# *A Framework Convention on Alcohol Control: Getting Concrete about Its Contents*

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*This article proposes and discusses the text of a Framework Convention on Alcohol Control, which would serve public health and welfare interests. The history of alcohol's omission from current drug treaties is briefly discussed. The paper spells out what should be covered in the treaty, using text adapted primarily from the Framework Convention on Tobacco Control, but for the control of trade from the 1961 narcotic drugs treaty. While the draft provides for the treaty to be negotiated under the auspices of the World Health Organization, other auspices are possible. Excluding alcohol industry interests from the negotiation of the treaty is noted as an important precondition. The articles in the draft treaty and their purposes are briefly described, and the divergences from the tobacco treaty are described and justified. The text of the draft treaty is provided as Supplementary Material. Specification of concrete provisions in a draft convention points the way towards more effective global actions and agreements on alcohol control, whatever form they take.*

## I. Introduction

Alcoholic beverages have been prepared and consumed by humans for longer than recorded history,[1] but that drinking is often problematic has been recognised since ancient times.[2] While the production of alcoholic beverages was originally a cottage industry,[3] it has become increasingly industrialised and dominated by multinational firms, controlling and trading not only the actual product across national borders, but also dealing in international licenses, trademarks and other "intellectual property"

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[1] E Guerra-Doce, "The origins of inebriation: archaeological evidence of the consumption of fermented beverages and drugs in prehistoric Eurasia" (2015) 22 Journal of Archaeological Method and Theory 751.

[2] R Room and W Hall, "Frameworks for understanding drug use and societal responses" in A Ritter, T King and M Hamilton (eds), *Drug Use in Australian Society* (2nd edn, Sydney, Oxford University Press 2017) pp 69–83.

[3] R Room et al, *Alcohol in Developing Societies: A Public Health Approach* (Helsinki, Finnish Foundation for Alcohol Studies & Geneva, World Health Organization 2002) pp 11–12.

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concerning their product. Though a majority of alcohol is consumed in the continent in which it is produced, much of it is part of international trade in terms of its branding, licensing, production and distribution. In each of these aspects, it is potentially subject to international trade agreements, in which it is commonly treated as an ordinary product. The social and health harms from drinking are largely local, but the production and marketing is highly and increasingly internationalised.[4]

Most nations of the world have found it in their national interest to impose controls on the alcohol market at national or subnational levels.[5] In recent decades, the substantial health and social harms from alcohol have also received increasing attention internationally. Studies of the risk factors for the global burden of disease have consistently found alcohol to be in the top ten risk factors for disability and death.[6] Besides these harms primarily to the drinker, there are also many harms from drinking to others around the drinker, and more attention is now being paid to the substantial extent of these harms.[7] In the public health interest, the World Health Organization (WHO) is accelerating action on its Global Strategy to Reduce the Harmful Use of Alcohol (hereafter Global Strategy)[8] and recommends to Member States as priorities in the public health interest such measures as increased taxes to discourage overuse and limits on availability, marketing and promotion.[9] However, a WHO staff review of the first decade of the Global Strategy acknowledged that "there is no progress in reducing the total per-capita alcohol consumption in the world compared to 2010", and that, despite some improvements, alcohol policy development and implementation "are still far from accomplishing effective protection of populations from alcohol-related harm".[10]

Alcohol is thus a classic example of a commodity that is valued but causes substantial harm, mostly at the local level, which is produced, traded and promoted in an increasingly internationalised market. It is the only widely used and strongly psychoactive commodity that is not subject to a public health treaty.[11] While it will probably be harder to reach an

[4] D Jernigan and CS Ross, "The alcohol marketing landscape: alcohol industry size, structure, strategies, and public health responses" (2020) Supplement 19 Journal of Studies on Alcohol and Drugs 13–25.

