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TRANSPARENCY AND ACCOUNTABILITY AND THE FRAMEWORK CONVENTION ON TOBACCO CONTROL

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*My personal opinion was requested by Japan Tobacco International on customary principles of Public International Law on transparency, openness and the Right to Information applicable to Inter Governmental Organisations (**IGOs**). I was also asked to give an assessment of the Rules of Procedure (**RoP**) of the Conference of the Parties (**COP**) of the Framework Convention on Tobacco Control (**FCTC**), and of the actual implementation of the RoP, especially as far as these principles are concerned. This Report, which confirms the 12 February 2014 Opinion on the FCTC written by Sir Franklin Berman QC, is intended as a continuation of his work and provides answers to these questions.*

Jean-Claude Piris

CONTENTS

EXECUTIVE SUMMARY

IGOs nowadays tend to be entrusted with powers formerly exercised only by States. Exercising such powers demands good governance and accountability, which are not possible without openness and transparency. This is all the more important since IGOs have no direct democratic legitimacy and benefit from an immunity from jurisdiction. The "Right to Information", first recognised as a Human Right and a principle of law binding all national public bodies, is now a customary principle of International Law. Recognised by all sources of international law – international conventions, general practice, judicial decisions and *opinio juris* of States and of the most qualified lawyers – it is applicable to all IGOs.

An assessment of the Rules of Procedure of the FCTC COP and of their implementation reveals that transparency and openness are not recognised and respected as they should be:

- the RoP do not enshrine a general rule on transparency and on access to documents and working papers;
- plenary sessions may be closed to the public, including when voting, and meetings of subsidiary bodies lack transparency;
- access to underlying documents is legally restricted and almost impossible in practice;
- there is discrimination in the accreditation of observers;
- procedural decisions are never justified;
- there is no mechanism of complaint, and even less of remedy or redress;
- Article 5.3 of the FCTC is incorrectly used in the RoP with the effect of minimizing openness; and
- there are no consultations and dialogue with all interested parties.

The 7th Session of the COP, COP7, which will meet in November 2016 in Noida, India, will consider a review of the RoP presented by that body's Bureau. It was decided at COP6 that any amendments to the RoP should, in particular, *"maximis[e] transparency with regard to Party delegations to the Conference of the Parties and its subsidiary bodies"*. It would be incorrect for Parties to try and increase transparency directed at themselves and not at the outside world. In any case, this review provides an opportunity to improve the way the COP is working, by amending its RoP. This is why amendments to the RoP are suggested at the end of this report.

According to the author, the following elements are particularly necessary for any amended RoP:

- general principles of openness, transparency, the right to information, accountability and good governance; and external consultation before preparing texts;

- the principle that all sessions and meetings are to be public, with clear rules on possible but limited and justified exceptions;
- the principle that all documents shall be made public or given on simple request, with clear rules on limited and justified exceptions;
- the principle of the impartiality of the COP, its Bureau and the Secretariat, including with regard to the application of the RoP and accreditation of observers;
- the right for any natural or legal person to complain to Secretariat and seek rapid redress in case of a difficulty in the application of the RoP;
- the establishment of an Ombudsman for Transparency, with guaranteed independence, to be mandatorily consulted on any issue concerning openness and transparency, whose recommendations will be consultative, but made public;
- clear rules on decision-making: when is a *"consensus"* reached, what is the quorum for voting, and who deals with the regularity of the vote?
- given the current culture of COP, all decisions concerning transparency and openness to be regarded as substantive;
- the deletion of any reference to Article 5.3 of the FCTC (and Preambular paragraphs 17 and 18): their use in this context is a distortion of their formulation, aim and content, directed at States in setting and implementing their public health policy and in accordance with their domestic law; they cannot be used as a means to avoid openness and transparency of COP;
- the obligation for COP, Bureau and Secretariat to consult the Ombudsman for Transparency on any issue or complaint concerning openness and transparency; and
- the RoP could also be completed by Rules on Regulation of Lobbying and Registration of Lobbyists.

INTRODUCTION

1. Given the effects of globalisation, IGOs have, especially since the end of World War II, been entrusted with more collective policy problems[i] by their member States. This has given rise to political difficulties. Traditionally, IGOs were controlled only by the Executives of their member States and often tended to work in opacity, sometimes in secret. This was progressively seen as an issue, especially when some IGOs were given tasks formerly dealt with by States: *"The interdependency between transparency, power and legitimacy implies that once political power is exercised by international organisations, they then face similar challenges as States"*.[ii]

2. An abundant literature on this evolution, written by international law specialists, academics and practitioners, has been published during the last twenty years (see ANNEX 1). It stresses three problems, which might be observed in particular in some IGOs on which their member States have conferred a competence, either to exercise operational powers of action, or to prepare the adoption of legally binding norms or decisions:

   (a) a democratic deficit;

   (b) a lack of accountability; and

   (c) a lack of transparency and openness.

3. Together, these three problems may be described as a lack of Good Governance.

4. As to the first aspect (*"democratic deficit"*), apart from the European Union (the ***EU***), which is not comparable to any other IGO, a direct solution, linking an IGO to affected or interested individuals, is not realistic. IGOs are not run by democratically elected personalities and it is quite normal that their democratic control has to be exercised indirectly. This is a role for their members' Governments, and for each national Parliament over its Government.[iii] That control may be exercised on different occasions: when a treaty is proposed in order to establish a new IGO; when it is decided to join an existing one, or to give it more powers; or when States are required to accept binding agreements or decisions adopted by an IGO of which they are members.

5. As to the second aspect (*"accountability"*), it is also normally a matter which is more easily dealt with by the ways and means according to which the relationship between a given IGO and its member States is organised and managed: *"Direct accountability to the public is indeed difficult to achieve"*.[iv]

6. On the other hand, tackling the third aspect (*"transparency and openness"*) is a concern, not only for the authorities of an IGO's member States, but also for the affected or interested public. Trying to address gaps or flaws in that domain appears to be an effective

means, and probably the most practical one, to try to correct an IGO's possible dysfunctioning and to improve its governance:

> *"Transparency – the ability of outside actors to access information about decision-making processes and actions – is generally seen as a precondition for all types of accountability and, more broadly, for the effective functioning of such organisations. It allows governments, transnational parliamentary assemblies, nongovernmental actors, and even the general public to determine whether IGOs are performing their duties in effective and appropriate ways"*.[v]
>
> *"The transparency dimension of accountability is, at the level of principle at least, the easiest way to develop broader political pressure for, as there is a general acceptance that access to timely, relevant information about an organisation's activities and policies is vital to ensure that both the internal and external stakeholders are able to hold an organisation to account effectively"*.[vi]

7. The recognition by States that there is a legal obligation for national public bodies to respect openness and transparency, embodied as the principle of the *"Right to Information"* of the public, preceded the application of those principles to international public bodies. However, the Right to Information has now become a Principle of International Law which is binding on all IGOs, particularly those which prepare the adoption of decisions or norms having an effect on natural or legal persons.

THE RIGHT TO INFORMATION

A PRINCIPLE OF INTERNATIONAL LAW APPLICABLE TO IGOS

8. According to Article 38(1) of the Statute of the International Court of Justice (the ***ICJ***):

> *"1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:*
>
> *(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*
>
> *(b) international custom, as evidence of a general practice accepted as law;*
>
> *(c) the general principles of law recognized by civilized nations;*
>
> *(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."*

9. Elements (a) to (d) above are actually the sources of public International Law. According to a 1985 judgment of the ICJ:

> *"the material of customary international law is to be looked for primarily in the actual practice and opinio juris of States, even though multilateral conventions may have an important role to play in recording and defining rules deriving from custom, or indeed in developing them"*.[vii]

10. Thus, in the case of the Right to Information, it was progressively recognised by all States in the world, enshrined by them in many multilateral conventions and first imposed on public national bodies. After recognising it as a Human Right, States progressively applied it also to public international bodies. Today, all conditions necessary to recognise it as a binding principle of customary International Law are fulfilled. It is enshrined in international conventions and reflected in the general practice of States. Its acceptance as law is confirmed by the *opinio juris* of States and by *"the most highly qualified lawyers"*.

