting as the "directing and co-ordinating authority on international health work,"<sup>22</sup> WHO has the cardinal responsibility to implement the aims of the Charter with respect to health.

23. WHO has the legal capacity<sup>23</sup> to initiate discussion among Member States and serve as a platform for international standard-setting efforts in relation to global tobacco control. WHO's Constitution confers authority upon the World Health Assembly to develop three types of instruments: (1) conventions under Article 19; (2) non-binding recommendations under Article 23; and (3) regulations under Article 21, although WHO's authority under Article 21 is strictly limited.<sup>24</sup> The scope of WHO's authority to encourage member nations to adopt recommendations (Article 23) or conventions (Article 19) extends to any matter within the competence of the Organization. Article 1 of WHO's Constitution proclaims that the "attainment by all peoples of the highest possible level of health" is the objective of the Organization. Hence, WHO has broad legal authority to encourage member nations to adopt recommendations (Article 23) or an international tobacco control convention or agreement (Article 19).

24. On numerous occasions WHA has utilized its constitutional authority to develop non-binding recommendations under Article 23. For example, in 1981 the Twenty-fourth World Health Assembly adopted the International Code of Marketing of Breast-milk Substitutes as a recommendation under Article 23.<sup>25</sup> In addition, the Organization regularly adopts technical recommendations which, because of WHO's reputation for technical expertise, command much attention in the international community. With respect to tobacco control, since 1970 the World Health Assembly has adopted many resolutions recommending specific policies and strategies to prevent avoidable deaths and disability resulting from the use of tobacco.<sup>26</sup>

25. The World Health Assembly has also adopted two international regulations under Article 21 of WHO's Constitution. The first of these, adopted initially in 1948, were given the short title of the Nomenclature Regulations. The second, first adopted in 1951, were renamed the International Health Regulations in 1969.

26. The World Health Assembly has not exercised its authority under Article 19 to adopt conventions or agreements with respect to any matter within the competence of WHO. Rather, WHA has only implemented Article 19 with respect to formal and administrative matters.

#### B. Legal authority of the UN

27. Although WHO is the premier authority on world health matters, the United Nations General Assembly has overlapping jurisdiction within the field of international health. As described above, Article 55 of the United Nations Charter describes the goals which the United Nations has pledged to promote among its members, including "solutions of international economic, social, health and related problems...."<sup>27</sup> Since a significant improvement of the world's health may be attained if the global problem of tobacco consumption is alleviated, the General Assembly has legal competence to address the issues of global tobacco control.

28. Acting within the framework of the United Nations Charter, the General Assembly has the capacity to study and discuss the international problems of tobacco, promulgate non-binding recommendations designed to promote global tobacco control efforts, and provide a forum for the negotiation of a multilateral tobacco control convention that establishes law for the parties to the instrument.

29. Article 13(1)(b) commands the General Assembly to "initiate studies and make recommendations... promoting international cooperation in the...health [field]." Most General Assembly resolutions are non-binding, but their acceptance by a majority vote provides a basis for the progressive development of the law.<sup>28</sup> In addition, Article 13(1)(a) of the UN Charter empowers the General Assembly to "initiate studies and make recommendations... encouraging the progressive development of international law and its codification." Although the General Assembly lacks express legislative powers, it has discharged its obligation to encourage the "progressive development of international law and its codification" by acting as a facilitator for the creation of international legislative rules through the traditional treaty-making process. It has done this primarily by convening conferences open to all UN members.

30. The General Assembly has addressed global health concerns in a number of non-binding recommendations, typically in the form of resolutions or declarations. Several resolutions and declarations of the General Assembly have included consideration of the health concerns or right to health of particularly vulnerable populations and persons with physical or mental disabilities.<sup>29</sup> For example, in 1991 the General Assembly adopted a resolution endorsing the Principles for the Protection of Persons With Mental Illness and for the Improvement of Mental Health Care.<sup>30</sup> The Principles, drafted in cooperation with WHO, have been described as "the most detailed and comprehensive international statement of the rights of people with mental disabilities to date."<sup>31</sup>

31. The General Assembly has also supported the development of a number of legally binding conventions that affirm the right to health or medical treatment. These agreements include the Convention on the Elimination of All Forms of Discrimination Against Women<sup>32</sup> and the Convention on the Rights of the Child.<sup>33</sup> The General Assembly also provided the forum for the promulgation of the International Covenant on Economic, Social and Cultural Rights, the most significant international instrument guaranteeing the right to health.<sup>34</sup>

#### IV. OPTIONS FOR AN INTERNATIONAL INSTRUMENT

##### A. Introduction

32. Multilateral organizations have developed a variety of mechanisms to encourage international agreement and action on matters of global concern. In general, there are two categories of international instrument that can be utilized to promote WHO tobacco strategies: (1) non-binding international resolutions; and (2) legally binding international instruments. Within these broad categories there are a number of specific options. The following provides a brief summary of international legislative options that can be employed to further global tobacco control efforts, with notes on their advantages and disadvantages. This section will conclude with an analysis of the impact of the implementation of any global regulatory effort within the context of the General Agreement on Tariffs and Trade (GATT).

##### B. Non-binding instruments

###### (i) Intergovernmental resolutions

33. The United Nations and its specialized agencies produce a wide variety of instruments, including Recommendations, Guidelines, Standards and Declarations of Principles, which are generally adopted in the form of intergovernmental resolutions. General declaratory resolutions are, for the most part, intended to be non-binding instruments expressing the common interests of many states in specific areas of international cooperation. Usually, an intergovernmental resolution makes recommendations to governments.

34. The key *advantage* of a non-binding declaration is its flexibility. A resolution format can enable states to take limited action or empower them to formulate precise, restrictive commitments, depending on the political possibilities of the governments. Therefore, a voluntary, non-binding multilateral approach to issues of global concern allows states to confront a problem collectively when they do not want to restrict their freedom of action. In addition, the simplified procedures and diminished voting requirements for adopting resolutions may enable topics of global concern to receive the attention of the international community faster than they would through multilateral treaty-making approaches. The latter are generally slower to negotiate, conclude and bring into force.<sup>35</sup> Furthermore, diplomatic and moral pressure can also be employed to encourage compliance by state parties to an intergovernmental resolution. Hence, international recommendations may acquire international attention and implementation more easily than treaty norms.

35. The *disadvantage* of utilizing non-binding instruments to affect national behaviour with respect to tobacco control is the very informality and non-legal character that makes this approach effective at first instance. The customary forces that generally encourage nations to comply with international law are lacking in non-binding instruments. For example, nations are under no legal obligation to domestically implement the terms of informal resolutions. Although a number of nations have adopted WHA recommendations on tobacco control, these resolutions have proved insufficient as an isolated strategy to slow the growth of tobacco consumption. In addition, although WHO has some authority to monitor state implementation of WHA recommendations,<sup>36</sup> the international machinery typically incorporated in an international convention for monitoring state compliance with the terms of the agreement are generally absent or not effectively utilized in such instruments. Also, unlike treaties, resolutions cannot address the widespread lack of resources to actually implement the tobacco control measures called for in these instruments.<sup>37</sup> Finally, non-binding resolutions on tobacco may actually inhibit progress towards global control of tobacco, since their voluntary format enables nations to relieve some public pressure without resolving or committing to real action.

##### Comments

36. General declaratory resolutions have been effective in establishing normative standards that influence the behaviour of nations, particularly in environmental matters. At times, such intergovernmental resolutions have been highly persuasive, and the conduct of states has tended to follow the principles embodied in these non-binding pronouncements.<sup>38</sup> The effectiveness of some non-binding international proscriptions in changing the environmental practices of states has led some commentators to refer to them as "soft-law."<sup>39</sup>

37. In the international environmental field, "soft-law" instruments have also paved the way for the evolution and subsequent adoption of binding treaty law (hard-law) by generating an on-going diplomatic forum.<sup>40</sup> Most international conventions related to the environment have been preceded by non-binding resolutions or declarations. It is important to note that not all resolutions of intergovernmental organizations lead to the development of formalized obligations or even become a significant factor in state practice. However, intergovernmental resolutions, particularly the resolutions of the United Nations General Assembly which are supported by influential states,<sup>41</sup> can influence state behaviour and lead to the codification of international law. General Assembly resolutions often have a political significance that can stimulate the law-making process in other international organizations.<sup>42</sup> United Nations Environment Programme (UNEP) has sought to harness the potential political significance of General Assembly resolutions, by encouraging the General Assembly forum to adopt international environmental policy texts as formal resolutions of the United Nations.<sup>43</sup>

38. Hence, a non-binding resolution or "soft-law" has two regulatory functions; (1) it may merely focus on the setting of multilateral goals for national conduct that, although informal, are intended to have some authoritative status; or (2) it may reflect an increasingly used and dynamic methodology of moving slowly towards the formalization of obligations in a binding treaty or convention. Despite the disadvantages of non-binding instruments, the experience of other international organizations is evidence of the potential effectiveness of General Assembly resolutions in modifying state behaviour and indicates that the utilization of this strategy as a first step leading to a binding convention may be an appropriate and effective approach to global tobacco control.

#### (ii) Intergovernmental codes of conduct

39. Intergovernmental codes of conduct are a particular type of non-binding instrument adopted as resolutions by Member States of international organizations.<sup>44</sup> The code label has been attached to a variety of devices and does not have a single sure meaning. Intergovernmental codes of conduct adopted by Member States of international organizations have generally established voluntary, non-binding, often inexact standards or principles for guiding the behaviour of governments and private entities, typically transnational corporations. An intergovernmental code of conduct may call upon governments to implement the terms of the code through national legislation and entreat industry to voluntarily adhere to the provisions of the code. Although there are examples of codes of conduct adopted as treaties,<sup>45</sup> discussion here is limited to codes of conduct that are recommendations.

