

Health Law, Policy & Ethics Seminar Series

2023-2024



Weaponising Evidence: A History of Tobacco Control in International Law

Abstract: Dr. Melillo's presentation focuses on chapter 2 of her forthcoming book *Weaponising Evidence: A History of Tobacco Control in International Law* (CUP), which analyses the negotiation of the WHO Framework Convention on Tobacco Control (FCTC, 1998-2003). It illustrates that evidence was a key element of the negotiations, and argues that the FCTC was developed as an evidence-based treaty to counteract the attacks on evidence by the tobacco industry. After a historical introduction, section 2.2 outlines the theoretical background of the chapter, introducing the notion of 'treaty entrepreneurs'. Sections 2.3, 2.4, and 2.5 proceed to delineate and analyse how the strategy on evidence unfolded during the FCTC negotiations. Section 2.3 illustrates how legal expertise from international environmental law was borrowed to build a treaty that could embed and develop evidence. Section 2.4 describes how evidence was mobilised to build the treaty. First, the treaty entrepreneurs relied on existing knowledge within the WHO; second, they served as a catalyst for the production of additional evidence from other relevant actors, most notably the World Bank. Section 2.5 reviews how the treaty entrepreneurs framed the available evidence, and how the label 'evidence-based' started being used. Section 2.6, finally, draws some conclusions on what on the implications of adopting a strategy on evidence to push forward the negotiations of a treaty.



Presenter

Margherita Melillo, PhD
Associate, O'Neill Institute for National and
Global Health Law Georgetown University

Margherita Melillo is an associate at the O'Neill Institute for National and Global Health Law of Georgetown University, where she works on tobacco control and diet-related policies for the prevention of noncommunicable diseases. Before joining O'Neill, she was a research fellow at the Max Planck Institute Luxembourg for Procedural Law. In 2020, she completed her PhD at the European University Institute. Her thesis won the 2021 Antonio Cassese Prize. Margherita's book, *Weaponising Evidence: A History of Tobacco Control in International Law*, will be published later this year by Cambridge University Press. The book provides the first analysis of the history of the international law on tobacco control. By relying on a vast set of empirical sources, it analyses the negotiation of the WHO Framework Convention on Tobacco Control (FCTC) and the tobacco control disputes lodged before the WTO and international investment tribunals (*Philip Morris v Uruguay and Australia – Plain Packaging*). The investigation focuses on two main threads: the instrumental use of international law in the warlike confrontation between the tobacco control advocates and the tobacco industry, and the use of evidence as a weapon in the conflict. The book unveils important lessons on the functioning of international organizations, the role of corporate actors and civil society organizations, and the importance and limits of science in law-making and litigation.



Commentator

Galit A. Sarfaty
Associate Professor, University of Toronto
Faculty of Law

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