WHO Framework Convention on Tobacco Control: a global ''good'' for public health

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Although the application of legal instruments to international health issues — relative to other areas of international concern — is still at a rudimentary stage of development, the transnational health impacts of globalization provide a rationale for the codification and implementation of global norms to deal with shared problems. The experience of promulgating international agreements in other areas closely related to international health — the environment, for example — demonstrates how evidence-based international agreements can effectively address a range of problems that cross national boundaries. The framework convention-protocol approach is a legally binding, incremental approach to international law-making that has frequently been employed to deal with environmental threats, and is now being adapted to serve purely public health ends.

Experience with the recently initiated WHO Framework Convention on Tobacco Control provides a case study of how transnational public health problems can be addressed by an international legal approach. Scientific evidence in public health and economics has provided the foundation for the elaboration of this evidence-based strategy. The present tobacco epidemic poses a range of transnational challenges that are best addressed through coordinated action. In this article, it is argued that the proposed Convention has the potential to be a global ''good'' for public health — i.e. it has the potential to yield important global public health benefits — and that it represents a test case for more active involvement of the public health community in international law-making.

Keywords: commerce; international cooperation; legislation, health; tobacco industry; treaties; smoking, epidemiology.

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Introduction

The health of populations in all parts of the world is increasingly being influenced by transnational economic, social, scientific, technological and cultural forces. Consequently, the domestic and international spheres of health policy are becoming more and more intertwined and inseparable (*1, 2*). As an example of how such transnational problems can be addressed by an international legal approach, this article presents a case study of the WHO Framework Convention on Tobacco Control, which was initiated recently to combat the globalized tobacco epidemic.

The planetary context of development has profound global implications for public health, and, concomitantly, the expansion and application of international health law. Although the protection and promotion of public health have traditionally been viewed as matters of national concern, the rapid and widespread influence of globalization calls for new frameworks of international collaboration to deal with the emerging global threats to health and to create opportunities for promoting health (*3*). Consequently, the codification and implementation of binding health norms is becoming increasingly important as international health interdependence accelerates and nations recognize the need for cooperation to solve essential problems (*4*). The health impacts of globalization, both positive and negative, have become a key policy issue leading to an expansion of conventional international law-making (*5*).

International health law now encompasses increasingly complex concerns, including aspects of human reproduction and human cloning, human organ transplantation, emerging infectious diseases, international food trade, control of the safety of pharmaceuticals, and control of addictive substances such as narcotics. As a result of the new global impacts, international health law is recognized as inextricably linked to other areas of international legal concern, such as international environmental law and the control of toxic pollutants, international labour law and occupational health and safety, arms control and the banning of weapons of mass destruction, nuclear safety and radiation protection, and fertility and population growth (*6*). Moreover, in the development of international legal instruments — for example, to address transboundary and global environmental problems — scientific evidence has been an important component of the treaty-making process.

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Despite the evolution of international law-making in health and related areas of international concern during the last few decades under the auspices of numerous organizations and agencies of the United Nations system, WHO has never — until recently — utilized its constitutional authority to promote the development of a binding international convention in any field of global public health. Thus, it was only in May 1999 that the Member States of WHO adopted a resolution that accelerated the process for negotiating and adopting the Organization's first treaty, the WHO Framework Convention on Tobacco Control.

Why is the development of international law important to public health at the present time? This article addresses this question in three ways.

- First, it is argued that the current globalization of public health problems provides a context in which the development of global norms and standards becomes increasingly necessary.
- Second, the experience of elaborating international agreements in other areas closely related to international health, particularly environmental matters, demonstrates how international agreements can make an impact and how scientific evidence has been employed to support the development of international law.
- Finally, the experience in negotiating the WHO Convention provides a case study of how transnational public health problems can be addressed by an international approach, and also how scientific evidence in both public health and economics provided a foundation for the development of binding global agreements.

International norms: what are the global public health benefits?

Globalization of public health

Globalization — the process of increasing economic, political and social interdependence, which takes place as capital, traded goods, persons, concepts, images, ideas and values diffuse across national boundaries — is occurring at ever increasing rates (*7*). The roots of globalization can be traced back to the industrial revolution and the laissez-faire economic policies of the late 19th century. However, the globalization of the late 20th century is assuming a magnitude — and taking on patterns — unprecedented in world history (*1*).

Globalization includes many interconnected risks and phenomena that affect the sustainability of health systems and the well-being of populations in rich and poor countries alike. Recently, Yach & Bettcher identified many of the health-related features of global change (*1*) and observed that the negative health repercussions associated with increasing global interdependence — for example, in international trade and communication and financial liberalization — cannot be overlooked. However, it should not be assumed that all the implications of globalization for public health are negative. Many transnational health threats could be turned into opportunities for improving our global public health futures.

