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Taking Steps Toward Coherent Global Governance of Alcohol: The Challenge and Opportunity of Managing Conflict of Interest

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ABSTRACT. The World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) is increasingly seen as offering a template for advancing effective global health governance in other spheres, notably including alcohol. In thinking about lessons that can be transferred, there is a simplifying tendency to overstate the FCTC’s transformative impacts and, more problematically, to neglect the significance of evolving policies, norms, and practices that collectively enabled its development. This can lead to underestimating the extent to which the FCTC’s evolution was protracted and contested, while issues that need to be addressed as prerequisites for an international legal instrument for alcohol are viewed as only feasible after its achievement. This problem is examined here with reference to managing conflict of interest with unhealthy commodity industries. Although protection of policymaking from tobacco industry interference under FCTC Article 5.3 has been hugely significant, it was feasible because of wide-ranging developments in practices across diverse governance actors at national and international levels. This article illustrates the legitimating and enabling significance to the FCTC of measures including emergent internal practices within the WHO, the World Bank’s decision to withdraw funding from tobacco projects, steps by host governments to restrict support for the overseas expansion of tobacco transnationals, and changes in civil society and researcher engagement with industry actors. Recent developments in seeking to manage conflicts of interest in nutrition policy in the WHO and at national levels highlight the scope for progress in the absence of an international legal instrument. The article concludes by considering implications of these varying innovations for the future development of effective global governance for alcohol. (J. Stud. Alcohol Drugs, 82, 000–000, 2021)
IN 2014, SCOTT RATZEN, then vice president of Global Corporate Affairs at AB InBev, conducted a series of interviews with Derek Yach, a former Executive Director for Noncommunicable Diseases and Mental Health of the World Health Organization (WHO), whose subsequent career entailed key roles with Pepsi, AB InBev, and the tobacco industry–funded Foundation for a Smoke-Free World (van der Eijk et al., 2019). Recognized as one of the key architects of the WHO Framework Convention on Tobacco Control (FCTC), the first international public health treaty negotiated under the auspices of the WHO, Yach was asked to reflect on lessons from the development of the FCTC for the future of alcohol policy and the alcohol industry.

Yach was very clear on how the tobacco control agenda within the WHO had been kick-started: “We had to take a fairly simple approach which really could be summarized by saying ‘Demonize the enemy’” (Yach, 2014), and he emphasized the legitimating role of disclosures from internal tobacco industry documents in undertaking the ambitious regulatory agenda that led to the FCTC. Epidemiological evidence of the massive health impacts of smoking and an international evidence base regarding the effectiveness of specific interventions were necessary but insufficient to initiate such a process. Rather, Yach emphasized the importance of understanding governance dynamics within the WHO and the gradually increasing effectiveness of the tobacco control movement in working within this context, before speculating on implications for the future of alcohol policy:

[T]he way the rule making process works at WHO is that it needs to be built incrementally on increasing evidence and evidence of action. So the first resolution on tobacco was in 1970. For the last thirty years there was a resolution every two or three years that added in advertising, and taxation, and sports sponsorship, eventually leading
to a framework convention thirty, thirty five years later. I mention that because that
process builds confidence among ministers of health; it builds an NGO network who start
understanding the value of intervention. In the case of alcohol, we actually have had very
few resolutions. We haven’t had too many success stories. It’s not like the case in
tobacco (Yach, 2014).

In the context of ongoing discussions around developing a legal instrument to advance
alcohol governance such as a framework convention, with increased engagement by civil society
and academics and with enthusiasm among a number of low- and middle-income countries
( WHO, 2020b), there is a need for the debate to progress from why issues focused on the
desirability of an alcohol convention to the political questions of how it can be advanced.

Detailed critical reflection on the implications of the tobacco experience is one way of
advancing this, although there are also important developments in other congruent policy
spheres, notably nutrition. In thinking about whether and how to strategically advance the case
for an international legal instrument focused on alcohol, there are several reasons such reflection
is particularly timely. These include the following:

• A risk of failing to recognize the protracted, complex, and precarious nature of the
FCTC process: it can seem comparatively straightforward in retrospect, and the extent to which
it was driven by high-level politics neglected in some accounts that emphasize evidence over
politics.

