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### Civil society and the negotiation of the Framework Convention on Tobacco Control

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## Civil society and the negotiation of the Framework Convention on Tobacco Control

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Tobacco control civil society organisations mobilised to influence countries during the negotiation of the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC) between 1999 and 2003. Tobacco control civil society organisations and coalitions around the world embraced the idea of an international tobacco control treaty and came together as the Framework Convention Alliance (FCA), becoming an important non-state actor within the international system of tobacco control. Archival documents and interviews demonstrate that the FCA successfully used strategies, including publication of a newsletter, shaming symbolism and media advocacy to influence policy positions of countries during the FCTC negotiation. The FCA became influential in the negotiation process, by mobilising tobacco control civil society organisations and resources with the help of the Internet, and framing the tobacco control discussion around global public health.

**Keywords:** Framework Convention on Tobacco Control (FCTC); Framework Convention Alliance (FCA); World Health Organisation (WHO); tobacco industry; transnational advocacy network; international affairs

### Introduction

The globalisation of the tobacco industry means that tobacco is no longer a problem of specific countries or regions (Taylor *et al.* 2000, Yach and Bettcher 2000, World Health Organisation (WHO) 2001, 2004). As a result, the WHO spearheaded the development of a global treaty on tobacco control, the Framework Convention on Tobacco Control (FCTC). The unanimous adoption of the FCTC by all 192 WHO member countries at the 56th World Health Assembly (WHA) in May 2003 represented the first time the WHO exercised its treaty making authority (WHO 2003). The FCTC became international law in February 2005, after 40 countries ratified it; as of September 2008, 160 parties had ratified it. The treaty contains provisions on sales bans to minors, advertising bans, tax increases, package labelling, smokefree environments, and finding alternatives to tobacco production (see Table 1).

Although governments negotiated and executed the FCTC, tobacco control civil society organisations played an important role in the FCTC negotiation (Collin *et al.* 2002, Farquharson 2003, White 2004, Mamudu 2005, Roemer *et al.* 2005). These

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Table 1. Key provisions of the FCTC (World Health Organisation 2003).

**Measures relating to the reduction of demand for tobacco**

Price and tax measure

Non-price measures

Protection from exposure to tobacco smoke

Regulation of the contents of tobacco products

Regulation of tobacco product disclosures

Packaging and labelling of tobacco products

Education, communication, training and public awareness

Tobacco advertising, promotion and sponsorship

Demand reduction measures concerning tobacco dependence and cessation

**Measures relating to the reduction of supply of tobacco**

Illicit trade in tobacco products

Sales to and by minors

Provision of support for economically viable alternatives

**Protection of the environment**

Protection of the environment and the health of persons

**Question related to liability**

Liability

**Scientific and technical cooperation and communication of information**

Research, surveillance and exchange of information

Reporting and exchange of information

Cooperation in scientific, technical and legal fields and provision of related expertise

organisations coalesced under an umbrella organisation, the Framework Convention Alliance (FCA), which worked to influence governments' positions through the publication of a daily newsletter during the negotiation to frame the discussion and shame countries whose positions were favourable to transnational tobacco companies (Jacob 2004, White 2004, Wilkenfeld 2005).

The FCA's involvement in the FCTC negotiation can be understood within political science's international relations framework for understanding non-state actors' involvement in policy making. Keck and Sikkink's (1998) transnational advocacy network framework identifies such a network as 'relevant actors working internationally on an issue who are bound together by shared values, a common discourse, and dense exchange of information and services'. Transnational advocacy networks emerge when domestic groups cannot resolve problems by appealing to state authorities, when political entrepreneurs believe that networking will aid their cause, and when opportunities can be created through international contacts. These networks influence agenda setting, changing discourse, institutional procedures, policy change and state behaviour. The FCA functioned precisely in this manner. The FCA's success as a non-state actor in the FCTC negotiation illustrates the importance of transnational advocacy networks for influencing the behaviour of states within the state-centric United Nations (UN) system.

**Methods**

This paper is a triangulation of archival documents and interviews. We searched WHO archives on the FCTC, between January 2004 and August 2007, for

information on the FCTC negotiation process and activities of non-state actors in that process. The FCA's printed *Alliance Bulletin* and its webpage ([www.fctc.org](http://www.fctc.org)) were examined to determine the objectives and activities of tobacco control civil society organisations throughout the FCTC negotiation. Between August 2005 and August 2007, the Legacy Tobacco Documents Library (<http://legacy.library.ucsf.edu>), the British American Tobacco (BAT) Document Archive (<http://bat.library.ucsf.edu>), and Tobacco Documents Online (<http://tobaccodocuments.org>), were searched for evidence of tobacco industry's activities during the FCTC negotiation.

To identify interviewees, lists of participants of the six Intergovernmental Negotiating Body (INB) sessions were obtained from WHO<sup>1</sup> and categorised into national delegates, intergovernmental organisations, tobacco control NGOs, business NGOs and individuals. We also compiled a list of those that made submissions during the FCTC public hearings. The interviewees included seven government delegates, 13 representatives of tobacco control civil society organisations, two representatives of business organisations, a pro-tobacco organisation, a tobacco control expert that participated in either one or a combination of national regional and global conferences and meetings on the FCTC, and one staff from the WHO. Given the diplomatic nature of the issue (treaty negotiation), we guaranteed interviewees anonymity. Because all efforts to interview representatives from the transnational tobacco companies on the FCTC failed, we used BAT, Imperial Tobacco Limited, Japan Tobacco International (JTI), Philip Morris R.J. Reynolds and Reemtsma Tobacco formal written submissions to the FCTC public hearings to determine their positions.<sup>2</sup> All interviews were conducted in accordance with a protocol approved by the Committees on Human Research of West Virginia University and the University of California, San Francisco.