International conventions

11. Many international texts have been adopted which progressively enshrined the Right to Information as a Fundamental Right:

    (a) 1948: adoption of the Universal Declaration of Human Rights by the United Nations General Assembly (the ***UNGA***);[viii] Article 19: *"Everyone has the right to freedom of opinion and expression; this right includes freedom… to seek, receive and impart*

information and ideas through any media and regardless of frontiers";

(b) 1950: adoption by the Council of Europe of the Convention for the Protection of Human Rights and Fundamental Freedoms;[ix] Article 10 on Freedom of expression includes the right *"to receive and impart information and ideas without interference by public authority"*;

(c) 1966: adoption of the International Covenant on Civil and Political Rights by the UNGA;[x] Article 19(2): *"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds..."*;

(d) 1969: adoption of the American Convention of Human Rights (San José Pact, Costa Rica, in force in 1978): Article 13(1) *"... freedom to seek, receive, and impart information..."*;

(e) 1981: adoption of the African Charter of Human and Peoples' Rights, followed in 1987 by the setting up of the African Commission on Human and Peoples' Rights (the ***ACHPR***), and in 1998 by the African Court on Human and Peoples' Rights (in effect since 2005);

(f) 1998: adoption of the UN Convention of Aarhus *"on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters"* (in force in 2001: access to information, participation in decision-making, right to redress);

(g) 2000: adoption by the European Union of the "*Charter of Fundamental Rights of the EU"*, recognises the freedom of information (Article 11), the rights to good administration (Article 41), access to documents (Article 42), and to effective remedy and fair trial (Article 47);

(h) 2002: adoption of the Declaration of Principles on Freedom of Expression in Africa by the ACHPR; Part IV (1): *"Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law"*;

(i) 2007: the Commission on the ACHPR agree [xi] on an *"Understanding"* on a free-standing right of access to information distinct from the right of freedom of expression;[xii]

(j) 2009: adoption by the General Assembly of the Organisation of American States of the *"Resolution on Access to Public Information: Strengthening Democracy"*;[xiii]

(k) 2009: the Council of Europe adopts the Convention on Access to Official Documents;[xiv]

(l) 2009: entry into force of the EU Lisbon Treaty, which gives to the 2000 Charter of Fundamental Rights the same legal value as the EU Treaties, and inserts in these Treaties several pertinent articles (see below);

(m) 2011: adoption by the Human Rights Committee of the UN of the Interpretation of the International Covenant on Civil and Political Rights,[xv] recognising the Right to Information as separate from that of Freedom of Expression (see Article 19(2) of the Universal Declaration of Human Rights) and applying to *"public bodies"* and *"other entities when such entities are carrying out public functions"*, going thus beyond the national sphere.[xvi] This interpretation is based on a *"functional"* definition of the obligees of that right, rather than a *"formalist" one. Thus, "public bodies"* can be regarded as including IGOs when they have functions comparable to those of national public bodies.[xvii]

12. By 2011, *"[o]ver 60 countries now have a Constitutional right to information and 90 have developed freedom of information laws"*[xviii] and *"It is now recognized that the right to information is protected by the new human rights texts and has developed into **a norm of customary international law**"* (emphasis added).[xix] This trend first concerned IGOs which, like public national bodies, have as one of their missions to prepare decisions or norms which will affect natural or legal persons.

13. It is therefore logical that the formal recognition of the Right to Information was first initiated by the EU, given its importance as a law-making body. Already, the ECSC[xx] Treaty of 1951 made reference to the obligation of *"justification of actions"*, and to the obligation to consult all stakeholders[xxi] which was embedded later in the successive EEC,[xxii] EC[xxiii] and EU Treaties. The move towards the affirmation of a legal principle materialised in the 1990s, with the adoption of the 1992 Declaration on the Right to Information[xxiv] attached to the Final Act of the Conference which adopted the Treaty of Maastricht:

> *"Transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration. The Conference accordingly recommends that the Commission submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions."*

14. Later, in 2001 the EU adopted Regulation 1049/2001 on Access to Documents.[xxv] The Charter of Fundamental Rights of the EU was adopted in 2000; since 2009, it has the same legal value as the EU Treaties (Article 6 of the Treaty on EU). On top of the Charter, a number of articles of the EU Treaties are also pertinent:

(a) Art 1er and Art 10(3)TEU:[xxvi]

"decisions are taken as openly as possible...";

(b) Art 11 TEU:

"2.The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent" ;

(c) Art 15 TFEU:[xxvii]

"1. In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible…

3. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices, and agencies, whatever their medium…. Each institution, body, office or agency shall ensure that its proceedings are transparent…";

(d) Protocol N°2:

"Art 2: Before proposing legislative acts, the Commission shall consult widely…"

"Art 5: Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality… Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved."

15. The respect for these rules by EU institutions and bodies is subject to judicial control by the Court of Justice of the EU, which tends to be liberal on the interpretation of the principle and strict on its exceptions: see for example cases *Turco*[xxviii] and *Sophie In't Veld*.[xxix]

16. This trend was recognised, enlarged and generalised by legal texts beyond the EU: see above, as well as the 2016 *"Handbook of European Economic Area Law"*,[xxx] and in particular its Chapter on "*The principles of Transparency and Openness, and Access to Documents"*. It is nowadays accepted that these Principles concern all IGOs: *"It is reasonable that international organisations should be subject to similar transparency requirements as States"*.[xxxi]

A general practice accepted as law, and a principle of International Law recognised by states

17. The Right to Information was first acknowledged by States as a principle of law binding on national public bodies. The 1990s and the first decade of the XXIst Century were marked by a *"global explosion of Freedom of Information laws"*.[xxxii] Democratic countries agree that formal democratic rules (elections by universal suffrage, control of the Executive by the Legislature, *etc.*) are necessary, but not sufficient. To ensure an effective democracy, other conditions must be fulfilled. The most important is that citizens must have the right to request, and obtain, access to clear and understandable information.

18. It was then progressively recognised that good governance and good administration must be ensured in all public bodies, either national or international, through openness of their work, access of the public to their documents, consultation of interested parties and, if and when possible, participation in their decision-making. Given the fact that public institutions, either national or international, can play comparable roles, they must be subject to the same rules. They must act in an open way, be accountable, and submitted to mechanisms of redress and accountability if they do not.

19. The Right to Information has become an universally accepted Fundamental Right, valid for international as well as national public bodies. All IGOs have a legal obligation to inform the public. This being said, the more an IGO is involved in tasks which, in the past, were exclusively accomplished by States, the more it is bound by the Right to Information, transparency and openness. This is understandable, given the fact that IGOs are not subject to the counter-balancing powers and democratic or judicial controls to which national Governments and administrations are.

20. Thus, good governance, legitimacy and accountability of those IGOs which prepare decisions affecting the public must be ensured by efficient means, and especially by fully and fairly respecting the Principle of the Right to Information of the public and all stakeholders. As explained in a recent letter by the President of the Eurogroup:

> *"Maintaining the **trust** of our constituents is crucial for the **legitimacy** of all our difficult decisions. This is certainly true for the work we do in the Eurogroup. Even though we are an informal group, we take far-reaching decisions influencing the future course of member States and our currency zone as a whole, decisions for which we should be **accountable**. For that reason and as a matter of principle we should aim to be as **transparent** as possible on our work."*[xxxiii]

21. Today, almost all IGOs have actually adopted rules to implement this Principle. This is not only the case for environmental institutions, for example the United Nations Framework Convention on Climate Change (the ***UNFCCC***),[xxxiv] which has accredited almost 100 IGOs and

almost 1,600 NGOs to have access to its meetings, including meetings of bodies of a limited composition.[xxxv] This is also the case for others,[xxxvi] including international financial institutions, such as the International Monetary Fund (decision on transparency, March 2010) or the World Bank (Policy on Access to Information, July 2010).[xxxvii] According to section 1 of this last text, transparency is *"critical for enhancing good governance, accountability, and development effectiveness. Openness promotes engagement with stakeholders…"*.

22. This generalised practice was recognised in 2013 by the Organisation for Economic Co-operation and Development (the ***OECD***):

> *"A large number of countries have passed Freedom of Information laws… These national developments find their parallel in the IGOs"*.

23. It has also been described by international law academics:

> *"Since the 1990s, international organisations have increasingly accepted the need to make their decisions as transparent as possible and to offer the general public as much access as possible to information concerning the work of the organisations."*[xxxviii]

Judicial decisions

24. A few judicial decisions might be quoted, as a matter of example:

(a) 2006: the Inter-American Court of Human Rights interpreted Article 13 of the American Convention of Human Rights as conferring a right of access to Government documents.[xxxix]

(b) 2008: the Court of Justice of the EU judged that the principle of access to documents is such that even internal legal opinions given by its own services to the Council must, unless justified and by limited exception, be made public.[xl]

(c) 2012: the European Court of Human Rights judged[xli] that the right *"to receive information in the form of access to documents"* was protected under Article 10 (quoted above) of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.

(d) 2014: the Court of Justice of the EU judged that the fact of making public a dispute between EU institutions could hypothetically have international political consequences was not a sufficient reason for not making a document public, given that *"the public interest in the document being made accessible in the light of the advantages stemming… from increased openness, in that this enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system, are*

of particular relevance where the Council is acting in its legislative capacity".[xlii]

Opinio juris of the most highly qualified international lawyers and of the International Law Association

25. These are the writings of lawyers specialising in international public law and in particular in the law applicable to IGOs.

26. It is not by chance that books dedicated to the issues discussed in this Report have been multiplying since the beginning of the XXIst Century (see ANNEX 2).

27. These books are largely going in the same direction, describing and criticising the problems raised by the imperfect functioning of some IGOs. The deficiencies in their governance and their lack of accountability are difficult to redress, due to the lack of democratic control and their immunity from jurisdiction.

28. Most authors and practitioners agree on the fact that the simplest way to remedy such deficiencies is to demand full compliance with the Right to Information, now enshrined as a customary Principle of International Law. IGOs which are closed, which do not open their meetings to the public, which do not give access to their documents, should no longer be tolerated.

