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On: 22 October 2012, At: 07:21

Publisher: Routledge

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Global Public Health: An International Journal for Research, Policy and Practice

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/rgph20>

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David Reubi ^a

^a Centre for Global Health Policy, School of Global Studies, University of Sussex, Brighton, UK

Version of record first published: 22 Oct 2012.

To cite this article: David Reubi (2012): Making a human right to tobacco control: Expert and advocacy networks, framing and the right to health, *Global Public Health: An International Journal for Research, Policy and Practice*, DOI:10.1080/17441692.2012.733948

To link to this article: <http://dx.doi.org/10.1080/17441692.2012.733948>



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Making a human right to tobacco control: Expert and advocacy networks, framing and the right to health

David Reubi*

Centre for Global Health Policy, School of Global Studies, University of Sussex, Brighton, UK

(Received 20 January 2012; final version received 4 September 2012)

This article addresses the proliferation of human rights in international public health over the last 20 years by examining recent attempts at framing the global smoking epidemic as a human rights problem. Rather than advocating in favour or against human rights-based approaches, the article purports to understand how and why such approaches are being articulated and disseminated. First, it argues that the representation of the global smoking epidemic as a human rights issue has been the product of a small, international network of public health experts and lawyers: the human rights and tobacco control collective or community (HTC). The article describes in particular the HTC's membership, its style of thinking and its efforts to articulate and disseminate human rights-based approaches to tobacco control. Second, the article argues that the aim of the HTC when framing tobacco control as a human rights issue was not to generate public attention for and the political will to tackle the global smoking epidemic, as the literature on framing and human rights presupposes. Instead, as the article shows, the HTC framed tobacco control as a human rights problem to tap into the powerful, judicial monitoring and enforceability mechanisms that make up international human rights.

Keywords: human rights; global health; tobacco control; expert networks; framing; right to health

Introduction

Over the last 20 years, there have been an increasing number of initiatives and efforts to use the language, institutions and practices of human rights in the field of global health (Reubi 2011). HIV/AIDS was one of the first global health issues in relation to which human rights approaches were articulated, generally to protect those with HIV/AIDS from stigma and discrimination. The establishment, by Jonathan Mann, of a Human Rights Office within the WHO's Global Program on AIDS is a typical illustration of such efforts (Fee and Parry 2008, Rushton 2010, Rushton 2012). Global health activists have also employed the human rights rhetoric in relation to access to medicines. Indeed, from the celebrated South African HIV/AIDS medicines access campaign led by large, international NGOs like Oxfam and Médecins Sans Frontières to efforts by Brazilian patient groups to obtain free drug treatment for rare genetic diseases, all have explicitly appealed to the values and norms of international human rights (Olesen 2006, Petryna 2009). More recently, public health advocates have sought to frame maternal and child health as a human right issue

*Email: d.reubi@sussex.ac.uk

with the hope of generating public interest and political action (Yamin and Maine 2005, Shiffman and Smith 2007).

The present article addresses this proliferation of human rights discourses in international public health by examining recent attempts at framing the global smoking epidemic as a human rights problem. Rather than advocating in favour or against human rights-based approaches like much of the literature on human rights and global health has done (e.g., Gruskin *et al.* 2005, Ferraz 2009, Schrecker *et al.* 2010, Reubi 2011), this article purports to understand how and why such approaches are being articulated and disseminated. Drawing on the literature on 'thought collectives', 'epistemic communities' and 'advocacy networks' (e.g., Fleck 1979, Hass 1992, Keck and Sikkink 1998, Mirowski and Plehwe 2009), the article first argues that the identification and description of the global smoking epidemic as a human rights issue have been the product of a small, international network of public health experts and lawyers which I term, the human rights and tobacco control collective or community (HTC). The article describes in particular the HTC's membership, its style of thinking and its efforts to articulate and disseminate human rights-based approaches to tobacco control over the last 10 years.

Second, this article argues that the HTC's use of human rights as a frame did not purport to generate attention for and a will to address a global health issue like the smoking epidemic, as much of the literature on framing and human rights tends to assume (e.g., Keck and Sikkink 1998, Jacobson and Banerjee 2005, Shiffman and Smith 2007, Rushton 2010). Instead, as the article shows, the HTC framed tobacco control as a human rights problem in order to tap into the powerful, judicial monitoring and enforceability mechanisms that make up the international human rights framework. As the article further shows, the HTC's view of human rights as powerful, judicial monitoring and enforceability mechanisms has led the network to adopt a legal definition of the right to health, thus giving lawyers an important role within the network and marginalising alternative, non-legal understandings of what human rights could be.

