

***The current state of
drug policy debate.***

***Trends in the last decade in the
European Union and
United Nations***

Martin Jelsma

TNI

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I. Initial considerations

Drug control originates from a desire to protect human well-being. The international community, concerned about the impact of drugs on public health, began to prohibit a series of substances and establish measures to eliminate their production, distribution and consumption. The initial phrase of the first UN treaty on drug control, 1961, speaks of a concern for the health and welfare of mankind. Since then, the illegal drug economy has grown at an exponential rate, achieving a certain market stability around the beginning of the nineteen nineties. The strategy to combat drugs led to a large-scale war, with extreme actions such as military operations against small farmers of illegal plants, chemical fumigation of illegal drug crops, wholesale imprisonment of users and small distributors, and even the death penalty for those who break the law relating to drugs in some countries. The prohibition of illegal drugs places the markets of this lucrative trade in the hands of criminal organizations, and creates enormous illegal funds which stimulate armed conflicts throughout the world.

This document offers an overview of the current trends in the search for possible alternative policies, particularly in the scope of the European Union and the United Nations. When speaking of alternative policies, it is easy to fall into the trap of oversimplifying the difference between prohibition and legalization. However, thinking in terms of this dichotomy is of little use when searching for strategies for change. At an abstract level, in the conceptual debate, bringing to the discussion the concept of legalization might be useful for questioning the current system. But legalization is not necessarily the answer, or the solution, for all the problems related to the existence of the illegal drugs economy. Just as extremely repressive methods used

to control drugs can have harmful effects, so the absence of certain control measures can also have a negative effect on public health.

In terms of measures to control psychoactive substances, there is currently a wide diversity worldwide, and also vast differences in the administrative and criminal sanctions applied in each country. The UN conventions establish global norms in this respect: The Single Convention of 1961, with its lists of narcotics, the Convention on Psychotropic Substances; 1971, the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, with its lists of precursors; and more recently, the WHO Framework Convention on Tobacco Control, 2003. The norms established by the United Nations have little logic, and have been shown to be full of inconsistencies from the very outset.

Instead of reducing the debate to the dichotomy mentioned above, it would be more useful to take as an image, a scheme which represents a continuum of different models and forms of control, and which can be divided under four main headings:

	<i>I</i>	<i>II</i>	<i>III</i>	<i>IV</i>
	<i>War on drugs</i>	<i>UN Treaties to prohibit drugs</i>	<i>Regulation of legal substances</i>	<i>Free trade</i>
<i>Characteristics</i>	- Extreme repression - Militarization	- Worldwide norms - Prohibition based on zero tolerance - Medical prescription	- Administrative controls - Big differences between countries	Use and distribution without international control
<i>Examples of practices</i>	- Fumigation - Mass imprisonment - Death penalty	- Penal sanctions for possession, trafficking - System of licenses for legal uses	- Licenses for production and sale, restriction for minors, etc. - Tobacco: WHO convention on control	- Control of mushrooms, khat and ephedrine in various countries. - Alkaloids of some treaties
<i>Substances</i>	Coca/cocaine Opium/Heroin Cannabis, ATS	More than 200 substances on the lists of the 1961 and 1971 Treaties	Alcohol Tobacco:	Coffee, khat, kava, ephedrine, mushrooms hallucinogens, etc.

The UN Treaties on drug control, which form the backbone of the prohibition regime, are just part of the problem in relation to the damage that is generated by some of their articles. There is not a single article in the conventions, for example, which obliges the signatory nations to imprison drug users or fumigate fields of illegal crops with herbicides. These control measures are carried out outside the norms established by the UN. Thus, as certain Islamic countries have decided to maintain the prohibition of alcohol and give criminal sanction to its consumption outside the worldwide norms, a large part of the true anti-drug war which falls under the first heading of the scheme is carried out at the margins of the established norms.

