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Law and Noncommunicable Diseases

The crosscutting role of law in
NCD control and regulating
risk factors

31 May & 1 June 2018
Groningen
The Netherlands

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Table of contents

Table of contents	2
Welcome by the organizers	3
A bird's eye view	4
Detailed programme per day	6
Keynotes	14
Plenary and parallel sessions	20

Welcome by the organizers

Dear participants,

The organizing committee warmly welcomes you to the Conference 'Law and Noncommunicable Diseases: The crosscutting role of law in NCD control and regulating risk factors'. Chronic noncommunicable diseases (NCDs) are the most important public health challenge that the world is facing today. As we all know, NCDs are largely preventable, because they are caused by behavioural patterns, including whether we smoke, what we eat, our alcohol intake, and how much we exercise. It is of the utmost importance to explore the role of international and domestic law in this context, as a powerful tool to support just and healthy societies.

NCDs demand our attention, and we are extremely pleased that you will join us in this event. Thank you, for making the effort to travel to Groningen to join us in what will hopefully be a thought provoking event. We hope it will provide many opportunities for knowledge exchange and for strengthening existing ties and for building new partnerships.

We also thank our ESNLT-partners the Dutch Cancer Society (KWF) as the key sponsor of this event and Kom op tegen Kanker (The Flemish Cancer Association) and the European Association of Health Law for their valuable contributions to making this event possible.

Warm regards

The organizing committee

University of Groningen
Prof. Brigit Toebes
Dr. Marie Elske Gispen

KU Leuven
Prof. Steven Lierman
Mathijs van Westendorp, LL.M, MSc



A bird's eye view

Wednesday 30 May 2018

't Feithhuis (Martinikerkhof 10)

15.15-17.00 Pre-conference seminar: Comparisons of Dutch and Chinese health laws and systems in light of human rights

't Feithhuis (Martinikerkhof 10)

17.30 – 19.00 Welcome reception

Thursday 31 May 2018

Academy building University of Groningen (Broerstraat 5)

8.00 Registration opens
9.00 Opening of the conference
9.30 Keynote address Prof. Amandine Garde
10.30 Walk to Norman building & break

Norman building (Lutkenieuwstraat 5)

11.00 Plenary session Track 1
12.30 Lunch
13.30 Parallel sessions Track 1
15.00 Break
15.30-17.00 Parallel sessions Track 2 & 3

Restaurant Prinsenhof (Martinikerkhof 23)

18.30 Conference dinner

Friday 1 June 2018

Academy building University of Groningen (Broerstraat 5)

8.00 Venue open
9.00 Keynote address Dr. Sakari Karjalainen
10.00 Walk to Norman building & break

Norman building (Lutkenieuwstraat 5)

10.30 Plenary session Track 4
12.00 Roundup session: what is next?
12.30 Lunch
13.30 Roundtable Industry involvement
15.00 Break
15.30 Roundtable Industry involvement continued
17.00-18.00 Closing drinks

Programme per day

Wednesday 30 May 2018

't Feithhuis (Martinikerkhof 10)

15.00-17.00 Pre-conference seminar: Comparisons of Dutch and Chinese health laws and systems in light of human rights

Chair: Dr. Yi Zhang, LL.M

15.30-16.00 Prof. Roland Friele, the Netherlands Institute for Health Service Research (NIVEL) (NL), Coping with the challenges of quality and affordability in health care: the Dutch Health Care Insurance Act and the Youth Act

16.00-16.30 Prof. Chenguang Wang, Law School, Tsinghua University (CN), The Drafting of China's essential health care and health promotion law: major issues and debates

16.30-17.00 Discussion

't Feithhuis (Martinikerkhof 10)

17.30-19.00 Welcome reception
Welcome speech by Dr. Jochen Mierau, Aletta Jacobs School of Public Health, University of Groningen

This reception is offered to you by the European Association of Health Law

Thursday 31 May 2018

Academy building University of Groningen (Broerstraat 5)

8.00 Registration opens (Bruinszaal)

9.00 Opening of the conference (Senate room)

9.00-9.10 Prof. Brigit Toebes, Academic director Global Health Law Groningen Research Centre University of Groningen (NL)

9.10-9.20 Intermezzo by Mira, Groningen Student Orchestra

9.20-9.30 Prof. Marcel Brus, Head of Department of Transboundary Legal Studies University of Groningen (NL)

9.30 Keynote address Prof. Amandine Garde, University of Liverpool

Chair: Prof. Brigit Toebes

9.30-10.10 Lecture: From tobacco control to NCD prevention: addressing the commercial determinants of health in liberal market economies

10.10-10.30 Q&A and discussion

10.30 Walk to Norman building & break

Norman building (Lutkenieuwstraat 5)

11.00 Plenary session (track 1) (plenary room)

Chair: Prof. Steven Lierman

11.00-11.15 Dr. Allyn Taylor, University of Washington (USA), Human Rights in the Origins of the FCTC

11.15-11.30 Dr. Oscar Cabrera, University of Georgetown (USA), NCDs and Human Rights: Lessons from Tobacco Control applied to Unhealthy Food Regulation

11.30-11.45 Prof. Andrew Mitchell, University of Melbourne (AU), If One Thai Bottle Should Accidentally Fall: Public Health, Alcohol Labelling and International Economic Law

