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Multilevel Governance and Shared Sovereignty: European Union, Member States, and the FCTC

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Abstract

The Westphalian idea of sovereignty in international relations has undergone recent transformation. “Shared sovereignty” through multilevel governance describes the responsibility of the European Union (EU) and its Member States in tobacco control policy. We examine how this has occurred on the EU level through directives and recommendations, accession rules for new members, tobacco control campaigns, and financial support for antitobacco nongovernmental organizations. In particular, the negotiation and ratification of the Framework Convention on Tobacco Control (FCTC) and the participation in the FCTC Conference of the Parties illustrates shared sovereignty. The EU Commission was the lead negotiator for Member States on issues over which it had jurisdiction, while individual Member States, through the EU presidency, could negotiate on issues on which authority was divided or remained with them. Shared sovereignty through multilevel governance has become the norm in the tobacco control policy area for EU members, including having one international organization negotiate within the context of another.

Introduction

Tobacco control is a major public health issue facing governments of the twenty-first century. The World Health Organization (WHO) has estimated that about 1 billion people around the world will die from tobacco-related diseases by the end of the century (WHO 2008). Smoking is the single largest cause of preventable death and disease in the European Union (EU), killing over 650,000 people each year (one in every seven deaths), and leading to over 13 million suffering from smoking-related diseases (European Commission 2004). The economic cost of tobacco is estimated to be between €8 and €130 billion, or between 1.04% and 1.39% of the EU’s gross domestic product for 2000 (European Commission 2004). Even though the general smoking rate in Europe continues to decline, smoking rates for females are increasing in some EU Member States and the average initiation age has declined to 11 years old (European Commission 2004). Thus, tobacco use continues to be a major public health problem within the EU.

Until 1986, tobacco control was under the exclusive jurisdiction of EU Member States. However, over the past 20 years there has been a shift toward shared sovereignty on this issue. While the now-27 Member States and their subdivisions still retain considerable policymaking authority, the EU also has some decision-making capacity over tobacco control. It is currently a full partner in the global governance of tobacco control, particularly since the 1999 inception of negotiation for the 2003 WHO Framework Convention on Tobacco Control (FCTC), the first global public health treaty. In terms of global public health governance, tobacco control has become a unique policy area because the FCTC represents the first time WHO has used its constitutional powers to lead the development of a formal treaty. The development of the FCTC established a new level of international governance in public health and thus provided an additional venue for shared sovereignty

between the EU and its Member States (Figure 1). Because of the absence of explicit provisions in the founding treaties of the EU to give it authority to regulate public health, the EU has gained this authority in an evolutionary manner. Thus, as illustrated by Figure 1, our article extends understanding of how this international organization has obtained and consolidated its authority in a new issue area within a system of multiple tiers of governance, and it provides further insight into tobacco control policymaking process within the EU through the participation in the FCTC process.

In this article, we provide a systematic analysis of shared sovereignty within the context of multilevel governance by examining its dimensions in tobacco control and how it developed, then by focusing on the role of the EU Commission, acting on behalf of the EU, as an equal actor in the FCTC process. We also show how affected interests, both tobacco companies and tobacco control groups, have responded to this situation.

Earlier research on tobacco examined the tobacco-control roles of Member States, both for themselves and within the EU process (Duina and Kurzer 2004; European Commission 2004; Grüning, Strünck, and Gilmore 2008; Hervey 2001; Princen and Rhinard 2006; Studlar 2009), how EU policies are applied at the country level (European Commission 2004; Frisbee, Studlar, and Christensen 2008; Gilmore and McKee 2002; Nielsen 2003; Strünck 2005), and the implications of multilevel governance within the EU for one country, the United Kingdom (Asare 2007). Studies of EU tobacco control policy have emphasized its problematic status and its supplementary role to individual Member State policies (Duina and Kurzer 2004; European Commission 2004; Gilmore and McKee 2004; Guigner 2004, 2006; Hervey 2001; Khanna 2001).

We specifically provide an analysis of shared sovereignty in the governance of tobacco control by examining not only how the EU relates to its Member States in the policy area but also how both the EU and Member States interact with another level of governance, the FCTC (Figure 1). While there is some work on the EU's general relationship to WHO on public health issues (Guigner 2004), little research has addressed the issue of the EU's role in the FCTC process as a different tier of governance in tobacco control (EU Commission 2004, 126–128; Guigner 2006). In this case one intergovernmental organization acted as a voting member of another one, giving its Member States as well as the EU a dual responsibility in the negotiation. The EU's relationship with nonstate actors also has played a role in this process of shared sovereignty between EU and its Member States in a system of multilevel governance in tobacco control (Princen 2007).

We perform this analysis by triangulating interviews with archival documents. Between August 2006 and August 2007, one of the authors conducted semistructured, face-to-face, telephone, or e-mail interviews of 26 people involved in tobacco control at various levels within the EU. The archival documents for this analysis include previously secret tobacco industry internal documents released after litigations in the United States and available at the British American Tobacco (BAT) Documents Library (<http://www.bat.library.ucsf.edu>), the Legacy Library (<http://www.legacy.library.ucsf.edu>), and Tobacco Documents Online (<http://www.tobaccodocumentsonline.org>), as well as at the EU, WHO, and European Network for Smoking Prevention (ENSP) archives.