II. Principles for a better balance

The real challenge in drug policy making is to find the optimal balance between protection of public health through certain controls, on one hand, and the negative consequences of overly repressive controls on the other. A growing group of countries – including some European ones – began, in the 1980s, to divert the focus away from the policy of zero tolerance, towards a better balance between repression and protection. Civil society began to organize itself in international networks – like the International Harm Reduction Association (IHRA) and the International Drug Policy Consortium (IDPC) – supporting a strategy of promoting a slow and gradual improvement in the current policies. The objective is to achieve a global system that can truly protect the well-being of humanity, which guarantees certain controls over potentially harmful substances, with sufficient flexibility, and which imposes limits on the level of repression meted out to users, farmers and small-scale drug traffickers. For this strategy of change, a series of principles emerged that could guide the policies in the right direction:

- 1) Evidence. The changes should be based on a thorough assessment of the policies, instead of being based on ideological principles. There are currently many studies on the policies which work and those which do not.

2) Differentiation. It is necessary to differentiate between substances, based on the damage they cause to health (the level of damage of cannabis is not the same as that of heroin), and between natural plants and their concentrated derivatives (coca in its natural form can be beneficial for health, while the consumption of its alkaloid - cocaine in concentrated form - can lead to problems), and thirdly, between predominantly recreational uses, and more problematic uses of drugs.

3) Harm reduction. A world without drugs will never exist. Little by little, the ideology of “zero tolerance” is being replaced by the principle of harm reduction, which offers a more pragmatic approach that favors policies capable of reducing drug associated damage as far as possible, for the consumer and for society in general.

4) Flexibility. Sociocultural differences also need to be taken into account. The norms that are established at global level should leave sufficient room for maneuver, enabling countries to adjust themselves to certain principles of national law, or to protect, for example, the rights of indigenous people to continue their traditional practices and customs.

5) Proportionality. Drug control should fully respect human rights, for which the sanctions should be in proportion to the crime. Imprisoning users for the mere fact of consumption, implementing criminal sanctions or forced eradication against farmers who have no other form of income, or issuing the death penalty for violation of the anti-drug laws, are all examples of disproportionality.

6) Participation. When formulating policies on drugs, there should be full participation by all the main players: farmers, users, health workers, etc.

III. Areas of the debate

There are various areas, within the current debate on changes in anti-drug policies, with different practices and experiments being developed in various countries:

III.1 Harm reduction

The last decade was characterized by major advances in harm reduction programs, particularly among injecting drug users, with the aim of decreasing the spread of diseases like HIV/AIDS and hepatitis. In many countries, needle exchange programs and substitution treatment with methadone or buprenorphine have been widely used. There are projects of this type in all the European countries, Canada and Australia, and in recent years they have been established on a wide scale in many countries of Asia, and in many cities of the United States. In some countries of Latin America (Brazil, Argentina and Uruguay), the concept and programs related to harm reduction are also gaining ground.

Through a Recommendation of the Council of Ministers in 2003¹, harm reduction began to be adopted as the common position of the EU, ratified in 2004 with the inclusion of harm reduction in the EU Drugs Strategy for 2005-2012 and the EU Action Plan on Drugs (2005-2008)². The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) affirmed that “the evidence strongly supports the contention that needle and syringe exchange provision can make an important contribution to reducing HIV transmission in drug injectors. Furthermore, needle and exchange provision can be effective in engaging with populations of drug users not in contact with other services, and may provide a conduit to drug treatment and primary health care services. No convincing evidence exists that its provision negatively impacts on other prevention or drug control activities.”³

This was confirmed in the declaration that resulted from the Fifteenth International Conference on AIDS in Bangkok in July 2004: *"There is overwhelming, high quality evidence of very effective, safe and cost effective harm reduction strategies to reduce the negative health and social consequences of drug injection. [...] Experience of numerous programs and projects in all regions of the world indicate that HIV/AIDS epidemics among injecting drug users can be prevented, stabilized and even reversed by timely and vigorous harm reduction strategies"*.⁴

¹ Council Recommendation of 18 June 2003 on the prevention and reduction of health-related harm associated with drug dependence (2003/488/EC).