For example, the globalization of modern information technologies carries the risk of advancing the worldwide trade and consumption of harmful commodities, such as tobacco. At the same time, however, if modern information technologies become accessible and affordable to developing countries, the potential benefits are extensive — including telemedicine, interactive health networks, communication services between health workers, and distance learning (*8*). As a further example, the globalization of advances in biomedical science raises the possibility of genetics-based discrimination by the public and private sectors in all countries with access to the new technology in genetics. However, advances in genetics can also lead to dramatic progress against diseases in both rich and poor countries, provided that these technologies become available and affordable worldwide (*9*).

In the context of the ongoing public health debate on globalization, this article addresses the particular relevance of the WHO Convention to the globalization of the tobacco epidemic.

Public benefits in a globalized world

The growing number of public health concerns that are bypassing or spilling over national boundaries has ushered in a new era of global public health policy. Although there is a long history of multilateral cooperation in some limited areas of public health policy, particularly infectious diseases (*10, 11*), public health has traditionally been viewed as being almost exclusively a national concern. However, with global integration has come a paradigm shift in which public health is now being recognized not only as a topic of global concern, but also as a global public "good" (*12, 13*).

At the national level the concept of public "goods" has long been an integral part of economic theory, with its roots in 18th-century scholarship. "Public goods are essentially defined by the existence of a provision problem; by their nature they cannot easily be provided by the "invisible hand" of the market and therefore require government to overcome the failures of the market in order to achieve efficient allocation of essential resources" (*14*). Depending upon the political structure of particular governments, "goods" conventionally falling within the public category include providing national defence and police services, administering justice and enforcing private property rights, organizing public transportation, protecting the environment, and promoting public health.

With ever expanding multilateral interdependence and integration, many policy questions that were once considered purely national issues or national public goods have now transcended national boundaries, as they cannot be addressed by unilateral

domestic action. Domestic policy goals, such as financial stability, human security and the preservation of culture, are more and more subject to international forces. Consequently, in recent years the international aspects of public goods have received much attention.

Inge et al. have developed a useful typology of global public goods: "At a minimum, a global public good would meet the following criteria: its benefits extend to more than one group of countries and do not discriminate against any population group or any set of generations, present or future" (*14*).

Global public goods can also be sorted as *intermediate* global public goods and *final* global public goods.

- "Intermediate global public goods, such as international regimes, contribute towards the provision of final global public goods" (*14*).
- "Final global public goods are outcomes rather than "goods" in the standard sense. They may be tangible (such as the environment, or the common heritage of mankind) or intangible (such as peace or financial stability)" (*14*).

Particularly noteworthy is the growing recognition that many issues directly related to public health are global public goods. Controlling the spread of emerging infectious diseases, expanding the access to benefits of biotechnology, enhancing food security, and preventing further environmental degradation are all global public health goods (*13–15*).

International legal agreements: global public benefits

Since there is no supra-national authority that can provide global public goods, the implications of globalization include the need for greater intersectoral action and transnational cooperation and partnerships. It is widely recognized that there is "broad justification for a more systematic and integrated approach to international cooperation" as "improving international cooperation will strengthen the capacity of national governments to achieve their national policy objectives" (*15*). A central component of enhanced multilateral cooperation in support of final global public goods is the expanded use of international instruments, including conventional international law.

In order to obtain national objectives for the protection and promotion of public health, governments must increasingly turn to international cooperation to achieve some control over the transboundary forces that affect their populations. As described below, many areas relevant to global public health show evidence for the expanded use of international law and international institutions — typically established under international agreements — as intermediate global public goods to promote or achieve a final global public health good.

International legal agreements — or treaties — are among the most important intermediate public health goods (*16*). International agreements provide a legal foundation for many other intermediate products with global public benefits, including research, surveillance, technical assistance programmes, and information clearing-houses. In addition, institutional mechanisms often established in international agreements — such as compulsory meetings of the parties, and monitoring or supervising compliance and the international infrastructure — contribute towards the provision of final global public goods (*14*).

The impact of international law and the role of science

The role of scientific evidence in international law-making

As part of a science-based discipline, public health experts and policy-makers are increasingly demanding that the rationale for a particular intervention should be based on evidence. We demonstrate in this section how these principles can apply also to international legal interventions. The development and implementation of recent environmental agreements are closely linked to the accumulation of scientific evidence, and to the scientific understanding of the environmental system. Evidence-based environmental treaties provide an important template for the elaboration of legal agreements, such as the WHO Convention, to be developed under the umbrella of the public health community.