11.45-12.30 Q&A and discussion

12.30	Lunch		14.00-14.15	Renate Dietvorst, LLM, University of Maastricht (NL), The role of the UNCRC in elementary schools in the prevention of NCD's and lifestyle related diseases
13.30	Parallel sessions A&B (track 1)		14.15-15.00	Q&A and discussion
	Parallel session A (track 1) (parallel room)			
	<i>Chair: Prof. Andrew Mitchell</i>		15.00	Break
13.30-13.45	Dr. John Lombard, University of Limerick (IE), The Application of the Principle of Proportionality to the Plain-Packaging of Tobacco Products		15.30-17.00	Parallel sessions C&D (track 2 & 3)
13.45-14.00	Dr. Yiannos Toliás, European Commission, Assessing the Proportionality of National Measures aiming to Restrict Trade in order to Protect Public Health			Parallel session C (track 2) (parallel room)
14.00-14.15	Meaghan Beyer, LLM, University of Groningen (NL), Lessons learned from Tobacco Regulation: Immunizing NCD Regulation from Fatal Challenge in the International Trade and Investment Regimes			<i>Chair: Dr. Marie Elske Gispen</i>
14.15-15.00	Q&A and discussion		15.30-15.45	Sam Varvastian, LLM, Mykolas Romeris University (LT), Tobacco litigation as a Role Model? In Search for Improving Legal Pathways to Tackle Climate Change
	Parallel session B (track 1) (plenary room)		15.45-16.00	Dr. Obiajulu Nnamuchi, University of Nigeria (NI), Tobacco Control and Regulation in Africa: Constraints and Necessary Interventions
	<i>Chair: Dr. Oscar Cabrera</i>		16.00-16.15,	Marlies Hesselman, LLM, University of Groningen (NL), Regulating Household Cooking Fires as 'Silent Killers in the Kitchen': Lessons from/for Indoor Air Pollution as 'Forgotten' NCD Risk Factor for 3 Billion Persons
13.30-13.45	Dr. Jitse van Dijk, University Medical Centre Groningen (NL), The Framework Convention on Tobacco Control in Slovakia: Will the Sustainable Development Goals stimulate implementing it?		16.15-17.00	Q&A and discussion
13.45-14.00	Dr. Marie Elske Gispen, University of Groningen (NL), Children's rights and NCD control: lessons from tobacco control			Parallel session D (track 3) (plenary room)
				<i>Chair: Mathijs van Westendorp, LLM, Msc</i>
			15.30-15.45	Dr. Jasper Been, Erasmus MC Rotterdam (NL), Policy ideally requires robust evidence: the case of children and tobacco

15.45-16.00	Dr. Laetitia Mulder, University of Groningen (NL), The Possible Effect of Laws on Norms – Insight from Social Psychology
16.00-16.15	Michael Schreuders, Msc, Academic Medical Centre, University of Amsterdam (NL), xxx
16.15-17.00	Q&A and discussion

Restaurant Prinsenhof (Martinikerkhof 23)

18.30-21.00	Conference dinner* Dinner speech by Prof. Chenguang Wang, Law School, Tsinghua University (CN), Reflections on NCD law and policy in China
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** Please contact the organizers if you have not registered for the conference dinner but wish to join.*

Friday 1 June 2018

Academy building University of Groningen (Broerstraat 5)

8.00	Venue open and coffee (Bruinszaal)
9.00	Keynote address Dr. Sakari Karjalainen, Association of European Cancer Leagues (Senate room) <i>Chair: Prof. Steven Lierman</i>
9.00-9.40	Lecture: The current political field on law and NCDs in Europe
9.40-10.00	Q&A and discussion
10.00	Walk to Norman building & break

Norman building (Lutkenieuwstraat 5)

10.30	Plenary session (track 4) (plenary room) <i>Chair: Prof. Brigit Toebes</i>
10.30-10.45	Prof. Stefania Negri, University of Salerno (IT), Law and Tobacco Control in Italy: smoke-free environments and smoking bans in private cars
10.45-11.00	Esther Oldenkamp, LLM, Leiden University Medical Centre (NL), Theoretical Lessons Learned from Self-Regulation in Tobacco Control
11.00-11.15	Dr. Robert Tabaszewski, University of Lublin (PL), Biopolitics, Politicians and Noncommunicable diseases: the Role of Policy-Makers in Prevention and Control of NCDs
11.15-12.30	Q&A and discussion
12.00	Roundup session: what is next? <i>Chair: Prof. Brigit Toebes & Prof. Steven Lierman</i>
12.30	Lunch
13.30	Roundtable Industry involvement (plenary room)

Session 1: Academic perspectives on the appropriate level of engagement between public and private entities

Chair: Dr. Marie Elske Gispen

13.35-13.40	Brief introduction by the organizers on the main objectives
13.40-13.55	Prof. Brigit Toebes, University of Groningen (NL), on business and human rights as applied to non-communicable diseases
13.55-14.10	Dr. Els Maeckelberghe, University Medical Centre Groningen (NL), on the role of private companies in disease prevention and treatment from an ethical perspective
14.10-14.25	Dr. Lottie Lane, University of Groningen (NL), on the role of State and private actors in relation to health and human rights from a governance perspective
14.25-15.00	Q&A and discussion
15.00	Break
15.30	Roundtable industry involvement (continued) (plenary room)

