

International Aspects of Tobacco Control and the Proposed WHO Treaty

Stephen D. Sugarman

In the past, national and local governments have been the primary sources of official policies aimed at tobacco control. Global and regional organizations have mainly served in advisory capacities. But changing perceptions of the “tobacco problem” have resulted in calls for the formal regulation of tobacco on a worldwide basis. Most significantly, the World Health Organization (WHO) has launched a major effort intended to culminate in the adoption of an international tobacco control treaty.

Section 1 of this chapter describes three global tobacco problems that together have prompted the proposed treaty: (1) the growing worldwide epidemic of tobacco-related diseases, (2) the growing economic and political power of the international tobacco companies, and (3) the growing “cross-border” tobacco peril, as exemplified by cigarette smuggling.

Section 2 examines the proposed treaty as a policy response to these problems. First, I consider the prospects for global tobacco control absent a treaty. Then I review the specifics of the proposed treaty and present optimistic scenarios that explore the ways in which the treaty could lead to the imposition of worldwide tobacco controls that nations acting without a treaty could not, or would not, otherwise achieve. That optimistic picture is followed by some cautionary scenarios that explore how the proposed treaty might fail. The chapter closes with a discussion of how much impact the proposed treaty, if widely adopted, might have on the global tobacco epidemic.

1. Three Global Tobacco Problems

Tobacco-Related Disease: An Enormous and Growing Worldwide Public Health Problem

Tobacco is currently a huge public health problem nearly everywhere in the world (WHO 1997; Abedian, van der Merwe, Wilkins, and Jha 1998; World Bank 1999; ASH 2000; Campaign for Tobacco-Free Kids 2000; UICC 2000). Epidemiologists estimate that as many as 4 million people a year now die from smoking-related diseases. Moreover, because of the typically long latency period between the initiation of smoking and death from tobacco-related diseases, future estimates are possible based on the expected trajectory of today's smokers. On that basis, that the annual global death count is now projected to reach more than 8 million by the year 2020, and perhaps 10 million by 2030. Furthermore, because of changing patterns of tobacco use, the incidence of mortality is shifting from richer, industrialized nations to poorer countries. For example, whereas about two-thirds of the tobacco-related deaths during the 1990s occurred in so-called developed nations, by 2030 an estimated two-thirds of the deaths from tobacco-related disease will occur in developing countries.

The following numbers describe the coming shift from a slightly different perspective. In the United States during the 1990s, the more than 400,000 annual tobacco-related deaths accounted for about 20% of all U.S. deaths in that period. In 1995, in developed nations as a whole, tobacco use accounted for about 17% of deaths. By contrast, the 3 million annual deaths worldwide from smoking-related diseases in the early 1990s amounted to "only" around 6% of all deaths. By the year 2020, however, the expected 8.4 million tobacco-related deaths worldwide would amount to roughly 12% of all projected deaths in that year, and 10 million tobacco-related deaths in 2030 would account for approximately 1 of every 6 deaths around the world that year.

This huge predicted growth in the future death toll is only partially attributable to the recent large increase in world population. During the past 30 years, smoking prevalence in the developing nations taken as a whole has sharply increased. Between 1970 and 1990, for example, cigarette consumption per person over the age of 15 in developing countries grew from 860 a year to 1,410 a year. By contrast, smoking in the more developed countries has actually declined somewhat, especially during the 1980s, with consumption of cigarettes per person over the age of 15 having dropped from 2,980 in 1980 to 2,590 in 1990.

China and India, the world's two most populous nations, together will account for a large share of the projected increase in tobacco deaths in the

coming two or three decades. From around 1970 to 1990, the estimated number of cigarettes smoked per adult in China increased by more than 250%, and tobacco consumption is up in India as well. By 2020 or 2030, China and India together are expected to account for somewhere between 30% and 45% of all deaths worldwide from tobacco use.¹

Of course, in principle some revolutionary medical or technological breakthrough could foil this bleak picture. But one should not be optimistic. Cures for lung cancer, heart disease, or emphysema, and so on are unlikely to emerge in the near term. Besides—short of some miracle vaccine—such a cure might well be too expensive or technologically sophisticated for the health care systems of poorer nations. For example, recent reports suggest that regular CAT scans could allow for the detection of lung cancer from smoking at its earliest stages, thereby potentially leading to medical treatment that might significantly extend a patient's life. But a full-scale, nationwide lung cancer "screening and treatment" strategy is probably implausibly expensive for most countries and surely out of the question for the poorer ones.

A technological fix would mean the creation of safe substitutes for today's tobacco products. These prospects are addressed in the chapter by Kenneth Warner. It is worth noting here that alternative nicotine delivery systems (ANDS) would probably raise similar financial constraints for smokers in poor countries, at least in the medium term. The prospects for the creation and public acceptance of inexpensive safer cigarettes or pseudo-cigarettes remain highly uncertain.

Of course, the projected future worldwide tobacco death toll could be significantly reduced by dramatic increases in cessation rates, as well as by dramatic decreases in start-up rates. But because of past experience with smoking patterns in richer countries, it is difficult to be optimistic for the medium term, given today's political, economic, and social climate. In the first place, in lower income nations today, few current smokers quit each year, or even say that they would like to do so. Moreover, many poorer countries are now at a much earlier stage in the national smoking and tobacco-related death cycle, which the richer Western nations have generally passed through, so that in 20 years, other things equal, they are likely to have proportionately more (rather than fewer) smokers than they have today.

Gender differences are especially noteworthy. As indicated earlier, the average number of cigarettes consumed per person in the developing countries, although rapidly increasing, is still well below the average for the developed countries. One important reason is that women's smoking rate in many countries remains low. For example, in Malaysia, Iraq, and Egypt, around 40% of men, but less than 5% of women, smoke; in the Philippines, Latvia, and Nigeria, men smoke at more than four times the rate of women. In some wealthier Asian nations, the gender imbalance is even more pronounced; in

Taiwan today, for example, an estimated 47% of adult men, but only 5% of adult women, are smokers, and in Korea the comparable numbers are estimated to be 68% and 7%.

Worldwide, during the 1990s, it was estimated that, whereas 47% of men smoked, only 12% of women smoked. In earlier times, this pattern held for the United States and Western Europe as well. But for many years now, women in these countries have been smoking at nearly the same rate as, and occasionally (e.g., in Sweden) at an even higher rate than, men. Hence, if these historical trends continue, large increases in women's smoking rates in other countries are to be expected—particularly as the countries get wealthier and as women's roles change.

Japan is an interesting case (Sasamoto n.d.; Watanabe 1997; Osaki, Kawaminami, and Minowa forthcoming). During World War II and in the years immediately following, the overall smoking rate was rather low—at first because cigarettes were largely unobtainable and later because most Japanese were so poor. But as Japan recovered economically, the percentage of adult men who said they smoked skyrocketed, quickly exceeding prewar levels and reaching an astounding nearly 85% in the mid-1960s. Since then, the men's smoking rate has been slowly, but steadily, declining, although most of the reduction occurred by 1986. Nevertheless, as of the late 1990s, the daily men's smoking rate was still very high, over 55%.

Meanwhile the women's smoking rate in Japan between 1965 and 1995 remained essentially constant at around 15%. But this plateau may be just a temporary phenomenon. Women's roles in Japan are changing quickly. Japanese women now marry later and remain in the work force longer (rather than becoming stay-at-home mothers shortly after finishing their schooling, which was the strong pattern in the past). Hence, it is perhaps not surprising that recent studies have found that 40% of single Japanese female shop workers in their twenties were smokers.

Put differently, there is an enormous potential market in female smokers in a large portion of the world. Consider, for example, that in the early 1990s, women over age 15 smoked at a 30% rate or more in Denmark, Norway, the Czech Republic, Israel, and Russia—all countries known for greater gender equality. Although traditional Asian cultural patterns and Islamic religious beliefs might prevent or long delay women's substantial uptake of smoking in some nations, surely the tobacco companies have their eyes on those potential customers.

The upshot is that realistic advocates who seek a large reduction in the worldwide rate of death and illness from tobacco products need to take a long-term perspective on their work. For example, a recent World Bank study suggests that even if worldwide adult smoking were cut back sharply so that consumption in 2020 was half of what it is today, the cumulative number of

smoking-related deaths since 1950 would be cut by less than 15% as of 2025. By 2050, however, the cumulative number of smoking-related deaths since 1950 could be cut by nearly 40% if adult consumption were to be halved by 2020 (World Bank 1999).

Some naysayers claim that tobacco-related diseases are largely a problem of old age and emphasize that the average lifetime smoker in the United States is statistically at risk of losing "only" around 6 years of life because of smoking (Levy and Marimont 1998). Hence, they say, poorer countries especially should instead worry much more about other health problems, such as communicable diseases. But this inappropriately minimizes the harm from tobacco products (Lukachko and Whelan 1999; Peto et al. 1992, 1996). Additional statistics provide a fuller picture. For example, U.S. data show that smokers who actually die from smoking-related diseases lose 12–13 years of life on average. Moreover, around 40% of those who die from smoking do so before the age at which the typical American retires from work, and those smokers lose more than 20 years of life on average.

It is not surprising then that Gro Harlem Brundtland, Norway's former prime minister and the head of WHO, has deemed tobacco and malaria as the two most serious global health problems.

Increasing Global Sales Dominance by the Giant Transnational Tobacco Companies

For much of the twentieth century, many countries throughout the world maintained a local monopoly, or near monopoly, on tobacco sales inside their national market. Often this was achieved through nationally owned and operated tobacco product manufacturing companies and sometimes through exclusively licensed national monopolies. Imported retail tobacco products were either banned or subjected to ruinous tariffs.

This strategy was adopted far more from a revenue-producing perspective than from a health perspective. Maintaining exclusive and close oversight over the tobacco product market seemed, especially in earlier years, to best assure successful excise (and related) tax collection (to say nothing of allowing the government to gain revenues from the profits generated by the sale of tobacco products). And, in strongly socialized economies, state-owned tobacco industries were the norm just as state ownership prevailed in other key sectors of the economy.

Until quite recently, local monopoly was the strong pattern throughout Asia and Eastern Europe. This remains largely the case in China, for example, where the state tobacco company still controls more than 95% of the national market and, as a result, accounts for an estimated 30% of all cigarette sales worldwide—making it the world's largest tobacco enterprise.

But now, outside of China, the international tobacco companies have achieved considerable penetration into both of these geographic areas (Holzman 1997; Bloom 1998; Hammond 1998; Weissman and Hammond 1998). In East Asia, market entry has been accomplished by aggressive assertion of free trade rights—and with the strong assistance of the U.S. trade representative during the Reagan administration. In Eastern Europe, market entry has been achieved in the aftermath of the disintegration of the communist economic system through outsiders' widespread purchase of formerly state-owned tobacco companies or their facilities.

