

Time to put implementation review back on the agenda

Fourth session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control 15-20 November 2010, Punta del Este, Uruguay

Recommendation

The fourth session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control should request the Convention Secretariat to prepare a comprehensive report on possible implementation review mechanisms and procedures for the Convention, drawing on relevant precedents from other international treaties, and submit that report to the Conference of the Parties for consideration at its fifth session.

Background

As the first treaty to be negotiated under the auspices of the World Health Organization, the WHO Framework Convention on Tobacco Control (FCTC) has been a groundbreaking step in global efforts to protect public health. Yet, while groundbreaking, the FCTC has in many respects charted a familiar course, building on the successes of treaties in other areas – in particular those developed in response to global environmental problems.

Like the environmental treaties on which it was modelled, the FCTC recognised that the legal instrument itself is just the beginning of the process of cooperative action to address a global problem. It created a Conference of the Parties (COP) (Article 23), a permanent Secretariat (Article 24), and a system of periodic reporting (Article 21) to oversee implementation of the range of regulatory measures required to combat the global tobacco epidemic. The COP's mandate is to 'keep under regular review the implementation of the Convention and take the decisions necessary to promote its effective implementation' – and towards this end, to undertake a range of specific activities, including considering Parties' reports on implementation and establishing 'such subsidiary bodies as are necessary to achieve the objective of the Convention'.

At its first three sessions, the COP's primary focus has been on key substantive issues for FCTC implementation, usually considered in its 'Committee A' – providing detailed guidance on a number of the Convention's core provisions through the development and adoption of guidelines for implementation, and initiating the elaboration of a protocol. At the fourth session of the COP (COP-4), with much of the substantive work completed or well underway, the time has come to place greater focus on the critical procedural issues usually considered in 'Committee B' – ensuring that the COP's workplan is properly funded, providing the means of support necessary to facilitate effective implementation, and better fulfilling the function of 'regular review' of implementation.

The need for an implementation review mechanism

Five years on from the FCTC's entry into force, many of its 171 Parties have recently submitted or will soon be due to submit their second report on progress in implementation. Parties' reports are published in a database on the website of the Convention Secretariat and given brief consideration by the Secretariat for its annual summary of global progress, but there is no opportunity for focused assessment of the detailed information they contain about successes and failures in implementation and difficulties or obstacles encountered. The Secretariat's global progress report for COP-4 (document FCTC/COP/4/14) indicates areas of concern: while some progress is evident, '[i]mplementation rates continue to vary substantially between different policy measures', some critical measures remain 'underutilised', and many reports 'refer to gaps between needs and the resources available for meeting obligations under the Convention'.

The COP's biennial sessions have tight, busy agendas, making it difficult to give detailed attention to the implementation problems Parties are encountering. To address this issue, the COPs – or Meetings of the Parties (MOPs) to the environmental treaties on which the FCTC system was modelled – have all established dedicated implementation review bodies: small, geographically representative committees that meet periodically to consider implementation difficulties or failures reported and to assist the COP in responding effectively.¹ These implementation review bodies are typically established within a few years of a treaty's entry into force.

A dedicated implementation review body reporting to the COP was part of the vision for the FCTC in early meetings to negotiate the Convention,² and is provided for within the COP's general power to establish subsidiary bodies under Article 23 (the negotiators decided to include this general power, as under many environmental treaties, rather than to limit the COP's discretion by explicitly requiring establishment of a particular kind of body at a particular time). Five years on from entry into force, COP-4 is the time to begin consideration of what kind of implementation review mechanism the FCTC needs to maximise its effectiveness on the ground.

The Framework Convention Alliance (FCA) recommends that COP-4 request the preparation of a comprehensive report on possible implementation review mechanisms and procedures to facilitate informed consideration of the establishment of an FCTC implementation review body by the fifth session of the COP (COP-5). The report should be prepared by the Convention Secretariat in consultation with other organisations possessing relevant expertise, and should draw on relevant precedents from other international treaties, outline and assess the range of options, and provide recommendations for the COP's consideration.

¹ These include, for example, the Implementation Committee of the Montreal Protocol on Substances that Deplete the Ozone Layer, the Implementation Committee of the Economic Commission for Europe Convention on Long-Range Transboundary Air Pollution, the Standing Committee on Implementation and Compliance of the Convention on the Conservation of Antarctic Marine Living Resources, the Mechanism for Promoting Implementation and Compliance of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Compliance Committee of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, and the Compliance Committee of the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

² See Working Group on the WHO Framework Convention on Tobacco Control: Treaties Make a Difference (Provisional agenda item 6, First Meeting of the Working Group on the WHO Framework Convention on Tobacco Control) UN Doc A/FCTC/WG1/4 (16 August 1999), Provisional texts of proposed draft elements for a WHO framework convention on tobacco control (Provisional agenda item 5, Second Meeting of the Working Group on the WHO Framework Convention on Tobacco Control) UN Doc A/FCTC/WG2/3 (29 February 2000) 18-19, WHO framework convention on tobacco control: Report of the second meeting of the working group, 27-29 March 2000, UN Doc A/FCTC/WG2/5 (26 April 2000) [73]; and Intergovernmental Negotiating Body on the WHO Framework Convention on Tobacco Control: Chair's text of a framework convention on tobacco control (Second session of the Intergovernmental Negotiating Body on the WHO Framework Convention on Tobacco Control) UN Doc A/FCTC/INB2/2 (9 January 2001) 12, WHO framework convention on tobacco control – Co-Chairs' working paper: Inventory of textual proposals made at the second session of the Intergovernmental Negotiating Body, merged with the Chair's Text –Working Group 3 (Agenda item 3, Third session of the Intergovernmental Negotiating Body on the WHO Framework Convention on Tobacco Control) UN Doc A/FCTC/INB3/2(c) (25 July 2001) 15, WHO framework convention on tobacco control – Co-Chairs' working papers: final revisions –Working Group 3 (Provisional agenda item 4, Fourth session of the Intergovernmental Negotiating Body on the WHO Framework Convention on Tobacco Control) UN Doc A/FCTC/INB4/2(b) (24 January 2002) 6-7.