

STATE RESPONSIBILITY FOR TOBACCO CONTROL: THE RIGHT TO HEALTH PERSPECTIVE

*Chuan-feng Wu**

ABSTRACT

Tobacco smoking, which has been proven to cause various illnesses (lung cancer, emphysema, cardiovascular disease) and early death, has been declared an emergency public health crisis by the World Health Organization (WHO). To fight this crisis, the Framework Convention on Tobacco Control [hereinafter FCTC], the first health-related treaty sponsored by the WHO, came into force in 2005 and addresses various aspects of tobacco control, from tobacco smuggling to tobacco advertising and the extent of the liability of tobacco companies. Although the FCTC demonstrates the idea that tobacco control is a major health issue requiring firmer state action than in the past, some of its key provisions are non-mandatory and fail to comprehensively protect individuals' right to health. To address these shortfalls, this article applies the framework of the right to health as a supplemental strategy to explore and examine the state's responsibility in tobacco control — including the state's responsibility to provide smoking cessation services, to combat tobacco smuggling, and to guarantee individuals access to health-related tobacco information, among

* Assistant Research Fellow, Institutum Iurisprudentiae (Preparatory Office), Academia Sinica, Taipei, Taiwan. J.S.D., University of California at Berkeley, School of Law, U.S.A. The preliminary draft of this article was presented for the “2008 International Conference on Illicit Trade in Tobacco Products” held at the Asian Center for WTO and International Health Law and Policy, College of Law, National Taiwan University, Taipei, Taiwan, August 1-2, 2008. The author can be reached at cfw@gate.sinica.edu.tw.

other issues. This article finds that applying human rights institutions to address tobacco-related human rights violations can help identify a state's failure to carry out effective tobacco control initiatives, strengthen the voice of public health, and concretize the scope of applicable rights under international laws. The right-to-health paradigm then can bring new perspectives to addressing the challenges the FCTC faces and can effectively complement global tobacco control efforts.

KEYWORDS: *right to health, state responsibility, tobacco control, FCTC*