A further, quite recent development has been a restructuring among the transnational tobacco giants themselves. Now there are but three big worldwide players. Philip Morris is the U.S.-based giant and the largest of the international firms with about 16% of the worldwide market. British-American Tobacco (BAT), operating in the United States through its subsidiary Brown & Williamson, recently took over most of Rothman's, formerly the fourth largest international firm, making BAT now nearly as large as Philip Morris. Japan Tobacco, which recently purchased nearly all of R. J. Reynolds's operations outside of the United States, now controls nearly 10% of the world market. At least one and often all three of these firms operate in most countries with any significant tobacco demand, and together they account for more than half of the cigarettes sold worldwide outside of China.

This does not mean that the giant international firms dominate sales in all countries. Local manufacturers still have a large share of the French and Spanish markets, for example, but although these firms are substantial enterprises and themselves have some sales abroad, they are not among the international giants. Nevertheless, the increasing importance in the worldwide tobacco market of a few giant companies (all broadly transnational, apart from the Chinese monopoly) is itself seen by many as a reason to view smoking and its control no longer merely as a series of separate national problems, but rather a global one.

Put simply, the concern is that the tobacco giants have the potential to exercise both strong economic and political power in country after country (Yach and Bettcher 2000). On the political side, this claim is not always convincing. In Japan, Taiwan, and Korea, for example, where outside transnational companies have become fairly strong competitors with the former national monopoly, it is difficult to see how those international giants will have *more* clout with the government than the local monopolists have had in the past (Levin 1997). The picture is perhaps a bit different in places like Australia, New Zealand, Canada, and South Africa, where the BAT-Rothman's merger will give the new BAT enterprise more than half, and sometimes more than 90%, of the market in each of those countries. In these cases, the new

giant may have more reason to invest in political influence and so could have more political might than the sum of several competitors had before.

It is perhaps more convincing to put the concern about the tobacco giants' political power this way: when a government's tight connection with its local monopoly is severed, an opening for the introduction of strong new public health-oriented tobacco control policies might emerge. Yet this opportunity might well be blocked by the political muscle of the international firms. In Eastern Europe, for example, after the fall of communism, new governments generally welcomed the international tobacco companies, and some implicitly (perhaps explicitly) promised them a regulation-friendly place to do business.

The economic concern is that tobacco product sales will significantly increase in countries that experience market penetration by the international firms (Taylor, Chaloupka, Guindon, and Corbett 2000; but see Tren and High 2000). There are several ways in which this might come about. First, these firms may simply offer "better" products because their cigarettes are more flavorful, or more consistent from pack to pack, or less bitter or burning in their taste (perhaps because different sorts of tobacco leaves are used, or nicotine levels are better controlled), and so on. It is also possible that cigarettes made by the international giants are more addictive. In addition, international (especially American) brands might be more attractive to some consumers simply because of the status associated with consuming a foreign import. Whatever the reason, if the imported product is more "desirable" to consumers than the old home-made brands, national consumption could increase.

Second, in most countries local monopolies in the past traditionally engaged in little advertising and promotion. By contrast, glamorous widespread marketing campaigns are the hallmark of the international tobacco companies everywhere. Although this may be necessary for the international firms to steal away some of the market share of their local competitors, many believe that these campaigns also increase demand for tobacco products and hence boost tobacco sales overall. Research from Southeast Asia suggests this is just what happened. Moreover, transnational firms are also thought to have the advantage of learning from their own experience as to what sorts of marketing efforts work in some countries—experience that they can try out in other countries as well. Especially important may be promotional gimmicks that the stodgier local monopolies might have ignored or been unaware of in the past.

Third, the entry of the international brands into new markets may create price competition that did not occur in the previously monopolized market. This is a standard economic axiom for what happens when free trade comes to formerly protected markets. Although the price of imported tobacco prod-

ucts may decline simply because tariffs are eliminated, the international firms themselves have not generally tried to bring in products that underprice the local ones (Council on Scientific Affairs 1990). That sort of competitive behavior may occur with steel or clothing, but rarely for tobacco products. Rather, economic analysis predicts that the local brands themselves will cut their prices to try to ward off their new international competitors, thereby also causing an increase in sales overall. There is evidence that this defensive response, resulting in increased overall sales, is exactly what has happened in nations such as Korea and Taiwan (Chaloupka and Laixuthai 1996).

Yet another worry about international dominance is that these corporate behemoths are increasingly entering countries with no tradition of tobacco control efforts (their tobacco taxes having been motivated solely by revenue concerns) and little structural capacity within the government to embrace such measures. Many African and Latin American nations and some Asian nations are in this situation. For example, the health and welfare ministry may have no, or few, professionals responsible for tobacco matters, little data may be collected about tobacco use and tobacco-related disease, the public health community may be small or focused on other diseases, public awareness of the dangers of tobacco products may be low, and so forth. In such settings, the willingness and ability of public officials to battle the international tobacco companies may be minimal, especially if the country has not yet experienced the enormous tobacco-related death count that others have. Yet, for the tobacco companies, these countries are good targets for increased cigarette sales.

Expanding Cross-Border Tobacco Problems

Smuggling Although the taxation of tobacco products has been government policy around the world for decades, only recently has this policy been embraced as a tobacco control strategy. Before, tobacco was seen as a product for which there was strong demand and from which a public revenue stream could be exacted without too much political opposition. Even in places where tobacco use is popular, it is still often a politically attractive candidate for taxation because of its cultural connection with pleasure or "sin" (along with alcohol products and other "luxuries" or indulgences). Now, as economists have shown how demand for tobacco products is influenced by their price (especially among younger people), many tobacco control advocates see high tobacco taxation as the single most important regulatory device for countries to adopt.

But tobacco tax policy (whether motivated for revenue-production or demand-reduction reasons) is undermined if the tax is evaded and tobacco products are available to smokers at a lower price. In fact, this now happens

to a moderate, and apparently growing, extent as a result of a variety of activities, the most important of which is "smuggling" (Joossens and Raw 1995; Galbraith and Kaiserman 1997; WHO 1997; Joossens 1998; World Bank 1999).

About 17% of the world's cigarettes are exported from the country of manufacture. Some have estimated that as many as 30% of those exported cigarettes (around 300 billion a year) are smuggled into other countries (or back into the country of origin)—that is, approximately 5% of all cigarettes. Of course, the incidence of smuggled cigarettes varies considerably from nation to nation. During the height of Canada's smuggling problem in 1993, one study estimated that untaxed cigarettes accounted for 30% of the market. In Sweden recently the problem seemed to many to be getting out of control, as criminal smuggling more than doubled its market share between 1996 and 1998, from 2% to 5%. The smuggling rate has been estimated at 4% in Russia and a bit lower in China, but perhaps 40% in Hong Kong, where many of the seemingly smuggled foreign brands are actually counterfeit. Italy has long had substantial smuggling problems, and recently, smuggling has become a substantial concern in Great Britain, where it is now estimated that smuggling suddenly accounts for 20% of cigarette sales.

The tobacco industry is quick to point out the smuggling problem in its opposition to higher tobacco taxes (British American Tobacco 2000a), and their allies, the "legitimate" retailers of their products, are plainly concerned about the problem. The picture typically portrayed by the industry goes something like this example. If tobacco taxes are low in Germany but high in Denmark, then, it is argued, cigarettes will be "smuggled" from Germany into Denmark.

At the simplest level, individual Danish smokers will go to Germany, stock up on cigarettes purchased from German retailers, and sneak them back into Denmark (avoiding the Danish tax). In this scenario, such "cross-border shopping" (or "bootlegging") clearly hurts Danish retailers, deprives the Danish government of revenues, and undermines Danish policy to discourage smoking through higher prices. In the United States, this sort of problem occurs between certain states with different tax policies, such as Massachusetts residents shopping in low-taxing New Hampshire.

However, although some of this cross-border trafficking clearly occurs, it appears to be a relatively limited phenomenon, constituting a small share of the international smuggling problem. Indeed, within the European Union (as in the Danish-German example), this sort of individual purchase for import to and consumption in one's home country is now generally no longer illegal.

A potentially bigger problem is that of organized criminal elements buying truckloads of cigarettes in Germany and clandestinely carting them into Denmark for distribution through either corrupt retailers or other black market

sellers. But people in this sort of business quickly realize that there would be much more profit to be made if the cigarettes they obtained were not fully taxed in Germany, but instead were acquired elsewhere entirely without tax. Whereas this could be from within a nation that has no domestic tax, these are hard to find. And a much simpler solution is available.

Smugglers buy tobacco products, for example, from bonded warehouses in Belgium and designate them for export to Russia or Cyprus so they are free from Belgian taxes—on the understanding that an appropriate tax will be imposed by the destination country. But then, once the products are on the move, the smugglers divert them from the pretended market to the secretly intended one, say, Spain or Italy. Now the smugglers have their tobacco products in hand and so far entirely free from tax.

At this point, the tobacco industry's typical story about smuggling patterns breaks down. Industry claims notwithstanding, Denmark and other countries with especially high tax rates are not necessarily the best market for smuggled tobacco products. High Danish prices in the legitimate market make it potentially possible for smugglers of untaxed cigarettes to reap handsome profits from Danish consumers (even if the smuggled cigarettes are sold at a price that is discounted from what legitimate retailers demand). But this requires getting the products into Denmark and into the hands of Danish smokers. Yet getting traditionally honest and well-monitored Danish retailers to participate might be difficult, and using small-time street sellers may not work well, especially because reasonably well-paid Danish police and customs officials might be vigilant against this danger and relatively unsusceptible to bribes.

Better then for the smugglers to sell the cigarettes in countries where weak law enforcement or corrupt retailers give the smugglers ready access to a wide distribution network—perhaps Italy or Spain, for example, even if those countries, as compared to Denmark, have lower taxes and somewhat lower retail tobacco prices in ordinary shops. Moreover, countries such as Italy and Spain may be especially vulnerable to this sort of trade because of their long seacoasts, thereby making them fairly easy targets for fast boat deliveries from, say, Cyprus or portions of former Yugoslavia.

In the United States and Canada, the story has been somewhat different. High new taxes adopted in the late 1980s in Canada prompted the pretended export of Canadian cigarettes to, say, the United States or to Russia free of Canadian tax, often through the reservation lands of Native American tribes that straddle the U.S.-Canadian border. But instead of actually going from the reservation into the export market, these cigarettes were brought right back from the reservation into the Canadian market where they could be sold for well under the newly increased Canadian retail price in conventional retail outlets. Notice that U.S. prices and U.S. taxes were irrelevant under

this scheme, because neither U.S. smokers nor U.S. cigarettes were significantly involved. (Apparently Canadians prefer products made in Canada—perhaps because of differences in Canadian-grown tobacco or the additives used in the products made in the two countries.) In this case, the smugglers took advantage of the Canadian police force's inability or unwillingness to do sufficient battle with the Native Americans; perhaps the authorities were also taken by surprise by the rapid involvement of organized criminal groups in this activity. The number of cigarettes sold in Quebec through this scheme became so large that Quebec retailers grew angry, and some of them, in rebellion, openly joined in the illegal trade. The political fallout was a significant reduction in the Canadian tax rate (at both the national level and in Quebec). Internal cross-border problems, then, caused the tax reduction at the Province level to ripple from Quebec to Ontario as well. Recently, the Canadians have decided that they now know how to fight smuggling more effectively and have once more imposed significant new tobacco taxes. This time the new domestic taxes are accompanied by significant export taxes that should discourage the illegal re-import of exported Canadian cigarettes. Whether this will cause an increase in smuggling of foreign brands is uncertain.

