THE FOG OF WAR LIFTS!

By the time you read this, many delegates will be mentally half out of the door. It’s been a gruelling week of drafting groups, white papers, and editing by committee, and we are almost done – almost.

Because, of course, there is usually one last issue that crops up on the final points in Committee A or Committee B, perhaps even in the final plenary. We shouldn’t pat ourselves on the back until the very last decision is taken.

Take stock: there have been significant achievements at COP8, most notably the new Global Strategy to Accelerate Tobacco Control, which should guide our collective efforts through to 2025. And yes, that will include an implementation Review Mechanism (IRM), albeit only as a pilot project. We hope we will learn from that pilot and be in a position to endorse the IRM at COP9.

In Committee B, there were also successes. Parties agreed to shift core funding so that some of the work outlined in the Global Strategy can begin in 2020. They also mandated the Convention Secretariat to explore new mechanisms for fundraising for the Secretariat’s workplan and budget.

There were disappointments too, such as the COP’s decision to keep the budget frozen for another biennium. We can only hope that future budgets, closely tied to the Global Strategy, will convince governments to loosen the purse strings.

And then there was the atmosphere of COP8. The frustration of enduring industry proxies’ efforts to delay, distract, and obstruct – in this respect, a sad repeat of COP7. And too much time - even amongst the good-faith delegates - spent haggling over words, rather than discussing our shared objective of reducing tobacco-caused deaths as quickly as possible.

Before COP9, Parties need to take decisive steps to curtail industry obstructionism – a crucial task that the incoming Bureau in particular will need to take forward.

But adversity breeds solidarity. The overwhelming majority of delegates worked hard to advance our common cause of closing the still gigantic gap between the promise of the FCTC and the reality of its under-implementation. This is a solid foundation on which to build.

Our thanks to the staff of the Convention Secretariat, who put in extraordinarily long hours all week.

Safe travels to all, and see you in 2020!
WHAT CAN BE DONE ABOUT TOBACCO INDUSTRY PROXIES?

Would it be a breach of the FCTC for parties to intentionally act to further the interests of the tobacco industry? This is a question I have been repeatedly asked following the epic four-hour debate in Committee A on whether to replace the word ‘mechanism’, as it relates to the Implementation Review Mechanism, with the word ‘process’ or ‘system’.

Differences in opinion between states in international deliberations are normal and a healthy part of the process of tackling difficult global problems. However, the actions of certain FCTC Parties seem more problematic. They appear not just to be voicing their views on how to regulate tobacco, but to be actively working to advance tobacco industry positions.

Such actions could have consequences under international law. Specifically, they could be found as a legal breach of the treaty.

How could this be? The answer lies in Article 60 of the Vienna Convention on the Law of Treaties. This treaty codifies the fundamental principle of international law: *pacta sunt servanda*. In plain language this means that all treaty obligations must be followed. Judging by behaviour in recent days, certain FCTC parties could be seen to be breaching the treaty by violating “a provision essential to the accomplishment of the object or purpose of the treaty”, in this case, Article 5.3 of the FCTC.

Article 5.3 of the FCTC obligates Parties to “act to protect” their public health policies from the tobacco industry and other vested interests. If Parties are working to advance the interests of the tobacco industry, they cannot be said to be protecting policies from the vested interests of the industry.

Assuming that select Parties are in breach of the WHO FCTC, what might the implications be?

First, other Parties to the FCTC could raise a dispute under Article 27 of the treaty. A report submitted to COP7 analysed the dispute settlement provisions of the FCTC (COP/7/20). It defined dispute to be "a disagreement on a point of law or fact, a conflict of legal views or of interests between two [or more] persons". It noted that under Article 27 a dispute must concern “the interpretation or application of the Convention”.

