The Framework Convention on Tobacco Control

A Primer

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

World Health Organization

Tobacco Free Initiative
For the first time in the Organization’s history, the Member States of the World Health Organization (WHO) are negotiating a legally binding international agreement. On 24 May 1999, the World Health Assembly (WHA), the governing body of WHO unanimously backed a resolution calling for work to begin on the Framework Convention on Tobacco Control (FCTC) – a new legal instrument that could address issues as diverse as tobacco advertising and promotion, agricultural diversification, smuggling, taxes and subsidies. A record fifty nations took the floor to pledge financial and political support for the Convention. The list included the five permanent members of the United Nations Security Council, major tobacco growers and exporters as well as several countries in the developing and developed world, which face the brunt of the tobacco industry’s marketing and promotion pitch. The European Union and NGOs also made statements in support of the Convention and the Director-General’s leadership in global tobacco control.

During the May 1999 World Health Assembly, Member States established both a FCTC Working Group and an Intergovernmental Negotiating Body. The FCTC Working Group, open to participation by all WHO Member States, regional economic integration organizations and observers, was to prepare proposed draft elements of the FCTC and to submit a report to the Fifty-third World Health Assembly. The Intergovernmental Negotiating Body, open to participation by all WHO Member States, regional economic integration organizations, and observers (as specified in Resolution WHA 52.18), is charged with the responsibility of negotiating the text of the Convention and possible related protocols.


The first session of the Negotiating Body (Geneva, 16 to 21 October 2000) had 148 participating Member States, as well as observers from six international organizations, the European Community, three representatives of other intergovernmental organizations, and 25 nongovernmental organizations. A Chair, Ambassador Celso Amorim of Brazil, was elected. Australia, India, Islamic Republic of Iran, South Africa, Turkey and the United States of America were elected as vice Chairpersons. Three Working
Groups were established; each was assigned certain provisions from the proposed draft text of the FCTC. A Chair’s text containing proposals for several possible elements which could be included in the final Convention was produced between the first and second sessions. In preparation for the second session, the first inter-sessional consultations were hosted by South Africa (African Region countries) and by Indonesia (South East Asian Region countries).

The second session of the Negotiating Body (Geneva, 30 April to 5 May 2001) was attended by participants from 158 Member States, the Holy See and the European Community as well as observers from thirteen intergovernmental organizations. A Chair's text1, which represented a first partial draft of the FCTC, was discussed and a full reading of the text was completed. The principal output of the meeting was the Co-Chairs' Working Papers, this rolling text displayed all textual proposals made at that session along with the Chair's text.

The third session of the Negotiating Body was held in Geneva from 22 to 28 November 2001. Despite international security concerns, a record number of 169 Member States participated in this round. In preparation for the negotiations, inter-sessional consultations were hosted by Algeria (African Region countries), Bhutan (South East Asian Region countries), Brazil (Latin American countries), Estonia (Baltic States), Iran (Eastern Mediterranean Region countries), New Zealand (Pacific Island countries) and the Russian Federation (Commonwealth of Independent States).

The fourth session of the Negotiating Body (Geneva, 18-23 March 2002) had 160 participating Member States. Before this session, inter-sessional consultations were hosted by India (South East Asian Region countries), Cote d’Ivoire (African Region countries), Egypt (Eastern Mediterranean Region countries), Peru (Latin American and Caribbean Group (GRULAC)) and Malaysia (Association of South East Asian Nation (ASEAN) countries). Additionally, an Inter-Ministerial Conference was held in Warsaw.

A new Chair of the Negotiating Body, Ambassador Luiz Felipe de Seixas Corrêa of Brazil, was elected at the fourth session of the Negotiating Body. By the end of the session, the Co-Chairs for each of the Working Groups had issued revised Co-Chairs “streamlined” texts. Working Group Three also completed a second reading of the textual proposals submitted by Member States for Article J (Compensation and Liability), Article S (Development of the

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1 A/FCTC/INB2/2
Constitution), and Article T (Final Clauses)\(^2\); these three Articles had not been addressed in the initial Chair’s text. Informal drafting groups made significant progress on issues including passive smoking, price measures and packaging and labelling. It was agreed that a New Chair’s Text would be issued in July 2002 and considered by the Negotiating Body at its Fifth Session.

