



WHO FRAMEWORK CONVENTION  
ON TOBACCO CONTROL

S E C R E T A R I A T

**Compatibility of the United Nations’**  
*Guidelines on cooperation between the United Nations and the business sector*  
**and the**  
*Guiding principles on business and human rights*  
**with Article 5.3 of the WHO Framework Convention on Tobacco Control**

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## **Background**

This report presents an overview of the United Nations' *Guidelines on cooperation between the United Nations and the business sector* and of the *Guiding principles on business and human rights* (UNGP) for their compatibility with Article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC).

A document prepared in advance of the 7<sup>th</sup> Conference of the Parties (COP7) of the WHO FCTC highlighted tobacco industry strategies to interfere with the implementation of the FCTC through a range of approaches to establishing partnerships or associations with United Nations agencies, other international governmental organizations and international nongovernmental organizations (1). The report highlighted opportunities to utilize existing United Nations documents to support and strengthen Parties' implementation of Article 5.3.

Several United Nations agencies and programmes (2) rely on United Nations policies and guidelines when establishing their own guidance for engaging in partnership with the private sector. These programmes and agencies also rely on the guidance and framework provided by the United Nations Global Compact (UNGC). The September 2017 integrity review by the UNGC, with subsequent exclusion of the tobacco industry from participating in the UNGC (discussed below), offers yet another avenue of guidance for Parties to comply with Article 5.3.

This report will highlight the opportunities within the *Guidelines on cooperation between the United Nations and the business sector* and the UNGP to support Parties in establishing strong policies to protect their tobacco control programmes and policies from the commercial and other vested interests of the tobacco industry.

### **UNGC policy on tobacco industry membership**

The UNGC is an initiative to encourage corporations to adopt sustainable and socially responsible policies, such as protecting human rights and supporting the Sustainable Development Goals (SDGs).

The UNGC was criticized for allowing tobacco industry membership, and earlier policy efforts were not sufficient to stop the tobacco industry from using the UNGC to advance its efforts to improve its corporate image (1,3).

In September 2017, the UNGC announced that it would exclude certain industries from participation, "including the production and manufacture of tobacco products, and nuclear, chemical, or biological weapons" (4). It further stated that "Participating companies whose business involves manufacturing or producing tobacco products will be delisted effective 15 October 2017" (4). On its website, the UNGC explains that it excludes companies that "Derive revenue from the production and/or manufacture of tobacco" (5).

### **Guidelines on cooperation between the United Nations and the business sector**

United Nations General Assembly Resolution 68/234 (February 2014) (6) reiterated the importance of public-private partnerships, highlighting that these partnerships could contribute to

reaching the SDGs, and led to a revision of the 2009 *Guidelines on cooperation between the United Nations and the business sector*. The revision process was led by the UNGC and it was a “[r]ecognition by Member States of the important role that the business sector can play in support of the 2030 Agenda for Sustainable Development, including by advancing partnerships to implement the new Global Goals” (7). The resulting 2015 document is the *Guidelines on a principle-based approach to the cooperation between the United Nations and the business sector*, described below (7).

### **Guidelines on a principle-based approach to the cooperation between the United Nations and the business sector**

The *Guidelines on a principle-based approach to the cooperation between the United Nations and the business sector* (Guidelines) highlights that any cooperation between the United Nations and the private sector must be aligned with the UNGC and the UNGP (discussed below). Further, it states that for any such partnerships to be undertaken they must advance the aims of the United Nations. Specifically, parts of the Guidelines state:

The United Nations is interested in working with business sector entities that share its values, including internationally recognized principles concerning human rights, labour, the environment and anti-corruption....

The United Nations will not engage with business sector entities:

- Which contribute to or are otherwise complicit in human rights abuses, tolerate forced or compulsory labour or the use of child labour, are involved in the sale or manufacture of anti-personnel landmines or cluster bombs, or that otherwise do not meet relevant obligations or responsibilities required by the United Nations.
- That are engaged in any activities which are inconsistent with sanctions established by the United Nations Security Council or other similar measures....
- The United Nations should not partner with business sector entities that systematically fail to demonstrate commitment to meeting the principles of the United Nations Global Compact or the United Nations Guiding Principles on Business and Human Rights. However, the United Nations may consider collaboration specifically intended to address this failure of commitment through meaningful changes to business policies and practices.

United Nations entities may establish additional eligibility and exclusionary criteria for screening companies appropriate to their specific mission and advocacy role... (7).

The tobacco industry has a long history of claiming to be a defender of human rights and the environment. However, research has demonstrated that these tobacco industry efforts are attempts to improve its credibility and in multiple instances tobacco industry activities were in direct contrast with the principles-based approach suggested by the Guidelines. The change in exclusion criteria by the UNGC, discussed above, should offer additional guidance that the tobacco industry should not be included among those private business that are eligible to engage in partnerships with the United Nations.