40. In the mid-1970s, codes of conduct emerged as a new mechanism of international relations to manage the increasingly troublesome issues related to the rapid expansion of multinational business activities. Although current debates on transnational corporation conduct are not so elevated as they were during the 1970s, a number of codes of conduct have since emanated from various international and regional organizations such as the (Organization for Economic Cooperation & Development (OECD), the UN Economic Commission for Europe (ECE), the International Labour Office (ILO), the Food and Agriculture Organization of the United Nations (FAO) and the International Maritime Organization (IMO). For example, in 1985 the FAO adopted the International Code of Conduct on the Distribution and Use of Pesticides to address the hazards associated with the use of pesticides in countries without adequate regulation.<sup>46</sup> In addition, in 1981 the World Health Assembly adopted, as a recommendation under Article 23 of WHO's Constitution, the International Code of Marketing of Breast-milk Substitutes to address the standards of advertising, labelling and marketing of infant formula by industry.<sup>47</sup>

41. "Private" codes of corporate conduct are also proliferating throughout the developed world. Many transnational corporations, especially those based in the United States have formulated "private" codes of environmental conduct,<sup>48</sup> either individually or as an industry-wide initiative. In addition, many governments have entered into voluntary code of conduct arrangements with transnational enterprises to address environmental concerns<sup>49</sup> as well as tobacco marketing and labelling.

42. The *advantages* of intergovernmental codes of conduct are similar to those of other non-binding instruments discussed in section IV (B)(i) above. As is the case for all non-binding resolutions, the very process of proposing and deciding on an intergovernmental code of conduct engages the attention of governments and creates the opportunity to inform and educate the international community about specific global concerns, such as tobacco. In addition, an intergovernmental code of conduct can set general standards of corporate conduct without compromising



national sovereignty on specific issues. Hence a code of conduct on tobacco control is likely to be more politically acceptable to nations than a binding instrument. Although intergovernmental codes of conduct are not binding, a variety of factors encourage nations to comply with their terms. Participating states create expectations as to the restraints nations will accept on their own behaviour and the obligations they will impose on transnational corporations.<sup>50</sup>

43. Nations can utilize intergovernmental codes to modify the behaviour of transnational enterprises by implementing the terms of a code into national law and/or by exploiting the public pressure aspects of such voluntary intergovernmental codes as "leverage" to gain advantages in particular confrontations with transnational corporations.<sup>51</sup> Some intergovernmental codes of conduct have been quite successful in altering the behaviour of nations and transnational enterprises. For example, the IMO's International Maritime Dangerous Goods Code, produced in cooperation with other UN bodies, is widely observed. All major ship owning states have enacted it into national law.<sup>52</sup> As a further example, 122 developing nations have sought to implement all or part of the aims of the International Code of Marketing of Breast-milk Substitutes by entering into voluntary arrangements with the infant-food industry, and many nations have enacted or are currently considering enacting legislation to end the distribution of free or low-cost supplies of infant formula in maternity wards.<sup>53</sup>

44. In addition to the general *disadvantages* of non-binding instruments described in section IV(B)(i) above, intergovernmental codes of conduct have additional drawbacks, which suggest that there may be particular problems in utilizing this strategy as a first step leading to a binding international instrument. Negotiating and implementing an intergovernmental code of conduct may at times be a particularly slow process that delays effective national and international action. A severe example is the draft United Nations Code of Conduct for Transnational Corporations, which was negotiated from 1976 until the project was suspended by the General Assembly in 1994.<sup>54</sup> As is the case for all non-binding instruments, states are under no international legal obligation to implement the terms of a voluntary code of conduct. Hence the customary forces that encourage nations to comply with international law are lacking in an intergovernmental code of conduct.

#### Comments

45. Despite the disadvantages of non-binding instruments, the global experience with intergovernmental codes of conduct is evidence of the potential effectiveness of such codes in modifying state behaviour and indicates that the utilization of this strategy as a first step leading to a binding convention may be an appropriate approach to global tobacco control. The code approach performs the important function of educating and encouraging nations to take effective domestic action and provides a forum for the negotiation of a binding international agreement. In addition, although voluntary codes of conduct are technically non-binding, the legal effect of all voluntary international instruments is ultimately measured by their impact on state practice. If a code of conduct is embraced by states and implemented through national legal processes, a voluntary code of conduct can be just as imposing on its treatment of transnational corporations as a binding treaty. Hence, voluntary international codes, like all non-binding instruments, can contribute to the national and international law-making process. However, relative to the other non-binding, "soft-law" instruments discussed above, codes of conduct may have specific disadvantages that suggest that this voluntary strategy may not be the most appropriate mechanism to control tobacco production and use.

46. In analysing the value of the code approach for addressing global tobacco problems, one must assess the susceptibility of transnational tobacco corporations to international regulation by this approach. Although nothing in the voluntary nature of codes prevents states from implementing their principles into national regulation, at times nations have sought to utilize the leverage aspects of these codes to modify the behaviour of transnational corporations through a variety of voluntary measures, without resorting to national legislation. In addition, an intergovernmental code may entreat industry to voluntarily comply with the provisions of the code. Depending on the nature of the regulated activities and the multinational corporations involved, these voluntary strategies of code implementation can be highly effective. As described above, 122 developing nations have sought to implement all or part of the aims of the International Code of Marketing of Breast-milk Substitutes by entering into voluntary arrangements with the infant food industry.<sup>55</sup>

47. However, given the extraordinary intransigence of the tobacco industry, there is considerable evidence that such voluntary arrangements with industry are insufficient to control tobacco industry practices. The global experience with "private" codes of conduct with respect to tobacco indicates that the tobacco industry does not tend to comply with "private," voluntary agreements controlling tobacco advertising and promotion in developed countries.<sup>56</sup> Clearly, where there are powerful and organized industry interests at stake, such as in the case of tobacco, there are strong incentives for industry to avoid compliance with the provisions of a voluntary code of conduct wherever possible. Given the fact that "private" codes of conduct on tobacco advertising and promotion have had limited effectiveness in industrialized states where tobacco issues have high visibility, the effectiveness of such codes in developing states, where they are needed most, is questionable.

48. The global experience with other intergovernmental codes of conduct and "private" environmental codes, in cases of powerful and organized industry interests, further illustrates the difficulty of utilizing a code approach that calls for voluntary industry compliance as a strategy for global tobacco control. For example, few countries have implemented the FAO Code of Conduct into national law, and it has been widely abused by multinational enterprises in developing states.<sup>57</sup> As a further example, in the context of "private" environmental codes of conduct, observers have noted that corporations tend to comply with such codes in developed nations, but that transnational enterprises do not generally abide by code provisions in developing countries.<sup>58</sup>

49. Although the other "soft-law" instruments described in section IV(B) above are also non-binding and may lead nations to enter into voluntary arrangements with the tobacco industry rather than implementing national law, the considerable time and effort that may be necessary to negotiate and adopt a code of conduct may postpone effective national and international action on tobacco control for a number of years. Hence, while an intergovernmental code of conduct may be an appropriate first step leading to a binding agreement, given the entrenched interests of global tobacco conglomerates and the adverse experience of numerous nations with voluntary agreements with the tobacco industry, such a code is unlikely to be effective, at least as an isolated strategy, in reducing worldwide prevalence of tobacco use. In addition, relative to general declaratory resolutions, the code of conduct approach to tobacco control may considerably delay and, perhaps, obstruct effective national and international legal action to control the tobacco pandemic.

### C. Legally binding instruments

50. Treaties are the most frequently utilized method of creating legally binding international standards. Pursuant to the Vienna Conventions on the Law of Treaties, a treaty is defined as "an international agreement concluded between states in written form and governed by international law. Whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."<sup>59</sup> Treaties are essentially international instruments, in whatever form, between states, or between states and international organizations, governed by international law. They can be called by a variety of names, including treaty, convention, protocol, covenant or pact.

51. As a substantive source of international law that creates legally binding obligations on participating states, multilateral conventions and other international instruments have specific *advantages* as a regulatory strategy for tobacco control relative to non-binding intergovernmental resolutions. Whether governments obey the rules of law with respect to tobacco control or any other international norm depends, of course, upon a number of variables within and outside the context of the law.<sup>60</sup> However, Oscar Schachter, an eminent authority on international law, has commented that states, powerful and not so powerful, tend to observe international law most of the time, even when it is not in their immediate interests to do so.<sup>61</sup> In addition, cogent international norms may be implemented in states' domestic legislation and can be used by domestic courts as evidence of standards, the breach of which can give rise to responsibility and damage.

52. The experience of multilateral environmental organizations that have achieved some success in serving as platforms for international standard-setting may serve as a precedent for global efforts to control the smoking epidemic.<sup>62</sup> The United Nations and its agencies, including the UNEP and the IMO, have become key catalysts, sponsors and coordinators for multilateral environmental negotiations, stimulating international consensus and action on a wide range of global environmental concerns through the traditional treaty-making process. For example, in the Montreal Protocol on Substances that Deplete the Ozone Layer to the Vienna Convention for the Protection of

the Ozone Layer,<sup>63</sup> UNEP fostered a broad consensus among nations on measures to safeguard the depletion of the ozone.<sup>64</sup>

53. The ability of international organizations through the treaty-making process to encourage and assist nations in overcoming powerful and organized industry resistance to regulation is evidence of the important role that international law-making could play in efforts to regulate the activities of the transnational tobacco conglomerates. For example, the IMO, through the organization of a powerful coalition of states, has facilitated the ability of nations to overcome the resistance of influential oil and shipping interests and foster international agreement and action on measures to control marine pollution.<sup>65</sup> Indeed, every international environmental agreement has some substantive implications for industry.

54. An emerging area of international legal activity relevant to global tobacco control efforts are rules and guidelines related to corporate advertising. Of particular note is the 1989 EC Directive on the pursuit of television broadcasting activities. The Broadcasting Directive establishes minimum standards for, *inter alia*, television programme and television advertising content and provides that "television advertising shall not ... encourage behaviour prejudicial to the protection of the environment."<sup>66</sup>

55. International law-making as a strategy for global tobacco control does have significant *disadvantages*. For example, an important drawback of the treaty-making process is that it is generally slow and delays occur frequently before a treaty is signed by the parties. In addition, a treaty once signed, must undergo a lengthy process of national ratification by the required minimum number of parties before it can enter into force. According to a 1971 United Nations Institute for Training and Research (UNITAR) study, multilateral treaties generally do not become effective until two to twelve years after formal agreement has been reached, the average period being about five years.<sup>67</sup> Although international organizations have now developed a variety of techniques to deal with the shortcomings of the law-making process and encourage brisk international commitment on cogent environmental standards,<sup>68</sup> the conventional treaty-making process is still somewhat slow and cumbersome.