The fifth session of the Negotiating Body (Geneva, 14-25 October 2002) considered this New Chair’s Text\(^1\). 165 Member States attended this session. Inter-sessional consultations prior to INB5 have been hosted by New Caledonia (Pacific Island countries), Myanmar (South East Asia Region countries), Bulgaria (Southeast European countries), Thailand (Association of South East Asian Nation (ASEAN) countries), Malawi (African Region countries), Russian Federation (Commonwealth of Independent States (CIS)), Estonia (Baltic States), Mexico (Latin American and Caribbean Group (GRULAC)), Bahrain (Eastern Mediterranean Region countries) and Denmark (European Region countries). Additionally, the United States of America, pursuant to its announcement during the fourth session of the Intergovernmental Negotiating Body (INB) on the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), held the international conference on illicit tobacco trade at the United Nations Headquarters in New York City from July 30 to August 1, 2002.

At INB5 the Chair introduced the new working method. The New Chair’s text was discussed at plenary sessions and informal meetings. Following key issues were addressed by informal meetings: packaging and labeling of tobacco products; advertising, promotion and sponsorship of tobacco products; liability and compensation; financial resources; tobacco and trade; illicit trade in tobacco products. The issue of use of terms was discussed during a special session. Two Ad Hoc meetings were held to discuss the definitions of the key terms of the Convention and the definitions were set forth in the spirit of a work in progress. Separate meeting was called upon to discuss institutional and procedural issues. The issue of protocols was also discussed during INB5. During INB5, the possibility of elaborating protocols on illicit trade and cross-border advertising was noted in particular. As concerns the timing options for negotiating and adopting protocols, a majority of delegations expressed preference for completing negotiations on the Framework Convention before engaging in negotiations on protocols.

The Chair issued a statement that the revised version of the new Chairs’ text based on the discussions from INB5 would be issued on 15 January 2003.

\(^1\) A first reading of the compilation document of textual proposals for the three articles which were submitted before the third session (A/FCTC/INB3/5) was completed at INB3.
\(^2\) A/FCTC/INB5/2
Framework Convention on Tobacco Control (FCTC) - A Primer

1. What is the FCTC?

The Framework Convention on Tobacco Control (FCTC) will be an international legal instrument that will circumscribe the global spread of tobacco and tobacco products. This is the first time that the WHO has acted under Article 19 of its constitution, which allows the Organization to develop and adopt such a Convention. In fact, the FCTC negotiations and the adoption of the Convention should be seen as a process and a product in service of public health.

This instrument is being developed by WHO’s 191 Member States so that their concerns are adequately reflected throughout the process. The framework convention/protocol approach allows Member States to craft this piece of international legislation in incremental stages:

♦ The Framework Convention will establish the legal parameters and structures of the public health tool. If the political will exists, detailed provisions can also be included in the Framework Convention itself. The process is similar to laying the foundation for a building.

♦ The Protocols will be separate agreements that will build upon the substantive provisions elaborated in the Framework Convention.

2. When will it be completed?

World Health Assembly Resolution WHA 52.18 maps out a process for developing the WHO FCTC and possible related protocols. This historic resolution, was adopted unanimously by the World Health Assembly in May 1999, foresees the adoption of the Framework Convention and possible related protocols by the World Health Assembly in May 2003. Member States have stressed the importance of respecting this target date for the adoption of the Framework Convention. Much depends upon political will and a sustained commitment to the cause of public health. The option of starting negotiations on one or more protocols before the Framework Convention is adopted has also been discussed in the Negotiating Body. In some treaties, for example, protocols were negotiated along with the main body of the framework convention4,5, or immediately after adoption of the framework convention.

3. How will the FCTC help international tobacco control?

I. The FCTC and related protocols may improve transnational tobacco control and cooperation in the following ways:

♦ The guiding principles of the Convention could encompass both national and transnational measures, emphasizing that tobacco is an important contributor to health inequities in all societies; that as a result of the addictive nature of tobacco and health damage associated with tobacco use, tobacco must be considered a harmful commodity; that the public has a right to be fully informed about the health consequences of using tobacco products; and that while the health sector has a

4 Reference is made to the Convention on the prohibition and restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects (1980) and to the United Nations Convention against Transnational Organized Crime (2000).

