GUIDANCE ON DRUG POLICY

INTERPRETING THE UN DRUG CONVENTIONS

All Party Parliamentary Group for Drug Policy Reform

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Foreword

Many States Parties now agree that the war on drugs has failed and that change is needed. The UN Special Session on drugs in 2016 offers a unique opportunity to press for improvements to the current system. The evidence from the experience of the last 50 years suggests that a more balanced approach to drug policy can be consistent with reduced drug harms. In particular we need a thorough debate about potential alternatives to blanket prohibition and greater emphasis upon policies which promote the health of the individual and the community and reduce violence and corruption.

A major part of the reform debate will focus on whether experiments in drug control can be supported and encouraged within the framework of the UN Drug Conventions. The successful policy in Portugal of decriminalising the possession of drugs has attracted much interest around the world and is seen as a positive way forward. It was criticised at first at UN level but is now accepted as being consistent with a reasonable interpretation of the Conventions. The experiments in the regulation of cannabis markets being implemented and considered by a number of States in the USA and in Uruguay will provide evidence to guide other States Parties in determining their own policies. Whether regulated markets fall within the Conventions is a contested issue. As experiments, they must be professionally evaluated.

Ultimately, the UN Conventions must be revised or they will increasingly be ignored by Member States. Pending treaty reform, Member States need an interpretation of the Conventions which takes account of the available flexibility and the evidence of the relative success of a range of policies to achieve the Conventions' stated objective – 'to advance the health and welfare of mankind'. Accordingly this Guidance has been drafted with support from European and Latin American government officials and experts. It shows how far policy can develop within the Conventions and proposes that, in the light of policy and scientific progress since 1961, the Conventions must allow experimentation and scientific evaluation of the full range of drug policy options. The Guidance promotes a balanced approach to the production and trafficking, as well as the sale and consumption of drugs. It also provides a framework to ensure access to essential pain relieving medicines.

Strengthening development and social policies and addressing health and community safety will require a fundamental reorientation of policy priorities and resources. If this is to be the main focus of international drug policy post 2016 then it is essential that as many States Parties as possible support these Guidelines.

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Introduction

The Stated objective of the UN Conventions on drugs is to “advance the health and welfare of mankind”. This remains a good starting point today.

The problem has been that when the Conventions were drafted, in 1961, 1971 and 1988, the world had little understanding of addiction or dependence syndrome, and virtually no evidence of policies that would help reduce prevalence and addiction, but at the same time avoid the violence, corruption, community and individual suffering associated with an illicit drug market. In the absence of science – evidence of effective drug policies – the Conventions were drafted on the basis of a punitive theory of motivation: that drugs are bad; drug users are bad and the problem could be resolved if all those involved were punished. For more than half a century, the UN organisation responsible for promoting the application of the Conventions – the International Narcotics Control Board – has seen its role as upholding a fiercely prohibitionist interpretation of those Conventions. It has discouraged policy innovation, thus inhibiting research into potential policy improvements.

The Global Commission on Drug Policy Reform[a] has set out the unintended consequences of the Drug Conventions as interpreted since their inception. For more than half a century the prohibitionist approach has failed to reduce addiction world-wide; has interfered with access to controlled medicines; has led to violence, corruption, harm to individuals and communities and has generated a turnover of more than $300 bn a year for criminal gangs and terrorists.[1] According to the Global Commission, "punitive drug law enforcement fuels crime and maximises the health risks associated with drug use, especially among the most vulnerable."[2] Also "punitive approaches to drug policy are severely undermining human rights in every region of the world". This regime has also failed to attempt to end the use of the death penalty for drug offences. The Global Commission and others have raised the possibility that the prohibitionist approach may have created more harms for the world’s population than the harms caused by the drugs themselves.

The UNODC has recognized that drug use has risen relentlessly at world level[3]. The prohibitionist interpretation of the UN Conventions has failed and the Treaties are in need of reform. However, opponents of reform will argue that although the evidence of the efficacy of current policies is weak, the absence of experimental policies and their evaluation has meant that we do not yet have the necessary evidence (which we accept as a good basis for policy) of what would be most effective in achieving the overarching objective of the Conventions. The immediate need, therefore, is to introduce an experimental ethos and evaluate policies designed to achieve a more balanced approach to drug policy; an approach which has less focus upon prohibition and punitive measures, and greater emphasis upon human rights, public health and social welfare.

There are, however, policies which have already been rigorously evaluated and which could be introduced more widely by States Parties. Obvious examples are the decriminalisation of possession and use of drugs in Portugal[4] and a few other countries. There is also the regulated supply of heroin to severely addicted users within a comprehensive rehabilitation service in Switzerland and elsewhere[5]; other policies, which depart from the prohibitionist interpretation of the Conventions and appear to have positive results, have not yet been formally evaluated. Properly evaluated experiments need to be encouraged across all policy areas but particularly in

[a]The **Global Commission on Drug Policy** (GCDP) is a panel of 22 world leaders and intellectuals which was formed in 2011 to "bring to the international level an informed, science-based discussion about humane and effective ways to reduce the harm caused by drugs to people and societies.

relation to drug production, supply and trafficking; and the full range of alternative models of market regulation.

The aims of drug policy

One of the problems has been an absence of specific aims which, if achieved, would deliver improvements in 'the health and welfare of mankind'. There is a need to identify such aims based on a health and harm minimisation approach against which drug policies could be objectively assessed.

The development of such a management framework is the work of experts in this field but as a start we propose five clear aims for drug policy:

Five aims of drug policy

1. **On the Possession and Use of Controlled Drugs**. To reduce the incidence of drug addiction and the harms caused by drug use and by the regime for controlling drug use.
2. **On the Relief of Pain**. To increase the number of States Parties where essential pain relieving medicines are available to those who need them – to 100%.
3. **On the Supply of Controlled Drugs**. To reduce the social harms associated with supply: including violence, corruption, harm to individuals and communities; and the generation of profits for criminal gangs and terrorists.
4. **On The Death Penalty.** To reduce the number of States Parties who apply the death penalty to drug offences – to zero.
5. **On Regulated markets.** To achieve aims 1-3 more effectively than the prohibitionist approach.

A reasonable test of alternative policies is whether they can do better than current ones and a further test of alternative policies is whether they are consistent with the UN Conventions and Treaties. This guidance sets out how the UN Drug Conventions and a human rights framework, taken together, provide room for major policy development.

Four justifications for drug policy development within the UN Drug Conventions

1. On specific drug policies such as possession and use there have been conflicting interpretations of the UN Drug Conventions but it has become established that they can be interpreted to permit decriminalisation of personal use and possession of small quantities of drugs.
2. The interpretation of the term: "for medical and scientific purposes" in the UN Conventions must take account of advances in the development and scope of 'science'; that is, evidence-led approaches not only to the application of medicines and treatments but also to the wider social policy arena including supply and regulation. The term should now capture and encourage new policy experiments which are scientifically evaluated.
3. Human Rights treaties take precedence over the Drug Control Conventions.
4. Within the overall prohibitionist framework the UN Conventions on drugs have always had regard to national sovereignty and discretion on implementation at national level. Governments will adjust drug policies to take account of the limitations of their resources and capacity.

Also policy development cannot be led by UN bodies such as the INCB. However, the aims of the INCB should be reconfigured to encourage and support policy experiments and ensure that such experiments are evaluated.

