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## DEATH CLOCK

Since the opening of the first working group for the Framework Convention on Tobacco Control on 25 October 1999,

**13,428,504** people have died from tobacco-related diseases.  
(At 9 am 25 February 2003)

## The RAT in RATification

A rodent clawed its way into Article 36 (Entry into Force) over the weekend. The alternative clause requires ratification by “60 states which (sic) accounted in total for at least 55% of tobacco consumption worldwide”.



This means that the great chimneys of the world (China, USA, Japan, Russia, Indonesia) could kill

the whole treaty by not ratifying it. Global cigarette consumption is 5500+ billion sticks. China consumes 1,643 while the USA smokes 451 billion.

**The FCA recommends entry into force when 30 countries ratify the convention.**

Poison the RAT, not the treaty!

## TREATY OR SHOPPING LIST?

In recent times, a small number of countries have actively campaigned for the adoption of voluntary measures as opposed to legally-binding commitments at every level of the United Nations system.

This disturbing trend (curiously absent from some leaders’ minds as regards Security Council Resolution 1441) was particularly apparent at the Johannesburg Summit of 2002, where the US actively promoted *public-private partnership initiatives* as a substitute to government regulation, legislation and commitments in the area of sustainable development.

NGOs are concerned that some of the language proposed in the FCTC, referring to *effective legislative, executive, administrative or other measures* could seriously undermine the implementation of several key provisions. *Other measures* can indeed be effective under certain, well-defined circumstances,

but they must not be a substitute to *legislative, executive or administrative measures*.

In the latest Draft Convention (24 February), this issue remains in Draft Articles 5.2, 7, 8, 9, 10, 12, 13.2, 15.2, 16, 16.7, 16.8, and 21a.

Take 21a, for example, which deals with *Reporting and Exchange of Information*: the suggestion that such reporting should regard “*legislative, executive, administrative or other measures*” is plain wrong, because it implies that action may be limited to “*other*” (read voluntary) measures.

Relax: none of this needs to be re-opened in discussions. It can be resolved by way of a very simple word-processing job. A small effort would result in significant strengthening of the Convention.

- Remi Parmentier

# Advertising – Progress at Last

The FCTC must be absolutely clear and give priority to a comprehensive ban on all forms of tobacco advertising, sponsorship and promotion. The extensive review by the US National Bureau of Economic Research concludes that:

“...comprehensive advertising bans can reduce tobacco consumption, but that a limited set of advertising bans will have little or no effect. A limited set of advertising bans will not reduce the total level of advertising expenditure but will simply result in substitution to the remaining non-banned media.”

This is the evidence underpinning the views of the World Bank and WHO that a comprehensive ban on tobacco advertising, promotion and sponsorship (using the good definition in Article 1) is a vital public health measure, but mere restrictions will have little effect. The new text has moved a step closer to the ideal by introducing a second option for 13.2 that gives priority to a comprehensive ban, by making this the norm. The ‘restrictions’ in 13.2 *bis* are only applicable to parties that are unable to achieve a comprehensive ban. That is definitely progress towards an evidence-

based approach.

However, in practice this second paragraph may not be needed at all. This is because the first paragraph of this version of 13.2 contains language that allows parties with *constitutional constraints* to formulate their legislation within the limits of the constitution – and this is the only credible reason why a party would be unable to undertake a comprehensive ban. The second option for 13.2 would be improved further by the deletion of 13.2 *bis*, or reframing it strictly as an interim measure – a form of chapeau to 13.3.

## “Old Europe” and the Fight against Terrorism

*The European Commission and ten EU Member States, including France and Germany, have taken the hardest action so far against illicit trade in tobacco by commencing legal action for racketeering against major tobacco companies. The UK has refused to join, and the US has tried to block it.*

### **Exhibit A - Extract from: CBS 60 minutes “Made in the USA” 12 February 2003**

How do Winstons wind their way to Iraq? RJ Reynolds says it doesn't know. But the company is being taken to court right now by people who say RJR knows perfectly well and is totally complicit.

“We've learned that their fingerprints are all over it. Up until the border with Iraq,” says Jack Toal, who used to chase down drug dealers for the DEA. Now, as a private investigator, he's putting together evidence for a lawsuit against RJR. “We've documented that in a less than two-year period they've sent 8 billion cigarettes into Iraq,” he says.

So far, RJR executives have had little reason to worry about the criminal penalty. Somehow, the US government has never questioned RJR about its business in the Middle East. European governments, on the other hand, accuse

RJR of coordinating and directing the entire operation.

“The crime is committed in the United States. By the United States companies that are sending it into, knowingly sending it into Iraq,” says Toal.