5 The Montreal Protocol to the Framework Convention on Climate Change was negotiated before the Entry into Force of the Framework Convention.
leading responsibility to combat the tobacco epidemic, success requires the full contribution of all sectors of society.

Under the Convention, State Parties would take appropriate measures to fulfil, through coordinated actions, the provisions that they had jointly agreed upon. In this respect, the FCTC could include provisions such as: protecting children and adolescents from promotion of, exposure to and use of tobacco products; preventing and treating tobacco dependence; promoting smoke-free environments; promoting healthy tobacco-free economies, especially through the elimination of smuggling; strengthening women’s leadership role in tobacco control; enhancing the capacity of all Member States in tobacco control and improving knowledge and exchange of information at national and international levels; and protecting vulnerable communities, including indigenous peoples.

The FCTC or its protocols could include specific obligations to address *inter alia*: prices, smuggling, tax-free tobacco products, advertising/sponsorships, Internet advertising/trade, testing methods, regulation of the tobacco product, package design/labelling, information sharing, and agricultural diversification. The New Chair’s Text contains references to protocols on advertising, promotion and sponsorship and on illicit trade; the negotiation of such a protocol could be initiated by the INB before the FCTC is adopted, by the INB following the adoption of the FCTC, or at a later stage by the Conference of Parties.

In the time before the adoption of the FCTC, the WHO and its Regional Offices will work with Member States, NGOs, media and other members of civil society in countries to focus on tobacco in all its dimensions.

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

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

5. **Which of the above is legally binding?**

Treaties are legally binding. The framework convention usually entails more general or
limited obligations, while the protocols involve more specific legal obligations. Protocols are specific measures designed to implement goals of the framework convention or to add further institutional commitments. However, if sufficient political will exists, specific obligations can be included in a framework convention.

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

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

A resolution is not sufficient to deal effectively with the public health threats associated with the tobacco trade, its marketing, and use. Over the past 30 years, the World Health Assembly has adopted 18 resolutions on several aspects of tobacco control with varying degrees of success. It is important to note that these various resolutions encompass all of the major components of a comprehensive approach towards tobacco control. While some Member States have sharpened these resolutions domestically, this piece-meal approach is too informal to be of any major consequence. This is especially true in the situation of tobacco control, where the international dimension of the problem has a direct bearing on how the issue is addressed domestically. However, resolutions adopted in other international fora will undoubtedly support and catalyse the FCTC process.

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

7. What were the roles of the FCTC Working Group in the Pre-negotiation phase and what are the roles of the Intergovernmental Negotiating Body in the Negotiation phase of the FCTC?

World Health Assembly Resolution WHA 52.18, which describes the FCTC Working Group and Intergovernmental Negotiating Body, maps out an integrated process for developing the FCTC and possible related protocols with the full participation of Member States. During the May 1999 World Health Assembly, Member States established both a FCTC Working Group and an Intergovernmental Negotiating Body. The mission of the FCTC Working Group, open to participation by all WHO Member States, regional economic integration organizations and observers, was to prepare proposed draft elements of the FCTC and to submit a report to the Fifty-third World Health Assembly. The Intergovernmental Negotiating Body, open to participation by all WHO Member States, regional economic integration organizations, and observers (as specified in Resolution WHA 52.18), is charged with the responsibility of negotiating the text of the Convention and possible related protocols.

The first meeting of the FCTC Working Group took place in Geneva from October 25 to 29 1999; delegates made recommendations for proposed draft elements of WHO Framework Convention on Tobacco Control. The Working Group proposed draft elements covering the Convention’s preamble, objectives, principles and definitions, obligations, institutions, implementation mechanisms and law-making procedures. The second and final meeting of the Working Group took place in Geneva from 27 to 29 March 2000. This meeting allowed delegates to further contribute to the draft text of proposed
elements of the Convention. A final report on the output from the Working Group was delivered to the 53rd World Health Assembly in May 2000, where a resolution was passed launching the formal political negotiations. Resolution 53.16 marked the end of the Pre-negotiation phase of the FCTC. The first session of the Intergovernmental Body, held 16-21 October 2000 in Geneva, marked the beginning of the Negotiation phase of the FCTC.