The smuggling problem is by no means clearly contrary to the interests of the international tobacco companies, even though they emphasize its dangers in opposing higher tobacco taxes. After all, so long as smuggled cigarettes are not stolen from them, they make their regular profits on sales to wholesalers. Further, to the extent that smuggling keeps the street price down, total sales increase. And, if customs or other police officials do manage to confiscate some smuggled cigarettes without disrupting the smuggling business completely, that translates into even more sales for the industry as the smugglers' stocks are replenished. Furthermore, smuggling can be a good way for the international firms to break first into national markets that are otherwise closed to them, because of official trade barriers, for example. And smuggled cigarettes sold at discounted prices may serve as something of a "loss leader" to introduce their product to new buyers. It is primarily to placate their ordinary retailers that tobacco companies have a financial interest in opposing smuggling.

Moreover, although tobacco company spokesmen loudly proclaim that it is clearly against firm policy to have anything to do with the smuggling trade, it has not gone without comment in the antismoking community that, on several recent occasions, individuals connected to the tobacco industry have been accused of knowing participation in smuggling operations (International Consortium of Investigative Journalists 2001). For example, in February 1999, a former R. J. Reynolds marketing executive was arrested and charged with assisting smugglers operating through the St. Regis Mohawk Reservation

in upstate New York, who had sold more than \$700 million in cigarettes on the Canadian black market. National Brands International, an R. J. Reynolds subsidiary, had already admitted participation in the ring and paid \$15 million in fines and forfeitures for its role. Earlier, employees of BAT or its subsidiaries were found guilty of involvement in smuggling operations in both Canada and Hong Kong. Claims have been made in both Colombia and South Africa that Philip Morris has encouraged or knowingly tolerated the smuggling of its cigarettes in from neighboring countries, and several Colombian state governments have recently brought civil racketeering charges against Philip Morris in American courts. Perhaps most significantly, the EU, together with nine member nations, have brought legal actions against Phillip Morris, R. J. Reynolds, and Japan Tobacco that accuse the international giants of scheming to smuggle cigarettes on a worldwide basis, a charge the defendants have denied.

Apart from smuggling concerns, cross-border transportation of "duty-free" cigarettes should be briefly mentioned. A modest share of untaxed, imported cigarettes is legally carried home from abroad by returning citizens, or into foreign nations by travelers as gifts or for personal consumption. These cigarettes are obtained duty free at special shops that have been set up for the purpose of arranging the sale of certain typically "luxury" items, including tobacco products, without certain taxes or customs duties and therefore at a lower price than that in the market where they are consumed.

Although a complete and effective end to duty-free shopping for tobacco products would have a relatively minor public health impact, it is understandably galling to tobacco control advocates that governments, in effect, deliberately encourage more tobacco consumption by including tobacco products in the duty-free industry and eagerly rent retail outlet space to duty-free shops located in public airports and other public facilities. Ending duty-free tobacco shopping would at least have a positive symbolic benefit for public health. (Interestingly enough, within the European Union, duty-free shopping in general is now being eliminated as tariffs at national borders are ending and national pricing and internal excises on tobacco and other products are being brought into line. In the future, it will pay for the English, for example, to bring back cigarettes from France only if the French hypermarkets are able to charge lower regular retail prices than those of their British counterparts.)

Leakage Around Advertising Controls Several nations have tried to sharply restrict tobacco product advertising within their borders, but sometimes advertising leaks in from outside.

Perhaps most important today is leakage through television. These days, in more and more countries, local citizens are able to watch foreign television

broadcasts, often through satellite dishes and the like. So tobacco companies effectively promote their products on television even in countries where such ads are supposedly banned.

A second strategy is to engage in sponsorship of activities, especially sporting activities, outside of a country, knowing that the sporting event and its association with tobacco products will be seen inside the target country when the event is broadcast there. For example, a tobacco company can sponsor racing car events in exotic locales, attaching its name to the event itself or to at least one of the entered vehicles (with appropriate brand logos affixed), and it can post billboards or other signs promoting its products at the raceway in locations visible to the television cameras as they cover the event. As proof of the extent that deliberate cross-border advertising of this sort occurs, anti-tobacco advocates have pointed to marketing campaigns attached to sports events that have little or nothing to do with the locale where the race takes place—for example, auto races in the Middle East carrying advertising of tobacco brands not sold there but rather sold, say, in Japan.

This sort of sponsorship might well be illegal in target nation(s), but if the event can be broadcast there, those controls are evaded. Nations might try to prevent local television broadcasters from carrying such programs. But local regulation might well not go that far, and the prospect of offshore and satellite broadcasting in several markets threatens to undermine any attempt at such domestic regulation.

Although television is probably the main source of ad leakage, print and Internet media are also relevant, and the latter may become increasingly important. To the extent that smokers and future smokers surf the Internet in search for fun or for specific information about tobacco products, placing ads on “offshore” websites makes it possible for tobacco advertisers to penetrate nations that otherwise seek to ban such advertising. Magazines (and other print media) also present a threat, as local citizens read tobacco ads that appear in foreign magazines. Unlike the Internet problem, magazines containing such ads might simply be banned. Still, having the political will to adopt such controls and organizing sufficiently large enforcement agencies to deal with violations are likely to involve considerable costs, especially because, as a practical matter, such magazine bans likely deprive local citizens of access to other information as well.

Free Trade Pressures Some nations have viewed imported tobacco products in the way U.S. government policy views imported illegal drugs such as cocaine and heroin. These are evil substances ruining “our” people, and an all-out war to block their entry (and to curtail their production at the source) should be waged. Other nations don’t have such moral or health-related reasons for strongly opposing the import of tobacco products. Instead, their

interest is purely economic: they simply want to have all the profits from domestic tobacco sales go to the local monopoly.

During the 1980s in particular, the United States took a position on tobacco products that dramatically opposed its position on other drugs. The “war on drugs” that sought to keep other nations’ products out of the United States was matched by an equally strong war to force other countries to open up their markets to our tobacco products (Hammond 1998).

This was especially important to the U.S. companies, for the United States is not only one of the world’s largest producers and exporters of tobacco leaf but also the largest exporter of finished tobacco products. But for years U.S. tobacco companies’ products were being officially denied entry by many countries with strong domestic tobacco markets. The U.S. trade representative under President Ronald Reagan engaged in a vigorous campaign to break down these trade barriers.

Some other countries claimed that they were restricting trade for health reasons. This is the basis on which the United States keeps some foreign-made pharmaceutical drugs out of the U.S. market: they have yet to be proven safe and effective to the satisfaction of the FDA. But parallel foreign nation claims about cigarettes were scoffed at as disguised protectionism, which in many cases was true.

Breaking down simple import barriers was not enough for many of the transnational tobacco companies, however. They wanted also to be able to advertise in their accustomed manner. When other governments claimed that their ad controls were motivated by health concerns or desires to prevent youths from smoking, U.S. authorities viewed these claims too as hidden and illegal trade barriers. Eventually, Japan, Korea, and Taiwan capitulated, with the result in Japan, for example, that high visibility tobacco advertising increased dramatically—both by the imported brands and, in response, by Japan Tobacco, which controls the Japanese brands. (After a dozen years or so, imported brands captured nearly a quarter of the Japanese market.)

Thailand, however, resisted the U.S. pressure with respect to ads, and the dispute eventually went to the World Trade Organization (WTO). The WTO decision called for a level playing field, requiring Thailand to provide access to imported goods but discounting the objections of the importers, who claimed that uniform treatment (ad bans on all tobacco companies) gave de facto advantage to the entrenched local brands. Moreover, during the Clinton administration, the United States backed off its position of especially supporting American tobacco exports.

Nevertheless, the broader point is that many countries around the world are increasingly committed to free trade—either by a genuine conviction on the part of the nation’s policy leaders or as a result of pressures brought upon the nation by the WTO, the International Monetary Fund, the United States

or other G-8 countries. But worldwide free trade principles and general international free trade organizations are seen by many in the tobacco control movement as obstacles that may prevent individual nations from adopting and enforcing the health-motivated tobacco control policies they desire (or might later desire). These concerns recently emerged in the debate that took place when the U.S. Congress granted "most favored nation" trading status to China. Although most opponents of the measure were concerned about international human rights in China and jobs of American workers, the main worry of public health officials was that increased trade with China would result in even more Chinese smokers.

2. International Tobacco Control through an International Treaty?

The World Health Assembly (WHA) is the governing body of the World Health Organization, to which nearly 200 nations belong. At its May 1996 meeting, the WHA requested that the director general of WHO initiate the development of a tobacco control treaty. And at its May 1999 meeting the WHA gave its unanimous "go ahead" to the project (WHA 1998). This is the first time that WHO is using its constitutional authority to try to facilitate the creation of such an international agreement (Yach 1995; Taylor 1996; Fidler 1998).

Global Tobacco Control Absent a Tobacco Treaty

Although many tobacco control advocates worldwide have strongly endorsed the proposed WHO treaty, before discussing the planned treaty, it is worth giving some attention to ways in which progress on international tobacco issues can be, and has been, made without a treaty. This inquiry may also help to identify more clearly the additional role(s) that the treaty could play (Ad Hoc Inter-Agency Task Force on Tobacco Control 2000).

WHO Dissemination of Information and Policy Recommendations The WHO director general has increased the importance of tobacco control within WHO, has pushed hard to get the tobacco control treaty-making process under way, and has increased substantially WHO staff capacity in the tobacco control arena. But WHO's campaign against tobacco-related disease is hardly brand new.

Over the past decade, WHO published several books and papers that document the extent of the tobacco problem around the world, identify var-

ious tobacco control strategies that some countries have adopted, and urge a specific tobacco-control agenda (e.g., Roemer 1993; Chollat-Traquet 1996; WHO Fact Sheets 1996, 1998a, 1998b, 1998c; WHO 1998). Also, WHO helps sponsor meetings and conferences where research, policy ideas, and political strategies about tobacco control are discussed. For example, a WHO-sponsored conference devoted to tobacco issues concerning women and children was held in Kobe, Japan, in fall 1999 and drew a large audience.