Before presenting this two-fold argument, the article first discusses the research methods used in this study and then traces the development of human rights-based approaches to tobacco control over the last 10 years.

Methodology

The study presented in this article is based on the meticulous collection and analysis of a large corpus of texts. The collection of this corpus followed a three-pronged approach modelled on the method developed by Bruno Latour (1988) in his analysis of the development and diffusion of pasteurisation in late nineteenth-century France. First, all the relevant articles were gathered from a literature search on human rights and tobacco control. The search was conducted using a range of keywords (tobacco, smoking, rights, litigation, etc.) on five different online databases (PubMed, Hein Online, IBSS, JStore and Web of Knowledge). Special attention was paid to three of the main journals in the fields of human rights and tobacco control: *Human Rights Quarterly*, *Health and Human Rights* and *Tobacco Control*.

Second, all the relevant documents (reports, guidelines, directives, pamphlets, manuals, articles, websites, minutes from meetings, etc.) were collected from key organisations in both tobacco control and human rights. These included: the World

Conference on Tobacco or Health; the WHO Tobacco Free Initiative; the WHO Health and Human Rights Unit; the Pan-American Health Organisation (PAHO); the Campaign for Tobacco Free Kids; the Framework Convention Alliance; the American Cancer Society; the Human Rights and Tobacco Control Network (HRTCN); the UN High Commissioner for Human Rights; the UN Special Rapporteur on the Right to Health; the UN Committee on Economic, Social and Cultural Rights (UN-CESCR); the Francois-Xavier Bagnoud Centre for Human Rights and Health, Harvard University; and the O'Neill Institute for National and Global Health Law, Georgetown University.

Third, in-depth, semi-structured interviews were conducted with over 70 experts and advocates in the fields of tobacco control and human rights. In addition, the author also partook in a Witness Seminar on the WHO Framework Convention on Tobacco Control (FCTC) organised by both the Wellcome Trust Centre for the History of Medicine at University College London and the WHO in February 2010 (Reynolds and Tansey 2012). Interviewees were identified on the basis of both the literature search and the collection of documents from key institutions in tobacco control and human rights. They were also identified on the basis of the Witness Seminar as well as through the snowballing method (Bauer and Gaskell 2000).

The corpus of texts thus assembled was analysed using standard content analysis methods (Latour 1988, Bauer and Gaskell 2000). The articles, documents and interviews, among other things, were examined in detail to: identify the main institutions and actors involved; understand the emergence pattern of human rights approaches in the field of tobacco control; determine the different understandings of human rights at work among the main institutions and actors; and ascertain the reasons, advantages and disadvantages for using human rights-based approaches put forward by the main institutions and actors. The analysis was streamlined and organised through the use of QSR International's NVivo 10 software for qualitative research.

The recent development of human rights-based approaches to tobacco control

From the 1970s onwards, tobacco control has been primarily framed as a public health issue (Berridge 2007, Brandt 2007). A critical aspect of this way of problematising smoking is, of course, epidemiological and biomedical. Smoking has been repeatedly portrayed as a key causal factor, both statistically and biologically, of an ever growing number of diseases. Furthermore, tobacco use has also increasingly been portrayed as one of the single, highest causes of preventable morbidity and mortality worldwide, killing more than Tuberculosis, HIV/AIDS and Malaria combined (Mathers and Loncar 2006, WHO 2009a, 2012). Another significant element of identifying and describing smoking as a public health issue has been the emphasis on the enormous costs associated with smoking in terms of medical care, loss of productivity and fire damages. Last, but not least, the framing of tobacco as a problem of public health has also involved strong moral overtones, with the smoking epidemic consistently described as the product of the greed and deceitful strategies of the transnational tobacco industry (Larsen 2008, Studlar 2008). It was this way of portraying smoking that so successfully informed the 2003 FCTC, the first public health treaty drafted and adopted under the aegis of the WHO (WHO 2009b, Mamudu *et al.* 2011, Reynolds and Tansey 2012).

