

The Impact Of COP9 On Vapers

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SUMMER 2021



Introduction

The Property Rights Alliance congratulates Christopher Snowden (Institute of Economic Affairs, UK) on the white paper “The impact of COP9 on vapers.” This paper brings to light the contradictions between the mission to reduce tobacco consumption and the policy recommendations put forth by the World Health Organization’s (WHO) Conference of Parties (COP) within the Framework Convention on Tobacco Control (FCTC).

This international treaty claims to serve as a public health guideline but promotes an ideological agenda against successful quit-aids like e-cigarettes (ECs) and vaping as well as reduced harm products. The overall purpose of this white paper is to examine and illustrate the inherently ideological and flawed nature of the COP that hurts individuals seeking smoking cessation.

The author indicates the inconsistencies in the mission and policies outlined in the FCTC treaty. First, Article 1 (d) of the treaty explicitly endorses harm reduction via “tobacco control,” but the WHO and proposals to COP meetings recommend policies that disregard extensive scientific and academic agreement that ECs and reduced-risk nicotine products are significantly less harmful than combustible tobacco products.

Second, WHO’s COP meetings are based on ideology, not science given there is no public consultation and transparency.

Third, it should be questioned why non-tobacco products like ECs are within the FCTC, and even so, why successful quit-aids are more heavily regulated than combustible tobacco.

With the ninth Conference of Parties approaching in November of 2021, the author exposes critical irregularities and dialogues of politics in public health and its negative consequences to vapers.

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Executive summary

The Framework Convention on Tobacco Control (FCTC) is a World Health Organisation (WHO) treaty that has a Secretariat which holds a biennial Conference of the Parties (COP) to discuss tobacco control issues.

Despite the treaty's commitment to tobacco harm reduction, the WHO and FCTC secretariat have never embraced e-cigarettes but have instead called for excessive regulation from the outset. Although research has shown that vaping is more than 95 per cent safer than smoking and that e-cigarettes do not 'renormalise' or encourage tobacco use, the WHO's opposition has become entrenched. It actively encourages full prohibition or heavy regulation to deter vaping.

The WHO influences policy worldwide by putting out negative statements about vaping which misrepresent the scientific evidence. These statements are then cited by policymakers. The European Commission, for example, has quoted anti-vaping claims from the WHO while preparing the next Tobacco Products Directive. EU Directives, in turn, provide a blueprint for regulation in other countries.

The FCTC Secretariat and the COP meetings are not fit for purpose. In their relentless opposition to vaping and other reduced risk nicotine products, they have become a threat to global health. With no sign of movement from the WHO, the next COP9 meeting to be held in November 2021 represents a tangible risk to vapers and to public health.

Governments which recognise vaping's potential to save lives should make their case strongly at COP9. If the WHO continues to spread misinformation about e-cigarettes, governments should withdraw funding from the FCTC Secretariat.

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1. What the WHO and the FCTC think about vaping

The Framework Convention on Tobacco Control (FCTC) is the first and, to date, only international treaty of the World Health Organisation. Adopted in 2003 and signed by 168 countries, it commits governments to various anti-smoking policies, such as health warnings, advertising restrictions and smoking bans.

Every two years, the FCTC secretariat holds a Conference of the Parties (COP). These are international conferences in which representatives from UN member states meet to discuss tobacco control. The latest conference - COP9 - was supposed to be held in the Hague in November 2020 but was cancelled due to COVID-19. It was rearranged for 8-13 November 2021 in the same venue, but will now be held online.

COP meetings are notoriously secretive. Journalists and the public are technically allowed in as observers under strict conditions (e.g. they must have no conceivable connection to the tobacco industry), but are invariably thrown out on the first day (without a vote being held). In 2014, Drew Johnson of the *Washington Times* was forcibly ejected from the venue in Moscow after being told that "the media is banned". In 2018, the internet livestream was cut off early in proceedings.

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Although the FCTC treaty contains many supply-side measures and is largely prohibitionist, it also explicitly endorses harm reduction. Article 1(d) of the treaty says "'tobacco control' means a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke". Unfortunately, the WHO has never pursued harm reduction policies in relation to smoking and in recent years has increasingly worked to stamp out e-cigarettes and other

reduced risk nicotine products. This is a bone of contention at the COP meetings because there is no agreement between member states on how to regulate e-cigarettes and other reduced-risk nicotine products. While some countries have embraced them, others have banned them outright.

COPs involve a great deal of horse-trading and it can be difficult to get consensus on contentious issues. COP8, held in Geneva in 2018, resulted in a stalemate between the pro- and anti-vaping camps although this has not stopped the WHO putting out strong and often misleading anti-vaping messages to the public.