Shifting Sovereignty in the EU under Multilevel Governance

Governance is a system of rules, norms, and institutions that govern public and private behavior across national boundaries (UN Commission on Global Governance, 1995), and it occurs at different levels within the international system (Krahman 2003). Prior to the FCTC, EU scholars had divided the compartmentalized governance structure within the EU into three or four levels, depending on whether Member States had federal/devolved or

unitary domestic political structures (Hooghe and Marks 2001; Marks 1993). The relationships between these levels of governance are complex and amorphous as local units/governments have been venues for policy innovation as well (Cairney 2007). Multilevel governance in the EU refers to how EU institutions, the Member States, and substate entities interact. Because of the development of the FCTC, there are now four to five levels in the multilevel governance of tobacco control policy (Figure 1). Within this new policy environment, the EU shares authority with its Member States and possibly their subdivisions, a process that evolved over the past two decades, and has consolidated this authority through the participation in the global governance of tobacco control as a separate actor. We combine these two concepts in international relations—multilevel governance and shared sovereignty—together in one study to provide illustration and understanding of the tobacco control policymaking of the EU over the past 20 years.

International relations theories such as institutionalism, which emphasizes cooperation through common interests (Keohane and Martin 1995; Pollack 1996), or critical theory, which emphasizes cooperation through norms (Wendt 1992), do not explain how established institutions incrementally share authority with their constituent states and consolidate it through participation in global governance. Also, the venue-shifting approach to policymaking, where policy entrepreneurs try to move decision making to more favorable institutions for their goals (Baumgartner and Jones 1993; Leibfried and Pierson 1995) cannot explain how the EU has gained authority in tobacco control because EU states and substate entities have been prominent venues for policy innovation in tobacco control (Studlar 2009). Moreover, the EU has sought and subsidized the involvement of civil society groups in this process, first through the European Bureau for Action on Smoking Prevention (BASP) and later the ENSP. Thus, shared sovereignty, which deals with how states willingly cede part of their sovereignty to intergovernmental organizations or supranational bodies to deal with issues that cannot be handled single-handedly, provides an important theoretical frame for understanding how the EU gained authority in this policy area within a system of multilevel governance. New governance structures often emerge to cope with the causes and consequences of adverse supranational, transnational, or national issues (Weiss 2000). Because tobacco is an issue with transnational dimensions, the EU gradually gained authority to deal with it.

Because the international system is dynamic, the dominant conception of sovereignty changes, albeit slowly. Sovereignty in international relations has been conceptualized in three major ways: (1) international legal sovereignty, (2) Westphalian sovereignty, and (3) domestic sovereignty (Krasner 2005; Lake 2003). Since the Treaty of Westphalia ended the Thirty Years' War in Europe, the dominant notion of sovereignty has been Westphalian, that is, states are autonomous and equal with each other and there is no generally recognized authority above the state to legally define the common good.

In contrast, "shared sovereignty" involves the engagement of external actors in some of the domestic authority structures of states for an indefinite period of time (Jamison, Frenk, and Knaul 1998; Krasner 2005; Lake 2003). According to Stephen Krasner (2005), shared-sovereignty institutions require three pre-conditions: (1) there must be international sovereignty, (2) the agreement must be voluntary, and (3) the arrangement must not ask the third party to contribute large resources. Under this arrangement, state actors have the authority to enter into agreements that would compromise their Westphalian sovereignty, with the goal of improving domestic sovereignty. While states preserve their authority to enter voluntary agreements, they cede their autonomy by pooling their resources into a multilateral organization or their commitments into an international treaty, which then become vehicles for international collective action (Jamison, Frenk, and Knaul 1998). Krasner notes that shared sovereignty could be limited to specific issue areas. States become

bound by adherence to international norms developed as a result of this collective action or cooperation. In this respect, the state does not have the sole authority over policy but is disaggregated, composed of state officials, nongovernmental organizations (NGOs), judges, commissions, and concerned citizens coming together to foment change (Vaughan and Kilcommins 2007). Phenomena such as globalization, interdependence, and regional integration have diminished the ability of states to be self-reliant, and as a result international institutions have emerged to deal with many issues that transcend national boundaries, leading to shared sovereignty.

“Shared sovereignty” leads to only institutional change (Hartwig et al. 2005; Oberschall 2000) without necessarily leading to wholesale domestic change; a state may only surrender part of its policymaking authority in an issue area to the supranational body. This is the case with respect to tobacco control policymaking between the EU and its Member States. Because issues involved in tobacco control such as cross-border advertising, marketing, and smuggling are part of the common market, the EU has emerged as an important policymaking actor not only within the Union but also globally through the FCTC. Even though Member States maintain responsibility over the health of their populations, continuing integration and interdependence have reduced state governments’ authority over tobacco control. The EU’s role in tobacco control represents an example of the widely analyzed phenomenon of multilevel governance in the EU (Bache and Flinders 2004; Hooghe and Marks 2001).

The Limits of State Sovereignty for Tobacco Control

Even though the 1950s were very important for scientific discoveries on the health dangers of tobacco use, restrictive tobacco control policy has only developed over the past half century since the publication of two landmark reports on the dangers of smoking, from the British Royal College of Physicians in 1962 and the U.S. Surgeon General in 1964. Because states have international sovereignty, they were responsible for formulating their own tobacco control policies in response to the accumulating evidence on the dangers of smoking. Despite official recognition of the problem, sovereign states were hesitant to develop policies to combat the tobacco epidemic. Few states took actions until the 1980s. For the most part, those states with tobacco growers and/or tobacco manufacturers continued to support these economic sectors through subsidies and included them in trade initiatives and negotiations with other countries (Studlar 2006). Starting in the 1980s the United States used trade liberalization arguments and threats of sanctions to open closed tobacco markets, especially in Asia. States with government-owned tobacco manufacturers were pressured to allow foreign-based private companies into their previously protected domestic markets (Chantornvong and McCargo 2001).

The sale of several state-owned tobacco manufacturers led to further consolidation of the tobacco manufacturing industry into the five now-dominant transnational tobacco companies based in Europe, Japan and the United States—Philip Morris, BAT, Japan Tobacco International, Imperial Tobacco Limited, and the Gallahar Group (Mackay, Eriksen, and Shafey 2006). Even though already global in nature, the major tobacco-producing companies have become larger and active in more countries over the past 20 years, especially developing and transitional ones including those in Central and Eastern Europe.