• In thinking about securing space on the global policy agenda, there is a risk that (in
Kingdon’s terminology), advocates searching for a policy window rely too much on the scale of
the health problem to make their case and pay insufficient attention to the need to nurture
enabling developments in the policy and political streams (Kingdon, 1984).
• Underpinning this, in reflecting on the FCTC experience there is a danger of confusing effects with causes. Without questioning the significance and impact of the FCTC, it is important to recognize the extent to which it represents a codification of existing best practices that had been established over many years across multiple countries. And even those elements of the FCTC that are seen as genuinely novel and innovative have their roots in emergent policies, practices, and (crucially) norms.

• Disappointment that the WHO Executive Board decision on accelerating action on alcohol in January 2020 (WHO, 2020a) did not identify steps toward a framework convention (Casswell & Rehm, 2020) should not lead to a fatalistic assumption that the path to such an instrument has been foreclosed. “An international instrument such as guidelines, a declaration, or an international convention”

In this context it is worth reflecting on Yach’s comments on the slow-building momentum behind the FCTC, particularly via successive resolutions at the World Health Assembly (WHA) over decades. The formal start of the fragmented and tortuous process that led to the FCTC is represented by the WHA resolution passed in May 1995. In establishing an international strategy for tobacco control, it requested a report “on the feasibility of developing an international instrument such as guidelines, a declaration, or an international convention on tobacco control to be adopted by the United Nations, taking into account existing trade and other conventions and treaties” (WHA, 1995). In retrospect, it is worth noting the extent to which political recognition of the need to manage potential tensions with trade agreements framed the process from the outset. But what is particularly striking is the broad range of options envisaged in the resolution, with no explicit reference to the specific category of a framework convention.
The path to the resolution had itself been complex. Academics had contributed to this process, including via Allyn Taylor and Ruth Roemer applying analyses of WHO’s unexercised constitutional authority to develop international health law to the case of tobacco (Mackay, 2003; Roemer et al., 2005). And the role of civil society was crucial from the inception of the FCTC; advocates promoted the concept within the WHO and the United Nations (UN) Conference on Trade and Development, then the UN focal point for tobacco issues, and the call for a convention received important international support via a resolution of the ninth World Conference on Tobacco or Health in Paris in 1994.

Alongside pursuing any such opportunities for progress toward an international instrument in alcohol governance, it is important also to identify intermediate objectives that are valuable in themselves and can serve to enable subsequent larger innovations. In looking at the tobacco experience, it is therefore important to identify a series of key steps across multiple spheres that served as political prerequisites in enabling the FCTC process. One of the features of the FCTC that is most attractive to health advocates in alcohol, nutrition, and other policy spheres is its focus on regulating the tobacco industry, specifically via measures in Article 5.3 to protect the policy process from industry influence (Moodie et al., 2013). In this context it is important to demystify Article 5.3 and to recognize both that there are other routes toward developing comparable instruments and that there are major steps still to take in alcohol policy that could advance the feasibility of a convention centered on the regulation of a transnational industry. Hence, this article will also examine the WHO approach to the prevention and management of conflicts of interest in nutrition policy at the country level (WHO, 2017a, 2017b), drawing on the author’s involvement in the process of developing this tool and in testing
and adapting it with governments and civil society in Brazil and for small island states in the Caribbean.

The FCTC, Article 5.3, and the role of conflict of interest in tobacco control

The significance of the global challenge posed by the tobacco industry to the development of effective policy is reflected in the FCTC being the “the only international Convention to explicitly address the potential for corporate undermining of (its) objectives”” (WHO, 2012; p.31). The threat of tobacco industry interference is explicitly addressed in the WHO FCTC Article 5.3:

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 (WHO, 2003; p.7).

The implications of this broad commitment are developed, and were endorsed by member states at the FCTC Conference of Parties (COP), in a wide-ranging set of guidelines to support Parties to implement Article 5.3 (Box 1). Importantly, these guidelines are explicitly based on the principle of “a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests” (FCTC Conference of Parties, 2008; p.2).

[COMP: BOX 1 about here]

The guidelines illustrate the distinctive model of health governance that characterizes tobacco control (Collin, 2012). For example, the requirement to reject partnerships runs counter to the general practice of partnership building across health and social policy at national and international levels, and which continues to characterize alcohol policy development in many contexts (Collin & Casswell, 2016). Yet although Article 5.3 is often depicted as the cornerstone
of the FCTC, it is striking to note both its strikingly limited implementation to date and the comparatively modest nature of the specific measures provided for in the guidelines.