Parties to the FCTC could argue that the actions of certain parties are inconsistent with Article 5.3 and are therefore a serious breach of the FCTC. Were that to happen, the Parties would first need to seek to settle the dispute through diplomatic channels involving negotiation, good offices, mediation, or conciliation. If that effort failed, Parties could pursue formal dispute resolution like an ad hoc arbitration procedure. Ultimately, Parties could appeal to the International Court of Justice (ICJ) based on Article 34(2)(a) of the Statute of the ICJ.

Were the ICJ to decide that these Parties were, in fact, in breach of the FCTC, they could be ordered by the court to cease and not repeat the breach. They could also be ordered to pay damages.

All of this is purely speculative, of course. But what is beyond speculation is that Parties to the FCTC which act to further the interests of the tobacco industry at COP meetings are likely in breach of the treaty. Other Parties to the treaty are not without power to challenge such actions.

COP meetings are costly. If we add up all the time that is spent discussing tobacco industry infiltration of Party delegations, it is not hard to imagine that other Parties might wish to take action to address actions that seriously undermine the “object or purpose” of the FCTC. Now may be the time for Parties who support the objectives of the FCFC to show the industry that playing hardball is not their prerogative alone.

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**LAST MINUTE BUSINESS**

WHEN COMMITTEE B MEETS TODAY FOR THE LAST TIME, WE URGE PARTIES TO REVISIT ITEM 8.1 (B) ON THE INTERIM PROGRESS REPORT ON THE 2018/19 WORKPLAN AND BUDGET.

WITH ONE YEAR LEFT IN THE 2018-19 WORKPLAN, IT IS IMPORTANT THAT PARTIES ALLOCATE FUNDING FOR WORK TO BEGIN IMMEDIATELY TO IMPLEMENT THE GLOBAL STRATEGY.

IN PARTICULAR, WE SUGGEST THAT AT LEAST $50,000 IN CORE FUNDING BE ALLOCATED FOR THE IMPLEMENTATION REVIEW MECHANISM PILOT PROJECT TO GET UP AND RUNNING.
Over the last two decades, many of the 181 Parties that have ratified the WHO FCTC have questioned the level of their assessed contributions for the Convention Secretariat’s important work to support the implementation of the treaty. Most Parties tend to view the Assessed Contributions as a cost rather than as an investment with proven returns for health.

We know that tobacco control is cost-effective so it is important to contextualize assessed contributions, and to consider them as an investment in addressing Noncommunicable Diseases (NCDs) and other health inequalities, where tobacco use is the greatest risk factor.

According to the Secretariat, nearly one third of all the Parties to the WHO FCTC have been in arrears for one biennium or longer, and more than 20 of those Parties have never paid contributions.

A simple analysis of assessed contributions of some countries in the AMRO region makes clear that there are substantial arrears. According to the data obtained from the World Bank and the Institute for Health Metrics and Evaluation, the non-payment of assessed contributions has economic consequences in terms of years of productive life lost or the Disability-Adjusted Life Years (DALYs) to NCDs attributable to tobacco.

In some cases, assessed contributions represent an insignifigant percentage of the total cost of DALYs lost to NCDs, for example Chile, 0.00057 per cent; Colombia, 0.00074 per cent; Costa Rica, 0.0008 per cent; Honduras, 0.00035 per cent; and Mexico, 0.00140 per cent.

The failure to pay assessed contributions is short-sighted, makes no economic sense and is a major obstacle to the Convention Secretariat undertaking its primary task of promoting the implementation of the FCTC.

Víctor Hugo Herrera Ballesteros, Instituto Conmemorativo Gorgas de Estudios de la Salud, Panama

POR QUÉ LOS ESTADOS DEBEN RATIFICAR EL CONVENIO MARCO PARA EL CONTROL DEL TABACO (CMCT)

Desde que el CMCT entró en vigencia en 2005, el CMCT ha sido ratificado por 181 países. Sin embargo, países como Argentina no han ratificado aún el CMCT a pesar de las cifras alarmantes que representan la epidemia de tabaquismo en el país.

