

All-Party Parliamentary Group on Vaping - Inquiry into the WHO Framework Convention on Tobacco Control (FCTC) Conference of the Parties (COP)

Memorandum by Clive Bates¹ February 2021

Summary

- The FCTC text was settled in 2003 and does not provide a satisfactory framework for regulating tobacco and nicotine products in the 2020s. It is not designed to capture the opportunities arising from vaping and other non-combustible consumer nicotine products that present much lower risks than smoking, which remains by far the dominant causes of harm globally. Though the FCTC includes harm reduction in its definition of tobacco control, it is not designed for 'risk-proportionate regulation'.
- The Conference of the Parties, the WHO, FCTC Secretariat, and approved observers have adapted to the fundamental weakness of the FCTC itself by adopting a highly hostile approach to tobacco harm reduction. The approach implicitly favoured by WHO is to normalise the prohibition of vaping products or, if that is not possible, press for excessive regulation, such as regulation comparable to cigarettes. The effect is to protect the global cigarette trade. *This is profoundly harmful and in conflict with UK interests and global public health aims.*
- The hostility is evident in COP decisions, papers and guidelines; in the approach taken to science and regulation; and in speeches, reports, events, awards, and advocacy conducted by WHO and the Secretariat. It is backed by a well-funded network of non-governmental organisations (NGOs), many of which rely on a small number of American foundations with intensely negative views about tobacco harm reduction. In the case of Bloomberg Philanthropies, the most significant funder, the proprietor favours outright prohibition of vaping, and many grantees are pursuing that agenda with his support.
- The policy and science postures of WHO, Secretariat and COP are selective and cherry-picked, are based on minimal or inadequate justification, and are largely blind to obvious perverse unintended consequences. Most of what passes for scientific synthesis and policy analysis would not withstand even cursory scrutiny. However, there is little real scrutiny and accountability.
- The FCTC institutions have carefully cultivated a self-referential bubble by approving only a small number of like-minded NGOs to participate as observers at COP meetings. To gain observer status, NGOs are required to pledge allegiance to the FCTC. The COP requires them to report on how they support the FCTC, and any Party can veto observer status for any organisation. The result is pronounced group-think from hand-picked, compliant and sycophantic observers. This is in marked contrast to other UN conventions such as the UNFCCC on climate change.

¹ The author has had a diverse career in the public, private and not-for-profit sectors. From 1997-2003 he was Director of Action on Smoking and Health (UK), campaigning to reduce the harms caused by tobacco. In 2003 he joined Prime Minister Blair's Strategy Unit as a civil servant and worked in senior roles in the public sector and for the United Nations in Sudan. In 2013, he founded Counterfactual, a consulting and advocacy practice focused on sustainability and public health. He has no conflicts of interest with respect to tobacco, vaping or pharmaceutical industries.

- Much of the FCTC insularity is justified with reference to preventing ‘tobacco industry interference’, However, this is both a tactical excuse and a strategic mistake. While vested interests should not distort policymaking, this concern should not be used as a tactical reason to exclude people or organisations affected by the FTCTC, with a critical perspective on the FCTC, or with legitimately different views on how to secure public health objectives. Strategically, tobacco companies have a significant role in tobacco harm reduction. The transformation of this industry to non-combustible technologies would be a very significant public health achievement. The tobacco industry is already present through delegations with state-owned tobacco enterprises. It should be possible for the COP to engage with tobacco, vaping, and other relevant industries with safeguards to prevent excessive influence while gaining from their experience.
- The UK government is no longer required to follow the EU common positions at COP meetings. It should no longer play a passive role in what is becoming a public health circus. It should take an assertive stance to rescue the FCTC and COP from counterproductive and harmful policies and distorted messaging. As a party to the FCTC and a member of the World Health Assembly, the UK should press WHO to restore respect for science, open-mindedness and curiosity in response to the public health impact of smoking. The UK should encourage WHO, the FCTC Secretariat and the Conference of the Parties towards developing a credible approach to innovation, risk and opportunity. It will be unable to do this as a bystander or by merely objecting if its own red lines are crossed. The UK needs to adopt an assertive evidence-based approach to comprehensive reform. The government should base its engagement strategy on:
 1. The world-class research and analysis by UK universities and non-profits, and the high-quality synthesis reports produced by Public Health England and others.
 2. The policy measures and communications needed to meet the demanding domestic goal of smoke-free status by 2030, taking advantage of smoke-free alternatives to cigarettes.
 3. A recognition that the critical public health distinction is not between tobacco and non-tobacco products, but between combustion and non-combustion products. The public health problem is overwhelmingly smoking, and all smoke-free products are beneficial.
 4. The principles of proportionality and non-discrimination in regulation and a sound approach to precaution and uncertainty. The regulation of tobacco and nicotine products should be “risk-proportionate”.
 5. The importance of the credibility, responsibility and trust in FCTC institutions and the accountability of these agencies to their stakeholders, including the UK government.
 6. Openness, transparency and diversity. FCTC needs much greater intellectual diversity in its observers and greatly increased media access. The UK delegation should reflect broader interests and should consider including public health and consumer representatives.
- It is premature to reopen the text of the FCTC, and this would be counterproductive at this point. The challenge for COP-9 and COP-10 is to shape the ‘discourse’ surrounding the FCTC and win over individuals and organisations to a more constructive and pragmatic approach to tobacco harm reduction and vaping.