² COM(2005) 45 final, Communication from the Commission to the European Parliament and the Council on a EU Drugs Action Plan (2005-2008), Brussels, February 14, 2005.

³ A European perspective on responding to blood borne infections among injecting drug users, A Short Briefing Paper, EMCDDA, Lisbon 2005.

⁴ Leadership Statement on Injecting drug use and HIV/AIDS, Bangkok, 2004. http://www.unaids.org/bangkok2004/docs/leadership/LS_IDU.pdf

The International Federation of Red Cross and Red Crescent Societies (IFRC) makes it clear in their guide to harm reduction related to the injecting of drugs: *“The message is clear. It is time to be guided by the light of science, not by the darkness of ignorance and fear”*.⁵

Meanwhile, the basic practices of harm reduction have spread rapidly throughout the world, including in countries which have very strict anti-drug laws. A country like China, for example, began needle exchange programs many years ago, and in 2006, it began opening a thousand methadone substitution clinics. Also countries like Iran, Pakistan and Vietnam are speaking openly about harm reduction. The United States federal government still maintains an ideological crusade against harm reduction, but at global level, it is only supported by Russia, Japan and some African and Islamic countries, like Sudan and Saudi Arabia.

While in the last five years, the world has experienced a strong wave of needle exchange programs and substitution programs, a smaller number of countries (Germany, Holland, Switzerland, Spain, Belgium, Luxemburg, Canada and Australia) continue to experiment with harm reduction projects that are still more controversial, like supervised injection facilities (“drug consumption rooms”) in 35 cities, and the practice of supplying heroin to problematic users.

III.2 Alternative Development

The trend towards more pragmatic policies for drug use is gaining ground, thanks also to a certain latitude in the international treaties on drug control with regard to use. However, during the last decade the repressive focus on production has toughened up. The forceful eradication and rigorous implementation of a prohibition of opium had tragic consequences in the Andes region, Southeast Asia and Afghanistan, which led to a worsening of social and armed conflicts and humanitarian dramas, due to the destruction of people’s sole means of subsistence. The lack of legal flexibility in the conventions, in relation to production, is a major

⁵ *Spreading the light of science: Guidelines on harm reduction related to injecting drug use*, International Federation of Red Cross and Red Crescent Societies, 2003. http://www.ifrc.org/what/health/tools/harm_reduction.asp

stumbling block for the introduction of pragmatic policies aimed at small farmers who grow illicit drug crops. In the context of programs for alternative development, this also hampered attempts to implement systems of gradual reduction that were more realistic and less oppressive, on a long-term basis, according to the lengthy process of ensuring other alternative means of subsistence and a reduction in demand.

In the debate on alternative development in the context of the reconstruction of Afghanistan, the theme of drugs is increasingly seen as a complex issue which requires balanced responses, which take into account aspects relating to the areas of development, human rights, governability and resolution of conflicts. To achieve this, however, there must be a certain room for maneuver, putting aside the desire to see immediate results, by reducing the number of hectares of cultivation.

At the level of discourse, the debate in this field has advanced significantly, following the UN General Assembly Special Session (UNGASS) on drugs in 1998.⁶ The Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development, approved by the UNGASS, mentions its goal, which is *“to promote lawful and sustainable socio-economic options for those communities and population groups that have resorted to illicit cultivation as their only viable means of obtaining a livelihood, contributing in an integrated way to the eradication of poverty”*. This was the official recognition, by the UN, of the importance of alternative development. However, the Assembly also adopted a policy statement whereby the governments undertake to eliminate or significantly reduce illicit drug crops in 2008, a very unrealistic deadline which merely increased the pressure to apply repressive measures on farmers.