### **The Framework Convention Alliance (FCA)**

The FCA is a heterogeneous alliance of civil society organisations and coalitions from around the world that worked jointly and separately to support the development of a strong FCTC. After the FCTC was adopted in May 2003, the FCA worked to ensure that the FCTC's provisions and related protocols were implemented. The FCA has offices in Geneva, Switzerland, and Washington, DC, the USA.

In recognition of the importance of civil society (INFACT 1999), WHO gave a grant to British-based Action on Smoking and Health (ASH) in 1999 to identify how to involve civil society in the FCTC negotiation. With the help of Internet, ASH mobilised tobacco control civil society organisations around the world into a loose network, which evolved into the FCA by 2000.

FCA membership is free and open to any organisation that endorses FCA's 'Vision and Mission' of promoting its role of coordinating international campaigns against tobacco, developing tobacco control capacity and carefully monitoring FCTC development (Framework Convention Alliance 2001a, Framework Convention Alliance 2003). Member organisations fund their own participation in the Alliance. The Alliance only raises funds to facilitate developing country civil society organisations' participation in the FCTC meetings and for specific Alliance projects not fundable directly by member organisations (Framework Convention Alliance

2001a). The number of FCA member organisations increased from 72, in October 2000, to 306 from 98 countries, in March 2008.

The Alliance formed a Steering Committee and Board of Directors from around the world to mobilise the disparate tobacco control civil society organisations around the world. This effort was facilitated by GLOBALink ([www.globalink.org](http://www.globalink.org)), a network created in the late 1980s, to facilitate communication among tobacco control advocates and researchers worldwide, which made it feasible to communicate in a timely manner, exchange information, understand needs, raise funds, and organise workshops.<sup>3</sup>

### The Framework Convention on Tobacco Control (FCTC) negotiation process

The WHA resolution, WHA48.11, in 1995, requested that the WHO Director General report to the 49th WHA in 1996 on the feasibility of an international instrument on tobacco control, and Resolution WHA49.17, in 1996,<sup>4</sup> requested that the Director General initiate a framework convention. Little progress occurred until Gro Harlem Brundtland was elected Director General in 1998. She created the WHO Tobacco Free Initiative (TFI) in July 1998 to focus global attention on tobacco control under a WHO Assistant Director General, Derek Yach.

In 1999, the 52nd WHA unanimously adopted resolution WHA52.18<sup>5</sup> to establish the FCTC Working Group and the INB to negotiate the treaty<sup>5,6</sup> (see Figure 1).

The Working Group prepared the draft elements (substantive and procedural) for the FCTC and technical background information for the INB, using recommendations from WHO technical consultation conferences in Kobe, Japan, New Delhi, India and Oslo, Norway.<sup>6,7</sup> After meetings in October 1999 and March 2000, the Working Group submitted a draft convention to the 53rd WHA in May 2000. The WHA resolution, WHA53.16, adopted the draft treaty to begin global discussion on the proposed FCTC provisions and active civil society involvement in the FCTC negotiation process (see Figure 1).<sup>8</sup>

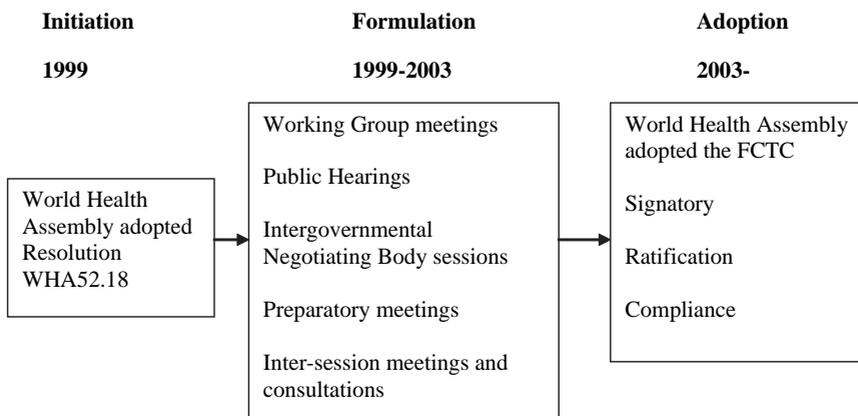


Figure 1. Phases of the FCTC negotiation.

***The intergovernmental negotiating body (INB) sessions***

The formal negotiation of the FCTC began with the work of the INB in October 2000. Between 2000 and 2003, the INB held six sessions, INB1 to INB6. One contentious issue at INB1 was whether civil society organisations would be allowed to participate in the INB sessions.<sup>9,10</sup> In spite of the 1996 UN Economic and Social Council resolution (United Nations Economic and Social Council 1996) calling for broad participation of civil society organisations in decision-making processes of UN agencies, the INB1 resorted to WHO rules, which only allowed formal participation by NGOs with formal relations with WHO (WHO 2000). As the FCA did not have formal relations with WHO, it could only be an observer. Formal participation was limited to FCA members that had official relations with WHO.

