Washington International Law Journal

Volume 24 | Number 3

6-1-2015

Take Me to Your Liter: Politics, Power, and Public-Private Partnerships with the Sugar-Sweetened Beverage Industry in the Post-2015 Development Agenda

Craig W. Moscetti

Allyn L. Taylor

TAKE ME TO YOUR LITER: POLITICS, POWER AND PUBLIC-PRIVATE PARTNERSHIPS WITH THE SUGAR-SWEETENED BEVERAGE INDUSTRY IN THE POST-2015 DEVELOPMENT AGENDA

Craig W. Moscetti[†] & Allyn L. Taylor[†]

Abstract: Today, non-communicable diseases ("NCDs") are widely recognized as a global public health crisis and a foreign policy priority. The international community was slow to identify and respond to the crisis of NCDs in the later part of the twentieth century. However, in 2011 the United Nations High Level Meeting on NCDs recognized NCDs as one of the greatest threats to health and development in the twenty-first century, and a major topic for the post-2015 development agenda. Notably, many experts, national governments, and global leaders have rallied for an inclusive, "whole-of-government" and "whole-of-society" approach, situating public-private partnerships ("PPPs") with some of the vectors of NCDs, in particular the food and beverage industries, as the necessary strategy to address the issue.

Although PPPs in global health are not a new phenomenon, PPPs with the food and beverage industries require a greater level of scrutiny and caution. The same level of vigilance should be applied when considering partnerships with the sugar-sweetened beverage (SSB) industry, as in the tobacco and firearms industries, which produce goods known to be antithetical to public health. We examine how major SSB companies, such as the Coca-Cola Company and PepsiCo, have been viewed as legitimate actors and partners, despite employing coercive tactics similar to the tobacco industry. We question their assumed full participation and cooperation in global NCD initiatives and call for greater transparency in global NCD partnership development and policy dialogue, particularly in the implementation of the post-2015 development agenda.

I. INTRODUCTION

Non-communicable diseases ("NCDs") are a global public health crisis. The 2011 United Nations High Level Meeting on NCDs recognized NCDs as a critical threat to health and development in the twenty-first century.[1] NCDs—heart disease, diabetes, cancer, and chronic lung

[†] Pediatric Health Program Manager, Allina Health (Minneapolis, MN). The opinions expressed in this paper are those of the author and do not necessarily reflect the views of Allina Health. The author would like to thank Professor Taylor for her encouragement to pursue this project and invaluable insights to during this collaboration.

[†] J.D., L.L.M., J.S.D. Visiting Professor of Law at Georgetown University Law Center. Adjunct Professor of international relations at the John Hopkins University Paul H. Nitze School of Advanced International Studies.

[1] U.N. General Assembly, *Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases; Draft resolution submitted by the President of the General Assembly*, U.N. Doc. A/66/L.1 (Sept. 16, 2011), *available at* http://www.un.org/ga/search/view_doc.asp?symbol=A/66/L.1 [hereinafter *Political Declaration*].

disease—and their shared modifiable risk factors—unhealthy diets, physical inactivity, alcohol abuse and tobacco use—caused almost 70 percent of the world's 56 million deaths in 2012; roughly six times as many deaths as HIV/AIDS, malaria, and tuberculosis combined.[2] Nearly three-quarters of these, and most premature deaths, occur in low- and middle-income countries. Moreover, the burden of disease is expected to grow over the coming decades and will represent some 70 percent of global deaths in 2030.[3]

Risk factors associated with NCDs are also on the rise in many low- and middle-income countries. A "nutrition transition" has been well documented globally, with more populations consuming larger amounts of sugar, animal meat, and vegetable oils.[4] Diets are also becoming increasingly energy-dense, with declining quality because of greater consumption of unhealthy foods, such as sugar-sweetened beverages ("SSBs").[5] For example, in the United States, SSBs are the primary source of added sugar.[6] They also accounted for at least one-fifth of the weight gain in the US population between 1977 and 2007.[7] SSB consumption impairs glucose and lipid metabolism, increases inflammation, and significantly increases the risk of obesity, type 2 diabetes, and other chronic diseases.[8] As such, SSB consumption accelerates cellular aging and shortens life, with every eight-ounce serving of SSB consumed each day being equivalent to about 1.9 additional years of aging.[9] Connections between

---

[2] *Global Status Report on Noncommunicable Diseases 2014: Attaining the nine global noncommunicable diseases targets; a shared responsibility*, WORLD HEALTH ORG. 9 (2014), http://apps.who.int/iris/bitstream/10665/148114/1/9789241564854_eng.pdf?ua=1.

[3] Colin D. Mathers & Dejan Loncar,. *Projections of Global Mortality and Burden of Disease from 2002 to 2030*, 3 PLOS MED. 2011, 2020-21 (2006).

[4] *See* Barry M Popkin, *Global nutrition dynamics: the world is shifting rapidly toward a diet linked with noncommunicable disease*, 84(2) AM. J. CLINICAL NUTRITION 289 (2006).

[5] *See* Fumiaki Imamura, *Dietary quality among men and women in 187 countries in 1990 and 2010: a systematic assessment*, 3 LANCET GLOBAL HEALTH, e132, 2015, at 2.

[6] *See Accelerating Progress in Obesity Prevention*, INST. OF MED. OF THE NAT'L ACADEMIES (May 2012), http:// www.iom.edu/Reports/2012/Accelerating-Progressin-Obesity-Prevention/~/media/Files/Report%20 Files/2012/APOP/IOM_FoodDrink_brief_v4.pdf.

[7] *See* Cynthia L. Ogden & Margaret D. Carroll et al., *Prevalence of High Body Mass Index in US Children and Adolescents, 2007-2008*, 303 J. AM. MED. ASS'N 242 (2010).

[8] *See* Frank B. Hu & Vasanti S. Malik, *Sugar-sweetened beverages and risk of obesity and type 2 diabetes: Epidemiological evidence*, 100 PHYSIOLOGY & BEHAV. 47 (2010); Isabelle Aeberli et al., *Low to moderate sugar-sweetened beverage consumption impairs glucose and lipid metabolism and promotes inflammation in healthy young men: a randomized controlled trial*, 94 AM. J. CLINICAL NUTRITION 479 (2012).

[9] *See* Cindy W. Leung et al., *Soda and cell aging: associations between sugar-sweetened beverage consumption and leukocyte telomere length in healthy adults from the National Health and Nutrition Examination Surveys*, 104(12) AM. J. PUB. HEALTH 2425 (2014).

SSB consumption and weight gain have been found for both adult and adolescent populations.[10]

Globally, one in three people are overweight or obese, increasing by 1.3 billion people between 1980 and 2013.[11] More than 60 percent of the world's obese people live in developing countries, with 15 percent of the world's obese people living in China and India alone.[12] Projections also estimate the prevalence of type 2 diabetes will increase 170 percent in developing countries and 42 percent in developed countries between 1995 and 2025, affecting an estimated 438 million individuals by 2030.[13]

The economic costs of the increasing NCD epidemic are unprecedented. Collectively, NCDs are predicted to cost the global economy USD 47 trillion over the coming two decades.[14] By 2030, diabetes will require USD 490 billion in health care expenditures globally.[15] Obesity is also taking a toll on economies and health systems. Currently, obesity's impact on global gross domestic product ("GDP") amounts to USD 2.0 trillion.[16] For many countries, this impact is projected to increase. For example, in the United States and United Kingdom, obesity-related medical costs are estimated to increase by USD 48–66 billion per year and by GBP 1.9–2 billion per year respectively by 2030.[17]

Like many other global health challenges, effectively combatting NCDs cannot be addressed by the health sector alone, but rather requires multi-sectoral action. One's risk of developing cancer or heart disease, for example, are influenced by a multitude of factors controlled by any number of different sectors including: trade, agriculture, urban planning, environment, and financial policy.[18] As a result, many experts, government

---

[10] *See* Vasanti Malik et al., *Sugar-Sweetened Beverages, Obesity, Type 2 Diabetes Mellitus, and Cardiovascular Disease Risk*, 121 CIRCULATION J. 1356 (2010).

[11] *See* Marie Ng et al., *Global, regional, and national prevalence of overweight and obesity in children and adults during 1980–2013: a systematic analysis for the Global Burden of Disease Study 2013*, 384 THE LANCET 766 (2014).

[12] *See id.*

[13] *See* Hilary King et al., *Global burden of diabetes, 1995-2025: prevalence, numerical estimates, and projections*, 21 DIABETES CARE 1414 (1998); Frank B. Hu, *Globalization of diabetes: the role of diet, lifestyle, and genes*, 34(6) DIABETES CARE 1249 (2011).

[14] David E. Bloom et al., *The Global Economic Burden of Non-communicable Diseases*, WORLD ECON. FORUM 6 (Sept. 2011), http://apps.who.int/medicinedocs/documents/s18806en/s18806en.pdf.

[15] Ping Zhang et al., *Global healthcare expenditure on diabetes for 2010 and 2030*, 87 DIABETES RES. & CLINICAL PRAC. 294, 294 (2010).

[16] Richard Dobbs et al., *How the world could better fight obesity*, MCKINSEY GLOBAL INST. (Nov. 2014), http://www.mckinsey.com/insights/economic_studies/how_the_world_could_better_fight_obesity.

[17] Y Claire Wang et al., *Health and economic burden of the projected obesity trends in the USA and the UK*, 378 THE LANCET 815, 815 (2011).

[18] Kumanan Rasanathan & Rüdiger Krech, *Action on the social determinants of health is essential to tackle noncommunicable diseases*, BULL. OF THE WORLD HEALTH ORG. (Sept. 6, 2011), http://www.who.int/bulletin/volumes/89/10/11-094243/en/.

officials, and global leaders have rallied for an inclusive "whole-of-government" and "whole-of-society" approach. Such an approach would situate public-private partnerships ("PPPs"), including those with the food and beverage industries, as core and perhaps necessary vehicles to address NCDs.[19] Some stakeholders from governments, international organizations, or public health organizations see these industries as possessing valuable resources (e.g., financial, human, technical, influential) that can be harnessed to improve health.[20]

At the same time, business as a whole has a vested interest in NCDs. The profit and growth of some businesses, such as in the food and beverage industries that produce unhealthy food products, help encourage consumption of these products, increasing NCD risk.[21] Further, with the economic development and population growth in Asia, Latin America, the Middle East, and Africa, companies see these regions as the most viable for increasing profit margins. These are also the same regions that are projected to experience the largest increase in NCD burden in the coming decades.[22] However, this growth for companies is directly tied to the health and productivity of its workforce.[23] NCDs and obesity pose significant threats to business, projected to cost the global economy trillions of dollars in the coming decades.[24] These potential barriers to economic growth are of great concern for business.

Although PPPs in global health are not a new phenomenon, partnerships with the food and beverage industries require a greater level of scrutiny than currently received. PPPs with industries such as tobacco and firearms, which manufacture products known to be antithetical to public health,[25] have been widely rejected.[26] However, opinions regarding the appropriate role of food and beverage companies are mixed, including for the two largest non-alcoholic multinational beverage companies—The Coca-

---

[19] *See Political Declaration*, *supra* note 1.

[20] *Global Forum: Addressing the Challenges of Noncommunicable Diseases: Forum Report*, WORLD HEALTH ORG. (Apr. 6, 2011), http://www.who.int/nmh/events/global_forum_ncd/en/.

[21] *See* David Stuckler et al., *Manufacturing Epidemics: The Role of Global Producers in Increased Consumption of Unhealthy Commodities Including Processed Foods, Alcohol, and Tobacco*, 9 PLOS MED., e10011235, 2012.

[22] *See Global Status report on noncommunicable diseases 2010*, WORLD HEALTH ORG. (Apr. 2011), http://whqlibdoc.who.int/publications/2011/9789240686458_eng.pdf?ua=1.

[23] *See* Christine Hancock et al., *The private sector, international development and NCDs*, 7(23) Globalization & Health 1 (2011).

[24] *See* Dobbs, *supra* note 16; Bloom, *supra* note 14.