Despite these advances, all was not well for the tobacco industry in the 1980s. Several developments encouraged the nascent tobacco control movement to become better organized domestically and internationally to oppose this globally expansive industry and its product. Groups and international organizations recognized new medical research discoveries about the dangers of constant exposure to secondhand tobacco smoke and the role of nicotine in

addiction. This moved the agenda of tobacco control from the earlier broadcast restrictions and educational warnings about the dangers of a freely chosen, legal product toward more regulatory and fiscally punitive measures to control an addictive social epidemic (Studlar 2002).

The increased prominence of tobacco control in the public agenda reflected the growth of tobacco control movements in several developed democratic countries. More major health charities, such as those concerned with heart, cancer, and respiratory diseases, as well as medical associations in some countries, decided to take political action against tobacco. While the treasury and industry departments of governments often continued to promote tobacco consumption for economic reasons, health departments increasingly allied with tobacco control civil society groups and became more successful in seeking restrictive policies. Some governments even gave subsidies to tobacco control groups as “public interest organizations” (Studlar 2002, 2006).

Tobacco Control: Growing International Dimensions

These actions against tobacco consumption occurred at the domestic tier of governance, proceeding on a state-by-state basis. Sometimes this occurred at the central level, at others at subcentral levels, especially in federal and quasifederal systems with divided authority over public health. But there also was increasing recognition that the tobacco industry was becoming more global. Therefore an effective tobacco control policy also needed an international network. Originally this was done in selective ways by states and nongovernmental organizations. In 1967, civil society groups and individuals took the initiative by organizing the first World Conference on Smoking or Health in New York City to find collective solutions to the worldwide spread of tobacco consumption, and in 1970 WHO became actively involved in this issue with the first World Health Assembly resolution on tobacco control (Mamudu 2005). As an issue new to the political agenda in many countries and at the international level, there was a search for information on what policies other countries were pursuing and how effective they were. In the early years there were only a few states with broad anti-tobacco policies, namely, Finland, Norway, Sweden, and arguably the United States. Once Canada adopted comprehensive tobacco control legislation in 1988, its policies became a touchstone for others, especially among English-speaking countries (Studlar 2005).

Policy learning through lesson drawing and policy diffusion, however, was not only conducted by states. The increasingly persuasive evidence about the dangers of smoking and exposure to tobacco smoke enabled the establishment of an international network of tobacco control organizations and advocates to counter the tobacco industry by the late 1980s (Farquharson 2003). Nongovernmental representatives had the advantages of being single-minded, often advocating for even stronger policies than existed in their own states. International NGOs such as the International Union Against Cancer (UICC), International Union Against Tuberculosis and Lung Disease, and International Union for Health Promotion and Education became leading advocacy institutions for tobacco control in the 1980s and 1990s within Europe and internationally (Mamudu 2005). Furthermore, new nongovernmental networks developed through such organizations as the periodic World Conference on Tobacco or Health, which became larger and more international in the 1980s (Mamudu 2005). The idea for a journal called *Tobacco Control*, containing both academic research and advocacy, was the product of one of these conferences, as were various international networks of advocates such as International Nongovernmental Coalition against Tobacco and the International Network of Women against Tobacco. With the rise of the Internet, more opportunities arose, including the formation of GLOBALink, a global online source for tobacco control experts and advocates established by the Advocacy

Institute of the United States in 1989 and transferred to UICC in 1992. In effect, in the 1980s and the 1990s, while states learned and borrowed ideas from leading states in this policy arena, individuals and NGOs actively diffused knowledge about tobacco use and tobacco control through conferences, workshops, country visits, publications, and the Internet.

Intergovernmental organizations also became involved in tobacco control during this time period. The WHO, which has publicly been engaged in tobacco control since 1970, mainly through World Health Assembly resolutions and programs for surveillance and training carried out by its regional offices, became more active with its Tobacco or Health Program and “World No-Tobacco Day.” In 1985 the WHO took a major step forward with the Ottawa Charter for Health Promotion, which included tobacco control measures as part of the objectives for member states to adopt. This was international endorsement of the new movement for Healthy Public Policy, first enunciated in the 1974 Lalonde Report, *A New Perspective on Health for Canadians*, and subsequently adopted by several countries. In contrast to traditional treatment concerns, Healthy Public Policy emphasized preventive measures through encouragement and monitoring of healthy life style choices (Appah 2007; Studlar 2002). Following a World Conference on Tobacco or Health recommendation in 1994, the World Health Assembly adopted resolution WHA48.11, International Strategy for Tobacco Control, to begin what became the FCTC.

The World Bank also became an active participant in the governance of tobacco control in the early 1990s with a U-turn in its tobacco policy (Mamudu, Hammond and Glantz Forthcoming; Ramin 2006). Countering industry arguments that tobacco control impedes international trade and has negative economic and social impacts, in 1991 the World Bank concluded that there are economic costs to tobacco consumption and promulgated a policy of not supporting tobacco projects. In 1999 the World Bank published a report, *Curbing the Epidemic*, which provided economic analysis to support tobacco control, (Jha and Chaloupka 1999), which the WHO subsequently used as an economic justification for the FCTC. Finally, through the creation of the Focal Point on tobacco control, which was located at the UN Conference on Trade and Development, in 1993, the UN became involved in the governance of tobacco control (Novotny and Mamudu 2008). In 1999, the UN Focal Point became the UN Ad Hoc Interagency Taskforce on Tobacco Control headed by the WHO. Thus, by 2000, through processes of diffusion, knowledge transfer, learning, and intergovernmentalism, tobacco control has become a global issue, setting the stage for the development of a global tier of governance, the FCTC.