Under the sponsorship of the German Government and the UNODC (United Nations Office on Drugs and Crime) in 2002, began a series of thematic conferences and evaluations, with the aim of evaluating 25 years of alternative

⁶ For a detailed article on the history of the 1998 UNGASS, see: M. Jelsma, *Drugs in the UN system: the unwritten history of the 1998 United Nations General Assembly Special Session on drugs*, International Journal of Drug Policy, April 2003 (Volume 14, Issue 2). Also available at ungassondrugs.org

development, and drawing conclusions about its future. The final declaration given at the first conference affirmed that “*Alternative Development should neither be made conditional to a prior elimination of drug crop cultivation, nor should a reduction be enforced until licit components of livelihood strategies have been sufficiently strengthened*”.⁷ In the March 2008 session of the UN Commission on Narcotic Drugs, a report of the balance of ten years of the Action Plan was presented, incorporating the lessons learned from the conferences, and the evaluations carried out.⁸

The UNODC report is the best example of the advances in the debate on alternative development. It recognizes that “*Global illicit cultivation of coca bush and opium poppy could be described as largely unchanged in the past decade.*” In relation to Afghanistan, the report observes that “*strong enforcement efforts against farmers were often ineffective in remote areas where resources, assets and markets were limited. The eradication of opium poppy fields and reductions in cultivation resulting from the threat of eradication tended to affect mostly poor farmers and rural wage labourers, who, lacking political support, were unable to pay bribes and could not otherwise protect themselves.*”. In general, based on the evaluations of the UNODC, the report indicates that “*there was little evidence that eradication reduces illicit cultivation in the long term – drug crops move, production technologies evolve, and total production decreases very slowly if at all.*”. Therefore, in its recommendations, the report asks the member states to increase their support for rural development in regions and populations affected by illicit cultivation, and facilitate greater access to the markets for the products of the alternative development. It concludes that “*Alternative development must be assessed using human development indicators and not solely based on illicit crop production statistics.*” It is very significant that the report does not ask the countries to increase or continue their efforts of forced eradication.

⁷ *Feldafing Declaration*, <http://www.unodc.un.or.th/ad/feldafing/document/declaration.pdf>

⁸ E/CN.7/2008/2/Add.2, *The world drug problem, Fifth report of the Executive Director, Addendum, Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development* Commission on Narcotic Drugs, 51st session, Vienna, March 10 - 14, 2008. <http://daccessdds.un.org/doc/UNDOC/GEN/V07/892/21/PDF/V0789221.pdf>

III.3 Depenalization and the prison crisis

The last two decades have seen a rapid increase in the prison population almost throughout the world, partly due to the tightening of anti-drug laws, under the influence of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Convention makes it mandatory for the signatory countries to “adopt such measures as may be necessary to establish as criminal offences under its domestic law” (art. 3, §1) all the activities related to the production, sale, transport, distribution, etc. of the substances included in the most restricted lists of the 1961 and 1971 conventions. The penal sanctions should also apply to the “cultivation of opium poppy, coca bush or cannabis plants for the purpose of the production of narcotic drugs”. The text establishes a difference between the intent of trafficking and the intent of personal consumption, stating that “the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption” should also be typified as a criminal offence, but “subject to the constitutional principles and the basic concepts of its legal system” (art.3, § 2). In the USA, Russia and China, mass imprisonment is practiced, and the majority of European and Latin American countries have also seen a major increase. The prison crisis and the lack of positive impacts in terms of a reduction in the illegal drug market have prompted various depenalization campaigns.