***The public hearings and conferences***

After WHA53.16 was adopted, WHO solicited public comments (Shibuya *et al.* 2003, Mamudu 2005). In October 2000, TFI organised two days of hearings in Geneva to give civil society organisations and tobacco companies the opportunity to make submissions about the proposed FCTC text.<sup>2</sup> Over 500 written submissions were received, and representatives of 144 organisations testified; 20% of the submissions were from the tobacco industry and affiliated groups.<sup>11,12</sup>

The hearings brought diverse tobacco control civil society organisations together in one venue, which created an opportunity to galvanise tobacco control civil society organisations' interest in the FCTC as well as to increase public support, and contributed to the FCA's emergence. Surprisingly, FCA members and national delegates interviewed did not think that the FCTC hearings influenced the INB.

Civil society organisations and the tobacco industry had an additional opportunity for public comment on the FCTC at national meetings. In the USA, for example, meetings on the FCTC were held in Nashville, Tennessee, San Francisco, California and Washington, DC. These national meetings helped countries formulate positions on the FCTC and made a global issue – the development of the FCTC – a domestic one.

Integral aspects of the formal FCTC negotiation were WHO regional and sub-regional FCTC preparatory meetings and inter-session consultations in which countries could formulate positions on the FCTC.<sup>6,13</sup> For example, the WHO African region (AFRO) issued declarations supporting the FCTC after preparatory and consultation meetings in Lome, Togo (WHO African Region 1999), Nairobi, Kenya (WHO African Region 2000), Johannesburg, South Africa (WHO African Region 2001a) and Algiers, Algeria (WHO African Region 2001b), which resulted in the creation of the first regional voting block in the negotiation (Jacob 2004, Wilkenfeld 2005). The AFRO countries cited public health concerns in these regional declarations as a reason to strongly support the FCTC.

Other regions (Jacob 2004, Wilkenfeld 2005) subsequently emulated this block approach. According to interviewees who participated in the INB sessions, the block approach helped WHO regions and sub-regions formulate common positions on proposed FCTC provisions. Consistent with interviewees that addressed the block issue, an FCA interviewee from North America noted that the block approach increased the influence of smaller countries, particularly the Pacific Islands and

English-speaking Caribbean countries, in the FCTC negotiation.<sup>14</sup> The regional and sub-regional preparatory and consultation meetings made the development of the FCTC a regional and sub-regional issue.

### **The FCA during the FCTC negotiation**

Because the FCA was not a formal participant in the FCTC negotiation, it adopted strategies and tactics from other treaty making processes to influence the national delegates.

#### ***The alliance bulletin***

Publication of the daily *Alliance Bulletin* (Framework Convention Alliance 2000–2003) served educational and informational purposes for the delegates as an integral part of the FCA's media advocacy to support pro-treaty delegations and pressure pro-tobacco delegations. Participants in the INB sessions agreed that the *Alliance Bulletin* was an important source of information.

A top FCA official said:

the *Alliance Bulletin* was very effective. It was really read by the delegates on daily basis. We tried to have articles in three languages – French, Spanish and English. We wanted to do more. But still, that was very, very effective. The delegates really read it on daily basis and responded to the topics.<sup>3</sup>

Another FCA interviewee from North America said:

the FCTC process made it very difficult (for delegates) to be on top of everything that was going on, especially if you were from a country with a small delegation. It became difficult to be even represented in all of the simultaneous sessions. So, communication became very important just for understanding what was going on, and there were very few mechanisms for that. There wasn't any newspaper reporting what was happening. So, the *Alliance Bulletin* came to take on that role. It was like the daily newspaper reporting that was going on in this (FCTC) process. So the Alliance would write this *Bulletin*, get it printed out overnight, and hand it out each morning as the delegates arrive at the Convention Centre. And there was eagerness on the part of the delegates, also over time, to go and get the *Bulletin* to find out what was happening and so it became a sort after communication tool and what the Alliance used to report on events, to hold people accountable if they were obstructing progress, to award those who were promoting progress and to educate, on the background basis, the issues involved.<sup>15</sup>

A government delegate from North America also said:

We read them (the *Alliance Bulletin*). ... Some times they will basically praise or condemn different countries for the stand they have taken a day before in the negotiation they (FCA) were observing. And I think that kind of feedback was always useful for countries because it helped create a sense of awareness in the negotiation that something very important was at stake in the negotiation. I think we followed that closely.<sup>16</sup>

The *Alliance Bulletin* became the main source of news and information for many delegates, especially in small delegations.

The four years negotiation (1999–2003) gave the FCA time to provide scientific information on the dangers of tobacco and secondhand smoke and the effectiveness of tobacco control programmes to national delegates who did not understand these

issues and the scope of global tobacco control. This dissemination of scientific knowledge helped frame discussions during the FCTC negotiation around global tobacco control. Eventually, delegates from developing countries, in particular, became conversant with the adverse health and economic effects of tobacco use, which then became the justification for global collective action. As a consequence, AFRO became more sympathetic to the FCA's position. The tactic was so successful that an American government delegate published an article, *Without Reservation* (in 2004), in which he complained of the dominance of the public health groups in the FCTC negotiation (Jacob 2004). All the delegates interviewed for this study cited the overwhelming public health concerns of the use and spread of tobacco as the prime reason for adopting the FCTC.