### **Exhibit B - European Union allegations against major tobacco companies (EU appeal 10 July 2002)**

*“The European Community and ten Member States joined together to commence this civil action to combat, deter, and remedy an ongoing global scheme to smuggle cigarettes, launder the proceeds of narcotics trafficking, obstruct government oversight of the tobacco industry, fix prices, bribe foreign public officials, and conduct illegal trade with terrorist groups and state sponsors of terrorism. Similarly, the [Colombian] Departments have commenced this action to address and remedy cigarette smuggling that fuels narcotics trafficking and money laundering on a massive scale -- a scheme that supports and finances foreign terrorist activity.”*

#### Facts you should know:

1. The US government has not only failed to investigate its own rogue tobacco multinationals, it

has attempted to block the racketeering actions brought by Canada and the EC. On 8 October 2002, the US Solicitor General gave an *amicus* brief to the Supreme Court arguing that the Canadian racketeering action against RJ Reynolds be rejected on a technicality relating to obscure tax law, setting a precedent that would potentially block the EC case.

2. The European Commission responded by restating the case as money laundering and terrorism. The EC is supported by the governments of Italy, Germany, France, Spain, Portugal, Greece, Belgium, the Netherlands, Finland and Luxembourg. The US's favourite poodle state, the United Kingdom, has refused to join this action. The UK has the worst smuggling problem in the world and its Customs have reacted with knuckle-dragging bewilderment to the role played by tobacco companies like Imperial Tobacco, in UK smuggling.

3. Racketeering and money laundering actions have been taken against RJ Reynolds, Japan Tobacco International, BAT and Philip Morris by various parties. We respectfully suggest that delegates keep a close eye on their valuables while circulating with the ‘public’ in the lobby and Serpent café.

## Package Warning Requirements Must Be Improved

The provision on package warnings is one of the key provisions in the FCTC. As currently worded, the warning requirements in Art. 11 contain a number of deficiencies that need to be corrected.

**Size of health warnings.** The minimum size for package warnings has been needlessly reduced to a mere 30% of one principal display surface – that is, either the front or the back. And there is a proposal by just a couple of countries to remove even this weak minimum by adding a qualifier that Parties need only “endeavour” to require the minimum. Countries should hold firm in opposing any further weakening of the minimum size, and indeed should support strengthening the minimum size.

**Use of non-health messages.** The new text incorporates the intent of countries to allow other messages in addition to “health warnings”, however the wording does not yet satisfactorily incorporate this intent. Countries should have the flexibility to choose non-health messages that would not be warnings, but that would be effective at decreasing smoking: the impact of smoking on the family budget, smoking and religion, information on new laws, etc. There could also be health-related messages that may not strictly be “warnings”, such as a Quit line or a “Quit and Win contest”. Unfortu-

nately, the wording of Art. 11(1)(c) is not satisfactory expressing the intent – countries might be interpreted as being pre-empted from being innovative with effective non-health messages. The requirement in Art. 11(1)(c) should be amended to simply require “health warnings or other messages”, or alternatively “health warnings describing the harmful effects of tobacco use, or other messages”.

**Information of emissions elsewhere on the package.** Art. 11(2), as currently worded, would require countries to place additional information on the package regarding emissions. Although there is no requirement that numerical yields be included, many countries would nevertheless end up using numbers for tar and nicotine derived from the deficient ISO method. The WHO Scientific Committee on Tobacco (SACTab) recently concluded that such numbers were misleading and should not be placed on packages. Art. 11(2) needs to be amended so that there are no resulting concerns. The area of emissions is an area where scientific knowledge is evolving – the wording of this provision should not pre-empt future developments and innovative approaches by governments.

- Rob Cunningham

## Tobacco Impoverishes, Health Enriches

The poor tend to use tobacco products more than the rich. People with low educational levels are more likely to smoke than those with a college education.

Poor families end up much poorer when a member is sick and hospitalised, draining the family's savings and incurring heavy debts. Especially in developing countries, health insurance fails to cover poor populations. Their health care cost is burdensome to governments, whose resources are barely enough to cover numerous competing national priorities.

Primary health care is the most cost-effective measure in addressing health problems. Primary health care *must* include comprehensive tobacco control measures. Since tobacco control reduces disease, it is a sound health care financing strategy, particularly in countries where financial resources for health care are wanting.

While we need dedicated funds and funding mechanisms explicitly provided for in the FCTC, governments should not make financial constraints an excuse for not implementing FCTC provisions at the national level.

Governments have the responsibility to implement programmes that are cost-effective and that will lead to improved health. Comprehensive tobacco control programmes meet this description.

Governments should treat people's health as a fundamental human right. The right to health must be fundamental and universal in both the substance and structures of any convention or multi-lateral agreement. This must be the governing principle of the FCTC, and the principle of national laws, for the health as well as economy of all nations.