Developing Shared Sovereignty over Tobacco Control in Europe

A tier in the governance of tobacco control at the EU level started to evolve by the mid-1980s when the EU began to assume a larger role in tobacco control. Two European Council resolutions of 1985, based on an initiative of President Francois Mitterrand of France and Premier Bettino Craxi of Italy, established the “Europe against Cancer” program of informational and later preventive measures. Tobacco control issues were considered within EU competence as long as actions could be justified with reference to the *Single European Act* of 1987 and later the *Maastricht Treaty* and *Amsterdam Treaty*. This made tobacco control issues subject to Qualified Majority Voting in the Council of Ministers rather than individual Member State vetoes. In effect, from this point shared sovereignty over tobacco control within a system of multilevel governance developed between the EU and its Member States, expanded and consolidated mainly through the EU Commission and public health consultants from member states and other international organizations, especially the WHO (Guigner 2006; Hervey 2001; Princen and Rhinard 2006). Table 1 shows major EU measures.

Although integration among European states is usually analyzed in terms of economic arrangements, integration also enables those states that affiliate around certain “shared norms and values to operate collective arrangements” (Wallace 2000). The EU has established its own imprint on tobacco control through directives on advertising, product regulation, tax harmonization, and labeling, including health warnings on cigarette packages. It also has taken legal action against major cigarette companies for their complicity in smuggling and engaged in media campaigns. At the same time, individual EU Member States have enacted their own tobacco control policies, including taxation, sales restrictions, content regulation, media campaigns, and nonsmoking policies (Gilmore and McKee 2004), which shows that neither EU nor the Member States have absolute sovereignty over tobacco control but that authority in this policy area is shared between them.

The competence of the EU in health matters is limited, fragmented, and contested, but tilted toward the promotion of public health through preventive and promotional measures (Guigner 2004; Strúnck 2005). The formal responsibility of the EU in tobacco control, initiated under the *Single European Act*, was further enhanced by the *Maastricht Treaty* (1993), and *Amsterdam Treaty* (1999). Article 129 of the *Amsterdam Treaty* states, “A high level of human health protection shall be assured in the definition and implementation of all Community policies and activities,” and Article 152 stipulates that “a high level of health protection shall be ensured in the definition and implementation of all Community policies” (WHO and Commission of the European Communities 2001). In effect, the *Amsterdam Treaty* conferred new powers on the EU to “act in areas of direct and indirect relevance to health” (WHO 2000). Through these treaties, authority in health was removed from the exclusive purview of the Member States and thereby resulting in shared sovereignty in public health issues such as tobacco control that cut across the Member States’ borders.

In spite of the EU’s powers under the *Amsterdam Treaty*, tobacco control legislation has been based on the internal market, under Article 95 EC (previously Article 100a). This is primarily due to the European Court of Justice’s ruling in the legal challenge to the first *Tobacco Advertising Directive* (TAD1). Tobacco control in the EU, with dimensions of public health, taxation, health and safety in the workplace, and agriculture, involves different Directorates General within the EU Commission, including Agriculture, Trade, Occupational Safety, and Justice. But currently the lead agency for most tobacco control policies is the Health Directorate General (DG Sanco), established after the *Maastricht Treaty* and the BSE crisis in the 1990s (Guigner 2004). Thus, although Member States have authority to make their own tobacco control legislation because they have juridical sovereignty, the EU also has power to enact tobacco control policies for Member States to implement (Gilmore and McKee 2004; Princen and Rhinard 2006).

In process of creating a tier of governance in tobacco control at the EU level, the EU used the common market principle to gain policymaking authority (European Commission 2004) because issues involved in tobacco consumption and tobacco control such as smuggling and advertising transcend national borders. The EU Commission has utilized “hard laws,” EU Treaty and binding regulations (directives), and “soft laws,” nonbinding regulations (recommendations and resolutions) as well as accession rules for new members and EU-wide tobacco control programs such as Quitlines and media campaigns to gain authority in the governance of tobacco control at the EU level (Table 2).

During the 1990s the first attempt to introduce a directive banning all forms of tobacco advertising and sponsorship (TAD1) was the subject of prolonged controversy (Duina and Kurzer 2004). Challenged by the tobacco industry and Germany, this directive was annulled by the European Court of Justice in 2000, which ruled that a total ban went beyond the

powers of the EU. In 2003 a new version of the Tobacco Advertising Directive (TAD2) was passed, limiting the ban to advertising and sponsorship with a cross-border dimension. This new directive has survived legal challenges.

The Tobacco Products Directive of 2001 included new health warnings on cigarette packages, limits on and reporting of toxic ingredients, and the first ban in the world on use of the descriptor terms “light and mild.” In 2003, graphic warning labels, pioneered in Canada, became an option for EU members. In 2006 Belgium became the first to implement them. Minimum excise taxes on tobacco products are revised every few years (Duina and Kurzer 2004; Gilmore and McKee 2004).

The EU also has used accession negotiations for candidate members to impose its policies on states in Central and Eastern Europe previously open to tobacco industry initiatives in the name of economic development. Tobacco control laws are part of the *acquis communautaire*, the body of existing EU law, which new members must accept in principle. However, some temporary exceptions, especially on taxation, have been allowed. In this respect, accession countries forfeit their absolute juridical and political sovereignty in tobacco control to share policymaking authority with the EU. For laggard countries in tobacco control, both longtime and recent members, EU law has stimulated policy changes that otherwise would not have occurred (Frisbee, Studlar, and Christensen 2008; Gilmore et al. 2004).