The Impact Assessment Expert Group commissioned to review progress over the first decade of the FCTC highlighted that no country has fully implemented Article 5.3 guidelines and that industry interference remains the principal barrier to effective implementation of the Convention (Chung-Hall et al., 2019). Although most parties are now engaged in implementing Article 5.3 to some extent, initiatives tend to be piecemeal, selective of recommendations and struggle to engage government departments beyond health (Fooks et al., 2017; Gilmore et al., 2015). The evidence available regarding policymakers’ awareness indicates very limited knowledge among officials and policymakers in the European Union (EU; Hawkins & Holden, 2018), whereas work in Zambia suggests limited recognition of the FCTC in ministries beyond health (Lencucha et al., 2016).

Recognition of the modest nature of commitments under Article 5.3 is useful in checking unrealistic ambitions about what such provisions may achieve and in demonstrating that its importance lies more in the codification of norms and practices that had been developing within tobacco control over many years. Crucially, this suggests that equivalents for alcohol policy may not require the negotiation of a convention (and could in turn facilitate future negotiations and development of an effective treaty-based instrument).

Important precedents and enablers for Article 5.3 included the WHO’s recognition of a fundamental conflict of interest with the tobacco industry and the development of internal practices around monitoring and declarations of interest by staff and consultants, changing practices among civil society organizations and among research funders that denormalized interactions or relationships with the tobacco industry, the World Bank’s decision to withdraw
funding from tobacco projects, and steps by host governments to restrict support for the overseas expansion of tobacco transnationals.

To take the latter two as examples, the 1999 World Bank report *Curbing the Epidemic: Governments and the Economics of Tobacco Control* became perhaps the single most important piece of research in enabling the successful negotiation of the FCTC (Mamudu et al., 2008). It powerfully depicted comprehensive tobacco control measures as providing a virtuous circle of enhancing revenue and advancing public health, and it effectively addressed key political barriers to the FCTC (Jha & Chaloupka, 1999). But this report itself reflected the fact that World Bank policy on tobacco had long incorporated health concerns, having committed in 1991 to working with countries to reduce tobacco use and refusing to lend for activities supporting tobacco production, processing, or marketing (Collin & Lee, 2009).

The United States and United Kingdom, hosts to leading tobacco transnationals, also developed mechanisms intended to curb the extent to which their governments were seen to support the global expansion of the tobacco epidemic. Following intense criticisms of the role of the U.S. Trade Representative in forcing open previously closed markets across Asia, Congress attached an amendment to its appropriations for the Departments of Commerce, Justice, and State, known as the “Doggett Amendment”; this was later extended to all U.S. executive agencies (Bollyky, 2011) and consolidated in subsequent legislation:

Sec. 509. None of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type. (U.S. Omnibus Appropriations Act, 2014).
In a similar vein, one of the more durable outcomes of the Labour government’s short-lived commitment to an ethical foreign policy in the United Kingdom was guidance issued to overseas diplomatic posts in 1999. This required that U.K. embassies and other overseas posts “must no longer directly promote products containing tobacco,” “should not inter alia be associated in any way with the promotion of the tobacco industry,” and “stressed the Government’s wish to encourage and support the efforts of other countries to strengthen their own tobacco control strategies” (Lords Hansard, 1999).

It would be wrong to overstate the significance of such guidance, which have often been more notable for (albeit useful in exposing) failures in their observance (Dowlard, 2017). Similarly, it is undoubtedly the case that the existence of Article 5.3 has, at least in some contexts, buttressed the development of practices to restrict industry interference, including in developing a much more comprehensive approach to guidance for U.K. embassies in 2013 (Department of Health, Foreign and Commonwealth Office, 2014). But the key point here is that Article 5.3, and the FCTC more broadly, was enabled by multiple actors seeking to regulate interactions with the tobacco industry in distinctive ways; “business as usual” was already seen as inappropriate and unviable in many policy, research, and advocacy contexts.

Preventing and managing conflicts of interest in nutrition policy?

Whereas the FCTC and Article 5.3 are predicated on the concept of a fundamental conflict of interest between the tobacco industry and public health, the development of a WHO tool to manage conflicts of interest in nutrition policy has occurred in a much more complex and ambiguous policy context. The WHO comprehensive implementation plan on maternal, infant, and young child nutrition, endorsed at the WHA in 2012, calls on member states to “establish a dialogue with relevant national and international parties and form alliances and partnerships to
expand nutrition actions with the establishment of adequate mechanisms to safeguard against potential conflicts of interest” (WHO, 2014a). In doing so, it situates nutrition policy on what has emerged as a central fault line in contemporary health governance (Ralston et al., 2020), and one that has clear relevance to alcohol policy (Collin et al., 2017). On the one hand, the plan epitomizes a wide-ranging commitment to public–private partnerships and multistakeholder platforms as key mechanisms for the pursuit of health and development goals (Bäckstrand & Kylsäter, 2014), highlighted in the call for revitalized and enhanced partnerships in Sustainable Development Goal (SDG) 17. On the other hand, it recognizes the scope for divergence between public health goals and interests of key economic actors, particularly pronounced in the case of ultraprocessed food and drink producers (Moodie et al., 2013).

