

Chapter Five  
***Evaluation of the Existing International Drug Control  
Measures and their Enforcement***

International drug control regime established under the United Nations has been widely supported by almost all the nations of the world. Full implementation of the control measures mandated by international drug control treaties and ECOSOC Resolutions is vital to more efficient international drug control.

The General Assembly of the United Nations, in a resolution on measures to strengthen international cooperation against illicit drug activities asked for the impact of the United Nations drug control treaties to be evaluated. The goal was to identify weaknesses as well as strengths in the treaty provisions. Since monitoring treaty implementation is the very essence of its work, the Narcotics Control Board decided to conduct its own evaluation of the effectiveness of the treaties and their implementation. The objective of evaluation is to identify the areas where the treaty provisions are weak, or not implemented, offering governments at the Commission on Narcotic Drugs or ECOSOC the opportunity to decide which weaknesses warranted intervention and the best way to remedy to such situations. One possible outcome would be to amend the drug control treaties.

The following two issues exemplify some of the difficulties associated with treaty implementation. The first one relates to coca chewing and the drinking of coca tea. Legislation in three countries in Latin America tolerates the drinking of coca tea and coca chewing. This is in contradiction to the provisions of the 1961 Convention, which make it mandatory that those habits be prohibited after a certain transitional period. The Narcotics Control Board, which is the guardian of the treaties, can only repeat every year that there is a treaty violation in the countries concerned. Based on adequate scientific evaluation of the coca tea and coca chewing habits, governments should decide whether treaty provisions are adequate. The second issue related to the possible revision of the classification and control of the cannabis plants and cannabis products. It is suggested that the potency of those products should be taken into account, rather than the type of products (e.g. leaf, resin, flowering tops). Cannabis leaves as such do not fall under international control.

The present drug control system has achieved considerable success in limiting diversion of narcotic drugs and of psychotropic substances from licit manufacture and trade into illicit channels. Some of the shortcomings of the international drug control system relate to the fact that the Conventions were intended to be universal but have not yet been universally adopted nor applied. In other words, the system has not yet been given the chance to function at its full capacity<sup>1</sup>. Universal adherence and implementation are therefore key conditions for the efficient international drug control. However, to be efficient, the international drug control system has to have the ability to adapt rapidly to the changing abuse and trafficking situations. This implies a need for timely decisions to place new substances under control or to change their control regimes. The importance of timely updating of treaty provisions and adjustment of technical assistance is also stressed.

The genesis and development of the international drug control treaties are closely connected with national and international responses to the changing drug abuse and illicit trafficking situation. The recommendations of the first international conference on narcotic drugs, which was held at Shanghai in 1909 (and which later became known as the Opium Commission) and the provisions of the international Opium Convention, signed at the Hague in 1912, are to be seen as the result of the international consensus reached on how to react to the then unlimited availability in several countries of narcotic drugs for non-medical use, in particular opium, which had led to the widespread abuse of those drugs, with all its health and social implications.

There have been numerous changes in the nature and extent of drug abuse since then. First, the development of sciences, such as synthetic organic chemistry and pharmacology, and of industrial manufacturing technologies has led to the discovery and marketing of hundreds of new psychoactive drugs, which in turn have contributed to the fast development of medical therapy, making it possible to treat and cure millions of people. The inappropriate medical use and, to an even greater extent, the non-medical use of the same drugs, however, have opened the door for new types of drug abuse. Secondly, drug abuse has ceased to be a problem of limited number of countries and has become a global problem, and drugs that used to be specific to certain cultures have spread to other cultures.

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<sup>1</sup> Hamid Ghodse, *International Drug Control into the 21<sup>st</sup> Century*, Ashgate Publishing, 2008, p.4.

The responses to that dynamic process are reflected in the international drug control conventions, including those currently in force. The Single Convention on Narcotic Drugs of 1961 incorporated and built upon earlier national and international measures to control the cultivation, production, manufacture and distribution of natural drugs (and, in the case of opiates, their synthetic analogues) and obliged governments to take measures against the illicit traffic in and abuse of such drugs. The Convention on Psychotropic Substances of 1971 was a response to the diversification and expansion of spectrum of drugs of abuse, introducing controls over a number of synthetic drugs (hallucinogens, stimulants, hypnotics, sedatives and anxiolytics). The immediate purpose of those two treaties was to codify universally applicable control measures in order to ensure the availability of narcotic drugs and psychotropic substances for medical and scientific purposes, and to prevent their diversion from licit sources into illicit channels. They also included provisions of a general nature on the illicit trade in and abuse of drugs.