Además de una fuerte interferencia de la industria, una de las principales razones por las cuales Argentina no es Estado Parte del Convenio es la excusa de contar con normativa local que se adapta a los estándares mínimos del CMCT. Sin embargo, la ratificación es necesaria ya que el CMCT contempla una serie de herramientas, medidas y mecanismos de cooperación internacional que no pueden ser reemplazados por políticas nacionales.

A continuación se desarrollarán tres principales razones por las cuales es necesaria la ratificación del CMCT, aplicables a la Argentina y cualquier otro país que no haya ratificado aún.

1. Es un problema global que requiere una solución global

El problema del tabaquismo es una epidemia que requiere una respuesta global, que proteja especialmente a los países y sectores sociales más vulnerables y con menores recursos.

2. La interferencia de la industria tabacalera es transnacional y requiere la cooperación de los países para contrarrestarla

El mercado global del tabaco genera mil millones de dólares. Este poder económico ha generado una batalla desigual con los gobiernos de los países. El CMCT y sus directrices brindan medidas para restringir la interferencia de las tabacaleras. La ratificación del CMCT otorga el marco legal necesario para garantizar la transparencia entre la industria tabacalera y los gobiernos.

3. El comercio ilegal de productos de tabaco es un problema internacional que requiere soluciones regionales

El comercio ilícito de productos de tabaco es un tema central de las políticas de control de tabaco, cuya solución es necesariamente la cooperación entre los países vecinos.

La manera de detener el comercio ilícito es la implementación de mayores controles y medidas de anticorrupción. Es necesario que países adopten políticas de comercio ilegal armonizadas al nivel regional.

Belén Rios, Fundación Interamericana del Corazón, Argentina
ADDRESSING ILLICIT TRADE IN EGYPT

The illicit tobacco trade is a major challenge in many countries, including Egypt, where it has escalated since the political unrest in 2011. The Assessment of Illicit Tobacco Trade in Egypt 2016-17 study, spearheaded by the Cairo Association against Smoking, Tuberculosis and Lung Diseases-Egypt (CASTLE) provides direct evidence of the magnitude of this problem in the country.

Although the result of this study showed a marked decline in the illicit tobacco trade, it is very clear that the government needs to step up efforts to prevent revenue loss.

Who smokes illicit cigarettes? According to the study, the percentage of illicit cigarette smokers is highest among the illiterate at 19.4 per cent, and lowest among higher educational level smokers at 7.2 per cent and 7.4 per cent for secondary school and university graduates respectively. Employment status also plays a role - the percentage of illicit smokers found among the unemployed is at its highest at 27.3 per cent and lowest among the employed at 8 per cent.

Egypt’s state budget reports that revenue from taxes collected from legal cigarettes was approximately US$ 2.4 billion during the fiscal year 2016-17 and is expected to increase to approximately US$ 3 billion for fiscal year 2017-18. The market share for illicit cigarettes is estimated at 8.5 per cent and is estimated to have cost the government approximately US$ 190 million in 2016-17. This is expected to rise to US$ 245 million in 2017-18.

The study recommends that the government of Egypt act quickly to ratify the WHO Protocol to Eliminate Illicit Tobacco Trade and highlights the need for effective collaboration and cross-government coordination (e.g. Customs, Police, Ministries of Finance, Health, Justice, Trade and local authorities).

There is also a need for greater public awareness on this issue and citizens must be aware of the effects of purchasing illegal cigarettes, both for the public health and the fiscal health of the country.

Esssam Elmoghazy, Youssef Waheeb, Randa Abou Elnaga, Laila Michil, Sahar Latif, Wagdy Admin, Egypt

ALTERNATIVE LIVELIHOODS FOR TOBACCO FARMERS STILL NEED SUPPORT

Delegates clapped when the decision on Articles 17 and 18 was adopted in Committee A. Looking at the decision, we observe a good list of action points for the Secretariat to support tobacco-growing countries in their efforts to explore, develop, implement, and evaluate projects on alternative livelihoods. This is good news.