But increasingly, “soft law” also has been used. Periodically since 1989 the Council of Ministers has passed nonbinding resolutions and recommendations on tobacco control, especially concerning indoor nonsmoking restrictions (Table 2). The EU also has initiated and funded media campaigns and capacity building projects, especially through subsidizing European-wide NGOs such as the ENSP, the Tobacco Control Resource Center, the European Network of Quitlines, and currently the “Help-for a Life without Tobacco” campaign (Khanna 2001). Some of these revenues come from a small portion of the budget for the support of tobacco growing in the Common Agricultural Policy. These agricultural subsidies are due to end by 2010 (Gilmore and McKee 2004).

Most recently, in accordance with the Lisbon Process to make the EU “the most competitive and dynamic knowledge-based economy in the world,” an expert benchmarking exercise for tobacco control was carried out. This rated all 30 members, accession candidates, and associated states for the strength of their tobacco control policies in six areas—price, public place bans, spending on public information campaigns, health warnings, advertising bans, and cessation treatment. Currently, the UK and Ireland have the most stringent tobacco control legislation in Europe (Joossens and Raw 2007).

Participation of the EU Commission in the FCTC

In spite of the fact that the EU actively has been involved in WHO–European Community conferences relating to tobacco control since at least 1988 (European Commission 2004), the most obvious evidence of shared sovereignty in tobacco control between the EU and its Member States was the negotiation of the FCTC between 1999 and 2003, and the subsequent participation in the FCTC Conference of the Parties for developing the FCTC protocols and guidelines. Since 2001, EU and the WHO have been holding periodic high-level meetings to discuss tobacco control within the EU and the development and implementation of the FCTC (European Commission, n.d.).

The idea of a tobacco control treaty first emerged in the early 1990s from conversations among academic researchers (Mackay 2003; Roemer, Taylor, and Larivier 2005) and was pursued by the WHO under the leadership of Director-General Gro Harlem Brundtland of

Norway. All of the 192 participating states and institutions, including the EU, approved the treaty in 2003, and it came into force in February 2005 after 40 signees had ratified it. The FCTC contains provisions covering such areas as smokefree environments, package labeling, a ban on sale to and by under 18 years of age, an advertising ban, tax increases, and finding alternatives sources of livelihood for people dependent on tobacco production (WHO 2003). While some commitments are obligatory, others are hortatory only, and there are no punitive sanctions beyond shaming.

In general, the FCTC provisions are based on best practices in tobacco control around the world, especially in economically developed democracies, modified by what could be agreed upon by the participants (Shibuya et al. 2003). The EU and some of its Member States served as good examples of best practice for several of the provisions. The major European tobacco control laggard, Germany, was a reluctant partner in the FCTC negotiation, along with the United States, China, and Japan (Mamudu and Glantz Forthcoming). Nevertheless, China, Germany, and Japan have ratified the treaty and shown signs of being more pro-active in the governance of tobacco control at the global level.

The development of tobacco control policies at the national and local levels through policy transfer, lesson drawing, and diffusion over the past 50 years provides an explanation for this collective action (Mamudu 2005). This cooperation was facilitated by the accumulation of scientific knowledge on the health, economic, and social consequences of tobacco use and exposure to tobacco smoke (Bettcher et al. 2001; Corrao et al. 2000; Jha and Chaloupka 1999) and transnational issues such as the worldwide extension of activities of the tobacco industry, cross-border advertising, global marketing, and smuggling (Satcher 2001; Taylor and Bettcher 2000; WHO 2003).

In addition, the involvement of civil society organizations led by the Framework Convention Alliance (FCA, 2000–2003), an umbrella organization for tobacco control civil society groups that worked for a strong FCTC, played a crucial role in the adoption of the FCTC (Mamudu and Glantz Forthcoming; Wilkenfeld 2005). The FCA successfully used strategies such as provision of expert information for delegates, publication of a daily newsletter (*Alliance Bulletin*) and shaming delegates for supporting tobacco industry positions (Mamudu and Glantz Forthcoming; White 2004; Wilkenfeld 2005).

A key question before the onset of the FCTC negotiation in 1999 was whether the EU Commission, as the executive arm of that organization, had the authority to participate in the negotiation. To grant the EU Commission the mandate to negotiate the FCTC, the EU Council adopted resolutions in October 1999 and April 2001. This agreement among the Member States consolidated EU authority in the governance of this issue and made the EU an important actor in the global governance of tobacco control. The EU actually had two representatives in the process, with the Commission negotiating for all Member States as well as the 13 accession and candidate countries in areas of exclusive EU responsibility and the country holding the rotating presidency of the EU (for six months) having responsibility for negotiating in areas of shared and Member State competence, in consultation with the individual members (European Commission 2004, 126–127; Guigner 2006).

Both the EU and its Member States sent delegations to the FCTC Intergovernmental Negotiating Body meetings, the organization responsible for negotiating the text of the FCTC. The EU consulted its members in order to arrive at a common position. Because of the need for consensus within the EU, Member States with stronger tobacco control programs, such as Sweden, could not be as assertive as they wished and hence were limited in their international sovereignty in tobacco control. On the other hand, on the issue of a ban

on tobacco advertising and sponsorship, the EU and its Member States, especially Germany, had to reach a compromise in order for the EU to support it (European Commission 2004).

Recognizing the policymaking authority of EU in tobacco control, the FCA directed it activities to garner support for the FCTC not only at the individual EU Member States but also at the EU Commission. Despite some blocking tactics by Germany, the EU was generally considered to have played a positive role both in process and content in the FCTC, especially on provisions concerning labeling and advertising (European Commission, 2004; Guigner 2006).