1. Possession, Use and the UN Drug Conventions

There has been initial hostility to experiments in decriminalisation such as in Portugal based on article 4(1)(c) of The Single Convention 1961, which obliges Parties to "limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs". However the Commentary to the 1988 Convention is conclusive with respect to use. It says "it will be noted that, as with the 1961 and 1971 Conventions, paragraph 2 does not require drug consumption as such to be established as a punishable offence".[6] Further the commentary in relation to Article 3; and to Article 3(2) of the 1988 Convention, along with other sources show that the Conventions do not require criminalisation in relation to personal use and possession, principally on grounds of national sovereignty.

2. Interpreting the term "for medical and scientific purposes".

With respect to article 4(1)(c) of the 1961 Convention (set out above) the commentary states "the objective of the international narcotics system is to limit exclusively to medical and scientific purposes the trade in and use of controlled drugs".[7] However there is not a clear and agreed definition of what the terms 'medical and scientific' can and cannot include. Within this interpretive space there needs to be consideration of how the science has advanced since 1961. There is now an established discourse at international level about evidence and evidence led approaches in all the social policy fields relevant to drug control. These include not only medicines, health and treatment but more broadly, public health, policing, criminal justice, forms of regulation, community and social development and the overall governance of policy. This Guidance recognises that reality.

Well known experiments in drug policy which although initially resisted are now accepted within the framework of the Conventions include decriminalisation in Portugal and heroin assisted treatment in Switzerland. It is no surprise that a contributory factor in their acceptance was that they were both robustly evaluated.

Yury Fedotov, Executive Director of the UN Office on Drugs and Crime (UNODC) has highlighted the importance of new scientific evidence and evaluation. Mr. Fedotov said it is necessary "to implement drug control policies and programmes which are based on scientific evidence, monitoring and evaluation".[8] The Fedotov position invites a broad interpretation of the term "scientific purposes" in the context of the drug Conventions.

One Legal Opinion from a senior UK Barrister, Lord Carlile, in relation to regulated markets for cannabis, concluded "that it would fall within the Conventions for a contracting State to produce a regulated market, preferably for a limited period subject to evaluation at the end of that period, as long as there was a clear medical or scientific basis for such an evaluation".[9] His opinion, although

contested, is the first to respond to the political reality of experiments in cannabis regulation in Uruguay and several US States.

3. The Supremacy of the Human Rights Obligations over the Drug Control Conventions

Human Rights obligations are a part of the UN Charter and therefore fundamental to the mission of the UN and States Parties. Obligations derived from the drug control Conventions are subordinate to human rights obligations. The UN Charter explicitly states, "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter prevail."[10] There is no ambiguity here. The supremacy of the Human Rights obligations is, of course, relevant to every aspect of drug policy. They set out very specific obligations on States Parties on how they should treat their citizens whereas the UN Drug Conventions allow a much greater degree of national autonomy.

4. The right of governments to determine their priorities within their limited resources

Within the central requirement of the UN Conventions on Drugs that controlled drugs are prohibited there is a degree of autonomy for States Parties in meeting these requirements. This is underpinned by the preamble to the Vienna Convention on the principle of international law: - the principle of self-determination of peoples, of the sovereign equality and independence of all states, of non-interference in the domestic affairs of States. Included within States Parties' autonomy is resource allocation. States Parties determine the allocation of resources to finance domestic policies to meet the needs of their populations.

The US has utilised this argument to justify non-interference by the federal authorities in the decisions of Washington and Colorado to introduce regulatory regimes for marijuana. The federal government has no constitutional authority to force states to implement the treaties. The federal government's only option, therefore, would be to directly enforce the treaties in states by using federal resources. The US State Department has argued this would place an excessive burden on federal resources and is therefore not consonant with a realistic interpretation of the drug control treaties. We raise the possibility that Governments other than those in federal nations might use a similar resource limitation argument to determine their domestic policies

The principle of self-determination of States Parties is, of course, also subject to the supremacy of their Human Rights obligations. It would not, therefore, be justified for a Member State to argue that the use of the death penalty, or denial of harm reduction measures would be justified on resource grounds.

A positive role for the INCB

National Governments remain the executors of the conventions, and the final arbiters of their implementation. The 1961 Single Convention established the role of the INCB: to promote the application of the International Drug Control Conventions. However, the INCB was not given the role of arbiter of States Parties' interpretation of the Conventions. Nor does the INCB have enforcement powers. However it has increasingly sought to carve out a role as custodian of UN drug treaty interpretation. At the same time it has claimed a lack of competence in relation to human rights issues, and its human rights record has been subject to question. We suggest it be reconfigured to encourage and support policy experiments and ensure that such experiments are evaluated.

Five main drug policy areas

This Guidance will examine the implications of the above justifications for reform in five key drug policy areas:

1. **Possession and use;**
2. **Access to essential pain relieving medicines;**
3. **The death penalty;**
4. **Supply; and**
5. **Regulated markets.**

In Section 6 this Guidance will refer to the role of the different UN institutions responsible for drug control.

1. Possession and Use of Drugs

States Parties to the UN Conventions on Drugs now have available a strong body of evidence to support the adoption of drug policies to deal with drug use and possession of drugs for personal use based upon a public health and human rights approach. A key metric in assessing drug policy should be the level of success in reducing the incidence of addiction to controlled drugs across the world; and in reducing the harms caused by both drug use and by the drug control regime itself. Countries with strong prohibition policies do not, in general, experience lower levels of use than more liberal ones. This was the conclusion of a recent UK Home Affairs Select Committee report on the drug policies of 11 States Parties with sharply contrasting policies.[11]

Based on evidence from the Czech Republic, Australia and Portugal[12]drug policies to deal with possession and use, which focus upon the social and health needs of drug dependent people have important benefits for the individuals, their families and communities.

Justification for Reform

This section clarifies that States Parties can introduce effective drug policies to deal with possession and use, based upon a helpful and widely accepted interpretation of the three Drug Control Conventions.

Personal Use of Controlled Drugs

To understand the flexibility available to States Parties, it is important to read the Commentary to the Conventions as well as the Convention Articles. Under the 1961 and 1971 Conventions States are required to take steps to limit drug use exclusively to medical and scientific purposes. This is set out clearly in The Single Convention of 1961, article 4(1)(c).[13]

However, there is no mention of 'use' in Article 36 of the 1961 Convention which sets out those activities which are punishable offences. Moreover, the Commentary to the 1961 Convention states explicitly that "… paragraph 1 (of Article 36) does not refer to "use"…..Article 36 is intended to fight illicit traffic, and unauthorized consumption of drugs by addicts does not constitute "illicit traffic".[14] Likewise, the provisions of the 1971 Convention do not require States to make drug consumption per se a criminal offence.[15]

The Commentary to the 1988 Convention is conclusive with respect to use. The Commentary says in relation to its Article 3 that "it will be noted that, as with the 1961 and 1971 Conventions, paragraph 2 does not require drug consumption as such to be established as a punishable offence".[16]

Possession of Controlled Drugs

Although the Conventions are more precise with respect to possession, they nevertheless leave room for flexibility with respect to possession for personal use.

Contrary to the 1961 and 1971 Conventions, Article 3(2) of the 1988 Convention stipulates that the parties shall adopt certain measures to criminalise the possession, purchase or cultivation of narcotic drugs or psychoactive substances for personal consumption, *subject to their constitutional principles and basic concepts of their domestic legal systems***.** The Commentary to the 1988 Convention, paras. 3.65-66 and 2.10, refers to this clause as the "safeguard clause". This can be interpreted to mean that States Parties have the right to determine domestic policy in accordance with their constitutions and laws. Such legal instruments have precedence over the UN Drug Control Conventions.