The conclusions of the International Law Association

29. The International Law Association (the ***ILA***) is the biggest world association of international lawyers. Its *opinio juris* on the issue under discussion is particularly precious. The ILA established a Committee on *"Accountability of International Organisations"*, composed of very distinguished practitioners of International Law, which reported to the ILA Conferences successively in Taipei in 1998, in London in 2000, in New Delhi in 2002 and finally in Berlin in 2004.[xliii]

30. The Chairman of the Committee, Sir Franklin Berman, briefly summarised the results of this long and serious work as follows in his 2014 *"Opinion on the FCTC"* (as noted above, this Opinion was also commissioned by Japan Tobacco International):[xliv]

> *"The question of the general rules of international law that govern their [the IGOs']*[xlv] *operation is undeveloped except in certain special areas. The most comprehensive treatment is the Report of the International Law Association ('the ILA') on* ***"The Accountability of International Organisations"*** *adopted at its Berlin Conference in 2004. The Report was drawn up by a Committee which included among its members two Judges of the International Court of Justice, a former Solicitor-General of Australia, a former Legal Counsel to the UN, and a former Registrar of the International Court of Justice.*

26. The ILA Report draws attention to the great diversity and variety of international organisations, and therefore of their powers and functions, but as its starting point that the conferment on an international organisation of authority and power brings with it, as a matter of principle, the duty to account for its exercise, and that this duty enures to the benefit of all entities, including private parties, whose interests may be affected by the organisation's activity. Because of the difficulty of drawing up a comprehensive code that would cover all international organisations, against the background of continuing development of their own accountability mechanisms within particular international organisations, what the Report puts forward is a structured set of 'Recommended Rules and Practices', designed to be both practical and flexible….

27. The RRPs… are based on principles and concepts common to all international organisations. The following are of particular interest:

*• **Under the principle of good governance**, there should be "[t]ransparency in both the decision making process and the implementation of institutional and operational decisions," which requires inter alia that normative decisions should, as a general rule, be adopted in a public vote. It is also pointed out that good governance implies that "full access to information is a fundamental element in the accountable functioning" of any organ of an international organisation.*

*• **Under the principle of constitutionality**, each international organisation "is under a legal obligation to carry out its functions and exercise its powers in accordance with the rules of the organisation"; this is seen as an aspect of the Rule of Law and one which imposes a duty on the Member States to ensure that decisions are in conformity with the rules of the organisation.*

*• **Under the principle of stating reasons**, "[organs of an international organisation] should state the reasons for their decisions or particular courses of action whenever necessary for the assessment of their proper functioning or otherwise relevant from the point of view of their accountability", and specifically, "[w]ith regard to a decision directly affecting rights and obligations of particular... non-State entities, the reasons given should set out the principal issues of law and fact on which the decision is based."*

*• **Under the principle of objectivity and impartiality**, an international organisation should conduct its institutional and operation activities in a manner which is objective and impartial and can be seen to be so; this principle is described as being of a "fundamental nature for the proper functioning" of the organisation.*

> *28. The above are general propositions applying to international organisations of all types. They can be seen to enunciate a series of linked precepts which, taken together, define what constitutes sound administrative practice, whether at the national or international level, and which therefore forms part of the rule of law".* [xlvi]

31. A specialised academic, in an article published in 2015, presented transparency as a principle of international law: *"La transparence comme principe du droit international public"* (*"Transparency as a Principle of Public International Law"*). [xlvii]

32. But what does this concretely mean? In practical terms, such recognition does not impose precise rules on IGOs. It rather means that any IGO must adopt its own rules on openness and transparency, as well as appropriate means to ensure that these rules are correctly implemented, because this *"forms part of the rule of law"* (ILA). The objective is for the public to be protected, as is the case in relations between the State and its citizens. To reach this objective, the public must, as a minimum, benefit from the Right to Information: meetings must be public and access to documents must be ensured, unless, in both cases, justified and by limited exception. There must be a right to complain and a mechanism of redress. Depending on their missions, some IGOs should also be open to other actors than the sole representatives of their member States:

> *"While international organisations were long the exclusive preserve of member governments, the past 20-30 years have witnessed a shift from inter-state cooperation to more complex forms of governance, involving participation by transnational actors such as nongovernmental organisations, social movements, philantropic foundations, business associations, and multinational corporations".* [xlviii]

33. The Right to Information forms part of the Rule of Law. It is a Principle of International Law that IGOs must respect. As there is no applicable detailed positive law applying that Principle in an operational manner, it is for each IGO to adopt its own appropriate Rules of Procedure to comply with its legal and political duties, as well as to define and to endow itself with the necessary ways and means for the implementation of these Rules in good faith.

34. This Principle and this duty do apply to the COP. [xlix] In any case, if there were any legal doubt, or any need for legal certainty, the case could certainly be presented by the World Health Organisation (the ***WHO***) to the ICJ for an Advisory Opinion. This is legally possible, given that Article 96 of the Charter of the UN provides that *"specialised agencies"* (which include the WHO) *"which may at any time be so authorised by the General Assembly, may… request advisory opinions of the Court on legal questions arising within the scope of their activities"*.

35. The COP of the FCTC must, therefore, not only adopt Rules of Procedure which respect the Principle of the Right to Information, but also apply them correctly, in good faith and impartially.

36. Are the current Rules of Procedure of the FCTC COP adequate in that regard? Are they implemented in a correct and fair manner?

THE FCTC COP

RULES OF PROCEDURE

37. Actually, the text of the RoP of the COP, even after having been modified as recently as 2014, is insufficient, and suffers from lacunae. Moreover, the RoP are implemented in such a way that the actual results are even further from what should be the case.

The current Rules of Procedure do not permit the FCTC COP to respect its legal obligations of openness and transparency

There is no general article on transparency, openness and the Right to Information

38. The RoP do not contain any obligation for the COP, the Bureau and the Secretariat to respect transparency, openness and the Principle of the Right to Information: no obligation of principle to hold sessions and meetings in public, no principle and no procedure for the access of the public to underlying documents and working papers, no right to complaint and no possibility for redress, no principle about consultation and dialogue with the public and all parties concerned.

Article 5.3 of the FCTC is incorrectly used in the RoP (Articles 27(2), 30(1), 31(2) and 32) with the aim and effect of minimising openness and transparency

39. In trying to justify the closure of all COP sessions from observation by the public, mention was made that this had to be done in application of Article 5.3 of the FCTC. This is legally incorrect. All *"General Obligations"* of Article 5, including paragraph 3, are addressed to the State Parties individually, and not to the COP, which is a different entity. Moreover, according to the wording of paragraph 3, this provision is addressing the State Parties *"in setting and implementing their public health policies"*, *"to protect these policies"* and *"in accordance with national law".*

40. In conformity with the principles governing the Law of Treaties, and in particular Article 31 of the Convention of 1969 on the Law of Treaties, *"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".* Article 5.3 imposes on the State Parties an obligation of result, to be aimed at in accordance with their national law and when setting up and implementing their national health policies. Article 5.3 does not address the COP's meetings. It does not provide, either directly or indirectly, that the COP should meet in secret when deliberating and voting.

Openness of sessions and meetings in the RoP

41. Paragraphs 10 to 12 of Rule 2 distinguish three kinds of meetings: *"public"*, *"open"* and *"restricted"*. [1] They list entities and people authorised to attend each of these kinds of meetings respectively, but

they are neutral as to the choice to be made between them: public, open or restricted. Besides, *"open"* is a misleading word, as these are actually meetings from which the attendance of the public is prohibited. Rule 2 does not provide for an obligation of principle to hold all sessions and meetings in public, subject to limited and justified exceptions.

42. It is true that Rule 32 provides that:

> *"Sessions of the Conference of the Parties shall be held in public, unless the Conference of the Parties decides that they shall be open or restricted. This rule shall be implemented in accordance with Article 5.3 of the Convention."*

43. It is also true that Rule 27, on subsidiary bodies, provides in its paragraph 2 that:

> *"Sessions or meetings of subsidiary bodies shall be held in public, unless the Conference of the Parties or the subsidiary body concerned decides that they shall be open or restricted. This rule shall be implemented in conformity with Article 5.3 of the Convention"*.

44. However, Rules 27 and 32 are not entirely legally correct:

(a) First, like Rule 2, they do not provide for an obligation to normally hold all sessions and meetings in public, subject to justified, limited and defined exceptions. They do not specify that *"open"* and *"restricted"* meetings should be exceptions to the Rules. They do not give criteria for accepting exceptions to openness. This is paradoxical, as the COP may prepare, directly or through an INB, texts which could acquire later the status of positive law, and therefore that it is most in need of transparency, accountability and legitimacy.

(b) Second, a bizarre reference to Article 5.3 of the FCTC appears. This reference is used to achieve a result which would be politically incorrect to put in clear language: *"the COP shall meet in secret, including when preparing protocols, deliberating and voting"*.

45. Again, the reference to Article 5.3 of the FCTC distorts the meaning of this provision. It is emptying the duty to hold meetings in public of its meaning. This is made applicable to the COP, thus violating its duty of openness and transparency. Such a rule would need a formal change to the text of the FCTC, to be submitted to the Parties, which, in accordance with their respective constitutional requirements, would not accept it. As practice shows (see below), this incorrect reference to Article 5.3 is not innocent, as it has opened the door to an application of the RoP which is contrary to its wording and to a legally binding Principle of International Law.

46. Last, but not least, the RoP do not provide for any possibility for complaining and obtaining redress about a decision not to have a meeting in public.