[5] World Health Organization, *Global Status Report: Alcohol Policy* (Geneva, World Health Organization 2004), available at <https://apps.who.int/iris/bitstream/handle/10665/42801/9241580356.pdf>.

[6] GBD 2016 Alcohol Collaborators, "Alcohol use and burden for 195 countries and territories, 1990–2016: a systematic analysis for the Global Burden of Disease Study 2016" (2018) 392 The Lancet 1015; LS Flor and E Gakidou, "The burden of alcohol use: better data and strong policies towards a sustainable development" (2020) 5 The Lancet Public Health e10.

[7] K Karriker-Jaffe, R Room, N Giesbrecht and TK Greenfield, "Alcohol's harm to others: Opportunities and challenges in a public health framework" (2018) 79 Journal of Studies on Alcohol and Drugs 239; A-M Laslett, R Room, O Waleewong, O Stanesby and S Callinan (eds), *Alcohol's Harms to Others: A Cross-National Study* (Geneva, World Health Organization 2019), available at <https://apps.who.int/iris/handle/10665/329393>.

[8] World Health Organization, "WHO to accelerate action to reduce the harmful use of alcohol" (Geneva, World Health Organization 2020), available at <https://www.who.int/news-room/detail/28-03-2020-who-to-accelerate-action-to-reduce-the-harmful-use-of-alcohol>.

[9] World Health Organization, *Tackling NCDs: "Best buys" and other recommended interventions for the prevention and control of NCDs* (Geneva, World Health Organization 2017), available at <https://apps.who.int/iris/bitstream/handle/10665/259232/WHO-NMH-NVI-17.9-eng.pdf?sequence=1>.

[10] World Health Organization, "Implementation of the WHO Global Strategy to Reduce the Harmful Use of Alcohol since Its Endorsement, and the Way Forward". Discussion paper (Geneva, World Health Organization 2019), available at <https://www.who.int/docs/default-source/alcohol/2010-strategy/discussion-paper.pdf?sfvrsn=a171471c_2>.

[11] R Room and J Cisneros Örnberg, "The governance of addictions at the international level" in P Anderson, G Bühringer and J Colom (eds), *Reframing Addictions: Policies, Processes and Pressures* (Barcelona, ALICE-RAP

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international consensus on alcohol than on other psychoactive substances, the experience with the Framework Convention on Tobacco Control (FCTC)[12] suggests that simply the existence of such a binding international agreement is an important step forward: the existence of the FCTC is routinely recognised and cited in trade disputes about tobacco products, while citations of the WHO's Global Strategy on alcohol in the same circumstances are much rarer.[13] There is thus a strong argument for reaching international agreements on limits and controls on the alcohol market that protect national and subnational regulations for public health and are in the public interest, and that counter the efforts of industry interests to nullify national controls through trade agreements and disputes.

New efforts to establish global coordination on alcohol policy from a public health perspective have been underway since the early 2000s, including the WHO's establishment in 2006 of the Global Strategy.[14] As a part of these efforts, there have been a number of calls by scholars with interest in international alcohol policy for a Framework Convention on Alcohol Control (FCAC).[15]

But these calls have generally lacked detail on what such a treaty should include. This paper aims to fill this gap by setting forth considerations on what should be covered in the treaty and providing and discussing a draft text as a concrete model of what it might contain. The draft text (see Supplementary Material) adapts text from the existing international treaties on other psychoactive substances. Broadly, its provisions on the control of international trade in alcohol are based on articles in one of the three international drug conventions, while its provisions concerning control of the domestic market in a signatory country are based on articles in the FCTC. The paper concludes with a discussion of the processes by which such a treaty might be adopted and come into effect.

## II. Precedents and parallels for an alcohol treaty

There is a considerable history in the last 130 years of international agreements on controls of attractive but problematic commodities, and particularly for substances that, like alcohol, are psychoactive. The first such international agreement, indeed,

Ebook 2014), available at <http://www.alicerap.eu/resources/documents/doc_download/216-alice-rap-e-book-reframing-addictions-policies-processes-and-pressures.html>.