The framework convention-protocol approach has been applied extensively in international environmental law. This approach allows for the addition of protocols and annexes to the basic framework as improved scientific understanding is reached (*17*) and/or as political consensus for concrete action develops (*16*). This approach to international law-making consists of at least two components:

- a framework convention, which typically establishes a general consensus about the relevant facts, broad international standards, and an institutional structure for global governance;
- protocols that supplement, clarify, amend, or qualify a framework convention and usually set forth more specific commitments or added institutional arrangements.

Risk assessment has been an important analytical tool in determining the magnitude of transboundary environmental risks. For example, the protocols to the Convention on Long Range Transboundary Air Pollution concerning sulfur emissions, nitrogen oxides, volatile compounds, and heavy metals and persistent pollutants were supported by scientific evidence. Moreover, the political decision to negotiate global norms to address depletion of the ozone layer was heavily influenced by an increasing body of scientific evidence that started to accumulate data in the late 1970s and early 1980s. The ozone depletion theory linked emissions of chlorofluorocarbons (CFCs) — through release of chlorine into the stratosphere — to a significant depletion of the ozone

layer. Later research linked depletion of the ozone layer to an increased incidence of skin cancer in light-skinned populations, an increased incidence of cataracts, and a weakening of the immune system (*18*). Likewise, in 1990, a Working Group established by the Intergovernmental Panel on Climate Change issued a report entitled the *Science of climate change*, which helped to push forward the negotiation process for the Framework Convention on Climate Change (*19*).

Do international legal agreements make a difference?

It is generally accepted in public health that, for an intervention to be useful, it must have a proven impact. The experience of some of the environmental agreements provides useful insights regarding the beneficial impacts of international legal instruments. When states agree to be legally bound by the obligations contained in an international agreement, a measure of the agreement's effectiveness is determined by the extent to which it causes the states to alter their behaviour in line with the national obligations contained in the treaty (*20*). International organizations have been able, in some cases, to serve as effective law-making platforms for nations in matters related to the environment and human health.

The global commitments to curb ozone depletion provide an example of a particularly effective international legal agreement. The scientific findings described above led in the mid-1980s to the negotiation and adoption of a legal instrument consisting of the Vienna Convention for the Protection of the Ozone Layer (a framework convention containing only general obligations) and the Montreal Ozone Protocol, which contains more specific commitments and institutional arrangements. As a result, in part of the codification and implementation of the Vienna Convention, Montreal Protocol and the London Amendments thereto, the global consumption of CFCs between 1986 and 1996 declined by more than 70%, from 1.1 million tonnes worldwide to 160 000 tonnes.

The agreement and effective collaboration by the international community to reduce CFC levels qualifies as an intermediate global public good, in that this international legal instrument is contributing towards the attainment of a final global public good, namely the attainment of an intact ozone shield (*14*). The principle of international environmental legal regimes as intermediate public goods provides a template for global social action by the public health community. This approach will be elaborated further in the next section.

Case study: the Framework Convention on Tobacco Control

In May 1999, the World Health Assembly — the governing body of the World Health Organization, comprising 191 Member States — adopted by consensus a resolution (WHA52.18), which paved the way for starting multilateral negotiations on the WHO Framework Convention on Tobacco Control and possible related protocol agreements (*21*). A record 50 countries took the floor to pledge financial and political support for the WHO Convention. The list included the five permanent members of the UN Security Council, major tobacco growers and exporters, as well as several developing and developed countries that face the brunt of the tobacco industry's marketing and promotion.

Annexed to this resolution is a detailed outline of expected activities for the development of the WHO Convention, which is divided into two stages.

- A technical Working Group, open to all Member States, meeting in two sessions in 1999 and 2000 (between the 52nd and 53rd World Health Assemblies), to prepare "proposed draft elements" of the WHO Convention.
- An Intergovernmental Negotiating Body, open to all Member States, to "draft and negotiate the proposed FCTC and possible related protocols."

In the annexed outline, the target date for the adoption of the WHO Convention and possible related protocols was set for May 2003, which gives the Intergovernmental Negotiating Body three years to complete its work (*22*).

The globalization of the tobacco epidemic

Current situation. Use of tobacco is one of the major public health disasters of the 20th century (*23*). There are over 1.25 billion smokers (250 million females, 1 billion males) in the world today, representing one-third of the world's population aged $\geqslant$ 15 years (*24*). Cigarette smoking is one of the largest causes of preventable death worldwide and the leading cause of premature death in industrialized countries. Currently, cigarette smoking and other forms of tobacco consumption kill four million people per year, with the majority of these deaths already occurring in developing nations. Moreover, the epidemic of tobacco addiction, disease and death is continuing to shift rapidly to the developing and transitional market countries (*25, 26*).