According to the Commentary to the 1988 Convention, "in relation to the obligation to criminalise possession, a distinction is made between possession for personal use and that for trafficking."[17] The thrust of the Convention's penal provisions is the prohibition of drug trafficking, and it does not appear that article 36(1) of the 1961 Convention obliges Parties to criminalise possession of drugs for personal use.[18]

For European countries, the European Convention on Human Rights, in particular Article 8[19], could be invoked in support of the argument that possession or purchase (or cultivation of drugs for personal use) (particularly in small quantities) do not injure other people's rights either directly or indirectly and therefore should not be criminalised. Nonetheless, harms to third parties can arise from the use of drugs (as with the use of alcohol). Such as harms to the children of drug users and harms arising from drug driving. These need to be addressed by the most effective means.

It does appear that there is scope for alternatives to criminalisation and criminal sanctions in response to the possession and use of controlled drugs. Such arguments have been used by the Netherlands, Alaska, Germany, Portugal and Spain to justify their policies on possession (or cultivation) of small quantities.[20]

Harm Reduction

A separate issue is the legality and legitimacy of harm reduction services, including needle exchange, maintenance treatment programmes using opiates, and drug consumption rooms. These policies have 'become virtually uncontested within the UN system and by an expanding majority of nations".[21]

Since the UN Drug Control Conventions do not prohibit drug use per se,[22] established practice has confirmed that the supervised use of scheduled drugs including methadone or heroin, when clinically indicated for the purposes of treatment, is entirely within the scope of the Conventions. Further, Article 33 of the Single Convention permits possession for medical and scientific purposes under domestic legal authority[23] and the Commentaries for the 1961 and 1971 Conventions and for the 1972 Protocol amending the Single Convention, all mention maintenance programmes within their opinions on what constitutes treatment and justified medical use of controlled drugs[24]. Finally, this principle is supported in spirit by the 1988 Convention which obliges parties to adopt appropriate demand reduction measures 'with a view to reducing human suffering'.[25]

The legitimacy of harm reduction policies was consolidated in 2002, when a request from the INCB to the UN Legal Affairs Services for an opinion on the legality of harm reduction measures generated a response which firmly argued that needle exchange programmes, maintenance treatment and drug injecting rooms were consistent with the Conventions.[26]

The 1998 UN Political Declaration on the Guiding Principles of Drug Demand Reduction also offers an accommodation with harm reduction approaches covering both treatment and the education and prevention fields,[27] stating "demand reduction shall (i) aim at preventing the use of drugs and at reducing the adverse consequences of drug abuse …".

Guidance

1. States Parties are able to decriminalise the use of all controlled drugs, and their possession for personal use, within the Conventions.
2. The following elements should be included in the harm reduction strategy of every Member State:
   - Prevention and evidence based education programmes
   - Harm reduction programmes to counter risky drug use, including needle exchange, drug consumption rooms, maintenance programmes and heroin treatment clinics.

2. Access to Essential Pain Relieving Medicines

Substances controlled under international law are routinely used in healthcare in such diverse fields of medicine as analgesia, anaesthesia, dependence treatment, maternal health, mental health, neurology and palliative care. The World Health Organization (WHO) has included twelve medicines that contain internationally controlled substances in its Model List of Essential Medicines; these should be affordable, accessible, and available to anyone who needs them.[28]

Although ensuring the adequate availability of controlled pain relieving substances for medical and scientific purposes is one of the fundamental aims of the UN Drug Conventions, the WHO estimates that some 160 UN States Parties fail to comply with the UN drug Conventions in this regard or with the WHO's List of Essential Medicines. In total, 5.5 billion people, including 5.5 million with terminal cancer and a million with end-stage HIV/AIDs, live in countries with low or non-existent access to controlled medicines. Tens of millions of people in these countries experience moderate to severe pain without access to pain relief every year.[29]

These countries need to ensure they comply with an affirmative human rights obligation under both the right to the highest attainable standard of health, and the prohibition of torture and cruel and inhumane treatment.[30]

The following Guidance considers the steps needed in order to achieve the original goal of the Drug Control Conventions with respect to essential pain relieving medicines; and at the same time ensure that all States Parties comply with their human rights obligations.

Reasons for Lack of Access to Essential, Controlled Pain Relieving Medications

The International Narcotics Control Board (INCB) and WHO have set out the key reasons for the limited availability of controlled pain relieving medicines in much of the world. These include overly restrictive drug control regulations; the misinterpretation of otherwise appropriate regulations; prejudices and fears related to the use of controlled medicines and inadequate training of health professionals in their use. Economic and social issues compound the problem.[31]

A number of drug control related factors contribute to this shocking state of affairs, including:

1. Lack of an operational paragraph in the 1961 Single Convention mandating States Parties to ensure adequate availability of controlled pain relieving medicines;
2. Failure of the INCB to challenge chronically low annual estimates for essential controlled medicines submitted by States Parties.
3. Failure of the Commission on Narcotic Drugs (CND) to focus adequate attention on this issue;
4. Excessive preoccupation among many States Parties with "cracking down on drugs."
5. A lack of public health policies and systems to support adequate access and availability of controlled medicines

The UN Drug Conventions

The Preamble to the Single Convention explicitly recognizes that "the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes…"[32] However, the preamble and operational paragraphs of the Convention itself focus heavily on control of illicitly manufactured and trafficked drugs, and nowhere directs States Parties to ensure the adequate availability of controlled medicines. Nor do they offer any guidance as to how States can achieve this goal. For

example, the Single Convention sets out reasonable minimum regulatory requirements for licensing controlled medicines at national level, but explicitly allows States Parties to impose stricter rules if they deem that necessary. The Convention does not require that such rules be proportionate and avoid interfering needlessly with the availability of controlled medicines.

UN Drug Control Agencies

Until recently, the CND, the INCB, and the UN Office on Drugs and Crime (UNODC) focused overwhelmingly on the prevention of production, traffic and use of illicit drugs, while ignoring the unfolding crisis with access to controlled pain relieving medicines, and considering it the responsibility of the WHO. While the INCB has periodically expressed concern about the limited availability of controlled medicines in many countries, an examination of its annual reports shows that it has historically been far more concerned about controlling illicit drugs than about their adequate availability for medical use.

Similarly, the CND ignored the issue of lack of access to essential pain relieving medicines for decades. In 1998 States Parties negotiated a political declaration on countering the world drug problem which proclaims drugs "…a grave threat to the health and well-being of all mankind." The document did not mention the medical uses of controlled substances or the aim of the 1961 treaty to ensure their adequate availability for medical use.[33]

In the last five years, civil society advocacy organisations have urged UN agencies, especially the WHO, and the CND to pay more attention to the limited availability of controlled medicines in much of the world. CND adopted resolutions on the issue in 2010 and 2011 and added it as a standing item to its agenda in 2010.[34] In 2011, INCB issued a detailed report on the topic;[35] and UNODC issued a discussion paper in 2011[36]. Following concerted pressure from several European States Parties, the 2014 Joint Ministerial Statement of the Commission on Narcotic Drugs added several paragraphs on the medicines issue.[37]

State Party Preoccupation with Fighting Drugs

Nevertheless, the Conventions and general institutional rhetoric about the War on Drugs have created a climate in which many UN States Parties found it politically expedient to be "tough on drugs." As a result, many countries have implemented drug control regulations that go far beyond the controls mandated by the Single Convention, and which often directly interfere with good medical practice. The 2013 Global Opioid Policy Initiative study of 115 countries in Africa, Asia, Eastern Europe, Latin America and the Middle East found that "access is significantly impaired by widespread over-regulation that continues to be pervasive."[38]

The Human Rights Justification for Reform

States Parties are required to prioritise the need to honour their human rights obligations. To achieve this, both developed and developing countries must reconsider their drug policies, and in the case of developed countries, their aid programmes. States Parties need a fresh interpretation and increased focus on the aim of the Single Convention to ensure access to essential pain relieving medicines. The aim must be to end the needless suffering of millions of people, largely in the Lower and Middle Income Countries.

