LETTERS TO THE EDITOR

Letters intended for publication should be a maximum of 500 words, 10 references, and one table or figure, and should be sent to the editor at the address given on the inside front cover. Those responding to articles or correspondence published in the journal should be received within six weeks of publication.

The death toll from tobacco: a crime against humanity?

EDITOR,—On 17 July 1998, by the Rome statute of the international criminal court, the United Nations resolved to establish a permanent court having power to exercise jurisdiction over persons for the most serious crimes of international concern.¹ As of January 1999, 73 member states (excluding the United States) have become signatories to the statute. Few have yet ratified it. Article 126 requires ratification by 60 member states before the statute comes into effect. Article 5 of the statute confers jurisdiction on the international criminal court with respect to crimes such as genocide, war crimes, and “crimes against humanity”.

A list of “crimes against humanity” is provided which covers events such as extermination, enforced prostitution and sterilisation, and religious persecution when committed as part of a widespread or systematic attack directly against any civilian population. Significantly, the definition of a crime against humanity includes “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”.

This definition begs the question of whether the death toll from tobacco does not constitute a crime against humanity, susceptible to prosecution in the international criminal court. The World Health Organisation (WHO) estimates that of some 1.1 thousand million smokers in the world, 50% will die prematurely from tobacco-attributable illness, half in middle age. This means that in excess of 500 million people, or about 10% of the existing population, will die from smoking. Based on current trends, WHO estimates that the death toll from smoking will rise to 10 million people per year by the year 2025. No other consumer product in the history of the world has come even close to inflicting this degree of harm on the world community.

If anything else posed a threat to life of this magnitude, whether human induced or naturally occurring—be it world war, genocide or “ethnic cleansing”, natural disaster, or disease—it would demand immediate international action. The international responses to war crimes (both current and dating back to world war two), germ warfare, nuclear weapons, HIV, or even climate change are but a few examples.

The jurisdiction of the international criminal court means that the directors and executives of the major transnational tobacco companies are at risk of being charged with a “crime against humanity” were the death toll from tobacco to increase from its present three million to anything like 10 million a year by the year 2025. It is at least arguable

that such a consequence is the result of an inhumane act of a character similar to murder, causing great suffering, or serious injury to body or to mental or physical health committed as part of a widespread or systematic attack directed against the civilian population of the world.

Given what is now known about smoking and disease, the decades-old deceit and duplicity of the tobacco industry, and given that directors of the major transnational companies must now have knowledge of the consequences of their activities, then each of them must face the prospect of such a charge in the international criminal court if those activities continue. The consequences of prosecution include penalties of imprisonment, fines, and forfeiture of assets (article 77). Provision is also made for reparations to victims (article 75).

The court has jurisdiction only with respect to crimes committed after the entry into force of the statute (article 11). In addition, the statute is not retroactive, in the sense that no person may be criminally responsible under the statute for conduct before the entry into force of the statute (article 24).

This means that the opportunity exists for these directors to escape liability under the provisions of the statute *providing* there is no increase in mortality from tobacco use. Arguably they should be responsible for a reduction. Because of the inevitability of an increase in mortality from past smoking, every effort would need to be made to reduce consumption to avoid a significant increase in the current death toll. Certainly continuing expansion in less developed countries should not occur.

Trigger mechanisms for the exercise of the jurisdiction of the international criminal court include a complaint lodged by a state party (articles 13 and 14). Alternatively, the prosecutor may initiate investigations on the basis of information on crimes within the jurisdiction of the court (article 15).

It may be argued that the definition of “crime against humanity” is directed rather more toward “intentional” crimes in the stronger sense: that is, not only did the perpetrators intend the acts while knowing the harm that would flow from the acts, but also they desired that very harm (either in itself, or as necessary means towards goals sought to be achieved). In this respect it could be said that the directors and executives of cigarette companies do not intend to cause their customers to suffer, nor do they need the suffering, injury, and death of their customers to achieve their goals—these consequences are merely an incidental result of their marketing activities. Even so, such conduct is comparable to manslaughter where death is an unintended consequence of a recklessly negligent act. In some jurisdictions, such conduct is also classified as a lesser degree of homicide or as “murder” as compared with “wilful murder”.² In any event, in a case where a person is put on notice that a consequence of their conduct is that large numbers of people may die, then it may be that the necessary intentional element is established.

Accordingly, the scope exists for those working in the field of tobacco control to prepare a brief of relevant material and arrange for it to be formally served on the directors and senior executives of all the major transnational tobacco companies, at the same time as sending it to the office of the prosecutor, requesting an investigation. Representa-

tions could also be made to state parties requesting a referral to the prosecutor. Thereafter, if the WHO projections began to be realised, those responsible could be progressively prosecuted, jailed, fined, and made to forfeit assets and pay reparations.

