
VISITING EXPERTS' LECTURES

THE INTERNATIONAL NORMATIVE FRAMEWORK ON DRUG CONTROL AND ITS EVOLVING CONTEXT

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I. CURRENT GLOBAL SITUATION OF DRUG TRAFFICKING

The international community has agreed on normative instruments to regulate the licit production and trade of certain drugs in the early XXth century,¹ which have been replaced by, and currently consist of, three treaties on drug control.² At that time, the main concern was to regulate the production of, and trade in, opium, which had been at the centre of the Opium Wars and had devastating health consequences, especially in China at the end of the XIXth century. Gradually, control over an increasing number of psychoactive substances meant that authorized use would be restricted to medical and scientific purposes. That normative development is the basis for the identification of production and trade that is illicit and for a discussion on the array of measures intended to address drug trafficking.

The continued monitoring of the cultivation and production of traditional drugs, such as opium and heroin, as well as coca and cocaine, are instrumental to understanding the evolution of global drug markets and prediction of drug use fluctuations.³ In addition to monitoring the supply of, and the demand for, controlled drugs, the need for monitoring the spread of new psychoactive substances⁴ has been fundamental, for its impact on health, on the dynamics of drugs markets, and as the basis for informed debates and decisions on the scheduling of new substances under the international drug control system.

The 2018 World Drug Report,⁵ as in previous years, contains detailed data on various aspects of drug control, including trafficking routes, which are based on an assessment of drug-seizure data, as provided by Member States and validated by UNODC. The last three years have notably observed a considerable increase both in the production of opium and heroin (especially from Afghanistan), as well as of coca and cocaine (especially from Colombia), which are likely to result in substantial pressures for the increase of the demand of those drugs, including based on retail price reductions and on a geographical diversification and expansion of drug markets. Cannabis has continued to be the most widely illicitly cultivated and consumed drug, with strains and products of very high levels of THC.⁶ Whereas legislative changes in Canada and Uruguay, as well as in some states of the United States, may contribute to changes in the perceived harm of its use, the consequences of such normalization of non-medical use in those jurisdictions will have to continue to be monitored, in particular in relation to their impact on health systems, security and international

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¹ See UNODC, *A century of international drug control*, 2008, available from: https://www.unodc.org/documents/data-and-analysis/Studies/100_Years_of_Drug_Control.pdf.

² The three drug control conventions are the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol (United Nations, *Treaty Series*, vol. 976, No. 14152), hereinafter the "1961 Convention", the 1971 Convention on Psychotropic Substances (United Nations, *Treaty Series*, vol.1019, No. 14956), hereinafter the "1971 Convention", and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (United Nations, *Treaty Series*, vol. 1582, No. 27627), hereinafter the "1988 Convention".

³ *Contribution of the Executive Director of the United Nations Office on Drugs and Crime to the special session of the General Assembly on the world drug problem to be held in 2016*, UNODC/ED/2016/1, 26 February 2016, p. 16.

⁴ See UNODC, *New psychoactive substances: overview of trends, challenges and legal approaches*, 2016, E/CN.7/2016/CRP.2*, available from: http://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_59/ECN72016_CRP2_V1601405_reissued.pdf ; and UNODC, *The challenge of new psychoactive substances*, 2013, available from: https://www.unodc.org/documents/scientific/NPS_2013_SMART.pdf.

⁵ Available from: www.unodc.org/wdr2018.

⁶ Cannabis and cannabis products are currently undergoing review by the World Health Organization.

cooperation.

The non-medical use of prescription drugs has gained considerable magnitude, and pharmaceutical opioids have been misused in different regions. North America currently faces an unparalleled opioid crisis, mainly originated due to overprescription of fentanyl, which has led to historic increases in overdose deaths. In parallel, the emergence of new psychoactive substances has stabilized, but continues to pose significant public health threats and to be a challenge for law enforcement action around the world.

II. INTERNATIONAL LEGAL FRAMEWORK ON DRUG CONTROL

The three international drug control conventions are recognized by the international community as the cornerstone of its drug control system. Typically, in international legal matters, countries will normally conduct negotiations and seek agreement on issues that have a transnational impact, and most will be reluctant to engage themselves in respect of issues that are constrained within their borders.

For that reason, the 1961 and the 1971 Conventions, while expressing concern for the health and welfare of mankind, are mostly focused on regulating drug production and trade for medical and scientific purposes. The importance of health measures, including prevention of drug abuse, education and treatment of drug use disorders, was recognized in the 1971 Convention, notably its article 20, and a similar provision was introduced in article 38 of the 1961 Convention through its 1972 Protocol. Both provisions include the need for Parties to duly train personnel for those purposes.

The 1988 Convention, which was developed against the background of the increasing power of drug cartels in the 1980s, contains an articulated provision aimed at harmonizing the description of drug-related criminal offences (with the highlight of the first definition of money-laundering offences in an international treaty), and it mostly focuses on facilitating and rendering more effective judicial and law enforcement international cooperation in relation to drug trafficking (which often requires transnational investigations and cooperation). Both the 2000 United Nations Convention against Transnational Organized Crime⁷ and the 2003 United Nations Convention against Corruption⁸ offer tools for Member States to address drug trafficking from the perspective of measures targeting sophisticated forms of criminality, driven by profit and facilitated by corruption and money-laundering strategies. Among such tools are the anti-money-laundering framework, special investigative techniques, and their use as a basis for extradition, mutual legal assistance and joint investigations.