Guidance

1. The INCB should give equal weight and appropriate resources to the two over-arching objectives of the Conventions: that States Parties ensure the adequate availability of essential, controlled medicines to those who need them; and an evidence based and health focused approach to the control of illicit drugs.
2. The INCB should highlight areas where States Parties are failing to fulfil their obligations, and the CND should be the forum where States Parties are called to account for their failings.
3. The CND should make availability of controlled pain relieving medicines a core pillar of global drug policy to ensure compliance with the human rights treaties.
4. States Parties must review and, as needed, reform domestic regulations on controlled medicines to ensure their adequate availability and use for the relief of pain and suffering.
5. Wealthier States Parties should contribute to the strengthening of governance in developing countries under the principle of mutual and shared responsibility and the training of government officials and medical staff in their obligations to make such medicines available to those who need them.

3. The Death Penalty for Drug Offences

When the first UN Convention on Drugs was agreed in 1961 only 9 countries had abolished the death penalty for all crimes.[39] Currently 140 have done so, while 58 still carry out the death penalty.[40] Today's interpretations of the Drug Conventions need to take account of a dramatically improved human rights landscape. Of the 58 Countries that use the death penalty 33 use it in relation to drug offences. For 13 of those the death sentence for drug offences is mandatory. The courts have no discretion to hear pleas of mitigation.[41] These inhumane practices have continued with little comment from those responsible for the implementation of the UN Drug Conventions.

Justification for Prioritising this Policy Area

The right to life is a central principle of UN human rights legislation. It was established by the Universal Declaration of Human Rights of 1948. Building on this the United Nations (UN) agreed the International Covenant on Civil and Political Rights (ICCPR) of 1966, which confirmed the right to life as part of a universal set of human rights. The majority of countries (168) are party to the ICCPR. The ICCPR came into force in 1976. It sought to limit the application of the death penalty to all but the gravest crimes.

According to Article 6(2) of the ICCPR the death penalty should be restricted to the 'most serious crimes'. This is made clear in Safeguard 1 of the *Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty.* Safeguard 1 was adopted by resolution 1984/50 of the UN Economic and Social Council (ECOSOC) which severely limits the use of the death penalty[42]. Countries which apply the death penalty for drug trafficking offences are in breach of this UN resolution.

This position on the death penalty is supported by guidelines from the European Union which state that the death penalty must not be imposed for drug related crimes. The guidelines also make clear that the death penalty should never apply to any but the most serious intentional crimes.'[43]

Despite the clear role of regional and global treaties to ensure human rights, the UN Conventions on Drugs make no reference to observance of UN instruments such as the ICCPR on limiting the use of the death penalty. The drug control treaties do not explicitly advocate the death penalty and where they recommend levels of sanction as part of drug control such as in Article 36 of the 1961 Convention they state that serious instances of drug offences, interpreted to mean various forms of trafficking, should be 'liable to adequate punishment, particularly imprisonment'.[44] However, Article 39 allows for the 'application of stricter control measures than those required by this Convention'.[45] There is also emerging evidence from a significant number of countries where drug offences carry the death penalty that these provisions entered their legal frameworks at the same time or shortly after signing the 1998 UN Convention on Drugs.[46]

The relevant Articles of the 1961 Convention are not consistent with the improved human rights standards within many States Parties and at the UN level in recent years. The abolition of the death penalty is not mandatory under UN conventions but the majority of States Parties support abolition. In December 2014, 117 of the 193 UN States Parties voted for a moratorium on the death penalty at the UN General Assembly plenary session. It is not possible to maintain the death penalty without fundamental violations of human rights. It should be abolished for all crimes, though our emphasis in this Guidance is upon drug related crimes.

Guidance

1. Control measures must conform to the human rights treaties, and thus the death penalty should not apply to drug supply or possession offences.
2. The UN agencies with responsibility for drug policy need to revisit their terms of reference to ensure that appropriate priority is given to the elimination of the death penalty for drug offences.

4. Supply-Side Policy

The UN drug control conventions are clear that any involvement in the cultivation, production, trafficking or supply of controlled substances for non-medical use will be prohibited.[47] Within these central requirements there is a degree of autonomy for States Parties in how they meet them. This is underpinned by the preamble to the Vienna Convention on the principle of international law: - the principle of self-determination of peoples, of the sovereign equality and independence of all states, of non- interference in the domestic affairs of States. Included within States Parties' autonomy is resource allocation. Governments determine the allocation of resources to finance domestic policies to meet the needs of their populations. Also States Parties should be equipped to develop the health focused elements within a widely recognized need for a balanced approach. Support for national and community development and social cohesion is crucial in order to reduce the prevalence of international organized crime.

The case for reform

In the field of 'supply-side' interventions new strategies are urgently needed. Past policies based on the 'war on drugs' comprising only punitive actions such as crop eradication and blanket interdiction of flows, have failed to suppress the market. Instead, unilateral actions have created market distortions and only shifted international trafficking routes – the so called balloon effect. These policies have undermined the drug control strategies of countries of the Global South. Decades of evidence now confirm this. Further, pursuit of these policies has produced considerable unintended consequences, in each country, in terms of violence, incarceration, breaking of social ties and human rights violations.[48]

The negative costs of the war on drugs can be measured in terms of human lives, health and other harms, whether these costs are generated by drug use, punitive interdiction against drug production and trafficking or the violence related to the drugs market. In both producer and consumer countries imprisonment as a first resort for minor infractions of the drug laws has led to disproportionate penalties, limited options for a productive life for young people and the overpopulation of prisons. This approach has also failed to take account of the coercion of vulnerable individuals, particularly children and women, into the service of organized trafficking, production or distribution organizations.

Some aspects of current policies present obstacles to the development of human rights based approaches. Disproportionate penalties, criminalization of possession, and lack of arms control policies all empower organized criminals.

Producer and transit countries

The producer and transit countries have undoubtedly suffered the most severe unintended consequences of the prohibitionist approach to controlled drugs. The levels of violence and corruption and the undermining of the governance of those countries has threatened the very existence of viable government. Drug cartels are able to make huge profits and to bribe the police and local officials (and in some cases MPs and others at national level), to ensure their illicit activities can continue undisturbed. This situation is exacerbated by the low income levels of public officials in some of these countries, making them vulnerable to bribery.

At the less skilled end of the drug cartels' activities, vulnerable individuals are drawn into illegal drug related activities. These people often include women and children, living in isolated communities where education is limited and infrastructure severely underdeveloped. Job opportunities are scarce or non-existent. The drug cartels take full advantage of the situation. Too often vulnerable individuals are coerced into the service of organized trafficking, production or distribution.

For the police, such vulnerable communities are a simple target for arrests. Tens of thousands of vulnerable people find themselves in prison. A criminal record and prison sentence will restrict even further the possibility of those involved finding employment and leading productive lives. Resources which could be allocated to education and infrastructure development are wasted on incarceration of people whose only aim is to feed their families. The results of such policies are wholly negative. The aim is no doubt to deter others. If people are hungry and vulnerable such deterrence does not work.