Just as the perpetrators of the Nazi holocaust are still being pursued as war criminals, there will undoubtedly be demands that current directors and executives of transnational tobacco companies be called to account in the international criminal court during the first decades of the 21st century if the death toll from tobacco predicted by WHO is inflicted on the world community.

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1 Web site for the United Nations conference of plenipotentiaries on the establishment of an international criminal court <www.un.org/icc/>.

2 See for example Queensland Criminal Code s302.

The “success” of Philip Morris’ campaign on environmental tobacco smoke in the Netherlands

EDITOR,—In the early summer of 1996, Philip Morris Europe launched a European campaign: “Secondhand smoke in perspective” to counter the growing public concern about the health effects of environmental tobacco smoke (ETS). In recent years, several governments in Europe had banned or restricted smoking in public places and in workplaces.¹ Philip Morris wanted to put a stop to these regulations by demonstrating that all concerns about ETS were unfounded.

Advertisements appeared in the main Dutch newspapers. These tried to place the relative risk of lung cancer from living with a smoking spouse in the context of risks associated with other, everyday activities. According to Philip Morris, scientific data demonstrate that ETS does not present a meaningful health risk to non-smokers; the relative risks of lung cancer from passive smoking are lower than the risks of serious diseases from drinking chlorinated tapwater, or eating a biscuit or a pepper. The campaign was based on a report of a European Working Group,² funded by Philip Morris, BAT, and Rothmans. The advertisements cited the relative risk of ETS for lung cancer produced by the Environmental Protection Agency in the United States.³ The health risks of the other activities were based on single studies.

Reactions to the campaign

Immediately after Philip Morris started their campaign, Stivoro (the Dutch Foundation on Smoking and Health) issued a press statement. Stivoro claimed that the campaign was highly misleading, in that the purported relationships between the foodstuffs mentioned and serious diseases were based only on single studies, and that ETS causes more diseases than just lung cancer, as was implied in the Philip Morris campaign.

The Dutch Union of Epidemiologists issued a fierce attack on Philip Morris’ interpretations of scientific research: “Data on risk factors for chronic diseases are interpreted in an unjustified manner. The campaign makes light of the health risks of ETS. We earnestly object to the way in which the campaign uses scientific research data.”

Public opinion in the Netherlands on environmental tobacco smoke (ETS) before (1996-I) and after (1996-IV) Philip Morris' campaign (n = 6244)

	1996-I (%)	1996-IV (%)
ETS is harmful to my health		
Agree	74	73
Neutral	11	13
Disagree	9	10
No opinion	5	5
ETS can cause lung cancer		
Agree	60*	57*
Neutral	14*	17*
Disagree	12	13
No opinion	14	13
In public places separate areas for smokers and non-smokers should be created		
Agree	75*	85*
Neutral	11*	6*
Disagree	11*	8*
No opinion	3*	2*
In enclosed places smokers should ask permission to smoke		
Agree	74*	79*
Neutral	10*	8*
Disagree	14*	12*
No opinion	3*	1*
Every employee should be able to do his/her work without being bothered by ETS		
Agree	80*	84*
Neutral	11*	9*
Disagree	6	5
No opinion	3*	2*

*Significant change between 1996-I and 1996-IV.

Leading experts in the field of cancer research and epidemiology, alerted by Stivoro, added to these condemnations. From the start, the campaign met with fierce criticism, not only from the health lobby, but also from media commentators and journalists.

In the first days of publicity, the Dutch participant in the industry-funded European Working Group, Professor PHM Lohman, from Leiden University,⁴ dissociated himself from the report.

Soon after the start of the campaign, a number of complaints were lodged with the Advertising Control Board, a self-regulating body of the Netherlands advertising community that seeks to prevent misleading campaigns. Complaints were lodged by the Asthma Foundation, the non-smokers' union, CAN (*Club actieve niet-rokers*), the federation of tapwater companies, a spice producer, and several private citizens. These complaints were publicised and generated a lot of negative publicity for Philip Morris. Although Philip Morris' goal was to open public debate on ETS, they refused nearly all invitations to respond to criticisms of their campaign in the media. Most importantly, the minister for health, Mrs Els Borst, condemned the campaign as being "really misleading".⁵

The Advertising Control Board found the campaign to be misleading and formally recommended that it be ended. Philip Morris stopped the campaign prematurely, with the pretext of having reached their goal: "We have created enough discussion about this issue".⁶

Effect on public opinion

By coincidence, in early 1996, a few months before the Philip Morris' campaign, Stivoro had commissioned an opinion poll by the Dutch survey institute NIPO about ETS.⁷ To measure the influence of the Philip Morris campaign on public opinion we repeated this survey in the last quarter of 1996, three months after the campaign was withdrawn. A random sample (n = 6244) of the adult population was interviewed face to face.