Consistent with the view of all interviewees, an FCA interviewee from North America said:

The three years of negotiation served as a sort of global university for the 500 or so national delegates. And over time, by virtue of things said in the formal negotiating sessions, the presentation statement of different participants and educational process that surrounded the negotiation. By virtue of those things, it felt to me that though overtime, you could feel the level of knowledge and understanding of these issues increased among the body of delegates. The effect of that – as it's true in tobacco control in general, in my opinion – was that the more you learn about the science and evidence, the more willing you become to support stronger policies because the science supports stronger policies. So, in all the six negotiating sessions, it felt to me the centre of gravity of the debate moved strongly towards stronger interventions. And I think that was in large part the function of the fact that the general body of 500 delegates had much deeper understanding of tobacco control by INB6 than they did in INB1. So, the FCA was one of the most important factors driving in support of stronger treaty.<sup>15</sup>

### *Framing the debate*

For many years, the tobacco industry and its allies have argued that tobacco supports economic development because of the revenue and employment it generates (World Health Organisation Committee of Experts on Tobacco Industry Documents 2000). In May 1999, the World Bank published *Curbing the Epidemic* (Jha and Chaloupka 1999), which concluded that tobacco control is not only good for health but also for the economy. *Curbing the Epidemic* influenced many countries during the FCTC negotiation, especially developing countries, where World Bank wields enormous influence.

The tobacco industry responded to the FCTC and *Curbing the Epidemic* with its traditional economic arguments on the economic benefits of tobacco<sup>17–19</sup> (World Health Organisation Committee of Experts on Tobacco Industry Documents 2000). The FCA used the *Alliance Bulletin*, press conferences, and briefing of delegates, to define tobacco control as primarily a global public health issue (White 2004, Wilkenfeld 2005). The FCA argued in the second issue of the *Bulletin*, published during INB1 in October 2000, that 'the protection and promotion of public health must be the guiding principle for all decisions and actions of the negotiating parties (Framework Convention Alliance 2001b)'. Just as the tobacco industry had feared, *Curbing the Epidemic* was the most important document the FCA used to frame the debate during the negotiation.

### *Tobacco control as a global issue*

Tobacco companies attempted to divide developed and developing countries by arguing that tobacco control was an issue for only affluent countries, a 'First World agenda'.<sup>20</sup> Internal tobacco industry documents illuminate the companies' intention to create a 'North-South' rift during the FCTC negotiation.<sup>21</sup> Martin Broughton, BAT's Chairman of the Board, said at an April 1999 BAT General Meeting, 'The World Health Organisation is seeking to regulate tobacco under its "Tobacco-Free Initiative" through an international FCTC. The convention is seeking to cover a broad range of areas and is, clearly, a western world dominated agenda'.<sup>22</sup> This claim was reiterated in a March 2000 BAT press release about the FCTC.<sup>23</sup>

In contrast, the *Alliance Bulletin* (Framework Convention Alliance 2000–2003) argued that global tobacco control was not a developed – developing world issue. The FCA worked to convince developing countries to treat tobacco control as a global issue, not just one for only affluent countries. To explain why tobacco control is a global issue, the *Alliance Bulletin* used trans-boundary issues, such as the tobacco companies targeting of developing countries' markets, smuggling and cross-border advertising. An FCA interviewee from Africa pointed out that the overwhelming support of African delegates resulted from information and lobbying from tobacco control NGOs, which helped delegates from developing countries realise that tobacco control was a worldwide issue relevant to developing countries.<sup>24</sup> Another FCA interviewee from Africa said:

We do not need to reinvent the wheels. Tobacco is not an African phenomenon. It was moved to this part of the world. So, if there are tools working elsewhere we can import and use them in our own countries. This is because the corporations are not designing any new strategies. So, if there are policies working in Norway, we can import them and they will work.<sup>25</sup>

By weakening the tobacco companies' 'First World Agenda' argument, the FCA kept the negotiation centred on global health concerns.

### *Shaming*

The FCA used shaming to influence country delegates and blunt the tobacco companies and their allies' influence. From the onset of the INB negotiation sessions in October 2000, the idea emerged among FCA members to reward countries for supporting a strong FCTC and shame those who worked against it. The first issue of the *Alliance Bulletin* announced two awards, the Orchid Award and Dirty Ashtray Award (Framework Convention Alliance 2000–2003). The Orchid Award recognised leadership in the negotiation for a strong FCTC, and the Dirty Ashtray Award highlighted behaviour undermining it (see Table 2) (White 2004, Wilkenfeld 2005). In addition, the Network Accountability for Tobacco Transnationals, a US-based tobacco control coalition made up of over 75 groups from over 50 countries, and an FCA member, gave the 'Marlboro Man Award', to expose and challenge countries for espousing treaty positions that benefited the tobacco industry (White 2004).

During the INB6, the *Alliance Bulletin* (Framework Convention Alliance 2000–2003) reported that the awards, which appeared on the *Bulletin's* last page, made the page popular among the delegates because who had won what became a critical question at the beginning of everyday's negotiation. A Malaysian member of the

Table 2. Recipients of FCA awards (*Alliance Bulletin*, 1999–2003, Issues 1–45) (Framework Convention Alliance 2000–2003).