Session 2: Perspectives from communities of practice on the appropriate level of engagement between public and private entities

Chair: Marlies Hesselman, LL.M

15.30-15.40	Discussant on tobacco: Laura Houtenbos (senior policy advisor at the Dutch Cancer Society)
15.40-15.50	Discussant on tobacco: Kabanda David (lawyer Centre of Health, Human Rights and Development, Uganda)
15.50-16.00	Discussant on pharmaceuticals: Dr. Christine Gispen-de Wied (Medicines Evaluation Board of the Netherlands/co-founder Regulatory Science Network Netherlands)
16.00-16.10	Discussant on pharmaceuticals: Dr. Ellen 't Hoen (Medicines Law & Policy)
16.10-16.20	Discussant on food & beverage: Carolien Martens (relations manager public affairs at the Dutch Heart Foundation)
16.20-17.00	Focused discussion (20 min Q&A/ 30 min focused on the primary research question and to propose a concrete outcome)

17.00-18.00 Closing drinks

Keynotes

Prof. Amandine Garde, University of Liverpool (UK)



Amandine Garde is Professor of Law and director of the Law & NCD Unit at the University of Liverpool, UK. She has developed an expertise on the role that legal instruments can play in promoting health, and she has written extensively on the regulation of food marketing to children and the role that the European Union should play in preventing NCDs.

Her book *EU Law and Obesity Prevention* (2010) is the first to offer a critical analysis of the EU's Obesity Prevention Strategy. She is co-editor of *Regulating Lifestyle Risks: the EU, Alcohol, Tobacco and Unhealthy Diets* (2015), and *Ending Childhood Obesity: A Challenge at the Crossroads of International Human Rights and Economic Law* (forthcoming). She is Senior Editor of the *European Journal of Risk Regulation*, and Editor of Elgar's new series *Health and the Law*.

She regularly advises international organisations, NGOs, governments and public health agencies worldwide. In particular, she was a member of the Ad Hoc Working Group on Science and Evidence to the WHO Commission on Ending Childhood Obesity and is lead author of a major report commissioned by UNICEF on *Food Marketing and Children's Rights* (in print).

She has also developed several training courses on the use of law in the prevention of NCDs. Before moving to Liverpool, she lectured at King's College London, the Faculty of Law in Cambridge, the University of Exeter and the University of Durham. She spent a year as a Jean Monnet postdoctoral fellow at the European University Institute in Florence in 2005-2006 and is also a qualified solicitor.

Abstract: From tobacco control to NCD prevention: addressing the commercial determinants of health in liberal market economies

There is a growing recognition in both academic and policy circles that the prevention and control of non-communicable diseases (NCDs) should be seen as a major human rights concern. In particular, the obligation resting on States to respect, protect and fulfil the right to the enjoyment of the highest attainable standard of health is increasingly recognised as an important legal basis for the regulation of the tobacco, alcohol and food industries.

Nevertheless, the right to health and other related rights are not absolute, and the more a State regulates these industries, the more likely it is to encounter legal challenges anchored in international economic law.

Business actors have resisted – and will presumably continue to resist – effective regulation, arguing that the trade restrictions imposed on them are not necessary and cannot therefore be justified. The question therefore arises how States can – and should – balance conflicting interests.

After reviewing the broad margin of discretion that States actually have to regulate the industries primarily responsible for the global burden of NCDs, this presentation will reflect more specifically on the extent to which the best interests of the child principle, anchored in the UN Convention on the Rights of the Child, can be used as a balancing tool to ensure that States uphold “the best interests of the child as a primary consideration in all their actions”, and more specifically in this policy area.

Dr. Sakari Karjalainen, Association of European Cancer Leagues



Sakari Karjalainen is Secretary General of the Cancer Society of Finland and Cancer Foundation Finland since 2011. Dr Karjalainen is President of the Association of European Cancer Leagues since 2015. He is MD, holds a doctorate in Epidemiology and is Adjunct Professor at the Tampere University.

Prior to his current appointment he was Director General of the Department of Education and Science

Policy of the Ministry of Education and Culture in Finland (2006–2011).

He has also worked as Director of the Science Policy Division of the Ministry of Education (2002–2006), Secretary General of Research Council for Health at the Academy of Finland (1995–2002).

Dr Karjalainen was leader of the WP2 (Dissemination) of the EU Joint Action of Cancer Control (CANCON) and is leading the WP3 (Evaluation) of the Joint Action of Rare Cancers (JARC). In 1993–94, Dr Karjalainen represented Finland at the Steering Committee of Bioethics (CDBI) of the Council of Europe.

He has had several other tasks and projects related to bioethics, health care ethics and research ethics. Dr Karjalainen has also led the legislative work related to educational rights at his Department of the Ministry of Education and Culture. His current research interests are cancer epidemiology, research ethics and health services research and equity in health.

Abstract: The current political field on law and NCDs in Europe

Important determinants for all non-communicable diseases comprise tobacco and alcohol use, nutrition and physical activity. Health policy is, in principle, a national mandate in the EU, but the regulation of many important elements related to the health determinants is mostly within the competence of the EU. One example is how the Common Agricultural Policy (CAP) affects food production and quality and therefore also consumption.