As of August 2008, the EU, as well as all Member States except Italy and the Czech Republic, has ratified the FCTC. There are now periodic follow-up Conference of Parties meetings for those who have ratified the convention, including the EU, working to develop protocols and guidelines for the FCTC provisions. In this respect, the EU is an intergovernmental organization, having concurrent powers in tobacco control with its Member States within this system of multilevel governance. As the benchmarking exercise revealed, there is still considerable variation in policies among EU Member States. But further convergence is expected in the near future as EU directives are fully implemented and accession states fully incorporate into the EU.

The key issue for the FCTC, as with any international treaty, is how to help states and the EU implement its provisions. The FCTC is considered to have more potential impact for states with weaker tobacco control policies, such as some of the recent EU accession countries of 2004 and 2007 and those in other economically developing areas. Developing countries and those with economies in transition are looking for financial aid and expertise from countries and organizations, including the EU, to enable them to implement the FCTC provisions.

Nonstate Actors in the EU

Because governance is characterized by the need for collaboration among governments and nongovernmental actors (Gordenker and Weiss 1996), nonstate entities have become prominent within this system of multilevel governance. The partial sovereignty of the EU in tobacco control has led to a struggle among nonstate actors for influence at this level of governance as well as through Member States (Figure 1). These actors not only seek to influence EU tobacco control policies but also aim to influence the EU participation in the FCTC process. The relationships with these nonstate actors enhance EU authority in tobacco control; while the tobacco industry seeks to shrink it, tobacco control groups seek to expand it.

The Tobacco Industry

At the EU level of governance (Figure 1), the tobacco industry has long recognized the policymaking authority of the EU in tobacco control and worked to influence it through sympathetic states and front groups (European Commission 2004; Neuman, Bitton, and Glantz 2002). At least since 1988 tobacco companies operating in Europe have been working to influence the EU's excise tax policy on tobacco (Bishop 1998). In the late 1990s BAT established an "excise and trade: international lobby" that entailed budgetary allocations for lobbying the EU (BAT 1998; Bishop 1997). The tobacco companies have been particularly successful in working against EU tobacco advertising legislation (European Commission 2004; Neuman, Bitton, and Glantz 2002).

The tobacco companies recognized EU shared authority in tobacco control during the long FCTC negotiation, noting the EU as one of the participants with positions favoring a strong

FCTC (Vecchiet 2000), and they worked to influence not only EU Member States but also to weaken the EU posture. In a note to BAT's Consumer and Regulatory Affairs Department managers around the world on December 20, 2000, BAT's International Political Affairs Manager stressed the need for them to mobilize countries and allies to oppose New Zealand, Canada, and the EU during the FCTC Working Group, the body that drafted the provisional text of the FCTC, because BAT deemed their support for the FCTC as extreme (Vecchiet 2000). This recognition by the tobacco industry of the EU as a separate actor in the governance of tobacco control, worthy of opposing or lobbying, shows how far the EU has come in sharing authority with the Member States.

Tobacco companies in Europe organized under the umbrella of the Confederation of European Community Cigarette Manufacturers (CECCM) to weaken EU participation in the FCTC process. CECCM adopted a strategy to hinder the negotiating mandate of the EU in the FCTC negotiation by working through individual member states, especially Germany, and challenging the legal standing of the EU to negotiate matters considered within the purview of individual Member States. An August 27, 1999, draft letter discussed the legal strategy the companies would employ to challenge the EU's ability to negotiate the FCTC on behalf of its Member States.

It is the position of the [tobacco] industry that the EU Treaty does not provide a legal base for the EU to negotiate and sign such a convention: (1) Whether or not the EU has the competence to enter into international agreements depends on whether a Treaty provision expressly or impliedly confers the power. (2) There are no express or specific external powers in the Treaty either to public health or internal market policy and there are no per se powers to adhere to conventions drafted by the UN or any of its agencies. Therefore, external competence can only arise from implied powers. (CECCM 1999a)

In this respect, the industry wanted the Member States to claim absolute international sovereignty in tobacco control, which would limit or undercut the EU's ability to participate in the FCTC negotiation.

The tobacco companies and their allies saw Germany as key in their effort to challenge the EU's competence in the FCTC negotiation. Reinhard Pauling of Verband der Cigarettenindustrie of Germany wrote a letter to the officials of BAT, Philip Morris, and Japan Tobacco International telling them that his contact in the Federal Chancellery of Germany has informed him that "there was much discussion on whether the EU had competence in the area of advertising because the ad ban directive is currently being disputed and a legal case is before the European Court of Justice. Despite Germany arguing against, the [permanent representatives] agreed that the EU had competence in this area, too.... I firmly believe that Germany will make sure that EU sticks to its mandate" (Pauling 1999b). This letter points out how EU Member States voluntarily ceded authority to EU despite opposition by Germany. In fact, Germany subsequently acquiesced to the EU's authority to negotiate the FCTC.

BAT was determined to "sustain Germany's constructive position," presumably both on the question of the EU's negotiating mandate and on its general opposition to the inclusion of effective tobacco control measures within the FCTC (BAT 2003). BAT noted that the company's position had been "effectively communicated" to the German government through the Verband (Lioutyi 2000). An October 15, 1999 fax from Verband's Pauling to colleagues at BAT, Philip Morris, and Japan Tobacco International about a "very controversial debate," which had just occurred between different German ministries, indicated that "against the wish of the health ministry they agreed that Germany should only favor or support initiatives on the areas of health information and education and labeling and

content,” which was an effort to limit EU authority in global governance of tobacco control (Pauling 1999a).