[12] World Health Organization, "WHO Framework Convention on Tobacco Control" (original 2003; Geneva, World Health Organization, Document Production Services 2005), available at <https://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=6A7F0F6DC80F791694FF87079CB23C5B?sequence=1>.

[13] P O'Brien, "Missing in Action: The *Global Strategy to Reduce the Harmful Use of Alcohol* and the WTO" (2020) European Journal of Risk Regulation doi:10.1017/err.2020.67.

[14] World Health Organization, "Global Strategy to Reduce the Harmful Use of Alcohol" (Geneva, World Health Organization 2010), available at <https://www.who.int/substance_abuse/msbalcstragegy.pdf>.

[15] Eg American Public Health Association, "A call for a framework convention on alcohol control". Policy Statement 200615 (Washington, DC, APHA 2006), available at <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/07/11/50/a-call-for-a-framework-convention-on-alcohol-control>; R Room, L Schmidt, J Rehm and P Mäkelä, "International regulation of alcohol" (2008) 337 British Medical Journal a2364; S Casswell and T Thamarangsi, "Reducing harm from alcohol: call to action" (2009) 373 The Lancet 2247; R Room, "Alcohol as a public health risk: new evidence demands a stronger global response" (2013) 2 International Journal of Alcohol and Drug Research 7; SLA Yeung and T Lam, "Unite for a Framework Convention for Alcohol Control" 393 The Lancet 1778.

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was about alcohol: European colonial powers agreed in the Brussels General Act of 1889–90 to limit commerce in "trade spirits" for native populations in a broad band of central Africa.[16] Though it was incorporated into the responsibilities of the League of Nations by a 1919 agreement, there was little effort to enforce the agreement after the 1930s, and it was eventually nullified by the end of the colonial era.

The early twentieth century saw the beginnings of what is now the global drug control system, with an initial international treaty to control the opium market agreed to in 1912 and coming into full effect as part of the agreements at the end of the First World War.[17] After the Second World War, responsibility for the drug treaties was assumed by the United Nations (UN). The current system, which by 1995 covered 282 substances,[18] includes three treaties, from 1961, 1971 and 1988, and operates under the auspices of the UN Office on Drugs and Crime. The treaties include provisions for additions to the list of psychoactive substances, which would logically apply both to alcohol and tobacco. While this was acknowledged in the official UN commentary on the 1971 treaty, the commentary adds that those negotiating the treaty "did not intend" to apply it to alcohol.[19] And when the issue has occasionally been raised in the WHO committee responsible for recommending additions to the list of substances covered by the treaties, further discussion of this inconvenient suggestion has been quickly and indefinitely deferred.[20]

As public health concerns about tobacco as a freely promoted commodity increased in recent decades, a new agreement was finally reached under WHO auspices for international control of the market in tobacco: the FCTC,[21] adopted by the World Health Assembly in 2003 and entering into effect in 2005. The designation of "framework convention" was adopted early in thinking about the treaty to indicate a minimum aim of agreement on a framework of principles to which more specific protocols could later be added.[22] But in the end, the treaty did include agreement on concrete steps, so that the "framework" designation is somewhat misleading.

The tobacco convention states clearly that its object is "to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke" (Article 3), but it takes a public health-orientated control approach rather than the prohibitive approach of the drug conventions concerning any non-medical use. The tobacco convention thus established a precedent for negotiating a treaty on a problematic psychoactive substance on a global basis and under the auspices of the WHO, and

[16] K Bruun, L Pan and I Rexed, *The Gentlemen's Club: International Control of Drugs and Alcohol* (Chicago, IL, University of Chicago Press 1975) pp 165–68.

[17] ibid, pp 11–13, 19.

[18] I Bayer and H Ghodse, "Evolution of international drug control, 1945–1995" (1999) 51 Bulletin on Narcotics 1.