Today the majority of smokers live in developing countries (800 million); most are men (700 million) and 300 million are Chinese. At current levels of consumption, the tobacco epidemic is expected to kill up to 8.4 million people per year by 2020, with 70% of these deaths occurring in developing countries (*27*). Hence, if unchecked, within the next 30 years tobacco use will be the leading cause of premature death worldwide.

Smoking has been associated, inter alia, with an increased risk of not only several different cancers, including lung and bladder cancer, but also ischaemic heart disease, bronchitis and emphysema, and increased antenatal and perinatal mortality. The health effects of tobacco consumption have strong public links because forced or passive smoking

presents health risks to non-smokers and the financial costs of treating tobacco-related diseases are borne by tax payers in countries where health care is provided by the public sector. In industrialized countries alone, smoking-related health care accounts for 6–15% of all annual health care costs (*28*).

A distinctive feature of the globalization of the tobacco pandemic is the role of multinational corporations (*29*). Since the beginning of the 20th century, a few major corporations have controlled much of the world's cigarette market. Today the world market for tobacco is dominated by a handful of American, British and Japanese multinational conglomerates, which have a controlling presence not only in western countries but also throughout the developing world. China stands out as an exception, with its large production of tobacco products mainly used in the domestic market. As Asma et al. have observed, understanding the history and conduct of the tobacco industry is central to the development of guiding strategies for tobacco control (*23*).

A significant contributor to the increased risk of tobacco-related diseases worldwide is the globalization of the tobacco epidemic through the successful efforts of the tobacco industry to expand their global trade and to achieve market penetration in developing countries and transitional market economies (*30–32*). Major transnational tobacco companies targeted growing markets in Latin America in the 1960s, the newly industrializing economies of Asia (Japan, the Republic of Korea, China (Province of Taiwan), and Thailand) in the 1980s, and — in the 1990s and currently — have moved into Africa, China, and eastern Europe, and are increasingly targeting young persons and women (*33*).

International trade liberalization. The global reach of the transnational tobacco industry has been enhanced by the recent wave of international trade liberalization, particularly the Uruguay Round of trade negotiations, which included for the first time, the liberalization of unmanufactured tobacco (*30, 32*). The Uruguay Round, which was concluded in 1994, established the World Trade Organization (WTO) and brought about an overhaul of the international trade regime by the conclusion of a number of new multilateral agreements addressing contemporary trade issues, including tobacco. These new WTO multilateral agreements have facilitated the expansion of trade in tobacco products through significant reductions in tariff and non-tariff barriers to trade. Regional trade agreements and associations, such as the North American Free Trade Agreement, the European Union, the Association of South-East Asian Nations, the Common Market of East and Southern African, the Common Market of Western African States, and the Organization of American States, have acted in synergy with the global level by mandating further trade liberalization in goods and services, including tobacco, at the regional level. Furthermore, bilateral trade agreements, such as those negotiated in the 1980s by the US Trade Representative under Section 301 of the revised 1974 US Trade Act with China (Province of Taiwan), Japan, and the Republic of Korea, have also facilitated market penetration in developing countries (*34*).

Trade liberalization and market penetration have been linked to a greater risk of increased tobacco consumption, particularly in low- and middle-income countries. A recent study has empirically examined the relationship between cigarette consumption and global trade in tobacco products (*32*). Estimates from this study indicate that reduced trade barriers have had a large and significant impact on cigarette consumption in low-income countries and a small but significant impact in middle-income countries.

Other aspects. In addition to trade liberalization, the transnational tobacco industry has also taken advantage of direct forms of market penetration in cash-hungry governments of poor countries via direct foreign investment, by either licensing with a domestic monopoly in joint ventures, or other strategic partnering with domestic companies (*35*). However, the globalization of the tobacco pandemic is not limited to international trade and investment.

The epidemic is being spread and reinforced worldwide through a complex mix of factors, including trade liberalization, global marketing and communications, and direct foreign investment (*23, 28*). Processes and practices that transcend national boundaries are fueling numerous aspects of the tobacco epidemic. For example, an estimated 355 billion cigarettes (33% of the world market for exported cigarettes) are smuggled each year in order to avoid taxes (*36*). As one authority has noted, "cigarette smuggling is now so widespread and well organized that it poses a serious threat to both public health and government treasuries, which are losing thousands of millions of dollars in revenue" (*36*). As a further example, tobacco advertising and sponsorship contributes to the global spread of tobacco use through the worldwide media, such as cable and satellite television, the Internet, and sponsorship of worldwide sports and entertainment events. In the USA alone, the tobacco industry spent US$ 5.66 billion on advertising and promotion in 1997 (*37*), with approximately 90% of this being on product promotion. Although global advertising and promotion of tobacco products is substantial, there are currently no figures on the exact amount the tobacco industry spends worldwide.