56. Perhaps the most significant drawback of a treaty approach to global tobacco control is the possible absence of global political support for binding international rules. Although treaties are a useful medium for international norm-making, many either do not enter into force or do so for only a limited number of states. In the absence of a supra-national authority, both the codification and implementation of international law depend upon the will of states. Given the politics of global tobacco control, efforts to develop a binding international convention on tobacco may be considered by many nations as an inappropriate interference with the domestic affairs of states. Since only states that consent contractually to an international convention are bound by it, there may be considerable difficulty in ensuring international support for a global tobacco control convention.<sup>69</sup> Treaties thus present problems as vehicles for changing national behaviour as opposed to simply codifying existing state practices.

57. The success of UNEP, the IMO and other international organizations in stimulating national action on environmental concerns demonstrates that, despite the political reality of the state system, international organizations can actively influence member state decision-making by serving as a platform for the creation of legally binding conventions.<sup>70</sup> The international regulation of ozone depleting substances in the Vienna Convention and Montreal Protocol sets a critical precedent for tobacco control efforts. These international regulations mark the first time the international community has sought to limit the production and use of a particular man-made product. This effective model of international standard-setting can be utilized by WHO, as global consensus for binding international rules develops, to prevent tobacco related diseases.

58. In responding to the international community's demand for rapid and effective law-making, the treaty has become a flexible concept encompassing extremely diverse manifestations of state consent to be bound by proposed rules. The remainder of this section describes and analyzes the advantages and disadvantages of particular forms of legally binding international instruments: (i) comprehensive treaties or conventions; (ii) the convention-protocol approach; and (iii) international regulations under Article 21 of WHO's constitution.

### (i) Comprehensive treaties or conventions

59. One form of a treaty can be described as comprehensive, in that it lays down clear, detailed and specific rules capable of being enacted instantly into national law. The United Nations Convention on the Law of the Sea<sup>71</sup> is a primary example of a comprehensive convention. The convention is intended to govern all uses of the ocean in a single instrument.

60. In addition to the general *advantages* of the treaty form described in section IV (C) above, the comprehensive convention has the specific advantage of encouraging state action by setting forth clear and detailed rules to govern the activities of states. As a number of commentators have observed, the sense of obligation to observe international law is directly related to the cogency of legal norms, the extent to which they clearly prohibit or permit particular conduct.<sup>72</sup> Broad, general rules can vitiate the sense of obligation of nations to obey the rule of law.

61. In addition to the general *disadvantages* of treaty-making approaches described in section IV (C) above, there are decisive barriers to utilizing the comprehensive convention approach as a model for global tobacco control. While governments may in principle support a comprehensive approach to tobacco, political consensus on the contents of an international instrument may be limited by varying political feasibility in different countries, discussed above. Hence, there may be particular difficulty in gathering global support for a comprehensive convention for tobacco control. Assuming the existence of sufficient support for a comprehensive convention, there are additional problems in securing widespread ratification of the instrument without significant reservations. The experience of the Law of the Sea Convention also shows that an ambitious, comprehensive format that seeks to resolve all substantive issues in a single instrument may result in stalled negotiations. On 16 November 1994, more than 25 years after negotiations of the Convention began, the Law of the Sea Convention entered into force.<sup>73</sup>

### (ii) Convention-protocol approach

62. A more feasible treaty strategy for global tobacco control is the framework convention-protocol approach. Unlike the comprehensive agreement pursued in the Law of the Sea Convention negotiations, the convention-protocol approach does not try to resolve all the substantive issues in a single document; rather it divides the negotiation of separate issues into separate agreements. States first adopt a framework convention that calls for cooperation in achieving broadly stated goals, with the possibility that the parties to the convention will conclude separate protocols containing specific measures designed to implement these goals.

63. Although the convention-protocol approach has roughly all the advantages and disadvantages of the treaty approaches described in Section IV (C) above, its main *advantage* as a treaty instrument is that it is likely to be more politically acceptable than any other binding approach to global tobacco control. Although technically binding, framework conventions actually fall somewhere between non-binding resolutions and treaty law, since they contain no explicit obligations. Nevertheless, the framework convention creates an institutionalized forum for cooperation and negotiation for implementing protocols containing detailed obligations. As such, the development of a framework convention may be more likely to secure political consensus and significant action on tobacco control than any other form of binding instrument.

64. The double-track convention-protocol approach has been used commonly and, at times, successfully to secure international agreement and action on environmental matters.<sup>74</sup> One of the earliest models in this field was the 1979 Convention on the Conservation of Migratory Species of Wild Animals.<sup>75</sup> The most effective application of this method was the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol, and the London Amendments to the Montreal Protocol, in which UNEP fostered broad political consensus among nations for measures to safeguard depletion of the ozone layer. The development and implementation of the Montreal Protocol has been described by one authority as a "remarkable achievement."<sup>76</sup>

65. The *disadvantages* of the convention-protocol model are similar to those of other treaty forms. Most importantly, there may not exist, at least currently, political consensus for any type of binding international instrument. In addition, the convention-protocol approach has other drawbacks. For example, although the treaty-making process is generally slow, the convention-protocol approach may be a particularly sluggish form of law-making since securing international agreement and concrete national action takes at least two sets of international

negotiation and national ratification for the framework convention and an implementing protocol, rather than the one set typical of other treaty forms.<sup>77</sup>

66. Another potentially critical drawback of the convention-protocol approach is that, like non-binding instruments, it may actually inhibit progress towards global control of tobacco: the broad format of the framework convention enables nations to relieve some public pressure for action without resolving or committing to taking concrete steps to control tobacco production and consumption. Hence a framework convention is a fairly cost-free enterprise for participating states. However, international environmental organizations have developed various techniques to deal with this shortcoming of the convention-protocol approach to encourage international commitment and action on cogent implementing protocols<sup>78</sup> that can be utilized by WHO to secure consensus and action on implementing protocols to an international tobacco control convention.

#### Comments

67. The framework convention-protocol approach may be particularly well suited to efforts to secure global agreement and action on the tobacco epidemic because this model can be a continuous and dynamic process of law-making. The modern environmental framework conventions and their implementing protocols are designed and implemented along conventional, predictable lines. Therefore, the successful experience of other multilateral organizations can be utilized by WHO as a model and guide to WHO's endeavours to develop and implement an international framework convention and protocols on tobacco control.

68. Although both the United Nations General Assembly and WHO have the legal capacity to serve as a platform for a framework convention on tobacco control, we propose that such an instrument be drafted, negotiated and implemented under WHO's auspices. The General Assembly can serve an important role in stimulating law-making through the promulgation of a non-binding resolution on tobacco control that encourages nations to adopt and implement a framework convention on tobacco developed under WHO auspices.<sup>79</sup> However, the General Assembly has neither the necessary expertise nor, perhaps, the time to engage in standard-setting in relation to tobacco control. In favour of the General Assembly's sponsorship of a framework convention is its ability to involve other specialized agencies of the United Nations in the development, content, and implementation of a framework convention, but WHO can also enlist that support as it has done in the past. Most importantly, WHO has the legal capacity and the public health expertise to encourage nations to promptly adopt a framework convention and implementing protocols on tobacco control as global political consensus for these instruments develops. As the premier authority on world health matters, WHO has a unique capacity and the extraordinary opportunity to serve as a key catalyst, sponsor and negotiator for a framework convention on tobacco control.

#### (iii) International regulations

69. Still another legislative strategy for international tobacco control is the development and implementation of global tobacco control regulations pursuant to Article 21 of WHO's Constitution.<sup>80</sup> Article 21 provides, *inter alia*, that:

The Health Assembly, shall have the authority to adopt regulations concerning:

- (d) standards with respect to the safety, purity and potency of biological, pharmaceutical and similar products moving in international commerce;
- (e) advertising and labelling of biological pharmaceutical and similar products moving in international commerce.

Assuming that tobacco is a "biological pharmaceutical [or] similar" product, as the tobacco industry has admitted,<sup>81</sup> Article 21 provides authority to WHO to establish standards with respect to tobacco moving in international commerce.

70. As a formal source of international law, the *advantages* of an Article 21 approach are similar to those of all treaty forms described in Section IV (c) above. In addition, an international regulatory approach has certain

procedural benefits. Unlike the typical treaty-making processes, which are slow and often cumbersome, international regulations are a fairly fast-track approach to international tobacco legislation. While the adoption of conventions and agreements requires a two-thirds vote of the World Health Assembly, regulations are adopted by a mere majority of the members present and voting. In addition, although conventions become law only for Member States that contractually commit themselves, WHA regulations automatically come into force for all Member States, except for those states that notify the Director-General of WHO of rejection or reservations within a specified period of time.<sup>82</sup>

71. There are a number of *disadvantages* with the regulatory approach which substantially limit its utility for global tobacco control. Importantly, the legislative scope of international regulations is highly restricted. Hence, an Article 21 regulatory technique can never serve as a comprehensive international framework to address many of the critical issues of global tobacco control. In addition, there may be significant problems in ensuring political support among Member States for an Article 21 regulatory approach to control tobacco use.

#### Comment

72. Although Article 21 provides broad authority to WHA to adopt international regulations, it is important to note that WHO has encouraged the formation of binding international regulations only in very limited and traditional contexts and has never utilized its authority under Article 21 (c) and (d).<sup>83</sup> In the absence of consensus, even if regulations are adopted by a simple majority of Member States, the probability of rejection or significant reservations to the instrument would render it "either without practical effect or, at best, extremely difficult to administer."<sup>84</sup>

#### D. Relation to existing trade agreements organization

73. Although a more detailed analysis is necessary, it may be reasonable to assume that GATT/World Trade Organization (WTO) obligations should not interfere with the capacity of states to adopt and enforce national measures that give effect to the principles and the aims of an international tobacco control instrument. Article XX of the Text of the General Agreement,<sup>85</sup> which concerns general exceptions, states:

*Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary and unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures...necessary to protect human...health [or] necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement... (emphasis added).*

74. GATT has elaborated on the implications of this provision in the context of national tobacco control regulations in a 1990 case involving Thailand's ban on cigarette imports and advertising.<sup>86</sup> The GATT panel ruled that Thailand must allow cigarette imports. However, GATT went on to delineate policies that Thailand could adopt applying to both domestic and imported tobacco, in lieu of an import ban and be consistent with GATT obligations. These national measures include ad valorem taxes, advertising bans, price restrictions, ingredient disclosures, strong warning labels, and even a ban on brand name and imagery.