Furthermore, access to and attractiveness of alcohol and tobacco is controlled by other than health policies, such as CAP, trade and competition policies and internal markets and the free movement of goods and services. From the public health perspective, the task is to ensure good quality products, regulate access to unhealthy products through, for example, availability or price.

It is important to ensure that adequate information is available and marketing has proper rules. The question is: how can Article 168 of the Lisbon Treaty be taken more seriously in all EU policies to protect health and prevent NCDs? What measures are proportional at the EU or national level for the protection of health? How can health aspects be strengthened within the EU institutions? Why do we need a health directorate and the Health Programme also in future?

In the presentation, case studies on these aspects concerning tobacco control, food stuffs and alcohol are presented from the point of view of identifying opportunities and challenges for preventing NCDs within the context of EU.

Prof. Chenguang Wang, Law School, Tsinghua University



Mr. Wang, Chenguang, B.A. 1980, Master of law 1983 and Ph.D. of Law 1999 from Peking University (China), LL.M. 1996 from Harvard Law School (US).

Mr. Wang has been Professor of Law at Tsinghua University since 2000 and Dean of Tsinghua Law School from 2002 to 2008.

His research interests are in the field of jurisprudence, sociology of law, Health Law, comparative law and judicial practice. He serves currently as Legal Advisor of China Food & Drug Administration, Member of the Drafting Group of China Basic Health Law, Legal Advisor for Health Emergence at State Commission of Health and Family Planning, Arbitrator at China International Economic and Trade Arbitration Commission since 1993.

He also served as Deputy Chairman of China Association of Legal Theory (since 2003), Deputy Chairman of China Association of Legal Education (since 2007), Deputy Chair of China Health Law Association (since 2007), and Deputy Chairman of China Association of Comparative Law (from 2003 to 2006).

Plenary and parallel sessions

Plenary session (track 1) (Thursday 31 May, 11.00, plenary room)

Chair: Prof. Steven Lierman

Dr. Allyn Taylor, University of Washington (USA), *Human Rights in the Origins of the FCTC*

This presentation will provide an account and analysis of how human rights issues were conceived of and addressed in the conceptualization, negotiation and conclusion of the Framework Convention on Tobacco Control (FCTC).

Although outside observers have suggested that human rights were a significant concern in the development of the FCTC, there was in fact little explicit consideration of human rights in the initiation or the negotiation of the instrument and, in the end, a human rights framework was not incorporated in the final text of the Convention.

This presentation explains how a complex intersection of legal, economic and political factors led to the neglect of human rights in the conception and design of the FCTC.

Dr. Oscar Cabrera, Georgetown University (USA), *NCDs and Human Rights: Lessons from Tobacco Control applied to Unhealthy Food Regulation*

Regulating modifiable risk factors of NCDs is one of the key priorities in developing a comprehensive and crosscutting strategy to NCDs prevention. In this context, human rights law provides a solid foundation to build a cohesive legal strategy to regulate tobacco, alcohol and unhealthy foods. For the most part, the analysis on the connection between NCDs and human rights has mainly focused on tobacco control.

In recent years, we have seen normative developments at the domestic level linking tobacco control and human rights, as well as case law both domestically and internationally that incorporate human rights arguments in support of tobacco control interventions. As the obesity epidemic continues to spread and impact populations across the globe, a clear human rights framing around regulating healthy foods is essential. For example, building solid arguments to both justify and encourage regulating unhealthy diets, in particular high sugary drinks and ultra-processed foods.

In this paper, we will examine lessons learned from tobacco control and human rights, and how they can inform developing the foundations for healthy foods and human rights. We will address both the similarities and differences between tobacco control and obesity prevention. From a human rights law standpoint, we will argue that the starting point for obesity prevention fundamentally differs from that adopted in tobacco control. The human rights analysis on tobacco control was initially developed in the context of smoke free areas. This led to clear arguments about protecting the health of non-smokers, where right to health arguments clearly outweighed right to autonomy and self-determination counter arguments.

In the context of food, governments are starting by focusing on labeling, taxes and marketing restrictions. In this context, human rights arguments need to be clearly drafted to support such interventions. In doing this, we will examine recent normative development in food, as well as some of the recent cases in which human rights arguments were central when adjudicating unhealthy food regulation.

Plenary session (track 1) continued

Prof. Andrew Mitchell, University of Melbourne (AU), *If One Thai Bottle Should Accidentally Fall: Public Health, Alcohol Labelling and International Economic Law*

This paper inquires whether alcohol labelling policies that require health warnings and/or prohibit industry marketing are consistent with international trade and investment agreements. These agreements are often considered to be obstacles to the implementation of progressive labeling policies.

Using two labeling policies developed by Thailand as a case study, this paper will investigate whether this view is correct. In 2010, Thailand introduced a watershed proposal to impose large graphic health warnings on alcoholic beverages. This proposal has not so far been implemented. In 2014,

Thailand caused further controversy by prohibiting the use of certain marketing images on alcoholic beverage labels. These innovative labeling policies raise a range of potential issues under international economic law. Our findings in relation to the Thai policies will have application to other countries' alcohol labeling rules.

This paper concludes by considering some new developments in international trade and investment law that, rather than constraining public health policy, might ultimately enhance the regulatory autonomy of states, including in relation to alcohol regulation.