[25] *See* H. Kuper et al., *Tobacco use and cancer causation: association by tumour type*, 252 J. INTERNAL MED. 206 (2002).

[26] *See* Paul A. Simon & Jonathan E. Fielding, *Public Health And Business: A Partnership That Makes Cents*, 25 HEALTH AFFAIRS 1029 (2006).

Cola Company ("Coca-Cola") and PepsiCo. Coca-Cola is the largest non-alcoholic beverage company in the world, operating in more than 200 countries and controlling 42 percent of the global SSB market.[27] PepsiCo, which also sells unhealthy food products such as potato chips which comprise roughly half of its sales, controls an additional 30 percent of the global SSB market.[28] While PepsiCo attempts to introduce new product lines marketed as healthier alternatives, such as Chobani Yogurt and Naked Juice smoothies, 75 percent of global sales for Coca-Cola remain in SSBs.[29]

Openness to engagement and partnership with these companies persists despite the growing evidence base that supports the link between SSB consumption and chronic conditions detrimental to health, such as obesity, metabolic syndrome, and type 2 diabetes.[30] On the other hand, some food companies, have played roles in various initiatives and partnerships to help address global hunger, contributing to their perceived legitimacy in international development.[31] As a result, partnerships that include these companies have received less scrutiny compared to the tobacco industry despite the global health impact of their products and the fact that these companies employ similar tactics to influence research, public opinion, and policy.

Consideration of the role of PPPs with food and beverage companies is currently playing out within the World Health Organization ("WHO") and as part of a broader debate on the post-2015 development agenda.[32] United Nations Member States are in the process of determining Sustainable Development Goals, which will succeed the expiring Millennium Development Goals. After a global consultation,[33] a report by an independent high-level panel of eminent persons appointed by the Secretary General,[34] and an Open Working Group process, Member States will consider a set of seventeen SDGs in September at the 68th UN General

---

[27] *Coke Vs. Pepsi: By The Numbers*, NASDAQ (Mar. 24, 2014), http://www.nasdaq.com/article/coke-vs-pepsi-by-the-numbers-cm337909.

[28] *Id.*

[29] *Id.*

[30] *See* Vasanti S. Malik et al., *Sugar-Sweetened Beverages and Risk of Metabolic Syndrome and Type 2 Diabetes: A meta-analysis*, 33 DIABETES CARE 2477 (2010).

[31] *See Nutrition for Growth Commitments: Executive Summary*, NUTRITION FOR GROWTH, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207274/nutrition-for-growth-commitments.pdf (last visited May 16, 2015).

[32] *See WHO Global Coordination Mechanism Working Groups*, WORLD HEALTH ORG., http://www.who.int/global-coordination-mechanism/working-groups/en/ (last visited May 16, 2015).

[33] *See* THE WORLD WE WANT 2015, http://www.worldwewant2015.org (last visited May 16, 2015).

[34] *See* A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustain Development: The Report of the High-Level Panel of Eminent Persons on the Post-2015 development Agenda (May 30, 2013), http://www.un.org/sg/management/pdf/HLP_P2015_Report.pdf.

Assembly. A variety of non-State actors, including businesses, have weighed in on the proposal.[35] A number of goals within the proposed SDGs relate to NCDs, including Goal 2 focused on nutrition, Goal 3 to ensure healthy lives and promote well-being, and Goal 12 to ensure sustainable consumption and production patterns. Lastly, Goal 17, like the MDGs, calls for partnership to "strengthen the means of implementation and revitalize the global partnership for sustainable development."[36]

As the post-2015 development agenda solidifies, partnerships will be a prominent strategy for governments, international organizations, and civil society to achieve the SDGs. As stated by UN Secretary General Ban Ki-Moon during the release of his synthesis report on the post-2015 agenda, partnerships are an "essential element" for success, and further, the agenda "will be built on a foundation of global cooperation and solidarity."[37]

With partnerships occupying such a prominent position within the post-2015 development agenda, the actors involved in them and the processes by which they emerge should be carefully considered. Such partnerships, especially those involving the private sector, require judicious scrutiny and transparency of the actors involved and their interests to safeguard public interests. More importantly, partnerships with industries whose products are detrimental to health, such as some of those produced by the food and beverage industry, require a more cautious approach to ensure the integrity of global NCD policymaking and governance.

In this paper we discuss the evolution of the private sector in global health PPPs. We then turn to examine current approaches within the UN system, including through the WHO with regard to engaging with the private sector. This examination is followed by a detailed exploration of two case studies, the NCD Roundtable—convened by the Global Health Council—and the Pan American Forum for Action on NCDs—convened by the Pan American Health Organization. These case studies highlight various coercive tactics employed by Coca-Cola and PepsiCo, which are later discussed in a cautionary questioning and call for reconsideration of the current enthusiasm for PPPs at the WHO and the UN in the SDG agenda.

---

[35] *See* U.N. Global Compact, The Role of Business and Finance in Supporting the Post-2015 Agenda (July 2, 2014), https://www.unglobalcompact.org/docs/news_events/9.6/Post2015_WhitePaper_2July14.pdf.

[36] *See* U.N. Dept. of Econ. & Soc. Affairs, Open Working Group Proposal for Sustainable Development Goals (Jan. 22, 2013), https://sustainabledevelopment.un.org/focussdgs.html [hereinafter Open Working Group Proposal for Sustainable Development Goals]; We End Poverty: Millennium Development Goals and Beyond 2015 (2015), http://www.un.org/millenniumgoals/bkgd.shtml.

[37] *See* U.N. Secretary-General, Secretary-General remarks to the General Assembly on the Synthesis Report on the Post-2015 Agenda (Dec. 4, 2014), www.un.org/sg/statements/index.asp?nid=8250.

II. EVOLUTION OF THE PRIVATE SECTOR'S INVOLVEMENT IN GLOBAL HEALTH PUBLIC-PRIVATE PARTNERSHIPS

Public-private partnerships combine the unique assets from public and private actors to jointly address complex challenges that one sector cannot address alone. At the global level, PPPs can be defined as "a collaborative relationship that transcends national boundaries and brings together at least two parties, among them a corporation (and/or industry association) and an intergovernmental organization, so as to achieve a shared health-creating goal on the basis of a mutually agreed division of labor."[38] In doing so, each individual partner brings a unique set of interests to bear, some of which are overtly disclosed, while others are not.

Despite their popularity for addressing global development challenges the history of PPPs is short, their definition is inconsistent, and evidence to support them is weak.[39] Prior to the late 1970s, relationships between public and private entities were filled with mistrust, precluding both from engaging in any meaningful collaboration within the UN system.[40] Partnerships in international development were mostly between donors and recipient country governments.[41] A significant ideological shift took place during the 1980s and 1990s, marked by views that public and private sector collaboration was needed to "modify" inefficient markets for public good.[42]

Motivated by disillusionment with the pace of the UN and multilateral approaches generally, and the appeal of the private sector's agility and efficiency, PPPs became an attractive option to "get things done" by the early 1990s.[43] Although the global health community was slow to accept the private sector as a legitimate partner, the popularity of PPPs in global health rose steadily from the 1980s into the 2000s, catalyzed by the successful Mectizan Donation Program of the 1980s.[44] The success of this partnership

---

[38] Kent Buse, *Global Public–Private Partnerships for Health: Part I – A New Development in Health?*, 78 BULL. WORLD HEALTH ORG. 549, 550 (2000).

[39] *See Public-Private Partnerships in developing countries*, MINISTRY OF FOREIGN AFF. OF THE NETHERLANDS (2013), http://www.oecd.org/dac/evaluation/IOBstudy378publicprivatepartnershipsindevelopingcountries.pdf [hereinafter *Public-Private Partnerships*].

[40] Buse, *supra* note 38, at 551.

[41] *See id.*

[42] *See id.*

[43] *See id.*

[44] A PPP between the pharmaceutical company, Merck, and Latin American and Africa governments, this partnership leveraged the production capacity of Merck to supply needed medications to treat onchocerciasis, also known as river blindness, which currently infects about 37 million people, 99% of who live in sub-Saharan Africa. Since it began, treatment donations exceed $1 billion for some 117,000 communities in 28 countries. *See* David H. Peters & Traci Phillips, *Mectizan Donation Program: evaluation of a public-private partnership*, 9 TROPICAL MED. & INT'L HEALTH A4 (2004); Peter J. Hotez & Aruna Kamath, *Neglected Tropical Diseases in Sub-Saharan Africa: Review of Their Prevalence,*

helped calm some previously held suspicions of forming partnerships with industry, and launched a wave of new global health PPPs between 1982 and 2003. Many of these PPPs were with pharmaceutical and medical device companies, who emerged as the first logical partners to advance global health. These PPPs emerged at the same time as public health threats, such as HIV/AIDS, tuberculosis and malaria, inundated developing country governments. This presented a growing need for financial resources, new drugs and medical technologies, and more extensive distribution and delivery networks to facilitate access to life-saving treatments. As a result, a growing consensus developed that partnerships with the private sector were not only important, but also essential in a world of increasing interdependence.[45]

The 2000 United Nations Millennium Declaration—which formed the backdrop for the Millennium Development Goals—and the United Nations General Assembly Special Session on HIV/AIDS in 2001—the first-ever high-level meeting devoted exclusively to a health topic—catalyzed and propelled PPPs into the mainstream in global health.[46] States resolved to "develop strong partnerships with the private sector" as part of the Millennium Declaration, and partnerships emerged as one of eight explicit MDGs, with a significant focus on cooperation with pharmaceutical companies to expand access to affordable essential drugs in developing countries.[47] A similar emphasis continued with global approaches to address HIV/AIDS in the Declaration of Commitment, including a commitment by Member States to "foster stronger collaboration and the development of innovative partnerships between the public and private sectors."[48] The Declaration went further to "establish and strengthen" decision-making mechanisms "that involve the private sector and civil society partners."[49] Alongside the Millennium Declaration, UN Secretary-General Kofi Annan

---

Distribution, and Disease Burden, 3 PLOS NEGLECTED TROPICAL DISEASES e412 (2009); B. Colatrella, *The Mectizan Donation Program: 20 years of successful collaboration – a retrospective*, 102ANNALS OF TROPICAL MED. & PARASITOLOGY (SUPPLEMENT ISSUE 1) 7 (2008).

[45] *See* Kent Buse & Andrew Harmer, *Power to the Partners? The Politics of Public-Private Health Partnership*, 47 DEV. 49 (2004); Judith Richter, *Public-private Partnerships for Health: A Trend with no Alternatives?*, 47 DEV. 43 (2004).

[46] *See* U.N General Assembly, Declaration of Commitment on HIV/AIDS: United Nations Special Session on HIV/AIDS (June 25, 2001), http://www.unaids.org/sites/default/files/sub_landing/files/aidsdeclaration_en_0.pdf [hereinafter Declaration of Commitment on HIV/AIDS].

[47] *See* United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc A/RES/55/2 (Sept. 18, 2000), *available at* http://www.un.org/millennium/declaration/ares552e.pdf.

[48] Declaration of Commitment on HIV/AIDS, *supra* note 46, at 18.

[49] *Id.*

also established the United Nations Global Compact in 2000, a business alliance that partners with the UN and UN specialized agencies.[50]

Though the private sector was not directly involved in their governance, public international organizations, such as the United Nations Joint Programme on AIDS ("UNAIDS") and the WHO, strengthened their engagement with the private sector in the 2000s, and developed explicit guidelines to inform these partnerships.[51] Many of the new global health PPPs, such as the Global Fund to Fight AIDS, Tuberculosis and Malaria ("GFATM"), Global Alliance for Improved Nutrition ("GAIN"), and the Gavi Alliance ("GAVI") include the private sector in some capacity on their governing boards.[52] Previous analyses of these types of global health PPPs established evidence of their beneficial contributions, both in terms of stakeholder participation and impact.[53] These results have supported an increasing shift in financing global development, with roughly one-third of official development assistance now flowing through global and regional PPPs.[54]

II. GLOBAL HEALTH PUBLIC-PRIVATE PARTNERSHIPS WITH FOOD AND BEVERAGE CORPORATIONS

Global PPPs created to address NCDs have attracted considerable attention and scrutiny, particularly surrounding the role of companies whose products contribute to ill health. The global health community widely agrees on the necessity to closely regulate the tobacco industry and exclude it from any health PPPs.[55] the WHO policy explicitly prohibits the organization from accepting funding from the tobacco industry. Further, in 2003 Member States adopted the Framework Convention on Tobacco Control ("FCTC"), one of the most widely ratified treaties in UN history and

---

[50] *See* UNITED NATIONS GLOBAL COMPACT, https://www.unglobalcompact.org/ (last visited May 16, 2015).