## **Guiding principles on business and human rights**

The UNGP, endorsed by the United Nations Human Rights Council in 2011, are a set of guidelines “to prevent, address and remedy human rights abuses committed in business operations” (8). No exceptions are allowed in the application of the UNGP, as they are applicable to all “States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure” (8). The UNGP do not create new legal obligations, but encourage that human rights are taken into account in a purposeful manner. For example:

In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed... (8).

Additionally, the UNGP calls for policy coherence, stating that:

States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support (8).

A significant body of research identifies the tobacco industry’s infringement of human rights (9), including child labour in tobacco growing (10), poor work safety conditions (11) and predatory marketing practices (12, 13), among others (14). In May 2017, the Danish Institute for Human Rights ended its engagement with Philip Morris International, after carrying out a human rights assessment of the company, applying the UNGP. The Institute concluded that for “the tobacco industry, the UNGPs therefore require the cessation of the production and marketing of tobacco” (15).

COP7 approved a decision (FCTC/COP7(26)) (16) encouraging Parties to strengthen the links between human rights and tobacco control, noting that protection of human rights and promoting tobacco control are closely linked. The implementation of Article 5.3 is supported by the strict implementation of a human rights framework as integral to tobacco control.

## **Legally binding instrument on transnational corporations and other business enterprises with respect to human rights**

The guidelines previously discussed are not legally binding. However, in June 2014 the United Nations Human Rights Council adopted a resolution (17) initiating a process to elaborate a *Legally binding instrument on transnational corporations and other business enterprises with respect to human rights*. This instrument would reaffirm the UNGP and other such principles and frameworks. The third session of the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights took place in Geneva in October 2017 (18). The negotiations of this legally binding instrument offer the opportunity to enhance policy coherence within the United Nations, aligning the new instrument with Article 5.3, the UNGC and the UNGP. They also offer the opportunity to strengthen the language of the instrument to ensure that the protection of public policy against the commercial and other vested interests of the tobacco industry is included.

## Summary and observations

As this analysis suggests, both the *Guidelines on cooperation between the United Nations and the business sector* and the UNGP are, in principle, compatible with Article 5.3 of the WHO FCTC. Furthermore, these documents could be used to support Parties in their implementation of Article 5.3.

Nonetheless, opportunities exist to strengthen the links between these guidelines and Article 5.3. For example, the guidelines could be strengthened by specifically mentioning the exclusion of tobacco industry from the list of eligible entities that are allowed to partner with governments and United Nations agencies. The UNGC has already taken steps along these lines and the guidelines could be updated to reflect the UNGC. This would create a higher level of internal policy coherence within the United Nations system and would support individual governments in their efforts to protect public policy from tobacco industry interference. Member States could request an amendment to the guidelines to explicitly state that the United Nations will not engage with the tobacco industry, following the precedent set by several agencies in the United Nations system.

Furthermore, there is a need to strengthen engagement of the Secretariat of the WHO FCTC with government focal points for human rights and, as appropriate, with stakeholders engaged in human rights advocacy. Enough evidence exists of the incompatibility between the tobacco industry and human rights, and dissemination of this information and joint engagement with these stakeholders could further support implementation of Article 5.3.

In addition, ongoing monitoring of the tobacco industry and of how existing United Nations policies and guidelines – including policies deriving from Article 5.3 – are being implemented, is crucial to prevent the tobacco industry from circumventing existing policies. This monitoring needs to also take place at the national level, where the dissemination and adoption of policies adopted at United Nations levels and by UN agencies could sometimes be delayed by the interference of the tobacco industry. At the international level, the efforts of the Secretariat of the WHO FCTC and its Knowledge Hub for Article 5.3 should be augmented to ensure that Parties are aware of existing international resources and tools.

The Conference of the Parties, at its seventh session, took a decision inviting the Convention Secretariat to collaborate with existing United Nations mechanisms and processes working on issues of business and human rights in order to protect public health interests from the commercial and other vested interests of the tobacco industry.

Therefore, an opportunity exists to ensure that the WHO FCTC, and the lessons learned from its implementation, are explicitly addressed in the negotiations for the development of the *Legally binding instrument on transnational corporations and other business enterprises with respect to human rights*. Indeed, along these lines, the Secretariat of the WHO FCTC provides technical inputs to the process of negotiation of the treaty on transnational corporations, thus promoting the requirements of Article 5.3 of the Convention and the recommendations of the Article 5.3 Guidelines. A concerted effort should also be made to inform Parties participating in future meetings of the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, to take into account their commitments under Article 5.3.

The Secretariat of the WHO FCTC should continue its outreach efforts within the United Nations to promote policy coherence between United Nations policies and the FCTC, as a member of the United Nations Inter-Agency Task Force on the Prevention and Control of Noncommunicable Diseases, and through its interactions with United Nations entities.

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