[19] A Lande, "Commentary on the Convention on Psychotropic Substances". Document E/CN.7/589 (New York: United Nations 1976) pp 47–48.

[20] R Room, "Drug legalization and public health: general issues, and the case of cannabis" in H Pickard and S Ahmed (eds), *The Routledge Handbook of Philosophy and Science of Addiction* (New York, Routledge 2018) pp 518–30.

[21] World Health Organization, supra, note 12.

[22] TAL Taylor and R Roemer, "International strategy for tobacco control". WHO/PSA/96.6 (Geneva, Programme on Substance Abuse, World Health Organization 1996), available at <https://apps.who.int/iris/bitstream/handle/10665/61186/WHO_PSA_96.6.pdf>.

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proposals for a treaty on alcohol have generally assumed that it would be negotiated under the auspices of WHO. But that is not the only option. For instance, the 2006 Convention on the Rights of Persons with Disabilities was negotiated and comes under the jurisdiction of the UN's Department of Economic and Social Affairs,[23] in line with preferences of some advocacy groups for disability rights being dealt with under a social rather than a medical model.[24] For another example, the 2005 Convention against Doping in Sport, which includes coverage of some psychoactive substances, was sponsored by the UN Education, Scientific and Cultural Organization (UNESCO).[25] Or the treaty might be negotiated under the auspices of a regional international body, but be opened also to countries elsewhere for signature. Thus, the first international treaty on doping in sport[26] was negotiated in 1989 under the auspices of a regional intergovernmental body, the Council of Europe, but it was an "open" convention, meaning it could be and was also joined by countries outside of Europe.[27] While WHO is the most obvious auspice for negotiating an international convention on alcohol control, it is not the only option, and the FCTC is not the only precedent and potential model for an alcohol convention.

## III. Industry influence in treaty negotiation and implementation

A major issue to be addressed concerning any alcohol treaty is the role of the industry in policy decisions about its product. In public health policymaking on a global level, the tobacco industry is now in a unique position, along with the arms industry: as stated in §44 of WHO's Framework of Engagement with Non-State Actors, "WHO does not engage with the tobacco industry or non-State actors that work to further the interests of the tobacco industry".[28] This position implements for WHO's own work a strong version of the General Obligation that states what those who are party to the FCTC have agreed to: "In setting and implementing their public health policies with respect to tobacco control, parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law" (§5.3 of the FCTC[29]).

The position has been characterised as "tobacco exceptionalism",[30] since the rules on consultation and presence at the table at WHO and in other public health policy situations

[23] DESA, "Convention on the Rights of Persons with Disabilities (CRPD)" (New York, Department of Economic and Social Affairs, United Nations 2020), available at <https://www.un.org/development/desa/disabilities>.

[24] R Room, "International control of alcohol: alternative paths forward" (2006) 25 Drug and Alcohol Review 581.

[25] B Houlihan, "Achieving compliance in international anti-doping policy: an analysis of the 2009 World Anti-Doping Code" (2014) 17 Sport Management Review 265.

[26] Sport Conventions Division, "For a clean and healthy sport: the Anti-Doping Convention" (Strasbourg, Council of Europe, n.d.), available at <https://rm.coe.int/for-a-clean-and-healthy-sport-the-anti-doping-convention/16807314b5>.

[27] Council of Europe, "Details of Treaty No. 135: Anti-Doping" (Strasbourg, Treaty Office, Council of Europe 2020), available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/135>; R Room, B Fischer, W Hall, S Lenton and P Reuter, *Cannabis Policy: Moving beyond Stalemate* (Oxford, etc., Oxford University Press 2010) p 141.

[28] World Health Assembly, "Annex: Framework of Engagement with Non-State Actors", Annex to WHA Resolution 69.10, 28 May 2016, pp 4–19, available at https://www.who.int/about/collaborations/non-state-actors/A69_R10-FENSA-en.pdf>.