Moreover, the WHA, WHO's legislative arm, has adopted many tobacco control resolutions over the past several years. And, many nations substantially increased their tobacco control regimes during the 1990s—although not necessarily in response to WHA's urging. Nevertheless, worldwide tobacco controls fall way short of what WHA has endorsed, demonstrating to many people the ineffectiveness of mere resolutions. The WHO treaty, by contrast, envisions that nations of the world acting collectively will be able to persuade each other to do more for tobacco control than they as a group have so far been willing or able to do by acting individually in response to WHA recommendations.

Learning from Others Through Conferences, Journals, and Other International Networks By no means is WHO the only forum or organization promoting the international exchange of information about tobacco control. For example, an international journal called *Tobacco Control* has been created to carry scholarly research, timely information, and policy advocacy about tobacco control around the world. It is widely read in the international tobacco control community (Tobacco Control 2000).

The Internet has also become a splendid way for tobacco control advocates around the world to communicate with each other. Probably most important, a special closed network for those interested in tobacco control, called Globalink, has been created. It provides a forum for discussions among tobacco control activists and experts; it is a current source of information about worldwide developments related to tobacco; it serves as a mechanism for those in far-flung countries seeking information and advice from colleagues elsewhere to ask for and readily obtain it; and Globalink (<http://www.uicc.ch>) is an easy vehicle for members to use to connect to the many active Worldwide Websites that post information about tobacco control from both national and international perspectives.

International tobacco control conferences seem to be growing in number and provide additional occasions for public officials, advocates, and scholars from many places to share their ideas and findings. A conference held in South Africa in 1998 yielded the book *The Economics of Tobacco Control*, a multi-authored volume with multinational contributors (Abedian et al. 1998). A conference in the Canary Islands in early 1999 drew more than two

thousand participants from around the world. More than 30 nations sent representatives to an "International Policy Conference on Children & Tobacco" held in Washington in early 1999 that was sponsored by leading American politicians and national organizations involved in tobacco control. And there were thousands of participants at the international conference on smoking and health held in Chicago in summer 2000.

Through these exchanges, tobacco control advocates everywhere can find out about several important matters, including (1) how to discover, track, and report data about the prevalence of smoking and the health effects of smoking in their country in ways consistent with the best data collection efforts elsewhere; (2) what the tobacco industry is doing elsewhere; (3) what other countries are doing about tobacco control; and (4) what research says about the impact, or likely impact, of various tobacco control strategies. All of this information, in turn, may pave the way for the adoption of new national tobacco control policies.

Participants in the tobacco control movement worldwide have informally ranked countries according to the strength of their regime of tobacco regulation. For example, it is now generally agreed that nations such as Australia, Canada, New Zealand, Finland, Norway, Poland, Singapore, and Thailand have reasonably strong and comprehensive tobacco control programs. This generally means that the country has adopted national regulation that includes all (or most) of the following: (1) broad restrictions on tobacco advertising and promotion; (2) high tobacco taxes; (3) strong warnings on tobacco packaging; (4) strict limits on smoking in public places and workplaces; (5) tight controls on sales to minors; (6) organized antismoking efforts such as antismoking ads, school-based antismoking education, and widespread availability of tobacco cessation and use reduction assistance; and (7) a well-funded tobacco control infrastructure to monitor and enforce the tobacco control regime. By identifying such countries and their tobacco control packages, advocates can provide ready examples for political leaders urging changes inside their own nations.

In sum, access to all of this information puts those seeking domestic changes in tobacco policy in a better position than they were in the past. For example, when local doubters say that X or Y or Z tobacco controls won't work or will be unenforceable or economically detrimental, advocates can often point to experience elsewhere in the world that belies these fears. However, those seeking a treaty have concluded that good arguments by themselves are not enough and that formal international agreements will achieve more.

Efforts of the World Bank and Other International and Regional Organizations
Some people believe that misunderstandings about economic issues prevent

governments from adopting tobacco control policies. For example, governments may fear that higher taxes will yield lower revenues because of reduced demand and increased smuggling (when in fact higher tobacco taxes will almost always yield higher revenues), or that tobacco control will lead to massive job losses (which it usually won't). When these misjudgments are a genuine factor inhibiting national policy reforms, distinguished international bodies may help persuade national leaders that these fears are erroneous (at least for most countries) merely by publishing careful studies. The World Bank has undertaken precisely this sort of effort as part of a recent book it released called *Curbing the Epidemic* (World Bank 1999). Groups like the World Bank can play other roles as well, for example, by refusing to lend money to nations for the purpose of increasing tobacco farming (which has been World Bank policy for several years).

Those behind the framework convention believe, however, not only that groups like the World Bank, the International Monetary Fund, and regional organizations are unable to sufficiently prompt the adoption of adequate worldwide tobacco control measures on their own but also that other international groups, like the WTO, are actually undermining international tobacco control efforts. Indeed, many think that an international tobacco treaty is necessary to turn certain WTO pressures around.

Export Controls In principle, countries that are home to international tobacco companies could regulate the conduct of those companies in other nations. For example, where warnings are stronger in the home country, a nation could force its companies to include similar warnings on the packages of cigarettes they sell elsewhere. The same policy could be applied to the disclosure of the ingredients contained in tobacco products.

But, so far, most countries have been reluctant to impose health-related requirements designed to benefit other nations' citizens. In some places this is seen as inappropriately intrusive in the internal affairs of other countries—although this concern didn't stop the U.S. trade representative during the Reagan presidency from pushing other countries to abandon their internal advertising controls. More likely, tobacco product exporting nations have been politically more responsive to their own tobacco companies than to the public health concerns of other nations. In the United States, several members of Congress have been trying, with limited success, to rein in American efforts on behalf of U.S. tobacco companies abroad, both by curtailing the pro-tobacco work of the U.S. trade representative and by trying to eliminate tax and other benefits tobacco companies obtain from general legislation designed to promote American exports; as noted earlier, the Clinton administration had not supported tobacco exporting the way its Republican predecessors had.

Nonetheless, even if some governments were persuaded to impose strong export restrictions, tobacco control leaders fear that tobacco companies would respond by shifting their base of operations, or at least by shifting the supply base for international shipments, to offshore affiliated companies likely beyond the regulatory reach of individual export-controlling nations.

Treaty supporters believe that here, too, through international agreement on standards (concerning, say, warnings, testing, and ingredients), tobacco control policy gains can be achieved that individual nations have been unwilling, or unable, to adopt on their own.

Bilateral Arrangements Countries might agree to cooperate on a bilateral basis to deal with some of the cross-border problems discussed here, such as smuggling or the leakage of television advertising. But, all too often, the country that is the source of the problem may not be eager to cooperate. Belgium, for example, is probably eager to maintain the economic benefits that many think come from its huge tobacco warehouse business, and would be understandably worried that imposing strong regulations on that business could cause a shift of the warehouse trade to a friendlier nation. The same goes for a country that hosts a tobacco industry—sponsored auto racing event broadcast into other nations.

Although advocates of the WHO effort are counting on an international agreement to overcome these problems, the “selfishness” factor now facing those wanting to solve their cross-border problems on a bilateral basis should also serve as a warning about difficulties that may also confront a multinational effort.

Background on the Proposed Treaty

Structure and Process Currently, WHO’s intention is to structure this treaty as a “framework convention with protocols.” In today’s world of international law, a framework convention is usually envisioned as a largely aspirational document containing few, if any, serious binding commitments, apart from reporting requirements. The protocols to a framework convention are meant to contain more seriously binding obligations. The typical strategy behind this approach is to seek prompt and widespread adoption of the framework convention. The protocols generally come later, and the adoption of each of them would probably be individually pursued (Bodansky 1998; Joossens 1998; Taylor and Bodansky 1998).

For example, the framework convention might ask signatories to agree that tobacco is a significant worldwide problem, to pledge to work toward its solution, and to report regularly both national data about tobacco use and what actions the country has taken and what progress it has made in achiev-

ing the goals of the convention. By contrast, a protocol might require a signatory country to ban all tobacco advertising and promotion or to agree to take certain steps to help combat international smuggling of tobacco products.

Nations signing the framework convention would probably not be required to adopt all, or even any, of the protocols. But the architects of this strategy plainly hope that, in due course, there would be nearly as widespread adoption of the protocols as of the framework convention itself.

There is nothing magic about this allocation of roles to the framework convention and the protocols, however. Hence, some tobacco control advocates are urging that the framework convention itself contain several strong binding conditions on its signatories; others are urging that a weaker framework convention and several tough protocols be forwarded together as an initial package that nations would be urged to adopt (possibly even requiring that those adopting the framework convention also adopt one or more designated protocols). Although the "framework convention with protocols" approach is not the only treaty strategy that WHO might have pursued, international experience with this approach convinced the WHA in 1996 that this route is the most promising.

Seeking worldwide adoption of a weak framework convention without any binding protocols would have been an alternative strategy. But this approach would probably achieve little or nothing more than what WHO's already published policy recommendations on smoking policy can accomplish. Clearly, WHO strategists believe that a stronger product is both necessary and possible to achieve.

At the other extreme, WHO could have pushed for a fully binding comprehensive treaty as the first document nations would be asked to ratify. But many fear that this approach would either doom the venture to failure or yield, in the end, a vapid document.

Perhaps most important, the framework convention with protocols approach should be viewed as a dynamic (rather than one-time) process by which international consensus is forged over time, binding agreements are put into place as sufficient support develops, dissenting nations can participate substantially in the treaty even if not fully, and some of the most contentious issues can perhaps be delayed.

In the years since the WHA's 1996 resolution, WHO has begun its work and now has a timetable in place, with the year 2003 targeted for the finalization and adoption of the framework convention (and perhaps several protocols) (Bettcher 1998).

Procedurally, WHO created a working group on the framework convention that was charged with suggesting possible treaty provisions by the start of the year 2000. The working group formally met not only with represen-

tatives of many nations (WHO 1999a, 1999b, 2000a and b, 2000e) but also with representatives of certain recognized nongovernmental organizations (NGOs) as it developed its suggested provisions (INFACT 1998). The efforts of the working group, discussed further on, were reported to the WHA in May 2000. An intergovernmental negotiating body has been established and charged with drawing on the efforts of the working group and creating the text of both a convention and at least some protocols that the world community is likely to support. This negotiating process among nations is scheduled to be completed in less than three years. As of this writing the negotiating body had met once (in October 2000) and a chair's draft text had been released. Important differences between the working group's text and the chair's draft are noted in the discussion that follows.

Justifications In fact, WHO has justified the need for an international treaty in ways that invoke each of the three global problems described in section 1. First, it is said that the treaty will "promote international cooperation in areas that transcend national boundaries." Second, the supporters of an international regime note the weakness of domestic regimes, especially in developing countries. A third justification is based upon the "enormity and gravity" of the problem, combined with the "global interdependence of tobacco markets and regulatory activities." Most generally Derek Yach, who heads WHO's efforts on behalf of the convention has said, "Tobacco is a global problem. The tobacco industry acts as a global force—countries need to act together to counter this threat to public health" (Tobacco Free Initiative 1998).