In seeking to reconcile these contrasting imperatives in nutrition policy, a WHA resolution in 2014 requested the development of “risk assessment, disclosure and management tools to safeguard against possible conflicts of interest in policy development and implementation of nutrition programmes” (WHO, 2014b). A process entailing a technical consultation and informal working groups led to the WHO publishing a “Draft approach on the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level” in 2017 (WHO, 2017b). This draft approach centers on a risk assessment tool offering a six-step methodology (Box 2) intended to support member states in considering their engagement with nonstate actors in the area of nutrition (WHO, 2017a). While addressing the potential risks of conflicts with a broad range of actors, the methodology incorporates a particular focus on commercial interests and assessing alignment with health goals.

[COMP: Box 2 about here]
Submissions to a consultation on the draft tool captures the high level of contestation around the tool. On one side of the debate was a grouping consisting of all commercial sector actors, the United States, and the Secretariat of Scaling Up Nutrition, a global public–private partnership, all of whom used the consultation to undertake an extensive critique of the tool. These submissions were strongly critical of the draft tool as exclusionary and distrustful in its attention to the commercial sector; consistently rejected any comparison between the food and tobacco industries or scope for lesson learning from practice in tobacco control; viewed the tool’s recommendations as inconsistent with principles of good governance, and particularly with the SDG agenda; and presented conflict of interest as being both compatible with extensive policy engagement with industry and as already being satisfactorily addressed by existing practices (Ralston et al., 2020).

In contrast, the vast majority of submissions from across member states, civil society organizations, UN agencies, and academia were strongly supportive of the intent of the tool, although they did raise several concerns regarding its complexity, limited conceptualization of conflict of interest, and a perceived presumption in favor of engagement.

Subsequent efforts to test the tool led by the Pan American Health Organization and supported by civil society groups in Brazil and the Caribbean have generally been encouraging in their appraisal of its potential to more effectively manage conflicts of interest in nutrition policy. A workshop in Brazil highlighted the need for a quick and concise scoping tool, which was subsequently used as the basis for real-world application within Brazil’s Ministry of Health by five teams from Food and Nutrition Coordination (Ministry of Health of Brazil, 2019). In the very different context of the Caribbean, attention focused on the distinctive challenges of managing conflicts of interest in small island states (Collin & Hill, 2019). Some Caribbean states
in the region are engaged in highly contentious partnerships with the private sector, and the tool was widely seen as offering scope to begin to navigate the complex politics of such multistakeholder platforms more effectively (Healthy Caribbean Coalition, 2019).

Similar approaches are being used in other jurisdictions in seeking to manage interactions with the food industry, particularly in the context of developing more ambitious approaches to tackling obesity. Health Canada, for example, made a deliberate and public decision not to meet with members of the food and beverage industry in developing its innovative new Food Guide, restricting contact to public consultation. The process outlined is notable for the high levels of transparency to which Health Canada committed to “ensure that the development of dietary guidance is free from conflict of interest” (Health Canada, 2021).

*Toward effective global governance for alcohol: The catalytic role of managing conflict of interest*

This overview of the development of varying approaches to the management of conflicts of interest across tobacco control and nutrition policy suggests significant implications and lessons for the development of effective global governance for alcohol, and specifically with reference to a proposed framework convention.

Somewhat counterintuitively, the FCTC experience highlights the extent to which effective forms of governance (at least partially, in emergent forms, and among some key actors) are likely to constitute a prerequisite for a framework convention on alcohol as much as they do the desired outcome of a convention. The FCTC has undoubtedly served to stimulate innovation and acceleration in uptake of effective tobacco control measures, but these have largely built on norms, practices, and policies that were becoming well established in key areas of tobacco control policy. Although not typically thought of as an intervention, the management of conflict...
of interest may well be the most important within the toolbox of approaches to comprehensive tobacco control outlined in the FCTC. But it is not the case that public health recognizes the distinctive threat of the tobacco industry because of the FCTC; rather, the FCTC exists because of recognition of the distinctive threat to public health posed by the tobacco industry.