75. This is the first GATT decision on manufactured tobacco products, and it has set a critical precedent for other countries. The case sends a clear message that nations have an international right to protect health in a manner that does not discriminate between domestic and imported tobacco. Hence, broad regulatory measures can be included in a global instrument on tobacco control and adopted and implemented by nations worldwide without violating any GATT/WTO requirements.

76. To the extent of any conflict between the GATT/WTO and the national implementation of the provisions of a binding tobacco instrument, a tobacco control convention can trump the GATT/WTO via the later in time rule of international law.<sup>87</sup> Article 30 of the Vienna Convention of the Law of Treaties provides general rules governing the relationship of successive treaties. When the provisions of two treaties are in conflict, the later in time prevails, as between parties to both, unless one treaty expressly specifies otherwise. If a state is a party to only one of the treaties, under Article 30(4)(b), only that treaty governs.<sup>88</sup>

77. The Director-General of the World Intellectual Property Organization has advised the Director-General of WHO that the Paris Convention for the Protection of Industrial Property makes the registration of a mark independent of the question as to whether goods to which such marks is to be applied may or may not be sold in the country concerned. The Convention obliges contracting parties to register a mark even where the sale of the goods to which such marks is to be applied is prohibited, limited or subject to approval by the competent authorities of such States.<sup>89</sup> Therefore, the adoption of an international instrument pursuant to which States would ban or restrict the use of tobacco trade marks on direct or indirect tobacco advertising, or on tobacco or non-tobacco products, would not conflict with the Paris Convention, provided that those restrictions did not interfere with trade mark registration.

78. The agreement on trade-related aspects of intellectual property rights forms part of the World Trade Agreement and comes into force on 1 January 1996.<sup>90</sup>





## V. IMPLEMENTATION OF AN INTERNATIONAL INSTRUMENT

### A. Role of WHO

79. This document has shown that WHO has the legal capacity and public health expertise to serve as a key catalyst, sponsor and negotiator for a multilateral tobacco control instrument that details national obligations. In order to ensure that efforts to develop such an international instrument are not purely symbolic, WHO must establish mechanisms to overcome the lack of capacity or the low levels of concern among some governments as well as resistance to regulation by transnational tobacco corporations. This section details some of the specific strategies that WHO can employ to encourage national implementation of a binding or non-binding international tobacco control instrument.

#### (i) System of national monitoring and reporting

80. Surveillance of the implementation of state obligations is perhaps the most powerful mechanism available to international organizations to ensure that nations give appropriate and adequate attention to their international commitments.<sup>91</sup> Disclosure and discussion of substandard national efforts in an international arena can provide powerful pressure on governments to escalate their efforts to comply with their international obligations to implement tobacco control policies.

81. International human rights law and international environmental law provide numerous examples of effective supervisory institutions. Different approaches to international surveillance of multilateral commitments are used. A common approach in international instruments is a *system of periodic national reporting*. This strategy requires participating nations to submit reports on measures that have been adopted and implemented in fulfilling international commitments. The experience with periodic reporting systems in the human rights efforts of the United Nations indicates that the reports submitted by Member States can help to promote state compliance with international obligations if the reports are subject to critical evaluation by international organizations that also have access to input from nongovernmental sources.<sup>92</sup> Institutionalized periodic review of states' performance is also a basic feature of many international environmental conventions, including the Montreal Protocol.

82. In addition to state self-reports, international organizations have developed other forms of surveillance to ensure national implementation of international instruments. One highly effective mechanism is regular *auditing* of member state compliance by an independent, technical committee. The International Labour Organization, the body with the most experience in auditing, has developed a highly effective auditing procedure: annual or biennial reporting by governments is combined with regular auditing by an independent committee to ascertain each member state's compliance with ILO standards. This procedure is followed by public debate of the audited reports by the ILO Conference Committee on the Application of Conventions and Recommendations.<sup>93</sup> With the active participation of both trade unions and employers' associations, this auditing procedure has, according to one authority, "turned into a worldwide public hearing that clearly induces more compliance by governments than the threat of any intergovernmental action would."<sup>94</sup>

83. Recognizing the favourable experience with national reporting and auditing programmes in the United Nations, WHO can utilize its own constitutional reporting procedure to promote member state compliance with an international tobacco control instrument. Pursuant to Article 62 of WHO's Constitution, member nations must report to WHO annually on measures taken to implement WHO's recommendations, regulations or conventions. This procedure could be transformed into an effective supervisory institution if WHO critically and publicly reviews state reports on national tobacco control measures.<sup>95</sup> In addition, an institutionalized national reporting or auditing system could be incorporated into the framework of a binding or non-binding international instrument on tobacco control.

#### (ii) Establishment of an international tobacco control fund

84. The establishment of international financial arrangements to implement an international tobacco control instrument is an essential ingredient of successful tobacco control efforts.<sup>96</sup> Appropriate funding is crucial to finance tobacco control measures in the least developed countries, train personnel in tobacco control strategies, support monitoring and implementation of tobacco control measures and fund crop substitution programmes. The critical

importance of establishing sufficient funding for the implementation of a tobacco control instrument is illustrated by noting that neither the World Bank nor the FAO currently funds tobacco crop substitution programmes.<sup>97</sup> Further, a resolution of the United Nations Economic and Social Council calls for "support to enable the United Nations system focal point [on Tobacco or Health] to carry out its mandate in an effective manner..."<sup>98</sup>

85. Existing international financial models provide a starting point for considering a new global financial programme to support an international instrument on tobacco control.<sup>99</sup> One paradigm is provided by the 1990 London Amendments to the Montreal Protocol to the Vienna Convention for the Protection of the Ozone Layer that established a US\$240 million multilateral trust fund to assist developing nations in meeting their obligations under the Protocol.<sup>100</sup> As a further example, the World Bank established the Global Environmental Facility (GEF) as a general fund to aid developing countries in correcting global environmental problems. The GEF is overseen and administered by the World Bank with the assistance of UNEP and the UNDP. Hence, WHO can consider establishing an international financial mechanism within the context of a global tobacco control convention or develop a separate facility apart from a binding convention to support tobacco control efforts. Such a fund can be managed under the authority of any number of organizations, including WHO or the World Bank.

#### **B. Role of other international organizations**

86. Multisectoral collaboration of a wide range of international organizations will be required to effectively implement an international instrument on tobacco control. Other international agencies can assist WHO's efforts by promoting the support of their constituencies for appropriate tobacco control policies, national legislation, economic and agricultural policies, and international instruments on tobacco control as they develop. United Nations Conference on Trade and Development (UNCTAD), the United Nations designated focal point on tobacco, can assist WHO's efforts by ensuring that the multisectoral approach to tobacco control takes place in a timely and effective manner.

#### **C. Role of nongovernmental organizations**

87. Nongovernmental organizations (NGOs) can play a significant role in efforts to adopt and implement an international tobacco control instrument. NGOs can spotlight the importance of global tobacco control measures and influence nations to adopt an international instrument on tobacco control. In addition, NGO participation may be critical for effective monitoring of national compliance with an international tobacco control instrument. The history of human rights periodic national reporting and auditing systems in the United Nations is evidence of the positive, essential role that NGOs can play in international norm monitoring.<sup>101</sup>

## VI. SUMMARY OF ISSUES

88. In deciding on the appropriate strategy to pursue to obtain an effective international instrument for tobacco control, the following key issues have been discussed in this document:

- i. Should the general approach to an international instrument for tobacco control be a single instrument (convention or code) or a gradual, incremental process utilizing progressively strengthened measures? (See paragraphs 14-20, 38, 46, 47, 62-68)
- ii. What should be the form of an international instrument for tobacco control - non-binding or legally binding? (See paragraphs 32-72)

Non-binding instruments:

- UN General Assembly declaration or resolution
- WHO recommendations under Article 23 of the WHO Constitution
- Voluntary international code

Legally binding instruments:

- Regulations under Article 21 of the WHO Constitution
  - Comprehensive treaty or convention
  - Framework convention with protocols
- iii. Under what sponsorship or auspices should a non-binding international instrument for tobacco control be sought? United Nations? World Health Organization?
  - iv. Under what sponsorship or auspices should a legally binding instrument for tobacco control be sought? United Nations? World Health Organization?
  - v. What should be the content of a non-binding or legally binding international instrument or instruments?
  - vi. What strategies for implementation of an international instrument should be undertaken? (See paragraphs 79-81)



## VII. PROPOSAL

89. This document has shown that WHO has both the cardinal responsibility and the extraordinary opportunity to serve as a platform for international instruments, stimulating national and international action on tobacco control. The tobacco pandemic presents a daunting public health challenge. However, recent revelations of what the tobacco industry has known and concealed about the addictive and lethal qualities of nicotine as well as the sharpened interest in tobacco regulation in a number of nations, including the United States, have highlighted the issues of tobacco control worldwide. These changing global circumstances have also created an historic opportunity for WHO to now serve as an effective forum for the development of international instruments on tobacco control. The time is ripe for WHO to revise existing strategies, through the employment of international instruments, to encourage and assist national regulation of tobacco.

90. The experience of other multilateral organizations that have achieved some success in serving as a platform for cogent international standard-setting and implementation may serve as a precedent, model and guide for WHO's efforts to develop international policies on tobacco control. Recognizing the experience of other international organizations, we propose that WHO adopt a dynamic process of international standard setting. Instead of a single instrument, WHO should incrementally develop political consensus for international policies on tobacco control, promoting first a non-controversial UN General Assembly declaration on agreed upon policies and progressively moving to a framework convention and implementing protocols of increasing strength and scope. Such a dynamic model, if adopted in advance, would permit the process of international standard-setting to keep pace with political realities for tobacco control in the Member States. At the same time, this model of standard-setting can progress systematically to the long range goal of a smoke-free world through the gradual development of basic international standards for national conduct.

91. The modest level of current global commitment to comprehensive tobacco control favours a measured, gradual approach to international standard-setting. Currently, only about a dozen countries have fully implemented WHA resolutions on tobacco or health. This fact and the economic dependence of many countries on tobacco show the practicality of a gradual, incremental process that amasses support to advance towards the implementation of legally binding instruments.

92. As a first step leading to a binding convention on global tobacco control, WHO could cultivate global support for the promulgation of a General Assembly declaratory resolution that encourages national and international action on tobacco. Such a resolution could ultimately call upon WHO to develop a binding framework convention on tobacco control to be adopted by member nations.