[51] *See* Joint United Nations Programme on HIV/AIDS, UNAIDS Guidelines: Working in Partnership with the Private Sector (Aug. 2007), http://data.unaids.org/pub/Manual/2007/unaids_guidelines_august2007_draft4_en.pdf.

[52] *See* Keith Bezanson & Paul Isenman, *Governance of New Global Partnerships: Challenges, Weaknesses, and Lessons*, CTR. FOR GLOBAL DEV. (Oct. 2012), http://www.cgdev.org/files/1426627_file_Bezanson_Isenman_FINAL.pdf.

[53] *See Global Health Partnerships: Assessing Country Consequences*, WORLD HEALTH ORG. (2005), http://www.who.int/healthsystems/gf16.pdf; Kent Buse & Sonja Tanaka, *Global Public-Private Health Partnerships: Lessons learned from ten years of experience and evaluation*, 61 INT'L DENTAL J. 2 (SUPPLEMENT ISSUE 2) (2011).

[54] *See* Uma Lele et al., *The Changing Aid Architecture: Can Global Initiatives Eradicate Poverty?*, ORG. FOR ECON. COOP. & DEV. (2006), http://www.oecd.org/dac/37034781.pdf.

[55] *See* Anna B. Gilmore et al., *Public health, corporations and the New Responsibility Deal: promoting partnerships with vectors of disease?*, 33 J. PUB. HEALTH 2 (2011).

the first convention established under the auspices of the WHO.[56] The UN, the WHO, and other public health authorities have widely affirmed the position that tobacco companies can never be suitable partners. As the WHO Director-General Margaret Chan emphatically reinforced at the 66th World Health Assembly, "the WHO will never be on speaking terms with the tobacco industry."[57] Thus, there is a clear conflict of interest for governments and health organization to partner with the tobacco industry.

The role that the food and beverage industries should play in global PPPs and policymaking lacks consensus. Food and beverage companies have a history of some positive contributions to global health, particularly in the areas of micronutrient fortification to address malnutrition.[58] More recently, companies such as Coca-Cola and PepsiCo have involved themselves in a broad range of development initiatives and partnerships, contributing valuable resources to address food insecurity and clean water, for example.[59] These contributions come at a time of stagnant donor resources, such as from the United States Government.[60]

Industry executives claim they are simply trying to leverage their scale for social good, as Muhtar Kent, CEO and Chairman of the Board of Coca-Cola argued in a recent interview.[61] Indra Nooyi, CEO of PepsiCo, has made similar comments: "Large companies are powerful—they can play a big role—so we need to work with governments to provide solutions."[62]

---

[56] *See* Ruth Roemer et al., *Origins of the WHO Framework Convention on Tobacco Control*, 95 AM. J. PUB. HEALTH 936 (2005).

[57] Margaret Chan, *WHO Director-General addresses the Sixty-sixth World Health Assembly*, WORLD HEALTH ORG. (May 20, 2013), http://www.who.int/dg/speeches/2013/world_health_assembly_20130520/en/.

[58] *See* Kraisid Tontisirin et al., *Food-Based Strategies to Meet the Challenges of Micronutrient Malnutrition in the Developing World*, 61 PROC. NUTRITION SOC'Y 243 (2002).

[59] For example, in 2011 PepsiCo established a partnership with the World Food Program, United States Agency for International Development and the government of Ethiopia, called "Enterprise EthioPEA," to improve the productivity of Ethiopian chickpea farmers and connect these farmers to PepsiCo's global supply chain. The Coca-Cola Foundation's flagship initiative, the Replenish Africa Initiative (RAIN), is a six-year, $30 million commitment to improve access to clean water for 2 million people in Africa by 2015. According to the company's website, the initiative supported access to clean water for 800,000 people as of 2014, less than half of its 2015 goal, and access to sanitation for 130,000 people.

[60] *See* Adam Wexler & Jennifer Kates, *The U.S Global Health Budget: Analysis of the Fiscal Year 2015 Budget Request*, THE HENRY J. KAISER FAMILY FOUNDATION (Mar. 20, 2014), http://kff.org/global-health-policy/issue-brief/the-u-s-global-health-budget-analysis-of-the-fiscal-year-2015-budget-request/.

[61] Amy Gallo, *The CEO of Coca-Cola on Using the Company's Scale for Good*, HARVARD BUS. REV. (May 29, 2014), https://hbr.org/2014/05/the-ceo-of-coca-cola-on-using-the-companys-scale-for-good/.

[62] John Seabrook, *Snacks for a fat planet: PepsiCo takes stock of the obesity epidemic*, THE NEW YORKER (May 16, 2011), http://www.newyorker.com/magazine/2011/05/16/snacks-for-a-fat-planet.

Countless other food industry executives have voiced similar sentiments, such as Unilever CEO Paul Polman.[63]

The global health and international development communities have been quick to accept the recent socially-conscious sentiments of many major food and beverage companies, despite the unintended consequence of legitimizing them in the process. A recent example is Coca-Cola's strategic partnership with the GFATM, announced in 2010, to improve the distribution of medical supplies across Ethiopia.[64] Two years later, the GFATM announced an expanded partnership with Coca-Cola to deliver medicines to remote parts of the world as part of the "Project Last Mile."[65] Similarly, PepsiCo and the Clinton Foundation launched a strategic partnership in 2014 to source cashew fruit from smallholder farmers in India which will in turn create a new ingredient supply for PepsiCo products.[66] Also, companies such as PepsiCo, Unilever and Yum! Brands all partner with the World Food Program, the United Nation system's lead agency on fighting hunger worldwide.[67]

Food and beverage companies have also banded together to form partnerships and make voluntary commitments to improve their products and public health. The International Food and Beverage Alliance ("IFBA")[68] and the Healthy Weight Commitment Foundation[69] are two examples of such collaborations, and include many of the largest food and beverage companies, including Coca-Cola and PepsiCo. Members of these groups have pledged to reformulate their products to make them healthier, to improve product nutrition information for consumers, and to restrict

---

[63] Lawrence MacDonald, *The Surprising and Sensible Remarks of Unilever CEO Paul Polman*, CTR. FOR GLOBAL DEV. (Feb. 18, 2014), http://www.cgdev.org/blog/surprising-and-sensible-remarks-unilever-ceo-paul-polman.

[64] *See Coca-Cola – sharing skills, saving lives: Leveraging business innovations to improve delivery of lifesaving drugs*, THE GLOBAL FUND, http://www.theglobalfund.org/en/partners/privatesector/cocacola/ (last visited May 16, 2015).

[65] *See* Press Release, The Global Fund, Coca-cola and the Global Fund Announce Partnership to Help Bring Critical Medicines to Remote Regions (Sept. 25, 2012), *available at* http://www.theglobalfund.org/en/mediacenter/newsreleases/2012-09-25_Coca-cola_and_the_Global_Fund_Announce_Partnership_to_Help_Bring_Critical_Medicines_to_Remote_Regions/.

[66] *See* Press Release, Clinton Foundation, Clinton Foundation and Pepsico Launch Strategic Partnership to Spur Social and Economic Development in Emerging Markets (May 22, 2014), *available at* https://www.clintonfoundation.org/press-releases/clinton-foundation-and-pepsico-launch-strategic-partnership-spur-social-and-economic.

[67] *See Meet our Partners*, WORLD FOOD PROGRAMME, http://www.wfp.org/partners/private-sector/meet-our-partners (last visited May 16, 2015).

[68] *See* INTERNATIONAL FOOD & BEVERAGE ALLIANCE, https://ifballiance.org/ (last visited May 16, 2015).

[69] *See* HEALTHY WEIGHT COMMITMENT FOUNDATION, http://www.healthyweightcommit.org/ (last visited May 16, 2015).

unhealthy food marketing to children under the age of twelve.[70] Progress has been mixed, in some cases and there remains a significant gap between company pledges and current practices (e.g., food marketing).[71] Such voluntary commitments at the global and national levels have also been widely criticized as establishing weak or vague standards without strong independent oversight, regulation, and evaluation.[72]

Despite industry claims of their positive contributions and the recognized benefits of cooperation, such close involvement can bias otherwise impartial ventures. Currently, private resources are flowing into public health research and professional associations.[73] Such contributions have helped finance the endowments of large global health foundations in the past.[74] In addition, foreign direct investment by corporations amounted to more than USD 470 billion in 2011, and is believed to be approaching USD 1 trillion.[75] This influx of private funds comes at an opportune time for business when only about 3 percent of development assistance for health is dedicated to NCDs.[76] With limited public investment in NCD prevention and control, the impact of private funding is even more influential.

According to David Stuckler, a professor of political economy and sociology at University of Oxford, companies that produce SSBs are employing similar tactics as the tobacco industry, in order to "divert[ ] the agenda and bias[ ] the science."[77] For example, a 2013 systematic review found that industry-funded studies examining the relationship between SSBs and weight gain or obesity were "five times more likely to present a

---

[70] *See Our Commitments*, INTERNATIONAL FOOD & BEVERAGE ALLIANCE, https://ifballiance.org/our-commitments/ (last visited May 16, 2015).

[71] *See* Corinna Hawkes & Jennifer L Harris, *An analysis of the content of food industry pledges on marketing to children*, 14 PUB. HEALTH NUTRITION 1403 (2011).

[72] *See* Michele Roberts et al., *Compliance with children's television food advertising regulations in Australia*, 12 BMC PUB. HEALTH 846 (2012); Corinna Hawkes, *Self-regulation of food advertising: what it can, could and cannot do to discourage unhealthy eating habits among children*, 30 NUTRITION BULL. 374 (2005); Sharron Bowers et al., *Does current industry self-regulation of food marketing in New Zealand protect children from exposure to unhealthy food advertising?*, CANCER SOC'Y OF NEW ZEALAND (2012), http://www.otago.ac.nz/wellington/otago036971.pdf.

[73] *See* David Stuckler et al., *Global Health Philanthropy and Institutional Relationships: How Should Conflicts of Interest Be Addressed?*, 8 PLOS MED., e1001020, 2011.

[74] *See id.*

[75] Michel Sidibé, *Why We Need The Private Sector And Why It Needs Us: Governing Global Health Differently Post-2015*, GLOBAL HEALTH & DIPLOMACY (2015), http://onlinedigeditions.com/article/Why_We_Need_The_Private_Sector_And_Why_It_Needs_Us%3A_Governing_Global_Health_Differently_Post-2015/1910242/242901/article.html.

[76] Rachel A. Nugent & Andrea B. Feigl, *Where Have All The Donors Gone? Scarce Donor Funding For Non-Communicable Diseases* 16 (Ctr. for Global Development, Working Paper 228, 2010), *available at* http://www.cgdev.org/publication/where-have-all-donors-gone-scarce-donor-funding-non-communicable-diseases-working-paper.