Another aspect of the problem has been the wholesale aerial crop eradication policy, apparently without regard for the consequences for the isolated communities affected. There is a clear tension between this approach and Article 1 of the International Covenant on Civil and Political Rights (ICCPR) which includes the right of nations to 'freely pursue their economic, social and cultural development" These and many other tensions between current drug policy and the global development agenda need to be urgently addressed.[49]

A new Supply-Side Framework

The interpretation of the Drug Control Conventions must take full account of the Universal Declaration of Human Rights, and the impact of current policies in human terms. This applies fully to the response to the production, trafficking and sale of controlled drugs. When the existing unbalanced prohibitionist response to drug market activities breaches human rights, then adjustments must be made.

International co-operation is a crucial element in supply side interventions. Much joint work between States Parties has been in the field of interdiction. This co-operation needs to be re-developed within an alternative approach and effective supply reduction calls for a development and social policy approach to build resilience amongst isolated and vulnerable communities against involvement in drug trafficking. There is also an urgent need to test whether a focus on education, infrastructure development, community development and the creation of job opportunities for isolated and vulnerable communities will be more effective in tackling the illicit drugs trade than present policies.

The justifications for reform set out in the Introduction above apply to the production, trafficking and sale of controlled drugs. A more flexible interpretation of the term "for medical and scientific purposes" will enable producing and transit Countries to test alternative policies designed to enable vulnerable individuals to lead productive lives independent from the drugs trade. These reforms could be implemented for up to ten years during which a robust evaluation of the costs and benefits of the policies would be undertaken. If effective in promoting the health and welfare of the population and achieving the third aim set out in the introduction, (that the policies reduce the harms to the

population) then the supremacy of the human rights treaties and the rights of governments to priorities effective policies would justify continuation of those policies.

Guidance

1. States Parties can minimize the negative impacts of illicit markets and protect the health, welfare, security and human rights of their populations. Further they can and should do this within the international co-operative framework laid down by the UN until treaty reform becomes politically feasible.
2. A genuinely balanced approach to policy in relation to the production, trafficking and supply of controlled drugs is justified under the Universal Declaration of Human Rights and an appropriate interpretation of the drug control treaties.
3. Such a balanced approach will involve:
    - Ending aerial crop eradication and replacing this with carefully targeted crop interventions compatible with sustainable development.
    - Assisting communities to resist the negative impact of drug trafficking and supporting them to become more secure, stable and peaceful.
    - Prioritising education, community development, infrastructure development and the creation of regular employment opportunities for vulnerable communities and individuals in both rural and urban areas.
    - Ensuring that new approaches to tackling illicit financial, arms and drugs markets are rigorously evaluated and effective policies promoted.
    - Using imprisonment as a last resort option rather than the first resort for low level offences in relation to the drugs market.
    - Promoting research into the impact on communities of illicit financial, arms and drugs markets in order to improve the response.

5. Regulated Markets

Regulated markets for previously illicit substances remain at the forefront of drug policy discussions. A number of States Parties to the UN drug control treaties have introduced, are introducing or are planning to introduce regulated markets at the local, state or national levels. This is part of a continuing process where individual States Parties have tested new policies that they believe promote human rights, health and welfare. Although regulated markets are being considered principally for cannabis, the question of regulation for low harm new psychoactive substances has also arisen. Also Bolivia has introduced a successful system for the regulation of the coca leaf market.[b]

Regulated markets for cannabis

Regulated markets for marijuana are now a reality. They are being introduced into four US States: Washington, Colorado, Alaska and Oregon. Washington DC has also passed an initiative to legalize marijuana, and others are expected to follow. Uruguay became the first Country to approve a marijuana legalization policy in December 2013.

It is important to identify whether these experiments are compatible with the UN Drug Conventions. It is also important, however, that they provide evidence of their effectiveness against the objective of the Conventions so that lessons can be learned. We referred in the introduction to the plea from Yuri Fedotov, Executive Director of the UN Office on Drugs and Crime, for drug policy to be based upon scientific evidence and evaluation. The following paragraphs provide a framework of understanding for states wishing to examine their options.

The US and Uruguay models of marijuana regulation are just two of many possible regimes.[50] There is no reason to believe that the US or Uruguay models will prove to be the most efficacious in achieving the overall objective of the Conventions: to advance the health and welfare of mankind. Indeed it is quite possible that the US commercial model may have unacceptable unintended consequences. Alternative more restrictive models need to be tried and robustly evaluated before any conclusions can be drawn about the principle of marijuana regulation.

As suggested by Caulkins and his co-authors, alternative regulatory models include: - home cultivation of small quantities; distribution within small co-ops or buyers' clubs (the Spanish model); the Dutch coffee shop model which allows locally controlled retail sales while supply remains illegal; a government operated monopoly of supply; supply limited to non-profit organisations; or supply limited to a few closely monitored for-profit licensees.

These models will have very different outcomes in terms of tax revenue and the likely impact on the illicit market. The greater the tax revenue, the less is likely to be the impact in reducing the illicit market, for example.

Also, the more restrictive the regulation of the market in terms of the content of the marijuana (for example, a THC limit, requirements on labelling of products and effective information programmes), the more socially beneficial the policy is likely to be. However, there will be a trade-off between the tightness of the controls and the size of the remaining illicit market.

[b] For details of regulation with respect to coca leaf and new psychoactive substances see Appendix 1

Regulation – Frameworks for Flexibilities:

There are three interpretive frameworks which can be used to suggest regulated markets can remain consonant with the overall objectives of the UN. This guidance remains agnostic about these various interpretations and merely outlines them for States Parties to consider as they evaluate new national policies and how to ensure alignment with the relevant international treaties. These frameworks are:

1. Resource/Capacity/Constitutional Limitations: Selective Enforcement Model
2. Supremacy of Human Rights Treaties Over Drug Control Treaties
3. Expanded Definition of "Medical and Scientific" via Experimentation

1) Resource/Capacity/Constitutional Limitations: Selective Enforcement Model:

This framework derives from the legal complications of enforcing the treaties in a federal political system. The United States remains the test case. The federal government is the signatory to the UN drug control treaties and is their executor. The federal government has no constitutional authority to force states to implement the treaties. The federal government only has the authority to directly enforce the treaties in states using federal resources.

The US State Department has argued this would place an excessive burden on federal resources and is therefore not consonant with a realistic interpretation of the drug control treaties. Further, the drug control treaties make specific mention of "constitutional limitations" as a mitigating factor when implementing a number of their clauses. For example, Article 35 of the 1961 Single Convention includes the preface: 'Having due regard to their constitutional, legal and administrative systems the Parties shall…'.[51]

As a result the US State Department has offered a framework for continuing international cooperation over drug policy, whilst allowing increasing variation in national policies:[52]

Other federalist jurisdictions, such as Spain have faced similar issues. In the case of Spain, a 2013 report by RAND stated:

"Following several Supreme Court rulings, the possession and consumption of cannabis is no longer considered a criminal offence, and the jurisprudence in the field has tended to interpret the existing legislation in a way that permits 'shared consumption' and cultivation for personal use when grown in a private place. While there is no additional legislation or regulation defining the scale or particulars under which cultivation could be permitted, the Cannabis Social Club (CSC) movement has sought to explore this legal space, reasoning that if one is allowed to cultivate cannabis for personal use and if 'shared consumption' is allowed, then one should also be able to do this in a collective manner. In this context, hundreds of CSCs have been established over the past 15 years, but legal uncertainty around the issue of production continues." [53]

2) Supremacy of Human Rights Treaties over Drug Control Treaties:

Specific interpretations of the UN drug control treaties can suggest national policies emphasising prohibition and criminalisation. Decades of evidence and a vast academic literature, however, highlight the economic failings, public health costs and human rights problems of this punitive approach.[54]

What happens when specific implementations of drug treaties conflict with human rights treaties and obligations?