Until the early 2000s, public health advocates did not use human rights and, specifically, the right to health together with their existing monitoring and enforceability mechanisms to advance tobacco control. At least, they did not do so in any systematic or concerted way.¹ The FCTC provides a good illustration of this dearth of human rights-based approaches in global tobacco control until recently. Indeed, aside from the preamble's reference to the right to health found in the WHO Constitution and UN treaties, human rights were absent from both the FCTC negotiation process and its final text (Taylor 2005, Dresler and Marks 2006). As Richard Daynard (2011), a prominent tobacco control advocate who participated in the negotiations, remembers:

It is certainly true that nobody was thinking about human rights when the FCTC was being negotiated. It was simply not the vocabulary... There was of course the customary reference in the preamble to some human rights treaties... but that was not something most of us even noticed.

Today, in contrast, human rights have started to make inroads in the field of global tobacco control. Indeed, while it is too early to make any definite judgements on the extent of this transformation,² it is clear that the language of human rights is increasingly complementing and combining with the already established public health discourses on smoking (Daynard 2012). First, a growing number of key organisations in the fight against the smoking epidemic have adopted, funded and encouraged human rights-based approaches. Both the WHO and PAHO, for example, now endorse and promote the use of human rights norms, institutions and procedures in relation to tobacco control through the organisation of workshops and the publications of factsheets (PAHO 2006, 2008, Roses 2006, Vestal 2010). Similarly, the largest source of funding for tobacco control in developing countries, The Bloomberg Initiative for the Reduction in Tobacco Use, currently finances the work of the O'Neill Institute for National and Global Health Law on human rights and smoking (Myers 2010, Cabrera 2011, O'Neill Institute 2011a). Furthermore, in its recently published 20th anniversary issue, *Tobacco Control*, the leading academic journal in the field of global tobacco control, identified the 'human rights-based approach to tobacco control' as a 'strategic direction and emerging issue' in the field and included three papers on the topic (Daynard 2012, Dresler *et al.* 2012, Marks 2012). Second, there is an increasing number of both human rights and tobacco control advocacy groups that are currently testing whether existing human rights monitoring and enforceability mechanisms can be successfully used to advance anti-smoking policies. For example, local coalitions of lawyers and tobacco control activists have recently filed lawsuits against the governments of both India and Mexico for violation of their human right to health, arguing that they have so far failed to adopt the necessary tobacco control policies to protect their health (Cabrera and Madrazo 2010, Myers 2010, O'Neill Institute 2011b). Similarly, local human rights and health activists groups in Argentina and Brazil have started submitting reports to both the UN-CESCR and the UN Committee for the Elimination of All Forms of Discrimination against Women (UN-CEDAW), in which they accuse these States to violate their right to health by not implementing strong anti-smoking policies (O'Neill Institute 2009, 2010a, 2010b, HRTCEN 2011b).

The HTC and the representation of tobacco control as a human rights problem

What I term the HTC is best understood as a hybrid between an epistemic community or thought collective and an advocacy network (cf. Fleck 1979, Hass 1992, Keck and Sikkink 1998, Mirowski and Plehwe 2009). Such collectives, communities or networks are groups of professionals with a recognised expertise in a specific domain. What makes these networks distinctive is that their members, who can come from a variety of backgrounds and disciplines, develop and share a same ‘style of thinking’ – a distinctive apparatus of knowledge, values, language, practices and devices, which allows the network’s members to identify problems that need addressing and suggest particular explanations, analyses and solutions.

The HTC understood as such a collective, community or network began to emerge from the early 2000s onwards, but it is only more recently that efforts were made to formalise its existence and structure. A critical moment in that respect was the creation of the HRTC in Lausanne, Switzerland, in 2008 – an organisation that ‘works to advance a human rights-based approach to tobacco control’ (HRTC 2011a). The HRTC’s hundred or so members comprise most of the professionals who make up the HTC.³ These professionals are, for the most part, either global tobacco control advocates or international human rights lawyers. Many of the tobacco control advocates work for American and international organisations active in the fight against smoking, including the American Cancer Society, the Campaign for Tobacco Free Kids, the Framework Convention Alliance and the WHO Tobacco Free Initiative. Some also work for North American universities and public health schools like the O’Neill Institute for National and Global Health Law at Georgetown University, the Masonic Cancer Center at the University of Minnesota and the Public Health Advocacy Institute at Northeastern University. It is interesting to note that many of these advocates have been active for a decade or more in the field of global tobacco control (Mamudu and Glantz 2009, Mamudu *et al.* 2011).⁴ For them, human rights is a discourse that has been highly successful in other areas of global health, like HIV/AIDS and access to medicines, which they are keen to tap into. Most of the human rights lawyers who are members of the HTC work for American universities and international organisations specialising in human rights and law, including: the Francois-Xavier Bagnoud Centre for Human Rights and Health at Harvard University opened by Jonathan Mann in the early 1990s; the Wellesley College’s Centres for Women; and both the WHO’s and the PAHO’s Human Rights and Health Units. Many of these lawyers are seasoned human rights professionals.⁵ For them, tobacco control is yet another area in which they can apply the legal expertise they have developed in relation to other issues from discrimination against women and people with AIDS to the protection of children and biomedical research subjects.