Even after the EU had been given the mandate to negotiate the FCTC, the tobacco companies and their allies saw the United Kingdom, with its concerns about retaining sovereignty, as an ally in challenging the competence of the EU. According to CECCM, the United Kingdom apparently “sought to restrict the [EU] Commission’s negotiating mandate” on the FCTC (CECCM 1999b). BAT also sought to challenge the EU’s ability to sign the FCTC. An April 2000 letter from BAT attorney Scott Crosby to the president of the Legal Affairs Committee of the European Parliament references a June 16, 1999 note on the FCTC that “argues that the [EU], having no internal competence in the field, may not sign any WHO Convention—implicitly, this note establishes that the very purpose of the proposed directive is illegal” (Crosby 2000).

Imperial Tobacco also tried to influence the EU on issues such as trade under the FCTC. In a letter to Ferdinand Sauer, Directorate of Public Health for EU, Clive Indton (2001) of Imperial Tobacco asserted that his company “does not understand the logic or the necessity of adding a further layer of regulation through the FCTC” and that proposals such as the prohibition on tobacco advertising, marketing, promotion, and sponsorship would conflict with the World Trade Organization agreements.

The tobacco companies used UNITAB, which is the farmers’ group in EU and an affiliate of International Tobacco Growers’ Association (ITGA), to influence the EU on the FCTC and also to challenge the EU’s competence in the FCTC negotiation. A February 7, 2000 e-mail to BAT from Tom Watson of Hallmark PR, a UK-based public relations firm that works for ITGA on behalf of the tobacco companies (Must 2001), described ITGA’s President Antonio Abunhosa’s meeting with government officials from Spain and Italy in advance of the second meeting of FCTC Working Group in March 2000 that was meant to finalize the FCTC text, noting that Abunhosa was to approach UNITAB “to split the task of lobbying Missions in Geneva. UNITAB would concentrate on [EU] members while Antonio would focus on grower countries from outside the EU” (Millson 2000). ITGA also worked with UNITAB to ensure that EU governments sent representatives from ministries of agriculture and visited the Geneva diplomatic missions of some of the key tobacco growing countries “to explain the growers’ concerns” (Abunhosa 2000). Thus, the tobacco companies used third-party allies to try to limit and influence the EU authority in governance of tobacco control. As noted above, however, the EU Council granted the EU Commission the authority to negotiate the FCTC, which overcame the tobacco industry and their allies’ efforts to challenge and deny EU competence in the FCTC negotiation. By overcoming this tobacco industry challenge to participate in the global governance of tobacco control, the EU reaffirmed shared sovereignty.

Tobacco Control Civil Society: ENSP

In 1996, following a May 1994 recommendation by a Conference of European tobacco control organizations, EU political elites decided to finance the development of two EU-level networks, the ENSP and European Network for Youth Against Tobacco, to stimulate and coordinate joint projects at the European level (European Commission 2004) and by so doing sustain and/or enhance the EU’s ability to share authority in tobacco control with its Member States. This is an example of what some commentators call “positive lobbying” in the public interest (Guigner 2004). In general, tobacco control civil society groups in the EU have coalesced under a common umbrella organization, the ENSP (ENSP 2006). Other networks such as the European Heart Network and the European Respiratory Society have also become actively involved in EU tobacco control policymaking processes and programs. With the creation of these EU-level networks, specialized interests have emerged that have

continued to sustain the EU's ability to share authority with its Member States in tobacco control.

BASP was the first EU-level nonstate advisory body on tobacco control but lost its funding from the EU, perhaps for being too aggressive. In 1997 ENSP replaced it and became a member of the EU tobacco control process (see Table 1). ENSP is made up of 28 national coalitions, with 635 member organizations and international networks active in tobacco control in Europe. With its secretariat in Brussels, ENSP is funded by membership fees and, until May 2007, by the European Commission. The mission of the ENSP is "to develop a strategy for coordinated action among organizations active in tobacco control in Europe by sharing information and experience and through coordinated activities and research" to promote comprehensive tobacco-control policies (ENSP 2006).

The ENSP was created primarily to focus on tobacco control issues at the EU level (European Commission 2004). Through its member organizations, however, it has been involved in policy development at various levels. The ENSP participated in the FCTC negotiation through the FCA and worked to influence the position of delegates, including the EU.

The emergence of ENSP has helped to sustain EU tobacco control policymaking authority within the nonstate sector and counterbalances the influence of the tobacco industry and its allies. Perhaps the ENSP's decision to cut its financial tie with the EU in 2008 will make it more independent and enable it to advocate for stronger tobacco control positions with respect to policymaking within the EU.

Overall, we agree with Princen's (2007) argument that the establishment of a new venue for tobacco control policy through the EU has been an advantage for tobacco control civil society groups, especially those in Member States who lack the influential connections to government agencies in their own countries that tobacco companies often possess. Shared sovereignty through multilevel governance affects the process as well as the outcomes in tobacco control.

Conclusion

As the tobacco industry has become more global in its orientation, and as the associated increase in tobacco-related diseases and deaths has become more apparent, there has been a counter-movement for global regulation of tobacco, first through nongovernmental organizations and the WHO, subsequently joined by the EU and the World Bank, and culminating in the FCTC. Until the 1980s, EU Member States had international sovereignty in tobacco control because it was considered within the purview of state governments. Contrary to the Westphalian concept of sovereignty, however, for the past two decades Member States of the EU no longer have exclusive authority over this transnational issue. Through political leadership of several EU institutions, policymaking authority in this area is now shared between the Member States and the EU. Tobacco control policy-making between the EU and its Member States, including the negotiation and ratification of the FCTC and the participation in the FCTC Conference of the Parties, demonstrates shared sovereignty in this issue area. Thus, Guigner (2006) correctly argues that among international organizations involved in public health in Europe, the EU has moved from being an imitator to a dominator, largely on the basis of its role in tobacco control, culminated by its work in the FCTC.

While states, even within the EU, still retain the largest share of sovereignty over public health, including tobacco control, there has been a perceptible shift. Multilevel governance in the EU has provided new opportunities for interest groups, especially those frustrated at

the state level, to bring their arguments to a new level, one with fewer established insider-outsider power relationships.