[29] World Health Organization, supra, note 12.

[30] J McCambridge and S Morris, "Comparing alcohol with tobacco indicates that it is time to move beyond tobacco exceptionalism" (2019) 29 European Journal of Public Health 200.

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are generally less stringent for alcohol and other commercial products with significant public health harms. Yet it has been cogently argued that the similarities in market structure and in political strategies between alcohol and tobacco industry interests "raise important questions about the appropriateness of current forms of engagement between policy-makers and the alcohol industry".[31] Parallel strategies have been found in the alcohol and tobacco industries' use of "informal channels of corporate influence on global health policymaking".[32] Reviewing the literature on alcohol industry influence on policymaking, McCambridge et al[33] found consistent evidence that "alcohol industry interests are involved in policymaking strategically to advance [their] commercial interest", including efforts to influence the framing of issues, the use of multiple organisational forms and the pursuit of long-term relationship-building with key decision-makers. While building in protection for public health interests from inappropriate commercial influence is an issue for consideration in the substance of an alcohol treaty, it also needs to be addressed and dealt with in the treaty preparation and negotiation process.

## IV. The parts of the treaty and their functions

A proposed full text for the treaty can be found in the Supplementary Material for this paper, and this discussion refers to that text. The proposed treaty's structure follows the general structure of the FCTC, being divided into eleven parts and a preamble. The parts include: an introduction; a set of statements of the objective, of guiding principles and of general obligations; a set of nine articles dealing with measures relating to the reduction of demand for alcohol; a set of three articles relating to the reduction of supply; an article on protection of the environment; an article on questions related to liability; a part with three articles on scientific and technical cooperation and reporting of information; a part with four articles on institutional arrangements and financial resources; an article on settlement of disputes; a part on amending and adding annexes to the convention; and a final part with nine articles concerning such matters as the adoption process, adding protocols (further provisions) to the treaty, reservations by parties to the treaty and withdrawal from it.

The different parts of the treaty are designed to serve different functions. The Preamble states the reasoning behind the consensus on joint action that the treaty represents. A public health-orientated alcohol convention would need to start from and express an international consensus that, in view of the serious adverse effects of alcohol use on public health and welfare, there is a need for substantial and continuing intergovernmental agreement and action. Elements in this consensus are commonly spelled out in some detail in Preambles to conventions, as well as in the convention's

[31] B Hawkins, C Holden, J Eckhardt and K Lee, "Reassessing policy paradigms: a comparison of the global tobacco and alcohol industries" (2018) 13 Global Public Health 1, 13.

[32] E Suzuki and S Moon, "Informal channels of corporate influence on global health policymaking" in N Kenworthy and K Lee (eds), *Case Studies on Corporations and Global Health Governance: Impacts, Influence and Accountability* (Lanham, MD, Rowman and Littlefield 2018) pp 73–88.

[33] J McCambridge, M Mialon and B Hawkins B, "Alcohol industry involvement in policymaking: a systematic review" (2018) 113 Addiction 1571.

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provisions. Preamble statements in treaties offer guidance on the intent behind specific provisions in the body of the treaty and are often cited in international tribunal or court decisions interpreting a specific provision of a treaty.

## 1. Introduction

Apart from specifying what is included in the meaning of key terms used in the body of the treaty (Article 1), the introductory part situates the treaty with respect to national laws and to other bilateral or multinational agreements that may related to it (Article 2), and it states that the treaty does not hinder such laws and agreements, provided they are compatible with it.