The system of international control of licit movement of narcotic drugs, as embodied in the 1961 Convention and that Convention as amended by the 1972 Protocol, has functioned in a generally satisfactory manner<sup>2</sup>. The system has succeeded in limiting the licit cultivation, production, manufacture and distribution of and trade in narcotic drugs to the quantities required for medical and scientific purposes. Those treaty provisions have kept to a minimum the diversion of narcotic drugs from licit sources into illicit channels.

As for the 1971 Convention, the diversion of Psychotropic substances in Schedule II from licit sources into illicit channels has been successfully curtailed. However, that achievement is attributable mainly to the control measure recommended by the International Narcotics Control Board and endorsed by the Economic and Social Council to reinforce the original measures of that Convention.

The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 reflected the response of the international community to ever increasing illicit cultivation, production, manufacture and trafficking activities. The implementation of measures of control has resulted in a situation where most of the drugs in illicit traffic or on illicit markets are no longer produced and manufactured in licit production areas. The international illicit traffic is supplied

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<sup>2</sup> Ibid P.42

mainly by illicit producers and clandestine laboratories. The general provisions of the earlier conventions against illicit traffic were not comprehensive and specific enough.

To counteract the rapid increase in illicit activities involving narcotic drugs and psychotropic substances, the 1988 Convention provided for comprehensive and innovative measures against drug trafficking such as provisions against money laundering and against illicit activities related to precursors and provisions for new measures for international cooperation against illicit traffic (transfer of proceedings, controlled delivery etc.).<sup>3</sup>

Hence, the three major international drug control treaties are mutually supportive, and complementary. Each of them builds upon and reinforces the provisions of the others and none of them alone would be comprehensive enough. The main focus of the strategy reflected in each of the three conventions has evolved, but the conventions have only one main goal, one philosophy and to prevent the use of drugs for non medical purposes. That common and unique objective should be constantly kept in mind by all involved in national and international drug control.

When evaluating the effectiveness of the treaties with regard to the ideal objective of a society free of non medical use of drugs, it has to be taken into account that the abuse of and illicit trafficking in drugs (including illicit cultivation, production and manufacture) have many reasons, social, economic, cultural and political, upon which the drug control instruments do not have a direct influence.

It is generally recognized by the international community that even preventing the diversion of drugs from licit channels and strengthening and coordinating the fight against illicit drug cultivation, production, manufacture and trafficking, would not by themselves solve the problem of persisting demand. Without reducing the demand for drugs of abuse, limiting the illicit supply would result in only temporary or partial success. Demand reduction programmes therefore now constitute a key element in the fight against drug abuse, in the same way as supply reduction measures.

In 1961 and 1971 Conventions, demand reduction was specifically addressed, albeit not in detail. Although they obligate governments to take appropriate measures, the conventions leave it to them to define those measures. That approach, in a

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<sup>3</sup> Convention Against Illicit Traffic in NDPS, 1988

field where uniform actions are barely possible may have led governments to underestimate the importance of such measures for a long time. The 1988 Convention contains provisions on demand reduction that go into more detail, referring to recommendations of the competent United Nations bodies and to the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control as a basis for demand reduction measures.

It has been questioned whether there should be a specific convention on demand reduction, or whether the provisions of the existing conventions should be amended to ensure greater commitment by governments to demand reduction strategies. Present treaty obligations may indeed be supplemented by those of other instruments, emphasising the importance of demand reduction in the context of comprehensive drug control strategies and stating general principles and guidelines. It is not certain that specific, universally binding treaty provisions on demand reduction could be agreed upon or that such a treaty would be an appropriate instrument to deal with such an issue. Demand reduction is a national task, which in a number of countries may have to be carried out with international support, and demand reduction programmes should be designed at the national and local levels, based on the knowledge of the real drug abuse situation and taking into consideration the cultural, political, economic and legal environment. The cooperation of the mass media is of crucial importance to demand reduction efforts.

Limiting the use of narcotic drugs to medical and scientific purposes is motivated by humanitarian considerations, such as protecting the individual from the slavery of drug dependence and protecting society from the irresponsible behaviour of intoxicated individuals.