For many tobacco control advocates, the global public health problem caused by tobacco consumption speaks for itself. In light of the spreading epidemics described, it is certainly understandable that WHO professionals would sense the urgency of "doing something" about the problem. So, too, public health leaders in the richer nations understandably want to help find solutions for the poorer countries, not only because this is generally what "do gooders" from richer nations try to do but also because the richer nations are ahead of the poorer ones in experiencing the enormity of the death toll from smoking, and the purveyors of death in poorer nations are, more and more, enterprises based in the richer ones.

And, yet, it does not obviously follow that an international treaty is an appropriate response to this public health epidemic. That is, what might such a treaty be able to accomplish? More precisely, what might collective action by the nations of the world be able to achieve that nations can't (or won't) achieve on their own or bi-laterally? The remainder of this chapter explores that question in some detail.

*Proposed Provisions of the WHO Framework Convention
and Its Protocols*

Competing Visions Although it is too soon to know whether the WHO treaty will ever be adopted and, if so, what it will actually say, we now know what elements WHO's working group has in mind, as influenced by positions taken both by national representatives and NGO representatives at large multinational meetings held in October, 1999 and March, 2000 in Geneva (WHO 2000b, 2000f). We also see that the chair's draft had already modified and somewhat weakened the working group's version.

Indeed, it became clear at the two meetings of the working group that key nations have taken quite different initial positions as to what matters should be included in the framework convention. As the working group notes emphasize, countries including the United States, Japan, Germany, and China have argued for including only "principles, general objectives and guidelines," whereas other nations, including Canada, Australia, Norway, and Singapore, "insisted that the body of the convention in itself should already contain strong provisions and obligations." (WHO 2000d).

The former group of countries based its position on the desirability of obtaining "a maximum of member states to sign the convention," and perhaps some of those countries are already signaling their potential (or likely) refusal to sign a treaty containing many (or certain) binding restrictions. The latter group, by contrast, expressed fears that a weak framework convention might be all that the nations of the world would sign and that would mean that the WHO process would have amounted to rather little. The European Union was reported to occupy an in-between position, which presumably means getting as many as possible real obligations into the initial framework convention itself—those for which there is widespread support—and leaving other obligations to be worked out over time in subsequent protocols.

The working group's work product appears to reflect the Canadian, Australian, et al. position, for it includes many strong provisions in the document it released. However, not a great deal should be made of this, because these various obligations could readily be placed instead in individual or multitopic protocols if the negotiating body so desires, and indeed the negotiating body appears to be moving in that direction.

Before turning to the specifics of the working group's effort, I will discuss one additional initial skirmish. Within the international community of non-governmental tobacco control, activist factions are also emerging over the content of the WHO treaty (Smoking and Health Action Foundation 2000). One group has emphasized the desirability of focusing on matters that truly require international cooperation, such as controls on smuggling and international advertising. Three quite different reasons lie behind this position.

The first is that these issues should have the highest priority because they require collective action; therefore, provisions concerning these problems promise to give countries benefits they could not obtain on their own. A second reason is that an agreement focused on these truly international control measures is more likely to be achieved—both because many countries see themselves in need of cooperative help from others in this area and because the specific controls envisioned are probably not too controversial for key nations involved. And third, people in this group fear that if the WHO treaty tries to deal with important domestic tobacco policy issues, it is likely to impose only modest obligations. Not only will modest obligations do little to combat the public health problem but such requirements cast as regulatory “floors” may have a way of becoming de facto “ceilings,” thereby possibly even setting back domestic tobacco control efforts. Not surprisingly, many of the advocates in this group come from nations such as Canada, which already have domestic controls that are, in nearly all cases, stronger than what many consider possible for the WHO agreement.

On the other side of this debate are those who, though conceding that matters necessarily requiring international cooperation are important, believe that strong domestic tobacco control policies are far more important. They hope that the WHO treaty will be the mechanism through which world opinion on wise tobacco control measures will be converted into mutually agreed upon worldwide action on the tobacco epidemic.

In short, the competing camps have different conceptions of the “global” tobacco problems, as well as different expectations as to how far international agreement might go. Some see the tobacco problem as most analogous to problems such as ocean resources and global warming for which issues of “externalities” and “commons” have been targeted through international agreements. Others, however, see the tobacco problem as more analogous to problems such as international human rights or children’s rights. Although treaties dealing with these latter issues address some important cross-national matters, they are most significantly about how governments are to treat their own people.

The working group dealt with this difference of opinion by trying to minimize it—by defining broadly those matters said to have an important international aspect. Tobacco tax policy is perhaps the best example. As noted earlier, for many tobacco control advocates, the single most important domestic policy a government can have is a high tax on tobacco products because of the ultimate price impact of this tax on tobacco consumption, especially by youths. The working group, however, released a document that talks about coordinated, relatively uniform tax rates from nation to nation in international terms by emphasizing the “bootleg” problem. Whatever its importance, dealing with the bootleg problem through coordinated taxes would

surely be only frosting on the cake. Moreover, coordination of tax rates could mean coordination around low rates. Indeed, that by itself would reduce substantially the cross-border problem. But, of course, the working group would be totally opposed to that sort of coordination. In short, coordinated high taxes are desirable because they are means of reducing internal demand through market forces. This is a perfectly appropriate explanation if strong domestic obligations are to be part of the treaty. But to justify this provision as a remedy to an important cross-border problem is simply not convincing.

In fact, the largest controversy among tobacco control advocates erupted not over taxes but over clean indoor air. Initially, the working group apparently could not find any way of viewing clean indoor air provisions as a cross-border issue, and so it did not include them in the documents it initially released. After all, tobacco smoke is not like acid rain that significantly travels from one country to another (smoking on international airplane flights aside). But many supporters of clean air policies find them to be a vital national policy. They not only protect third parties from the dangers of passive smoking and help those smokers who want to quit to do so but also they prod some smokers to quit somewhat involuntarily and send a strong signal to the rest of the society, including to youths, that smoking in public is not a "normal" activity. Hence, these advocates are eager to have the obligation for clean indoor air policies in the treaty, and, as emphasized before, they are by no means persuaded by those who envision a narrower truly cross-border focus to the treaty. And in the work products presented by the working group to the WHA, clean indoor air requirements were included.

Working Group Proposed Provisions as of May 2000 I have identified 10 substantive tobacco control policies that the working group presented to the WHA in May 2000—provisions that signatory nations would be required to enact, if the working group's provisions were eventually included in the treaty by the negotiating body (WHO 2000c). The working group envisions an approach that would expressly provide that signatory nations may adopt strong tobacco control measures that go beyond these requirements as long as they are not inconsistent with the treaty (the "floor" and "ceiling" issue already discussed). Some of the working group's proposals envision early adoption of supplementary protocols, yet, as already noted, placement of a policy in the framework convention, in a protocol, or both is not important for now, since the negotiating body might, for example, place all of these topics in the protocols:

- Tobacco taxes: countries would agree to impose excise taxes that would be maintained at two-thirds or more of the retail price of all tobacco products and to ban duty free and other tax free sales.

- Tobacco sales to youths: countries would agree to prohibit sales to youths, ban vending machines, and require retailers to obtain evidence of age from buyers.
- Environmental tobacco smoke: countries would agree to protect their citizens from passive smoking, and in the working group's more detailed option, they would agree to prohibit smoking in a long list of specific locations, including workplaces, public transport vehicles, restaurants, and bars.
- Tobacco product content and disclosure: countries would agree to adopt standards governing the testing, design, manufacturing, and processing of tobacco products (although the document is silent about what those standards might be) and to require disclosures concerning the ingredients and additives in tobacco products (perhaps based upon WHO-approved testing methods).
- Tobacco education: countries would agree to develop educational and public awareness programs on the health risks of tobacco use and exposure to tobacco smoke, especially ensuring that children and youths are well informed of these dangers.
- Tobacco packaging and warnings: countries would agree to require cigarettes to be sold only in packages of 20 or more, to prohibit the use of words like "light" or "low tar" on the packages, and to require packages to carry strong warnings (probably both pictures and words) as to the harmful consequences of tobacco consumption. A further protocol on packaging and warning is envisioned.
- Tobacco marketing: countries would agree to prohibit (or, in the weaker optional version, merely "impose appropriate restrictions on") advertising, promotion, and sponsorship aimed at children and youths, to regulate (in an undisclosed manner) other tobacco marketing, and to require tobacco companies to disclose their expenditures on marketing. A further protocol on marketing is envisioned.
- Tobacco dependence treatment: countries would agree to encourage tobacco cessation and to provide treatment programs for those dependent on tobacco (as well as integrating tobacco dependence treatment into reproductive health programs). A further protocol on dependence treatment is envisioned.
- Tobacco liability and compensation: countries would agree to open their legal processes and forums to those seeking compensation from damages caused by tobacco products (although the working group is vague as to whether this calls for some internationally agreed upon basis for liability); the working group also appears to envision a role for international law in this process, although that role is undefined in the working group's document.

- Tobacco smuggling: countries would agree to require products made in their jurisdiction to contain a label identifying the single nation in which they are to be legally sold and to otherwise further cooperate (in undefined ways) with each other in preventing and combating smuggling. A further protocol on smuggling is envisioned.

In my opinion, only the provision on smuggling deals centrally with cross-border issues. The marketing provision (which itself is not strong) does not address the advertising leakage problem.

The working group's presentation to the WHA also contains several provisions aimed generally at international cooperation, information coordination, and the building of tobacco control capacity in all nations. I have grouped them into seven topics:

- Tobacco control funding: countries would agree to allocate a certain (as yet undesignated) proportion of tobacco tax revenue for tobacco control efforts. The working group document also suggests that "countries that export manufactured tobacco products have a special responsibility to provide technical support to developing countries to strengthen their national tobacco control programmes" and that developed countries may also provide financial support to developing countries through various channels.
- Tobacco control surveillance: countries would agree to gather and regularly report on relevant national tobacco statistics including tobacco prevalence, tobacco tax and price structures, knowledge of the health risks of tobacco, mortality and morbidity associated with tobacco use, youth access, and so on.
- Tobacco control information sharing: countries would agree to assure public access to information about the tobacco industry and to exchange with each other relevant scientific, technical, socioeconomic, commercial, and legal information, including information about tobacco industry practices.
- Tobacco control research: countries would agree to sponsor research relevant to reducing tobacco consumption and to coordinate their research efforts with those of other nations.
- Tobacco control training: countries would agree to put in place relevant programs to train a wide range of professionals in the techniques of tobacco control.
- Tobacco control participation: countries would agree to promote the participation of various public bodies and NGOs in their tobacco control efforts.
- Tobacco control technology sharing (scientific, technical, and legal): countries would agree to share with each other both expertise on to-

bacco control and any equipment or technology needed for effective tobacco control that they develop.