The scope of narcotic drugs and psychotropic substances under control is determined by a scheduling process, which is based on the scientific review of new or already controlled substances by the World Health Organization. Similarly, the scope of controlled substances, under the 1988 Convention, frequently used in the illicit manufacture of narcotic drugs and psychotropic substances is based on the scientific review by the International Narcotics Control Board. In both cases, the concerned entities formulate recommendations on adequate and proper schedules or tables for decisions to be taken by the Commission on Narcotic Drugs.⁹

The drug control treaties established and mandated the International Narcotics Control Board as the monitoring body responsible for supervising their implementation and administering a system of estimates of drug requirements and statistical returns (with differences for psychotropic substances), aimed at advancing the aims of the treaties: to “limit the cultivation, production, manufacture and use of drugs to an adequate amount required for medical and scientific purposes, to ensure their availability for such purposes and to prevent illicit cultivation, production, and manufacture of, and illicit trafficking in and use of, drugs” (article 9, paragraph 4, 1961 Convention).

The Commission on Narcotic Drugs was established in 1946 by the Economic and Social Council of the

⁷ United Nations, *Treaty Series*, vol. 2225, No. 39574.

⁸ United Nations, *Treaty Series*, vol. 2349, No. 42146.

⁹ For more details on the procedures to schedule drugs and precursors under the international drug control conventions, see UNODC, Note by the Secretariat on Challenges and future work of the Commission on Narcotic Drugs and the World Health Organization in the review of substances for possible scheduling recommendations, E/CN.7/2014/10, available from: https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_57/_E-CN7-2014-10/E-CN7-2014-10_V1388967_E.pdf.

United Nations, preceding the drug control conventions. In addition to its treaty functions related to deciding on the scheduling of controlled substances, it is the central policy-making body of the United Nations on drug matters. The Commission monitors global trends and proposes new concerted measures or agreed policies. Besides resolutions and decisions adopted during its annual sessions, the Commission has been instrumental for the adoption of high-level political declarations and plans of action.¹⁰

Those documents, adopted by the Commission, the Council or the General Assembly, are fundamental for the development of national policies and strategies, as well as laws, despite their non-binding nature, and this is all the more so when they are adopted by consensus and acted upon by Member States. In such policy debates, the international community coined the term “common and shared responsibility” to describe the principle that binds the drug policies of different countries together, including the need for each State to adopt measures at the national level that contribute, for example, to the reduction of illicit drug demand, and to overcome the artificial differentiation of responsibility among countries that are predominantly seen as producing or as consumer markets.¹¹

The latest instrument reflecting the array of measures and language of consensus of the international community, including on matters that are not addressed in detail in the drug control treaties, is the outcome document adopted by the United Nations General Assembly at its special session on the world drug problem, held in 2016.¹² As the reading of all operational recommendations arising from that document reveals, the drug control framework is not isolated from other normative instruments. It includes and encompasses applicable international human rights norms, as well as standards and norms in crime prevention and criminal justice.

In addition to supporting the Commission on Narcotic Drugs and the International Narcotics Control Board as their secretariat, the United Nations Office on Drugs and Crime is mandated to provide technical assistance to States, upon their request, in the implementation of international drug control norms, and in assisting them in efforts to reduce the world drug problem.

III. CONCLUSIONS

In sum, countering drug trafficking should not be an isolated action, but integrated as part of a comprehensive policy of promoting and protecting public health. This objective is therefore narrowed down not only by the concern with selecting approaches that prove to have systemic positive effects, including on reducing the influence and profits of organized criminal groups, but also by the concern with protecting and respecting human rights.

Such efforts depend on political willingness as well as technical capacity to adequately cooperate in transnational investigations and prosecutions, and the exchange of operational information and, as much as possible, direct contact among authorities of cooperating countries is fundamental for effectiveness. Data collection also needs to be improved and expanded for the development of sound policies.

The international community faces considerable challenges, which include the need to reduce knowledge disparities across the globe, which may lead to national laws and policies that are not adapted to their context. When it comes to non-controlled substances manufactured to mimic the effects of controlled drugs, States are still to find a proactive modality of response, which takes account both of the already insufficient forensic services in many countries, and of the potential variety of chemical variants for many drugs.

Finally, there are barriers to the availability of controlled drugs for medical and scientific services that

¹⁰ More information is available from: http://www.unodc.org/unodc/en/commissions/CND/Political_Declarations/Political-Declarations_Index.html.

¹¹ See the 1998 Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Problem (available from: http://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_52/Political-Declaration2009_V0984963_E.pdf) and chapter I of the 2012 Annual Report of the International Narcotics Control Board (available from: https://www.incb.org/documents/Publications/AnnualReports/AR2012/AR_2012_E_Chapter_I.pdf).

¹² A/RES/S-30/1, available from: <https://undocs.org/A/RES/S-30/1>.

need to be overcome, as well as barriers to the necessary delivery of social and health services to persons with drug use disorders or who illicitly use drugs. The work of Governments to address drug trafficking is not isolated from those services, which should be brought closer to those who need them. Cooperation and coordination among authorities in charge of providing health and social services is important, as well as addressing justice and law enforcement.