- Carmi C. Canila, MD

## Consensus or Veto?

Perhaps while no one is looking, bad language is creeping into the parts of the text that deal with the development of the FCTC. The procedures for settlement of disputes (27.2) and development of the FCTC (28.3) could be resolved by ‘consensus’ if certain bracketed options are selected. In both

cases it is vital to have a means of agreement where there is no consensus – for example two-thirds or three-quarters majority voting. Though the word ‘consensus’ is warm and appealing, if it is required for development of the FCTC, it effectively becomes a veto, meaning that any party could cause the FCTC to stagnate.

# Lights, Lows and Lies: Lets Stop the Deception

Article 11 now includes a provision that requires that parties take effective measures to ensure that tobacco product packaging and labeling does not promote a tobacco product by any means that are *determined by the Party to be false, misleading....or likely to create an erroneous impression about its ... health effects....and may include terms such as "low tar", "light" "ultra light" or "mild."*

The multiple requirements of proof demanded by this provision will allow tobacco companies to continue to entice smokers concerned about their health with false promises of "lighter", "milder", and thus healthier products. The tobacco industry will thus ensure itself many more decades of deceived smokers.

The FCTC must ban misleading descriptors such as "light", "low tar", and "mild", and not require each State to go through legal hoops to achieve this end.

These terms have been used by the industry to convince smokers that there is a safe alternative to quitting. The use of

such terms represents one of the deadliest consumer frauds of the 20<sup>th</sup> century, and one that the FCTC must address without equivocation.

The FCTC must also ensure



that the flawed ISO "tar and nicotine" testing method not be used by Parties to indicate to consumers the relative risk of different tobacco products. Unfortunately, the proposed text

would place responsibility on each party to prove over and over again what science has already established: these products are no safer than their higher tar brothers, and the terms have been and will be used to deceive consumers.

There is overwhelming scientific evidence that "light" and "low tar" cigarettes have had no measurable health benefit and have been used by the tobacco industry to keep smokers addicted. Insisting that each state prove that these products deceive consumers will allow unreasonable and burdensome legal challenges from the tobacco industry.

Given the evidence about these products, this would place an intolerable regulatory burden on many Parties, especially developing countries: requiring that they prove in each instance that these products are a health fraud and that the terms create a false impression among consumers.

- Judith Wilkenfeld  
Tobacco Free Kids

## Large Warnings and Ban on Misleading Terms Pass Court Test

Since INB5, two court judgments have rejected tobacco industry attempts to invalidate package warning requirements.

On December 10, 2002, the European Court of Justice dismissed a challenge to the European Community Directive on packaging and labeling of tobacco products. The Directive prohibits the use of terms such as "light" and "mild".

The Directive also requires warnings covering on average 45% of the front and back of the package (even larger sizes are required in multilingual countries). The legal challenge was initiated by British American Tobacco and Imperial Tobacco, and supported by Japan Tobacco and a small number of EU countries.

In rejecting tobacco industry claims, the Court concluded that the Directive met the test of proportionality for products sold within the European Community. The Court stated that health warnings were "a recognized means of encouraging consumers to reduce their consumption of tobacco products". The Court found that the increased size for warnings was valid.

In upholding the ban on terms such as "light" and "mild", the Court endorsed the conclusion that "the use of descriptions which suggest the consumption of a certain tobacco product is beneficial to health, compared with other tobacco products, is liable to encourage smoking."

In Canada, on December 13,

2002, the Quebec Superior Court dismissed a challenge to Canadian regulations requiring that picture-based warnings cover the top 50% of the front and back of the package. The challenge was brought by the Canadian subsidiaries of Philip Morris, BAT and Japan Tobacco.

The Court dismissed arguments that the warnings were an unjustified infringement of freedom of expression, and that the warnings were an illegal appropriation of the trademarks of tobacco companies. In the judgment, the Court cited the warnings required by Brazil and by the European Community, as indicative of an international trend.

- Rob Cunningham

## Will Health Finally Take Precedence Over Trade?

Will the FCTC recognize the right of the parties to give high priority to public health in interpreting and implementing the FCTC?

That should be an easy question. There is broad consensus that the FCTC should be interpreted, to the extent possible, to protect public health. However, a few countries insist that no "health over trade" language of any sort should be allowed into the FCTC. A few are even calling for a return to earlier text that would explicitly subordinate the FCTC to all other agreements – a position that was soundly rejected at INB5.

The issue has been referred to the newly formed Drafting Committee for resolution. While no final

word was available as of press time for the Bulletin, the group was reported to be considering several compromise proposals.