These sorts of provisions, though mild-sounding to some, could be key to the treaty's success. If implemented even approximately as envisioned by the working group, they would assure that nearly all countries around the globe have active, well-informed, and reasonably well-funded tobacco control experts both inside and outside government. These experts would be in constant contact with counterparts elsewhere. Successful tobacco control strategies would be quickly identified and transmitted worldwide. Nations that failed to keep pace would be targeted for attention, and tobacco control activists in those nations would be able to call on outsiders for support. This infrastructure could assist many nations in battles with both their internal tobacco companies and the international giants. At least, that is the aspiration of the working group.

The remainder of the working group's document primarily addresses important structural and procedural matters that won't be discussed here—for example, the creation of the conference of the parties that would oversee the implementation of the framework convention and the process of creating and adopting subsequent protocols; the creation of a secretariat and other bodies that serve the conference; rules about reporting, settlement of disputes, adoption of new provisions, entry into force of the convention and later protocols; and so on. Some of these are routine matters applicable to all treaties. However, the working group's approach envisions a strong and active secretariat and conference as central to its view of the proposed framework convention and protocols as an ongoing dynamic process in furtherance of global tobacco control.

Intergovernmental Negotiating Body Chair's Draft Text as of January 2001 The draft text of the framework convention was released in January 2001 by the negotiating body's chair, with the expectation that this version would be the subject of further discussion at the negotiating body's next session in Geneva in May 2001, after this chapter was completed (WHO 2001).

Although the working group's text has been substantially reorganized, the major topics have remained largely the same. However, there are some significant differences between the two texts. For example, on tobacco taxation, whereas the working group called for taxes to be set equal to at least two-thirds the retail price, the chair's text calls for harmonized tax policies "so as to achieve a stable and continuous reduction in tobacco consumption" with no indication as to what the negotiating body believes is necessary by way of tax policy to achieve that result. Moreover, it is not clear that the two themes of the chair's draft on taxes are compatible with each other. Har-

monization implies having today's highly divergent level of taxes converge; but to achieve a continuous reduction in consumption would seemingly require even today's higher taxing nations to regularly boost their rates, which seems counter to an international movement toward harmonization. To be sure, lower taxing nations could dramatically increase their rates so as to catch up with the others, but that seems inconsistent with the call for a "stable . . . reduction" in consumption.

As another example, the chair's draft on advertising controls seems especially directed toward youths, whereas the working group's text seemed to envision greater regulation of advertising and promotion in general. At the same time, whereas the working group, as noted earlier, seemed to ignore the cross-border advertising issue, this concern is specifically dealt with in the chair's draft. In any case, this plank of the convention has already drawn harsh criticism as being far too weak from the tobacco control community, which seeks a total worldwide ban on all advertising and promotion (e.g., American Lung Association 2001; Framework Convention Alliance 2001).

As a third example, while the working group called for opening up the legal processes of each nation to claims for compensation for injury from tobacco products, the chair's draft is deliberately silent on this issue, identifying it as something to be taken up by the negotiating body at a latter session. Already concerns have been raised in the tobacco control community that the industry will seek to use the framework convention as a device for buying it legal immunity worldwide—an expanded solution of the sort that the industry tried and failed to get in the United States.

As a fourth example, the chair's draft actually seems to be stronger and more specific in terms of strategies for dealing with smuggling. Yet here too critics have already complained that even better and more effective approaches to smuggling are available, based in particular upon a recently adopted Basel Convention dealing with the disposal of hazardous waste, which imposes an obligation on initial suppliers to take responsibility for products even after they have left their hands (ASH 2001).

Finally, the chair's draft includes as one of its guiding principles that "tobacco-control measures should not constitute a means of arbitrary or unjustifiable discrimination in international trade." Although this principle could have little bite, tobacco control advocates are up in arms that a provision such as this will be used to put free trade values ahead of public health values and will block efforts of individual nations from imposing additional tobacco control measures of their own. This flag has been raised notwithstanding the further guiding principle of the chair's draft that "the provisions of this Convention should be recognized as minimum standards, and Parties

are encouraged to implement measures beyond those required by the Convention.”

How the Treaty Approach Might Get Countries to Adopt Stronger and More Effective Tobacco Controls than They Would Without the Treaty

Whether the framework convention and protocols are a sweeping attempt to change domestic tobacco controls or a more limited attempt to address cross-border problems and domestic capacity building, the question remains: why might countries agree to measures they have not already either imposed on themselves or voluntarily adopted for the benefit of others?

The answer lies in the nature of international law making and the envisioned dynamic process that accompanies a framework convention and protocols approach. We can understand the distinctive ways an international process of this sort could result in progress on tobacco control if we consider the wide range of reasons why nations might agree to sign a tobacco control treaty.

First, consider the countries (several of which were noted earlier) that already have adopted comprehensive tobacco control regimes. They are probably most likely to sign the convention and all its protocols early on. After all, these nations (1) won't have to make many, if any, changes in national policy in order to comply, (2) will have "bragging" rights to say they have stepped up to do the "right thing" for public health, and (3) may genuinely benefit from the cross-border controls that are adopted. Indeed, it is perhaps not surprising that (despite some doubters within their own borders) the countries with strong tobacco control records have generally been among those urging the working group and the negotiating body to include tough requirements in the framework convention itself. Surely, treaty advocates have counted on countries like these all along to get something started, hoping that these pioneers would be willing to use some of their political and economic muscle to persuade others to join in.

A second type of country that would be drawn to sign the treaty early is a nation whose leaders would like to have tougher domestic tobacco control policies, but currently lack the capacity to impose and enforce such controls. As already noted, many advocates of the framework convention believe that it will help build that capacity, and several specific provisions suggested by the working group and the negotiating body that are targeted at that goal have already been described. To repeat, the hope is that, over time, the convention's provisions will provide the needed training, expertise, and cash to support strong domestic tobacco control efforts—especially in developing

nations (although whether richer nations will in fact provide cash remains to be seen). Support for the treaty along these lines is suggested by a declaration issued in March 2001 on behalf of 21 African nations following a meeting in Johannesburg of health officials.

Another way to think of the framework convention is as a political device for encouraging a group of nations to act in concert against the tobacco companies. The vision here is that, without the treaty, the industry is now able to immobilize weak governments one by one. But the solidarity of the treaty process (amplified by convention provisions relating to regular meetings, information exchange, and the like) may be a means of increasing the collective strength of these countries to resist the tobacco giants. Ironically, some countries in this group may be those with national tobacco industries who, their governments fear, are losing out in market competition with the international giants. These nations may now be afraid to impose tobacco controls that would harm the international companies because this could subject the country to free trade and other sanctions. But the framework convention may provide a more secure basis in international law for adopting those controls. Cooperative action along this dimension is suggested by an April 2001 agreement reached at meeting in Jakarta among health officials from eight Asian nations to support a total ban on cigarette advertising.

Third, from a "public choice" perspective, the internal politics of some countries might be influenced by the creation of the framework convention. That is, the political leverage of existing tobacco control supporters within a country (political entrepreneurs, leaders in key nongovernmental organizations, and important public health officials) may be enhanced by the process leading up to the adoption of the framework convention. The debate over the convention and its later adoption can help fairly powerful tobacco control advocates inside a country finally gain the upper hand, thereby facilitating the adoption of protocol requirements calling for additional domestic controls that would not be possible without the convention. Several aspects of the treaty might work in this direction. First, the convention and protocol process may establish international norms of "proper" regulation. This may give such norms more weight inside a country than they might have as mere WHO recommendations or policy positions of tobacco control advocates. In addition the visibility of the framework convention, the negotiations surrounding it, and the worldwide facts it brings to light through the convention-adoption process may help bring and keep tobacco control on the "front burner" as a domestic political matter in ways that would not happen without the treaty creation process. This too might tilt domestic politics in favor of committing to broader tobacco control than would otherwise be possible.

Fourth, countries facing specific tobacco control problems may be drawn to signing the treaty because of advantageous trade-offs within the terms of

the tobacco control convention itself. That is, they would foresee more gain than loss from signing up. For example, Italy and Spain might agree to adopt new internal controls if they could get international help to fight their smuggling problems.

Fifth, once the framework convention is in place, even recalcitrant nations might be influenced to change their domestic policies over time. If there is a worldwide commitment to the tobacco problem, some nations can effectively be embarrassed into doing more domestically to control tobacco. The regular reporting requirements of the framework convention are intended to work in this direction by forcing the do-little signatories to lay bare both the extent of their tobacco problem and their failure to make progress in solving it. (This, of course, assumes that nations currently unwilling to embrace binding protocols will at least sign a framework convention that imposes reporting and meeting obligations.)

Easiest to influence in this way, perhaps, are nations that like to have a "good guy" international reputation. Many nations included in this group may have internal legal norms such that signing a treaty, even with binding promises included, yields few if any genuine legal consequences internally. For example, these countries may readily agree to adopt measures limiting youths' access to smoking but then not rigorously enforce them. Nonetheless, from the multinational perspective, even getting these "paper tigers" to sign the treaty (and perhaps some protocols) could be valuable. Eventually the treaty would allow these foot-dragger countries to be identified and isolated and thereby subject to further international pressures to fall in line.

One should not have great optimism about the United States ratifying the framework convention and its protocols. After all, the United States has not signed a number of other important treaties that have gained the support of most other nations—such as the treaties covering land mines or the rights of children. However, because of the ways the treaty-making process can shift internal political balances, as already discussed, even without formal ratification, the terms of a tobacco control convention and its protocols could have a positive influence upon internal U.S. policy.

Finally, some nations may embrace the convention and protocols because they are enticed or pressured into doing so. This happens all the time in the international law-making field. Sometimes, international organizations have some leverage points that can be used against recalcitrant member countries. Indeed, because of the leverage of the United Nations (UN), some initially favored having the UN rather than WHO take the lead on this effort. But it can be dicey, and perhaps illegal, for international organizations (whether the UN or WHA/WHO) openly and strongly to pressure countries into giving support to a new treaty. Think, for example, about a suggestion that the WHA should direct WHO to limit its support for the control of internal

malaria problems or the cross-border spread of contagious diseases to nations that support the tobacco convention. Even if this were legal (which it might not be), this step is highly unlikely for the WHA to take. First, it is morally questionable, given who would be harmed if the threat is carried out; and second, it could create a logistical nightmare because it would invite a practice of reopening for renegotiation every international agreement each time a new one is put on the table.

It is one thing for avid tobacco control countries to campaign with words for others to follow their lead. It is another for them to make threats in other arenas, or offer sufficient bribes, to gain adherents. Nevertheless, in reality such efforts are probably necessary to gain certain nations' support. Indeed, some nations might secretly be welcoming the framework convention on tobacco control just because they will knowingly use it as an occasion to solicit and accept bribes.