Alongside, and promoting, a push toward an international legal instrument focused on alcohol, moves to replicate the preparatory steps by which diverse actors changed their terms of engagement with the tobacco industry could be invaluable. Obtaining the active support of the World Bank for international tobacco control, for example, was crucial to making the development case for an FCTC. Some 30 years after such commitments in tobacco control, it really ought to be feasible to obtain the World Bank’s agreement to work with countries to reduce alcohol-related harm and to refuse to lend for activities supporting alcohol production or marketing. Securing equivalents to the U.K. government’s 1999 decision not to actively promote the interests of tobacco companies overseas could also have major implications for how the global expansion of alcohol transnationals is understood and promoted. The 1999 U.K. guidance echoed international commitments in its national tobacco control strategy (Lords Hansard, 1999), and encouraging national alcohol plans to be more effectively situated within the context of a shifting global epidemic would again be helpful in reframing key aspects of policy debates.

The WHO approach to regulating conflicts of interest in nutrition policy is by no means unproblematic, but it is perhaps of more immediate strategic use as a comparator than the tobacco case. Alcohol advocates are familiar with the frustrations of “tobacco exceptionalism” (Collin, 2012) and with the reluctance of policymakers and officials to recognize the policy implications of structural and strategic similarities between alcohol and tobacco producers as vectors of industrial epidemics (Jahiel & Babor, 2007). But if the WHO can recognize the need
to manage conflicts of interest in nutrition policy, it surely ought to be feasible to generate support to develop equivalent tools for alcohol. Such an instrument could do much to dispel the haze of confusion, often industry-generated, that surrounds references in the WHO global strategy to encouraging economic operators to “consider effective ways to prevent and reduce harmful use of alcohol within their core roles” (WHO, 2010). This confusion continues to define inadequate attention to alcohol and conflicts of interest in key UN documents, including in the twin lost opportunities in 2018 of both the Time to Deliver report and the UN political declaration. Although recently updated guidance for the WHO staff in managing any interactions with the alcohol industry is welcome, there is a clear and pressing need to provide member states with more detailed support. Analysis of the strengths and weaknesses of the WHO nutrition tool has much to offer in developing a tool for managing conflicts of interest in alcohol policy as a key step toward more effective global governance.

The path toward a framework convention or comparable international legal instrument for alcohol remains uncertain. Although disappointment with the lack of momentum toward such a mechanism is understandable (Casswell & Rehm, 2020), it is important to recognize that the path toward an FCTC was similarly winding. The trajectory implied by the WHA resolution from which it eventually derived was notably vague, and progress required sustained lobbying and coordinated strategic action. In alcohol, the development of a WHO action plan to support effective implementation of the Global Strategy may offer an important, if indirect, opportunity. Proposed actions for the WHO Secretariat provide for scope to “seek international solutions within the WHO’s mandate” (WHO, 2020c), offering a basis on which alcohol policy advocates can build. While acknowledging the need for alcohol policies “to be protected from interference by commercial interests,” current proposals fail to address how this will be operationalized and
remain worryingly ambiguous in their articulation of roles for economic operators (WHO, 2020c). The argument of this article is that, although routes toward the goal of an international legal instrument for alcohol policy remain to be explored, the development of more effective mechanisms to manage conflicts of interest and limit interactions with the alcohol industry are prerequisites for meaningful progress.

References


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Box 1. Recommendations for addressing tobacco industry interference in public health policies (Article 5.3 implementation guidelines)

1. Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.
2. Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.
3. Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.
4. Avoid conflicts of interest for government officials and employees.
5. Require that information provided by the tobacco industry be transparent and accurate.
6. Denormalize and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility.”
7. Do not give preferential treatment to the tobacco industry.
8. Treat State-owned tobacco industry in the same way as any other tobacco industry.

Box 2. Six-step decision-making tree for managing engagement with non-state actors in nutrition policy

**Step 1. Rationale for engagement:** Is the public health nutrition goal clear?

**Step 2. Profiling, due diligence, and risk assessment:** What are the risk profiles of the external actor and of the engagement?

**Step 3. Balancing risks and benefits:** What is the outcome of the risk and benefit analysis of the engagement?

**Step 4. Risk management:** Have the risks been appropriately managed across mitigation measures, terms of reference and work plan?

**Step 5. Monitoring and evaluation and accountability:** Has the engagement advanced public health nutrition goals? Should the engagement continue or stop?

**Step 6. Transparency and communication:** Have details of the engagement activities and outcomes been communicated to relevant audiences?