The Intergovernmental Negotiating Body chose to begin its substantive work by reviewing the proposed draft elements for the Framework Convention (document A/FCTC/INB1/2), which the two working groups had prepared during the pre-negotiation phase. The reading of the core obligations and guiding principles helped the group to assess which provisions should be included in the Framework Convention and which might be deferred to subsequent protocols; it also provided guidance for the future work of three technical Working Groups established by the Negotiating Body on the Chair’s recommendation. The Working Groups serve to advance negotiations by developing clear texts and compromise solutions, thereby increasing consensus. Each Working Group was assigned a number of major topics.

♦ Working Group 1 considered provisions on:
  - Research (K.2);
  - Elimination of sales to and by young persons (I.8-12);
  - Regulation of tobacco product disclosures (G.1(c));
  - Packaging and labelling (G.1(d));
  - Demand reduction measures concerning tobacco dependence and cessation (H.1-2);
  - Education, training and public awareness (G.1(e));
  - Passive smoking (G.1(a));
  - Regulation of the contents of tobacco products (G.1(b));
  - Advertising, promotion, and sponsorship (G.2-4);
  - Guiding Principles (D.1-2);
  - General Obligations (E.1-2);
  - Definitions (B)

♦ Working Group 2 considered provisions on:
  - Surveillance (K.1);
  - Exchange of information (K.3);
  - Price and tax measures to reduce the demand for tobacco (F.1 and F.2(a)(b)(c));
  - Government support for tobacco manufacturing and agriculture (I.15);
  - Illicit trade in tobacco products (I.1-7);
  - Licensing (I.13-14);
  - Guiding Principles (D.4-5, D.7);
  - General Obligations (E.3);
  - Definitions (B).

♦ Working Group 3 considered provisions on:
  - Conference of the Parties (M);
  - Secretariat (N);
  - Support by the World Health Organization (O);
  - Reporting and implementation (P);
  - Settlement of disputes (R);
  - Compensation and liability (J);
  - Development of the convention (S);
  - Final clauses (T);

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6 The titles and numbering of these provisions are as they appear in the Chair’s text, document A/FCTC/INB2/2.
The Negotiating Body at the first session also agreed that the Chair of the Negotiating Body should prepare a draft text based on Member State interventions and written submissions made at the first session. Member States called for the Secretariat to continue technical work on such issues as trade; technical assistance to countries; compensation and liability; and monitoring and implementation. In preparation for the second session, the first intersessional consultations were hosted by South Africa (African Region countries) and by Indonesia (South East Asian Region countries).

The second session of the Negotiating Body was held from 30 April to 5 May 2000, shortly before the Fifty-fourth World Health Assembly. Member States, in their respective Working Groups, considered the draft Chair’s Text that had been prepared in the interim. This document, a partial draft of the Framework Convention, was structured to contain, inter alia, tobacco-specific substantive sections addressing: Price and tax measures to reduce the demand for tobacco (Article F); Non-price measures to reduce the demand for tobacco (Article G); Measures related to the supply of tobacco (Article I); Surveillance, research and exchange of information (Article K); and Scientific, technical and legal co-operation (Article L). Member States considered this text within the respective Working Groups and proposed additions and deletions to the draft text. These proposals were presented merged with the original Chair’s text in the Co-Chair’s Working Papers, constituting in effect a rolling text.

The third session of the Negotiating Body was held in Geneva from 22 to 28 November 2001. Despite the international security concerns, a record number of 169 Member States participated in this round. In preparation for the negotiations, intersessional consultations were hosted by Algeria (African Region countries), Bhutan (South East Asian Region countries), Brazil (Latin American and CARICOM countries), Estonia (Baltic States), Iran (Eastern Mediterranean Region countries), New Zealand (Pacific Island countries) and the Russian Federation (Commonwealth of Independent States). These consultations allowed many countries to agree upon common negotiating positions.