The table shows that Philip Morris succeeded in one respect: the number of people who said that ETS is harmful to health

had fallen after the campaign, although not significantly, by 1% to 73%. Ten per cent of the Dutch population thought that ETS was not harmful. Fewer people thought that ETS can cause lung cancer. This is a significant change.

However, the ultimate goal of the campaign failed in the Netherlands: more people said that separate areas for smokers and non-smokers in public places are needed; that smokers should ask permission before lighting up; and that employees should be able to work without being bothered by cigarette smoke.

Philip Morris' purpose in running the campaign was to calm serious concern about ETS and forestall more smoking restrictions from the government. They tried to influence public opinion and the decision making process, so that state regulations to protect non-smokers would not be introduced in Europe. Philip Morris failed to achieve its goal of convincing the public that ETS does not warrant more regulation.

Tobacco control lobbyists in the European Union experienced great satisfaction when their hard work bore fruit in May 1998, when the European parliament voted in favour of a proposed directive which bans all tobacco advertising and sponsorship, and which will come into force in all member states of the European Union during the period July 2001 to July 2006.

In the final analysis, the Philip Morris campaign should probably be applauded for its role in facilitating the advertising ban. The campaign antagonised the Dutch government and the Commission on Health of the European parliament. As the commission was debating the advertising ban at the time Philip Morris launched its ETS campaign, it is likely that the campaign probably helped to reduce the tobacco industry's political and public support.

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- 1 European Bureau for Action on Smoking Prevention. *No smoke between us: a report on passive smoking*. Brussels, Belgium: EBASP, 1993.
- 2 European Working Group. *Environmental tobacco smoke and lung cancer: an evaluation of the risk. A report of a European Working Group*. Trondheim, Norway: European Working Group, 1996.
- 3 US Environmental Protection Agency. *Respiratory health effects of passive smoking: lung cancer and other disorders*. Washington, DC: Office of Health and Environmental Assessment, 1992. (Publication No EPA/600/6-90/006F.)
- 4 Growing resistance to smoke advertising. *Algemeen Dagblad* and 27 other Dutch newspapers 1996;Jun 14.
- 5 Borst: misleading action by Philip Morris. *Het Parool* and 14 other Dutch newspapers 1996; Jun 21.
- 6 Campaign on passive smoking counteracted by Philip Morris. *De Stem* and four other Dutch newspapers 1996;Jun 27.
- 7 NIPO. *Continuous smoking research in the Netherlands. First and fourth quarter of 1996*. Netherlands: NIPO, 1996.

The United States navy attracts young women who smoke

EDITOR,—In the United States, smoking rates continue to be higher in male and female active duty military personnel than among their civilian counterparts.^{1,2} Other countries have similarly reported higher smoking rates among their military personnel.³ Several studies have investigated whether the United States navy "attracts" or "produces" smokers—that is, whether the higher prevalence of smoking among navy active duty personnel is due to self selection of smokers into the navy, or by navy institutional norms that promote smoking.^{1,4-9} Studies to date have had methodological limitations—for instance, small samples, limited age ranges, use of active duty personnel rather than new enlistees, or no adjustments for differences in civilian-military sociodemographic factors—and results have been conflicting. The present analysis addressed the "attracting" aspect of the question by studying a large sample of women as they entered the navy. The smoking rate of the navy recruit sample was compared with that of a large, representative civilian sample equated to the navy population in terms of age, race/ethnicity, and education using a direct standardisation procedure.¹⁰

During a one-year period, all female recruits (n = 5503) completed smoking surveys as they entered the navy. Refusals were virtually nonexistent. Civilian data were obtained from the tobacco use supplement (TUS) to the 1992-1993 United States Bureau of the Census' current population survey.¹¹ Almost 63 000 unweighted cases were extracted from the TUS for women between the ages of 17 and 35 years to correspond with the complete age range of the navy recruit sample. Software for survey data analysis (SUDAAN)¹² was used to weight and standardise the civilian data to the joint distribution of the navy recruit sample in terms of education and race/ethnicity, and then comparisons were made within three age strata. Estimates for civilians can be interpreted as those that would be obtained if the civilian population had had the same sociodemographic distribution as the navy recruit population. For recruits and civilians, current smoking was defined as having smoked 100 cigarettes in one's life and being an everyday or someday smoker.

The comparison of current smoking between navy women recruits and civilian