## 2. Objectives, Guiding principles and General obligations

Part II of the treaty puts in more concrete terms than the Preamble what has been agreed upon as the frame of shared understanding between the parties on the principles and practices that the nations agree to in their implementation of the treaty. Article 3, on the treaty's Objective, states the intention that the treaty will provide a framework for measures to be implemented at international and national levels that would support national and subnational regulation of alcohol production, distribution, sale and use so as to minimise health and social harms from use. The Guiding principles (Article 4) set out what the parties agree will be each country's general commitments, such as to international cooperation and to the involvement of civil society, in implementing the treaty. The General obligations (Article 5) commit the parties to the treaty to finance and form a national focal point responsible for planning and action and to adopt and implement legislation in accordance with the treaty. In addition, parties to the treaty commit to cooperate with and contribute to the financing of intergovernmental organisations in the implementation of the treaty.

## 3. Measures to control the alcohol market and promotion and for public education and training

The nine Articles in Part III of the treaty are its heart in terms of the commitment to implement a set of public health strategies for controlling levels of alcohol consumption and reducing levels of alcohol-related harm. It should be noted that, although the treaty would represent a binding agreement, what is agreed to in this part is mostly about intentions, structures and reports of activities, with very little mention of specific provisions or measures of compliance and success. As with the tobacco treaty, what looks like a binding agreement that could be enforced by international jurisprudence is in fact mostly an agreement on principles and intentions. Article 6 commits parties to the treaty to taking account of public health objectives "as appropriate" in setting tax and price policies on alcoholic beverages, and Article 7 extends this general commitment to "non-price measures" for controlling the demand for alcoholic beverages. Article 8 requires government agencies be established to regulate the production and sale of alcoholic products, and

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that persons or enterprises that trade in alcoholic beverages or provide places for their consumption be licensed by the agencies, under conditions specified by and enforced under the licence. However, there is no specification in the article of what the conditions on the licences should be. Article 9 includes some more specific provisions for preventing sales of alcoholic beverages to "minors", with a recommendation that the minimum age for such sales be eighteen. It also includes a couple of more general measures that facilitate controlling sales to minors, such as prohibiting vending machines for alcohol products.

Articles 10 and 11 primarily apply to the production and import levels of the alcohol industry, regulating the contents of alcohol products and disclosures about them (Article 10) and their packaging and labelling (Article 11). The draft treaty is fairly specific about such issues as the size and rotation of warning labels, reflecting national experiences with both tobacco and alcohol warning labels, but it is not specific about the content of the labels, other than that information on the ingredients and percentage ethanol content of the product should be listed. Article 13, on advertising, promotion and sponsorship, will probably also apply mostly to production, import and distribution levels of the alcohol industry. It calls for a "comprehensive ban of all alcohol advertising, promotion and sponsorship" by five years after accession to the treaty, but it provides various escape clauses for such a ban and specifies some minimum conditions in lieu of such a ban. The adoption and implementation of this article are likely to be the most fiercely resisted by alcohol industry interests.

The remaining two articles in this part are concerned with the other conventional parts of alcohol policy. Parties are committed by Article 12 to raising public awareness of risks to the drinker and to others from alcohol consumption, and to using alcohol control measures for public health, and they are committed by Article 14 to developing and implementing educational programmes in community institutions and treatment facilities for alcohol use disorders. There is no specification of the scope and little specification of the content of such programmes.

## 4. Control of international trade

Part IV contains two articles on the control of international trade in alcohol: Article 15 on controlling the legal trade and suppressing illegal trade in alcohol and Article 16 on the control of the export and import of alcoholic beverages. As noted below, Article 16's provisions on international trade are modelled on provisions in the 1961 Single Convention on Narcotic Drugs rather than on the tobacco convention. Unlike the FCTC, Article 16 also includes a provision (Section 16) that it takes precedence over free trade and equal-treatment provisions of the international trade agreements under the auspices of the World Trade Organization (WTO) and other trade agreements, since it has proven difficult to get the system of trade and investment agreements, disputes and adjudications to apply the public health exception in free-trade agreements to alcoholic beverages.[34] The two following articles (17 and 18) offer

[34] D Gleeson and R Labonté, *Trade Agreements and Public Health: A Primer for Health Policy Makers, Researchers and Advocates* (Singapore, etc., Palgrave Macmillan 2020) p 83.