Parallel session A (track 1) (Thursday 31 May, 13.30, parallel room)

Chair: Prof. Andrew Mitchell

Dr. John Lombard, University of Limerick (IE), *The Application of the Principle of Proportionality to the Plain-Packaging of Tobacco Products*

Tobacco products have been the subject of numerous international regulations aimed at improving public health. These include regulations which address advertising and sponsorship by tobacco companies as well as the placement of warning labels on tobacco products. More recently, there has been a move towards imposing greater restrictions on intellectual property rights as a tool through which smoking rates are cut and smoking related illnesses are reduced.

As such, several jurisdictions have introduced or will soon introduce plain-packaging for tobacco products. The introduction of plain-packaging is an emerging international issue and has been the subject of legal challenges from tobacco companies due to the restrictions placed on their intellectual property rights. Tobacco companies have advanced arguments based on the violation of property rights, the violation of the free movement of goods, and the proportionality of the regulations.

The concept of proportionality has begun to take a more central role in the arguments presented by tobacco companies. This paper will consider the interpretation and application of the principle of proportionality in this area. First, the principle of proportionality will be outlined. This will include discussion of suitability and necessity. The paper will then move on to examine the application and interpretation of the proportionality argument in the courts. In particular, the High Court decision in *British American Tobacco v The Secretary of State for Health* will be discussed as this decision turned on the issue of proportionality.

The paper will then move to consider how the proportionality argument might develop in the future based on emerging data from jurisdictions such as Australia. As such, it will focus on how proportionality is to navigate any tension between theory and measurable outcomes, and what this might mean for future regulation of NCD-related risk factors.

Parallel session A (track 1) *continued*

Dr. Yiannos Toliás, European Commission, *Assessing the Proportionality of National Measures aiming to Restrict Trade in order to Protect Public Health*

It is true that free trade appears to be causing fewer controversies within the EU internal market than the other fundamental freedoms. However, in recent years it has been also evident that some Member States and/or some groups of society perceive trade liberalization and other advancements in production as a threat to the protection of public health, environment and/or the consumer. As a result, some Member States proceed to adopt measures in order to address these issues. However, ensuring that these national measures are compatible with EU law has in recent years become more complex. It has become more complex, as national measures aiming to protect such justifiable objectives could at the same time be incorporating protectionist elements and/or promoting certain policies incompatible with EU law. The Court of Justice has been asked in certain cases to step in and provide guidance on how these delicate and sensitive balances could be struck. There are two main hurdles that the Court of Justice had to deal with in this respect. First, some Member States might be adopting measures that could be described as selling arrangements (e.g. advertising restrictions or pricing restrictions). Such measures would be only caught by EU law if they are discriminatory. The challenge is that some of these measures might be appearing non-discriminatory selling arrangements but still erecting obstacles to trade (e.g. C-148/15, Deutsche Parkinson, C-108/09, Ker Optika and C-158/04, Alfa Vita (bake-off) case; C-333/14 Scotch Whisky Association (MUP)). The Court had to address these sensitive issues especially in cases where such types of measures could be incorporating elements of protectionism. Secondly, the Court had to address issues concerning the appropriateness of national measures (e.g. C-148/15, Deutsche Parkinson case) and/or the necessity/proportionality of the measures in sensitive areas such as health (e.g. C-333/14 Scotch Whisky Association (minimum price of alcohol); environment (e.g. C-28/09, Commission v Austria (sectoral traffic ban)) and consumer protection (e.g. see recent case C-95/14 UNIC). In many of these cases applying the tests of appropriateness and necessity could be quite sensitive. This paper identifies the guidelines emerging from the Court of Justice's jurisprudence on how this delicate analysis could be carried out.

Meaghan Beyer, LL.M., University of Groningen (NL), *Lessons learned from Tobacco Regulation: Immunizing NCD Regulation from Fatal Challenge in the International Trade and Investment Regimes*

Arriving at the current level of regulation of tobacco products has involved significant resistance from the tobacco industry and numerous costly legal disputes. As states scale up NCD regulations, similar types of policies implemented to regulate tobacco will be adopted, including marketing restrictions, labelling requirements and fiscal policies. As a result, there are substantial parallels concerning the relevant legal obligations, limitations and challenges states face.

Thus, the question is not if, but when these measures will be challenged in (international) dispute settlement and how to effectively respond. In addition to substantial challenges from affected industries, especially developing states heavily rely on certain industries and raw materials linked to NCDs for economic prosperity (e.g. palm oil). Consequently, there will be further national resistance to the adoption of increased regulations.

Drawing from the success achieved in WTO disputes and international investment arbitrations concerning the adoption of tobacco regulations, there are a number of lessons to be learned to immunize NCD regulation from fatal challenge in the international trade and investment regimes.

Three key takeaways can be observed: 1) where measures are first implemented remains key as these states need to have the legal and financial capacity to respond to potential disputes; 2) it is crucial to increase the legal capacity and expertise concerning the relevant legal frameworks to ensure that policy makers are aware of the limitations imposed by the trade and investment regimes and; 3) international standards can play a pivotal role in encouraging and supporting binding domestic and international regulation.

