The History and Future of the International Drug Control System

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Drugs, Crime and punishment – where to draw the line?
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Overview

- Concepts & principles
- Dealing with past challenges
- Parallel (shadow) processes of regime transformation
- What next for the international system?
- Some concluding thoughts (UNGASS)
‘By now the problems have been clearly defined and some of them have been solved, or instruments of their solution have been created: non-medical consumption of opium, coca leaf and cannabis, and the drugs manufactured from them is outlawed in principle and is bound to disappear after transitional periods of adaptation.’


‘If the principles on which these treaties and this control rest could be applied with equal success to wider fields of human endeavour, to other kinds of dangerous weapons, peace would be within our reach.’

Statement by the UN Secretary General, UN Bulletin on Narcotics, 1949
The UN drug control system/regime

- Two core methods of achieving drug control.
- (1) **Commodity control.** Definition and regulation of the licit production, supply and possession of drugs. (Pharmaceutical market-Essential Medicines)
- (2) **Penal control** - Suppression through criminal law of illicit production, supply and consumption of certain drugs
- Prohibition of non-medical & non-scientific use
- Aim - Seek **balance** between penal sanctions, the degree of real and/or potential harm associated with specific drugs and their therapeutic usefulness.
- **Dual Obligation of Parties.**
Belief in three related ‘principles’ –

(1) **Guiding Principle** – ‘concerned with the health and welfare’ of humankind

(2) The best way to reduce problems caused by the use of proscribed drugs is to **minimize the scale of** - and **ultimately eliminate** - the illicit drug market

(3) …and that this can be successfully achieved through a reliance on **prohibition-oriented supply-side measures**.

Almost Universal Adherence – **Overarching legal framework for national policies** (EU)

Flexibility, but this is finite…
Dealing with past challenges – Changing markets & political imperatives

- Pre – UN treaties – Economic & moral interests (duality & ideational transfer)
- UN Hard Law -
  - 1961 Single Convention on Narcotic Drugs – Establishment of prohibitive norm
  - 1972 Amending Protocol – US ↑
  - Challenge of ‘Synthetics’ – 1971 Convention on Psychotropic Substances (duality)
  - Challenge of DTOs - 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (& TOC)
- UN Soft Law –
  - Political Declarations – ‘shared responsibility’/ balanced, comprehensive & integrated approach – UNGASS 1998
United Nations Drug Control

Security Council → General Assembly → Economic and Social Council (ECOSOC)

World Health Assembly (WHA)

UN Office on Drugs & Crime (UNODC)

World Health Organization (WHO)

UN International Drug Control Program (UNDCP)

Expert Committee on Drug Dependence

Commission on Narcotic Drugs (CND)

Commission on Crime Prevention and Criminal Justice (CCPCJ)

International Narcotics Control Board (INCB)

Dotted line: Coordination, advising
Arrow: Governing or constitutional relation

Major Donors Fund ($US 100 million per annum)

Secretariat

Ad-hoc Counter-Terrorism Committee

Terrorism Prevention Branch (TPB)
Parallel (shadow) processes of regime transformation

- System achieving goals?
- Challenge of ↑ market dynamism and complexity, ↑ knowledge
- Some states shift to ‘market management’ & reduction of harm - Policing issues
- ‘Unintended Consequences’
- ↑ deviation from core prohibitive norm – ‘decriminalization’ (MMU) & Harm Reduction
- Imperatives - public health (HIV), human rights, law enforcement costs, public attitudes
- Geo-political shifts: Higher on policy agenda
- Not hard or explicit soft law responses, but diverging views and conflict in Commission on Narcotic Drugs (CND)
- ‘Vienna Consensus’ on drugs long on life-support. (E.g. HLS 2009).
- Not full blown defection (Strong mechanisms of adherence – costs: reputational & economic)
- Soft Defection
What next for the international system? - Dealing with unprecedented challenges

1. System response – ‘Re’-focusing within framework of the current regime: public health, human rights and alternative development

2. Existential response – state actors (or sub-units therein) moving beyond Soft Defection & review of substantive internal tensions.

(Interconnected)
(1) System Response: Some challenges

- Marginalisation of WHO
- Mandate of INCB
- Scheduling procedures – ketamine, dronabinol, NPS
- Essential Medicines
- System-wide (in)coherence - SDGs
- Data capture/market tracking – Africa, ATS, NPS
- Towards metrics that measure outcomes that matter – away from process indicators (Market management – policing implications)
(2) Existential Response: Moving past Soft Defection

But, many issues not resolved via Soft Defection and working within extant framework:

- Inconsistencies between existing drug treaties
- Correcting historical errors – coca (cannabis?)
- Mandated roles of INCB & WHO
- Tensions vis-à-vis other treaty commitments
- Treaties stifle policy experimentation - Drug policy repatriation? ↑ not ↓
Regulated Cannabis Markets: Beyond the theoretical and towards the future

- Since 2012 - Legally regulated recreational cannabis markets in 4 US states (and Washington DC)
- Bolivia - Article 49 - Temporary defection
- US & Uruguay arguably both in breach of the Single Convention
- Nation state and UN level denial - geo-political calculus
- ‘Untidy legal justifications’
- Scenarios – US 2016? Canada?
- International law?
Some concluding thoughts

- All regimes evolve and change to a greater or lesser extent
- Increase use of current flexibility, but finite...
- Long-term systemic challenge for the international drug control regime is how to manage a change of the regime to increase flexibility and allow for ‘principled policy pluralism’
- UNGASS - soft law system response
- But, April 2016 - opportunity to initiate substantive discussions on treaty reform
- …‘conduct a wide-ranging and open debate that considers all options’
- UNSG Ban Ki-moon, 2013
- ‘Social problems are never solved. At best they are only re-solved over and over again’.

Thank you for your attention
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