

STOP FOSSIL FUELS SETTING THE CLIMATE AGENDA

Lessons from international tobacco law: why we need a fossil fuel 5.3

Context: Corporate capture of climate talks

COP19 is set to be the most corporate captured climate talks ever. The conference has official corporate “partners”, which include huge climate culprits like ArcelorMittal, Alstom, Lotos, PGE, General Motors, BMW and Emirates Airlines. Added to the usual army of industry lobbyists registered to the COP, there was an unprecedented official Pre-COP business day, and the UNFCCC presidency, the Polish government, has teamed up with the World Coal Association to promote propaganda about coal's supposed contribution to stopping climate change.¹

In order to ensure real, effective and just climate action, it is absolutely vital that polluting corporations with everything to gain from climate inaction do not have a place at the climate policy-making table. This requires restricting the influence and access of fossil fuel companies (or companies whose core business model depends on the overconsumption of fossil fuels/ emitting excessive greenhouse gases) in climate change policy-making. This idea is inspired by a precedent in the UN World Health Organisation's (WHO) global tobacco treaty.

What is tobacco law article 5.3?

The UN WHO Framework Convention on Tobacco Control (FCTC)'s Article 5.3 enshrines in international law the principle that the tobacco industry has no role in public health policy-making. Article 5.3 states that in setting tobacco control policies,

"Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry".²

Article 5.3's implementing guidelines elaborate that this means policy-makers “should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products” and that where they are necessary, “Parties should ensure that such interactions are conducted transparently”.³ In effect, this bans tobacco industry lobbying towards public health policy-makers, at national and international levels. The guidelines also prohibit access for representatives of the tobacco industry and its interests to the treaty's Conference of Parties (COP), including attending meetings, lobbying delegates or attending as part of country delegations. Conflicts of interest with the tobacco industry in government bodies are prohibited, alongside any kind of “partnership”, sponsorship or voluntary initiatives that take the place of legally enforceable measures. Government action that provides the industry with any kind of preferential

treatment or incentives to operate is also not allowed.

The FCTC 5.3 is based on the fact that there is no safe way of using tobacco, and so the companies that profit from the sale and use of this deadly and addictive product have no place in influencing law-makers whose goal is to minimise this. The guidelines state that:

“There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.”⁴

The FCTC establishes an important precedent for the international regulation of other industries that endanger human rights, public health and the environment. 5.3 is a vital precedent for corporate accountability, by prohibiting an abusive industry from influencing its own regulation.

There is a strong analogy between tobacco and health, on the one hand, and fossil fuels and climate change, on the other. As the IPCC's fifth assessment report confirms, there is no safe way of emitting greenhouse gases into the atmosphere. Given the current levels of atmospheric carbon, and the many climatic feedback mechanisms, climate science tells us that we need to leave fossil fuels in the ground and reduce global emissions. Climate change is destroying - and will continue to destroy - lives and livelihoods, on an enormous scale. The interests of fossil fuel companies - and other big polluters - directly conflict with the goals of climate-change policy-makers.

How did tobacco end up with a lobby ban?

FCTC 5.3 followed decades of tobacco industry misinformation campaigns, use of front groups and aggressive lobbying, so-called corporate social responsibility (CSR), funding of junk science to discredit the scientific body of evidence about tobacco's dangerous effects, and infiltration of the WHO and other health agencies to undermine tobacco-control efforts. Following a U.S. court case in the late 90s, the Master Settlement Agreement (which forced big tobacco to pay out billions in reparations for tobacco-related healthcare costs) released millions of internal tobacco industry documents. The documents clearly show the efforts of the tobacco industry to undermine or subvert tobacco control regulation; on this basis, a WHO inquiry reported in 2000 on tobacco companies' undermining strategies.⁵

During the UN WHO negotiations for the global tobacco treaty, in 2001-2002, a network of over 100 consumer, environmental, public health, human rights, faith-based and corporate accountability organizations, largely from the global South, fought to limit tobacco industry influence. The Network for Accountability of Tobacco Transnationals (NATT)⁶

1 CEO and TNI, 'The COP19 Guide to Corporate Lobbying', <http://corporateteurope.org/publications/cop19-guide-corporate-lobbying>
2 UN WHO, 'Framework Convention on Tobacco Control', Article 5.3, 2003, <http://whqlibdoc.who.int/publications/2003/9241591013.pdf>
3 UN WHO, 'Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control' 2008, http://www.who.int/fctc/guidelines/article_5_3.pdf

4 *ibid.*
5 WHO, 'Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organisation', July 2000, http://www.who.int/tobacco/en/who_inquiry.pdf
6 Corporate Accountability International, 'Network For Accountability Of Tobacco Transnationals (NATT)', http://www.stopcorporateabuse.org/sites/default/files/resources/natt_leadership_red
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was instrumental in pushing for, and turning the tide in support of, Article 5.3. Countries in the global South are being most negatively effected, and aggressively lobbied, by the tobacco industry; the fight for 5.3 was led by an African block. Support also came from within the WHO, keen to do something about the tobacco industry's attempts to infiltrate it.

In 2003, the WHO FCTC was adopted by the World Health Assembly, with the unprecedented inclusion of an article designed to prevent a harmful industry from manipulating policy-making to serve its own interests – Article 5.3. The FCTC entered into force in 2005, and NATT is now busy trying to ensure Article 5.3 is properly implemented – including the guidelines adopted in 2008 – in the 177 countries that have ratified it. FCTC 5.3 is not only a great success for public health, but an important precedent for corporate accountability.