As the vector of the tobacco epidemic, the tobacco industry is well aware of the characteristics of globalization and is attempting to manipulate globalization trends in its favour. Recently released documents of the multinational tobacco industry concretely indicate that the industry "plans, develops and operates its markets on a global scale" (*38*). For example, a careful review of tobacco industry documents has shown that the industry looks towards the creation of new "global brands" and a "global smoker" as one way of overcoming markets which have thus far resisted the tobacco industry's onslaught:

"[G]lobalisation has its limits. In India, for instance, around 80 per cent of the population uses traditional tobacco products such as bidis or chewing tobacco ... . For how long will these markets resist the attraction of global trends? In one or two generations, the sons and the grandsons of today's Indians may not want to smoke bidis or chew pan masala. Global brands are one way to accelerate this process" (*29*).

The public release of over 35 million pages of documents in 1998 from the internal files of the tobacco industry through the landmark lawsuit brought against the tobacco industry by the Attorney General of Minnesota and Blue Cross and Blue Shield of Minnesota clearly demonstrates the global threat which the industry poses for tobacco control efforts:

"The documents disclosed in the last few years — the words of the industry itself — are the best proof of its fraud regarding (i) what the industry knew — that smoking causes cancer, (ii) when the industry knew it — in the 1950s, and (iii) what the industry did about it — systematic denial and cover-up" (*39*).

The dramatic increase in tobacco consumption in the last couple of decades portends public health and economic tragedy for nations worldwide in the 21st century. Much of the potential calamity can be averted, however, through effective implementation of tobacco control strategies. In its recent report, *Curbing the epidemic: governments and the economics of tobacco control*, the World Bank concluded that tobacco control is highly cost-effective as part of a basic public health package in all countries (*28*).

Global tobacco control has significant characteristics for global public good. Traditionally, prevention or treatment of noncommunicable diseases was considered to be mostly a private good, since the risk factors associated with such diseases, including use of tobacco, are related to individual choices in lifestyle. However, globalization has blurred the traditional line between private and public in health and brought international tobacco control efforts within the domain of global public goods (*13*).

Since many, if not all, of the challenges of tobacco control are increasingly transcending national boundaries, stemming the growth of the tobacco pandemic requires global agreement and action. The globalization of the tobacco pandemic restricts the capacity of countries to unilaterally control tobacco within their sovereign borders (*40*). All transnational tobacco control issues — including trade, smuggling, advertising and sponsorship, prices and taxes, control of toxic substances, and tobacco package design and labelling require multilateral cooperation and effective action at the global level (*41*). If not attended to, these global aspects of tobacco control can overwhelm the best national tobacco control strategies.

An international evidence-based approach

The WHO Convention is being developed as a scientific, evidence-based approach to global tobacco control, which has the potential to significantly advance national and international efforts to curb the growth of the pandemic (*23*). The WHO Working Group, which is the intergovernmental technical body established to elaborate the scientific and policy foundation for the WHO Convention and possible related protocols, agreed at its first meeting in October 1999 that substantive tobacco control obligations in the Convention and related protocols should focus principally on empirically established demand reduction strategies (*42*). Hence, the Working Group emphasized that the WHO Convention and possible related protocols should promote global agreement and cooperation on the primary interventions on which there is overwhelming empirical support, including tobacco taxes and prices, advertising and promotion, mass media and counter-advertising, warning labels, clean indoor air policies, and treatment of tobacco dependence. Consistent with the World Bank's recommendations, the Working Group supported coordinated action against smuggling as the one key supply-side area for global agreement and harmonization of strategies.

While a number of studies have quantified the impact of tobacco price and tax increases on reducing tobacco consumption, establishing the precise impact of other demand reduction strategies has been more difficult. Overall, the demand reduction strategies emphasized by the Working Group are consistent with the recommendations of the World Bank. According to the World Bank, the potential combined impact of non-price tobacco control measures, including information for consumers, dissemination of scientific reports and research, warning labels, counter-advertising, comprehensive bans on advertising and promotion, and clean indoor air polices, would be to persuade 2–10% of consumers to quit smoking. Based on these assumptions, a package of non-price measures could reduce the number of smokers alive in 1995 by 23 million worldwide (*28*). The evidence base for strategies advanced by the Working Group are discussed in detail by Joossens elsewhere in this issue of the *Bulletin* (*41*).