[77] Jonathan Gornall, *Sugar's web of influence 2: Biasing the science*, 350 BMJ 1 (2015).

conclusion of no positive association."[78] Private industry also influences professional associations, some of which produce their own research and are leading authorities in promulgating evidence-based public health guidelines. For example, the American College of Sports Medicine has a stated mission to "advance and integrate scientific research to provide educational and practical applications of exercise science and sports medicine."[79] But one of its prominent global health initiatives, Exercise is Medicine, includes Coca-Cola as one of its two sole funders. Similarly, the American Academy of Family Practice received a large donation from Coca-Cola to support patient education on obesity prevention.[80] In addition, former employees of PepsiCo played prominent roles in workshops and reports produced by the Institute of Medicine, including one's focused on cardiovascular disease prevention in developing countries, country-level decision making for controlling NCDs, and PPPs for global health.[81]

The food and beverage industry's involvement in global health may be less overt, but still influential. For example, the Bill and Melinda Gates Foundation the largest private foundation in the United States and is a leading funder of global health initiatives with assets of almost USD 30 billion, has maintained significant ties to food and beverage companies and the pharmaceutical industry for a number of years.[82] In 2012, the Foundation held 9.4 million shares in McDonald's stock (or about 5 percent of its portfolio) and more than 15 million shares in Coca-Cola stock (over 7 percent of its portfolio).[83] The Foundation's largest holding is in Berkshire Hathaway, which represents 49.75 percent of its portfolio, or USD 5.9 billion. Berkshire Hathaway, in turn, has its largest holding in The Coca-Cola Company, representing more than 20 percent of its portfolio, or roughly USD 10 billion.[84] In early 2015, the Gates Foundation announced the sale of its stock holdings in both McDonald's and Coca-Cola during the fourth

---

[78] Maira Bes-Rastrollo et al., *Financial Conflicts of Interest and Reporting Bias Regarding the Association between Sugar-Sweetened Beverages and Weight Gain: A Systematic Review of Systematic Reviews*, 10 PLOS MED., e1001578, 2013, at 2.

[79] *About ACSM*, AM. COLLEGE OF SPORTS MED., http://www.acsm.org/about-acsm/who-we-are (last visited May 16, 2015).

[80] Howard Brody, *Professional Medical Organizations and Commercial Conflicts of Interest: Ethical Issues*, 8 ANNALS OF FAMILY MED. 354, 354 (2010).

[81] *See, e.g.*, *Directory: Committee Member – Dr. Derek Yach*, INST. OF MED. OF THE NAT'L ACADEMIES, http://iom.edu/Global/Directory/Detail.aspx?id=0020019489 (last visited May 16, 2015).

[82] Stuckler, *supra* note 73, at 4.

[83] *Id.*

[84] *Id.* at 5.

quarter of 2014, a combined 32.3 million shares valued at USD 1.9 billion.[85] However, the Gates Foundation continues to hold investments in Berkshire Hathaway.[86]

Although partnerships with food and beverage companies have contributed positively to global development, their unchecked infiltration into developing country markets can have negative consequences for public health. The case of Brazil is a prime example. Several multinational food and beverage companies, namely Nestle and Coca-Cola, have penetrated even the most remote areas of the country, using door-to-door marketing tactics, and targeting low-income consumers.[87] In a globalized food system and increased urbanization, developing countries and emerging economies are experiencing an influx of SSBs that are displacing traditional diets and contributing to obesity and NCDs, such as cardiovascular disease and type 2 diabetes.[88]

III. CURRENT UN APPROACHES TO PARTNERSHIPS WITH THE PRIVATE SECTOR

Calls for "multi-sectoral" or "multi-stakeholder" collaborations, particularly to address global NCDs, are widespread among governments and intergovernmental organizations, including UN, the WHO, PAHO, the World Bank, and others.[89] Currently, States are negotiating the post-2015 development agenda at the UN, where health, NCDs, and nutrition are likely to feature prominently.[90] Partnerships continue to be a major discussion topic and a key point of emphasis, raising questions about how they can be effectively used to achieve goals in each thematic area of the proposed

---

[85] Lauren Streib, *Gates Foundation Ditches McDonald's, Coca-Cola in Fourth Quarter*, BLOOMBERG (Feb. 17, 2015), http://www.bloomberg.com/news/articles/2015-02-17/gates-foundation-ditches-mcdonald-s-coca-cola-in-fourth-quarter.

[86] *Id.*

[87] Carlos Monteiro & Geoffrey Cannon, *The Impact of Transnational "Big Food" Companies on the South: A View from Brazil*, 9 PLoS Med., e1001252, 2012, at 3.

[88] *See* Vasanti S. Malik et al., *Global Obesity: Trends, Risk Factors and Policy Implications*, 9 NATURE REV. ENDOCRINOLOGY 13 (2013); Eric L Ding & Vasanti S Malik, *Convergence of Obesity and High Glycemic Diet on Compounding Diabetes and Cardiovascular Risks in Modernizing China: An Emerging Public Health Dilemma*, 4 GLOBALIZATION & HEALTH, 2008; Hu, *supra* note 13; Prakash S. Shetty, *Nutrition Transition in India*, 5 PUB. HEALTH NUTRITION 175 (2002).

[89] *Global Action Plan for the Prevention and Control of Noncommunicable Diseases, 2013-2020*, WORLD HEALTH ORG. 3 (2013), http://apps.who.int/iris/bitstream/10665/94384/1/9789241506236_eng.pdf [hereinafter *Global Action Plan*]. *See* Mirta Rose, *Building a Healthier World by Tackling Noncommunicable Diseases*, 16 J. HEALTH COMMUNC'N 3 (2011).

[90] Open Working Group Proposal for Sustainable Development Goals, *supra* note 32.

SDGs being considered at the forthcoming UN General Assembly in September 2015.[91]

Dialogue and policymaking on the WHO's relationship with non-state actors, including the food and beverage industry is playing out simultaneously within several processes. One process is specifically relates to global NCDs and the other relates to the WHO governance more broadly. Pertaining to NCDs, the WHO is responsible for facilitating actions identified by Member States in the Political Declaration of the 2011 United Nations High Level Meeting on NCDs, including a new global NCD action plan, and a new global coordinating mechanism that aims to "facilitate and enhance…multi-stakeholder engagement and action across sectors."[92] The Global Coordinating Mechanism ("GCM") for NCDs is charged with "facilitat[ing] engagement among Member States, United Nations funds, programmes and agencies, and other international partners, and non-State actors" to inform the WHO governing bodies.[93] For the GCM, the WHO defines non-State actors as "academia and relevant nongovernmental organizations, as well as selected private sector entities, as appropriate," but only explicitly excludes the tobacco industry from consideration.

This inclusive approach slightly contrast with how the role of the food and beverage industry is considered within broader the WHO reforms. Member States at the May 2015 World Health Assembly will consider a new "framework of engagement with non-State actors."[94] The outcomes of this process are intended to produce clearer guidelines and procedures for how the WHO will engage with the private sector, including food and beverage companies. Based on views expressed by Member States regarding the WHO's proposed framework, some governments remain wary of direct global alliance with the food and beverage industries, and view them in a similar vein as the tobacco and firearms industries. Pertaining to entities with which the WHO will not engage, the proposed framework says, "although there is agreement that the WHO should not engage with the tobacco and arms industries, this restriction, in the view of a number of

---

[91] *See* General Assembly, *The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet*, U.N. Doc. A/69/700 (Dec. 4, 2014), *available at* http://www.un.org/ga/search/view_doc.asp?symbol=A/69/700&Lang=E.

[92] *WHO Global Coordination Mechanism on the Prevention and Control of NCDs*, WORLD HEALTH ORG., http://www.who.int/nmh/ncd-coordination-mechanism/en/ (last visited May 16, 2015).

[93] *Draft Terms of Reference for a Global Coordination Mechanism for the Prevention and Control of Noncommunicable Diseases*, WORLD HEALTH ORG. 1 (2013), http://www.who.int/cardiovascular_diseases/GCM_First_WHO_Discussion_Paper_FINAL_CORR2.pdf?ua=1.

[94] *Framework of Engagement with Non-State Actors, Report by the Secretariat*, WORLD HEALTH ORG. 1 (2014), http://apps.who.int/gb/ebwha/pdf_files/EB136/B136_5-en.pdf.

Member States, should be extended to others, including notably the alcohol, food and beverage industries."[95]

However, to date normative guidelines and strategies produced by the WHO have refrained from excluding the food and beverage industries from active participation in NCD partnerships and initiatives. Instead, the Global Strategy on Diet, Physical Activity and Health, the 2008-2013 Action Plan for the Global Strategy for the Prevention and Control of Noncommunicable Diseases, and the 2013-2020 Global Action Plan for the Prevention and Control of Noncommunicable Diseases all advocate for partnerships and cooperation with relevant private actors. In some of these documents, such as the Global Strategy on Diet, Physical Activity and Health, there is an explicit commitment from the WHO to "hold discussions with the transnational food industry and other parts of the private sector in support of the aims of the Strategy, and of implementing the recommendations in countries."[96] Elsewhere in the Global Strategy, the WHO contends that "the private sector can be a significant player in promoting healthy diets."[97] The new 2013-2020 Global Strategy on NCDs continues this emphasis on partnerships, and a commitment from the WHO to "facilitate coordination, collaboration and cooperation among the main stakeholders including . . . the private sector."[98]

As these processes unfold, the role of partnerships will likely remain at the forefront. Past experiences interacting with the food and beverage industry can help guide how the UN, the WHO, and other normative and global health policy-making institutions should proceed as they consider the role of PPPs within the SDGs. These experiences are discussed in the following case studies.

IV. CASE STUDIES OF BEVERAGE COMPANY INFLUENCE ON GLOBAL NCDS

The following two case studies examine tactics utilized by major SSBs, especially Coca-Cola and PepsiCo, to directly influence global policy discourse on NCDs. The first case study is the NCD Roundtable, a civil society coalition that included NGOs, universities, think tanks, and private sector as members. The second case study is the Pan American Forum for Action on NCDs—a platform established by the Pan American Health

---

[95] *Id.* at 3.

[96] *Global Strategy on Diet, Physical Activity and Health*, WORLD HEALTH ORG. 11, http://www.who.int/dietphysicalactivity/strategy/eb11344/strategy_english_web.pdf?ua=1

[97] *Id.* at 13.

[98] *Global Action Plan*, *supra* note 89, at 16.

Organization, the WHO's regional office of the Americas. This case study represents a more typical public-private partnership model with government, NGO, academic, and private sector members. Each case study focuses heavily on global NCD policy-making processes, including the 2011 UN High Level Meeting on NCDs and the World Health Assembly. Despite important differences the following examination of the tactics employed to advance corporate interests in global health suggests the need for greater care when considering the ethics and efficacy of future partnerships with the SSB industry.

A. The NCD Roundtable

Launched by the Global Health Council ("GHC") in December 2010, the NCD Roundtable ("NCDRT") was founded as "a coalition of civil society organizations, including NGOs, academia, research institutions and the private sector, working to raise the profile of NCDs through policy dialogue and engagement, partnership building, and grassroots mobilization."[99] When founded, the GHC was the largest membership organization devoted to global health.[100] GHCs initial motivation to launch the NCDRT was based on member demands that the GHC organize its membership to establish and stake policy positions on key issues relevant to the High Level Meeting and World Health Organization deliberations on NCDs.[101]

The NCDRT functioned similarly to GHC's other issue-specific roundtables. However, the private sector was not generally a major voice at these other roundtables, except for pharmaceutical and medical technologies companies that participated on a limited basis.[102] In stark contrast, a number of prospective private sector members of GHC appeared to join the organization specifically to participate in the NCDRT. These companies, which included PepsiCo and Coca-Cola, were not active in any other roundtable convened by GHC. However, they were regular participants in the NCDRT and were active in discussions about advocacy strategy and policy recommendations.[103] Notably, some private sector organizations,

---

[99] GLOBAL HEALTH COUNCIL, GLOBAL LEADERSHIP, LOCAL SOLUTIONS: MOBILIZING FOR NCDS. A STATEMENT OF THE GLOBAL HEALTH COUNCIL NCD ROUNDTABLE (2011) [hereinafter MOBILIZING FOR NCDS].

[100] *About Us*, GLOBAL HEALTH COUNCIL, http://globalhealth.org/about-us/mission-and-vision/ (last visited May 16, 2015).

[101] Direct communication with Craig Moscetti, who chaired the NCD Roundtable in 2011.