93. Although a General Assembly resolution could be an important first step in global tobacco control efforts, mere non-binding instruments are insufficient to control the global prevalence of tobacco use. The success of other multilateral organizations, particularly UNEP, in utilizing the treaty-making process to encourage national action and overcome powerful industry opposition to regulation is evidence of the critical role that international law-making should have in a long range plan to promote national regulation of tobacco.

94. We propose that, concurrently with or subsequent to a resolution on tobacco control, WHO should develop political support for the promulgation of an international framework convention for tobacco control and, as consensus develops, implementing protocols. As a gradual and dynamic process of law-making, this strategy holds the promise of support from a large number of member nations.

95. A framework convention on tobacco control would call for broad national measures to control tobacco production and promotion to prevent tobacco use, particularly by young people. It would also institutionalize a forum for future global cooperation and negotiation. As global political support for concrete measures develops, implementing protocols focused on high priority, generally advocated measures can be incrementally adopted. Such a framework convention and implementing protocols on tobacco control can be developed under the auspices of either the UN General Assembly or WHO. However, as the premier authority on world health matters, WHO has the unique capacity and necessary expertise to serve as the effective catalyst, sponsor and negotiator for such binding instruments.

96. An alternative strategy is the codification of a framework convention and implementing protocols on tobacco control under WHO auspices without pursuing the promulgation of a General Assembly declaratory resolution. While a General Assembly resolution may serve as an important forerunner to a WHO convention on tobacco control the procedure is time-consuming and may considerably delay and, perhaps, inhibit the development of effective international legal mechanisms. Moreover, the time and effort that may be necessary to adopt a non-binding UN resolution may postpone effective national and international legal action for a number of years, while increased cohorts of young people become at risk of tobacco-related diseases. Nevertheless, should a framework convention be established under Article 19 of the WHO constitution without prior endorsement via a UN General Assembly resolution, close collaboration among United Nations offices and agencies is still essential. This collaboration could be fostered and encouraged through the United Nations Focal Point on Tobacco, based in the United Nations Conference on Trade and Development.

97. In order to ensure that the development of international instruments on tobacco control are not purely symbolic, WHO must establish mechanisms to enlist the support of governments faced with many competing concerns and overcome the resistance to regulation by transnational tobacco conglomerates. Section V sets forth several implementing mechanisms that are critical ingredients of successful international efforts.

98. While the simplicity of immediately determining the form and content of a single international instrument on tobacco control is appealing, a dynamic and continuous long range plan, as proposed in either of the above alternatives, involving several years of work in the future, may hold the promise of greater success. WHO is currently in the process of developing a plan of action for the Tobacco or Health Programme for the period 1996-2000, as called for by WHA48.11. This plan of action might well include support for the progressive and systematic strategies in global tobacco control that can generate effective international instruments on tobacco control and mobilize national action in the process.

99. The experience of other United Nations agencies indicates that, despite the political reality of the state system, international organizations, including WHO, can actively influence Member States' decision-making by serving as a platform for the creation of national and international standards. WHA48.11 creates a pivotal opportunity for WHO to stimulate national action on tobacco control by becoming an effective forum for the development and implementation of international instruments. Although member nationals will ultimately decide about their commitment to global tobacco control, active organizational promotion of binding international tobacco control standards is an important step towards the attainment of a smoke-free world.

## END NOTES

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4. See United Nations Economic and Social Council, Coordination Questions: Multisectoral Collaboration on Tobacco or Health, Progress made in the Implementation of Multisectoral Collaboration on Tobacco or Health. Report of the Secretary-General, E/1995/67, 25 May 1995 (for summary of the policies and activities on tobacco control of agencies in the UN system and nongovernmental organizations) (hereinafter ECOSOC).
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16. Editorial, 'The Brown and Williamson Documents, Where Do We Go from Here?' *Journal of the American Medical Association*, 1995, 274(3): 256-258.
17. ECOSOC *supra* at 6-8.
18. Resolutions WHA23.32 (1970); WHA24.48 (1971); WHA29.55 (1976); WHA31.56 (1978); WHA33.35 (1980); WHA39.14 (1986); WHA40.38 (1987); WHA41.25 (1988); WHA42.19 (1989); WHA43.16 (1990); WHA44.26 (1991); WHA45.20 (1992); WHA46.8 (1993); WHA48.11 (1995).
19. Roemer, *supra* note 4, note 2.
20. UN Charter articles. 1(3), 55, 56, 57, 58, 59, 63 and 64.
21. UN Charter article 57(a).
22. WHO Constitution article 2(a).
23. See generally, Fluss SS & Gutteridge F. *International encyclopaedia of medical law* (ed., Blanpain R). Kluwer law and Taxation, Deventer. World Health Organization, Geneva, 1993, 9-22.
24. See discussion *infra* notes 80-84 and accompanying text.
25. WHA resolution 22, UN Doc. A/34/Vr/15, 1981. Reprinted *International Legal Materials*, 1981, 20:1004.
26. See for example, WHA23.32 (1970); WHA24.48 (1971); WHA29.55 (1976); WHA31.56(1978); WHA33.35 (1980); WHA39.14 (1986); WHA40.38 (1987); WHA42.19 (1989); WHA43.16 (1990); WHA44.26 (1991); WHA45.20 (1992).
27. UN Charter article 57(a).
28. See discussion *infra* notes 40-43 and accompanying text.
29. See for example, Declaration on the Rights of Disabled Persons, Article 6, General Assembly Resolution (hereinafter GA Res.) 3447, UN General Assembly Official Records (hereinafter GAOR) 30th Session, Supp. No. 34, at 88, UN Doc. A/10034 (1975); Declaration on the Rights of Mentally Retarded Persons, art. 2., GA Res. 2856, UN GAOR, 26th Sess.; Supp. No. 29, at 93 UN Doc A/8429 (1971), Prevention and Control of the Acquired Immunodeficiency Syndrome, art. 5(a), GA Res. 187, UN GAOR 45th Sess.; Supp. No. 49, at 114, UN Doc. A/45/49 (1990).
30. GA Res. 119, UN GAOR 46th Sess., Supp. No 49, Annex, at 188-192, UN Doc. A/46/49 (1991).
31. Rosenthal E & Rubenstein L. International Human Rights Advocacy under the "Principles for the Protection of Persons with Mental Illness", *International Journal of Law and Psychiatry*, 1993, 16:257.
32. Convention on Elimination of All Forms of Discrimination Against Women, articles. 11(1)(f), 12(1), 12(2), 14(2)(b), GA Res. 34/180, UN GAOR 34th Sess., Supp. No. 46, at 196, UN Doc. A/34/46, 1979.
33. Convention on the Rights of the Child, arts. 24-25, GA Res. 44/25, UN GAOR, 44th Sess., Agenda Item 108, at 12-13, UN Doc. A/RES/44/25, 1989.
34. The International Covenant on Economic Social and Cultural Rights, GA Res. 2200, art. 12, UN GAOR, 21st Sess. Supp. No. 16, at 59, UN Doc. A/6316, 1966.



35. International organizations generally adopt recommendations through a simple or weighted majority of Member States. At the World Health Organization, the adoption of conventions requires a two-thirds vote of the World Health Assembly, while recommendations are adopted by a simple majority of the Member States present and voting. WJIO Constitution Articles 19, 22, 23. In addition, at the General Assembly of the United Nations a practice has grown up of adopting resolutions by consensus, without resort to any vote at all. The President asks whether or not any state has any objections to the proposed resolution, and none being voiced, the President declares the resolution to be adopted by consensus. States are not expected to raise any objections unless they are critical to their interests. See for example Birnie PW & Boyle AE. *International Law and the Environment*, 19, 1992. Many of the organizations within the UN system frequently do not vote at all and adopt texts by consensus. *Id.* at 37.
36. See discussion *infra* at paragraph 83 and note 61.
37. See discussion *infra* notes 96-100 and accompanying text, (describing how an international trust fund for tobacco control can be established).
38. See for example, the Stockholm Declaration of 1972, has had an enormous impact on state practice. Stockholm Declaration on the Human Environment of the United Nations Conference on the Human Environment, 16 June 1971, *International Legal Materials* 1972, 11:1716.
39. See for example Handl G. Environmental Security and Global Change: The Challenge to International Law, in *Environmental Protection and International Law*, 59, 63 (Lang W et al., eds, 1991). Although "soft-law" instruments are not law *per se* is a convenient term for describing the effectiveness of these instruments in influencing state behaviour. "Soft-law" denotes international proscriptions that are deemed to lack the requisite characteristics of international law, but which are capable of modifying state behaviour. International environmental law provides numerous examples of the "soft-law" approach. See generally, Dupuy P-M. Soft Law and the International Law of the Environment, *Michigan Journal of International Law*, 1991, 12:420.
40. One such example is the partial hardening of UNEP's Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes which served as a forerunner to the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes. UNEP Environmental Law Guidelines and Principles, Decision 14/30 of the Governing Council of UNEP of 17 June 1987. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 22 March 1989, *International Legal Materials*, 1989, 28:656, [hereinafter Basel Convention].
41. As one authority has suggested, "states often do not meaningfully support what a resolution says and they almost always do not mean that the resolution is law." Arangio-Ruiz G. The Normative Role of the General Assembly of the United Nations and the Development of Principles of Friendly Relations, *Recueil des Cours*, 1972 III, cited with approval in Higgins R. *Problems and process: International law and how we use it* 1994:27. "Unless the more powerful and influential governments are prepared to carry out the resolutions of the General Assembly, the verbiage of the resolutions may have no more effect than harmless blowing off steam." Bachr P & Gordenker L. *The United Nations in the 1990s*, 1992, 58.
42. Meron T. *Human rights law-making in the United Nations*, 1986: 265-266. The "acceptance [of General Assembly Resolutions] by a majority vote constitutes evidence of the opinions of governments in the widest forum for the expression of such opinions. "Brownlie I. *Principles of public international law*, Third edition, 1985:14. General Assembly resolutions " may be said to be generally representative of world opinion." Birnie PW & Boyle AE. *Supra* note 35, at 19. While there are writers who claim that United Nations General Assembly Resolutions constitute a new source of law, the majority of commentators base their arguments upon the effectiveness of the UN resolutions in influencing state behaviour. The principal argument against the view that UN resolutions constitute a new source of law is that the UN Charter accords the General Assembly no authority to enact rules of international law. See discussion *supra* at paragraph 27. This argument is further strengthened by the fact that states generally do not accept General Assembly resolutions as law.

