Open letter to the delegates at FCTC COP-11
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Delegates to the 11th Conference of the Parties
Framework Convention on Tobacco Control
17-22 November 2025

Dear delegate

WHO FCTC 11th Conference of the Parties (COP-11) – briefing for delegates.

I am writing to enclose briefings and observations to support delegates participating in COP-11, for your consideration. I have been an advocate for tobacco harm reduction since 1997, and I was heavily involved in the origins of the FCTC as an NGO leader from 1999 to 2003 [LinkedIn]. I have no conflicts of interest regarding tobacco, nicotine, or pharmaceutical industries.

Overall summary

There are very few new, big ideas available to meet the objectives of the FCTC that will deliver results without significant unintended adverse consequences. The biggest and most practical idea by far is to *make nicotine use much safer*. This can be achieved by shifting usage from high-risk to low-risk nicotine products – from smoking to smoke-free nicotine use. Despite decades of tobacco control, there are still well over one billion nicotine users and around 7.5 million deaths per year, almost all arising from *smoking*. Nicotine use has been with us for 12,000 years, and like alcohol or caffeine, it is likely to remain popular. To achieve the FCTC objective to reduce "devastating health, social, environmental and economic consequences" of tobacco use, we must focus on reducing *smoking*. We now have the option to migrate nicotine use to much safer smoke-free nicotine products, an approach known as tobacco harm reduction.

Tobacco harm reduction works through consent rather than coercion and is driven by nicotine users making informed decisions to protect their health and well-being at their own expense. User consent makes the strategy ethically appealing, politically viable, and cost-effective. Yet rather than encouraging this transition, the WHO, the Secretariat, and most FCTC-accredited NGOs are trying to obstruct this shift through various forms of prohibition or misinformation. Prohibitions of any sort are unlikely to force people into abstinence, but more likely to lead to increased smoking, protect the worst elements of the tobacco industry, drive more illicit trade, and promote risky workarounds. For the COP and FCTC to work for public health, a new strategy and direction are urgently needed, but the COP agenda repeatedly avoids facing this inevitable reckoning. Without a rethink, there is a risk that the FCTC and COP meetings will do more harm than good. My briefings and observations below should be seen in this context.

Briefings on the COP proceedings

- COP-11: Commentary on the Annotated Agenda (PDF, 22 pages). This briefing provides comments on each agenda item, side-by-side with the text used in the annotated agenda for the COP, with live links to the FCTC documents cited.
- COP-11: Forward-looking measures - a guide. Brief comments on the 16 measures to be discussed under Agenda item 4.1.
- COP-11: Commentary on Agenda Item 4.5 (PDF, 16 pages). A side-by-side analysis of the Secretariat's paper (FCTC/COP/11/10) on tobacco harm reduction under Agenda item 4.5.
- COP-11: Expert Wall. Statements to the Parties from independent experts concerning the FCTC, WHO, and tobacco and nicotine policy.