Significant progress to advance negotiations took place during the third round. By the close of the session, the Co-Chairs for Working Groups 2 and 3 issued revised texts, which were accepted as a foundation for future negotiations. Given the complexity and scope of the subject matter for Working Group 1, the Co-Chairs of that group worked with the Secretariat during the intersessional period to draft revised versions of the Co-Chairs’ texts for consideration at the beginning of the next session.

The fourth session of the Negotiating Body was held in Geneva from 18 to 23 March 2002; 160 Member States participated. Before this session, inter-sessional consultations were hosted by India (South East Asian Region countries), Cote d’Ivoire (African Region countries), Egypt (Eastern Mediterranean Region countries), Peru (Latin American and Caribbean Group (GRULAC)) and Malaysia (Association of South East Asian Nation (ASEAN) countries). Additionally, an Inter-Ministerial Conference was held in Warsaw.
A new Chair of the Negotiating Body, Ambassador Luiz Felipe de Seixas Corrêa of Brazil, was elected at the fourth session of the Negotiating Body. By the end of the session, the Co-Chairs for each of the Working Groups had issued revised Co-Chairs “streamlined” texts. Working Group 3 also completed a second reading of the textual proposals submitted by Member States for Article J (Compensation and Liability), Article S (Development of the Convention), and Article T (Final Clauses); these three Articles had not been addressed in the initial Chair’s text. Significant progress was also achieved in informal drafting groups on issues including passive smoking, price measures and packaging and labelling. Furthermore, substantial progress was made in preparations for a New Chair’s Text, issued in July 2002, which was considered by the Negotiating Body at its Fifth Session (14-25 October 2002). The New Chair’s Text was the principal negotiating document for INB5.

The fifth session of the Negotiating Body took place 14-25 October 2002. Before this session, inter-sessional consultations had been hosted by New Caledonia (Pacific Island countries), Myanmar (South East Asia Region countries), Bulgaria (Southeast European countries), Thailand (Association of South East Asian Nation (ASEAN) countries), Malawi (African Region countries), Russian Federation (Commonwealth of Independent States (CIS)), Estonia (Baltic States), Mexico (Latin American and Caribbean Group (GRULAC)), Bahrain (Eastern Mediterranean Region countries) and Denmark (European Region countries). Additionally, the United States of America, pursuant to its announcement during the fourth session of the Intergovernmental Negotiating Body (INB) on the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), held the international conference on illicit tobacco trade at the United Nations Headquarters in New York City from July 30 to August 1, 2002.

At INB5 an informal review of the Chair’s text on selected articles was made by the Chair and was discussed in plenary. Appropriate language was found and consensus was reached in some areas, notably in the clause on illicit trade, while in other parts of the text differences have been substantially narrowed. Some divergences still persist on a limited number of issues, which is natural in this type of negotiation, but they became clearer and more identifiable in the discussions. It was agreed that on the basis of the outcome of the fifth session of the Negotiating Body and the further consultations, which the Chair will be conducting, the Chair would issue a revised text by 15 January 2003. The Chair’s text of a framework convention on tobacco control (Revised) is organized into the following sections:

I Introduction
II Objective, Guiding Principles and General Obligations
III Measures Relating to the Reduction of Demand for Tobacco
IV Measures Relating to the Reduction of the Supply of Tobacco
V Protection of the Environment
VI Questions Related to Liability
VII Scientific and Technical Cooperation and Communication of Information
VIII Institutional Arrangements and Financial Resources
IX Settlement of Disputes
X Development of the Convention
XI Final Provisions

\(^7\) A/FCTC/INB5/2
\(^8\) A/FCTC/INB6/2
8. Who is going to pay for the FCTC?

The budget for the FCTC is initially being financed through a combination of regular and extra-budgetary funding from WHO. These costs include WHO technical support, and support for intergovernmental technical and negotiation meetings. In particular, developing countries require financial and technical assistance to participate in the process of formulating the FCTC. Resolution 53.16, adopted by the 53rd World Health Assembly in May 2000, specifically encouraged the Director-General to facilitate developing country participation throughout the negotiations process. Following the adoption of the convention, core funds will be required to provide technical support to developing countries as they move towards ratification of the Convention, and ensure sustained implementation and monitoring of the Convention and its protocols after these instruments enter into force.