The HTC’s thought style is characterised by a will to frame smoking as a human rights issue associated with a belief that human rights-based approaches to tobacco control will help strengthen anti-smoking efforts. An excellent illustration of this way of conceptualising the relation between human rights and tobacco control can be found on the HRTC (2011a) website:

[We] believe that tobacco control is a human right and can be advanced by using a human rights-based approach.

Human rights lawyers and HTC members Carolyn Dresler and Stephen Marks' (2006) article *The Emerging Human Right to Tobacco Control* and tobacco control pioneer Judith Mackay's (2009) keynote address at the HRTCN's Mumbai meeting provide another two good examples of this style of reasoning:

Our claim is that a human rights framework implies both norms and potential remedies that may reinforce tobacco control regulation. (Dresler and Marks 2006, p. 602)

[There is] the need for a human rights approach to tobacco control...to advance tobacco control. (Mackay 2009)

In principle, HTC members acknowledge that human rights-based approaches to tobacco control can be based on any relevant human rights norms (e.g., Crow 2004, McIntyre 2008, Dresler *et al.* 2012). In practice, however, they generally focus on the right to health as recognised in international human rights treaties like the International Convention on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). So, for example, Oscar Cabrera, a human rights lawyer at the O'Neill Institute and a HRTCN member, explains that 'the right to health must play a central role in any strategy that deploys human rights in advancing tobacco control' (Cabrera and Madrazo 2010, p. S291). Similarly, Dresler and Marks argue that what they call the 'human right to tobacco control' is, for the most part, 'derived from...the right to health' (2006 p. 631, cf. Dresler *et al.* 2012). The centrality given by the HTC to the right to health is because the latter is the human rights norm that is most relevant to tobacco control efforts. Indeed, according to the HTC, the right to health can be invoked: (a) to forbid States to actively contribute to the tobacco epidemic by directly or indirectly supporting the production and sale of cigarettes; and (b) to oblige States to set up and implement comprehensive tobacco control policies including prevention campaigns, public smoking bans and smoking cessation programmes. As Cabrera explains:

The right to health can provide significant support to tobacco control policies. First and foremost, the State must respect the right to health by refraining from spreading the tobacco epidemic...State ownership of tobacco companies [for example] is problematic from this perspective...The State also has an obligation to protect people's right to health from the threat of tobacco...This obligation requires the State to regulate private parties if their activities infringe on human rights. Clear examples of measures oriented at realising this obligation are: smoking bans in public places...[and] bans on advertising and promotion of tobacco products...The state must also fulfil the right to health by implementing all the relevant measures, legislation, regulation and budgetary allocation that will be conducive to effective tobacco control regulation...[This includes:] providing health services for people afflicted by diseases stemming from tobacco use, facilitating smokers' access to cessation programmes; and prevention campaigns that inform...the...population...about the dangers associated with tobacco use. (Cabrera and Madrazo 2010, pp. S291–S292)

As the literature on thought collectives, epistemic communities and advocacy networks (Fleck 1979, Hass 1992, Keck and Sikkink 1998, Mirowski and Plehwe 2009) has suggested, such groups play a critical part in the production of many of the political truths that prevail today. The same can be said about the HTC in relation to

the framing of smoking as a human rights problem over the last 10 years. To start with, its members have contributed decisively to the articulation of human rights-based approaches to tobacco control. They have mostly done so through intellectual reflection, research and debates carried out in academic or similar settings. Much of this work has involved the preparation and publication of numerous scholarly articles in which HTC members outline how human rights and, in particular, the right to health could be used to improve tobacco control. Examples include: Melissa Crow's (2005) *The human rights responsibilities of multinational tobacco companies*; Oscar Cabrera and Alejandro Madrazo's (2010) *Human rights as a tool for tobacco control in Latin America*; Ragnita De Silva de Alwis and Richard Daynard's (2011) *Defining tobacco control as an important human right and development goal*; and Carolyn Dressler, Harry Lando, Nick Schneider and Hitakshi Sehgal's (2012) *Human rights-based approach to tobacco control*. It has also involved the organisation of seminars and colloquiums at which HTC members and others examined and discussed human rights-based approaches to tobacco control. One example is a 2003 seminar on human rights and health at the Harvard School of Public Health where Carolyn Dresler, Stephen Marks and others discussed the idea of a right to tobacco control (Dresler 2011). Another illustration is the 2004 seminar funded by the Robert Wood Johnson Foundation where scholars, many of which were linked to the HTC, debated the 'opportunities, problems and prospects involved in having rights arguments play a significant role in efforts to reduce the harm associated with tobacco' (Fox and Katz 2005, p. ii1). A further two examples are the HRTCN meetings organised at both the University of Lausanne's Institute of Social and Preventive Medicine and the Tata Institute for Social Sciences in Mumbai (HRTCN 2008, 2009).