Parallel session B (track 1) (Thursday 31 May, 13.30, plenary room)

Chair: Dr. Oscar Cabrera

Dr. Jitse van Dijk, University Medical Centre Groningen (NL), *The Framework Convention on Tobacco Control in Slovakia: Will the Sustainable Development Goals stimulate implementing it?*

Background: The Framework Convention on Tobacco Control (FCTC) is not implemented in Slovakia. The state did very little, although it ratified the FCTC more than 13 years ago and it also is a member state of World Health Organisation. Aim of this study is to explore the political barriers for the implementation of the FCTC.

Methods: In this case study as political barriers were seen: institutional support, financing, Human Resources management; they were measured by the number of functional State authorities and executive bodies, by the amount of finances intended to reduce tobacco consumption and by the number of staff implementing measures supporting FCTC respectively. We report them after a short historical introduction in this order.

Results: Slovakia ratified the FCTC in May 2004 as the second EU country. Executive and control bodies foreseen by FCTC are malfunctioning in Slovakia. Financing of activities supporting FCTC implementation is undervalued. Staff realizing necessary steps is missing.

Conclusion: Realization of technical and formal measures existing only in policy documents must be seen as the main barrier for the implementation of the FCTC in Slovakia. The Sustainable Development Goals (SDGs) are seen as the new fuel for global health issues among which the implementation of the FCTC, and we are very much curious whether it will fulfil this role.

Dr. Marie Elske Gispen, University of Groningen (NL), *Children's rights and NCD control: lessons from tobacco control*

Human rights play an increasingly important role in (global) NCD control and governance. As children are particularly vulnerable in the NCD crisis, this contribution reflects the potential of children's rights as guidepost for NCD regulatory strategies.

Building on existing knowledge on children's rights and tobacco control, the presentation explores commonalities and difference between the different behavioral risk factors and the role of (international) (human rights) law therein.

Reflecting on the nature and scope of rights as included in the Convention on the Rights of the Child, the presentation will conclude with highlighting that the interest, life, survival, health and information rights of children are of crucial importance yet a one-size fits all approach would be insufficient.

Parallel session B (track 1) *continued*

Renate Dietvorst, LLM, University of Maastricht (NL), *The role of the UNCRC in elementary schools in the prevention of NCD's and lifestyle related diseases*

Unhealthy lifestyles and high obesity-rates are a persistent problem in the Netherlands and other Western societies. These problems are also affecting children. At a young age, children are starting with unhealthy behaviors by drinking energy drinks, smoking cigarettes, sedentary lifestyles and consuming unhealthy foods.

Unfortunately, this behavior will lead to major issues in adulthood such as chronic diseases, reduced quality of life, a lower socio-economic status, reduced chances for equal opportunities and labor market access. Eventually, this behavior will result in rising healthcare- and benefit expenses, social and economical problems and even complications for human rights such as inequality issues. Finally, there is a risk that a vicious circle will emerge whereby these socio-economic and healthcare related problems will be transferred from our children to our future generations.

To break this pattern and to reverse this gloomy health epidemic, there is a need for focus on prevention instead of solution based problem solving. The human rights based approach to tackle these problems will be a crucial factor in prevention. The most important question is how to implement this human rights approach and what could be the best environment to break this tenacious pattern.

The school setting is an ideal environment for prevention and the promotion of healthy lifestyles and to implement a human rights approach. The school setting can serve as a place to further implement the UNCRC and to focus on the prevention in the health care context. The question central to this debate is therefore: "what is the significance of the UNCRC for the prevention of NCD's and lifestyle-related diseases and risks in elementary schools?"

Parallel session C (track 2) (Thursday 31 May, 15.30, parallel room)

Chair: Dr. Marie Elske Gispem

Sam Varvastian, LLM, Mykolas Romeris University (LT), *Tobacco litigation as a Role Model? In Search for Improving Legal Pathways to Tackle Climate Change*

What do smoking and climate change have in common? The answer may be somewhat blurry from a general point of view, yet it is rapidly gaining recognition in legal circles all across the world.

Both revolve around societal dependence on certain harmful products - tobacco, in case of smoking, and fossil fuels, as the primary driver for anthropogenically-driven climate change. Both represent an overwhelming threat to human health, yet are quite elusive in terms of its manifestation due to complex interaction with other overlapping risk factors. Both respect no borders and affect communities at large, including those, who are the least responsible. Both incur enormous costs on governments. And above all else, both have been extremely difficult to regulate because of powerful industry lobbying and deliberate obfuscation of the science involved.

At the same time, tobacco control has a longer history, which means that where necessary, it could serve as a starting point when dealing with climate change or, indeed, with other forms of environmental threat (e.g. toxic pollution, etc.), from a regulatory angle. However, no matter what they have in common, there are still substantial differences between these issues, hence any direct transposition of experience is questionable.

The presentation thus addresses the potential applicability of experience gained within the field of tobacco control to the realm of climate change. It argues, that despite all the differences, the experience gained from the regulation of tobacco could be instrumental in optimizing the legal pathways to tackle climate change.

Parallel session C (track 2) continued

Dr. Obiajulu Nnamuchi, University of Nigeria (NI), *Tobacco Control and Regulation in Africa: Constraints and Necessary Interventions*

One of the more visible negative consequences of globalization and improving economic outlook in Africa is a surge in the number of smokers in various countries in the region. Recent figures indicate that the region is tethering on the brink of tobacco-induced disease epidemic.