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

New extra-budgetary funds will need to be committed to the FCTC process; however, no previously allocated funds for tobacco control will be diverted to support the FCTC process. Support to the FCTC should be seen as an integral part of supporting national and global tobacco control. The FCTC process has already stimulated commitment and action on tobacco control by facilitating the development of national coalitions. It has acted as a catalyst for the establishment of mechanisms to coordinate tobacco control activities through helping to develop national plans to facilitate multisectoral responses through legislation, economics and advocacy, and through the monitoring and adjustment of laws and policies. In reality, the successful adoption of the FCTC will likely result in a marked increase in financial resources for tobacco control both within countries and at the international level. The FCTC, when adopted, will ensure that tobacco control is given a higher political profile. The adoption of the FCTC represents a barometer of success or failure in placing tobacco control front and centre on the global stage.

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

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

The widely held perception that tobacco control will lead to loss of revenues is not true. In reality, the numbers are heavily in favour of moving away from tobacco cultivation. Recent economic analyses, for example World Bank data in the publications Curbing the Epidemic – Government and the Economics of Tobacco Control, Tobacco Control in Developing Countries and The Economics of Tobacco Control: Towards an optimal policy mix, show that the social and health costs of tobacco far outweigh the direct economic benefits that may be possible because of tobacco manufacturing and cultivation.

The tobacco companies rely on the argument that there are no real crop or other substitution options. It is reasonable to assume that consumers who stop smoking will reallocate their tobacco expenditure to other goods and services in the economy.
Therefore, falling employment in the tobacco industry will be offset by increases in employment in other industries. However, for countries that rely heavily on tobacco production and exports, economic/agricultural diversification will likely entail some employment losses in the medium- to long-term, during the transition process.

The gradual decline in tobacco consumption that will accompany tobacco control success means that a loss of jobs, if any occurs, will itself be gradual. In general, any such job losses will be easily handled by normal worker attrition, without the need for transition support. In those developed countries in which tobacco control is succeeding, consumption has been falling approximately 1-2% per year. Normal annual worker turnover is on the order of 5 to 10 times greater.

Worldwide the number of tobacco consumers is projected to grow substantially over the next few decades, the result in part simply due to population growth. The increased numbers of tobacco consumers will be found in the developing countries. Thus, for the foreseeable future, success in international tobacco control will mean reducing the rate of growth of tobacco consumption, not causing dramatic and rapid declines from current levels of consumption. Therefore, successful tobacco control should reduce the growth in the number of tobacco jobs. Significant numbers of tobacco-related jobs will not be lost; rather, fewer new ones will be created. Clearly, if there were exceptions, it would be appropriate to assist displaced workers during a period of transition.

The FCTC takes a long-term view of agricultural diversification. The framework-protocol approach provides for an evolutionary approach to developing an international legal regime for tobacco control, and thus all issues will not need to be addressed at the same time. The FCTC and/or its related protocols could be the first instrument seeking global support for tobacco farmers.

Also, it is worth noting that the current 1.27 billion smokers in the world, assuming no change in the global prevalence of smoking, are predicted to rise to about 1.67 billion by 2020 because of increases in the world population. Therefore, tobacco-growing countries are extremely unlikely to suffer economically from any tobacco control measures such as the FCTC. Even if global tobacco control efforts are highly successful, the world will likely have 1 to 1.2 billion tobacco users by 2020. Accordingly, under this best demand reduction scenario the global market for tobacco products is unlikely to change in the medium-term.

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

Ministries of Health are playing a leading role in negotiations. In addition, Ministries of Foreign Affairs typically take a lead role in the negotiation of conventions/treaties. Ministries of Finance, Environment, Labour, Justice, Foreign Trade, Education, Agriculture and other sectors have also already come into the ambit of the FCTC negotiations.

Evidence is accumulating on the effectiveness of the FCTC process in stimulating global change, the inherent “power of the process”. At the global level, the process has created an unprecedented opportunity to highlight tobacco control issues and to educate and inform political leaders about the health and economic consequences of tobacco. At the domestic level, the treaty-making process is creating the opportunity to broaden the dialogue to Ministries of Agriculture and Finance,
among others. Consequently, the process is creating an opportunity for political leaders to learn about tobacco and forge partnerships. The FCTC is making a key contribution to a global political environment for strengthened tobacco control at the national and local levels; this provides an opportunity for important work at the local level to strengthen the capacity for the development of better capacity-building in areas such as legislation, economics and research/surveillance at the country level.