HTC members have also made important efforts to disseminate the human rights-based approaches, which they helped articulate. First, they have organised numerous workshops on the use of human rights to improve tobacco control for both human rights and anti-smoking advocates. The O'Neill Institute, for example, has conducted numerous workshops on 'shadow reporting' and 'human rights-based litigation strategies for tobacco control' in cities throughout Latin America such as Mexico City, Buenos Aires and Santiago de Chile (Cabrera 2011, O'Neill Institute 2011a). Richard Daynard's Public Health Advocacy Institute did similar work across Asia and Africa (De Silva de Alwis and Daynard 2011, De Silva de Alwis *et al.* 2011, Daynard 2012). As Daynard explains:

We have been to something like 15 countries talking with human rights people and trying to push human rights and tobacco control people together to... get them to include tobacco control issues in their shadow reports... In Bangladesh, ... Vietnam ... or Beijing ... we would have these conferences and we would invite local tobacco control people there. (2011)

Second, HTC members have also sought to disseminate human rights-based approaches by producing manuals in which they explain how to organise and conduct shadow reporting or litigation strategies. One example is the O'Neill Institute's (2011b) *Litigation guide on tobacco industry strategy in Latin American courts*. Another example is human rights lawyer Ragnita De Silva de Alwis's (2008a) *Basic guidelines for shadow reporting preparation* written for the HRTCN. Third, HTC members have also disseminated their human rights-based strategies by

lobbying relevant national and international human rights bodies. For example, the HRTCEN organised a series of meetings in Geneva with the UN Special Rapporteur on the Right to Health, the UN-CESCR, the UN-CEDAW and the CRC Committee where it outlined why tobacco control was an important issue (Vestal 2010, Dresler 2011, Dresler *et al.* 2012).

Lawyers and the promise of powerful tools

For much of the literature on framing and human rights (e.g., Keck and Sikkink 1998, Jacobson and Banerjee 2005, Shiffman and Smith 2007, Rushton 2010, Rushton 2012), the aim of representing a specific issue as a human rights issue is to attract attention and encourage action. For example, Keck and Sikkink (1998, chapter 5) suggest that the use of a human rights frame rather than a ‘development’ or ‘discrimination’ frame was critical in drawing attention to and generating the political will to address women’s rights. Similarly, Rushton (2012) argues that a human rights framework was employed with the intention of attracting attention to and changing existing travel restrictions against people living with HIV/AIDS. While a human rights framework can be exploited to generate awareness and encourage action, the HTC’s use of such a framework suggests that it would be wrong to assume that this is the only possible aim when presenting an issue as a human rights one.

Indeed, for most HTC members the attraction of human rights-based approaches to tobacco control was not to attract attention to and encourage action to tackle the global smoking epidemic but to tap into the powerful, judicial monitoring and enforceability mechanisms that make up international human rights. A good illustration can be found on the HRTCEN’s (2011a) website, where it is explained that a ‘human rights-based approach to tobacco control’ is about ‘utilizing the legal remedies and reporting requirements of current [human rights] treaties and conventions’. Similarly, when introducing a new forum about human rights on the major online tobacco control advocacy network Globalink, tobacco control advocate Doreen McIntyre (2008) claimed that what is ‘most important’ about human rights is that they ‘have enforceable legal protection mechanisms that could be pursued to advance tobacco control.’

For HTC members, these monitoring and enforceability mechanisms are conceptualised as ‘powerful’ or ‘effective tools’ for the advancement of tobacco control. For example, in a speech on the importance of human rights for public health, PAHO director Mirta Roses (2006) argued that:

Human rights instruments...[are] effective tools for the promotion and protection of health...PAHO’s newest initiative in health and human rights is the issue of exposure to second hand smoke and...in this area international human rights instruments have been an underutilized but powerful mechanism that can help diminish deaths and diseases in the Americas.

