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HEALTHY IS AS HEALTHY DOES: WHERE WILL A VOLUNTARY CODE GET US ON INTERNATIONAL ALCOHOL CONTROL? Commentary on Taylor and Dhillon

Robin Room

With the coming into force of the Framework Convention on Tobacco Control (FCTC), alcohol became the main widely-used psychoactive substance not covered by an international agreement on controlling the market. While tobacco has its own treaty, other such substances are covered by three international drug control treaties. Yet there is a good argument that it is for alcohol that the strongest case for such international controls exists. This is not only because of the burden on the drinking individual, reflected in the high rank of alcohol among risk factors in the global burden of disease. It is also because of the harms from drinking to others, which about equal the harms to the drinker [1]. In all rankings of the intrinsic harmfulness of substances, alcohol comes high [2]. When the harm to others is taken into account, it ranks highest [3].

Alcohol was actually the first psychoactive substance to be covered by an international agreement [4], as one by-product of substantial social movements for a century and more against its harm to health and welfare. But in the long 20th-century reaction against this history, alcohol and tobacco were conceptually separated out from the “drugs” causing “addiction” [5], and so not covered by the drug control treaties. However, alcohol clearly qualifies for control under the definitions and provisions in the treaties, and I am presently putting it forward for pre-review to the body charged with scheduling under the treaties, the WHO’s Expert Committee on Drug Dependence. It is hard to imagine that it will not qualify on scientific grounds. If it is scheduled under the treaties, there will be no need for a separate convention for alcohol, although the treaties themselves will need some adjustment.

Why does alcohol need to be covered by an international treaty, whether the drug treaties or a new one? There are two minimum reasons. First, to provide a line of defense against WTO and bilateral trade treaties, whether in law or (as for the FCTC) less formally. The argument is often made that this is not needed, because trade treaties provide for exceptions for public health. But this has proved in practice to be illusory, given the way the game works for trade treaties. So we presently have the spectacle of the Australian government, under legal attack itself from the tobacco industry for its plain packaging initiative, arguing with other alcohol-exporting countries that Thailand’s initiative to require warning labels on alcohol bottles would be a restraint of trade, and that Thailand could use some other means for its public health ends [6]. Second, to establish a principle of comity for alcohol controls – that governments should not act in ways which undermine the domestic regulations of another country.

Beyond these, there are the reasons Taylor and Dhillon [7] mention for negotiating international instruments, such as establishing an international consensus, backed up with “legal processes and discourse”, and “raising global awareness and stimulating international commitment

and national action". Soft law under some circumstances indeed can serve such public health purposes at least as well as hard law. Indeed, a good deal of the FCTC is actually soft law, with phrases that encourage ("as appropriate") rather than require. In my view, the international drug treaties would be fitter for purpose if some of their language was converted from hard to soft law.

However, the question is what kind of soft law and in what context? Taylor and Dhillon propose to include alcohol in a non-binding code of practice on marketing to children, along with "unhealthy foods and beverages". They see this as a first step "leading eventually to a comprehensive binding treaty". Without having seen their forthcoming article, to me this does not sound like a step towards something stronger. Rather, it sounds like something the alcohol industry is quite familiar with. From the industry's perspective, such nonbinding codes of practice are a prophylactic measure, intended both to build goodwill and to hold off anything more effective – in which they often succeed. In country after country in recent years, organisations funded by the alcohol industry have set up self-regulating advertising codes and bodies, focusing on the content of advertisements in metered media and avoiding such issues as the overall volume of promotion. Examples abound, such as one on 19 EU countries [8], of self-congratulatory monitoring reports. But public health-oriented investigations often find a rather different story [e.g., 9]. As a report on adherence to codes in EU countries summarises, the code organisations "in general report positive experiences with self-regulation, whereas governments, scientists and NGOs report that national regulations are not particularly effective in protecting young people" [10, p. 17]. Meanwhile, reviews of the effectiveness of alcohol policy measures question whether even substantial efforts to control alcohol advertising content, as opposed to the volume or timing, have any measurable effect [11]. At a minimum, any effort to set in place an international nonbinding code of practice on marketing alcohol needs to take account of the extensive experience in many countries in this area, and its sobering lessons.

Any proposal including alcohol in a more general code needs to take its specificities into account. Differences between alcoholic beverages and foodstuffs include differing structures of the industries. As Brownell and Warner point out [12], the three largest food companies, Nestlé, Unilever and Kraft, produce both "good" and "bad" foods from the point of view of public health. This means that a substantial portion of the food producers have something to gain to balance what they may lose from cooperation with public health. Big alcohol, however, is more like big tobacco, in that it produces primarily one range of products, where public health and commercial interests are largely opposed. Effective cooperation is not in its shareholders' interest.

The general question Taylor and Dhillon raise is how to accomplish substantial social change in a global perspective. Whether to go about such change on a step-by-step basis or to aim for something more radical is a recurrent debate in history. Taylor and Dhillon worry whether aiming for the radical will mean nothing is accomplished. The alternative worry is that baby steps of reform, even if they accomplish anything, often serve to stave off more worthwhile changes. There is no general answer to either of these worries. Rather, there is a need to analyse both sides of the question in concrete terms. What would be the most desirable international alcohol control regime, whether or not we can see how to get there? Are particular baby steps likely to have any effect? Will they move us in the right direction, and are they likely to be an end-point, or to lead on to further steps?

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ROBIN ROOM

Centre for Alcohol Policy Research, Turning Point Alcohol & Drug Centre, Fitzroy, Victoria, Australia
School of Population Health, University of Melbourne
Centre for Social Research on Alcohol & Drugs, Stockholm University

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