According to the World Health Organization (WHO), deaths resulting from noncommunicable diseases (NCD) in Africa, a significant number of which are tobacco-related, will increase 27 percent over the next decade – second only to Russia. For a region whose population is suffocating under the stranglehold of underperforming health systems and decades-long institutional ineptitude, this data is troubling and should be a source of concern to the political leadership in Africa as well as the global health community. Taking this concern seriously requires channeling available resources toward curbing or reversing the surge.

On a positive note, the fact that the vast majority of African countries are Parties to the WHO's Framework Convention on Tobacco Control (FCTC), which is aimed at freeing humanity from the scourge of tobacco-related diseases, is quite encouraging. Nonetheless, it is not clear whether domestic legal and policy regimes in these countries are consistent with international standards and global best practices. Are there deficits that need to be plugged in the realm of tobacco control and regulation in the region? Responding to these concerns is the task of this paper.

Marlies Hesselman, LL.M., University of Groningen (NL), *Regulating Household Cooking Fires as 'Silent Killers in the Kitchen': Lessons from/for Indoor Air Pollution as 'Forgotten' NCD Risk Factor for 3 Billion Persons*

While discussions on NCD risk factors tend to focus on life-style oriented behaviour such as the consumption of alcohol, tobacco, unhealthy foods or poor physical activity, there is another omnipresent NCD risk factor in many peoples' day-to-day lives, i.e. the manner they prepare and cook food and meet other energy needs in the household. A whopping 40% of the global population still relies on basic household fires fuelled by solid fuels (wood, coal, dung, biomass), which the WHO estimates contributed to approximately 4.3 million premature deaths in 2012 as a result of stroke, ischemic heart disease, COPD and lung cancer (7,7% of total global mortality).

The WHO equates inhalation of these fumes to smoking two packets of cigarettes per day, while recently experts equated open kitchen fires to 'burning 400 cigarettes an hour'. Continued usage of these fires may be explained by many different factors that also affect other NCD risk factors, including availability, affordability or reliability of healthier alternatives, poor quality standards, lack of information about the harmful nature of fires or particular products, or cultural (un)acceptability of particular cooking technologies.

This paper critically outlines (a) some of the salient issues of indoor air pollution described here (b) possible regulatory or policy responses discussed in literature and policy practice; (c) analyze the (rapidly) evolving international law and policy responses to this issue (in hard and soft law and in international guidelines and standard setting of the WHO, OHCHR, UN SE4ALL, IEA, ESMAP) with a particular focus on international human rights law. There is evidence that energy poverty is increasingly taken up by human rights law frameworks as a matter of human rights concern (cf. CEDAW GR 36 on rural womens' rights; CRC GR on childrens' health) and this paper critically assesses its contributions in light of important challenges that are flagged by policy practice and the human rights framework itself, incl. the availability, physical or economic accessibility, (cultural/social) acceptability or/of quality of (healthy) goods and services and the progressive realization of rights (to health and food).

Parallel session D (track 3) (Thursday 31 May, 15.30, plenary room)

Chair: Mathijs van Westendorp, LL.M, Msc

Dr. Jasper Been, Erasmus MC Rotterdam (NL), *Policy ideally requires robust evidence: the case of children and tobacco*

Tobacco use is an important risk factor for premature mortality and morbidity. Tobacco control policies are effective in reducing tobacco consumption and exposure of non-smokers to tobacco smoke.

In 2003 the World Health Organization initiated the Framework Convention for Tobacco Control, the first global public health treaty which informs countries worldwide on evidence-based tobacco control. Although the treaty has now been ratified by 181 countries, over a third of these countries have not yet implemented a single effective policy at the highest level.

Worldwide, about half of all children are regularly exposed to other people's tobacco smoke. Children are particularly vulnerable to the adverse health effects of tobacco smoke, and they are unable to regulate their own level of exposure. Children should have the right to grow up smoke-free. Evidence for effectiveness of tobacco control policies to protect children's health is therefore a strong argument in terms of advocacy.

Over recent years, several robust studies have demonstrated that implementation of strong smoke-free laws is associated with substantial reductions in important early-life adverse health outcomes. Opportunities should be sought to translate robust research evidence into policy and law-making through establishing better connections between the various disciplines involved in these processes.

Dr. Laetitia Mulder, University of Groningen (NL), *The Possible Effect of Laws on Norms – Insight from Social Psychology*

Can laws regulating health-related behavior, change norms about this behavior? The increase of the legal drinking age in the Netherlands in 2014, evoked quite a few skeptical reactions.

For example, it was argued that teenagers motivated to drink will find easy ways around this law. This skepticism does not take into account the possible expressive function of the law. Laws that forbid specific behaviors communicate that these behaviors are wrong and harmful.

Given the right circumstances, people may gradually adopt this vision. Hence, laws have the ability to change norms with regard to these behaviors. But what are the boundary condition for laws to be successful in changing norms?

Parallel session D (track 3) *continued*

Michael Schreuders, Msc, Academic Medical Centre, University of Amsterdam (NL), *To what extent and why adolescents do or do not support future tobacco control measures: A multi-method study in The Netherlands*

In the Netherlands, the adoption of new tobacco control measures is needed to further reduce rates of adolescent smoking. Adolescents' support for future measures could increase the likelihood of adoption as this provides political leverage for tobacco control advocates. There is, however, scant evidence about to what extent and why adolescents support future measures. We therefore assessed adolescents' support for a range of future measures and explored the criteria that adolescents use to underpin their support.