Similarly, in a posting on Globalink’s Human Rights Forum, Ragnita De Silva de Alwis (2008b) explained that UN human rights monitoring procedures and, in particular, the Human Rights Council’s Universal Periodic Review (HPR) were ‘very powerful’. This understanding is shared by Oscar Cabrera who asserts that ‘human

rights law is one of the most powerful legal tools that can be used' to advance tobacco control (Cabrera and Madrazo 2010, S288).

These powerful human rights tools praised and promoted by HTC members are of two types. The first one comprises the monitoring and reporting procedures for the UN human rights treaties that assert the right to health such as the ICESCR, the CEDAW and the CRC (e.g., Crow 2004, Dresler and Marks 2006, De Silva de Alwis 2008a, HRTCN 2008, 2009, Cabrera and Madrazo 2010, Dresler *et al.* 2012, Marks 2012). These procedures oblige States to regularly submit official reports on how they fulfil their human rights obligations – including their obligation to protect everyone's health – to the relevant treaty bodies. With the help of alternative, shadow reports submitted by civil society groups, the treaty bodies assess these official reports and make recommendations to States on what they can and should do to better fulfil their obligations. If States ignore these recommendations, the treaty bodies can attempt to force their hand by publicly condemning and shaming them. For HTC members, these procedures offer the possibility to submit shadow reports on how States have fulfilled and how they could better fulfil their human rights obligation to protect everyone's health in relation to tobacco control. They have used this possibility by submitting shadow reports about Brazil and Argentina to the UN-CESCR and about Argentina and Egypt to the UN-CEDAW (O'Neill Institute 2009, 2010a, 2010b, HRTCN 2011b). Each time, the treaty bodies have responded favourably, identifying tobacco as a critical issue and strongly recommending that these countries set up and implement comprehensive tobacco control policies (O'Neill Institute 2011a).

The second type of powerful tools praised and promoted by the HTC are human rights litigation strategies (e.g., Crow 2004, Dresler and Marks 2006, Gostin 2007, Cabrera and Madrazo 2010, Dresler *et al.* 2012, Marks 2012). These strategies allow individuals and civil society groups to claim their right to health against a government in a court of law. Relevant jurisdictions include both international courts like the European and Inter-American Courts of Human Rights and higher-level national courts. For HTC members, these strategies are an opportunity to advance tobacco control. Litigation can either be passive/defensive or active (Cabrera and Madrazo 2010, O'Neill Institute 2011b). Passive litigation allows individuals and civil society groups to use their right to health to defend existing tobacco control policies that the tobacco industry is challenging in a court of law on the grounds that they violate its rights to economic freedom or of speech. Active litigation allows individuals and civil society groups to use their right to health to ask a judge to force a government to pass and implement comprehensive tobacco policies. Members of the HTC have increasingly been involved in both passive and active litigation strategies in countries like Argentina, Guatemala, India, Mexico and Uruguay (Crow 2004, Cabrera and Madrazo 2010, O'Neill Institute 2011b). As the Campaign for Tobacco Free Kids director Matthew Myers (2010) explains:

We are supporting lawyers who have filed suits in Mexico... Arguing that the right to health is a fundamental right, therefore the Mexican government's failure to fully implement the FCTC violates not only its international obligations under the FCTC but the constitutional right [to health] of citizens. We are supporting some litigation in India that is also looking at the issue of the right to health... Fundamental human rights issues. India should be obligated, in our mind, to comply under both its constitution and its international obligations. We are looking at other opportunities like those around the world.

Interestingly, the way most HTC members conflate human rights-based approaches with the use of existing monitoring and enforceability mechanisms has led them to take a legal view of the right to health and thus gives lawyers a critical role within the network. Indeed, when using these mechanisms one needs to use the right to health as defined in human rights law and jurisprudence as only this understanding of the right to health will be recognised by UN treaty bodies, international human rights courts and national courts of law. There are many signs of HTC's legal understanding of the right to health. One is the way in which the members of the network have sought to ground the right to health in both internationally recognised legal norms such as article 12 IESCR and the jurisprudence of international human rights bodies such as the UN-CESCR's (2000) *General comment 14* on the right to health. Both Crow's (2004) paper, *Using human rights to promote global tobacco control*, and Dresler and Marks's (2006) essay, *The emerging human right to tobacco control*, are excellent illustrations of such attempts. Another sign of HTC's legal understanding of the right to health is the importance given to trained lawyers within the network – a pattern that, interestingly, seems to be common to a large number of transnational regulatory fields (Dezalay and Garth 2011, 2012). One example is the prominence accorded to highly technical presentations given by lawyers like Rangita de Silva de Alwis, Yeheneh Walilegne and Benjamin Meier on 'The Human Rights Framework', 'Rights Holders' and 'Duty Bearers' at the HRCTN's first conference in Lausanne (HRCTN 2008). Another example is how HTC members explicitly recognise the importance of lawyers within the network. So, Oscar Cabrera (2011) explains that:

You need to have the lawyers in the group so they can interpret what are the rights and what are the obligations.