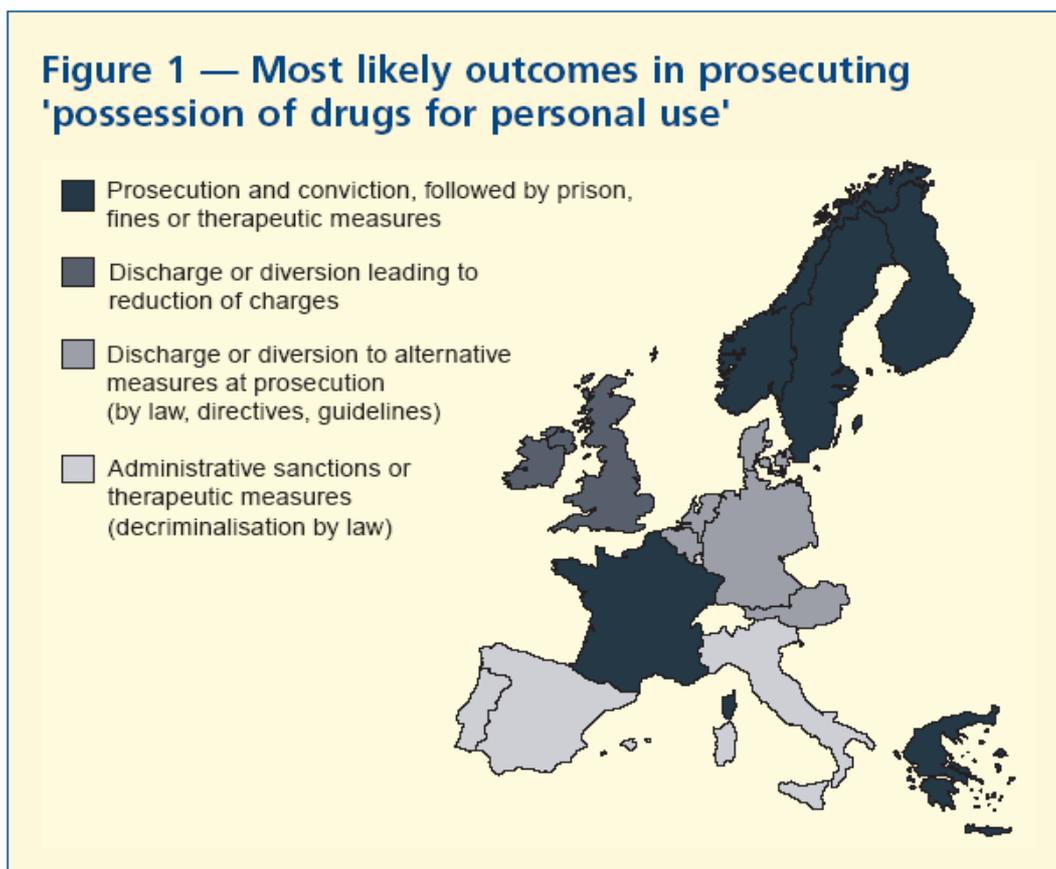
In many countries, personal consumption is not, in itself, a crime. The conventions do not oblige any penalty to be imposed for consumption *per se*, as is clearly stated in the official Commentary to the 1988 Convention: “It will be noted that, as with the 1961 and 1971 Conventions, paragraph 2 does not require drug consumption as such to be established as a punishable offence”.⁹ Nowadays there are various countries where the possession of a quantity of drugs for personal use is completely decriminalized, and there are many where this is no longer a priority for law enforcement, or where sentences have been reduced. These changes in the law or directives of jurisprudence could directly decrease the many personal and family dramas caused by detention, and may have an immediate positive effect on the already overburdened legal system, and overcrowding in the prisons.

⁹ E/CN.7/590. *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, given in Vienna on 20 December 1988, New York: United Nations, 1998, ISBN 92-1-148106-6, for 3.95, p. 82.

Binding EU guidelines have only been established for trafficking offenses (including preparatory acts with the intent to traffic) but not for acts related to personal use. Thus, there are enormous differences within the EU on how to deal with the consumption of drugs. Spain and Italy, and more recently, Portugal and Luxembourg, for example, do not consider possession of drugs for personal use as a crime. Other countries, such as Holland, Germany and the Czech Republic maintain guidelines for the police, public prosecution or courts to avoid imposing a punishment – or small fines – if the amount is insignificant or for personal consumption. The legal definitions of what constitutes an amount “for personal use” also differ. Portugal, for example, uses the definition of “*the quantity required for an average individual consumption during a period of 10 days*”. Other jurisdictions define it as a specific amount in grams or units. In Austria, for example, the limit of the “serious offense” (which is punishable by prison) is 15 grams of cocaine and 3 grams of heroin, while “small” amounts” are defined as 0.5 grams of heroin, 1.0 grams of ATS and 1.5 grams of cocaine

In Finland, by comparison, the law refers to 1 gram of heroin or 1.5 grams of cocaine, although in actual practice, the lower limit for a prison sentence is 10 grams of ATS, 40 ecstasy pills, 4 grams of cocaine and 2 grams of heroin.¹⁰ Graph 1 below shows the main differences on how possession of drugs for personal use is dealt with in Europe.