#### *Implementation mechanisms*

The role of the International Narcotics Control Board (INCB) in monitoring and promoting the implementation of the international drug control treaties is clearly defined under the 1961 and 1971 Conventions. The INCB ensures the execution of the treaties, as spelt out in Article 14 of 1961 Convention and Article 19 of the 1971 Convention. Over the years, the INCB, building on the practice of its predecessors (the Permanent Central Opium Board, the Permanent Central Narcotics Board and the Drug Supervisory Body) and in line with the provisions and spirit of the treaties, has established its own procedure for promoting treaty implementation, within the context of a constant diplomatic dialogue with governments and good international cooperation. As part of that continuing

dialogue, the INCB has established procedures to deal with serious drug abuse and illicit trafficking situations and with problems in treaty implementation. These include exchanging letters with the governments concerned, raising the problems in its report, sending missions to the countries concerned and mentioning the conclusions of those missions in its report. Within that context, the INCB has often requested certain governments to provide explanations or to take remedial measures and has frequently drawn the attention of the parties to the convention as well as ECOSOC, particularly in worrying situations.

Ensuring that national drug control legislation is reviewed and evaluated in a systematic and continuous manner is of particular importance in determining whether the provisions of the international drug control treaties are being implemented by the governments. The INCB is not equipped to conduct such an analysis on a regular, country-by-country basis, though it does review the adequacy of national legislation during some of its missions and on the basis of the information it receives from governments.

The implementation of a drug control system appears to have had the desirable long-term effect of containing the expansion of the drug problem and of limiting the spread of illicit drug use and addiction. At the same time, a number of unintended consequences have appeared. The development of black markets and the opportunities they create for organized crime have been among the unintended side effects. Black markets are not specific to controlled psychoactive substances, of course, as they affect a broad range of regulated or prohibited goods and services. Effective drug control measures seem to have given rise to another main category of unintended consequences in illicit drug markets. These are various replacement or displacement effects, sometimes generically referred to as the "balloon effect". There are several examples of such effects at work:

- When opium production was halted in the Islamic Republic of Iran in 1979, it first shifted to Pakistan and then to Afghanistan. Opium production in Thailand declined from the 1960s onwards, but it increased in Burma (later Myanmar) until the early 1990s (before falling after 1996). Declining ATS manufacture in Thailand in the 2000s prompted rises in neighbouring Myanmar.
- Declining coca leaf production in Bolivia and Peru in the 1990s occurred in parallel with rising coca leaf production in Colombia; similarly, declining coca leaf production in Colombia in the 2000s was accompanied by increases in Bolivia and Peru.

- Another case of displacement concerns so-called new psychoactive substances, some of which appeared in the wake of precursor control efforts in many countries. For example, effective control of 3,4-MDP-2-P in Europe led to decline in ecstasy production and the emergence of new psychoactive substances such as mephedrone.

The net results of such displacement effects vary, but from a global perspective they always reduce the intended impact of interventions<sup>4</sup>. Balloon effects do not only occur on the supply side, however. In the United Kingdom, for instance, policy interventions appear to have contributed to massive declines in the illicit use of amphetamines. The annual prevalence of amphetamine use fell by two thirds between 1996 and 2010/11 in England and Wales. While the decline was offset in part by strong increases in the use of cocaine.<sup>5</sup>

The international drug control regime has come under a lot of pressure for an alleged lack of focus on its main objective: the preservation of the health and welfare of mankind. A main point of criticism focuses on the failure to sufficiently take human rights into account in drug control efforts. Rightfully or not, it has been contended that the UN regime focuses too much on criminalization and punishment and not enough on education and harm reduction. Especially in academia and by non-governmental organizations, discordant voices have been raised which advocate a new approach to international drug policy, putting more emphasis on liberal mechanisms rather than on repressive measures.<sup>6</sup>

An increasing number of States, non-governmental organisations and scientists, are concerned that the drug conventions, despite the impact that they carry, are not flexible enough to allow for an individually tailored approach taking special socio-economic features of different States into account. The Latin American Commission on Drugs and Democracy states its concern that 'the search for more efficient policies, rooted in the respect for human rights, implies taking into account the diversity of national situations and emphasizing prevention and treatment'.<sup>7</sup> Indeed the implementation of the conventions into domestic law prompts concerns because some of the most vulnerable groups of society are affected by the drug

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<sup>4</sup> World Drug Report, 2011.