But there is bad news: it is highly unlikely that any budget from assessed contributions will be allocated to these actions to be carried out by the Secretariat, similar to previous COPs. This is disappointing from two points of view: First, the tobacco industry’s firm grip on tobacco farmers is a real obstacle for tobacco-growing countries to properly implement tobacco control measures. On Wednesday, the Bulletin article on company cards in Bangladesh demonstrated farmers’ deep dependence on tobacco companies and how this negatively affects human rights. One can find similar examples from virtually all low and middle income countries where tobacco is grown.

Secondly, many smallholder farmers are willing to switch away from tobacco and earn their living from other crops or activities. But, they are reluctant to support the FCTC as long as they are not getting any meaningful support from the treaty. Thus, some farmers become prey for the tobacco industry and/or their front groups. To resolve this difficult issue, Parties must work toward funding alternative livelihoods projects. There are some preliminary projects underway that could be scaled up. For example, the United Nations Development Programme is beginning an innovative pilot program that uses a social impact bond as a funding strategy to assist farmers in exiting tobacco and finding economically viable alternative livelihoods. While a highly commendable effort, this will not be enough considering the size of the challenge. Parties cannot wait another two years until the next COP to show their commitment to the most vulnerable tobacco-growing countries and their farmers who struggle to make a decent living.

Jeffrey Drope, American Cancer Society, USA
Sonja von Eichborn, Unfairtobacco, Germany
**CO-OPTING PUBLIC HEALTH LANGUAGE: THE CASE OF PHILIP MORRIS**

Tobacco giant Philip Morris International (PMI) has publicly pledged to “design a smoke-free future” and has put $1bn aside to set up the Foundation for a Smoke-Free World to help achieve its bold vision. But, what does the company really mean by ‘smoke-free’? André Calantzopoulos, the company’s CEO, recently admitted that PMI’s definition of ‘smoke-free’ does not necessarily involve consumers quitting tobacco: “our paramount business strategy is to replace cigarettes with less harmful, smoke-free alternatives. That’s what we call a smoke-free future.” PMI’s vision is not for smokers to quit tobacco all together, but to switch to PMI’s heated tobacco product, IQOS. A sleekly designed device that supposedly heats—rather than burns—tobacco sticks, IQOS is promoted as less harmful than conventional cigarettes, despite the lack of independent evidence to support that claim.

The company recently muddied the ‘smoke-free’ waters even further, by co-opting the name of the Smoke-Free Index, a toolkit developed by the Southeast Asia Tobacco Control Alliance (SEATCA) to help Parties to the FCTC meet their obligations under Article 8 (the protection from exposure to tobacco smoke). Last month, the Foundation for a Smoke-Free World issued a research call for a ‘Smoke-Free Index©’, purportedly aimed at measuring the contribution of tobacco companies to a ‘smoke-free’ future and identify tobacco companies’ violations of the FCTC. So, we are made to believe that not only is one of the largest and most profitable tobacco companies in the world ready to quit cigarettes, but that through its Foundation it will self-assess the progress made towards that goal, and report on violations it makes to support the FCTC. No, you’re not dreaming.

This week at COP 8, we have witnessed first-hand, tobacco industry attempts to delay and weaken proposals for the effective implementation of the FCTC. This calls into question the industry’s supposed commitment to a smoke-free future. With eager anticipation we await the Foundation’s first Smoke-Free Index report, due in 2020, to see how the industry will score itself on FCTC Article 5.3 at COP 8.

**DEFORESTATION: THE IMPACT OF TOBACCO GROWING IN TANZANIA**

Every year, tobacco growing and curing causes deforestation of at least 200,000 hectares globally. The miombo woodlands, covering 2.4km² of sub-Saharan Africa, belong to the most affected areas. The miombo is the world’s largest continuous area of tropical dry forests and woodlands, a unique ecosystem. While this forest is important for the global climate because of its capacity to store carbon, it provides medicinal plants, food for humans and for livestock, construction materials, and fuel sources to local communities.