[102] *Id.*

[103] *Id.*

including food and beverage companies, even inquired about a separate membership for just the NCDRT.[104]

The NCDRT's institutional diversity was a unique characteristic of the coalition that it openly marketed to outside stakeholders, including governmental, inter-governmental, and private sector entities as well as prospective new members. In essence, the "democratic" nature of the coalition gave equal voice to all parties, including private sector food and beverage industry members.[105] Each member had an opportunity to participate in generating consensus policy recommendations.[106] In theory, each member held an equal seat at the decision-making table of the coalition. This type of co-mingling of stakeholders advantaged more powerful entities, who could sway discussions simply by their mere presence.[107]

This inclusive approach to decision-making was particularly relevant when developing policy recommendations. For example, a primary activity of the NCDRT in preparation regional preparatory meetings convened by the WHO and its regional offices was to develop a set of consensus policy recommendations to use in advocacy targeting the US Government, the WHO, and other decision-makers.[108] The final document, entitled *Global Leadership, Local Solutions: Mobilizing for NCDs*, stood as a "statement of the Global Health Council."[109] All of the eighty-plus organizations participating in the NCDRT had the opportunity to contribute to the document, and make recommendations on its contents, including Coca-Cola and PepsiCo. This process, which was afforded a high degree of legitimacy because it was led by and in the name of GHC, was an indirect way for beverage companies to influence policy recommendations on global NCDs.[110] *Global Leadership, Local Solutions,* in turn, was used in meetings with government officials who were directly involved in negotiating global NCD policy, including the UN High Level Meeting's Political Declaration.[111]

At the center of these policy recommendations was an unambiguous endorsement of "multi-sector partnerships," or "whole-of-society" approaches, including the private sector at national and international

---

[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] Direct communication with Craig Moscetti, who chaired the NCD Roundtable in 2011.
[108] *See Concept Paper*, GLOBAL HEALTH COUNCIL NCD ROUNDTABLE, http://ncdalliance.org/sites/default/files/resource_files/ACS-GHC%20NCD%20Roundtable%20Concept%20Paper.pdf.
[109] *See* MOBILIZING FOR NCDS, *supra* note 99.
[110] *See id.*
[111] Direct communication with Craig Moscetti, who chaired the NCD Roundtable in 2011.

levels.[112] These recommendations also failed to mention any public health regulatory approaches to NCDs, despite evidence supporting the efficacy of such approaches,[113] implying the need for voluntary commitments and action. Indeed, an explicit call for partnership with the private sector, including the food and beverage industries but excluding tobacco, consistently ran through the events and documents produced by GHC regarding global NCDs.[114] In addition, the recommendations take a favorable position towards accepting and even promoting financing from private sector sources, including major beverage corporations.[115]

Industry-sponsored GHC events on global NCDs during 2011 also provided PepsiCo and Coca-Cola with both a façade of legitimacy as an equal partner within the public health community, and significant access to policy-makers who were directly involved with the proceedings of the UN High Level Meeting. One event, held at the United Nations, was a "multi-stakeholder dialogue" around approaches to global NCDs.[116] As in the process for developing the GHC policy positions on global NCDs, this event GHC's global health brand legitimized industry perspectives, and afforded beverage industry representatives access to key players and decision-makers on international NCD policy. The event was co-sponsored by PepsiCo, along with two organizations in which food and beverage companies are heavily involved - the World Economic Forum and UN Global Compact.[117] In addition, representatives from PepsiCo and Coca-Cola occupied prominent roles in the meeting's agenda. Meeting participants included representatives from various government embassies to the UN, as well as the Ambassadors from Jamaica and Luxembourg, who at the time, served as co-facilitators of the UN High Level Meeting on NCDs.[118] Industry influenced the planning and execution of the event by sponsoring it. In turn, GHC established PepsiCo and Coca-Cola as equal partners.

The High Level Meeting's Political Declaration reflected the heightened attention to multi-sectoral and multi-stakeholder engagement and

---

[112] *See* MOBILIZING FOR NCDS, *supra* note 99.

[113] *See* Robert Beaglehole et al., *Priority Actions for the Non-communicable Disease Crisis*, 377 LANCET 1438 (2011); *see also* Michele Cecchini et al., *Tackling of Unhealthy Diets, Physical Inactivity, and Obesity: Health Effects and Cost-Effectiveness*, 376 LANCET 1775(2010).

[114] *See* MOBILIZING FOR NCDS, *supra* note 99.

[115] *See id.*

[116] *Building Multi-Stakeholder Partnerships for NCDs: Ideas, Steps and Actions*, GLOBAL HEALTH COUNCIL NCD ROUNDTABLE (July 2010), http://www.globalhealth.org/wp-content/uploads/ghc_Multi-stakeholder-engagement-for-NCDs_final.pdf.

[117] *Id.*

[118] U.N. President of the G.A., High Level Meeting on the Prevention of Non-communicable Diseases (Sept. 9, 2011), http://www.un.org/en/ga/president/66/Issues/NCD/ncdindex.shtml.

partnerships. The term multi-sectoral appears in the Political Declaration fifteen times, and an entire section is devoted to "whole-of-government" and "whole-of-society" actions, the latter implying partnerships with the food and beverage industries. Again, this designation includes the food and beverage industries, while Member States agreed that only the tobacco industry has a "fundamental conflict of interest" with public health.

Beverage companies also took advantage of GHC's intimate relationship with the WHO and the UN to gain access to global policy-making deliberations and provide formal recommendations to influence policy-making. As an organization in official relations with the WHO and as an accredited member of the Economic and Social Council of the United Nations, GHC and its delegation participated at international meetings on NCDs such as the World Health Assembly. UN High Level Meeting on NCDs, and the Civil Society Consultation Hearing that preceded the High Level Meeting. Although many of these meetings would not have otherwise be open to the private sector, representatives from Coca-Cola, PepsiCo, and the International Food Information Council Foundation,[119] an industry-funded front group,[120] all participated on GHC delegations to these meetings in 2011 and in subsequent years.[121] Given such access, these groups held

---

[119] Industry front groups are a well-documented tactic by industry to dispute science and create doubt. In the case of tobacco, industry-funded front groups acted as pawns, opposing federal legislation and regulation that would be harmful to the tobacco industry. In some cases, front group lobbyists were used in the place of tobacco industry lobbyists to oppose such measures as excise taxes, indoor air pollution, and tobacco control in general. Public health advocates have continued to emphasize similarities with the food and beverage industry, which funds similar front groups, nutrition research, and pays scientists as consultants. Like the tobacco industry, front groups representing food and beverage industry interests emphasize voluntary self-regulation, and adhere to principles and guidelines which they themselves create, whether related to the consumption of unhealthy foods, or how conflict of interest measures should be structured. These recommendations are also often published in peer-reviewed academic journals, a tactic to help portray them as credible.

The practice is alarmingly widespread and entrenched. A recent investigation published in *The BMJ* found:

> [F]or more than a decade funding from industry has flowed to scientists involved with the [human nutrition] research unit [of the Medical Research Council]. Scientists working on Medical Research Council (MRC) projects have received research funding from organisations including Coca-Cola, PepsiCo, Nestlé, [and] the Institute of Brewing and Distilling.

Jonathan Gornall, *Sugar: Spinning a Web of Influence*, 350 BMJ 1 (2015).

In some instances, industry supported up to 5% of the total operating budget of the human nutrition unit at MRC, or £380 874 (approximately $586,450). Such financial connections fundamentally influence the results of research. For example, a 2013 review of sugary drink consumption and weight gain or obesity found that industry-funded studies were "five times more likely to present a conclusion of no positive association" compared to those that weren't. Bes-Rastrollo, *supra* note 78.

[120] *See* MICHELE SIMON, CENTER FOR FOOD SAFETY, BEST PUBLIC RELATIONS THAT MONEY CAN BUY: A GUIDE TO FOOD INDUSTRY FRONT GROUPS (2013).

[121] *UN Informal Interactive Hearing*, NCD ROUNDTABLE, http://www.ncdroundtable.org/2014/07/un-informal-interactive-hearing/ (last visited May 16, 2015).

influential side events at major UN meetings and provided formal recommendations on global NCD policy.[122]

An important strategy to improve the standing of these companies within global public health circles, as practiced by the tobacco industry, was to hire prominent experts to increase company activity and image around the UN High Level Meeting. In the case of PepsiCo, the company gave a prominent role at the NCD Summit to Derek Yach, a former Executive Director at the WHO that had been tapped by PepsiCo years earlier as the Senior Vice President for Global Health and Agriculture Policy.[123] Yach's history with the WHO is important to note because of the agency's central role in global NCD policymaking and his connections with global health policymakers within the WHO and countries around the world. While Executive Director of NCDs at the WHO, Yach helped strengthen the organization's relationship with the food and beverage industry.[124] Notably, during Yach's tenure at PepsiCo, instead of carving a different path forward, PepsiCo continued similar tactics to influence public policy and sway public opinion. The company continued to emphasize self-regulation, its participation in voluntary commitment organizations, and the positive contributions it could make in public-private partnerships.[125]

There are a number of plausible reasons for the NCDRT's approach to private sector participation. While the exact reasons may never be known, the timing of private sector organizations' participation is critical. Their

---

[122] Kimberly Reed, *"Remember the People" in Communicating About Food*, GLOBAL HEALTH COUNCIL BLOG (May 19, 2011), http://www.globalhealth.org/remember-the-people-in-communicating-about-food/.

[123] *International Health Policy Analyst Derek Yach Joins the Vitality Group*, PRNEWSWIRE (Oct. 23, 2012), http://www.prnewswire.com/news-releases/international-health-policy-analyst-derek-yach-joins-the-vitality-group-175389031.html.

[124] In the early 2000's, the WHO held private meetings with companies like Coca-Cola, McDonald's, Unilever and Nestle to consider their views while developing the 2002 World Health Report, focused on promoting healthy living. Yach, who also served as chair of the WHO Reference Group, which advised on the Global Strategy on Diet, Physical Activity and Health, helped arrange ongoing consultations with the food and beverage industries while developing the new global strategy. At the time, the WHO viewed the food and beverage industry as fundamentally distinct from the tobacco industry, though the organization also claimed SSBs contributed to obesity and declining health. Despite this stance, a number of media reports at the same time documented evidence of industry influence and claimed the organization was "infiltrated by [the] food industry…just as the tobacco industry did." Speaking on behalf of the WHO, Yach responded to the criticism, and said,

> …food is not tobacco. The food and beverage industries are a part of the solution. They have an important role to play in achieving the best possible global strategy. We have been arranging a series of transparent discussions where all parties can discuss practical solutions for better diet, which do not in any way compromise the interests of public health.

Statement, World Health Organization, WHO welcomes media focus on key global health issue of diet and chronic diseases (Jan. 3 2003), http://www.who.int/mediacentre/news/statements/2003/statement1/en/.

[125] *See* Derek Yach et al., *The Role and Challenges of the Food Industry in Addressing Chronic Diseases*, 6 GLOBALIZATION & HEALTH 1 (2010).

involvement in global NCD policy issues significantly increased around the time of the UN High Level Meeting, which presented significant opportunity for them to influence global policy that would affect their brand and products. This strategic increase in "socially responsible" activities during this time allowed PepsiCo and Coca-Cola to paint a public image of themselves as responsible corporate citizens. These perceived positive contributions to global NCD efforts helped overshadow any critique associated with products they manufacture that might be detrimental to health and contribute to the growing burden of NCDs. It also allowed these organizations to directly influence the development of international policy.

