CALL FOR PAPERS

International Investment Law and NCD Prevention

Organisers: Law & NCD Unit, University of Liverpool

Dates: 10 and 11 May 2018

Venue: University of Liverpool London Campus, 33 Finsbury Square, London EC2A 1AG

Non-communicable diseases (NCDs) are responsible for almost 70% of all deaths worldwide. Almost three quarters of all NCD deaths, and 82% of the 16 million people who die prematurely, occur in low- and middle-income countries. NCDs have devastating consequences for individuals, families and communities; they threaten to overwhelm health systems; and they hinder development. Since the first UN High Level Meeting on NCDs in 2011, the international community has acknowledged the scope of the problem and undertaken to take coordinated and coherent action to reduce the burden of NCDs. In particular, the WHO Global Action Plan on the Prevention and Control of NCDs for 2013-2020 lays down the foundation for the adoption of effective strategies intended to reduce the availability, acceptability and affordability of tobacco products, alcoholic beverages and unhealthy food, which include the adoption of marketing restrictions, labelling rules and fiscal measures. More recently, states renewed their commitment to “ensure healthy lives and promote well-being for all at all ages” and “reduce premature deaths from NCDs by one-third by 2030” (Sustainable Development Goal 3). In 2018, the third UN High Level Meeting on NCDs will assess the progress that states have made towards their commitment to reduce the burden of NCDs.

Over the last thirty years, globalisation and economic liberalisation have greatly increased foreign direct investment in the tobacco, alcohol, and food industries. Foreign investors enjoy certain protections under international investment agreements (IIAs) which empower them to bring compensation claims against host states for any government measure that interferes with their investment. Thus, state efforts to reduce risk factors for NCDs and promote public health could give rise to expensive legal proceedings, as illustrated by recent claims challenging tobacco control legislation in Australia and Uruguay. The regulation of alcoholic beverages and unhealthy food could
face similar challenges under international investment law. This raises important and timely questions about how international investment law can affect state regulatory autonomy in designing and implementing measures for preventing NCDs.

The conference, organised by the Law & NCD Unit at the University of Liverpool, will explore the relationship between the NCD prevention policies and international investment law. It proposes to adopt an interdisciplinary viewpoint; we would particularly welcome contributions by lawyers and public health experts, as well as economists and specialists in trade and developments studies.

It is anticipated that the conference will cover the following questions:

- How do IIAs affect government choices in designing and implementing NCD prevention policies?
- What legitimate expectations of investors in the tobacco, alcohol, and food sector are/should be protected under IIAs?
- How can NCD prevention measures interfere with investors’ intellectually property rights?
- Can the ‘police power doctrine’ sufficiently protect the state’s right to regulate risk factors for NCDs?
- How can standards of reasonableness and proportionality be applied in balancing the interests of investors and public health objectives?
- What standard of review and degree of deference towards state regulatory measures should arbitral tribunals exercise?
- How should evidence be assessed in situations of scientific and causal uncertainties?
- What is the role and scope of public health exceptions in IIAs in preserving states’ regulatory power?
- Should governments consult industry stakeholders when designing policies for preventing NCDs?
- Is investor-state arbitration an appropriate forum for deciding challenges to NCD prevention measures?
- How can conflicting obligations from investment law and other legal disciplines, in particular international human rights law and public health law, be reconciled?
- Do regional investment treaties provide a better framework for protecting public health than bilateral investment treaties?
- How can foreign investment be utilised for financing NCD initiatives in developing countries?
- Should certain obligations relating to public health be placed on investors in future investment agreements?

If you are interested in presenting a paper at this conference, please submit an abstract of no more than 500 words and a short biography by 15th of March to ncdunit@liverpool.ac.uk. The conference budget will cover accommodation costs in London (where necessary) and/or part of the travel costs. This will be discussed with participants whose papers have been selected on an individual basis.