Tobacco is grown in monoculture, is prone to pests, and heavily depletes the soil of nutrients. Farmers clear forests to gain fertile lands for this cash crop. Tobacco is also a crop that needs drying, commonly known as curing. Virginia tobacco – making up about half of the tobacco blend in manufactured cigarettes – is a flue-cured variety. This curing process involves the burning of huge amounts of fuel wood to keep the heat in the tobacco barns for about one week.

Estimates of the volume of wood needed to cure tobacco vary for different countries. Annual rates of forest removal can provide an idea of the ecological impact. In Urambo district, Tabora region in Tanzania, for example, the deforestation rates due to land clearance (3.5 per cent) and fuel wood extraction (3 per cent) during the first half of the 2000s were 10 times higher than the overall deforestation rate for Africa (0.64 per cent). Consequently, the miombo ecosystem suffers a loss of biomass and biodiversity. Along with the miombo flora, the habitat for animals also disappears, including pollinating insects such as bees. The long-term effects on local communities could include malnutrition, hunger and poverty due to poor soil quality, lack of access to inputs and water, and lower yields.

In the short-term, it is critically important to scale up efforts to reforest affected areas with indigenous tree species. Governments of tobacco-growing countries should hold the tobacco industry accountable, for example, by introducing an environment tax on raw tobacco sales, paid by the buyers. These funds could be earmarked for tree planting schemes, and should be safeguarded from the influence of the tobacco industry.

Sonja von Eichborn, Unfairtobacco, Germany
**SYNERGIE D’ACTION POUR LE FINANCEMENT DE LA MISE EN ŒUVRE DE LA CCLAT : LE CAS DU TCHAD**

Le tabagisme constitue un fléau mondial qui n’épargne aucun pays du monde et notamment les pays en développement comme le Tchad qui est confronté à d’énormes défis sanitaires.

Face à cette problématique, le Tchad à l’instar des autres pays, s’est inscrit dans la dynamique mondiale de lutte contre le tabagisme en ratifiant en 2006 la CCLAT et en la mettant en œuvre. Cette mise en œuvre s’est traduite par des actions concrètes telles l’adoption d’une législation nationale antitabac, la création d’un programme national de lutte contre le tabac, la mise en place d’un cadre multisectoriel de coordination, la mise en garde sanitaire en image couvrant 70% des surfaces des paquets de cigarettes, l’augmentation de taxe à hauteur de 40% ces 5 dernières années, la mise en place d’un système de traçabilité pour lutter contre le commerce illicite.

Malgré ces progrès, beaucoup reste à faire pour une mise en œuvre effective des dispositions clés de la CCLAT. La crise financière et économique que traverse le Tchad depuis la chute des cours mondiaux du pétrole a limité sa capacité d’allocation budgétaire pour bon nombre de services de base y compris le contrôle du tabac. Ce qui fait que le programme national de lutte contre le tabac n’a pas pu bénéficier depuis 2015 d’allocation budgétaire pour réaliser ses activités. Fort heureusement que le Tchad bénéficie depuis une année de deux appuis techniques et financiers dont l’un de l’Union Internationale contre la tuberculose et les Maladies Respiratoires et le second du Secrétariat de la Convention dans le cadre du Projet FCTC 2030. Ces deux appuis qui se complètent ont amorcé une dynamique nationale multisectorielle de coordination pour une mise en œuvre effective de la loi antitabac promulgué le 10 juin 2010 tout en contrecarrant efficacement l’interférence de l’Industrie du Tabac et en menant des actions de mobilisation de ressources internes pour le financement durable de la mise en œuvre de la CCLAT. Cette coopération multilatérale augure des perspectives bonnes pour l’accélération de la mise en œuvre de la CCLAT au Tchad. C’est le lieu ici de souligner l’importance des synergies tant au niveau national, régional et au niveau international. A travers la stratégie mondiale adoptée au cours de cette COP, la communauté internationale de lutte antitabac pourra optimiser et rendre efficents les financements existants mais au-delà mobiliser et lever de nouveaux fonds. Il faut absolument prendre des mesures concrètes pour faire avancer le programme, en particulier en ce qui concerne le financement de cette feuille de route ambitieuse.
CRIMINAL LIABILITY: THE FORGOTTEN ASPECT OF ARTICLE 19

Criminal liability for tobacco executives is a concept that is taking off around the world.