At its second session in March 2000, the Working Group prepared a final report for the 53rd World Health Assembly. After considering this report, the World Health Assembly adopted Resolution WHA53.16, which formally set in motion the negotiation process, which is due to commence in October 2000 with the first session of the Intergovernmental Negotiating Body. Working from WHO Secretariat papers that analysed the potential elements of the WHO Convention, based largely on the examples of existing framework conventions and other treaties (*43, 44*), both sessions of the Working Group examined: (i) other potential national obligations under the WHO Convention, such as education, training and public awareness, cooperation in surveillance, cooperation in scientific research, and exchange of information; (ii) the institutions that might be established under the Convention, such as a conference of the parties and the Secretariat, a

financial mechanism, a subsidiary body for science, and a subsidiary body for implementation; (iii) implementation mechanisms, such as for national reporting and dispute settlements; (iv) procedures for formulating protocols, amendments, and annexes to the Convention and related protocols; and (v) the final clauses of the Convention.

Evidence from other treaty-making processes shows that the institutions and procedural mechanisms established by the WHO Convention can prompt timely consensus and action on cogent implementing protocols and, thus, contribute to the implementation of the Convention and the advancement of the global public good of international tobacco control (*40*). For example, environmental framework conventions and protocols are often designed to encourage state parties to adopt implementing protocols by mandating regular and institutionalized meetings of the parties. In the case of some framework conventions, the mandatory provisions for consultation "offer the prospect of a virtually continuous legislative enterprise"(*45*). Rapid implementation of the WHO Convention can also be encouraged by institutions and mechanisms that establish incentives for the parties, such as information, technology, training, technical advice and assistance.

Of course, the effective international law-making experiences achieved at times in the environmental areas may not accurately reflect WHO's potential to garner broad support for the development and implementation of a Framework Convention on Tobacco Control and related protocols. The extent to which international agreements are effective — and under what conditions — has been a continuing source of theoretical fascination and dispute among scholars of international relations and international law. Although it is beyond the scope of this article to detail the factors that may contribute to the effective adoption and implementation of the WHO Convention, it may be noted that tobacco control does share the characteristic of "scientific certainty" which has galvanized effective international action in some areas of environmental law (*40*). Like the hole in the ozone layer above Antarctica which led to the conclusion of the Montreal Ozone Protocol, the health and economic consequences of tobacco consumption are empirically established. In addition, the use of the framework convention protocol approach will allow countries to undertake added substantive and/or institutional commitments as global consensus for concrete measures on tobacco control develops.

Framework Convention on Tobacco Control: a global public "good"

As a rational, evidence-based approach, the WHO Convention holds the potential of dramatically advancing global cooperation for tobacco control and can thus be considered a potential intermediate public health good. The principles, norms and standards ultimately codified in the Convention can legally establish global priorities for national action and multilateral cooperation on tobacco control. The institutions eventually established by the Convention, including — potentially — a financial mechanism, technical advice and assistance programmes, a mechanism to monitor treaty compliance, and provisions for ongoing consultation of the parties, can help contribute to the adoption of effective global tobacco control measures. Overall, by providing an ongoing and institutionalized platform for multilateral consultations on tobacco control, the WHO Convention may be able to promote adoption and implementation of effective tobacco control strategies worldwide.

WHO has the constitutional responsibility and the unique opportunity to propel the development of a Framework Convention on Tobacco Control. Importantly, the sheer process of negotiating and seeking its adoption can also be considered a public good. WHO's efforts to achieve global public support for an international regulatory framework for tobacco control may stimulate national policy change and thus make a dramatic contribution to curtailing the spiraling pandemic well before global consensus on cogent tobacco norms is secured (*40*).

Conclusion

Although numerous existing international legal measures have direct or indirect implications for public health, international law-making is a largely uncharted area for the public health community. However, the development and negotiation of the WHO Convention will require us to move into this area. Like many international environmental measures, the Convention will be a binding agreement for states party to the agreement — based on scientific evidence — once the tobacco control treaty enters into force. In fact, it can well be argued that the scientific evidence base is much firmer for an international legal agreement on tobacco than, for example, in many areas of environmental law-making where "scientific uncertainty" has been a dominant issue.

Tobacco control is one of the most rational, evidence-based policies in health care. Moreover, the recent economic data released by the World Bank strengthens immeasurably this bedrock of scientific evidence. On these grounds, the World Bank recommends that "international organizations such as the United Nations agencies should review their existing programs and policies to ensure that tobacco control is given due prominence... and that they should address tobacco control issues that cross borders, including working with the WHO's proposed Framework Convention on Tobacco Control".