INB (dates)	Orchid award	Dirty ashtray award
INB1 16–21 October, 2000	Canada, Uganda, Kenya and Thomas Zeltner	Tobacco Industry and Marketing Board of Zimbabwe, and CIGG Lobby Vending Machine
INB2 30 April–5 May, 2001	Brazil, Hungary, South Africa and Russia (pre-INB2), WHO African region (AFRO), WHO Southeast Asian region (SEARO), countries in support of total ban on tobacco advertising Canada and India Delegation	Nottingham University (pre-INB2), British American Tobacco (2*), Philip Morris, Japan Tobacco, countries determined to exclude NGOs from working groups, the United States (US), countries that did not support total ban on tobacco advertising and China
INB3 22–28 November, 2001	President Arap Moi of Kenya, Kenya Medical Association, Kenya Dental Practitioners Association, Kenya Times newspaper, and local and international NGOs, Ireland, Palau and India	Philip Morris, the USA, tobacco companies, Germany, International Tobacco Growers' Association and Japanese Government
INB4 18–23 March, 2002	David Byrne (EU Commissioner), the Espresso guy at CIGG, Pacific and Caribbean countries, Palau, Thailand, India and AFRO	Zigarettenrepublik Deutschland, speakers of Working Group 1 of the CCLAT, Australia, Canada, the UK, Pakistan and Japan
INB5 October 14–25, 2002	Malaysia, Gro Harlem Brundtland (WHO Director General), Ireland, SEARO, AFRO, European Forum of Medical Association, Commonwealth and World Medical Association, the Pacific Islands, English-speaking Caribbean nations, and Maldives	Japan Tobacco (3*), Singapore, Germany, the USA, Pakistan, organizations and countries that sought consensus on issues where there should be no compromise, countries that seek to exclude civil society groups from the negotiation, WHO European region (EURO)
INB6 18–27 February, 2003	AFRO (2*), SEARO (2*), Pacific Islands (2*), Iceland, China, Saudi Arabia, Baltic States, WHO Eastern Mediterranean region (EMRO), English-speaking Caribbean states and India	The revised Chair's Text (pre INB6), Argentina, the USA (2*), China (2*), Russia, United Nations and WHO, Cuba, Greek Presidency of EU, Germany and Lifetime Achievement Award for the USA

\*The number of awards received in an INB session.

FCA Steering Committee indicated that some government officials took the awards seriously enough to complain to the FCA and even to raise them during the plenary negotiating session (White 2004). A New Zealand delegate reported that some countries initially dismissed the awards, but later became more cognisant of them when some of the delegates used the awards to criticise others.<sup>26</sup>

### ***Symbolism***

The FCA used symbols to convey tobacco control as a global public health issue. The Death Clock, a large digital counter that displayed the number of worldwide deaths from tobacco-induced diseases since the beginning of the FCTC negotiation, was located at the plenary session entrance. The clock, which reached 13, 461, 552 when the negotiation ended in February 2003 made the delegates aware of the damage tobacco use causes worldwide and the cost of inaction. The clock also infused a sense of urgency to the negotiation. An US delegate pointed out that, even though some of the delegates were already aware of the statistics concerning worldwide tobacco-related deaths, the Death Clock was a constant reminder of the gravity of the problem.<sup>27</sup> On 22 October 1999, the Director of Philip Morris Worldwide Regulatory Affairs emailed a *Los Angeles Times* article about the Death Clock to other Philip Morris officials, a sign that the industry was concerned about its impact.<sup>28</sup>

The FCA used media advocacy in home countries to influence delegates. For example, protest letters were sent to US President George W. Bush after information leaked that in February 2003 the US Embassy in Riyadh had sent a letter to the Saudi Arabian Ministry of Foreign Affairs arguing that the FCTC contradicted trade agreements and encouraging trade and agricultural ministries to participate in developing their country's position in INB6 (Framework Convention Alliance 2000–2003, NewsReleaseWire.com 2003). The letter echoed the industry's strategy of involving these ministries in delegations to weaken the voice of health ministries.<sup>20,29</sup> The FCA helped focus international attention on such efforts.

### ***Direct lobbying***

The FCA directly lobbied the delegates through briefings, providing expertise for delegates, particularly those from developing countries, through submission of amendments to texts, face-to-face meeting in the corridors, and distribution of position papers. FCA member organisations, such as ASH-Australia, sponsored government delegates from poor countries in the WHO Western Pacific Region to travel to Geneva in order to participate in the FCTC negotiation, and helped some countries from the region formulate positions on the FCTC.<sup>30</sup> A delegate from North America also pointed out that they consistently consulted NGOs from their country (also members of the FCA) throughout the negotiation in Geneva.<sup>16</sup>

The direct interactions with the delegates during the negotiation served informative, educational, and advocacy purposes for the FCA because of the involvement of experts on various issues under negotiation, such as trade, litigation, smuggling, and secondhand tobacco smoke. Echoing the feelings of all the interviewees, a New Zealand delegate indicated that the NGOs were very influential,

particularly with respect to developing countries where the governments themselves are not experts in the field of tobacco control.<sup>26</sup>

### **Framework Convention Alliances (FCA) strategies for the ‘big four’**

The ‘big four’ – China, Japan, Germany and the USA – were the leading opponents of key FCTC provisions to minimise its effectiveness and practical impact on the tobacco industry efforts to promote tobacco use. All have entrenched a strong domestic tobacco interests.

#### ***China***

China has the largest state-owned tobacco monopoly (China National Tobacco Corporation) in the world, which claims to be crucial to China’s economy because of the revenue and employment it generates. China also produces a third of the world’s tobacco and cigarettes, and is home to a third of the world’s smokers (World Health Organisation-Tobacco Free Initiative 2000, Toy 2006). Members of China’s tobacco monopoly were on its delegations to the FCTC negotiation.