For example, “Sick of Smoking” is a movement that has gained huge momentum in the Netherlands. Several victims (supported by over 30,000 people who have signed the online petition) have filed a criminal complaint against tobacco manufacturers accusing them of attempted murder, manslaughter and/or attempts to cause bodily harm and/or damage to health. The criminal complaint is currently in an appeal process; a judge will soon decide whether the case will be prosecuted.

A similar complaint was filed in France, and there has been movement to suggest related cases in the USA, the UK, South Africa, and other countries. The implications of these potential cases are far-reaching. If tobacco executives are found guilty of murder, how can they keep selling their products? And how will they hire new employees? This could represent the beginning of the end for Big Tobacco.

Unfortunately, this movement has been divorced from Article 19 of the FCTC. There are myriad reasons for this disconnect, but two stand out: First, domestic criminal courts are not aware of their government’s obligations under the FCTC. The attorneys for potential criminal cases, as well as the civil society organisations behind them, should be looking to Article 19 for support. Countries that care deeply about their treaty obligations may be convinced to open a criminal case because of Article 19.

Second, the global tobacco control community has not placed much emphasis on the criminal liability aspect of Article 19 either. There is an excellent toolkit on civil liability for Article 19, but no resources on criminal liability, partly due to the complexities of addressing criminal law in 195 jurisdictions.

However, the FCTC intentionally left room for criminal cases, and the global tobacco control community should embrace that whole-heartedly. It is time for the COP – and society as a whole – to consider utilising criminal law. A criminal case against the tobacco industry would be a win for the FCTC and a win for public health.

Kelsey Romeo-Stuppy
Action on Smoking and Health (USA)
THE NETHERLANDS TO HOST COP9?

On the very first day of COP8, Paul Blokhuis, the Dutch State Secretary for Health, Welfare and Sport, expressed his commitment to the WHO Framework Convention on Tobacco Control (FCTC) and announced that the Netherlands would like to put itself forward as a candidate to host COP9.

The Netherlands has come a long way in the past couple of years with regards to tobacco control. Although the country ratified the FCTC in 2005, a shadow report published by civil society in 2012 showed that the Netherlands was not meeting many of its FCTC obligations. Progress had slowed and some of the effective measures that had been adopted in the past had even been reversed.

Luckily, we are in a very different position today. FCTC Article 5.3 has gained prominence and progress has been made on several of the FCTC measures relating to demand reduction. Nevertheless, 23.1 per cent of Dutch adults still smoke. And each week several hundreds of children start smoking. A comprehensive tobacco control action plan is needed, with ambitious targets and measures. The Netherlands is currently working on a National Prevention Agreement, which will be launched at the end of October and has tobacco control as one of its priorities.

The Prevention Agreement brings together the central government, municipalities, the healthcare sector, health insurers, sports organisations, NGOs, and other relevant parties. In line with FCTC Article 5.3, the tobacco industry and its allies do not have a seat at the table. By launching the Prevention Agreement, the Netherlands seeks to align with a growing number of countries around the world that are setting an endgame target: the ambition is that by 2040 no child below 18 years old will smoke and that smoking prevalence among adults will have decreased to under 5 per cent.

In 2020, the first concrete results of this action plan should have materialised. Hosting the next COP in the Netherlands can only boost these results and provide additional momentum to make sure that we will have a Smoke-Free Generation by 2040.

Sanne Heijndijk, Dutch Alliance for a Smokefree Society
Patrick Ooms, Dutch Cancer Society, The Netherlands