Good "health over trade" language is desperately needed to minimize the possibility that hard-won tobacco control measures embraced by the FCTC will be challenged by nations that are home to the multinational tobacco companies. This is a case where the rest of the world will have to stand firm against nations that are either acting on behalf of the tobacco industry, or are too inflexible in their trade policy to recognize that tobacco products are not like other products. That is, after all, why we are all here.

### Listening to the Tobacco Industry Causes Confusion

The following excerpt is from an ad drafted by the Tobacco Institute,



causes cancer...but they continue to try to confuse people on a range of other issues. How much longer will we be fooled by the industry's attempts to distort the facts to protect their profits?

"COMMUNISM CAUSES CANCER You don't believe it? Well, wait a second. Let's use the same kind of statistical analysis the Public Health Service is using to 'prove' that cigarettes cause cancer. We'll use only statistical facts taken from bona fide population surveys.

1. Americans smoke a lot and some of them die of lung cancer. The Dutch smoke less than Americans, but more of them die of lung cancer.

2. The Australians smoke a lot and some of them die of lung cancer. The British smoke as much as the Australians, but twice as many British have lung cancer...

One statistical inference is very clear. In each pair of countries, the higher cancer rate is in the country closer to the Iron Curtain... By the same means that some public servants are using to indict cigarettes, we've just proved that Communism causes cancer. But you know and we know, Communism is not guilty. And nobody yet knows about cigarettes."

### "Balance" explained ...

As WHO staff prepare to share the stage with British American Tobacco at the ILO to discuss 'corporate social responsibility', we answer some of the questions that often arise on the subject of 'balance' between health and commerce...

*Q. What is the balance between health and trade?*

A. BAT earns £948 in profit for

every customer life lost due to use of its products (2001 figures)

*Q. What is the balance between health and employment in the tobacco industry?*

A. 12 customer lives are lost for each person-year of employment in BAT.

*Q. What is the balance between shareholders and customers?*

A. BAT's market capitalisation is

### Make the Profits Pay !

Tobacco money flows from poor citizens to rich governments. Isn't it time to reverse the flow?

The governments of rich countries (like the US and the UK) profit from global tobacco sales by over \$3 billion each year. Shouldn't they be expected to do more?

► Philip Morris pays almost \$2 billion each year in corporate income taxes on its profits from overseas tobacco sales.

► BAT and Imperial Tobacco pay over \$1.3 billion each year in corporate income taxes on overseas sales -- \$630 million from the pockets of smokers in the developing world.

By returning only one percent of the money it receives on taxes from global tobacco profits, the US government could contribute \$18 million each year and the government of the United Kingdom could contribute \$12 million each year to the FCTC.

- Cynthia Callard

£680 per BAT customer death to 2030 (deaths discounted @ 2% in line with UK Treasury guidelines) (May 2002 figure).

Source: *ASH UK, British American Tobacco – the other report to society, June 2002*

# International Treaties the US Has Not Ratified

EXAMPLE 4:

## The Kyoto Protocol

Date Adopted: 11 Dec 1997.

The Kyoto Protocol to the Framework Convention on Climate Change (FCCC) was signed at the 1992 Earth Summit in Rio de Janeiro. The Treaty was almost dealt a



death blow when the US, the world's biggest energy con-

sumer and emissions producer, pulled out of the Kyoto Protocol.

However in 2001, the European Union decided to move forward with the ratification and implementation of Kyoto without the US. Japan and Canada followed, and Russia is expected to follow shortly.

## FCTC definitions

Following in FCA tradition, we hereby attempt to assist delegates in understanding the sometimes cumbersome and obtuse terms used in the delegations.

Phrase	Meaning
Endeavour to...	Get up late, take a leisurely breakfast, read a newspaper and then say "despite my earnest endeavours I fear this Article is rather beyond our national capabilities for today..."
Appropriate...	Whatever we want, including and especially <u>nothing</u> .
Commercial free speech	Monstrous invention of conservative judges appointed by conservative politicians receiving donations from commercial corporations constructed by the misuse of noble principles articulated by inspired and moral individuals in an earlier, more innocent, age.
Parties may...	Parties may not...
...or other measures	See "appropriate"



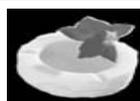
## FRAMEWORK CONVENTION ALLIANCE

The Framework Convention Alliance (FCA) is an alliance of NGOs from around the world working to achieve the strongest possible Framework Convention on Tobacco Control. Views expressed in the *Alliance Bulletin* are those of the writers and do not necessarily represent those of the sponsors.

Framework Convention Alliance  
46 Ventnor Avenue  
West Perth, 6005  
Australia  
Tel. 61 8 9212 4333  
Fax. 61 8 9212 4334  
FCA@globalink.org  
www.fctc.org

## Orchid Award

[Temporarily suspended due to lack of information.]



## Dirty Ashtray Award

**China**, for introducing the RAT (see front cover).