Not long after the UN High Level Meeting, Coca-Cola and PepsiCo's participation in the NCDRT's activities diminished, along with their prominence in global NCD policy discussions. Neither company is currently a member of the NCDRT, which continues to advocate on global NCD policy with the US Government, the WHO and UN.[126]

B. Pan American Forum for Action on NCDs

In 2009, the Pan American Health Organization ("PAHO"), a specialized agency of the Organization of American States and the Americas regional office of the WHO, partnered with the World Economic Forum to jointly establish the PAHO Partners Forum, which later became the Pan American Forum for Action on NCDs ("PAFNCD"), to provide a formal mechanism for dialogue between PAHO and private actors to address NCDs.[127] PAFNCD is designed to serve as PAHO's innovative approach to harness business for public good. Similar to GHC's NCDRT, the platform was designed to take an "open" and inclusive approach, promoting "multi-stakeholder action" to implementing the PAHO Regional Strategy for the Prevention and Control of NCDs.[128] Though PAHO still retains the right to deny membership to organizations it deems unsuitable partners, which includes any organization with "ties to tobacco, alcohol, weapons, land mines, or products deemed detrimental to public health," the PAFNCD is

[126] *See Members*, NCD ROUNDTABLE, http://www.ncdroundtable.org/about/members/ (last visited May 16, 2015).

[127] *See Pan American Forum For Action on NCDs*, PAN AM. HEALTH ORGANIZATION, http://www.paho.org/panamericanforum/ (last visited May 16, 2015).

[128] C. James Hospedales & Eva Jane-Llopis, *A Multistakeholder Platform to Promote Health and Prevent Noncommunicable Diseases in the Region of the Americas: the Pan American Health Organization Partners Forum for Action*, 16 J. HEALTH COMM'N 191, 198 (2011).

still an open, multi-sectoral forum, allowing such corporations as Pfizer, Medtronic and Coca-Cola to take "a lead role."[129]

PAHO's approach to engaging with the food and beverage industry mirrors that of the WHO under the leadership of Gro Harlem Brundtland and her Executive Director, Derek Yach. These industries are viewed unequivocally as partners and full stakeholders in NCD policymaking without "products detrimental to public health," despite significant research demonstrating the detrimental impact of SSBs and the concrete evidence that these industries have sought to thwart effective regulatory approaches, nationally and internationally.[130] Similar to GHC's NCDRT, the PAFNCD openly solicited the participation of the food and beverage industry. In a letter addressed to prospective members, Irene Klinger, head of the PAFNCD, wrote:

> All stakeholders have a role to play to combat the epidemic of NCDs in the Americas. PAFNCD brings together all actors with complementary roles & skills to dialogue and catalyze innovative ways to jointly implement the strategic priority initiatives of the Regional Strategy, together with the 38 PAHO Members States, civil society organizations, private sector companies and academia.[131]

As a welcomed partner, participant, and financer of the PAFNCD, the food and beverage industry has been afforded opportunities to influence PAHO's policy discourse on NCDs both before and after the UN High Level Meeting on NCDs. According to PAHO, the Organization's "dialogue with partners," including through the PAFNCD, was a key step in its preparatory process to "influence the discussion for the UN Summit [on NCDs] and contribute [to the] Outcome document."[132] In addition, the implementation of the PAFNCD as a proof of concept for developing cross-sector

---

[129] *See* PAN AMERICAN HEALTH ORG., RULES FOR MEMBERS ENGAGEMENT: PAN AMERICAN FORUM FOR ACTION ON NONCOMMUNICABLE DISEASES (PAFCND) (2013), http://www.paho.org/panamericanforum/wp-content/uploads/2013/04/Rules-and-Regulations-PAFNCD-April-2013.pdf; Sanica Dalley, *Latin America and the Caribbean: Business Booms—But Health Crisis Looms*, GBC HEALTH, http://www.businessfightsaids.org/asset/latin-america-and-the-caribbean-business-boomsbut-health-crisis-looms/.

[130] *See* Yach, *supra* note 125.

[131] *Membership*, PAN AM. HEALTH ORG., http://www.paho.org/panamericanforum/?p=754 (last visited May 16, 2015).

[132] *See Challenges of the Chronic Diseases in the Americas: Opportunities for Action Beyond the UN High Level Meeting*, CTR. FOR STRATEGIC AND INT'L STUDS. (Sept. 12, 2011.), *available at* http://csis.org/files/attachments/110912_PAHO.pdf.

partnerships, including with food and beverage companies, was "presented to the UN Secretary General in September 2012 as an approach for developing global partnerships," according to James Hospedales, PAHO's NCD technical lead and coordinator at the time.[133]

As such, PAHO was calling upon the food and beverage industry to help it refine this proof of concept (i.e. a multi-stakeholder platform to address NCDs), which would, in turn, be presented to the UN as an NCD policy alternative. But the food and beverage industry's influence in the PAFNCD stemmed beyond its role as a participant. It was a significant financer and advisor for the PAFNCD and its eight strategic initiatives.[134] A special report published by Reuters in 2012 highlighted a number of large industry donations to PAHO to support the work of the PAFNCD, including USD 50,000 from Coca-Cola, USD 150,000 from Nestle, and USD 150,000 from Unilever. Unilever and Coca-Cola were both heavily involved in advisory capacities for the PAFNCD and its initiatives. Therefore, the question arose as to whether industry members were simply "pay[ing] for [a] seat at [the] health-policy table."[135] Such contributions from industry directly to PAHO were also unprecedented. The Reuters article went on to state, " . . . the Pan American Health Organization, not only is relying on the food and beverage industry for advice on how to fight obesity. For the first time in its 110-year history, it has taken hundreds of thousands of dollars in money from the industry." The fact that a significant amount of PAFNCD funding coming from industry raises questions about PAHO's ability to independently determine NCD policy and its implementation.

As a member of the PAFNCD's Advisory Steering Group ("ASG"), IFBA was appointed to the role by the Director of PAHO, and instructed to "advise [the PAHO] technical secretariat on the PAF-NCD from initial kick-off to full operationalization, and to monitor its implementation and results." This advice focuses on strategy, structure, resource mobilization, membership, and communications.

Beyond the ASG, food and beverage industry interests reach into specific PAFNCD initiatives. One such example is the PAFNCD's dietary salt reduction initiative, SaltSmart Consortium. The SaltSmart Consortium

---

[133] *Report of the First meeting of the Pan American Forum: From Declaration to Multi-stakeholder Action on the NCDs*, PAN AM. HEALTH ORG. 15 (2012), http://www.paho.org/panamericanforum/wp-content/uploads/2012/07/PAF_First_Meeting_Final_Report.pdf [hereinafter *Pan Am Report*].

[134] The eight initiatives of the PAFNCD include: 1) dietary salt reduction; 2) cervical cancer prevention and control; 3) advocacy and communications; 4) healthy workplaces; 5) tobacco control; 6) scaling up cardiovascular disease management; 7) physical activity; and 8) wellness week. *See id.*

[135] Duff Wilson & Adam Kerlin, *Special Report: Food, Beverage Industry Pays for Seat at Health – Policy Table*, REUTERS, Oct. 19, 2012, *available at* http://www.reuters.com/article/2012/10/19/us-obesity-who-industry-idUSBRE89I0K620121019.

was prioritized because of the potential public health impact in the region, and previous successful public-private partnerships that actively engaged food producers to reformulate the salt content of their products.[136] Like the PAFNCD Advisory Steering Group, the SaltSmart Consortium includes industry representatives in its advisory group. Specifically, two food industry representatives, one from Unilever and the other from Kraft Foods (now Mondolez International) were included in the initiative's eight-person advisory group. As members of the SaltSmart Consortium's advisory group, food industry interests could be brought to bear in the initiative's strategy, focus and direction.[137] Through its active participation and financial contributions to the SaltSmart Consortium, the food and beverage industry was able to influence PAHO's NCD prevention policy implementation.

From the PAFNCD's inception, PAHO has contended that it would serve as a vehicle for policy implementation, not a platform for policy formulation.[138] However, some question whether PAHO's interest in collaborating with industry was unbiased, or if food and beverage companies bought its way to engaging with national governments from the region. The PAFNCD included representatives from national governments from the region, affording the food and beverage industry regular access to the same government officials who would in turn participate in NCD policymaking within PAHO through the Pan American Sanitary Conference, PAHO's governing body meeting.[139] In 2012, while PAHO increased its engagement with industry through the PAFNCD, it guided a new regional *Plan of Action for the Prevention and Control of Noncommunicable Diseases in the Americas, 2013-2019.* Adopted at the 28th Pan American Sanitary Conference, the *Plan of Action* encourages governments to pursue multi-sectoral partnerships to prevent and control NCDs, and recommends codification of these approaches as part of national NCD plans.[140] This includes pursuing collaborations and partnerships with the private sector. As part of the regional *Plan of Action*, PAHO plans to actively monitor country progress by assessing the "number of countries implementing a national

[136] Wyness L, Butriss JL, Stanner SA. Reduction the population's sodium intake: the UK Food Standards Agency's salt reduction programme. *Public Health Nutrition*. 15(2): 254-261.

[137] Laura Wyness et al., *Reduction the Population's Sodium Intake: The UK Food Standards Agency's Salt Reduction Programme*, 15 PUB. HEALTH NUTRITION 254 (2012).

[138] *Advisory Group*, PAN AM. HEALTH ORG., http://www.paho.org/panamericanforum/?p=230 (last visited May 16, 2015).

[139] *Pan Am Report*, *supra* note 133, at 2-4.

[140] *About PAFNCDs*, PAN AM. HEALTH ORG., http://www.paho.org/panamericanforum/?page_id=67 (last visited May 16, 2015).

multi-sectoral plan."[141] Through these actions, PAHO has taken the concept of voluntary multi-sectoral action, which started with the PAFNCD, and created a mandate for countries to follow this approach.[142]

Following this Reuters story exposing the influence of food and beverage companies within PAHO, the WHO quickly clarified its relationship with the private sector. The WHO Director-General Margaret Chan stated that "when the WHO works with the private sector, the Organization takes all possible measures to ensure its work to develop policy and guidelines is protected from industry influence."[143] Such protection includes prohibiting funds "from enterprises that have a direct commercial interest in the outcome of the project toward which they would be contributing."[144] The statement continued: "the WHO Global Strategy on Diet, Physical Activity and Health commits WHO to hold discussions with the private sector, but the Organization will not take money from private companies active in food and beverage production for work on NCD prevention and control as implied by the media articles." PAHO, as a WHO Regional Office, would be in violation of the WHO policy by accepting funds from the food and beverage industry to support NCD prevention and control initiatives. However, PAHO is unique among the WHO regional offices in that it wears two organizational hats, the WHO Regional Office for the Americas ("AMRO") and the specialized health agency of the Organization of the American States ("PAHO"). Chan points out, "In some areas the two entities may have variations in policy,"[145] thereby attempting to disassociate the WHO from PAHO's decision to accept food and beverage industry funding.

PAHO's acceptance of food and beverage industry funding set off a number of negative reactions within the global public health community, particularly among those in the nutrition community. Public health advocates started petitions to PAHO.[146] For example, the International Lactation Consultant Association ("ILCA") issued a statement and filed a formal

---

[141] *Plan of Action for the Prevention and Control of NonCommunicable Diseases in the Americas 2013-2019*, PAN AM. HEALTH ORG. (2014), http://www.paho.org/hq/index.php?option=com_docman&task=doc_view&Itemid= 270&gid=21345&lang=en.

[142] *Id.* at 10.

[143] Margaret Chan, *WHO Sets the Record Straight on Work with the Food and Beverage Industry*, WORLD HEALTH ORG. (Nov. 19, 2012), http://www.who.int/mediacentre/news/statements/2012/nutrition_20121119/en/.