In other world trade negotiations, for example, the United States was able to pressure China into adopting a domestic intellectual property law that would benefit U.S. companies because China did not want to lose access to the U.S. market. But, of course, it is by no means clear that the United States will be willing to exert any of its political or economic might in support of the WHO treaty. At the national level (as contrasted with the state and local levels), the United States has weak tobacco control laws—low taxes, few clean indoor air controls, limited advertising controls, and so on. Hence, the U.S. government hardly has a history of crusading for tobacco control. Moreover (or perhaps as an explanation of the former), Philip Morris and other U.S. tobacco companies have historically had considerable political power at the national level, and though that power may be eroding, the industry is still a strong presence in Washington.

Furthermore, American political entrepreneurs wanting to make a name for themselves in tobacco control are perhaps more likely to want to take on domestic issues (like giving the FDA control over tobacco products) than the WHO treaty. And because Japan's tobacco control record is even weaker than that of the United States, it looks as though the political muscle and economic grease for the treaty will come primarily from a combination of the European Union (which has adopted a strong European position on tobacco control) and former British colonies, such as Canada and Australia. What precisely these national groups will be willing and able to do to garner support from other countries remains to be seen.

The most talked-about "bribe" strategy so far concerns paying off poorer nations that are now large tobacco exporters by getting them to shift their agricultural investment to other crops. Zimbabwe and Malawi, especially, and Turkey and Brazil, secondarily, are significant exporters of unmanufactured tobacco that might be enticed into crop shifting. How much this would ac-

tually influence the worldwide supply of tobacco is another matter, however. The United States, China, India, and Italy, to give but some examples, are all also significant tobacco leaf exporters, many of which could readily increase production capacity if competitor nations dropped out of the business. Nonetheless, if the treaty deals with the plight of farmers in those poorer nations currently economically most dependent on tobacco growing, then at least one bothersome economic argument could be removed. In the end, however, other pressures and bribes may well be necessary.

If all (or even most) of these favorable possibilities fall into place, a strong tobacco control treaty could become a global reality in the next few years.

Risks

On the other hand, the framework convention on tobacco control could come to nothing, apart from the expenditure of WHO time and money. Now that the negotiating body has begun its work, it may well achieve consensus about the framework convention within the scheduled time period. But obtaining a consensus within the negotiating body is just a preliminary step. Whether the treaty will gain widespread ratification and actually result in substantial changes is still a question. And the risks of failure are significant.

It seems clear that the advocates for the convention are particularly concerned about the growth of tobacco-related health problems in developing nations. Many of the richer countries already have fairly strong tobacco controls in place, and many more will probably adopt such controls before too long even without the treaty; besides, tobacco consumption seems headed downward in most such countries (albeit at a much slower pace than tobacco control advocates would like). By contrast, developing countries have a much greater need for controls. Yet many of those countries have yet to experience the mounting number of tobacco-related deaths now common in richer nations. Moreover, many of them have other critical and immediate public health problems to worry about. Furthermore, in nations with short life expectancies and widespread poverty, measures that primarily prolong the lives of older people are not likely to have the highest priority. And, of course, the tobacco industry and its friends will do their best to prevent the adoption of a treaty, at least a treaty with any teeth at all (British American Tobacco 2000b; Scruton 2000).

From a numbers perspective, as with many international issues, high population nations such as China, India, Russia, and Indonesia are the key group on which to focus efforts at change, for by 2020 they are likely as a group to account for more than half of the death toll from tobacco outside the richer countries. Yet, as suggested before, these nations have many pressing problems in addition to the tobacco epidemic. Besides, when more than half of

the men in a country smoke (as is now true in China, Russia, and Indonesia), the internal politics of tobacco control has tended to be much less promising. In countries with much stronger tobacco control programs today, men tend to smoke much less—such as Sweden, New Zealand, Australia, and Canada. Indeed, some have suggested that the causal direction of national tobacco control policy works primarily in this direction: that is, smoking reduction causes more tobacco control to be adopted than tobacco control causes smoking reduction. So far at least, leaders from China, India, Russia, and Indonesia have not made public their response to the WHO treaty effort (although China has joined the United States and Japan in asking for a sharp division between an aspirational framework convention and binding protocols).

Although the framework convention approach is designed to try to prevent the watering down problem that can plague comprehensive, fully binding treaties, obviously it will amount to much the same thing if, for example, most of the exporting countries refuse to sign the protocol regulating exports, or most of the countries responsible for smuggling problems refuse to sign that protocol.

A different problem is that a strong treaty would be signed by many nations that would then not comply (Chayes and Chayes 1995; Weiss and Jacobson 1998). For several other treaties, developing countries do not have splendid compliance records, even with reporting requirements. Often these countries do not have effective internal NGOs to pressure the government to meet its obligations, the press is weak or not interested, and, despite good intentions, the government is unable to deliver meaningful information about the state of its problem. Because this sort of noncompliance, based on the lack of an adequate infrastructure, could well plague the proposed tobacco control convention, its advocates are putting substantial emphasis on capacity building in developing countries.

Willful noncompliance is also a risk. Many nations could do a much better job, say, of reporting on their own internal human rights problems—but choose not to do so. Noncompliance could also happen with tobacco control for nations that weren't really keen to join in the first place but did so because of their wider agenda in the international community—or because the pro-tobacco forces regained political power that was temporarily lost around the ratifying of the treaty. All of this applies as well to countries that ratify protocols, but don't follow them in a meaningful way, either by adopting regulations with loopholes, by adopting regulations without sanctions, or by not enforcing their laws on the books. Tobacco control is especially problematic from this perspective because it requires changing the behavior of masses of ordinary citizens, and in many cases of large numbers of local businesses (e.g., around youths' access, advertising, and clear indoor air issues). This is very different from treaties with which the government can comply simply

by getting government officials to go about their own business in new ways. Again, the working group and the negotiating body envision that these problems could be addressed through regular meetings of the signatories, in which these concerns may be aired and pressures brought to bear on nations to improve their compliance record; however, the long-term effect of these precautions is unclear.

Nevertheless, important progress could be achieved even if the WHO treaty suffered because many important countries refused to sign or signatories did not comply. After all, every country that imposes on itself stronger internal tobacco controls than it would have otherwise (or would have adopted only later on) would mean a public health plus. Some reduction in smuggling and cross-border ad leakage is better than none. And any gain in internal tobacco control infrastructure holds promise for the embrace of effective policies in the future.

Potential Implications for Tobacco-Related Disease Worldwide

Despite the concerns raised in the prior section, let us assume now that a strong framework convention and binding protocols were adopted and enforced by every nation in the world. What would be the impact on the worldwide toll of death and disease? That is, how much and how rapidly would such a treaty actually curtail the prevalence of smoking?

Controls that have a specific cross-border focus are likely to have relatively little direct impact. That is not to say they are unimportant, only that these measures need to be put in context. Suppose, for example, there was no more tobacco smuggling and no more leakage of outside advertising inside countries. By itself, this would surely reduce smoking only by a little in most places. If, as in a typical country, 5% of the cigarettes are now smuggled in and sell for a somewhat lower price on the street, the elimination of that supply could be readily replaced with legitimate sources, and the price effect on consumption would surely be modest. This would also be true even where a much higher share of the retail market is dominated by smuggled products (e.g., 20%), unless the price discount for those products is extremely large. In fact, the most important consequence of wiping out smuggling could well be to enhance the political will to stick with high domestic tobacco taxes; that indirect impact could, of course, be quite significant. A similar point applies to advertising from outside that evades internal bans. By themselves, these ads can have but a small impact on smoking levels, so, in turn, the direct consequence of their elimination cannot be great. But, again, if these ads are successfully kept out, a nation might be more willing to impose and enforce stronger internal ad bans that could have a greater impact.

Nevertheless, international experience to date also makes me cautious about how optimistic tobacco control advocates should be about the effectiveness of the domestic controls envisioned by the treaty. This caution derives from the fact that most of the nations that currently have strong comprehensive tobacco control programs still have significant smoking rates. I do not mean to say that tobacco control programs don't work or aren't well worth it from a cost-benefit perspective (National Academy of Sciences 2000). After all, a 10% reduction in deaths from smoking-related diseases by the year 2020 would mean more than 800,000 fewer deaths—a very large number indeed. And reducing the adult smoking rate worldwide below 20% would have an even greater positive long-run impact on public health. Nonetheless, my point is that one must be realistic about how far domestic tobacco control policies can directly bring about change. It is hard to find any nation with a strong tobacco control regime that by the year 2001 has moved its smoking prevalence rate below 20% (it appears that Sweden has finally achieved this goal [AP 1999]).

Moreover, one must face the fact that some countries with relatively weaker tobacco control regimes—such as the United States—have smoking rates that are generally no higher, or at times even lower, than similar nations with strong controls. Of course, the United States might have an even lower smoking rate were its controls tougher. After all, California, which has adopted significantly stronger controls than the United States on average, also has a substantially lower smoking rate among its citizens than among the nation as a whole. Still, it is unclear how much of this difference is due to tobacco control policies and how much is due to the state's "healthy lifestyle" culture.

From the international cultural perspective, it would be a mistake to draw many conclusions from the tobacco control experience of the rich Western countries. As noted at the outset of this chapter, in many developing countries, the greatest challenge from the tobacco control perspective may be keeping women from starting to smoke. But whatever the cultural norms are that create these vast gender differences, it is by no means clear that they can be directly and dramatically influenced by the levers available through tobacco control policy. Indeed, to the extent that other ongoing international efforts are aimed at creating greater wealth and equality in today's developing nations, substantial tobacco control efforts may be required to prevent the overall adult smoking prevalence rate from escalating.

That having been said, the proposed WHO treaty should be seen in the context of the wider cultural perspective. What is really needed is a global sea change in the social norms around smoking. This has in fact happened in many upper-middle-class and professional-class communities in the United States and elsewhere. In these circles, smoking is basically unaccept-

able; smokers are thought to be foolish and perhaps pitied; smoking is decidedly not cool; and as the social norms have changed, smoking rates have dropped dramatically, down to below 10% in such groups. Can these norms be embraced worldwide? It is by no means clear. But, over time, the proposed WHO treaty, both directly and indirectly, could indeed help promote changed social norms about tobacco, and perhaps therein lies its greatest hope.

NOTE

1. In India today, unlike most other high-consumption nations, tobacco is significantly consumed as bidis and as smokeless tobacco, and not as manufactured cigarettes. Bidis are made from a small amount of tobacco wrapped in a tembruni leaf. In 1992, for example, 20% of the tobacco (by weight) consumed in India was in the form of manufactured cigarettes as compared with 40% in the form of bidis. Despite their small size compared to cigarettes, bidis are thought to deliver at least the same levels of tar and carbon monoxide to their smokers.