The RoP do not provide that documents about meetings, agendas and proposals, shall be made available to the public in due time before, during and after the meetings, and that all votes shall be taken in public

47. Again, on this important issue, the RoP are incomplete.

48. First, Rule 51 does not provide that it is compulsory always to vote in public:

> *"2. The Conference of the Parties may vote on any matter by secret ballot if it has previously so decided by a majority of the Parties present and voting, provided that no secret ballot may be taken on budgetary questions…."*

49. Second, the distribution of documents is limited by the wording of several Rules:

(a) Rule 5 provides that only the Parties are to be informed *"of the dates and venue at least sixty days in advance of a regular session, and at least thirty days in advance of an extraordinary session"*;

(b) according to Rule 8, *"For each regular session, the provisional agenda, together with other conference documents, shall be distributed in the official languages by the Secretariat to the Parties, and to observers… at least sixty days before the opening day of the session"*;

(c) according to Rule 33, *"Proposals and amendments to proposals"* as well as *"procedural motions"* are circulated only to the Parties;

(d) Rule 63 provides that *"copies of all verbatim and summary records, resolutions, recommendations and other formal decisions adopted by the COP shall be transmitted by the Head of the Secretariat to Parties and to States and regional economic integration organisations invited to attend the sessions. The records of restricted meetings shall be transmitted to the participants only"*;

(e) Rule 64 provides that verbatim and summary records of public meetings shall be published only for public meetings;

(f) Rule 65 provides that the Secretariat shall issue a daily journal of the session, a summary account of the proceedings of plenary meetings, and of public meetings of subsidiary bodies, but exclusively for *"participating delegations"*; and

(g) finally, Rules 30 and 31 are interpreted in practice as allowing the application in a partial way of the procedure to confer the

quality of accredited observer on NGOs, through another incorrect interpretation of Article 5.3 of the FCTC *("taking into account the 17th and 18th preambular paragraphs as well as Article 5.3 of the Convention").* This opaque drafting hides that the aim and result of this provision is that stakeholders, such as representatives of tobacco farmers and of tobacco industries, will not be admitted as observers.

The RoP provide neither possibilities for complaint, nor any procedure or mechanism for redress

> *"Individuals and other non-State entities are unlikely to be successful in bringing claims against an international organisation, when such claims are based on liability under domestic law, due to jurisdictional immunity being upheld. They are unlikely to be successful either with claims for organisational responsibility under international law because of a lack of locus standi".* [li]

50. However, non-judicial alternative remedies may be established by IGOs, as was done by the World Bank Inspection Panel (established in 1993), followed in 2000 by the Access to Information Committee,[lii] a model followed later by others,[liii] or the EU Ombudsman, an organ established in 1992 and in place since 1995, *"a complaint-handling mechanism that attempts to improve the accountability of public bodies and authorities… the essential conditions for its effective operation, and thus remedial impact, are independence, an impartial stance and broad powers of investigation."* [liv]

51. Nothing is provided in the RoP of the COP for complaining, nor for possible remedies.

52. Whatever the criteria to check if the Principle of International Law on the Right to Information is respected by the RoP, the result is negative:

    (a) the absence of a general provision about the importance of respecting transparency, openness and the Principle of the Right to Information;

    (b) the absence of a general rule of principle to hold all sessions and meetings in public, unless by limited and duly justified exceptions, which should be decided according to a clear procedure,

    (c) the the incorrect reference to Article 5.3 of the FCTC looks like aiming at the possibility to hold all sessions and meetings in secret, with no attendance by the public at all;

    (d) this also looks at allowing discrimination in the accreditation of observers;

(e) the absence of an obligation to make public the list of members of subsidiary bodies, including working groups, and absence of a general rule on transparency of their work;

(f) the absence of a general rule on access to all documents held by the COP, the Bureau or the Secretariat, whatever their form and support, including agendas, proposals, results of the meetings, unless by limited and duly justified exceptions, which should be decided according to a clear procedure;

(g) the absence of a rule to encourage consultations and dialogue with all interested parties, without discrimination or partiality, especially before deliberation;

(h) the absence of a rule of principle prohibiting votes to be taken in secret, and of clear rules on decision-making;

(i) the absence of a rule demanding impartiality of the Bureau and of the Secretariat in general, and in particular in the application of the RoP;

(j) the absence of a right to complain and to obtain redress, through an external and judicial organ, such as a tribunal or an arbitration panel, or through an internal and non-judicial mechanism, such as an independent ombudsman, an independent panel or an independent office in charge of transparency, openness and the Right to Information. Moreover, the application of the RoP in practice leads to a further reduction of openness and transparency.

Most plenary sessions of the COP are not held in public

53. There is no other justification than the above described distortion of the meaning of Article 5.3 of the FCTC. Why is this mentioned? *"Tobacco industry interference"* in the work of the COP is presented as the reason why the public (which would include representatives of the tobacco industry) should be excluded from observing the sessions of the COP (one may observe that NGOs accredited on the basis of a distorted interpretation of Article 5.3 of the FCTC were admitted, despite the wording of Rule 2.12 of the RoP).

54. However, no such *"interference"* of representatives of the industry in the COP's meetings is mentioned concretely. When the Secretariat was requested to present a report describing how that *"interference"* was materialising, the Report presented by the Secretariat at COP6, in Moscow, as document FCTC/COP/6/16 dated 14 July 2014, did not mention the slightest *"interference"* in the COP. The one and only fact mentioned is in paragraph 11, page 4 of the Report. It is quite short: *"attendance by representatives of tobacco companies at sessions of the COP accompanied by engagement with delegations".*[lv]

55. The word *"engagement"* cannot but be interpreted as *"speaking with".* This is apparently the only *"interference"* on which the decision to hold

sessions closed to the public was based. It is on that sole and only basis that the Report of the Secretariat concludes that the COP must continue to work while excluding the public, as it is written in an understated way in its paragraph 21:

> *"To ensure protection from tobacco industry interference at meetings of the governing bodies of the WHO FCTC, the Secretariat is submitting proposals to the COP at its sixth session on how to regulate attendance by the public at meetings of the COP and its subsidiary bodies, based on concerns raised by Parties over the large numbers of tobacco industry representatives among public attendees."*

56. On that basis, the proposal of the Secretariat was nevertheless to close sessions and meetings to the public. Again, the presence of accredited observers (whose accreditation is decided in a discriminatory manner) was admitted, despite Rule 2(12). In both cases, the RoP do not provide for any right to complain and ask for redress.

57. It is difficult to understand how the silent presence of representatives of the industry concerned by the COP's work would prevent the COP making decisions it wants to take anyway. It has not been alleged that the conduct of representatives of the industry, as described in the Report of the Secretariat, was illegal; or that they had in some way behaved inappropriately; or that they in any way prevented the COP from functioning.

58. Whether the presence of silent industry representatives is sufficient to decide to hold all plenary sessions without them being able to listen to the debates, thus ignoring International Law, is therefore doubtful. It must, after all, be borne in mind that the tobacco industry is not illegal, any more than the sugar, fat, or salt industries, which arguably are contributing to unhealthy diets, and are even described by a senior United Nations official as *"a greater threat to health than tobacco".*[lvi] In that context, could one imagine that all meetings of the WHO (or of the EU[lvii] or of other IGOs), discussing how better to fight that threat, be also closed to representatives of these industries? One might argue that discriminations of this kind would appear to be illegal, not only in International Law, but also according to most national constitutions and laws of WHO Member States and FCTC Parties.

59. Should such behaviour by the COP be acceptable only because it benefits from immunity from jurisdiction? Other notable features of the RoP include:

    (a) Access of the public to underlying documents and working papers, which is restricted by the RoP, is even more difficult in practice due to the fact that the Secretariat does not give members of the public security badges to go near the meeting rooms where documents are available, thus there are no practical means to obtain them. Moreover, there is no right to complain and obtain rapid redress.

(b) There is a lack of clarity and transparency in the membership and proceedings of the Working Groups, despite a recent improvement (namely the publication of a list of such groups and their members).

(c) There are no public consultations and no assessments before taking decisions. Why would it be impossible to listen to all arguments and then decide, as do most IGOs?

(d) The accreditation of observers is not impartial due to the distortion of the meaning of Article 5.3 of the FCTC: thus, the examples of the refusal to admit Interpol,[lviii] the International Tobacco Growers Association and the World Farmers Organisation, as observers, are difficult to believe in the IGO which is working on tobacco control, but these are facts. One can observe that, at COP6 in 2014, out of 206 observers, about 80% were representing NGOs fighting for tobacco control.

60. The practices described above are signs of an organisation which runs the risk of isolating itself from the outside world:

(a) in which neither opposition nor nuance is accepted;

(b) in which consultation of bodies or persons not sharing the same opinion is not admitted; and

(c) where even accepting a public which might disagree in silence looks to be unbearable.

61. Similar observations have been made in other IGOs, for example in the book of Michael N. Barnett and Martha Finnemore: *"The Politics, Power, and Pathologies of International Organisations"*.[lix] The authors stress that an IGO may become too much insulated from the outside world, with the consequence that it receives insufficient or inadequate feedback, or suffers from the concentration within its ranks of people with the same professional training and experience (one might add: or the same values or opinions). Openness is the best and simplest way to solve that phenomenon.