General observations on COP-11

- **Sharpen focus on the FCTC objective**. The purpose of the FCTC, as expressed in its objective Article 3, is *to reduce harm* (the devastating health, social, environmental and economic consequences of tobacco use). The aim is to achieve this by generalising the uptake of evidence-based tobacco control measures, including harm reduction measures (as defined in Article 1.d). The one big forward-looking idea that would advance the FCTC objective—tobacco harm reduction—is mispresented as an industry marketing ploy and dismissed without meaningful discussion or analysis.
- **The COP agenda obstructs rather than advances progress towards the FCTC objective**. The COP is presented with a long list of punitive or prohibition-based "forward-looking measures" drawn up by a selected "expert group" without credible supporting evidence or experience (Agenda item 4.1): most would fail if tried or would never be agreed upon in the first place. This embrace of prohibition is combined with the Secretariat's contemptuous dismissal of the very idea of discussing tobacco harm reduction, based on an obviously flawed analysis (Agenda item 4.5). The other substantive agenda items (4.2 on liability, 4.3 on environment, 4.4 on product regulation and disclosure) offer nothing new and little that would make any material difference to achieving the FCTC objective.
- **The forward-looking measures are backwards-looking**. Under agenda item 4.1, Article 2.1 (an anti-preemption clause that permits Parties to go beyond the FCTC) has been misused to set out a new tobacco control agenda of 16 measures, most of which are either already within the scope of the FCTC or amount to various forms of prohibition and are unlikely to work in practice. The package relies on an out-of-date understanding of consumers, markets, and regulation and will fail (delegates should be mindful of Australia's experience). The Parties should not be pulled in this direction by an "expert group". FCTC reporting should cover obligations and activities that are within the scope of the FCTC, not beyond it.
- **Proposals on liability constitute special-interest pleading.** Under agenda item 4.2, there are proposals to make it easier to sue tobacco companies and for NGOs to function as prosecutors or complainants. But the papers do not explain why exceptions to long-standing civil and criminal law practice should be made for the special case of tobacco or why tobacco litigation justifies substantive changes to civil and criminal law practice. The tobacco industry deserves to face litigation if it has committed wrongful acts that have harmed people, but like everyone, it also deserves fair treatment under the law.
- **The environmental measures are presented with inadequate evidence.** Under agenda item 4.3, the listing of possible environmental measures provides a poor basis for Parties to act. Some of the measures have implications that go well beyond environmental impacts, and others would require integrating into broader waste management practice. The paper does not provide evidence of the effectiveness of the measures proposed or discuss likely unintended consequences, such as users of disposable vapes returning to smoking.
- **Product regulation is stuck in a bureaucratic quagmire.** Under agenda item 4.4, there is little that is new or interesting, and most of the discussion concerns the respective merits of expert groups (often heavily influenced by NGOs or activist academics) and Working Groups

(usually composed of representatives of the Parties). The latter is more democratic, more pragmatic, and more likely to secure consensus.

- **The Secretariat's dismissal of tobacco harm reduction is shocking.** Under agenda item 4.5, the Secretariat has abandoned all pretence of being a neutral facilitator of COP business and serving the Parties. Instead, the Secretariat has taken an activist stance and chosen to advance a conspiracy theory in which tobacco harm reduction is portrayed as a tobacco industry marketing tactic. Further, it has tried to deflect focus away from the health and other aims of the FCTC onto nicotine addiction, which it fails to define or understand. The supporting paper is the worst I have ever seen in this convention or any other.
- **The COP needs to improve its transparency and openness**. The system for accreditation of observers, the appointment of expert groups, and attitudes of the WHO and the Secretariat risk creating an insular bubble of groupthink, disconnected from the real-world challenges of reducing smoking and disease. In theory, some of this has been done to exclude the tobacco industry, but now it has reached the point that the Secretariat dismisses any dissenting views as tobacco industry interference. The narrow selection criteria for observers have enforced conformity with an outdated tobacco control policy model and eliminated diverse perspectives from legitimate stakeholders, such as consumers. The WHO FCTC has just 29 accredited observers. In contrast, the UNFCCC (climate change) has about 4,000, representing a wide range of viewpoints and interests. The high degree of viewpoint conformity in FCTC COP meetings has not helped delegates find pragmatic, viable measures to reduce smoking. The full COP meeting should be open to a broader range of observers, publicly streamed, and on the record; there is no justification for excluding the public from any sessions that selected NGOs can attend.
- **The COP needs a refreshed and affordable strategy.** The FCTC and Secretariat need a new strategy. The Global Strategy to Accelerate Tobacco Control (2019-2025) was conceived in 2016 and rolled over in 2024, extending it to 2030. But much has changed since 2016. Prohibitions have been tried and failed; there has been significant uptake of evolving reduced-risk products; new campaigns, such as WHO's 3 by 35 initiative, have emerged; and overseas development assistance has contracted. The "Global tobacco control funding gap" claims that $9.6 billion per year is needed to meet the FCTC objective —an 8-fold increase over the current spend of $1.2 billion. Such funding will *never* be forthcoming, and funds may even decline. However, much of the need for this expenditure (~80%) could be reduced or eliminated through (i) tobacco harm reduction, in which nicotine users pay for their own smoking cessation or diversion, and (ii) low-cost communications that provide authoritative, truthful information about risks.

I hope you find these briefings and observations interesting and valuable. May I wish you a productive week in Geneva and express my sincere hope that the COP will advance global public health. Please get in touch via clivedbates@gmail.com if I can be of further assistance.

Yours sincerely

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