Human rights obligations are a part of the UN Charter and therefore fundamental to the mission of the UN and its member states. Obligations derived from the drug control treaties are subordinate to human rights obligations. As the UN Charter explicitly states, "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."[55] Member states must therefore judge their interpretation and implementation of the drug control treaties with a close regard to their human rights obligations under the UN Charter.

Uruguay has provided a systematic elaboration of this argument:

The essential points are:
"(i) The object and purpose of the Convention on Narcotic Drugs, especially the 1988 Convention, should be combating illicit trafficking and, in particular, combating the harmful effects of drug trafficking … we have found that repression alone does not solve the problem and have decided to try an alternative way to steal the market from drug trafficking"
(ii) All the measures adopted to put this combat into practice must neither contradict the Uruguayan Constitution nor ignore or leave fundamental rights unprotected.
(iii) The obligations that our State, as well as other States Parties, have assumed under other Conventions, must be taken into account, in particular those related to the protection of human rights, since they constitute *jus cogens* ("compelling law") and cannot be ignored.
(iv) It is noteworthy that, given two possible interpretations of the provisions of the Convention, the choice should be for the one that best protects the human right in question, as stated in Article 29 of the American Convention on Human Rights …

In this context and on the basis of the above interpretation, we believe that production and sale in the manner prescribed in the new law may be the best way, on the one hand, to combat drug trafficking, and on the other, to defend the constitutionally protected right to freedom of our fellow citizens."[56]

3) Expanded Definition of "Medical and Scientific" via Experimentation:

As the commentary on the 1961 Single Convention states, "The object of the international narcotics system is to limit exclusively to medical and scientific purposes the trade in and use of controlled drugs."[57]

The Commentary states that "the term "medical purposes" does not necessarily have exactly the same meaning at all times and under all circumstances."[58] For example, prior to 1961 an array of states counted "quasi-medical" consumption via state regulated opium eating and smoking as a form of medical and scientific use. Over time this has ceased to be the case, but it highlights the continued evolutionary process behind the international drug control system. Heroin Assisted Treatment is another example of a form of state regulated supply and consumption that was once controversial internationally but is now broadly accepted as consonant with the drug control conventions.

The question is whether a regulated market for the lawful sale of a controlled drug for recreational purposes could be recognized as an exercise for "medical and scientific purposes", that is to say a scientific experiment. Scientific evaluations of social policy initiatives are now commonplace. If independent observers could conclude that a regulated market was indeed a scientific experiment that contributed to evidence based policy, then it could potentially be viewed as being within the parameters of the conventions if pursued for a defined period of time.

One Legal Opinion solicited for this Guidance from a senior UK barrister, Lord Carlile of Berriew, concluded that "it would fall within the Conventions for a contracting State to produce a regulated market, preferably for a limited period subject to evaluation at the end of that period, as long as there was a clear medical or scientific basis for such an evaluation".

To establish a definitive framework for evaluation which would command wide support is beyond the scope of this Guidance. Indications of the kinds of metrics to be considered are contained within the aims to be found in the Introduction. Further indications are set out within Lord Carlile's opinion. He proposes six further measurements to assess a marijuana regulation policy:

- Measurement of the increase/decrease in use of cannabis after the change in the law, generally and by age groups and socio-economic groups;
- Measurement of the increase/decrease in physical and mental illness connected with the use of regulated cannabis;
- Assessment of any pharmacological benefits/detriments consequent on regulation;
- Assessment of the purity and quality of the drug provided through the regulated market as coimopmpared with the former (and any continuing) black market;
- Assessment of any perceived social and economic effects of regulation, including the effects on criminal activity;
- Assessment of the impact upon transnational organized crime.

Other expert opinions remain unconvinced that such a framework could serve a justification for enacting regulated markets under the drug control conventions. This interpretation remains controversial and is mentioned here as a discussion point for States Parties and their national legal experts.

Conclusion:

This guidance fully agrees with and recognises the importance of maintaining an international drugs control system. Unilateral decisions risk negatively affecting other States Parties. A key consideration for any national drug policy by a signatory to the UN drug conventions is whether other countries would be affected by a proposed policy, and how their rights might be protected. As far as regulated markets are concerned there will be issues arising from different approaches to drug control by neighbouring countries, and the implications for border control of imports and exports and the potential problem of smuggling.[59] These will need to be addressed.

However, this guidance also agrees with and recognizes the assertion by many States Parties and international experts that it is necessary to develop the evidence base in the field of drug policy whilst maintaining flexibilities for national policy and the supremacy of human rights. While debates are ongoing over how best to improve and sustain international cooperation on this issue, this guidance seeks to highlight interim frameworks for sustaining international cooperation and maintaining the "core" integrity of the international drug control conventions. Such frameworks will need to take account of human rights and national legislative and sovereignty prerogatives.

Guidance

1. Robustly evaluated experiments in the wide range of possible models of regulated markets for cannabis (and possibly other low harm controlled substances like coca leaf) should be encouraged;
2. The autonomy of States Parties in implementing the UN Drug Conventions both constitutionally and in resource terms is relevant to experimentation in the field of regulation
3. Regulation needs to reflect the supremacy of human rights conventions
4. Frameworks for evaluation should be drawn up by experts in the field, taking account of the 5 aims set out in the introduction to this Guidance.
5. Depending upon the results of the evaluations, consideration may then be given to treaty reform to make appropriate provision for regulation of cannabis, and possibly also for other controlled substances.

6. Responsibilities of the United Nations in Overseeing the Implementation of the UN Drug Conventions

National Governments remain the executors of the conventions, and the final arbiters of their implementation. The UN Commission on Narcotic Drugs (CND) is the forum where States Parties can be challenged by other States Parties for their perceived failures to implement the drug control treaties in a consistent manner.

As with all conflicts between UN States Parties, if there were an unresolved conflict between two States Parties in relation to the drug treaties, the International Court of Justice would be the final arbiter. No such case has ever been taken. However, as more States Parties adopt regimes for the regulation of cannabis, it may be that such conflicts may arise. It will be important for governments introducing such regulatory regimes to decide whether their systems remain "in good faith in accordance with the ordinary meaning" of the relevant UN treaties, as mandated by the Vienna Convention on the Law of Treaties.[60]

The 1961 Single Convention established the role of the INCB: to promote the application of the International Drug Control Conventions.[61] However, the INCB was not given the role of arbiter of States Parties' interpretation of the Conventions. Nor does the INCB have enforcement powers. Indeed there are no enforcement mechanisms. This is illustrated in the case of clearly excessive accumulations of controlled substances in a given territory. In such a case the INCB can suggest to CND that the CND propose an embargo on further exports to that territory. This must then be considered by the UN Economic and Social Council (ECOSOC) and ultimately the UN General Assembly. Such a measure has never been taken. A similar process would be required in order to censure a member state.

The INCB has increasingly sought to carve out a role of arbiter of UN drug treaty interpretation.[62] This is clearly not provided for by the UN treaties. On the contrary, the Board is described as working "in co-operation with Governments" to achieve the aims of the Conventions.[63] Only if the Board "has objective reasons to believe that the aims of this Convention are being seriously endangered"….can the Board propose to the Government concerned the opening of consultations or ask that Government to provide explanations of their actions. If, as this Guidance recommends, a Government introduces a policy explicitly to further the primary objective of the 1961 Conventions – "to advance the health and welfare of mankind" it would appear that the Board would have no role at all.