<sup>5</sup> Ibid,

<sup>6</sup> Dave Bewley-Taylor, *Challenging the UN Drug Control Conventions: Problems and Possibilities*, International Journal of Drug Policy 171 (2003)

<sup>7</sup> Latin American Commission on Drugs and Democracy: Toward a Paradigm Shift, available at <[http://www.drogasedemocracia.org/Arquivos/livro\\_ingles\\_02.pdf](http://www.drogasedemocracia.org/Arquivos/livro_ingles_02.pdf)>

conventions: drug addicts (who are vulnerable to discrimination and poverty any way) and farmers in developing countries (who cultivate illicit crops and often do not have an economically sound alternative).<sup>8</sup>

The international drug control regime is dedicated to controlling global drug flows and States must implement laws towards this common end. Therefore the complete legalization of substances currently under control seems not to be a valid option under the international control regime, whether legalization would be a solution for the problems related to drug abuse is debated anyway<sup>9</sup>. Be that as it may, the point to be made is that the drug control conventions do not contain provisions that meticulously dictate to Member States what actions are to be taken without granting them sufficient leeway for implementing individual policies. The most troublesome measures on the domestic level are arguably carried out outside the mandatory framework of the conventions. As is clear, it is in fact the obligation of each party to one of the conventions, and of the international community as a whole, to remedy unwelcome effects of the global drug control regime and to prevent grave human rights violations from happening.<sup>10</sup>

Dissatisfaction with the UN drug control system is on the rise and a consensus has formed that the focus of international drug control policies needs to be shifted because the repressive approach has not resulted in the desired effects of cessation of the production and consumption of harmful psychoactive substances. The system being a prohibition regime focusing on control of the production of psychoactive substances that are deemed to be harmful, has over time developed side effects

that were not foreseen (at least in their magnitude) when it was established. The Secretary-General of UNODC in a position paper presented in 2008 admitted that the application of the drug control system has had several 'unintended consequences'.<sup>11</sup>

Despite the unfortunate effects of globalization and free trade on drug control, which could possibly have been taken into account decades ago when the drug control conventions were drafted, a consensus seems to be building that the unin-

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<sup>8</sup> Daniel Heilmann, 'The International Control of Illegal Drugs and the U.N. Treaty Regime: Preventing or Causing Human Rights Violations?'

<sup>9</sup> World Drug Report, 2009

<sup>10</sup> Daniel Heilmann, 2010, Available at: [http://works.bepress.com/daniel\\_heilmann/1](http://works.bepress.com/daniel_heilmann/1)

<sup>11</sup> Daniel Heilmann, 'The International Control of Illegal Drugs and the U.N. Treaty Regime: Preventing or Causing Human Rights Violations?'

tended consequences warrant a paradigm shift in the system of international drug control<sup>12</sup>. While most countries that are heavily affected by drug control measures have built a supportive infrastructure for law enforcement and penal sanctions, the same does not hold true for issues concerning public health. The challenge for the system is to maintain a balance between effective control measures on the one hand and the negative consequences of such controls on the other<sup>13</sup>. It has therefore, rightfully, been proposed that the international drug control system should refocus on three main directives: (1) treating drug use as a matter of public health;

(2) reducing drug consumption through information, education and prevention; and (3) focusing repressive measures on organized crime.<sup>14</sup>

The question must be answered whether the drug control regime is flexible enough to be refined within its existing boundaries, or whether a new system must be established instead. Drug control is part of the international economic, social, health and related problems, the international co-operation is needed to resolve it<sup>15</sup>. Drug control, however, is not explicitly mentioned in the UN Charter. This is an important deviation from the Covenant of the League of Nations, which specifically mentioned drug control in Art. 23 (c), which explicitly entrusted the League of Nations with the general supervision over the execution of agreements with regard to 'the traffic in opium and other dangerous drugs'. Drug control under the UN Charter is a subset of the higher aims of the organisation and its members.<sup>16</sup>

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<sup>12</sup> Ibid.

<sup>13</sup> Jelsma, *The Current State of the Drug Policy Debate* 14, 2008.

<sup>14</sup> *Drug and Democracy: toward a paradigm shift*.

<sup>15</sup> United Nations Charter, Art. 1 (3). Arts 55 (b) and 60 UN Charter mandate ECOSOC to promote solutions of international economic, social, health and related problems.

<sup>16</sup> Rick Lines & Richard Elliott, *Injecting drugs into human rights advocacy*, 18 *International Journal of Drug Policy* 453, 455 (2007).