FCA activities toward the ‘big four’, as reported in the *Alliance Bulletin* and the interviews, indicates that China was the least vigorous opponent to key provisions of the FCTC among the big four. Indeed, China was the only recipient of an FCA Orchid Award, when China supported an FCTC provision that would have given public health precedence over trade (see Table 2). China also supported the provision on liability of the tobacco companies, to allow countries to sue tobacco companies in accordance with their domestic laws (Daynard 2001).

Despite these positive actions, the FCA criticised China for preferring a more generic FCTC, calling for deletion of pictorial warning labels on tobacco packages, from the Chair’s officially proposed text during INB3, and joining the USA against allowing NGOs access to informal sessions during INB6. Opposition from China and the USA to NGO access to the informal sessions was inconsistent with the rule of NGO participation in the INB meetings, which stipulated that ‘nongovernmental organisations in official relations with WHO should have access, as observers to the plenary and working groups that functioned as committees of the whole (Framework Convention Alliance 2000–2003, WHO 2000)’. These activities won China three Dirty Ashtray Awards (see Table 2). Members of the Chinese delegation were upset about receiving Dirty Ashtray Awards, suggesting that the FCA activities had some impact on them.<sup>31</sup>

#### ***Japan***

Japan is the home of JTI. In 1999, Japan Tobacco acquired the international operations of the US-based R.J. Reynolds Tobacco to become JTI, the third largest transnational tobacco company in the world (Mackay *et al.* 2006). The largest shareholder of JTI is the Japanese government. As a result, Japanese government and JTI share similar pro-tobacco control sentiments (Bialous *et al.* 2006). During the FCTC negotiation, JTI worked actively with the Japanese government to weaken the FCTC (Assunta and Chapman 2006). Japan opposed important FCTC provisions, including the total ban on advertising, prohibition of use of descriptors,

such as ‘light’ and ‘mild’ for cigarettes, and any provision in the FCTC that would allow public health to take precedence over trade (Framework Convention Alliance 2000–2003). The *Alliance Bulletin* reported that Japan never budged in its opposition to key provisions. The Japanese delegation and JTI received six Dirty Ashtray Awards, the most of any country (see Table 2).

By INB5, the FCA had devised a strategy to influence domestic opinion in Japan, Germany and the USA about the FCTC. The FCA and its members worked locally there by using the press to inform the public of their government’s pro-tobacco positions at the INB and by helping people and organisations lobby locally (Framework Convention Alliance 2000–2003). The Japan Medical Association, an FCA member, announced during INB6 that it had decided to lobby the Japanese government to take tougher action against smoking because of concerns that the government would prevent the WHO from reaching an agreement on the FCTC (Framework Convention Alliance 2000–2003). During INB6, the FCA worked to increase Japan’s isolation. The FCA requested that Japan and the USA leave the negotiation because of their obduracy.

Many FCA interviewees, and some of the delegates interviewed for this study, believed that Japan’s last minute decision to adopt the FCTC in May 2003 was because it did not want to be isolated and seen as one of the few countries (or the only country) opposed to the FCTC. They also thought that Japan decided to be a party to the FCTC so that it could influence its implementation.

### **Germany**

Germany is the home of Reemtsma Tobacco which, until the UK’s Imperial Tobacco acquired in 2002 was the fourth largest transnational tobacco company. Tobacco companies and their affiliate organisations, have had a strong influence in Germany; it is one of the few developed countries in which the government openly works with the tobacco industry (Bornhauser *et al.* 2006, Grüning *et al.* 2006). Germany led efforts to fight a ban on cigarette advertising in the European Union (EU) in the 1990s (Neuman *et al.* 2002, Lancet 2003), and has been slow to embrace smokefree policies (Bornhauser *et al.* 2006).

Consistent with its historical opposition to tobacco control in the EU, particularly the advertising ban, Germany strenuously opposed Article 13 of the FCTC that required a ban on all forms of tobacco advertising, promotion and sponsorship (European Commission 2004). Germany’s argument was that Article 13 was against its constitutional freedom of speech. Germany’s opposition had a broader effect on EU support for the FCTC because the EU Commission’s decisions require consensus (European Commission 2004). Germany received a Dirty Ashtray Award for dragging down the EU on advertising ban during INB3 (see Table 2) (Framework Convention Alliance 2000–2003).

The FCA used several strategies, including an Internet petition and protests, to press Germany to change its position. Germany finally supported Article 13, after it was amended to allow exceptions for countries that claimed their national constitutions prohibited an absolute ban on tobacco advertising, promotion, and sponsorship (European Commission 2004).

In the end, the EU health ministers reached a compromise with Germany (British Broadcasting Corporation 2002, European Commission 2004), in which a ban on

tobacco industry sponsorship of sporting events took effect in 2006 instead of 2005. The EU would not have been able to support Article 13 of the FCTC without this compromise (Framework Convention Alliance 2000–2003, European Commission 2004).

### ***United States***

The USA is the home of Philip Morris, the world's largest transnational tobacco company, as well as R.J. Reynolds and Brown and Williamson (part of BAT at the time). These companies are powerful in the USA because of strong national lobbying efforts and generous campaign contributions to politicians, including the Republican Party and George Bush in the USA 2000 national elections (Kaufman 2001).