62. It remains, in any case, that general Principles of International Law obliging IGOs to respect openness, transparency, the Right to Information, access to documents, *etc.* allow limitations and exceptions. However, limitations and exceptions should be limited and justified on a case-by-case basis. They should be pre-established in the procedural rules of each particular IGO. Decisions to use them should be submitted to possible complaints and redress.

A STEP TOWARDS GOOD GOVERNANCE: AMENDING THE RULES OF PROCEDURE

63. Given that it has been decided that COP7, which will meet in November 2016 in Noida, India will review the RoP, ANNEX 4 to this Report contains suggested amendments to the RoP concerning the Right to Information.

64. According to the author, the following elements would be the most particularly needed in the RoP:

(a) addition of a general rule on the principles of openness, transparency and the Right to Information, as well as on the duty of accountability, good governance and to consult widely outside of the organisation before preparing texts;

(b) establish clear rules on the principle that all sessions and meetings are public, and on possible but limited and justified exceptions;

(c) establish clear rules on the principle that all documents, on any media held by the COP, the Bureau or the Secretariat, shall be made public or given on simple request, subject to limited and justified exceptions;

(d) confirm the principle of impartiality of the COP, its Bureau and the Secretariat and of the responsibility of the Head of the Secretariat for the fair and impartial application of the RoP, including in the accreditation of observers;

(e) establish a right for State Parties, accredited observers, as well as for any natural or legal person, to complain to the Secretariat and to ask for rapid redress in case of a difficulty in the application of the RoP;

(f) establish an Ombudsman for Transparency, with guaranteed independence vis-à-vis the Secretariat; this person shall mandatorily be consulted by the COP, its Bureau or the Secretariat on any issue concerning openness, transparency and the right to information, regarding sessions, meetings, working of the plenary as well as subsidiary organs, access to documents and information, accreditation of observers, *etc.*; any complaint concerning one of these issues should be addressed to him/her for advice before a rapid decision made; his/her recommendations to be consultative, not compulsory, but made public;

(g) establish clear rules on decision-making: when is a *"consensus"* to be considered as not having be reached? what is the quorum for voting? who deals with the regularity of the voting operations?

(h) given the current culture of the COP, all decisions concerning transparency, openness, and the Right to Information should be regarded as substantive decisions;

(i) deletion of any reference in the RoP to Article 5.3 of the FCTC (and to Preambular paragraphs 17 and 18): their use in this context is a distortion of their formulation, aim and content; the actual scope and meaning of these provisions are directed at States in setting and implementing their public health policy and

in accordance with their domestic law; they do not aim at being and cannot be used as if they were a means to avoid openness and transparency in the working of the COP;

(j) establish adequate non-judicial remedies: introduce an obligation for the COP, its Bureau and Secretariat to consult the Ombudsman for Transparency on any issue or complaint concerning openness and transparency of the work of the COP or any issue regarding the right to be informed and access to information and especially to documents held by the COP, its Bureau or the Secretariat; and

(k) the RoP could also be completed by Rules on Regulation of Lobbying and Registration of Lobbyists, for example:

  (i) Rules which could be inspired by the non-legally binding *"10 principles on integrity"* adopted by the OECD in 2010,[lx] which could even provide for sanctions in the case of the violation of certain Rules by the lobbies (end of observership, prohibition of access to public sessions or meetings), subject to possible complaint and advice of the Ombudsman in charge of Transparency; or

  (ii) Rules which could be inspired by the Registration of Lobbyists adopted by the EU in 2014.[lxi]

Jean-Claude PIRIS

Bruxelles, 8 April 2016

ANNEX 1
CURRICULUM VITAE: JEAN-CLAUDE PIRIS

Currently:

- CEO, Piris Consulting SPRL (Consultancy in EU Law and Public International Law);
- Council Member, Gerson Lehrman Group;
- Member of the Audit Committee of the EU Council;
- Member of the Board of Trustees of the Academy of European Law, Trier;
- Member of the Advisory Board of the Centre for European Legal Studies, University of Cambridge;
- Member of the Governing Board of the European Institute for Public Administration, Maastricht;
- Member of the Scientific Board of the Robert Schuman Foundation, Paris;
- Member of the Scientific Board of the Egmont Institute (Royal Institute for International Relations), Brussels;
- Honorary French Conseiller d'Etat and Honorary EU Director General.

Previously:

Apart from his direct past responsibilities in the EU, the OECD and the UN, Mr Piris has also spoken at conferences, pleaded in the EU Court of Justice and written books and articles on issues concerning other IGOs, in particular: ASEAN, ECHR, Council of Europe, EEA, EFTA, WEU, Eurocontrol, ILO and WTO.

April 1988 – November 2010: Legal Counsel (Jurisconsult) of the European Council and Director General of the Legal Service of the Council of Ministers of the EU. At the same time:

- Legal Advisor to the Intergovernmental Conferences which negotiated and adopted the Treaties of Maastricht (1991-1992), Amsterdam (1996-1997), Nice (2000-2001), the failed Constitutional Treaty (Rome, 2004) and Lisbon (2007);
- Representative of the EU Council in a number of cases before the EU Court of Justice, including Opinions 1/91 and 1/92 (European Economic Agreement), 2/91 (International Labour Organisation), 2/92 (Organisation of Economic Cooperation and Development), 1/94 (General Agreement on Tariffs and Trade-World Trade Organisation), 2/94 (European Human Rights Convention); and

- *Ad interim*, Director General of the General Directorate of Justice and Home Affairs (1st July – 31 December 2004).

April 1985 – March 1988: Legal Counsel of the OECD and Director of the OECD Legal Service (Paris).

1983-1985: Member of the Conseil d'Etat; Legal Counsellor to the Directorate-General of Civil Aviation and alternate French Representative to the Council of the International Civil Aviation Organisation (Montreal).

1984-1985: Member of the Arbitration Tribunal to which was submitted a dispute between the international organisation Eurocontrol and the Kingdom of Belgium.

1979-1983: Diplomat, Legal Counsellor of the French Permanent Mission to the United Nations and Deputy French Representative to the United Nations Security Council; French Representative to the Legal Committee of the United Nations General Assembly (34th, 35th, 36th and 37th sessions) and to the Diplomatic Conference on Succession of States in respect of State Property, Archives and Debts (Vienna, 1983).

1976-1978: Deputy Secretary-General of the Conseil d'Etat; Secretary General of the National High Council for Youth, Sports and Leisure.

1972-1976: Judge in the Conseil d'Etat; Rapporteur of the National Committee for the Control of the Electoral Campaign for the Election of the President of the French Republic (1974); Rapporteur of the Committee Studying Adjustments to the Social Security System (1975).

1972, 1st June: Appointed Member of the Conseil d'Etat (France) (Honorary Conseiller d'Etat since 2004).

Education:

1970-1972: Graduate of the National School of Administration, Paris.

1968-1972: Law degree and Post Graduate Degree in Public Law (European Studies), Paris.

1964-1967: Graduate of the Institute of Political Studies, (International section), Bordeaux.

Decorations:

1995: Ridder af 1 grad Dannebrogorden (Denmark)

1997: Chevalier de la Légion d'Honneur (France)

1997: Commander in the Order of Isabel la Catolica (Spain)

2002: Grosse Goldene Ehrenzeichen mit dem Stern (Austria)

2010: Officier de la Légion d'Honneur (France)

2011: Commander in the Order of Orange-Nassau (Netherlands)

2012: Grand Cross in the Order of Knighthood of Henry the Navigator (Portugal)

2013: Grand Officier de l'Ordre de la Couronne (Belgium)

Selected books:

Two Chapters of *"Troubled Membership: Dealing with Secession from a Member State and Withdrawal from the EU"*, on *"Political and Legal Aspects of Recent Regional Secessionist Trends in some EU Member States"*, (ed. Carlos Closa), Cambridge University Press, to be published in 2016.

One Chapter of *"Teoria y Realidad Constitucional"*, n°57, pp 101-133: *"La Union Europea, Cataluna y Escocia - Cuestiones Juridicas sobre las recientes tendencias secesionistas en los Estados Miembros de la UE"*, to be published in June 2016 by Universidad Nacional de Educacion a Distancia, Madrid.

One Chapter of *"Britain Alone? The Implications and Consequences of United Kingdom Exit from the EU" (ed.* Patrick Birkinshaw and Andrea Biondi*),* author of the Chapter: *"Which Options Would be Available for the United Kingdom in the Case of a Withdrawal from the EU?*" pp 111-137, Wolters Kluwer International, The Netherlands, March 2016.

"Towards a Rules-Based Community: An ASEAN Legal Service", written with Professor Walter Woon, Cambridge University Press, 2015.

"The Future of Europe: Towards a Two-Speed EU?", Cambridge University Press, 2012; foreword by Professor Joseph H. H. Weiler.

"Il Trattato di Lisboa", Giuffre, Roma, 2012; prefazione dil Presidente de la Republica Giorgio Napolitano.

"The Lisbon Treaty: A Legal and Political Analysis", Cambridge University Press, 2010; foreword by Chancellor Angela Merkel.

"Il Processo di riforma dell'UE – Il trattato costituzionale nella prospettiva del trattato di riforma", I Quaderni del CIDE, Roma, 2007; prefazione dil Presidente dil Consiglio Giuliano Amato.