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

The implementation of an international agreement can make a significant difference. For example:

♦ As a result of the Montreal Protocol to the Vienna Convention for the Protection of the Ozone Layer, production and consumption of substances that deplete the stratospheric ozone layer have declined dramatically over the last decade.

♦ The General Agreement on Tariffs and Trade has brought down trade barriers and promoted the expansion of international trade.

♦ Arms control agreements have limited nuclear weapons proliferation and have led to a substantial reduction in the arsenals of the nuclear powers.

13. Can international agreements affect the behaviour of States?

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

♦ establish review mechanisms that focus pressure on States by holding them up to public scrutiny;

♦ articulate legal rules that may be enforceable in domestic courts;

♦ provide supporters within national governments with additional leverage to pursue the treaty’s goals.

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

14. Why has the FCTC been developed and negotiated under the auspices of the World Health Organization, rather than, for example, under the umbrella of the United Nations?

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

The establishment and monitoring of complex technical standards on tobacco control is within the mandate of WHO, the primary specialized agency in public health. In Resolutions WHA 49.17, WHA52.18, and
WHA53.16, Member States recognized the unique capacity of WHO to serve as a platform for the adoption of the FCTC by calling upon the Organization to initiate the development and negotiation of the Convention. Furthermore, 18 tobacco-related WHA resolutions over the past 30 years have established WHO’s technical mandate in areas covering all areas of comprehensive tobacco-control and supply-related areas such as agricultural diversification.

However, insofar as the ultimate goal of global tobacco control intersects with the mandate of other United Nations’ Bodies, the establishment of technical mechanisms for inter-agency cooperation, especially with regard to possible specialized protocols, may be indicated.

The United Nations Ad-Hoc Interagency Task Force on Tobacco Control, a focal point among existing institutions of the United Nations system on the subject of multisectoral collaboration on the economic and social aspects of tobacco production and consumption, was established in 1999 under WHO leadership. The UN Task Force comprises 15 bodies and organizations of the United Nations system, as well as the World Bank, the International Monetary Fund, the World Trade Organization (WTO) and the World Customs Organization (WCO). Participating UN organizations include, *inter alia*, the Food and Agriculture Organization (FAO); the International Labour Organization (ILO); the United Nations Children’s Fund (UNICEF); the United Nations Development Programme (UNDP); the UN Education, Social and Cultural Organization (UNESCO); and the UN Environment Programme (UNEP).

The Task Force works towards the implementation of multisectoral collaboration on tobacco or health, with particular emphasis on the development of appropriate strategies to address the social and economic implications of the impact of tobacco or health initiatives. To date, the Task Force has helped to initiate new interagency partnerships on the economics of tobacco control and issues of supply, demand, and trade. Negotiation of the proposed Framework Convention on Tobacco Control will require increased collaboration within the UN system, such as that being established by the Task Force.

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

A review of the Convention on the Rights of the Child with respect to tobacco control was conducted under the WHO/UNICEF project, *Building alliances and taking action to create a generation of tobacco-free children and youth*, supported by the United Nations Foundation. With respect to TFI’s work on strengthening the role of women in global tobacco control, possible links between the FCTC and the United Nation’s Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), were considered during the Kobe meeting on Women and Tobacco, hosted by WHO and held in Kobe, Japan, from 14-18 November 1999. Some recommendations to emerge from this meeting were that results of the Conference, including the Kobe Declaration and technical information, should be officially reported to the CEDAW Committee and a liaison committee be established; that the CEDAW Committee should be encouraged to continue to require reporting by governments under Article 12, which includes tobacco; and that similar relationships be established between WHO and the bodies that monitor the Convention on the Rights of the Child.
Links between the FCTC and other international treaties addressing issues such as smuggling have been also examined. For example, WHO and the World Customs Organization (WCO) are currently developing closer ties with the view of addressing the problem of cigarette smuggling. At this point, joint meetings have been held and discussions between the two organizations are ongoing to strengthen this technical cooperation. A Memorandum of Understanding formalizing relations between the two organizations was signed in July 2002; additionally the illicit trade component of the FCTC negotiation constitutes a major area for technical collaboration between the two organizations.