The US' initial enthusiasm for the treaty, during Democrat Bill Clinton's presidency changed after Republican Bush became president in 2001 (Waxman 2002, Wilkenfeld 2005). After Bush took office, the USA objected to, among others, provisions that warning labels on cigarette packages be printed in the main language(s) of the country of sale, the precedence of public health over trade, and a comprehensive ban on tobacco advertising (Waxman 2002). The USA sought to eliminate 10 of 11 provisions that Philip Morris wanted deleted from the treaty (Waxman 2002). According to a New Zealand delegate, 'the US' position was extremely attached to Philip Morris' position on almost everything'.<sup>26</sup> Mirroring tobacco industry arguments, the USA cited constitutional and free trade concerns as reasons for opposition to proposed provisions on advertising and trade. The USA also criticised the FCTC because it did not include a 'reservation' clause that would allow signatories to selectively ignore provisions of the treaty (Jacob 2004).

From INB1 to INB5, tobacco control civil society organisations realised that it was essential that the USA and Germany stop opposing key FCTC provisions. The medical journal *Lancet* pointed out that 'failure of the USA to sign up to the FCTC will be a major blow to the treaty's power (Lancet 2003)'. Members of the FCA used the *Alliance Bulletin* and the Internet to criticise and publicise the USA and Germany's pro-tobacco positions. In a letter to President Bush, Congressman Henry Waxman (Democrat, California) said, 'the position of the USA has been in virtual lockstep with the tobacco industry throughout the treaty negotiation (Lancet 2003)'. The American Cancer Society, the American Heart Association, American Lung Association, and Campaign for Tobacco-Free Kids (all FCA members) said, 'The US ... has repeatedly made proposals that will weaken critical provisions of the draft convention and severely undermine potential efforts to reduce the death and disease caused by tobacco around the world (Weissman 2001)'. In addition, in denouncing USA obstructionism, ASH-UK (another FCA member) said, 'The US contribution has been entirely negative: weakening, and deleting anything that might have substance (Weissman 2001)'. The USA receipt of five Dirty Ashtray awards and a special Lifetime Achievement Award during INB6 (see Table 2), attest to how the FCA was frustrated with the US' positions on key provisions of the FCTC. The awards increased the US isolation in the negotiation process (White 2004, Wilkenfeld 2005).

To further isolate the USA, the FCA focused on convincing other countries to ignore opposition from the USA. In March 2003, during the INB6, the FCA capitalised on the international unpopularity of the US' military build-up to the war

in Iraq. A Thai delegate pointed out, that the NGOs' activities during the negotiation helped developing countries withstand pressure from the USA, Japan and their allies (White 2004). An FCA interviewee pointed out that highlighting the US isolationist and unilateral tendencies, by using the build-up to the war in Iraq as an example, not only mobilised other countries to ignore the US' objections to key FCTC provisions, but also emboldened countries that would otherwise not stand up against the USA and support the treaty.<sup>31</sup>

Once all the other countries had announced that they would support the treaty, the USA relented and voted for it. (As of September 2008, President Bush had not submitted the treaty to the US Senate for ratification.)

### *The transnational tobacco companies*

The tobacco industry has consistently used its resources and political connections to deny the health dangers of tobacco use, and to undermine tobacco control policies nationally (Ong and Glantz 2001, Ling and Glantz 2002), regionally (Neuman *et al.* 2002), and globally (World Health Organisation Committee of Experts on Tobacco Industry Documents 2000). During the negotiation, the industry continued to question the scientific evidence on addiction and health effects of tobacco. A 1999 letter, from the BAT Chairman to the WHO Director-General, maintained that tobacco was addictive in the same sense as chocolate (Yach and Bettcher 2000). This claim contradicts the tobacco industry's internal documents, which reveal that tobacco companies have been aware of the fact that tobacco use causes cancer, since the 1950s, and that nicotine is addictive, since the 1960s (Glantz *et al.* 1995, Slade *et al.* 1995, Yach and Bettcher 2000).

The tobacco industry has a long history of working covertly to undermine international tobacco control efforts (Francey and Chapman 2000, World Health Organisation Committee of Experts on Tobacco Industry Documents 2000). It staged events to divert attention away from the public health issues raised by tobacco use, attempted to reduce budgets for scientific and policy activities carried out by WHO and to pit other UN agencies against WHO, distorted the results of scientific studies on tobacco, worked to discredit WHO as an institution through third party critics, and used surrogates to influence WHO decisions (World Health Organisation Committee of Experts on Tobacco Industry Documents 2000).

Tobacco companies that provided written submissions and verbal testimony during the FCTC public hearings,<sup>2</sup> complained in their submissions about their limited involvement in the FCTC process, and claimed that WHO intended to ignore the companies and their allies. At the same time, the industry worked directly (individually and jointly) and indirectly through country delegations<sup>32</sup> (Otaney *et al.* 2008, Assunta and Chapman, 2008) and other third parties<sup>33</sup> (Waxman 2002, Wilkenfeld 2005), to influence and undermine the FCTC. An FCA interviewee from Africa reported that, 'During the negotiation, even directors of BAT as far away as Nigeria were in Geneva' lobbying delegates.<sup>24</sup> In addition, members of the industry were national delegates of (at least) China, Japan, Malawi, Russia and Turkey.

During the negotiation, the transnational tobacco companies worked directly: to lobby national delegates,<sup>34-36</sup> to influence the composition of national delegations to include people from trade, finance, and agricultural ministries,<sup>20,29,35-37</sup> to hire consultants to engage in public relations and design strategies for undermining the

FCTC,<sup>38–40</sup> and to divert attention away from the FCTC with industry ‘youth smoking prevention’ and other voluntary programs<sup>41</sup> (Mamudu and Glantz 2008).