"Le traité constitutionnel pour l'Europe: une analyse juridique", Bruylant, Brussels, 2006; préface du Premier Ministre Jean-Claude Juncker.

"El tratado Constitucional para Europa: un análisis jurídico" Marcial Pons, Madrid, 2006; prólogo del Secretario de Estado Alberto Navarro.

"The Constitution for Europe: A Legal Analysis" Cambridge University Press, 2006.

ANNEX 2
SELECTED *OPINIO JURIS* OF INTERNATIONAL LAWYERS

Writings on the governance of IGOs have multiplied in the recent period. This phenomenon reflects the growing importance of international ccoperation in a more globalised world and the increasing role of IGOs in that context. Most of these writings give a critical description of the problems raised by the functioning of some IGOs. A number of studies first concentrated on the more important IGOs, either in the economic and financial sector – the World Bank, the International Monetary Fund and the World Trade Organisation – due to the fact that these IGOs take decisions having direct effects on the outside world, and the United Nations when playing a direct role on the ground (as peace keepers, for example).

Authors stress deficiencies in the governance of some IGOs. They stress also that their lack of accountability is difficult to redress, due to political reasons (the lack of democratic control) as well as legal reasons (immunity from jurisdiction). This abundant literature, written by international law specialists, academics and practitioners, emphasises three problems in particular, which might especially be observed in some IGOs on which their member States have conferred a competence, either to exercise operational powers of action, or to prepare the adoption of legally binding norms or decisions:

(a) a democratic deficit;

(b) a lack of accountability; and

(c) a lack of transparency and openness.

Most authors agree on the fact that the best means of addressing a lack of transparency and openness is to demand full compliance with the Right to Information, now regarded as a customary Principle of International Law. IGOs which are closed, which do not open their meetings to the public, which do not give access to their documents, should not be tolerated anymore.

Set out below is a short list of recent writings, the titles of which are telling:

2000: Paul Nelson, *"Transparency in IGOs: Testing the Strength of the Norm in Regional and Global Multilateral Development Banks"*, International Studies Association, Los Angeles;

2000: Ann Fiorini, *"The Politics of Transparency"*, International Studies Association, Los Angeles;

2000: Michael Zurn, *"Democratic Governance Beyond the Nation-State: The EU and other Institutions"*, European Institute of International Relations, 6: 183-221;

2001: Ngaire Woods and Amrita Narlikar, *"Governance and the Limits of Accountability: the WTO, the IMF, and the World Bank"*, International Social Science Journal, Vol. 5, issue 170, 569-583;

2001: Joseph Nye, *"Globalization's Democratic Deficit: How to Make International Institutions More Accountable"*, Foreign Affairs, 80:2-6;

2002: Harel Wellens, *"Remedies against International Organisations"* (CUP);

2002: Thomas Blanton, *"The International Movement for Freedom of Information"*, International Studies association, New Orleans;

2002: Jon C. Pevehouse, *"Democracy from the Outside-In? International Organizations and Democratization"*, International Organization, Vol.56, N.3, 515-549;

2003: Robert Keohane, *"Global Governance and Democratic Accountability ,* in *Taming Globalization: Frontiers of Governance"*, David Held and Mathias Koenig-Archibugi, Polity Press, Cambridge;

2003: Ngaire Woods, *"Holding Intergovernmental Institutions to Account"*, Ethics and International Affairs, 17(1): 69-80;

2005: Simon Burall and Caroline Neligan, *"The Accountability of International Organisations"*, Global Public Policy Institute, Research Paper Series N°2;

2006: Thomas D. Zweifel, *"International Organisations and Democracy: Accountability, Politics and Power"*, Lynne Rienner, London;

2007: Alexandru Grigorescu, *"Transparency of Intergovernmental Organizations: The Roles of Member States, International Bureaucracies and Nongovernmental Organizations"*, International Studies Quarterly, Blackwell, USA (2007) 51, 625-648;

2009: Tetsuo Sato, *"Legitimacy of International Organisations and their Decisions – Challenges that International Organisations face in the 21st Century"*, Hitotsubashi Journal of Law and Politics, 11-30, Hitotsubashi University;

2008: Bart Driessen, *"Transparency in EU Institutional Law: A Practitioner's Handbook"*, Cameron May, London;

2010: Beat Habegger, *"Democratic Accountability of International Organisations"*, Cooperation and Conflict, 45(2), 186-204;

2011: Randall W. Stone, *"Controlling Institutions: International Organisations and the Global Economy"*, CUP;

2013: Andrea Bianchi and Anne Peters, *"Transparency in International Law"*, CUP;

2013: Jonas Tallberg, T. Sommerer, T. Squatrito, C. Jonsson, *"The Opening Up of International Organizations: Transnational Access in Global Governance"*, CUP;

2015: Alexandru Grigorescu, *"Democratic Intergovernmental Organizations?"*, CUP;

2015: Margaret Karns, Karen Mingst, Kendell Stiles, *"International Organizations: The Politics and Processes of Global Governance"*, 3rd edition, Lynne Rienner, London;

2015: Brian Frederking and Paul Diehl, *"The Politics of Global Governance: International Organizations in an Interdependent World"*, Lynne Rienne, London; and

2016: Jonas Tallberg: *"Transparency and Openness"* in *"Oxford Handbook of International Organisations"*, (ed. J. Cogan and others), Oxford University Press, to be published in September 2016.

ANNEX 3

TWENTY ELEMENTS WHICH SHOULD BE INCORPORATED IN THE RULES OF PROCEDURE OF IGOS

1. A general rule on openness, transparency, Right to Information, duty of accountability, duty to consult largely before drafting legal texts.

2. Clear and precise rules on openness of sessions and meetings of plenaries, committees and working groups; exceptions should be limited and justified, if and when appropriate and in conformity with specific pre-established reasons; obligation of motivation.

3. Clear and precise rules on access to documents, and on possible limited and justified exceptions, if and when appropriate, and in conformity with specific pre-established rules; obligation of motivation.

4. In good time, advanced publication or dissemination to the public and interested persons of the agendas of meetings (Plenaries, Committees, Working Groups), as well as documents containing proposals to be submitted to a decision.

5. Clear and precise rules for the impartial accreditation of observers, without discrimination.

6. A general duty of objectivity and impartiality, interdiction of discrimination, legal guarantees for a fair and impartial application of the Rules.

7. Clarity and openness of the decision-making process and of the voting procedure; access of the public when legally binding decisions are to be adopted, publication of all votes (except on persons).

8. Openness of data, with guaranteed protections for private data and information subject to commercial or industrial secrecy or confidentiality.

9. The right to complain and to ask for redress for any decision, including on procedural matters; appropriate legal mechanisms guaranteeing the respect of procedures: scrutiny, monitoring, possibility to complain about a violation of the rules of procedure.

10. The establishment of an Ombudsman or an Inspector for Transparency, with guaranteed independence and mandatory consultation on any matter concerning openness, transparency and the Right to Information; recommendations not binding but to be made public.

11. Adequate non-judicial internal procedures for complaints and possible remedies: establish a right to seize the Secretariat and/or the Ombudsman for Transparency of a complaint about a lack of transparency or a refusal of access to information and documents, or about an interpretation or application of the rules of procedure regarded as questionable.

12. Due consideration of the possibility of establishing judicial means of control/complaint/redress.

13. Publication of the lists of members of working groups and deliberating bodies, as well as of their mandate, and declaration of interests.

14. Registration of lobbyists and regulation of their rights and duties, including possible sanctions according to an objective procedure duly made public.

15. Consultation and cooperation, with no discrimination, of all potentially affected people by decisions to be prepared, be they consumers, economic operators or other stakeholders; results to be published.

16. Impact assessment of economic and social consequences of decisions before their preparation and adoption; results to be published.

17. In some cases, encouraging member States to consult their Parliament before the taking of decisions having a legal effect, and allow a reasonable period of time to do it.

18. An obligation of concision, clarity, precision and motivation in the formulation of any decision having legal effects.

19. Full publication of the minutes and of the results of meetings having deliberated proposals of substantive decisions.

20. Assessing overall economic and social effects of the implementation of substantive legally binding decisions or instruments after a few years.

Specific to the ROP of FCTC COP: deletion of references to Article 5.3 of the FCTC (and of Preambular paragraphs 17 and 18), because their use in the context of the RoP is a distortion of their aim and content. These provisions are directed as States in setting and implementing their public health policy and in accordance with their domestic law; they cannot be used as a means to avoid openness and transparency in the COP.