The INCB has claimed a lack of competence in relation to human rights issues, and their human rights record has been subject to question.[64] If a state party seeks to adjust their drug laws in order to respect the human rights of their populations, the INCB would not be a helpful body to become involved.

The role of the INCB in promoting the application of the drug conventions is not a straightforward one, given that all three Conventions contain multiple ambiguities and internal inconsistencies.

Guidance :

1. With respect to the production, trafficking, supply, use and possession for personal use of controlled drugs, the International Narcotics Control Board's overriding goals should be:
   a. to encourage and support policy experiments designed to further the first aim of the 1961 Convention, and to encourage evaluations of those experiments. Thus the Board would play an active role in ensuring that an evidence base is developed for the future;
   b. to ensure that States Parties implement evidence based policies directed at promoting health and welfare in order to achieve the Conventions' primary aim.
2. With respect to access to essential pain relieving medicines:
   a) the Board's overriding goal should be to play a pro-active role in ensuring that the relevant medicines are made available to everyone who needs them at appropriate prices;
   b) developed countries should be encouraged to allocate their aid budgets to support developing nations' capacity to fulfil their human rights obligations;
   c) the CND should be responsible for monitoring progress towards this Convention aim and holding failing States Parties to account.
3. With respect to drug policy generally, more active contributions of the other organisations in the UN System, such as the WHO, the HRC, and UNAIDS, will enrich national and international drug strategy and allow all States Parties to reach a better understanding of the issues and more effective responses.

7. Summary of Guidance

Use and Possession for Personal Use

1. States Parties are able to decriminalise the use of all controlled drugs, and their possession for personal use, within the Conventions.
2. The following elements should be included in the harm reduction strategy of every Member State:
   - Prevention and evidence based education programmes; and
   - harm reduction programmes to counter risky drug use, including needle exchange, drug consumption rooms, maintenance programmes and heroin treatment clinics.

Access to Essential Pain Relieving Medicines

1. The INCB should give equal weight and appropriate resources to the two over-arching objectives of the Conventions: that States Parties ensure the adequate availability of essential, controlled medicines to those who need them; and the control of illicit drugs.
2. The INCB should highlight areas where States Parties are failing to fulfil their obligations, and the CND should be the forum where States Parties are called to account for their failings.
3. The CND should make availability of controlled pain relieving medicines a core pillar of global drug policy to ensure compliance with the human rights treaties.
4. States Parties must review and, as needed, reform domestic regulations on controlled medicines to ensure their adequate availability and use for the relief of pain and suffering.
5. Wealthier States Parties should contribute to the strengthening of governance in developing countries under the principle of mutual and shared responsibility and the training of government officials and medical staff in their obligations to make such medicines available to those who need them.

The Death Penalty

1. Control measures must conform to the human rights treaties, and thus the death penalty should not apply to drug supply or possession offences.
2. The UN agencies with responsibility for drug policy need to revisit their terms of reference to ensure that appropriate priority is given to the elimination of the death penalty for drug offences.

Production, Trafficking and Supply

1. States Parties can minimize the negative impacts of illicit markets and protect the health, welfare, security and human rights of their populations. Further they can and should do this within the international co-operative framework laid down by the UN Drug Conventions until treaty reform becomes politically feasible.
2. A genuinely balanced approach to policy in relation to the production, trafficking and supply of controlled drugs is justified under the Universal Declaration of Human Rights and an appropriate interpretation of the drug control treaties.
3. Such a balanced approach will involve:
   - Ending crop eradication and replacing this with carefully targeted crop interventions compatible with sustainable development.

- Assisting communities in resisting the negative impact of drug trafficking and supporting them to become more secure, stable and peaceful.
- Prioritising education, community development, infrastructure development and the creation of regular employment opportunities for vulnerable communities and individuals in both rural and urban areas.
- Ensuring that new approaches to tackling illicit financial, arms and drugs markets are rigorously evaluated and effective policies promoted.
- Using imprisonment as a last resort option rather than the first resort for low level offences in relation to the drugs market.
- Promoting research into the impact on communities of illicit financial, arms and drugs markets in order to improve the response.

Regulated Markets

1. Robustly evaluated experiments in the wide range of possible models of regulated markets for cannabis (and possibly other low harm controlled substances like coca leaf) should be encouraged.
2. The autonomy of States Parties in implementing the UN Drug Conventions both constitutionally and in resource terms is relevant to experimentation in the field of regulation.
3. Regulation needs to reflect the supremacy of human rights conventions.
4. Frameworks for evaluation should be drawn up by experts in the field, taking account of the five aims set out in the introduction to this Guidance.
5. Depending upon the results of the evaluations, consideration may then be given to treaty reform to make appropriate provision for regulation of cannabis, and possibly also for other controlled substances.

Role of the UN Drug Control Organisations

1. With respect to the production, trafficking, supply, use and possession for personal use of controlled drugs, the International Narcotics Control Board's overriding goals should be:
   - to encourage and support policy experiments designed to further the first aim of the 1961 Convention, and to encourage evaluations of those experiments. Thus the Board would play an active role in ensuring that an evidence base is developed for the future;
   - to ensure that States Parties implement evidence based policies directed at promoting health and welfare in order to achieve the Conventions' primary aim.
2. with respect to access to essential pain relieving medicines:
   - the Board's overriding goal should be to play a pro-active role in ensuring that the relevant medicines are made available to everyone who needs them at appropriate prices;
   - developed countries should be encouraged to allocate their aid budgets to support developing nations' capacity to fulfil their human rights obligations; and
   - the CND should be responsible for monitoring progress towards this Convention aim and holding failing States Parties to account.
3. With respect to drug policy generally, more active contributions of the other organisations in the UN System, such as the WHO, the HRC, and UNAIDS, will enrich national and international drug strategy and allow all States Parties to reach a better understanding of the issues and more effective responses**.**

8. Appendix – Regulation of Coca leaf and new psychoactive substances

Regulated market for Coca Leaf

Growing and consuming coca leaf has been a traditional practice in Bolivia for many years. But it wasn't until 2013 that Bolivia finally achieved recognition of its traditional coca use by withdrawing from the UN Drug Conventions and re-acceding with a reservation to exclude coca leaf from the list of controlled substances indicated by the Conventions.[65] The US and 14 other states objected on the basis that legal coca chewing could lead to increases in coca production and the amount of coca diverted to the cocaine trade. Nevertheless, Bolivia won their case[66]

Bolivia has set up a system of regulated supply of coca leaf by licensing a limited number of growers and acting in the event of overproduction or unlicensed growing. According to the UNODC Annual Report 2012 the area under coca cultivation in Bolivia dropped from 31,000 hectares in 2010 to 27,000 hectares under these arrangements[67]

Bolivia took the view that it was not able to implement its system of licensing within the current Conventions and regularised its position by means of a reservation. That its re-accession to the Conventions was accepted by the majority of States Parties represents a political acknowledgement of the possibility of alternative approaches to regulation.

Regulated market for 'low harm' new psychoactive substances

The phenomenon of new psychoactive substances (NPS) represents a particular challenge to systems of control. The rate at which new substances are coming onto the market makes it impossible to make equally rapid decisions about control based on a systematic assessment of harms. There have been a range of responses to try and disrupt supply including: systems to group and control similar drugs, temporary arrangements of control while full assessments on harms take place; the use of consumer protection powers and legislation to prosecute suppliers; the passing of legislation to place a blanket ban on the sale of psychoactive substances (requiring exceptions to made for coffee and similar substances)[68] All these approaches carry the same danger which is that the supply of NPS, removed from a relatively open market including head shops will be driven into the black market.