The technical disciplines involved in the negotiation of the Convention will span several different sectors — including, *inter alia*, finance, foreign affairs, trade, and agriculture — and will require a coordinated approach. In view of the

tenacity and wealth of the industry sector of the tobacco epidemic, the scientific evidence base supporting tobacco control efforts will need to be linked with international politics since the negotiation of a legally binding agreement is very much in the realm of politics. As John McKinlay has recently noted "the success of future public health activities — including preventive interventions — requires an awareness of the magnitude and tactics of the macroeconomic lessons working against us" (*46*). In this regard, recently disclosed industry documents provide, in the words of the industry itself, a rationale for a global regulatory framework. It is now up to the public health community to make a global legal framework an effective component of comprehensive tobacco control measures. As outlined in this article, the Framework Convention on Tobacco Control is potentially an important global public good. The success or failure of this approach provides a test case for the more active involvement of the public health community in international law-making. ■

Résumé

La convention-cadre pour la lutte antitabac : un atout pour la santé publique

Dans toutes les parties du monde, la santé des populations est de plus en plus influencée par des forces économiques, sociales, scientifiques, technologiques et culturelles transnationales. Les dimensions nationales et internationales des politiques de santé étant de plus en plus étroitement imbriquées, une approche juridique internationale peut permettre de résoudre certains problèmes. A titre d'exemple, le présent article examine la convention-cadre récemment élaborée par l'OMS pour lutter efficacement contre les méfaits du tabac au plan mondial.

Parce que le développement économique à grande échelle a de profondes répercussions sur la santé publique, il importe d'élaborer et de mettre en œuvre parallèlement une réglementation internationale rigoureuse en matière de santé. Bien que la protection et la promotion de la santé publique relèvent traditionnellement des compétences individuelles des nations, l'impact croissant de la mondialisation exige la mise en place de nouveaux cadres de collaboration internationaux. La codification et l'élaboration de normes juridiquement contraignantes deviennent donc de plus en plus importantes à mesure que l'interdépendance des pays en matière de santé s'accélère et qu'ils prennent conscience de l'utilité de la coopération pour résoudre des problèmes essentiels. Les conséquences de la mondialisation sur la santé, qu'elles soient positives ou négatives, constituent un enjeu majeur, qui a déjà donné lieu à un renforcement des instruments juridiques internationaux.

Ces derniers englobent aujourd'hui des questions de plus en plus complexes, y compris certains problèmes associés à la procréation et au clonage humains, aux transplantations d'organes, aux maladies infectieuses émergentes, au commerce international des denrées alimentaires, à la sécurité des services sanitaires et des produits pharmaceutiques, ou encore aux substances provoquant une dépendance, comme les stupéfiants. Du fait de la mondialisation, ils sont aussi intimement liés à d'autres instruments du droit international touchant, notamment, à l'environnement et à la lutte contre les polluants toxiques, à la sécurité et à l'hygiène du travail, au contrôle des armes et à l'interdiction des armes de destruction de masse, à la sécurité nucléaire et à la radioprotection, à la fécondité et à la croissance démographique. En outre, la recherche scientifique joue un rôle croissant dans l'élaboration des instruments juridiques internationaux lorsqu'il s'agit, par exemple, de s'attaquer aux problèmes environnementaux transfrontières.

Si, au cours des dernières décennies, de nombreuses organisations et agences du système des Nations Unies ont pris une part active au développement du droit international dans le domaine de la santé et dans d'autres secteurs connexes intéressant la communauté internationale, l'OMS est longtemps restée en marge de ces efforts, n'usant que récemment du droit que lui confère sa Constitution de promouvoir l'élaboration d'une convention juridiquement contraignante dans un domaine quelconque de la santé publique mondiale. C'est en mai 1999 seulement que les Etats Membres de l'Organisation ont adopté une résolution en vue d'accélérer le processus de négociation et d'adoption du premier traité promu par l'OMS – la convention-cadre pour la lutte antitabac.

Pourquoi le renforcement du droit international est-il aujourd'hui crucial pour la santé publique ?

- Premièrement, parce que la mondialisation des problèmes de santé publique rend indispensable l'élaboration de normes s'appliquant elles aussi à toute la communauté des nations.
- Deuxièmement, parce que l'expérience a fait la preuve de l'efficacité d'accords internationaux fondés sur les connaissances scientifiques dans d'autres domaines étroitement liés à la santé – notamment l'environnement.