Recognition that the problems of tobacco production and consumption cross state boundaries has led to the EU to obtain shared functional authority over tobacco control in its part of the world and to become a recognized actor in the global governance of tobacco control through the FCTC. The establishment of a global regulatory regime through the FCTC is now a central international reference point for all jurisdictions and actors. The results of the consultation on the 2007 EU Green Paper on nonsmoking areas, which explores policy options in dealing with this issue, will indicate how much further sovereignty may shift toward the EU in the short to medium term (European Commission, Health, and Consumer Protection Directorate General 2007). Nevertheless, horizontal and vertical fragmentation in the EU on tobacco control is likely to continue, reinforcing the practice of shared sovereignty, which, as we have shown, has international as well as domestic repercussions.

In summary, we draw upon theories of multilevel governance and shared sovereignty to provide illustration and understanding of the tobacco control policymaking process of EU (Figure 1). Over a period of two decades, the EU gradually gained authority in tobacco control, which has resulted in shared sovereignty. The EU's ability to gain authority in this public health issue resulted in the creation of a new tier of governance at the EU level. The development of the 2003 WHO FCTC resulted in the creation of a global tier of governance in tobacco control and an expanded system of multilevel governance. The EU participation in the development of the FCTC and the subsequent development of protocols and guidelines through the Conference of the Parties consolidated its authority in tobacco control. In this respect, the tobacco control policymaking in the EU conforms to the idea of shared sovereignty within a system of multilevel governance.

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FIGURE 1. Shared Authority in a System of Multilevel Governance
FCTC, Framework Convention on Tobacco Control.

TABLE 1

Chronology of Tobacco Control in the European Union

1970	Tobacco growing subsidized in Common Agricultural Policy
1985	First European antitobacco campaign, Europe against Cancer (implemented 1987)
1989	First EU health warnings; Television ad ban; Limits on product labeling; First EU nonbinding resolution on tobacco control, secondhand smoke
1990	First limits on toxic ingredients
1992	Tax harmonization for cigarettes
1993	Maastricht Treaty expands EU role in health but also emphasizes markets and subsidiarity; EU-level tobacco industry became more organized
1994	First EU financing of NGO capacity-building projects
1995	First advisory body on tobacco control, European Bureau for Action on Smoking Prevention (BASP), ends, eventually replaced by ENSP (1997)
1996	First general EU statement on tobacco control policy (others 1999 others 2002)
1997	First EU general ad ban approved (TAD1)
1999	Amsterdam Treaty, Article 129, "A high level of human health level protection shall be assured in the definition and implementation of all Community policies and activities"; EU recommended policies for Member States
2000	European Court of Justice (ECJ) strikes down TAD1; Lisbon Process
2001	Larger health warnings; Bans on "light and mild" descriptors
2002	EU sues tobacco companies for smuggling in the U.S.; Council recommendation on improving tobacco control
2003	Revised EU print, telecast, and internet ad and sponsorship ban (TAD2); Graphic warning labels approved; Framework Convention on Tobacco Control (FCTC) signed
2005	Agricultural price support for tobacco reduced, to end by 2010; Ten accession countries given delays for <i>acquis</i> on tobacco tax; Ratification of FCTC
2006	Commission refers Germany to the ECJ for lack of advertising ban transposition; Finnish presidency emphasizes health in all policies, including tobacco
2007	Green Paper on secondhand smoke; Two more accession countries

TABLE 2

EU Tobacco Control Legislation and Recommendations 1989–2007

Name of Measure	Key Requirements
Labeling directives 1989, 1992	Require rotating health warnings on tobacco products. Ban the marketing of certain tobacco products for oral use.
Advertising directives 1989, 1997, 1998, 2003	Ban all forms of TV advertising for tobacco products. Ban on tobacco advertising in the press, radio, and on the Internet. Ban on tobacco sponsorship of events with cross-border effects.
Tar Yield Directive 1990	Sets a maximum tar yield of 15 mg per cigarette by December 31, 1992, and of 12 mg per cigarette from December 31, 1997.
Tax directives 1992, 1995, 2002	Set minimum levels of excise duties on cigarettes and tobacco.
Tobacco Product Regulation Directive 2001	Larger warning labels are required on all tobacco products; descriptors suggesting that one tobacco product are less harmful than another are banned; manufacturers and importers must submit a list of all ingredients used in the manufacture of tobacco products. Maximum levels of tar, nicotine, and carbon monoxide are established for cigarettes (10 mg tar per cigarette, 1 mg nicotine per cigarette, 10 mg carbon monoxide per cigarette).
Workplace Air Quality directives 1989, 1992	Require employers to ensure that workers have access to fresh air and ventilation.
Framework Directive on Health and Safety in Workplace 1989	EEC requires a health assessment to be carried out by employees, which should include exposure to secondhand smoke in the workplace.
Resolution on smoking in public places 1989	Invites Member States to adopt measures banning smoking in public places and on all forms of public transportation (nonbinding).
Pregnant Women Directive 1992	Requires employers to take action to protect pregnant and breastfeeding women from exposure to an exhaustive list of substances, including carbon monoxide.
Carcinogens Directive 1990	Restricts smoking in workplace areas where carcinogenic substances are handled.
Council resolutions 1993, 1996, 1999	Proposals to Member States and the Commission measures to combat smoking (nonbinding). Council recommendation.
Council recommendation 2003	Concerns aspects of tobacco control that are the responsibility of the Member States, including tobacco sales to children and adolescents; tobacco advertising and promotion that has no cross-border effects; provision of information on advertising expenditure; environmental effects of tobacco smoke (nonbinding).

Source: European Commission 2004