43. See for example, Sand PH. Lessons Learned in Global Environmental Governance, *B.C. Environmental Affairs Law Review* 1991, 18:213-239.
44. For an analysis of international codes of conducts, see generally, Kline JM. *International Codes and multinational business*. 1985; Lutz RE & Aron GD. Codes of Conduct and Other International Instruments, in *Transferring hazardous technologies and substances: the international legal challenge* (Handl G & Lutz RE eds., 1989); Chrispeels E. International Measures for the Control of Tobacco: Convention or Code, 21 April 1995 (personal communication).
45. Examples of codes of conduct that are treaties include a Convention on a Code of Conduct for Liner Conferences, 6 April 1974, *International Legal Materials* 1974, 13:910 and the Standard Code on Multinational Enterprises and Regulations of the Treatment Applicable to Subregional Capital of the Andean Common Market, *International Legal Materials* 1972, 11:357.
46. UN Food and Agricultural Organization, International Code of Conduct on the Distribution and the Use of Pesticides, UN Doc. M/R8130, E/8.86/1/5000. 1986.
47. International Code of Marketing of Breast-milk Substitutes, *supra* note 25.
48. Baram MS. Multinational Corporations, Private Codes and Technology Transfer for Sustainable Development, *Environmental Law*. 1994, 24:33.
49. See for example Schmidheiny S. *Changing course: A global business perspective on development and the environment*, Business Council for Sustainable Development, 1992, 88:89.
50. Principles contained in a code may also subsequently be employed in treaties. An additional advantage of a code is that monitoring of participating states is often built into the code for the purpose of code reform by the agency responsible for overseeing the instrument's implementation.
51. See generally, Kline JM, *supra* note 44, at 71. Kline defines these two functions of intergovernmental codes as laws and levers. *Id.*
52. See generally, Birnie PW & Boyle AE, *supra* note 35, at 29-30 (describing how International Maritime Dangerous Goods (IMDG) Code, IMO Doc. MSC/Cr. 497, 26 July 1988, Ref. T33.06, indicates the wide application of this Convention).
53. Governments Take Action to Protect Breast-Feeding, WIIO Press Release WIIO/10, 2 February 1992. See generally, Infant and Young Child Nutrition (Progress and Evaluation Report; and Status of the Implementation of the International Code of Marketing Breast-milk Substitutes) 63-74, Report by the Director-General, WIIO Doc. A47/6, 23 March 1994. [hereinafter 1994 WIIO Code Report].
54. General Assembly Res. 49/130 (19 December 1994); Work Related to the Code on Transnational Corporation and Other International Arrangements and Agreements: Code of Conduct on Transnational Corporations 1, Report of the Secretary General, Commission on Transnational Corporations, *ECOSOC Document E/CN.10/1990/5* (29 January 1990).
55. See discussion *infra* note 53 and accompanying text. In addition, health authorities in many nations have utilized other non-legislative measures to implement the Code, including issuing guidelines to health personnel, often accompanied by copies of the International Code; intersectoral committees have been established for implementing the Code; and working groups have reviewed practices relating to the marketing and distribution of breast-milk substitutes. See Shuber S. The International Code of Marketing of Breast-milk Substitutes, *International digest of health legislation*, 1985, 36:879-908. Lester G. The International Code of Marketing of Breast-milk Substitutes: Survey of National Legislation and other Measures Adopted, 1981-1991. *WIIO Doc. WIIO/HLE/NUT 92.1*. 1992.
56. A number of industrialized nations including Australia, Austria, Denmark, Germany, Sweden, and the United Kingdom rely, in part, on voluntary agreements with the tobacco industry to control advertising or place health warnings on cigarette packages and do not resort to national legislation. Voluntary or "code of conduct" agreements have proven to be a weak means of controlling tobacco promotion because they take years to negotiate and leave industry free to find loopholes and evade restrictions by

such devices as sponsoring sports and cultural events, introducing indirect advertising on television, and placing brand names on other products. Roemer R. *supra* note 2, at 14-16.

57. See for example Dinham B. FAO and Pesticides: Promotion or Proscription? *The Ecologist*, 1992, 21:61.
58. Baram MS, *supra* note 48, at 33.
59. Vienna Convention on the Law of Treaties, art. 1, 1155 UNTS 331, 1969. The 1986 Vienna Convention on the Law of Treaties extends this basic definition of a treaty to international agreements concluded between states and international organizations and to agreements concluded between international organizations. The Vienna Convention on the Law of Treaties between States and International Organizations or Between International Organizations, 1986, UN Doc. A/Conf. 129/15 (1986).
60. See for example Schachter O. *International Law in Theory and Practice: General Course in Public International Law* 24-25 (Academy of International Law Offprint from the Collected Course, Vol. 178(1982-V).
61. Schachter O, *supra* note 60, at 29. Nations tend to comply with international conventions they are parties to because it is accepted by states and expresses their will. In addition, nations tend to comply with international conventions even when it does not appear to be in their immediate interests to do so because, in many countries, officials are sensitive to the anticipated criticism in international circles or the expected disapproval by influential domestic leaders or groups who place a high value on the country's reputation for legality generally or on observance of the particular obligations involved. *Id.* at 29.  
International organizations, nongovernmental organizations and other groups have also become highly effective in mobilizing the "politics of shame" to ensure member state compliance with international law. Cultivating public support for national and multilateral action and publicizing nations' compliance with the rule of law have been key ingredients of the successful law making activities of other international organizations, including UNEP and the ILO. See for example, Taylor A. Making the World Health Organization Work: A Legal Framework for Universal Access to the Conditions for Health, *American Journal of Law and Medicine*, 1992, 18: 301-331. Leary VA, *infra* note 92, at 594-602; Gray MA. The United Nations Environmental Programme: An Assessment, *Environmental Law*, 1990, 30: 291-306.
62. See generally, Taylor A, *supra* note 61, (discussing the role that international law-making can play in WHO's efforts to address global health concerns); Taylor AL. Women's Health at a Crossroad: Global Responses to HIV/AIDS, *Health Matrix*, 1994, 4:297-324. (describing potential role of international health law in protecting and promoting global health).
63. Montreal Protocol on Substances that Deplete the Ozone Layer, 16 September 1987. *International Legal Materials* 1987, 26:1550 [hereinafter Montreal Protocol]; Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, 29 June 1990. *International Legal Materials* 1991, 31:541 [hereinafter London Amendments to the Montreal Protocol]. Vienna Convention for the Protection of the Ozone Layer, 22 March 1985. *International Legal Materials* 1987, 26:1516.
64. As a further example, the International Maritime Organization was able to persuade nations to address the serious threat posed to the marine environment by oil pollution, by encouraging the adoption and national implementation of the International Convention on Oil Pollution, Preparedness, Response and Cooperation. 30 November 1990. *International Legal Materials* 1991, 30:735.
65. There are numerous other examples of the effectiveness of multilateral organizations in assisting nations to overcome powerful and organized industry resistance to regulation through traditional treaty-making processes. Commentators have also noted that, through its law-making efforts, UNEP served a critical function in encouraging nations to bring a multi-billion dollar industry to a halt to protect the ozone layer, despite the objections of some of the industry leaders. Moornaw WR. Protecting the ozone layer: a revolutionary approach to evolutionary treaties. Urbani E et al., eds., *Transnational environmental law and its impact on corporate behaviour*, 1994:329-345, (noting that US automobile industry tended to oppose any regulatory change to protect the ozone). Some industry leaders,

particularly the US chemical industry moved ahead of regulations to reduce production of ozone producing chemicals. *Id.* at 345; Parson EA, Protecting the ozone layer, in Haas PM et al., eds, *Institutions for the earth: sources of effective international environmental protection*, 1993:27-66 [hereinafter *Institutions for the earth*]. As a further example, some authorities credit regional organizations for enabling states of the North and Baltic Sea to override industry objections and adopt and implement a number of conventions to control marine pollution in these seas. See for example, Haas PM, Protecting the Baltic and North Seas, in *Institutions for the earth*, *supra*, at 133, 136, 173.

66. See discussion of EC Broadcasting Directives in *International environmental law: emerging trends and implications for transnational corporations* 21, Department of Economic and Social Development Transnational Corporations and Management Division, Environmental Series No.3, UN Doc., ST/CTC/137, 1993.
67. See *United nations institute for training and research, toward wider acceptance of UN treaties*, 1970, 34-40, cited in Sand PII, *supra* note 43, at 237.
68. See generally, Sand PII, *supra* note 43, at 220-248.
69. According to conventional wisdom, the sovereign equality of states excludes any automatic effect of treaties on third states. See example, Danilenko GM. *Law-making and the international community*, 1993:58. Although treaties do not *ipso facto* bind third states they can do so if they clearly express an intent that their benefits and obligations may do so and the state concerned expressly accepts this; in the case of obligations this assent must be expressed in writing. 1969 Vienna Convention on the Law of Treaties, *supra* note 59, at arts. 34-37. Certain provisions of treaties may, however, become binding upon other states by becoming part of customary international law. *Id.* at art. 38.
70. See generally, Taylor A, *supra* note 61.
71. United Nations Convention on the Law of the Sea, *International Legal Materials* 1982, 21:1261, [hereinafter Law of the Sea Convention].
72. See for example, Franck TM. *The power of legitimacy among nations*, 1990:50-66, (describing "determinacy" as one of four indicators of the legitimacy of international rules). Frank asserts that the higher the level of determinacy, the greater the likelihood that the rule will be observed. *Id.* at 52.
73. For a critical appraisal of the Law of the Sea Convention, see generally, Stevenson JR & Oxman BHI. The Future of the United Nations Convention on the Law of the Sea, *American Journal of International Law*, 1994, 88:488.
74. See for example, Handl G. *supra* note 39, at 59, 61-63; Kiss A. The Implications of Global Change for the International Legal System. In Weiss EB, ed., *Environmental change and international law*, 1992: 315-322.
75. Bonn Convention on the Conservation of Migratory Species of Wild Animals, 23 June 1979, *International Legal Materials* 1980, 19:15.
76. Moomaw WR, *supra* note 65, at 329. The Framework Convention on Climate Change, opened for signature at the 1992 United Nations Environment and Development Conference in Rio de Janeiro, Brazil, is patterned on the convention-protocol format of the Montreal Protocol. United Nations Framework Convention on Climate Change, 9 May 1992, UN Doc. A/AC.237/18 (Part II)/Add.1.
77. This is not always the case, however. The rapid entry into force of the Montreal Protocol and the Vienna Convention for the Protection of the Ozone Layer indicates that the multilateral convention-protocol approach can provide an efficient means of global or regional law-making when there is political support for rapid action.
78. See generally Sand PII, *supra* note 43 at 248-275. For example, environmental framework conventions are often structured to encourage state parties to adopt implementing protocols by mandating regular and institutionalized meetings of the participating parties. See example, Vienna

Convention for the Protection of the Ozone Layer, *supra* note 59, at article 6; United Nations Framework Convention on Climate Change, *International Legal Materials* 1992, 31, 849. at art 7. In the case of some framework conventions, the mandatory provisions for consultations has created, according to one authority, a "virtually continuous legislative process." Handl G. *supra* note 39, at 62.