The WHO has been broadly opposed to e-cigarettes since they first became popular a decade ago. Before the COP4 meeting was held in Uruguay in 2010, the FCTC Secretariat put out a brief report calling for more evidence on e-cigarettes. At the time, there were reasonable concerns that many countries did not have any form of regulation in place for vaping products. With little evidence existing to guide policy-makers, the WHO stepped in to fill the void, calling on member states to prohibit vaping in public places and restrict the marketing of e-cigarette products (WHO 2010: 6).

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In 2016, the FCTC acknowledged that “it is very likely that ENDS/ENNDS are less toxic than cigarette smoke”² and that they could have significant harm reduction potential:

“If the great majority of tobacco smokers who are unable or unwilling to quit would switch without delay to using an alternative source of nicotine with lower health risks, and eventually stop using it, this would represent a significant contemporary public health achievement.”

2. Rather than using conventional terms such as ‘vaping’ and ‘e-cigarettes’, the FCTC tends to prefer the terms ‘electronic nicotine delivery systems’ (ENDS) ‘electronic non-nicotine delivery systems’ (ENNDS).

The document noted that it was “still a subject of debate” whether e-cigarettes could achieve this (WHO 2016a: 2-3) and that e-cigarettes would have to be at least three times safer than cigarettes for them to produce population-wide net health benefits. There was (and is) little doubt that e-cigarettes meet this threshold of risk reduction. Public Health England (McNeill et al. 2015) and the Royal College of Physicians (2016) had both stated that the risks of vaping are likely to be at least 95 per cent lower than the risks of smoking. The US National Academies of Science Engineering and Mathematics (2018: 1) concluded, after a thorough review of the evidence, that “e-cigarettes are likely to be far less harmful than combustible tobacco cigarettes”. After more than a decade on the market, with millions of regular users, no deaths have been associated with regulated e-cigarettes (some cases of acute lung disease in the USA in 2019 were blamed on e-cigarettes by some but were actually the result of black market THC oil being vaped).

Although the 2016 document acknowledged that e-cigarettes and cigarettes were substitutes, with higher taxes on the former leading to greater sales of the latter, the WHO did not discourage member states from banning them, and it encouraged those who had not banned their sale to ban or restrict e-cigarette advertising, tax e-cigarettes “at a level that makes the devices and e-liquids unaffordable to minors”, ban or restrict flavours “that appeal to minors”, and ban vaping indoors wherever smoking was banned (ibid.: 6-7).

When COP7 was held in New Delhi, India in November 2016, it led to the FCTC telling member states “to consider applying regulatory measures .. to prohibit or restrict the manufacture, importation, distribution, presentation, sale and use of ENDS/ENNDS” (WHO 2016b: 2). This has been the WHO’s position ever since: prohibition if possible, heavy regulation if not.

Despite mounting evidence of e-cigarettes’ effectiveness as smoking cessation aids (e.g. Hartmann-Boyce et al. 2020), growing evidence from the field of economics confirming that cigarettes and e-cigarettes are direct substitutes for one another (e.g. Pesko et al. 2020), and a conspicuous lack of evidence that vaping causes significant harm to health, the FCTC has continued to push a strident anti-vaping line. In January 2020, as COVID-19 spread around the globe, the WHO put out a series of bizarre tweets about vaping, falsely claiming that e-cigarette liquid burns skin and that secondhand vapour harms bystanders. One tweet even suggested that e-cigarettes could be “more dangerous than regular cigarettes”.

In December 2020, WHO Europe described e-cigarettes and other reduced-risk products as “the next frontier in the global tobacco epidemic” and said that “with rigorous implementation of the WHO FCTC, a path can be built towards a tobacco and nicotine-free future.”³

3. <https://www.euro.who.int/en/health-topics/disease-prevention/tobacco/news/news/2020/12/new-who-report-reveals-that-while-smoking-continues-to-decline-among-european-adolescents,-the-use-of-electronic-cigarettes-by-young-people-is-on-the-rise>

In the same month, the WHO published a brief report on heated tobacco products. The US Food and Drug Administration says that one of these products (IQOS) "significantly reduces the production of harmful and potentially harmful chemicals."⁴ The UK's Committee on Toxicity (2017) found that heated tobacco products emit between 50 to 90 per cent fewer potentially harmful compounds than cigarettes. The WHO, however, rejected their harm reduction potential and recommended that policy-makers "maintain focus on evidence-based measures to reduce tobacco use as outlined in the WHO Framework Convention on Tobacco Control and seek to avoid being distracted from these actions by the promotion of novel tobacco products such as heated tobacco products" (WHO 2020: 6). It called on member states to "apply the most restrictive tobacco control regulations to heated tobacco products" and further recommended that all refillable e-cigarette devices be banned (ibid.: 7).