[144] *See id.*

[145] *See id.*

[146] *See Urge the World Health Organization to Cut Ties with Nestle: Our Mothers and Babies are Worth It*, THE PETITION SITE, http://www.thepetitionsite.com/569/157/115/urge-the-world-health-organization-to-cut-ties-with-nestle-our-mothers-and-babies-are-worth-it/ (last visited May 16, 2015).

complaint with PAHO citing PAHO's acceptance of funding from Nestle, whom ILCA argued, "market[s] products detrimental to health" and is not "meeting their obligations under the *International Code* [*of Marketing of Breast-milk Substitutes*]."[147] The World Public Health Nutrition Association also sent an open letter to PAHO in February 2013, following the election of PAHO new director Dr. Carissa Etienne, stating, "the fact that PAHO received money from The Coca-Cola Company and other food and beverage corporations has damaged its reputation as the leading UN organization concerned with nutrition and public health in our Hemisphere." The letter, signed by leading public health and nutrition experts including Marion Nestle, Barry Popkin, and Walter Willett, called on Dr. Etienne to "reconsider recent steps that have moved PAHO away from the path of promoting better nutrition and health" by engaging with "multinational corporations whose interests are in conflict with those of public health."[148]

Responding to the pressure from the public health community, PAHO took several steps which altered the nature of the organization's engagement with the food and beverage industry. First, Dr. Carissa Ettiene, assumed the position at a time when civil society was discontent with the Organization and calling for significant changes with its relationships with food and beverage companies. Second, PAHO subsequently shifted fiduciary control of the PAFNCD's initiatives to the PAHO Foundation—formerly the Pan American Health and Education Foundation—which is a 501(c)(3) charitable arm of PAHO.[149] Third, the PAFNCD currently assumes a much less prominent role in PAHO's NCD programming, in part because key staff that championed and implemented the initiative are no longer with PAHO. These staff include the PAFNCD's director, PAHO's NCD coordinator, who was also the visionary behind the PAFNCD, and PAHO's deputy director who led partnerships and external relations for the organization. The PAFNCD website is still active; however its last news release was from June 14, 2013.[150]

---

[147] Elizabeth Brooks, *Statement from the ILCA Board on PAHO and WHO Acceptance of Industry Fund*, 29 J. HUM. LACTATION 289, 289-90 (2013).

[148] *Open Letter to New UN Agency Chief: No More Deals with Nestle Please*, WORLD PUB. HEALTH NUTRITION ASSOC. (March 2013), http://www.wphna.org/htdocs/2013_mar_hp1_paho.htm.

[149] *About PAHO Foundation*, PAHO FOUNDATION, http://www.pahofoundation.org/en/aboutus.html (last visited May 16, 2015).

[150] *SaltSmart Consortium Endorses Plan to Halve Dietary Salt Consumption in the Americas by 2020*, PAHO/WHO (June 14, 2013), http://www.paho.org/hq/index.php?option=com_content&view=article&id=8801%3Asaltsmart-consortium-endorses-plan-to-halve-dietary-consumption-in-the-americas-by-2020-&catid=740%3Anews-press-releases&Itemid=1926&lang=en.

V. DISCUSSION

The NCDRT and PAFNCD both provide valuable lessons that governments, international organizations and other stakeholders to consider when formulating NCD policies and partnerships. Engagement with industry is inevitable and in fact is already occurring. Momentum towards this approach has been building for a number of years.[151] States have the sovereign right to work with the private sector when developing global health strategies, including the right to involve industry representatives on state delegations to international meetings. Many contend that private sector participation allows for rational decision-making. Private businesses are regulated entities, and therefore, have a right to be heard and participate. Informed industry opinions can, in some cases, help shape cogent policy.

However, given the increased involvement of the private sector in NCD policy-making, public health organizations should remain wary of companies' conflicting interests. In addition to the cases discussed previously, the UN Global Compact, NCDnet, a collaborate arrangement between UN agencies and non-state actors, and the Moscow Global Forum, held in April 2011 prior to the UN High Level Meeting are all examples of the UN system directly engaging with industry around NCDs. Some have argued this engagement led to favorable outcomes for industry in the UN High Level Meeting's Political Declaration.[152] Food companies may play a role in addressing NCDs, and in some cases, business interests may align with public health. However, this engagement shouldn't be accidental or assumed. Business interests may align with public health in some instances, but the fundamental motivations and interests of the private sector and public health differ. A Corporations' primary duty is to maximize profit for shareholders, not the health of consumers.[153] These profit-maximization motivations will always dominate the actions of the private sector. As such, public health organizations should remain vigilant when interacting with industry, particularly with companies whose products are known to contribute to negative health outcomes, such as SSBs.

Therefore, the most important question is how to structure this engagement to ensure it advances public health in a transparent, accountable manner. Without the necessary controls, industry's involvement in international organizations and policy dialogue at the WHO and the UN can

---

[151] *See* Kent Buse & Amalia Waxman, *Public-Private Health Partnerships: A Strategy for WHO*, 79 BULL. OF THE WORLD HEALTH ORG. 748 (2001).

[152] *See* David Stuckler et al., *Commentary: UN High Level Meeting on Non-communicable Diseases: An Opportunity for Whom?*, 343 BMJ 1 (2011).

[153] *See* Gerard Hastings, *Why corporate Power is a Public Health Priority*, 345 BMJ 1 (2012).

inhibit progress. When PPPs involve the food and beverage industry, their efficacy is debatable.

As a result of the limited outcome evidence to support PPPs with food and beverage companies, the cases of the NCDRT and PAFNCD are concerning for the integrity of future global health and NCD policy-making and partnerships. The case studies discussed above highlight three themes relating to how SSB companies engage on global NCDs: A) resource constraints and public-private partnerships, B) policy incoherence, and C) insufficient accountability. Increasing fiscal constraints on public sector funding has led to international development and global health communities to pursuing alternative financing mechanisms, presenting an opportunity for greater industry involvement. This increased willingness of governments, international organizations, and NGOs to pursue collaborations with industry deviates, at times, from existing policies or approaches, leading to policy incoherence. Further, as PPPs have emerged to fill resource and programmatic voids within global health, there are insufficient controls to require companies to transparently disclose interests, prevent conflicts of interest, and ensure sufficient accountability. Though specific to NCDs, these lessons can help inform future partnership development within the broader global health and international development communities. In particular, strong consideration should be taken as stakeholders continue to debate the evolving international development architecture and the post-2015 agenda.

A. Resource Constraints and the Rise of Public–Private Partnerships

Ongoing resource constraints in international development and global health have forced governments to increasingly pursue alternative financing and program implementation arrangements through PPPs.[154] This resource gap is most apparent in global NCD financing. A substantial resource gap exists between the burden of disease from NCDs and their commensurate resources.[155] This gap exists between donors and middle- and low-income country national budgets.[156] Less than 5 percent of official development assistance for health is for global NCDs.[157] In the case of the NCD

[154] INST. FOR HEALTH METRICS AND EVALUATION, TASK FORCE REPORT: FINANCING GLOBAL HEALTH 2013: TRANSITION IN AN AGE OF AUSTERITY (2014).

[155] Mitchell E. Daniels Jr. et al., *The Emerging Global Health Crisis: Noncommunicable Diseases in Low- and Middle-Income Countries*, COUNCIL ON FOREIGN RELATIONS INDEPENDENT TASK FORCE (2014).

[156] W.K. Bosu, *A Comprehensive Review of the Policy and Programmatic Response to Chronic Non-communicable Disease in Ghana*, 46 GHANA MED. J. 69 (2012).

[157] *See* Nugent & Feigl, *supra* note 76.

Roundtable and PAFNCD, both were unfunded mandates at their inception. GHC's membership overwhelmingly favored (and urged) the organization's involvement and leadership of NCDs but it lacked any dedicated resources for the program area. The PAFNCD has similarly struggled to acquire dedicated resources internally, which likely influenced PAHO's decision to seek outside funding from food and beverage companies.

As evaluations of global PPPs have shown, they are effective in mobilizing resources, a potential benefit in both cases of the NCDRT and PAFNCD. At the time GHC launched the NCDRT, the organization relied on two primary funding streams: membership dues and a large grant from the Gates Foundation. Neither proved sustainable and GHC announced it would close operations the following year.[158] The organization faced a challenging financial situation when embarking upon its NCD work, and the appeal of funding from the private sector provided a strong incentive to include them in a significant way.

Beyond PAHO, the WHO has faced chronic resource constraints over the past several decades, and its reliance on extra-budgetary contributions has skewed its priorities. Roughly 80 percent of the WHO's funding comes from extra-budgetary funds from States and private sources which significantly influence the WHO's capacity to focus on particular health issues. For example, the majority of the WHO's extra-budgetary contributions are earmarked for infectious disease programs, despite NCDs accounting for more than 60 percent of all deaths worldwide and injuries accounting for some 17 percent of global disease burden.[159] Previous research on the topic has found that over 90 percent of the WHO's extra-budgetary funds were earmarked for diseases that accounted for less than 10 percent of global mortality.[160]

At the country level, national governments in some low- and middle-income countries have identified financial constraints as one of the principle reasons for limited progress on NCD prevention and control.[161] A common justification for PPPs is to overcome these resource constraints.[162] Indeed,

---

[158] *Global Health Council to Close Operations*, BLOG 4 GLOBAL HEALTH (Apr. 20, 2012), https://blog4globalhealth.wordpress.com/2012/04/20/global-health-council-to-close-operations/.

[159] Devi Sridhar & Lawrence O. Gostin, *Reforming the World Health Organization*. 35 J. AM. MED. ASSOC. 1585, 1586 (2011).

[160] Sonia Shah, *How Private Companies Are Transforming the Global Public Health Agenda*, FOREIGN AFF. (Nov. 9, 2011), http://www.foreignaffairs.com/articles/136654/sonia-shah/how-private-companies-are-transforming-the-global-public-health.

[161] *See* JEFFREY L STURCHIO & AKASH GOEL, CTR. STRATEGIC AND INT'L. STUDS. THE PRIVATE-SECTOR ROLE IN PUBLIC HEALTH: REFLECTIONS ON THE NEW GLOBAL ARCHITECTURE IN HEALTH (2012), http://csis.org/files/publication/120131_Sturchio_PrivateSectorRole_Web.pdf.

[162] *See id.*

evaluations of PPPs typically focus on resource-sharing objectives, and generally show positive results from a resource mobilization perspective.[163] The goal of many PPPs is to mobilize resources that enable the execution of public programs. However, effectiveness measures are often overlooked or de-emphasized, in part due to ambiguous objectives. Such objectives often point to "increased cooperation" or "increased collaboration among stakeholders" as desired outcomes. These process-oriented, short-term aims often substitute for outcome-focused, long-term objectives, which represent a better measure of the PPP's effectiveness.

B. Policy Incoherence

This new era of collaboration and partnerships with industry deviates from previously-held positions that viewed industry engagement more critically. This shift results in policy incoherence between global governance and NCD policy priorities. Prior research in tobacco control found that policy incoherence occurs when there are inconsistencies between different policies, thus resulting in their mutual impairment.[164] In the case of tobacco, the WHO facilitated the FCTC to regulate certain transnational corporations seen as fundamentally detrimental to health. But at the same time, the WHO increased its support for and involvement in collaborations and partnerships with the private sector. Widespread participation, including engagement with the food, beverage, and alcohol industries, became a tenant of good governance with the WHO and other international organizations.

With this shift away from industry skepticism, regulatory approaches are being replaced with industry self-regulation and increased opportunities for "multi-stakeholder" engagement. In spite of widespread recognition of the FCTC's success as a global governance model tool, many see it as unique to tobacco with little or no useful application for other NCD risk factors, such as unhealthy eating and excessive alcohol consumption. Indeed, many global health thought-leaders have called for the active inclusion of "the private sector, particularly the food and beverage industries," stating it is "extremely important to finding durable solutions" related to NCD prevention.[165] This view persists despite calls from many public health groups for stronger regulation of the food, beverage, and alcohol industries. Some view the FCTC as a model legal instrument that

---

[163] *See Public-Private Partnerships*, supra note 39.

[164] Jeff Collin, *Tobacco Control, Global Health Policy and Development: Towards Policy Coherence in Global Governance*, 21 TOBACCO CONTROL 274, 275 (2012).