79. See discussion *infra* notes 40-43 and accompanying text.
80. For an extensive discussion of Article 21 regulations, see, generally, Fluss SS & Gutteridge F, *supra* note 23, at 11-12, 15-19.
81. Slade J et al., *supra* note 15, at 225-232.
82. WHO Constitution Article 22. Specifically, Article 22 provides that "[r]egulations adopted pursuant to Article 21 shall come into force for all Members after due notice has been given of their adoption by the Health Assembly except for such Members as may notify the Director-General of rejection or reservations within the period stated in the notice." *Id.*
83. The Assembly has only adopted two international regulations under Article 21(a) and (b): the Nomenclature Regulations and the International Health Regulations. See Fluss SS & Gutteridge F, *supra* note 23, at 15-19; see also discussion, *infra* at paragraphs 21 and 23.
84. Fluss SS & Gutteridge F. *supra* note 23, at 22.
85. General Agreement on Tariffs and Trade, 30 October 1947, TIAS No. 1700, 55 UNTS 187 (1947).
86. Thailand-Restriction on Importation of and Internal Taxes on Cigarettes (GATT Panel Report adopted 7 November 1990), *International Legal Materials*, 1991, 30:1122. See discussion in Roemer R. *supra* note 2, at 76-79.
87. The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations reset GATT's date to 1994. See Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Agreement Establishing the World Trade Organization, GATT Doc. MTN/FA (15 April 1994), reprinted in 33 *International Legal Materials* 1125 (1994). For a discussion of the later in time rule in the context of GATT, see Shultz J, The GATT/WTO Committee on Trade and the Environment-Toward Environmental Reform, *American Journal of International Law*, 1995, 89:423-434.
88. Vienna Convention on the Law of Treaties, 1969, *supra* note 59.
89. Bogsch A, Director-General, World Intellectual Property Organization. Letter to Director-General, WHIO, dated 22 February 1995.
90. Final Act embodying the results of the Uruguay round of multilateral trade negotiations, Annex 1C: Agreement on trade-related aspects of intellectual property rights, including trade in counterfeit goods. GATT document No.MTN/FA, 15 December 1993.
91. Taylor A, *supra* note 61, at 330-331.
92. Alston P, United Nations Specialized Agencies and the Implementation of the Covenant on Economic Social and Cultural Rights, *Columbia Journal of Transnational Law*, 1979, 18:79-101. See also Leary VA, Lessons from the Experience of the International Labour Organization. In Alston P ed., *The United Nations and Human Rights*, 1992:580-602.
93. Leary VA, *supra* note 92, at 595-602.
94. Sand PH, *supra* note 43, at 273.
95. See discussion in Taylor A, *supra* note 61, at 330-331.
96. Chrispeels E, *supra* note 44, at 4.

97. See for example, ECOSOC, *supra* note at 6, 8. Tobacco Costs the Earth, *Anoscope*, October 1994 at 14. Skolnick A, Experts at Buenos Aires Conference Predict Pandemic of Tobacco Deaths, *Journal of the American Medical Association*, 1992, 267:3255-3256.
98. Tobacco or Health, ECOSOC Res. E/1995/L.63 (27 July 1995).
99. See for example, Mehr TA, International technology transfer: constructing and financing an environmental programme, *Loyola Legal Academy International and Comparative Law Journal*, 1993, 15:731-746. Dernbach JC, The Global environmental facility: financing the treaty obligations of developing nations, *Environmental Law Reports*, 1993, 23:10124.
100. London Amendments to the Montreal Protocol, *supra* note 63, at art. T (amendment to Article 10 of the Montreal Protocol).
101. See for example, Finkelstein LS, ed., The Politics of value allocation in the UN System. In Finkelstein LS, ed., *Politics in the United Nations System*, 1988:1-28. Leary VA, *supra* note 90, at 601, 617.

**WHA48.11     An international strategy for tobacco control**

The Forty-eighth World Health Assembly,

Recalling and reaffirming resolutions WHA33.35, WHA39.14, WHA43.16 and WHA45.20, all calling for comprehensive multisectoral, long-term tobacco strategies and outlining the most important aspects of national, regional and international policies and strategies in that field;

Recognizing the work carried out by the Organization in the field of tobacco or health, and noting that the plan of action of the tobacco or health programme for 1988-1995 comes to an end in the current year;

Noting that the Director-General and his staff contributed to the success of the Ninth World Conference on Tobacco and Health (Paris, October 1994) at which an international strategy for tobacco control was adopted covering the essential aspects of WHO policy in that field: curbing of promotion of tobacco products, demand reduction, particularly among women and young people, smoking cessation programmes, economic policies, health warnings, regulation of tar and nicotine content of tobacco products, smoke-free environments, and marketing and monitoring.

1. COMMENDS the International Civil Aviation Organization's response to ban smoking on all international flights as of 1 July 1996;
2. URGES those Member States that have already successfully implemented all or most of a comprehensive strategy for tobacco control to provide assistance to WHO, working with the United Nations system focal point on "tobacco or health" (located in UNCTAD), so that these bodies can effectively coordinate the provision of timely and effective advice and support to Member States seeking to improve their tobacco control strategies, including health warnings on exported tobacco products;
3. REQUESTS the Director-General:
  - (1) to report to the Forty-ninth World Health Assembly on the feasibility of developing an international instrument such as guidelines, a declaration, or an international convention on tobacco control to be adopted by the United Nations, taking into account existing trade and other conventions and treaties;
  - (2) to inform the Economic and Social Council of the United Nations of this resolution;
  - (3) to strengthen WHO's advocacy role and capacity in the field of tobacco or health and to submit to the Forty-ninth World Health Assembly a plan of action for the tobacco or health programme for the period 1996-2000.



**World Health Organization**  
**Organisation mondiale de la Santé**

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**The feasibility of developing an international  
instrument for tobacco control**

**Report by the Director-General**

This report is submitted in accordance with resolution WHA48.11 (An international strategy for tobacco control), adopted by the Forty-eighth World Health Assembly in May 1995, which, *inter alia*, requested the Director-General "to report to the Forty-ninth World Health Assembly on the feasibility of developing an international instrument such as guidelines, a declaration, or an international convention on tobacco control to be adopted by the United Nations, taking into account existing trade and other conventions and treaties".

The report sets forth the various options for an international instrument, and advice for future action is requested of the Executive Board.

**INTRODUCTION**

1. Tobacco use is responsible for an annual global total of about three million deaths, a toll that will rise to about 10 million each year by the 2020s or 2030s if current smoking patterns persist, seven million of them in developing countries. The tobacco pandemic is a cause for international concern calling for urgent global action and cooperation to protect the health of populations in industrialized and developing countries.

2. Considering this critical situation, the Forty-eighth World Health Assembly in resolution WHA48.11 requested a report on the feasibility of developing an international instrument on tobacco control.

**CONTENT OF INTERNATIONAL INSTRUMENTS**

3. An international instrument may be viewed as representing both a consensus of nations and a goal that the world community strives to achieve. Its content must be acceptable to a significant number of nations, and eventually to many more. An international instrument on tobacco control must confront two principal factors: first, the influence of the tobacco industry and, second, the possible reluctance of some tobacco-producing countries to support control: the more general or limited the content of the instrument is, at least initially, the more likely will be its acceptance by a large number of governments.



## LEGAL AUTHORITY OF WHO AND THE UNITED NATIONS TO DEVELOP INTERNATIONAL INSTRUMENTS

4. Both the United Nations and the World Health Organization are legally competent to develop international instruments on at least some aspects of tobacco control. According to its Constitution, WHO acts as the "directing and coordinating authority on international health work", and the Health Assembly has the authority to develop:

- (a) non-binding recommendations (in the form of resolutions or international codes of practice, e.g. the International Code of Marketing of Breast-milk Substitutes), under Article 23;
- (b) conventions or agreements with respect to matters within the competence of the Organization, under Article 19; and
- (c) international regulations, under Article 21.

In the last case its powers are strictly limited.

5. The United Nations General Assembly has overlapping jurisdiction within the field of international health: Article 55 of the United Nations Charter describes the goals which the United Nations has pledged to promote among its members, including "solutions of international economic, social, health and related problems". Article 13(1)(b) provides that the General Assembly shall "initiate studies and make recommendations ... promoting international cooperation in the ... health [field]".

## OPTIONS FOR AN INTERNATIONAL INSTRUMENT

### Non-binding instruments

#### (a) Resolutions

6. **Advantages:** Resolutions draw international attention to important issues faster than multilateral treaty approaches, while still allowing flexibility to Member States with respect to their implementation.

7. **Disadvantages:** Nations are under no legal obligation to implement resolutions: the Health Assembly has adopted 14 resolutions calling for comprehensive tobacco control policies, but a number of Member States have not fully implemented such policies. A summary of elements for a comprehensive tobacco control policy is given in the Annex.

#### (b) Codes of conduct

8. **Advantages:** Codes of conduct are usually more detailed than resolutions, and they too allow flexibility in implementation; they may call upon governments to pass national legislation and urge industry to adhere voluntarily to the provisions of the code.

9. **Disadvantages:** As with resolutions, there is no legal obligation for their implementation; negotiating and implementing an intergovernmental code of conduct may at times be a particularly slow process (e.g., the draft United Nations Code of Conduct for Transnational Corporations was negotiated from 1976 until the project was suspended by the General Assembly in 1994). This consideration applies to all binding instruments.