Enfin, parce que l'expérience des négociations qui ont abouti à la convention-cadre de l'OMS pour la lutte antitabac a confirmé que les problèmes de santé publique transnationaux peuvent être résolus par une approche internationale, et que la recherche scientifique dans les domaines de la santé publique et de l'économie fournit une base solide pour la formulation d'accords.

Resumen

El Convenio Marco para la Lucha Antitabáquica: una baza mundial para la salud pública

En la salud de las poblaciones influyen de forma creciente en todo el mundo fuerzas transnacionales económicas, sociales, científicas, tecnológicas y culturales. Las esferas nacionales e internacionales de las políticas de salud están tornándose cada vez más imbricadas e inseparables. A modo de ejemplo de cómo pueden abordarse esos problemas transnacionales mediante medidas jurídicas de ámbito internacional, en este artículo se presenta un estudio práctico del Convenio Marco de la OMS para la Lucha Antitabáquica, iniciativa emprendida recientemente para combatir la epidemia mundial de tabaquismo.

Toda vez que el desarrollo económico en gran escala tiene profundas repercusiones mundiales en la salud pública, es necesario ampliar y aplicar paralelamente la legislación sanitaria internacional. Aunque la protección y la promoción de la salud pública han sido tradicionalmente asuntos abordados a nivel nacional, la influencia rápida y generalizada de la mundialización exige nuevos marcos de colaboración internacional para hacer frente a las amenazas mundiales que se ciernen sobre la salud y para crear oportunidades de promoción de la salud. En consecuencia, la codificación y la ejecución de normas sanitarias vinculantes resultan crecientemente necesarias a medida que se acelera la interdependencia internacional en materia de salud y que los países reconocen la necesidad de cooperar para resolver problemas esenciales. Los efectos sanitarios de la globalización, tanto positivos como negativos, se han convertido en un tema de política fundamental que conduce a la ampliación de la actividad legislativa internacional tradicional.

La legislación sanitaria internacional abarca hoy cuestiones cada vez más complejas, incluidos los aspectos de la reproducción humana y la clonación humana, el trasplante de órganos humanos, las enfermedades infecciosas emergentes, el comercio internacional de alimentos, el control de la seguridad de los servicios de salud y de los productos farmacéuticos, y la fiscalización de sustancias adictivas tales como los estupefacientes. Como resultado de la globalización, se admite también que la legislación sanitaria internacional está inextricablemente ligada a otros sectores relacionados con el derecho ambiental internacional y el control de los contaminantes tóxicos, la legislación laboral internacional y la salud y la seguridad ocupacionales, el control de los armamentos y la prohibición de las armas de destrucción masiva, la seguridad nuclear y la protección radiológica, y la fecundidad y el crecimiento demográfico. Además, en el desarrollo de instrumentos jurídicos internacionales, por ejemplo para hacer frente a problemas ambientales transfronterizos y mundiales, las pruebas científicas han sido un componente importante del procedimiento para la celebración de tratados.

En contraste con la evolución registrada por la actividad normativa internacional en el campo de salud y en otros sectores conexos de alcance internacional durante los últimos decenios bajo los auspicios de gran número de organizaciones y organismos del sistema de las Naciones Unidas, la OMS no ha utilizado nunca – hasta hace poco – su autoridad constitucional para promover el desarrollo de un convenio internacional de carácter vinculante en ningún sector de la salud pública mundial. Sólo en mayo de 1999 los Estados Miembros de la OMS adoptaron una resolución que ha acelerado el proceso iniciado para negociar y adoptar el primer tratado de la Organización, a saber, el Convenio Marco de la OMS para la Lucha Antitabáquica.

¿Por qué es tan importante en este momento para la salud pública el desarrollo del derecho internacional? El presente artículo se propone abordar esta pregunta en tres partes.

- Primero, se sostiene que la actual mundialización de los problemas de salud pública configura un panorama donde el desarrollo de normas y patrones mundiales resulta cada vez más necesario.
- Segundo, la experiencia adquirida durante la elaboración de acuerdos internacionales en otros sectores estrechamente relacionados con la salud internacional, en particular el del medio ambiente, demuestra que los acuerdos internacionales pueden influir en la realidad y que es posible usar pruebas científicas en apoyo del desarrollo del derecho internacional.

Por último, la experiencia de negociación del Convenio Marco de la OMS para la Lucha Antitabáquica proporciona un estudio práctico que ilustra la manera de abordar los problemas de salud pública transnacionales mediante una perspectiva internacional, así como la utilidad de los datos científicos sobre salud pública y economía como fundamento para el desarrollo de este acuerdo vinculante.

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