[165] DEVI SRIDHAR ET AL., CTR. STRATEGIC AND INT'L. STUDS, GETTING THE POLITICS RIGHT FOR THE SEPTEMBER 2011 UN HIGH-LEVEL MEETING ON NONCOMMUNICABLE DISEASES (2011).

could be applied to unhealthy food and beverage product, such as through a Framework Convention on Obesity. Though this type of binding treaty is highly unlikely, governments could consider alternative regulatory approaches, such as an International Code of Practice on the Marketing of SSBs to Children. Such a measure may help address one area of coercive tactics employed by the food and beverage industry that persists despite self-regulation.[166]

Further, the WHO continues to urge national governments to pursue partnerships with the private sector to mobilize resources, strengthen capacity, and enhance collaboration to address NCDs.[167] At the same, the WHO stresses the need for "robust governance mechanisms to safeguard public health from conflicts of interest."[168] Indeed, the WHO Director-General Margaret Chan has stated that food and beverage companies "protect themselves by using the same tactics" as Big Tobacco.[169] Chan has also suggested that food and beverage companies are the "opposition," and that "when industry is involved in policy-making, rest assured that the most effective control measures will be downplayed or left out entirely."[170]

The WHO has also strengthened its recommendations on sugar intake, despite pushback from industry. On March 4, 2015, the WHO released new sugar intake guidelines for adults and children, advising that it be reduced to less than 10 percent of total energy intake. The guidelines also conditionally recommend individuals to reduce intake to less than 5 percent of total energy intake.[171] In response, the International Council of Beverage Associations, which includes Coca-Cola and PepsiCo, released a statement opposing the measure, suggesting that WHO's recommendation "does not reflect scientific agreement on the totality of evidence."[172]

While the WHO's new guidelines on sugar intake suggest a more aggressive approach to combating the pervasiveness of sugar in high-income

---

[166] Dale Kunkel et al., *Evaluating Industry Self-regulation of Food Marketing to Children*, 48 AM. J. OF PREVENTIVE MED. (forthcoming 2015).

[167] Margaret Chan, Director-General, World Health Org, Opening Address of the 8th Global Conference on Health Promotion (June 10, 2013), *available at* http://www.who.int/dg/speeches/2013/health_promotion_20130610/en/.

[168] *Id.* at 17.

[169] *See Guideline: Sugars Intake for Adults and Children*, WORLD HEALTH ORG. (2015), www.who.int/nutrition/publications/guidelines/sugar_intake/.

[170] *See id.*

[171] On average, 13% of total calories consumed by the typical American adult over the age of twenty are from added sugars, the largest source of which are SSBs. Since the 1970s, daily calories from SSBs have more than doubled in the United States. Sugar and SSB consumption is also on the rise in many low- and middle-income countries, including Mexico where SSBs account for 10% of total caloric intake. *See id.*

[172] Allison Aubrey, *Dump the Lumps: The World Health Organization Says Eat Less Sugar*, NPR (Mar. 4, 2015), http://www.npr.org/sections/thesalt/2015/03/04/390726878/dump-the-lumps-the-world-health-organization-says-eat-less-sugar.

and increasingly middle- and low-income countries, its recommendations on how to achieve these changes (e.g., through PPPs) is questionable. Previous assertions by Chan on the adversarial nature of food and beverage companies seem contrary to the WHO's activities of engaging with and promoting partnerships with these industries. Such partnership approaches are also contrary to existing research on PPPs generally, and those specifically involving the food and beverage industry.

C. Insufficient Accountability

As the global health landscape becomes increasingly complex and resources continue to flow into PPPs, evaluation and accountability will be critical. Although PPPs are a popular strategy to address global health challenges, they often lack sufficient evaluation protocols to assess their effectiveness.[173] In their review of independent evaluations of existing global health PPPs, Buse and Tanaka found that there is a "relatively small number of independent GHP [global health partnership] evaluations publicly available, however, reflects the generally inadequate commitment of global health programmes, including partnerships, to evaluation."[174] A separate review of PPPs in developing countries commissioned by the Ministry of Foreign Affairs of the Netherlands details the shortcomings of existing PPP evaluations, which often lack an appropriate reference point for comparison prior to the PPP and are unclear whether positive effects directly result from the PPP or some other factor.[175] Some contend that PPPs "are basically public relations and market expansion gambits for the private sector."[176]

The limited commitment to evaluations of PPPs in global health presents a key question of accountability, especially when these partnerships include contentious stakeholders, such as the food and beverage industry. Currently, few accountability mechanisms exist to assess the nature of the food and beverage industry's interaction with the public sector and civil society in current PPPs; concrete mechanisms for monitoring and review should be an essential component of future partnerships. Both the NCDRT and PAFNCD implemented few accountability measures, and the PAHO altered its means for engaging with the food and beverage industry only after

---

[173] *See* INST. OF MED. OF THE NAT'L. ACADS., EXPLORING LESSONS LEARNED FROM PUBLIC-PRIVATE PARTNERSHIPS TO IMPROVE GLOBAL HEALTH AND SAFETY (2014), http://www.iom.edu/Activities/Global/PublicPrivatePartnershipsForum/2014-NOV-18-19/Workshop-in-Brief.aspx.

[174] Buse & Tanaka, *supra* note 53, at 8.

[175] *See Public-Private Partnerships*, *supra* note 39.

[176] Nora Y. Ng & Jennifer P. Ruger, *Global Health Governance at a Crossroads*, 3 GLOBAL HEALTH GOVERNANCE 1, 6 (2011).

significant negative media exposure. Many national governments lack an independent accountability mechanism to assess collaborations and partnerships with industry. Meanwhile, private resources have become a significant funding stream in global health, yet the extent of these resources and the relationships between actors are not well understood.[177] Transparency and accountability have also been major concerns at the WHO, in part due to the WHO not having a third-party review process for the partnerships it enters. In short, the WHO lacks an independent means of protecting against conflicts of interest.

In the area of PPPs to address NCDs, some have called for the establishment or improvement of monitoring systems of private sector policies and practices, especially those related to the food and beverage industry. Such systems must be independent and empowered with enforcement authority and capabilities, as The *Lancet* NCD Action Group has proposed.[178] In a 2015 *Lancet* article, Swinburn and colleagues outlined an accountability framework to promote healthy food environments, which also included enforcement mechanisms for both governments and the private sector, such as legal, quasi-regulatory, market-based, and other strategies.[179] Similarly, the International Network for Food and Obesity/NCD Research, Monitoring and Action Support ("INFORMAS") has created a monitoring approach of private sector policies and practices that influence food environments.[180] Although many of the monitoring measures of food and beverage industry policies and practices in global NCD prevention and control are still being developed, they emphasize the need for greater transparency and independent monitoring.

Many public health experts believe it is not possible to construct effective public health partnerships with food and beverage companies. A *Lancet*-sponsored group of independent experts in a 2013 review of tobacco, alcohol, and ultra-processed food and drink industries concluded that "despite the common reliance on industry self-regulation and public-private partnerships to improve public health, there is no evidence to support their effectiveness or safety."[181] The article unequivocally stated that "unhealthy

---

[177] *See* Stuckler, *supra* note 73.

[178] *See* Robert Beaglehole et al., *Independent Global Accountability for NCDs*, 381 LANCET 602 (2013).

[179] *See* Boyd Swinburn et al., *Strengthening of Accountability Systems to Create Healthy Food Environments and Reduce Global Obesity*, LANCET (forthcoming 2015).

[180] *See* Gary Sacks et al., *A Proposed Approach to Monitor Private-Sector Policies and Practices Related to Food Environments, Obesity and Non-Communicable Disease Prevention*, 14 OBESITY REVIEWS 38 (2013).

[181] Rob Moodie et al., *Profits and Pandemics: Prevention of Harmful Effects of Tobacco, Alcohol, and Ultra-Processed Food and Drink Industries*, 381 LANCET, 670, 670 (2013).

commodity industries should have no role in the formation of national or international policy for non-communicable disease policy." Others have gone further to suggest governments, international organizations, and other stakeholders "reject partnership with food and alcohol industries as inappropriate and voluntary regulation as inadequate given the global challenge of obesity and alcohol related harms."[182]

VI. CONCLUSION: CONSIDERATIONS FOR THE POST-2015 DEVELOPMENT AGENDA

This discussion has important implications for the UN Sustainable Development Goals that aim to achieve "improved nutrition"[183] and "ensure healthy lives and promote well-being for all at all ages."[184] Realizing these goals requires governments, the public health community, civil society, and other stakeholders carefully scrutinize and define terms of engagement with the food and beverage industry to ensure public health remains the highest priority. The global health community must ask questions of the private sector and explicitly define its role; its full participation and cooperation in global health policy decision-making should not be assumed. Food and beverage companies may very well be able to play a role, but governments should not conflate setting public health objectives through policy with strategies to achieve them.[185]

Such questions are not currently at the forefront of policy discourse on global NCDs. Other important questions have risen to the top of the agenda,[186] while a largely undefined "multi-stakeholder" or "multi-sectoral" approach remains a prevailing assumption, such as in proposed SDG 17, which calls for "multi-stakeholder partnerships . . . to support the achievement of sustainable development goals" and "encourage[s] . . . public-private . . . partnerships."[187] As researchers have found in other sectors, such as agriculture, PPPs may serve a valuable purpose, but they "are not automatically the right choice to solve every challenge in

---

[182] Collin, *supra* note 164, at 278.

[183] *See* U.N. Dept. of Econ. & Soc. Affairs, *supra* note 36 (Goal 2).

[184] *See id* (Goal 3).

[185] *See* Corinna Hawkes & Kent Buse, *Public Health Sector and Food Industry Interaction: It's Time to Clarify the Term "Partnership" and Be Honest About Underlying Interests*, 21 EUR. J. PUB. HEALTH 400 (2011).

[186] *See* Robert Beaglehole et al., UN High-Level Meeting on Non-Communicable Diseases: Addressing Four Questions, 378 *Lancet* 449 (2011).

[187] *See* Open Working Group Proposal for Sustainable Development Goals, *supra* note 36 (Goal 17).

agriculture."[188] After all, PPPs remain a relatively new form of development cooperation. As Peter Drucker, an influential philosopher of the modern business corporation, said, "erroneous assumptions can be disastrous." A solution is only as effective as its underlying assumptions. When assumptions are faulty, solution strategies are misguided and ultimately fail.

As a 2012 *PLoS Medicine* editorial argued, "the food industry is ripe for scrutiny."[189] Its attempts to gain legitimacy within global health resemble many of the same tactics previously used by the tobacco industry. Food and beverage companies are actively pursuing opportunities to influence the policy debate and policy-making on global NCDs, as the NCDRT and PAFNCD cases demonstrate. Thus, as the WHO continues to pursue and promote an inclusive, multi-sectoral approach to addressing NCDs, it should consider the food and beverage industry's history as an effective partner. Ultimately, is the industry motivated to protect public health, or is their involvement in global NCDs a strategic decision based on business interests? As Beaglehole and colleagues state, "market forces contribute to the rise of NCDs . . . from the successful marketing of unhealthy products; this outcome provides strong justification for government intervention through regulatory and legislative responses."[190]

VII. CONCLUSION

PPPs have become an important strategy to address complex global health challenges. As the global burden of NCDs and obesity expands, governments, international organizations, and civil society will continue to explore opportunities to collaborate with the private sector, including in pursuit of achieving the forthcoming SDGs. In many cases, the private sector, including the food and beverage industry, has a "seat at the table." Like tobacco companies, however, food and beverage companies are employing similar tactics as tobacco companies to sway public sentiment and influence the outcome of policy debates. While the debate continues regarding the specific mechanisms required to advance global NCD policy, this article offers two cautionary case studies supporting the need for sufficient monitoring and accountability with whatever mechanism is pursued. As with tobacco companies, some food and beverage companies

---

[188] Marco Ferroni & Paul Castle, *Public-Private Partnerships and Sustainable Agriculture Development*, 3 SUSTAINABILITY 1064, 1071 (2011).

[189] *See* The PLoS Medicine Editors, *PLoS Medicine Series on Big Food: the Food Industry is Ripe for Scrutiny*, 9 PLOS MED. 1 (2012).

[190] Beaglehole et al., *supra* note 186, at 452.

manufacture products that are detrimental to health, such as SSBs. Consumption of these unhealthy products is increasing in many low- and middle-income countries and sometimes replacing native foods. The constructive participation of the companies that produce these products should not be assumed.