A mixed-method design involved surveys and group interviews with fourth-year students (predominantly 15–16 years). The survey, completed by 345 adolescents, included statements about future tobacco control measures and a smoke-free future wherein nobody starts or continues smoking. Thereafter, fifteen adolescents participated in five group interviews to discuss their support for future measures.

The survey showed that adolescents generally support a smoke-free future. They expressed most support for product measures, mixed support for smoke-free areas, ambivalent support for price increases, least support for sales restrictions. The group interviews revealed that differences in support were explained by adolescents' criteria that future measures should: have the potential to be effective, not violate individuals' right to smoke, protect children from pro-smoking social influences, and protect non-smokers from second-hand smoke.

Adolescents' high support for a smoke-free future does not lead to categorical support for any measure. Addressing the underlying criteria may increase adolescents' support and therewith provide political leverage for the adoption of future measures.

Parallel session (track 4) (Friday 1 June, 10.30, plenary room)

Chair: Prof. Brigit Toebes

Prof. Stefania Negri, University of Salerno (IT), *Law and Tobacco Control in Italy: smoke-free environments and smoking bans in private cars*

The paper aims to present the Italian legislation on tobacco control and the establishment of smoke-free environments, with a focus on the prohibition on smoking in private cars.

The peculiarity of this legislation, based on article 32 of the Italian Constitution, is that it predates and goes beyond the obligations imposed by international and EU law on tobacco control. In fact, when Italy ratified the WHO FCTC and executed it by Law no. 75 of 18 March 2008, the Italian legislation already included a broad variety of bans on smoking in 'indoor workplaces, public transport, indoor public places and other public places', as requested by article 8 FCTC.

More recently, Legislative Decree no. 6 of 12 January 2016, transposing Directive 2014/40/EU, imposed a ban on smoking for drivers and passengers of private cars or vehicles in presence of minors and pregnant women. This provision, which appears in connection with the execution of an act which does not require Member States to adopt national measures on smoke-free environments, goes well beyond the scope of any international obligation incumbent on Italy and rather represents voluntary compliance with the EU Council Recommendation on Smoke-Free Environments (2009).

The paper will examine the relevant legal issues concerning the adoption of this national legislation, including legitimacy and human rights-related issues.

Parallel session (track 4) continued

Esther Oldenkamp, LL.M., Leiden University Medical Centre (NL), *Theoretical Lessons Learned from Self-Regulation in Tobacco Control*

In 2008 the WHO claimed that the solution to control the global tobacco epidemic is to be found in actions of the government and civil society. When it comes to the regulatory framework that controls the tobacco epidemic actions of civil society play an essential role. In legal terms these actions are categorized as self-regulatory actions. Some self-regulatory mechanisms are a product of the interplay between civil actors and the (international) government.

This presentation aims to reflect on the fundamental and theoretical questions that arise from self-regulation. Taking the self-regulatory element(s) of tobacco control as a case study. What can we learn from the (lack of) theoretical foundation of these self-regulatory elements? It is important to discuss this fundamental question since law is claimed to be an important mechanism in the (future) control of the NCD's epidemic and the risk factors that are related to NCD's. Law has a certain flexibility, it is able to have a cross cutting role.

The dimension of self-regulation is an essential part of that flexibility. That means that self-regulation will be of big importance in the control of NCD's epidemic.

In the presentation, I will address the following questions, taking the self-regulatory part of tobacco control as a starting point: how to think about self-regulatory mechanisms in terms of legitimacy? Can we justify regulatory actions of civil society by the severity of NCD's? How can we define the relation with the human rights that dominate in the foundation of (international) health law? Who are the civil parties that function as self-regulatory actors? What role do formal public parties play? What constitutes the 'self' in the self-regulation that concerns tobacco? How can we think about the 'self' when the self-regulation is a web of international and national actors - which makes it hard to have a clear idea of the 'self'?

Dr. Robert Tabaszewski, University of Lublin (PL), *Biopolitics, Politicians and Noncommunicable diseases: the Role of Policy-Makers in Prevention and Control of NCDs*

Health and biopolitics are the values, which mutually determine one another. Health is a good of a particular value for human being. The place of NCD control is determined by the political system in a given state, and also by the degree to which the international commitments undertaken by this state are met.

The analysis of European documents shows that an individual has NCDs regulations to maintain and strengthen health, as well as seek the enforcement of their rights using the UN and WHO strategies. Fulfilling NCD-related needs at international level requires a number of effectively functioning institutions, which guarantee an individual that their right to health is protected (conferences, common strategies and actions). Therefore, the individual state of health of decision-makers is important as well.

The decisions of domestic politicians, finding reflection at international level as well, exert influence on public and individual health. It cannot be required of politicians who cannot look after their own health that they will manage the affairs of other people, and of other countries, appropriately. Because, at international level, there is not a comprehensive legal regulation relevant to NCDs, it needs to be made precise to what extent the lack of health and the dysfunctions of politicians' organisms constitute an obstacle to serve as state office holders.

The analysis explains to what extent regulations relevant to controlling the NCD state of health of public figures so as not to violate their right to privacy while meeting international requirements need to be enacted.