REFERENCES

- Abedian, I., R. van der Merwe, N. Wilkins, and P. Jha, eds. 1998. *The Economics of Tobacco Control: Towards an Optimal Policy Mix*. Cape Town, South Africa: Applied Fiscal Research Centre.
- Ad Hoc Inter-Agency Task Force on Tobacco Control. 2000. *Report of the Secretary-General*. UNESCO Substantive Session of 2000, May 1.
- Action on Smoking and Health (ASH). 2000. Online. Available: <http://www.ash.org.uk>.
- . 2001. Overview of the chair's text. March Online. Available: <http://www.ash.org.uk/?international>
- American Lung Association Action Alert. Online. Available: <http://www.lungusa.org>
- Associated Press (AP). 1999. *Sweden tobacco use declines*. Sept. 17.
- British American Tobacco. 2000a. *Smuggling: Our view*. Online. Available: <http://www.bat.com>.
- . 2000b. *The WHO Framework Convention on Tobacco Control: Our view*. Online. Available: <http://www.bat.com>.
- Bettcher, D. 1998. WHO Framework Convention on Tobacco Control (FCTC): An accelerated workplan. Background document for presentation to the WHO Framework Convention on Tobacco Control: Meeting of Public Health Experts, 2 December.
- Bloom, J. L. 1998. *International interests in U.S. tobacco legislation*. Health Science Analysis Project, Policy Analysis No. 3. Washington, DC: Advocacy Institute. Available: <http://scarcnet.org/hsap/international.htm>
- Bodansky, D. 1998. *The framework convention/protocol approach: The experience of international environmental regimes*. Background paper for the proposed International Framework Convention on Tobacco Control, November.

- Campaign Center for Tobacco-Free Kids. 2000. Online. Available: <http://www.tobaccofreekids.org>.
- Chaloupka, F., and A. Laixuthai. 1996. *U.S. trade policy and cigarette smoking in Asia*. National Bureau of Economic Research, Working Paper 5543.
- Chayes, A., and A. H. Chayes. 1995. *The New Sovereignty: Compliance with International Regulatory Agreements*. Cambridge, MA: Harvard University Press.
- Chollat-Traquet, C. 1996. *Evaluating Tobacco Control Activities: Experiences and Guiding Principles*. Geneva: World Health Organization.
- Council on Scientific Affairs. 1990. The worldwide smoking epidemic: Tobacco trade, use, and control. *JAMA* 263:3312–18.
- Filder, D. P. 1998. The future of the World Health Organization: What role for international law? *Vanderbilt Journal of Transnational Law* 31:1079–1126.
- Framework Convention Alliance. 2001. Briefing paper for the 2nd meeting of the intergovernmental negotiating body of the Framework Convention on Tobacco Control, comments on the chair's draft. March. Online. Available: <http://www.fctc.org>
- Galbraith, J. W., and M. Kaiserman. 1997. Taxation, smuggling and demand for cigarettes in Canada. *Journal of Health Economics* 16:287–301.
- Hammond, R. 1998. *Addicted to Profit: Big Tobacco's Expanding Global Reach*. Washington, DC: Essential Action.
- Holzman, D. 1997. Tobacco abroad: Infiltrating foreign markets. *Environmental Health Perspectives* 103:178–83.
- INFACT. 1998. *Mobilizing NGOs and the media behind the International Framework Convention on Tobacco Control: Experiences from breast-milk substitutes, landmines, environmental codes and conventions*. Background paper, Tobacco Free Initiative, World Health Organization.
- International Consortium of Investigative Journalists. 2001. Tobacco companies linked to criminal organizations in lucrative cigarette smuggling. Online Available: <http://www.publici.org>
- International Union Against Cancer (UICC). 2000. *Tobacco and cancer programme*. Online. Available: <http://uicc.ch/toba>.
- Joossens, L. 1998. *Improving public health through an International Framework Convention for Tobacco Control*. Background Paper, Tobacco Free Initiative, World Health Organization.
- Joossens, L., and M. Raw. 1995. Smuggling and cross border shopping of tobacco in Europe. *British Medical Journal* 310:1393–97.
- Levin, M. A. 1997. Smoke around the rising sun: An American look at tobacco regulation in Japan. *Stanford Law & Policy Rev* 8:99–123.
- Levy, R., and R. Marimont. 1998. Lies, damned lies, and 400,000 smoking-related deaths. *Regulation* 21:24–9.
- Lukachko, A. M., and E. M. Whelan. 1999. A critical assessment of "Lies, damned lies, & 400,000 smoking-related deaths." Online. Available: <http://www.acsh.org/publications/reports/cato99.html>.
- National Academy of Sciences. 2000. *State Programs Can Reduce Tobacco Use*. National Cancer Policy Board and Board on Health Promotion and Disease Prevention. Online. Available: <http://books.nap.edu/catalog/9762.html>.

- Osaki, Y., K. Kawaminami, and M. Minowa. Forthcoming. Estimating adolescent cigarette consumption in Japan. *Journal of Epidemiology*.
- Peto, R., A. D. Lopez, J. Boreham, M. Thun, and C. Heath, Jr. 1992. Mortality from tobacco in developed countries: Indirect estimation from national vital statistics. *Lancet* 339:1268–78.
- . 1996. Mortality from smoking worldwide. *British Medical Bulletin* 52:12–21.
- Roemer, R. 1993. *Legislative Action to Combat the World Tobacco Epidemic*. 2d ed. Geneva: World Health Organization.
- Sasamoto, T. n.d. *National policy on tobacco control in Japan*. Health Promotion and Nutrition Division, Ministry of Health and Welfare, Japan.
- Scruton, R. 2000. *WHO, what and why? Trans-national government, legitimacy and the World Health Organisation*. Occasional Paper 113. London: Institute of Economic Affairs.
- Smoking and Health Action Foundation and Non-Smokers' Right Association. 2000. Comments on draft elements of the WHO Framework Convention on Tobacco Control. Submission to *Health Canada*. Available: <http://www.nsra-andf/ca/english/FCTC-NSRA.html>. March 16.
- Taylor, A. L. 1996. An international regulatory strategy for global tobacco control. *Yale Journal of International Law*. 21:257–304.
- Taylor, A. L., and D. Bodansky. 1998. *The development of the WHO Framework Convention on Tobacco Control: Legal and policy considerations*. Background Paper, Tobacco Free Initiative, World Health Organization.
- Taylor, A., F. J. Chaloupka, E. Guindon, and M. Corbett. 2000. The impact of trade liberalization on tobacco consumption. In *Tobacco Control in Developing Countries*. Edited by P. Jha and F. Chaloupka. Oxford: Oxford University Press. 343–64.
- Tobacco Free Initiative. 1998. *Rationale, Update and Progress*. Online. Available: <http://www.who.int/toh/>. World Health Organization, December.
- Tren, R., and H. High. 2000. *Smoked Out: Anti-Tobacco Activism at the World Bank*. Online. Available: <http://www.iea.org.uk/wpapers/smokeout.htm>. London: Institute of Economic Affairs.
- Watanabe, B. 1997. *Smoking in Japan—1997 Profile*. Tokyo: Tobacco Problems Information Center.
- Weiss, E. B., and H. K. Jacobson, eds. 1998. *Engaging Countries: Strengthening Compliance with International Environmental Accords*. Cambridge, MA.: MIT Press.
- Weissman, R., and R. Hammond. 1998. In focus: International tobacco sales. 3 *U.S. Foreign Policy in Focus* 3, no. 17. Available: <http://www.foreignpolicy-infocus.org>.
- World Health Assembly (WHA). 1998. *World Health Assembly paves way for Framework Convention on Tobacco Control*. Press Release, May 24. Online. Available: <http://www.who.int/inf-pr-1999/en/pr99-wha14.html>.
- World Bank. 1999. *Curbing the Epidemic: Governments and the Economics of Tobacco Control*. Washington, DC: World Bank.
- World Health Organization (WHO). 1997. *Tobacco or Health: A global Status Report*. Geneva: World Health Organization.
- . 1998. *Guidelines for Controlling and Monitoring the Tobacco Epidemic*. Geneva: World Health Organization.
- . 1999a. First meeting of the Working Group on the WHO Framework Con-

- vention on Tobacco Control, subjects of possible protocols and their relation to the Framework Convention on Tobacco Control. Provisional Agenda Item 8. World Health Organization, September 3.
- . 1999b. Report of the first meeting of the Working Group on the WHO Framework Convention on Tobacco Control. World Health Organization, October 28.
- . 2000a. Second meeting of the Working Group on the WHO Framework Convention on Tobacco Control. Annotated Provisional Agenda. World Health Organization, February 14.
- . 2000b. Second meeting of the Working Group on the WHO Framework Convention on Tobacco Control. Provisional texts of proposed draft elements for a WHO Framework Convention on Tobacco Control. Provisional Agenda Item 5. World Health Organization, February 29.
- . 2000c. Second meeting of the Working Group on the WHO Framework Convention on Tobacco Control. Secretariat update on progress since the first meeting of the Working Group. Provisional Agenda Item 4. World Health Organization, March 3.
- . 2000d. Second meeting of the Working Group on the WHO Framework Convention on Tobacco Control. Brief overview of discussion on 27th and 28th March. World Health Organization, March 28.
- . 2000e. Working Group on the WHO Framework Convention on Tobacco Control. Report of the second meeting of the Working Group. World Health Organization, April 26.
- . 2000f. Fifth-Third World Health Assembly, WHO Framework Convention on Tobacco Control, Report of the Working Group, WHO (Provisional Agenda Item 12.10, April 26, 2000 and with Corrigendum May 11, 2000).
- . 2001. Chair's text of a framework convention on tobacco control. January 9. WHO Fact Sheets. 1996. *The Tobacco Epidemic: A Global Public Health Emergency*. N188. Online. Available: <http://www.who.int/inf-fs/en/fact.html>. May.
- . 1998a. *Governments for a Tobacco-Free World*. N159. Online. Available: <http://www.who.int/inf-fs/en/fact.html>. May.
- . 1998b. *Tobacco Epidemic: Health Dimensions*. N154. Online. Available: <http://www.who.int/inf-fs/en/fact.html>. May.
- . 1998c. *Tobacco Epidemic: Much More Than a Health Issue*. N155. Online. Available: <http://www.who.int/inf-fs/en/fact.html>. May.
- World's best practice in tobacco control. 2000. *Tobacco Control* 9:228. Available: <http://www.bmj.com/data/tob.htm>.
- Yach, D. 1995. Progress in achieving international tobacco control: Output of the 48th World Health Assembly, Geneva, May 1995. *Tobacco Control* 4:278–301.
- Yach, D., and D. Bettcher. 2000. Globalisation of tobacco industry influence and new global responses. *Tobacco Control* 9:206–16.