ANNEX 4
SUGGESTED AMENDMENTS TO THE FCTC COP RULES OF PROCEDURE

Rule	Proposed Amendment	Derivation
2	Addition of a definition of "accredited observer" Amendment to definition of "public" sessions: such sessions to be held in public and webcast; "open" sessions renamed "restricted" sessions: such sessions to be open to the media and accredited observers, but not the public; "restricted" sessions renamed "secret" sessions.	The Rules of Procedure of the United Nations Framework Convention on Climate Change (the ***UNFCCC Rules***) See Report ANNEX 3, principles 2 and 5 UNFCCC Rules Report ANNEX 3, principle 2
2 bis*	A Transparency Ombudsman to be established; normal practice of the COP to be to meet in public; right of access to documents established; COP to maintain an open and transparent dialogue with NGOs and civil society. Exceptions must be limited and justified and submitted to the Transparency Ombudsman for advice. Advice non-obligatory but be made public.	Report ANNEX 3, principle 10
5	Accredited observers and the public to be informed of the dates and venue of a regular COP session at least 60 days in advance.	Report ANNEX 3, principle 4

Rule	Proposed Amendment	Derivation
8	Provisional agenda for regular sessions to be sent to accredited observers and made available to the public online at least 60 days in advance.	Food and Agriculture Organization of the United Nations, Conference of the Member Nations Rules (the ***CMN Rules***) ANNEX 3, principle 3
9	Any supplementary provisional agenda to be made available online to the Parties, accredited observers and the public.	In conformity with amended Rule 8 Report ANNEX 3, principle 3
10	Any provisional agenda to be examined in a public session of the COP; any updated provisional and supplementary provisional agendas to be made available online; no decisions may be taken on matters presented less than 48 hours before being discussed.	In conformity with amended Rules 8 and 9 Report ANNEX 3, principle 3
11	Any provisional agenda for an extraordinary session to be made available online to accredited observers and the public; no decisions may be taken on matters presented less than 48 hours before being discussed.	In conformity with amended Rules 8, 9 and 10 UNFCCC Rules Report ANNEX 3, principle 3
14	The Head of the Secretariat to maintain the Secretariat's impartiality and independence, to promote good governance and foster a culture of openness, transparency and professionalism.	CMN Rules *"Transparency and Integrity in Lobbying"* by the Organisation for Economic Cooperation and Development (the ***OECD***) Report ANNEX 3, principles 1, 6, 7, 15 and 18

Rule	Proposed Amendment	Derivation
15	The Secretariat to respect openness and transparency, the principle of the Right to Information, as well as impartiality and non-discrimination; distribute documents or make them public in accordance with the Rules; maintain sound recordings of each session; handle complaints pursuant to Rule 67.	UNFCCC Rules Report ANNEX 3, principles 1, 6, 7, 8, 15 and 18
18	Credentials of delegates and/or representatives and the names of alternates and advisers to be submitted to the Secretariat in advance of a session; the Secretariat to highlight any case where a credentials have not been presented correctly/on time.	CMN Rules The Rules of the World Trade Organisation (the ***WTO Rules***) Report ANNEX 3, principle 8
21	The Bureau to maintain impartiality and independence; to instruct the Secretariat to promote openness, transparency, dissemination of information, accountability, good governance and professionalism.	*"Transparency and Integrity in Lobbying"*, the OECD Report ANNEX 3, principles 1 and 6
24 ter	Any interested entity may apply for accredited observer status, as long as it formally accepts the principal objective of the FCTC .	UNFCCC Rules Report ANNEX 3, principle 5
24 quater	The regional coordinator to make working documents or proposals of the Bureau or the Parties available to the public, including through a website.	Report ANNEX 3, principles 2, 3, 4 and 8

Rule	Proposed Amendment	Derivation
25	The Secretariat to make information relating to the subsidiary bodies available to the public. Exceptions must be limited and justified and submitted to the Transparency Ombudsman for public advice.	Report ANNEX 3, principles 2, 4, 8, 10 and 13
26	The composition of all subsidiary bodies, and the identities of accredited observers in attendance, to be published on a website.	Report ANNEX 3, principles 2, 4, 8 and 13
27	Meetings of subsidiary bodies to be held in public; documents relating to their work to be made available to the public. Exceptions must be limited and justified and submitted to the Transparency Ombudsman for public advice.	Report ANNEX 3, principles 2, 3, 4, 8 and 13
30	Any interested entity may apply for accredited observer status, as long as it formally accepts the principal objective of the FCTC. Applications to be considered by the Secretariat in accordance with impartiality and non-discrimination, while respecting proportionality and balance between represented interests. Accredited observers may participate in public or restricted sessions of the COP and shall be entitled to receive all documents relevant to a session. They must agree to cooperate with the FCTC's principal objective and commit to acting in accordance with internationally accepted principles regulating lobbying.	UNFCCC Rules; WTO Rules; CMN Rules EU Transparency Register Report ANNEX 3, principles 5 and 13 *"Transparency and Integrity in Lobbying"*, the OECD

Rule	Proposed Amendment	Derivation
31	The Secretariat to highlight any conflicts of interest between parties and accredited observers; the COP to have the power to terminate accredited observer status according to a clear pre-established and public procedure. Removal of automatic accreditation for any organisation which participated in the INBs and removal of the obligation for COP to take into account Article 5.3 of the FCTC.	FAQs published by the Food and Agriculture Organization of the United Nations Report ANNEX 3, principles 5, 6 and 14
32	Sessions to be held in public, save in exceptional circumstances pursuant to a written request and a written decision, which shall be adjudicated in a public session of the COP, having taken into account the opinion of the Transparency Ombudsman. Decision to be regarded as a substantive matter. Removal of requirement to take account of Article 5.3. Subject to such decision, the Secretariat to make arrangements for access by the public, media and accredited observers.	The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Meeting of the Parties Rules of Procedure CMN Rules Report ANNEX 3, principles 1, 2 and 7
33	Copies of proposals to be made available to accredited observers and the public. Proposals made public less than 24 hours in advance can only be considered by COP on a decision taken in a public session, having taken into account the opinion of the Transparency Ombudsman. Such decision to be motivated and be regarded as a substantive matter.	Report ANNEX 3, principles 1, 2, 4, 7, 10, and 18

Rule	Proposed Amendment	Derivation
34	Two thirds quorum to apply for any decision to be taken by COP, including on procedural matters regarding transparency, openness and the Right to Information.	Report ANNEX 3, principle 7
50	All non-budgetary decisions to be taken by consensus in a public session. Consensus is considered as not have be reached where at least three Parties express a formal opposition. No decision may be made when the necessary quorum is not met. When consensus fails, the COP shall proceed to a public vote. Where a ¾ majority is required, a majority in number of the parties must be present for the vote to be legitimate. After having taken into account the opinion of the Transparency Ombudsman, the President shall rule by a motivated and written decision on whether a matter is procedural or substantive.	CMN Rules Report ANNEX 3, principles 7, 10 and 18
51	No voting by show of hands where a ¾ majority is required, where a roll-call shall be taken. Votes to be taken in public as a matter of normal practice. Exceptions to be decided by COP after having taken into account the opinion of the Transparency Ombudsman.	CMN Rules Report ANNEX 3, principles 7 and 10
56 bis*	Parties to be permitted to challenge the regularity of the results of taking of a decision. The President may decide to put the decision to a second vote.	CMN Rules Report ANNEX 3, principles 7, 9 and 11

Rule	Proposed Amendment	Derivation
56 ter*	An officer of the Bureau to be appointed to monitor the voting operations and ensure that all Rules concerning voting are properly implemented.	CMN Rules Report ANNEX 3, principle 7
60	When the Secretariat has full records of subsidiary body sessions, it should keep them and make them available to the public, subject to limited and justified exceptions to be decided by the COP, having taken into account the opinion of the Transparency Ombudsman .	Report ANNEX 3, principles 3, 8 and 10
61	Sound recordings to be kept according to UN practice and made available to the public. All existing recordings to be made public, subject to limited and justified exceptions to be decided by the COP, having taken into account the opinion of the Transparency Ombudsman .	UNFCCC Rules Report ANNEX 3, principles 3, 8, 10 and 19
63	Records of each session to be transmitted to participants and made available to the public as soon as possible thereafter. Records of secret meetings to be transmitted to participants only. May be made available to the public after a period of time to be decided by the COP, having taken into account the opinion of the Transparency Ombudsman .	Report ANNEX 3, principles 3, 8, 10 and 19

Rule	Proposed Amendment	Derivation
64	Verbatim records of public and restricted meetings and reports of all subsidiary bodies and other meetings to be published online, subject to limited and justified exceptions to be decided by the COP, having taken into account the opinion of the Transparency Ombudsman .	Report ANNEX 3, principles 3, 8, 10 and 19
65	Daily *Journal* also to be issued for the convenience of the public; the *Journal* to include summary accounts of public and restricted meetings of committees and subcommittees.	Report ANNEX 3, principles 3 and 8
66	Rules may only be amended in accordance with Rule 50. Such amendments to be treated as a substantive matter.	Report ANNEX 3, principles 6 and 7
67*	Parties, accredited observers and members of the public to be granted the right to complain to the Secretariat if they suffer a violation of the Rules of Procedure. Opinion of the Transparency Ombudsman to be requested.	Report ANNEX 3, principles 9, 10, 11 and 12

**New Rule*

[i]There are about 250 IGOs in the world.

[ii]2013: Anne Peters, in Andrea Biondi and Anne Peters (eds.): *"Transparency in International Law"* (Cambridge University Press: CUP), at page 557.

[iii]1999: *"Can International Organizations be Democratic? A Skeptic's View"*, by R.A. Dahl, in Shapiro and Hacker-Cordon (eds.): *"Democracy's Edges"* (CUP), at pages 19-36.

[iv]2013: Alexandru Grigorescu, *"International Organizations and their Bureaucratic Oversight Mechanisms: The Democratic Deficit, Accountability and Transparency"*, in *"Routledge Handbook of International Organization"*, edited by Bob Reinalda, Routledge, at page 179.

[v]2015: Alexandru Grigorescu,*"Democratic Intergovernmental Organizations?"*, (CUP), at page 7.