The World Trade Organization (WTO) collaborates with WHO on the issue of potential links between the FCTC and the variety of multilateral trade agreements concluded during the Uruguay Round of trade talks. WTO explains international trade rules as they relate to the FCTC. The most relevant WTO agreements for the FCTC include the Agreements on Technical Barriers to Trade (TBT); the General Agreement on Trade in Services (GATS); the General Agreement on Tariffs and Trade (GATT); and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The members of the United Nations Task Force are also invited to participate as observers to the Intergovernmental Negotiating Body.

16. What are the relevant rules and procedures for involvement of NGOs in the FCTC negotiations?

World Health Assembly Resolution WHA 52.18 (24 May 1999) specifically requested the Director-General of WHO “to invite, as observers at the sessions of the working group on the WHO framework convention on tobacco control and the intergovernmental negotiating body, representatives…of nongovernmental organizations in official relations with WHO, who will attend the sessions of those bodies in accordance with the relevant Rules of Procedures and resolutions of the Health Assembly.”

Additionally, in Resolution WHA 53.16 (20 May 2000), the World Health Assembly called upon the Intergovernmental Negotiating Body of the WHO framework convention on tobacco control to “examine the question of an extended participation, as observers, of nongovernmental organizations according to criteria to be established by the Negotiating Body”.

Recalling these two World Health Assembly Resolutions, at its first session the Intergovernmental Negotiating Body established the following guidelines with respect to participation of nongovernmental organizations in the Negotiating Body:

♦ Nongovernmental organizations in official relations with WHO should have access, as observers, to the plenary and working groups that functioned as formal committees of the whole;

♦ Other groups established for a particular purpose should be closed, but a limited number of nongovernmental organizations might be invited by the chairman, with the agreement of Member States participating in those groups, to make presentations in order to clarify issues of relevance to the discussions;

♦ Time should be scheduled at the end of every morning or afternoon meeting for nongovernmental organizations to make statements in accordance with paragraph 6.1(f) of the WHO Principles Governing Relations between the World Health Organization and Nongovernmental Organizations;
Copies of statements should be provided to the Chairman sufficiently in advance to ensure their review.

On 22 January 2001 at its 107th session, the Executive Board of the World Health Organization adopted decision EB107/SR/12, which authorized the Chairman of the Executive Board, acting jointly with the Chairman of the Standing Committee on Nongovernmental Organizations, to admit provisionally nongovernmental organizations into official relations with WHO for the purpose of participating as observers to the Negotiating Body. This decision will remain applicable, unless terminated or revised by the Board, until the adoption of the Framework Convention. This decision will apply to NGOs that request official relations solely or also for the purpose of participating in the work of the Negotiating Body, provided that the nongovernmental organizations are in working relations with WHO at the time their applications are submitted; that nongovernmental organizations otherwise meet the criteria established in section 3 of the Principles Governing Relations between the World Health Organization and Nongovernmental Organizations; and that the mandates of the nongovernmental organizations concerned are relevant to the work to the Negotiating Body. The Executive Board will review nongovernmental organizations in provisional relations at its January session subsequent to their admission into provisional official relations, for the purpose of confirming or terminating such relations in accordance with normal procedures.

In accordance with the provisions of this decision of the Executive Board, the Chairman of the Executive Board, acting jointly with the Chairman of the Standing Committee on Nongovernmental Organizations, decided to admit two nongovernmental organizations provisionally into official relations with the World Health Organization as of 26 April 2001; official relations with WHO have since been confirmed for both nongovernmental organizations. Official letters were dispatched to those organizations, inviting them to designate one or more representatives to participate in the second session of the Intergovernmental Negotiating Body on the WHO framework convention on tobacco control.

All official focal points of nongovernmental organizations in official and provisional official relations with WHO are invited to sessions of the Negotiating Body.

The Framework Convention on Tobacco Control (FCTC) will be an international legal instrument that will circumscribe the global spread of tobacco products. In fact, the FCTC negotiations and the adoption of the Convention should be seen as a process and a product in service of public health.