Why do we need a fossil fuel 5.3?

The fossil fuel industry has been up to the same dodgy and dishonest tricks as big tobacco; propaganda campaigns, front groups, funding climate sceptic studies and think tanks, financing political parties and aggressively lobbying, not to mention close-ties with governments and infiltrating country delegations to UNFCCC COPs. The result? Vital progress in the climate talks weakened and blocked; a failure on both climate action and climate justice.

But unlike big tobacco, big polluters have been successful at painting themselves as part of the solution, rather than part of the problem, to climate change. Despite the fact that they profit from their continued contributions to climate catastrophe, and engage in subversive lobbying to block more ambitious and binding climate targets and mechanisms, at national and international levels.

For example, vocal and vociferous climate sceptic groups, such as right-wing think tanks the Heartland Institute, the Center for the Study of Carbon Dioxide and Global Change and the Heritage Foundation, are being funded by fossil fuels and other big polluting industries.⁷ As documented by Greenpeace, oil giant ExxonMobil spent \$27.4 million supporting the climate denial movement between 1998 and 2012. The multi-billionaire Koch brothers, whose fortune has its roots in fossil fuels, have funnelled at least \$67 million into the denial machine since 1997, through charitable foundations. In many cases, climate sceptic think tanks (and their fossil fuel funders) have close links with “the original architects of the blueprint for deflecting blame and denying responsibility”: the tobacco industry.⁸

Through such climate sceptic groups, the fossil fuel industry has been involved in misinformation and propaganda campaigns, junk-science studies, insidious personal attacks and abuse towards climate scientists, and many other dirty tactics. The UNFCCC's Director of the Implementation Strategy Unit, Halldor Thorgeirsson, recently warned that:

“Vested interests are paying for the discrediting of scientists all the time”.⁹

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- 7 InsideClimate News, 'Ahead of IPCC Climate Report, Skeptic Groups Launch Global Anti-Science Campaign', September 2013, <http://insideclimatenews.org/news/20130918/ahead-ippcc-climate-report-skeptic-groups-launch-global-anti-science-campaign?page=show>
- 8 Greenpeace USA, 'Dealing in Doubt: The Climate Denial Machine vs. Climate Science', September 2013, <http://www.greenpeace.org/usa/Global/usa/report/Dealing%20in%20Doubt%202013%20-%20Greenpeace%20report%20on%20Climate%20Change%20Denial%20Machine.pdf>
- 9 The Guardian, 'Big business funds effort to discredit climate science, warns UN official', September 2013, <http://www.theguardian.com/science/2013/sep/20/big->

These big fossils also fund and infiltrate political parties; the influence of big oil is no more obvious than on US policy; a fact illustrated by Oil Change International's calculation that, for the years 2009-2010, “for every \$1 the industry spends on campaign contributions and lobbying in Washington DC, it gets back \$59 in subsidies.”¹⁰ Front groups – or astroturf campaigns – are another tactic used with impunity; for example, Polish dirty energy companies LOTOS and PGNiG's have funded a pro-shale gas lobby group misleadingly called the “Citizens Coalition for Responsible Energy”.¹¹ The use of voluntary 'partnerships', and the greenwashing opportunity they provide, is exemplified by COP19 partnering up with climate crooks who profit from polluting and lobby against effective climate action.

The European Parliament, in October 2013, recognised the problem of fossil fuel lobbying in its COP19 climate resolution, stating that there is a:

"need to be vigilant concerning efforts by economic actors that emit significant amounts of greenhouse gases or benefit from burning fossil fuels, to undermine or subvert climate protection efforts.”¹²

How do we get a fossil fuel 5.3?

To protect the integrity of the climate talks, and ultimately our planet, we need a fossil fuel 5.3. We need the climate treaty coming out of Paris 2015 to include a provision to protect climate policy from the efforts of fossil fuels and big polluters to subvert it. A provision which limits interactions between climate policy-makers and fossil fuels/polluting industries (including lobbyists, front groups, etc, representing their interests) at UN, national and regional levels.

Civil society of all shades, from global North and South, has the opportunity to make a splash at COP19 with the idea of a 5.3 for fossil fuels, and continue making waves right through to Paris 2015. Two years away, but the drafting of the agreement text starts now. For the UN WHO tobacco convention, it was during two key years of negotiating, 2001-2002, that NATT - the global South-led civil society network - took 5.3 from fiction to reality.

The FCTC's Article 5.3, and its accompanying guidelines, sets the precedent for limiting interactions between an industry that profits from harm and those tasked with minimising and ultimately stopping the harm it causes.

Now is the time to make the case, and build a global campaign, for a climate agreement which protects climate change policy-making from the vested interests of corporations that benefit from the continued excessive use of fossil fuels.

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Research funded by Satu Hassi, Green Member of the European Parliament for Finland

[business-funding-climate-change-sceptics](#)

- 10 Oil Change International, 'Fossil Fuel Funding to Congress: Industry influence in the U.S.', <http://priceofoil.org/fossil-fuel-industry-influence-in-the-u-s/>
- 11 CEO, 'Citizens coalition or industry front group?', November 2012, <http://corporateeurope.org/climate-and-energy/2012/11/citizens-coalition-or-industry-frontgroup-covert-lobby-shale-gas-enters>
- 12 European Parliament resolution of 23 October 2013 on the climate change conference in Warsaw, Poland (COP 19), (2013/2666(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0443&language=EN&ring=B7-2013-0482>