This importance given to lawyers and a legal definition of the right to health has, of course, marginalised other, alternative understandings of this right within HTC. For example, the use of anthropological films to denounce the exploitative working conditions of tobacco farmers in Africa proposed by Marty Otanez (2010) or the abstruse concept of 'breathing [as] a human rights issue' put forward by tobacco control activist Robert Starkey (2009) have received very little attention within the HTC. Indeed, these alternative understandings of human rights have never really been taken up in HTC publications or discussed at HTC meetings (e.g., Crow 2004, Dressler and Marks 2006, HRCTN 2008, 2009, De Silva de Alwis *et al.* 2011, Daynard 2012).

The HTC's reasons for conceiving the human rights framework as a way to access powerful monitoring and enforceability mechanisms rather than as a way to attract attention and encourage political action are three-fold. First, there is an understanding that there is no real need to employ human rights to draw awareness and promote action to tackle the global smoking epidemic. Indeed, as already alluded to, the public health frame that has been used from the 1970s onwards has been very successful at doing that over the last 15 years, as demonstrated by the adoption of the FCTC and the increasing funding from philanthropists like Bloomberg and Gates (Brandt 2007, WHO 2009b, Mamudu *et al.* 2011, Reynolds and Tansey 2012). Second, there is a certain scepticism as to whether the use of human rights can really be efficient in terms of raising awareness and encouraging action about tobacco control. Indeed, there is a sense among many HTC members that, when compared to

famine, war, genocide or rape, tobacco control will never be among the most urgent and compelling human rights issues. As Patricia Lambert (2010), a human rights lawyer and tobacco control advocate, explains:

There is a growing movement to see tobacco control as a human right and I think that is a good thing... But when you compare [tobacco control] to... food and water... the wars of the future... climate change... The most urgent human rights debates are not around a right to tobacco control. So we should move beyond debate and into direct action through, for example, litigation.

Third, there is a perceived need for monitoring and enforceability mechanisms in relation to tobacco control. As HTC members repeatedly argue, the FCTC does not have procedures through which States party to the convention can be forced to comply with their obligations. Already existing human rights monitoring and enforceability mechanisms, they suggest, can offer a practical alternative. As Melissa Crow, one of the first human rights lawyers to discuss the use of human rights in tobacco control, explains:

In their present form, neither the FCTC's reporting requirements nor its dispute resolution procedures are likely to influence the conduct of governments... [The use] of implementation mechanisms employed by existing human rights institutions—including reporting requirements, individual petition procedures and advisory opinions—would enhance the likelihood of promoting compliance by [governments]. Confronted with heightened scrutiny of their conduct, [they] would have greater incentives to take their FCTC commitments seriously. (2004, pp. 220, 249)

Similarly, Carolyn Dressler, Harry Lando and other fellow HRTC members (2012, p. 208) explain that the FCTC does not have any 'enforcement mechanisms'. One way of addressing this problem, they suggest, is by 'construct[ing] legal claims to [human] rights related to tobacco' (Dressler *et al.* 2012). Indeed, this would allow 'citizens from across the globe [to] demand effective action for tobacco control' by using the enforcement mechanisms contained in international human rights conventions (Dressler *et al.* 2012).

Conclusion

As mentioned, human rights have increasingly been used to label and interpret a variety of global health issues such as HIV/AIDS to maternal health over the last two decades (Shiffman and Smith 2007, Rushton 2010, Reubi 2011). The present article addressed this proliferation of human rights discourses in international public health by examining recent efforts to frame the tobacco epidemic as a human rights problem. More specifically, it has sought to contribute to our understanding of how and why such approaches are being articulated and disseminated.