An alternative response has been developed by New Zealand. Potential suppliers of low harm new psychoactive substances are invited to make application for the substance to become approved for supply. The criteria that the substance has to meet will include:

1. The nature of the harm caused by the substance (including its prevalence of use) and any benefits from its use;
2. whether the harm of the substance can be effectively mitigated by the imposition of regulatory controls (such as clear packaging, restriction on sale to minors etc);
3. likely consequences of any proposed regulation or prohibition of the substance (i.e. assessing alternative regulatory approaches) ; and
4. any possible displacement effects that might occur because of the way substances are regulated (i.e. the risk that prohibition might encourage the use of a more harmful substance.[69]

Harm minimisation is at the heart of the New Zealand approach and their intention is that applications for a regulated substance can only be made for those not already controlled. The legal implications if a substance that becomes licensed within New Zealand but subsequently becomes controlled at UN level are not clear but if their approach has been evaluated as optimum in terms of harm minimisation it is difficult to see how a switch to a system entailing greater harms would be viable. Although the intention of the legislation remains there are currently implementation difficulties with respect to interim measures whilst potential substances for regulation are subject to trials.

[1] UNODC (2008): *World Drug Report*

[2] Taking Control: Pathways to drug policies that work, Global Commission on Drug Policy 2014

[3] Ref. UNODC (2014) World Drug Report , Vienna UN, http://www.unodc.org/documents/wdr/WDR_2008/WDR_2008_eng_web.pdf

[4] Caitlin Hughes and Alex Stevens (2007): The effects of decriminalisation of drug use in Portugal: Beckley Foundation: December 2007

[5]Uchtenhagen, A. 2009. Heroin-assisted treatment in Switzerland: a case study in policy change. *Addiction* 105: 29–37.

[6] Commentary on the UN Convention 1988, para. 3.95

[7] Commentary on the Single Convention on Narcotic Drugs, 1961

[8] https://www.unodc.org/documents/hlr/V1388514e.pdf

[9] Lord Carlile of Berriew CBE QC: Whether the UN Drug Conventions can be interpreted to allow for the introduction of regulated markets for cannabis?: (December 2014)

[10] United Nations Charter, Ch. XVI, Art. 103

[11] Home Office 2014: *Drugs – International Comparators: October 2014*

[12]Degenhardt, L., Chiu, W.T., Sampson, N., Kessler, R.C., Anthony, J.C. et al (2008) *'Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings from the WHO World Mental Health Surveys'),* (Fetherston, J. and Lenton, S. (2007) *Effects of the Western Australian Cannabis Infringement Notification Scheme on Public Attitudes, Knowledge and Use: Comparison of Pre-and Post Change Data* Perth: National Drug Research Institute http://ndri.curin. Edu.au/local/docs/pdf/publications/T177.pdf) (Csete H (2012): *A Balancing Act Policymaking on Illicit Drugs in the Czech Republic:* OSF

[13] Article 4, 33 and 36 of UN 1961; Article 5 and 7 of UN 1971

[14]Commentary on the Single Convention 1961, Commentary on Article 36 para. 7

[15] The UN drug control conventions – The Limits of Latitude by Dave Bewley-Taylor and Martin Jelsma, Transnational Institute idpc, Series on Legislative Reform of Drug Policies Nr 18 March 2012; also Room for Maneuver, Overview of comparative legal research into national drug laws of France, Germany, Italy, Spain, the Netherlands and Sweden and their relation to three international drugs conventions by Nicholas Dorn and Alison Jamieson. A study of DrugScope, London for The Independent Inquiry on The Misuse of Drugs Act 1971, London March 2000

[16] Commentary on the UN Convention 1988, para. 3.95

[17] Commentary on the UN Convention 1988, para. 3.95

[18] Neil Boister, Penal Aspects of the UN Drug Conventions, Kluwer Law International, 2001

[19]Article 8 provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

[20] The UN Drug Conventions – Room for Flexibility? Legal Opinion from Lord Carlile of Berriew and Sarah Clarke, para. 56

[21] The Limits of Latitude; Dave Bewley-Taylor and Martin Jelsma, TI idpc, Series on Legislative Reform of Drug Policies Nr 18 March 2012, p. 11.

[22]The Limits of Latitude; Dave Bewley-Taylor and Martin Jelsma, TI idpc, Series on Legislative Reform of Drug Policies Nr 18 March 2012, p. 11. and others

[23] Article 33 Possession: *The Parties shall not permit the possession of drugs except under legal authority*. https://www.unodc.org/pdf/convention_1961_en.pdf (11/

[24] Commentary on the Single Convention on Narcotic Drugs, 1961, (New York: United Nations,1973), p. 111, Commentary on the Convention on Psychotropic Substances, Done in Vienna on 21 February 1971, (New York: United Nations, 1976), p.332, and Commentary on the Protocol amending the Single Convention on Narcotic Drugs, 1961, Done at Geneva on March 25 1972, (New York: United Nations, 1976), p. 84

[25] R. Elliott et al, 'Harm Reduction, HIV/AIDS, and the Human Rights Challenge to Global Drug Control Policy,' 114.

[26] Decision 74/10, Flexibility of Treaty Provisions as Regards Harm Reduction Approaches, prepared by UNDCP 's Legal Affairs Section, E/INCB/2002/W.13/SS.5, 30 September 2002 http://www.hrw.org/sites/default/files/related_material/IHRA%20HRW%20Book%20of%20Authorities%20Jan%202009.pdf (11/14)

[27]http://www.unodc.org/documents/commissions/CND/Political_Declaration/Political_Declaration_1998/1998-Political-Declaration_A-RES-S-20-2.pdf

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[29] WHO Briefing Note of the Access to Controlled Medications Programme, April 2012 http://www.who.int/medicines/areas/quality safety/ACMP BrNote Genrl EN Apr2012.pdf (12/14)

[30] Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 1 February 2013, para. 72, see:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf (accessed December 3, 2014).

[31] INCB, Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes, 2010, see: http://whqlibdoc.who.int/publications/2011/9789241564175_eng.pdf?ua=1 (accessed December 3, 2014).

[32] Preamble, 1961 Single Convention on Narcotic Drugs, see: https://www.unodc.org/unodc/en/treaties/single-convention.html (accessed December 3, 2014).

[33] General Assembly resolution A/RES/S-20/2*, October 21, 1998, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/775/09/PDF/N9877509.pdf?OpenElement (accessed December 3, 2014).

[34] CND Resolution 53/4, "Promoting adequate availability of internationally controlled licit drugs for medical and scientific purposes while preventing their diversion and abuse," http://www.unodc.org/documents/commissions/CND-Res-2000-until-present/CND53_4e.pdf; CND Resolution 54/6, "Promoting adequate availability of internationally controlled narcotic drugs and psychotropic substances for medical and scientific purposes while preventing their diversion and abuse," http://www.unodc.org/documents/commissions/CND-Res-2011to2019/CND54_6e1.pdf (accessed December 3, 2014).

[35] INCB (2010): Report of the International Narcotics Control Board on the Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes , p. 15.

[36] UNODC, Discussion paper: Ensuring availability of controlled medications for the relief of pain and preventing diversion and abuse. Striking the right balance to achieve the optimal public health outcome. 2011. http://www.unodc.org/docs/treatment/Pain/Ensuring_availability_of_controlled_medications_FINAL_15_March_CND_version.pdf (accessed December 3, 2014).

[37]Commission on Narcotic Drugs, Joint Ministerial Statement, 2014 http://www.unodc.org/documents/ungass2016//V1403583-1-2.pdf (accessed December 3, 2014).

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