## **Binding instruments**

### **(a) Treaties or conventions**

10. Treaties, conventions, protocols, covenants or pacts are essentially international agreements, in whatever form, between States, or between States and international organizations.

11. **Advantages:** They create obligations for States signatories to develop national legislation in accordance with their international commitments. Comprehensive conventions, by their detailed nature, will stimulate specific and detailed national legislation, and may be viewed as of the utmost importance in tobacco control policies.

12. **Disadvantages:** The negotiation, signing and ratification of treaties are usually slow, and delays of more than 10 years may occur before they enter into force. Perhaps the most significant drawback here is the possible absence of global political support for binding international rules, which may be considered by many as an inappropriate interference with the domestic affairs of individual States. Since only States that sign an international convention are bound by it, there may be considerable difficulty in ensuring international support for a global tobacco control convention.

### **(b) Convention-protocol approach**

13. This approach does not seek to resolve all the substantive issues in a single document; rather it divides the negotiation of separate issues into separate agreements. States first adopt a framework convention that calls for cooperation in achieving broadly stated goals, with the possibility that the parties to the convention will conclude separate protocols containing specific measures designed to implement these goals.

14. **Advantages:** It is likely to be more politically acceptable than any binding approaches to tobacco control. Although technically binding, framework conventions actually fall somewhere between non-binding resolutions and treaty law since they contain no explicit obligations. They may be more likely to lead to significant action on tobacco control than any other form of binding instrument, and can be a continuous and dynamic process of law-making. This approach has been used by UNEP to foster broad consensus among nations for measures to guard against depletion of the ozone layer.<sup>1</sup>

15. **Disadvantages:** Like other forms of treaty, it is often slow and complex because of the need for negotiating several agreements and sub-agreements simultaneously.

### **(c) International regulations**

16. Under Article 21 of the Constitution of WHO, the Health Assembly has the authority to adopt regulations concerning a limited range of subjects, e.g., standards for the safety, purity, potency, advertising and labelling of biological, pharmaceutical and similar products moving in international commerce. If it were possible to interpret tobacco products as being included in one of these categories, the following would apply.

17. **Advantages:** Regulations could be adopted by the Health Assembly (while the adoption of conventions or agreements requires a two-thirds vote of the Health Assembly, regulations are adopted by a simple majority of the Members present and voting), and automatically come into force for all Member States, except for those that notify the Director-General of WHO of rejections or reservations within a specified period of time (WHO Constitution, Article 22).

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<sup>1</sup> *The Montreal Protocol. United Nations Framework Convention on Climate Change.* United Nations document A/AC.237/18 (Part II)/Add.1, 9 May 1992.

18. **Disadvantages:** The legislative scope of international regulations is highly restricted. The process of amending the Constitution to include expressly the authority to adopt regulations covering tobacco would be lengthy. In addition, consensus among governments on such an approach to tobacco control could prove difficult to reach.

## RELATION TO EXISTING TRADE AGREEMENTS

19. A GATT Panel set an international precedent when it ruled that Thailand must allow cigarette imports, thus invalidating a previous national ban. However, the panel also ruled that, provided tobacco control measures applied equally to domestic and imported tobacco products, comprehensive tobacco control measures could be introduced without violating GATT/WTO requirements.<sup>1</sup>

20. The Director-General of the World Intellectual Property Organization has advised the Director-General of WHO that the Paris Convention for the Protection of Industrial Property makes the registration of a mark independent of the question as to whether goods to which such mark is to be applied may or may not be sold in the country concerned. The Convention obliges contracting parties to register a mark even where the sale of the goods to which such mark is to be applied is prohibited, limited or subject to approval by the competent authorities of such States.<sup>2</sup> Therefore, the adoption of an international instrument pursuant to which States would ban or restrict the use of tobacco trade marks on direct or indirect tobacco advertising or on tobacco or non-tobacco products would not conflict with the Paris Convention, provided that those restrictions did not interfere with trade mark registration.

21. The agreement on trade-related aspects of intellectual property rights forms part of the World Trade Agreement and comes into force on 1 January 1996.<sup>3</sup> Its Article 20 states that "The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements ...". Therefore, an international instrument pursuant to which States would ban or restrict the use of tobacco trade marks in advertising or packages would need to be justified. Presumably well-documented research on the serious health hazards of tobacco use would be sufficient to satisfy this requirement.

## POSSIBLE APPROACH AND FINANCIAL IMPLICATIONS

22. The development of international instruments to move progressively towards more effective global tobacco control is feasible, given modest commitment to comprehensive tobacco control and the economic dependence of some countries on tobacco. As a first step WIIO's governing bodies might consider adopting a resolution establishing ultimate goals for global tobacco control and recommending their endorsement by the United Nations Economic and Social Council and the General Assembly. Subsequently, the Council and the General Assembly could consider adopting a resolution setting out the components of comprehensive tobacco control and a related strategy and recommending to begin negotiations on a framework convention with separate protocols for tobacco control.

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<sup>1</sup> Thailand: Restriction on importation of and internal taxes on cigarettes, GATT Panel Report, 7 November 1990, in: *International Legal Materials*, 1991, 30: 1122.

<sup>2</sup> Bogsch, A., Director-General, World Intellectual Property Organization. Letter to Director-General, WIIO, dated 22 February 1995.

<sup>3</sup> *Final Act embodying the results of the Uruguay round of multilateral trade negotiations*, Annex 1C: Agreement on trade-related aspects of intellectual property rights, including trade in counterfeit goods. GATT document No. MTN/FA, 15 December 1993.

23. Before any decision is taken, due consideration should be given to the financial implications. Taking the example in paragraph 22, the development of an initial draft of a framework convention (with separate protocols) would involve contracting experts, convening one or more expert groups, strengthening the appropriate technical units of WHO and of other United Nations organizations so that effective technical support can be given not only in the health field but also in other technical fields affected by such a project. As the resources to carry out this work are not available in the regular budget, extrabudgetary funds would have to be mobilized; and as tobacco control is a subject of paramount global concern, some Member States may wish thus to provide support for the development of an international instrument.

## ANNEX

### ELEMENTS OF COMPREHENSIVE NATIONAL TOBACCO CONTROL PROGRAMMES

1. Establishment and maintenance of an active national focal point to stimulate, support and coordinate tobacco control activities.
2. Establishment of an adequately financed and staffed national coordinating organization on "tobacco or health".
3. Effective programmes of promotion and education for smoking prevention and support for cessation of smoking.
4. Effective protection from involuntary exposure to tobacco smoke in public transport vehicles, public places and workplaces.
5. Measures to ensure that health care workers and institutions set a good example by not smoking themselves, make their institutions smoke-free and through their own training, counselling and advocacy activities, emphasize the benefits of a smoke-free life.
6. Monitoring of trends in smoking and other forms of tobacco use, tobacco-related diseases, and assessment of effectiveness of national smoking control activities.
7. Tobacco taxes that increase faster than the growth in prices and incomes.
8. Use of part of tobacco taxes to finance tobacco control measures.
9. A ban on all forms of tobacco advertising, promotion and sponsorship.
10. A legal requirement for strong, varied health warnings on packages of cigarettes.
11. Restriction of access to tobacco products including a prohibition on sale of tobacco products to young people.
12. Limitation of the permissible levels of tar and nicotine in manufactured cigarettes.
13. Mandatory reporting of the levels of toxic constituents in manufactured tobacco products.
14. Strategies to provide economic alternatives to tobacco-growing for agricultural workers.

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## AN INTERNATIONAL STRATEGY FOR TOBACCO CONTROL

### Adopted by the Ninth World Conference on Tobacco or Health, in October 1994

Since measures to deal with the tobacco problem must be comprehensive and long term, the following individual actions should form the basis of such a strategy:

1. Legislation to ban all direct and indirect advertising and promotion of tobacco products.
  2. Legislation to protect young people from tobacco promotion and sales.
  3. Policies to discourage the onset and maintenance of tobacco use including:
    - a) intensive health education and information to young people and adults;
    - b) wide availability of support for tobacco users who wish to stop.
  4. Economic policies to discourage production and use of all tobacco products, including:
    - a) progressive significant increases in tax above inflation (and the growth of disposable income), and the allocation of a specific proportion of such taxes for tobacco control purposes;
    - b) action to discourage tobacco production and marketing by the abolition of all subsidies and protection for tobacco growers and the development of alternative economic, agricultural and international trade policies;
    - c) removal of tobacco from national cost of living indexes;
    - d) measures to control smuggling of tobacco products.
  5. Effective health warnings and regulation of tobacco product packaging and on such promotional material still permitted.
  6. A policy for the regulation of tar and nicotine content of tobacco products.
  7. "Smokefree" public policies - to protect the health and rights of people in all common environments.
  8. Policies to block future marketing initiatives of the transnational tobacco industry.
  9. Effective national monitoring of the tobacco pandemic and the enforcement of these tobacco control measures.
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**Summary Table A**      **Number of countries and territories with legislation to control the production, sale, and promotion of tobacco, by WHO region.**

Type of legislation	Number of countries and territories						
	All regions	Africa	Americas	Eastern Mediter-ranean	Europe	South-East Asia	Western Pacific
Total ban on tobacco advertising	27	3	2	3	13	1	5
Some restrictions on advertising	77	7	19	9	26	5	11
Restriction on sponsorship	18	2	4	-	8	-	4
Rotating/strong warnings on cigarette packages	29	1	6	6	11	1	4
Familiar warnings on cigarette packages	48	6	14	7	12	4	5
Statement of tar and nicotine content	40	4	6	8	15	-	7
Restrictions on places of sale	11	-	3	1	5	2	-

**Summary Table B**      **Number of countries and territories with legislation to influence smoking practices, by WHO region**

Type of legislation	Number of countries and territories						
	All regions	Africa	Americas	Eastern Mediter-ranean	Europe	South-East Asia	Western Pacific
Restrictions on smoking in public places	90	20	17	10	28	4	11
Restrictions on smoking in the workplace	34	3	11	1	14	-	5
Preventing young people from smoking	42	2	18	2	12	1	7
Controlling smokeless tobacco	19	-	2	1	11	1	4
Health education	36	1	14	3	12	2	4

Source: Roemer, R., Legislative Action to Combat the World Tobacco Epidemic, 2nd Edition, Geneva: World Health Organization, 1993