To start with, the article stressed the critical role played by networks of expertise and advocacy in the proliferation of human rights discourses in the field of global health (Fleck 1979, Hass 1992, Keck and Sikkink 1998). More specifically, it argued that recent efforts to frame tobacco control as a problem of human rights was the product of a small, international collective, which I termed the HTC. The article described how the HTC comprises principally tobacco control advocates and human

rights lawyers who believe that invoking the right to health will help strengthen anti-smoking efforts. It also described the ways in which the HTC has helped articulate and disseminate human rights-based approaches to tobacco control, from the publication of scholarly articles and how-to-do manuals to the organisation of meetings and workshops.

Furthermore, the article also emphasised the role of human rights frameworks in providing access to powerful, legal and quasi-legal tools. The existing literature on framing usually assumes that human rights-based approaches are used to attract public attention and encourage collective action (e.g., Keck and Sikkink 1998, Jacobson and Banerjee 2005, Shiffman and Smith 2007). The article showed that this assumption can be restrictive by outlining how the HTC uses such approaches to tap into human rights reporting and litigation strategies to compensate for the FCTC's lack of monitoring and enforceability mechanisms. This particular understanding of the function of human rights has led the HTC to privilege a legal definition of the right to health and grant lawyers a critical role. It has also made the language, institutions and practices of human rights a complement rather than a substitute for the public health discourses through which tobacco control has usually been framed up to this day.

Acknowledgements

First and foremost, I would like to thank the tobacco control advocates and human rights experts interviewed for this research for their interest and the time spent answering my queries. Furthermore, I thank Colin McInness, Simon Rushton, Owain Williams, Kelley Lee, Adam Kamradt-Scott and two anonymous reviewers for their helpful comments on earlier drafts of this article. I also gratefully acknowledge the financial support from the European Research Council under the European Community's Seventh Framework Programme (Ideas Grant 230489 GHG). All views expressed remain mine.

Notes

1. This assertion comes with three caveats. First, there have been instances over the last 40 years when both the tobacco industry and the anti-smoking movement have used a rhetoric or language of rights, i.e., have used linguistic expressions like 'the right to smoke' and 'the right to a smoke-free environment' as arguments in policy debates about smoking (cf. Jacobson and Soliman 2002, Berridge 2007, Brandt 2007). This, however, is quite different from the HTC's efforts to use a legally recognised and defined human right to health together with the existing national and international human rights monitoring and enforceability mechanisms. Second, some international human rights institutions had already made a link between human rights and tobacco control in the late 1990s and early 2000s (Crow 2004). In particular, the UN-CESCR has, from 1999 onwards, sometimes mentioned, both in its *General comment 14* on the right to health and in its reviews of States' reports, that information campaigns on the dangers of smoking are a measure through which states can fulfil the right to health found in article 12 ICESCR. These few mentions did not, however, amount to any systematic or concerted effort to use the right to health to improve tobacco control. Third, in 1999, the WHO Tobacco Free Initiative sought to ally with UNICEF and use the 1989 UN CRC to support its call for increased efforts in tobacco control. A two-day workshop was held and a report entitled Tobacco and the Rights of the Child was published (WHO 2001), but neither had any impact and the attempt to frame tobacco control as a children's rights issue was not pursued further (Yach 2010).
2. Some tobacco control advocates are still uncertain as to whether the language of human rights will become important in their field. As Matthew Myers (2010), the current President of the Campaign for Tobacco Free Kids which currently funds the work of human rights lawyers on smoking, explains:

I think it is too early to know whether human rights will become a powerful tool or not (...) We are testing them out (...) It's too early to know (...) Up to this time with a couple of exceptions it has not been as successful as we had hoped, but that does not mean it won't be (...) It is still a nascent discussion.

3. Members of the HRTC include: Douglas Bettcher, Chris Bostic, Pascal Bovet, Oscar Cabrera, Richard Daynard, Rangita de Silva de Alwis, Carolyn Dresler, Tom Glynn, Patricia Lambert, Harry Lando, Judith Mackay, Hadii Mamudu, Stephen Marks, Benjamin Meier, Kathy Mulvey, Helena Nygren-Krug, Marty Otanez, Gemma Vestal and Yehnew Walilegney (HRTC 2011a).
4. HTC members who have been involved in the field of global tobacco control for a decade or more include: Douglas Bettcher, Chris Bostic, Pascal Bovet, Richard Daynard, Patricia Lambert, Tom Glynn, Judith Mackay and Kathy Mulvey.
5. HTC members with a previous experience of the field of international human rights include: Oscar Cabrera, Rangita de Silva de Alwis, Stephen Marks, Helena Nygren-Krug and Yehnew Walilegney.

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