[vi]2005: Simon Burall, Caroline Neligan, *"The Accountability of International Organizations"*,, GPPi Research Paper No. 2, Berlin.

[vii]International Court of Justice, 3 June 1985, Case concerning the continental shelf (Libyan Arab Jamahiriya/Malta). Rec page 29, paragraph 27.

[viii]Resolution 217 A (III), 10th December 1948.

[ix]Rome, 4th November 1950.

[x]Resolution 2200A (XXI) of 16 December 1966 (entered into force in 1976).

[xi]Adopted 27 June 1981, 1520 UNTS 217.

[xii]Resolution 122, 28 November 2007 (www.achpr.org).

[xiii]Resolution 2514 (XXXIX 0/09) 4 June 2009.

[xiv]18 June 2009, CETS n°2005. Ten ratifications are needed for its entry into force. Eight have been deposited at the date of writing.

[xv]Resolution UNGA 2200 A (XXi) 16 December 1966.

[xvi]Human Rights Committee, General Comment N°34, CCPR/C/GC/34, 12 September 2011, paragraph 18.

[xvii]2013: Anne Peters in *"Transparency in International Law"* (CUP), at page 593.

[xviii]It is recognized in the Constitution of States, such as Mexico, Poland, Sweden, or South Africa.

[xix]2011: Roger Vleugels, *"Overview of all FOI Laws"*, 9 October 2011 (www.right2info.org). See also: 2013, Jonathan Klaaren *"The Human Right to Information and Transparency"*, in *"Transparency in International Law"* (CUP), at page 231.

[xx]Treaty establishing the European Coal and Steel Community, articles 5 and 15.

[xxi]ECSC Treaty, article 46.

[xxii]European Economic Community.

[xxiii]European Community.

[xxiv]EU Official Journal, C191/101.

[xxv]Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 *"regarding public access to European Parliament, Council and Commission documents"*, EU Official Journal, 31 May 2001, L145/43.

[xxvi]Treaty on European Union.

[xxvii]Treaty on the Functioning of the European Union.

[xxviii]Sweden and Turco v. EU Council, CJEU 1 July 2008, cases C-39/05 and C-52/04.

[xxix]EU Council v. Sophie In't Veld, CJEU 3 July 2014, case C-350/12.

[xxx]2016: Springer International Publishing, Switzerland, edited by Carl Baudenbacher, President of the European Free Trade Agreement (EFTA) Court.

[xxxi]2013: Anne Peters in *"Transparency in International Law"* (CUP), Chapter 20: "*Towards Transparency as a Global Norm"*, pp 534-607, at page 541.

[xxxii]2006: John M. Ackermann and Irina E. Sandoval-Ballesteros: *"The Global Explosion of Freedom of Information Laws"*, Administrative Law Review 58 (2006), 85-130.

[xxxiii]2015, December 17th, letter of the President of the Eurogroup of the EU, justifying the need of more transparency for the (informal) Eurogroup (Internet site of the EU Ombudsman).

[xxxiv]UN Framework Convention on Climate Change, 9 May 1992.

[xxxv]2013: Jutta Brunnée and Ellen Hey: "*Transparency and International Environmental Institutions",* chapter 2 of the book *"Transparency in International Law"* (CUP), pp 23-48. See also Chapter 3 of the same book: Jonas Ebbeson, which deals with *"international law on transparency in environmental matters for members of the public".*

[xxxvi]Council of Europe: Resolution 2001/6 on Access to Council of Europe Documents, June 2001. World Trade Organisation: Procedure for the Circulation and Derestriction of WTO Documents, Decision May 2002. Organization of American States: Executive Order n°12-02 May 2012, Appendix A on Access to Information Policy.

[xxxvii]An Access to Information Committee was established.

[xxxviii]2011: Henry G. Schermers and Niels M. Blokker, *"International Institutional Law"*, Martinus Nijhoff, 5th ed., at page 255.

[xxxix]Case Reyes v. Chile, judgment of 19 September 2006. IACrtHR, series C N°151.

[xl]2008, 1st July, Sweden and Turco v. EU Council.

[xli]ECtHR, 3rd April 2012, Gillberg v. Sweden, Grand Chamber, Application n° 41723/06, paragraph 93.

[xlii]2014, 3rd July, EU Council v. Sophie Int' Veld.

[xliii]Report of the International Law Association, *"The Accountability of International Organisations"*, 2004

[xliv]*"Opinion Re: The Framework Convention on Tobacco Control"*, 12 February 2014.

[xlv]Words between parenthesis added.

[xlvi]Emphasis added.

[xlvii]2015: Anne Peters, "*La transparence comme principe du droit international public"*, pp 171-185, in *"Le cosmopolitisme juridique"*, Editions Pédone, Paris.

[xlviii]2013: *"The Opening Up of International Organisations: Transnational Access in Global Governance"*, Jonas Tallberg, Thomas Sommerer, Theresa Squatrito, Christer Jönsson (CUP).

[xlix]Sir Franklin Berman, in his already quoted Opinion of 12 February 2014, has impeccably treated this point:

"*A final word (...) as to the applicability of these precepts to the subsidiary organs of the FCTC, the COP and the INB (Intergovernmental Negotiating Body), given that they are not, in a formal sense, international organisations in their own right. The question is recognized in the ILA Report, which draws attention to "anomalous cases in which intergovernmental Organisations do not possess a legal personality of their own in international law." It goes on however to say: "Since autonomous institutional arrangements established by treaty(treaty-organs) and entrusted with monitoring functions over the implementation of such treaties by the States parties to them generally have not been created as international legal persons, they are not covered by the present Report unless stated otherwise. However, treaty organs are usually closely linked to [international organisations]*

and their functioning has raised a number of accountability questions of a similar nature to those relating to (international organisations). This Report will therefore where appropriate make references to treaty organs....". (...) it is beyond argument that the more general propositions discussed in paragraphs 25-27 above apply naturally to organs like the COP and the INB, composed as they are of the collected representatives of the States Parties to the FCTC, and having functions that go beyond the mere monitoring of compliance: in the case of the COP, to take decisions to promote the effective implementation of the FCTC (Article 23.5), and in the case of the INB, to negotiate a Protocol setting out new obligations. As the ILA Report says, their functioning 'raises accountability questions of a similar nature to those relating to international organisations'. It is noteworthy in this connection that the COP Secretariat (paragraph 9 above), although notionally designated by the COP acting autonomously under Article 23.6 of the FCTC, which is also required to "make arrangements for its functioning," seems in practice merely to be a branch of the Secretariat of the WHO, with which it shares an address. Similarly, when (see paragraph 18 above) legal advice is required for the operation of these bodies, it is provided by the Legal Counsel to the WHO, acting apparently in that capacity. To judge from the way the FCTC is presented on the website and in publications of the WHO, it is regarded by the Organisation as a central part of core activity, and one can hardly imagine that the WHO would wish to hold the functioning of the FCTC to a lower standard than the operation of the WHO as such. Its status as a UN Specialized Agency gives rise to the additional expectation that the WHO would wish its own processes and those of its programme activities to conform to recognized international norms and standards. It is noteworthy in that, when the then Director-General of the WHO set in train the negotiating process for the FCTC, the first session of the negotiating body was preceded by a public hearing on the issues surrounding the negotiation "in order to provide a forum for the public health community, the tobacco industry and farmers' groups to present their case."

[l]The word *"meeting"* covers also *"sessions"* in this Report.

[li]2002: *"Remedies against International Organisations"*, Karel Wellens, (CUP), at pp 181-182.

[lii]2000: *"The World Bank Inspection Panel in Practice"*, Washington DC: Oxford University Press. The WB created in 2000 an Access to Information Committee, to which a requester for information may appeal a refusal of access. There is also a possibility for the WB to appeal from a decision by the Committee to an external Appeals Board. However, the Committee's refusals of public access are final.

[liii]Such as the UNDP (UN Development Program): there is a possibility of an internal review by the Legal Support Office and a further possibility of review by the Information Disclosure Oversight Panel (can make only recommendations). See www.undp.org, paragraphs15-17.

[liv]2002: *"Remedies against International Organisations"*, Karel Wellens, (CUP), at page 178.

[lv]*Report of the sixth session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control*, 13–18 October 2014

[lvi]*"UN says diet a greater threat to health than tobacco"*, Olivier De Schutter, the UN Special rapporteur on the right to food, EurActiv.com, 22nd May 2014.

[lvii]*"EU must regulate salt and fat content in foods, health expert warns"*, José Ramon Gonzales Juanatey, President of the Spanish Society of Cardiology, 4 September 2014, EurActiv. com.

See also the 2015 book *"Regulating Lifestyle Risks: The EU, Alcohol, Tobacco and Unhealthy Diets"*, edited by Alberto Alemano and Amandine Garde (CUP).

[lviii]The application of Interpol was rejected at COP 5 in 2012, and again at COP 6 in 2014.

[lix]1999: *"International Organizations"* 53, 4, Autumn 1999, 699-732 (The International Organisation Foundation and the Massachusetts Institute of Technology).

[lx] http://www.oecd.org/gov/ethics/oecdprinciplesfortransparencyandintegrityinlobbying.htm
[lxi] http://ec.europa.eu/transparencyregister/public/homePage.do