In summary, the WHO and the FCTC have become implacable opponents of vaping and tobacco harm reduction. Despite an ever-expanding body of evidence confirming that e-cigarettes are much less hazardous than combustible tobacco (e.g. Stephens 2018) and are more effective than nicotine replacement therapy in helping smokers quit, combined with real world evidence showing smoking rates declining as vaping rates increase (Zheng et al. 2017), the WHO has doubled down on its initial reservations. It has lied by omission by focusing on potential risks while ignoring the demonstrable health benefits conferred on those who have switched from smoking to vaping. It has been guilty of spreading misinformation about tobacco harm reduction and it has to take some of the blame for public understanding of the relative risks between smoking and vaping going backwards in recent years.

4. <https://www.fda.gov/news-events/press-announcements/fda-authorizes-marketing-iqos-tobacco-heating-system-reduced-exposure-information>

2. What is the tangible impact of COP discussions and decisions on vapers?

As an international treaty that has been ratified by the majority of signatories, the FCTC clearly has some legislative power. But many of its provisions are loosely worded and some its stipulations are relatively mild by the standards of tobacco control in much of Europe. Many countries have ignored some of their supposed obligations under the treaty, such as implementing a total ban on tobacco advertising, without facing sanctions. In practice, the FCTC is largely aspirational. It tells member states what the WHO would like them to do, but there is little legal recourse available to the WHO to enforce the treaty in practice. This is even more true of the decisions and consensus statements made at the COP meetings which are not enshrined in the treaty itself.

The FCTC and its COP meetings are nevertheless highly influential, particularly in poorer nations that depend on WHO aid. One source of influence is the WHO's World No Tobacco Day Awards, several dozen of which are handed out on 31 May each year. These are given to academics and pressure groups, but they are mostly awarded to politicians, governments and governmental departments. For example, after announcing a ban on the sale of e-cigarettes in 2019, Hong Kong's Department of Health was honoured with a World No Tobacco Day Award.

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The UK's public health minister, Jane Ellison, won the WHO Director-General Special award in 2016 after legislating for plain packaging. After losing her seat in the 2017 general election, Ellison secured a job at the WHO as its Executive Director for External Relations and Governance.

The civil servant Andrew Black, who was the Department of Health's Tobacco Programme Manager during the campaign for plain packaging, also now works for the WHO in the Secretariat of the FCTC.

For politicians, World No Tobacco Day Awards are a low cost way of generating good publicity at home and abroad. This is particularly important for governments which are sometimes viewed negatively by the international community. Past winners include Saudi Arabia's Ministry of Health, President Ortega of Nicaragua, President Erdoğan of Turkey and President Berdimuhamedow of Turkmenistan. In 2017, the Health Secretary of the Philippines, Paulyn Ubial, was given a World No Tobacco Day Award while she was working on a nationwide smoking ban. When asked whether vaping would be included in the ban, Ubial said she was awaiting the advice and recommendations of the WHO. Vaping was subsequently banned in public places and the sale of heated tobacco was banned completely.

The FCTC's influence is not confined to low and middle income countries. In 2010, New Zealand started a decade of compounding tobacco tax hikes which the government justified on the basis of recommendations from the Framework Convention on Tobacco Control treaty, which New Zealand ratified in 2004 (Health Protection Agency 2013). By 2019, it had the highest tobacco taxes as a proportion of income in the OECD and consequently the most expensive cigarettes in the OECD. The WHO commends this programme of excise tax under its 'MPOWER' scorecard system and gave the architect of the tobacco excise regime its Western Pacific Region award for her work on tobacco control.

The FCTC, via the WHO, also influences public opinion directly through its statements and reports. For example, a WHO webpage titled 'E-cigarettes are harmful to health' appears high in the search engine listings when people look for information about the health consequences of vaping. The webpage says nothing positive about e-cigarettes, it does not mention the benefits to smokers who switch and it does not compare the health effects with those of smoking. Instead it asserts that "ENDS are undoubtedly harmful" and "should be strictly regulated".⁵

The WHO's framing of the issue inevitability filters down to health agencies and governments. Those looking for ammunition against tobacco harm reduction can argue from authority by quoting the WHO. Both the European Commission and the EU's Scientific Committee on Health, Environmental and Emerging Risks recently cited the WHO when assessing the evidence in preparation of the next Tobacco Products Directive. As the Commission puts it, the WHO "concluded that no firm evidence exists on the safety of e-cigarettes, but there is increasing evidence of harm" (European Commission 2021: 14). The Commission is also pushing for plain packaging for cigarettes which, it says, "is the golden standard promoted by the WHO and the FCTC" (ibid.: 8).