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general support for alternatives to working on alcohol production and sales and for the protection of the environment and health. The next part (Article 19) discusses the consideration and mutual support concerning legal liability for damages due to the adverse effects of alcohol.

### 5. Institutions of the treaty and cooperation of Parties

Seven articles (20–26) are concerned with scientific and technical cooperation and with institutional and financial arrangements for the operation of the treaty. Articles 20 and 21 commit parties to undertaking national research on alcohol control, to developing and cooperating in the surveillance of alcohol production, consumption and problems, to developing knowledge about alcohol laws and regulations and their enforcement and to reporting and exchanging information on these matters and on the implementation of the treaty. Accordingly, Article 22 commits the Parties to cooperating directly or through international bodies in scientific, technical and legal fields on matters relevant to the treaty. Article 23 establishes a Conference of Parties to meet regularly as a governing body of the treaty's implementation, with Article 25 spelling out its competence to work with other international and regional bodies. Article 24 provides for a permanent Secretariat to coordinate meetings and work under the treaty and in cooperation with other international and regional bodies. Article 26, on financial resources for the operations under the treaty, recognises the importance of the issue and suggests ways and means of obtaining resources, but it makes the Conference of Parties responsible for finding financial mechanisms for implementing the treaty and meeting its objectives.

### 6. Procedures for treaty adoption and amendment

The remaining articles of the treaty cover issues applicable to all treaties: means of settling disputes between parties concerning the treaty (Article 27); procedures for amending and adding annexes or protocols to the treaty (Articles 28, 29 and 33); rights of Parties to vote in matters under the treaty and to make reservations or withdraw from it (Articles 30–32); and specification of the authenticity of texts in the main UN languages and of the means of the treaty's ratification and entry into force (Articles 34–38).

## V. Divergences from the provisions of the tobacco convention

The main differences from the FCTC in the structure and ordering of the proposed alcohol treaty result from the differences in content, discussed below, so that the proposed alcohol treaty includes Article 8 (on the regulation of production and sale) and Article 16, with provisions relating to international trade, resulting in moving around (from Article 16 to Article 9) and combining (Articles 9 and 10 into Article 10) a few of the FCTC articles. The proposed alcohol treaty does not contain an equivalent of the FCTC's Article 8 (Protection from exposure to tobacco smoke); alcohol is involved in considerably

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more harm to others than tobacco,[35] but harms from exposure to a chemical by-product of use are not prominent among them. Harms to others in which drinking is a factor are major considerations in regulation of the conditions of sale (Article 8 in the proposed treaty) and of international trade (Article 16), provisions that are not included in the FCTC. It should be acknowledged that there are major areas of national and local law in most countries deterring or discouraging alcohol's role in such harms – for instance, on drink driving, intoxicated violence and intoxicated caring for children and others – which are not dealt with in the proposed treaty. If it is felt that international agreement and action is needed in these areas, they could be added to the treaty during its negotiation or afterwards by protocol, or dealt with separately in other international agreements.

Substantively, the model of the FCTC has not been followed in several respects. A major area of weakness in the tobacco treaty is its measures to monitor and control the international legal trade. Apparently, it was felt at the time of the treaty's negotiation that anything that could be agreed upon in this regard would be a net loss to public health, so the topic was omitted. For tobacco, the issue made its way back onto the agenda in terms of the inadequacy of the Convention in controlling illegal trade. The result was the adoption in November 2012 of a forty-seven-article Protocol to Eliminate Illicit Trade in Tobacco Products,[36] which modifies the convention and went into effect on 25 September 2018. In seeking to eliminate the illicit market, the protocol's provisions also cover the licit market, providing for detailed licensing and control of all entities involved in that market in order to deter and trace diversion to the illicit market. Building on the national systems, a global tracking and tracing regime for legal tobacco supplies, from the tobacco plant to the retail sale of the manufactured product, is to be established by September 2023.