The most important third party that the tobacco industry used to lobby against the FCTC was the International Tobacco Growers’ Association (ITGA). The ITGA was established in 1984 and, as of March 2008, was made up of organisations from 25 countries. It claimed to represent tobacco growers during the FCTC public hearings,<sup>2</sup> opposing the FCTC on economic grounds and disagreeing with the FCA members over the need for the FCTC. In 1988, the ITGA was strengthened as the tobacco industry’s lobby with US\$400,000 from the tobacco companies<sup>42</sup> (Yach and Bettcher 2000; Must 2001). The industry continued to fund the ITGA public relations programme that promoted the industry’s point of view on the FCTC.<sup>43–46</sup>

The tobacco companies sought to weaken the influence of tobacco control civil society organisations in the FCTC process by infiltrating them to promote discord.<sup>47–50</sup> For instance, Philip Morris and RJ Reynolds used a Washington, DC-based public relations firm to gather intelligence and provide strategic advice concerning the activities of tobacco control NGOs during the negotiation (Carter 2002). The companies were specifically interested in weakening the FCA by engaging member organisations individually at the local level<sup>47,49,50</sup> (Carter 2002). These efforts to weaken the FCA failed.

## Conclusion

Motivated by public health concerns about the dangers of tobacco use and the worldwide spread of tobacco, tobacco control civil society organisations embraced the idea of an international convention on tobacco control. These organisations mobilised during the FCTC negotiation under a single umbrella organisation, the FCA, using the Internet. The FCA worked to influence the development of the FCTC within a state-centric UN system by publicising the position of countries and staging a worldwide campaign against recalcitrant countries. The FCA participated in the policy-making processes by motivating and mobilising civil society organisations around the world (Peterson 1999), and, so, emerged as an important transnational actor during the negotiation (Keck and Sikkink 1998).

The FCA’s ability to garner support for the FCTC represents a great achievement. As of September 2008, three of the ‘big four’ had ratified the treaty. By helping to bring the FCTC into being, the FCA helped put tobacco control on many countries’ agendas. Another important FCA achievement was a provision that allows civil society participation in the FCTC implementation process. Article 4: Guiding principles, No.7 of the FCTC states: ‘The participation of civil society is essential in achieving the objective of the Convention and its protocols (WHO 2003)’.

At the same time, the FCA did not get everything it wanted. The language of the FCTC is generally framed as recommendations rather than the obligations the FCA espoused. The FCTC did not impose a worldwide comprehensive ban on tobacco advertising, promotion and sponsorship because the FCTC subjected this ban to domestic constitutional limitations. The FCA’s inability to secure a provision that explicitly gives the FCTC precedence over the international trade regime under the World Trade Organisation is its biggest failure. This failure indicates the tobacco industry’s successful use of the economic rationale to dissuade governments from

enacting effective tobacco control measures not only at the domestic level but also at the international level.

The successful negotiation of the FCTC demonstrates how civil society can help facilitate cooperation among countries within the UN system. For this reason, the survival of the FCTC depends not only on the will of countries but also on the ability of the FCA to sustain the campaign at all levels of governance (Wipfli *et al.* 2004). After approval of the treaty, the FCA shifted its attention to ensuring ratification and monitoring compliance of the FCTC two key roles of civil society organisations (Peterson 1999).

There are several lessons to be learned, from the FCTC negotiation, for other global public health problems:

Civil society organisations should be involved in international negotiation on public health issues. Civil society organisations, involved in international negotiation on any public health issue, should focus on providing and sharing scientific information on the issue with national delegates. All the delegates and FCA participants in the FCTC, pointed out that there was a wide variation in the level of knowledge of tobacco use and tobacco control among the national delegates at the beginning of the INB sessions. The FCA helped to close this gap by providing and sharing information with the delegates.

The strategy of holding countries accountable by publicising their positions and using awards to recognise positions that support a strong treaty or to shame recalcitrant states can be used to address many global public health issues, where some countries would like to put political expediencies and individual countries' interests above collective global interests.

The strategy of limiting the influence of the tobacco industry demonstrates the importance of identifying key opponents of public health within the non-state sector and focus on limiting their influence in international negotiation. Public health groups should expect the tobacco industry to use economic arguments to dissuade governments from promulgating effective tobacco control measures and should aggressively engage the industry on the economic issue. While the FCA failed to win a provision in the FCTC that explicitly gave public health precedence over trade issues, it did win language that put public health on a par with trade, representing a 'draw' in the battle with the tobacco industry.

Civil society organisations should pressure countries, particularly members of the FCTCs implementing Conference of the Parties, to honour their commitments by aggressively implementing the FCTC. In this respect, the FCA has become an important non-state transnational actor in global tobacco control (Keck and Sikkink 1998) by participating in the FCTC Conference of the Parties as a formal participant and by conducting workshops around the world to build capacity for implementing the FCTC. In the end, civil society organisations will need to sustain policy makers' interests or political will in the FCTC, just as they did during the FCTC negotiation, to ensure successful FCTC implementation around the world.

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## Note

- References which constitute the 'data' for the paper are cited with numbers and are available online at [http://repositories.cdlib.org/ctcre/tcpmi/CivilSociety\\_Refs](http://repositories.cdlib.org/ctcre/tcpmi/CivilSociety_Refs)

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