5. <https://www.who.int/news/item/05-02-2020-e-cigarettes-are-harmful-to-health>

The WHO's reputation has been tarnished in the last 18 months as a result of its handling of COVID-19, but it is still respected by many people who associate it with the successful campaign to eradicate smallpox in the twentieth century. If the WHO says that e-cigarettes are a dangerous product that threatens to derail decades of progress in the fight against smoking, many people will take it on trust. The COVID-19 pandemic has highlighted the political nature of the WHO and has shown that it is capable of making big mistakes on science and policy, such as insisting that SARS-CoV-2 is not airborne and that travel bans don't work, but it still benefits from a 'halo effect' thanks to its illustrious past and the important principles for which it purports to stand. Many countries do not have the resources to carry out the kind of evidence reviews conducted in the UK and the USA. Instead, they rely on agencies such as the WHO and the FCTC, little knowing that they have been captured by a small group of abstinence-only prohibitionists.

3. What is to be done?

The WHO is showing no signs of softening its position on e-cigarettes and tobacco harm reduction. As we were writing this paper, it put out a press release for World No Tobacco Day which claimed that the tobacco industry is trying to “hook children” on e-cigarettes by offering “15,000 attractive flavours”. It claimed that the “scientific evidence on e-cigarettes as cessation aids is inconclusive and there is a lack of clarity as to whether these products have any role to play in smoking cessation”. It even asserted that “[s]witching from conventional tobacco products to e-cigarettes is not quitting.”⁶

In an accompanying tweet, the WHO told its 9.3 million followers that: “E-cigarettes are not proven cessation aids. They generate toxic chemicals, which can cause harmful health effects such as cardiovascular disease & lung disorders.”⁷ This is highly misleading. Randomised controlled trials have been shown e-cigarettes to be more effective than nicotine replacement therapy in smoking cessation and there have been no confirmed cases of regulated e-cigarettes causing heart disease or lung disorders. The tobacco industry did not invent e-cigarettes, nor does it control the market for them (even if it had invented them, it would be a genetic fallacy to dismiss vaping on that basis). Proponents of tobacco harm reduction have always been willing - perhaps *too* willing - to accept that e-cigarettes are not entirely risk-free, but the WHO rarely discusses relative risk and instead focuses on small or hypothetical risks.

The WHO has clearly failed to endorse the “harm reduction strategies” that the FCTC treaty defines as part of tobacco control. The FCTC Secretariat and the COP meetings are not fit for purpose. In their relentless opposition to vaping and other reduced risk nicotine products, they have become a threat to global health.

How should vapers and enlightened public health advocates respond? There is a phrase in medical ethics that is relevant to this debate: “Nothing about me without me”. The FCTC conferences operate without the consent and participation of nicotine users. The public is excluded. Journalists are expelled. The lack of transparency is unacceptable for a UN conference funded by taxpayers.

6. <https://www.who.int/news-room/commentaries/detail/quit-tobacco-to-be-a-winner>

7. <https://twitter.com/WHO/status/1395029704705396750>

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Vapers have little chance of being allowed to attend COP9, let alone being permitted to speak at it. Their only hope is to contact their elected representatives and demand that pressure be put on the FCTC to take a more open and evidence-based approach. COP meetings fly under the media's radar and that is how the FCTC likes it. It thrives in darkness. Journalists should ask more questions about what goes on in the online backrooms of the COP9 this November. Sunlight is the best disinfectant.

E-cigarettes are not tobacco products and it is debatable whether they fall within the FCTC's remit, but if they are to be the focus of COP meetings, they should be embraced rather than vilified. Prohibition does not work and a “nicotine-free future” is wholly unrealistic. There is no ethical or economic justification for making this a political goal.

Governments differ on how they view tobacco harm reduction, but those which recognise its potential to lower smoking rates and save lives should make that case strongly at COP9. They should pick strong, articulate advocates as their delegates, not bureaucrats. If the WHO continues to spread misinformation about e-cigarettes and if COP9 is held in secret, they should withdraw their funding of the FCTC Secretariat. The FCTC Secretariat should be put on notice. COP9 is its last chance to mend its ways and operate as a transparent and evidence-based organisation. If it cannot be reformed, it should be disbanded.

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