This highly ambitious system has not yet been set up at the international level, so evidence is lacking on its functionality. In the meantime, tobacco industry interests have taken elaborate steps to gain effective control of any global "track and trace" surveillance system.[37] The provisions for control of the legal trade in alcohol in the draft alcohol treaty (Article 16) are modelled instead on the less ambitious system for legal international trade required by the 1961 Single Convention on Narcotic Drugs – provisions that reflected a half-century of experience already at that time in regulating at the international level the legal trade in opiates and other medications. A related difference from the tobacco treaty is the recognition in the Objectives (Article 3) that, while alcoholic beverages are legal commodities in a majority of countries, in some they are not; following the principles of comity in international law,[38] the Objectives commit states not to undercut other countries' domestic legislation by failing to respect an import ban where sale or use is prohibited.

[35] DJ Nutt, LA King and LD Phillips, "Drug harms in the UK: a multicriteria decision analysis" (2010) 376 The Lancet 1558.

[36] World Health Organization, "Protocol to Eliminate Illicit Trade in Tobacco Products" (Geneva, World Health Organization 2013), available at <https://www.who.int/fctc/protocol/illicit_trade/protocol-publication/en/>.

[37] AB Gilmore, AW Gallagher and A Rowell, "Tobacco industry's elaborate attempts to control a global track and trace system and fundamentally undermine the Illicit Trade Protocol" (2019) 28 Tobacco Control 127.

[38] JR Paul, "The transformation of international comity" (2008) 71 Law & Contemporary Problems 19.

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The model of the FCTC has also been substantially changed in two other respects. First, while tobacco products are derived from a single plant species, alcoholic beverages draw on a variety of plants as raw materials, and most of these plants have other uses, often as foodstuffs. The distinguishing characteristic of alcoholic beverages is therefore not their raw material, but rather the fermentation or distillation process. The draft alcohol convention provisions reflect this in their wording, such as in the definition of "alcohol products" in Article 1 and in the omission of an equivalent to Article 4, Section 6 of the tobacco convention on transitional assistance to tobacco growers and workers. There are agricultural plants where a major part of their production is used in preparing alcoholic beverages – notably, grapes and hops – and an equivalent of the FCTC's provision on transitional assistance to growers and workers in these crops could be added to the alcohol treaty if provision beyond its Article 18 is needed.

Second, the draft also includes provisions concerning control of on-premise sales and consumption (Article 8, Section 5), in recognition of the long history of state alcohol control and regulation not only of the production and sale of bottles and other containers of alcoholic beverages, but also of serving and on-premise drinking of alcoholic beverages in such places as restaurants, taverns and clubs (eg see Nicholls[39]). On the other hand, the draft alcohol convention omits some wording from the FCTC that arose from the particularly iniquitous and duplicitous history of tobacco industry interference in science and policy and the understandable special emphasis in the FCTC on tobacco smoke and emissions.

## VI. Adopting an alcohol treaty

The draft alcohol convention follows the FCTC precedent in stating that it will enter into effect on the ninetieth day following the deposit of the instrument of ratification of the fortieth party to the treaty. As noted, this resulted in the FCTC entering into effect two years after it was adopted.

It is potentially a long path between the conceptual exercise of spelling out provisions for an international agreement and such an agreement being actually agreed upon and ratified. But it is time to move beyond abstract calls for a framework convention and onto considering and debating concrete provisions and actions. The specification here of potential concrete provisions in a draft alcohol control convention, it is hoped, will point the way towards effective global agreements and action on alcohol control.

**Supplementary material.** To view supplementary material for this article, please visit https://doi.org/10.1017/err.2020.73.

[39] J Nicholls, *The Politics of Alcohol: A History of the Drink Question in England* (Manchester & New York, Manchester University Press 2009).

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