¹⁰ *Illicit drug use in the EU: legislative approaches*, EMCDDA thematic papers, Lisbon 2005, ISBN 92-9168-215-2.



Source: *European legal database on drugs (ELDD) 'Country profiles'* (<http://eldd.emcdda.org>) and *EMCDDA Insights No 5* [3].

III.4 Decriminalization of cannabis

In the case of cannabis, the illegal substance with the highest mass consumption - consumed by an estimated 200 million people worldwide - the percentage of recreational users who develop problematic patterns of consumption is very small. Various countries therefore have more tolerant policies in relation to consumers of cannabis, despite the fact that this substance is classified by the UN treaties in the same category as heroin. In many cases the police and the legal system have simply reduced the priority of chasing cannabis users. In some countries, like Holland, Switzerland, Belgium, Luxembourg, Portugal, Ireland, the United Kingdom, and a dozen states of the USA, there have been changes in the law to decriminalize the possession of cannabis in small quantities. Holland is the most well-known example, as it permits the sale of amounts of up to 5 g of cannabis to adults, in the so-called "coffee-shops". It is important to highlight that even with the Dutch system of open sale, the levels of consumption of cannabis in the country are similar to

those of the neighboring countries like Germany and Belgium, and much lower than England, France or Spain.¹¹ In practice, in the majority of European countries, infringements involving small amounts of cannabis (up to 30 g) are not processed or only incur administrative sanctions. Furthermore, there have been numerous parliamentary proposals (in England, Canada, various states of the United States, Holland and Switzerland) for a legal regularization of the cannabis market, similar to the controls that exist for alcohol and tobacco. These proposals have never been implemented, even in cases where the legislative majority was in favor, because they contradict with the international treaties.

III.5 Revalorization of coca leaves

In the case of coca leaves, it appears that problematic use does not even exist. According to a World Health Organization (WHO) report, “*The use of coca leaves appears to have no negative health effects and has positive therapeutic, sacred and social functions for indigenous Andean populations*”.¹² The WHO was unable to publish this study due to the threat of the United States cutting its funding if it published these findings. In relation to coca leaves, there is an intrinsic contradiction between the conventions, on one hand, and the traditional practice of farming and consumption on the other. The International Narcotics Control Board (INCB), in its reports, condemns Bolivia and Peru for continuing to permit the use of coca leaves, whether chewed or in the form of coca tea, and other processed products of the coca plant. The inclusion of coca leaves in the Single Convention de 1961 – that established a period of 25 days to completely abolish any use of coca (except for Coca Cola) was a historical error, and something that the current Evo Morales Government in Bolivia is seeking to repair, through the revalorization of the coca leaf, and ultimately, its removal from the lists of substances banned by the UN.¹³

¹¹ 2007 Annual report on the state of the drugs problem in Europe, EMCDDA, Lisbon 2008, www.emcdda.europa.eu

¹² WHO/UNICRI Cocaine Project. <http://www.tni.org/docs/200703081409275046.pdf>

¹³ *Sending the wrong message, The INCB and the un-scheduling of the coca leaf*, TNI Drug Policy Briefing 21, March 2007. <http://www.tni.org/policybriefings/brief21.pdf>

IV. The UNGASS Review: 1998-2008

In 2008-2009 a review will be carried out of the objectives and goals established in 1998 during a UN General Assembly Special Session on drugs, UNGASS. This will be a historical opportunity to progress in the search for a better balance in drug control policies.

Almost half a century has passed since the first United Nations convention on drug control, the Single Convention on Narcotic Drugs, 1961. This convention unified the different multilateral instruments negotiated throughout the previous half century, i.e. from the first convention on opium agreed in 1912 in the Hague. Since then, the United Nations has held numerous conferences and summits with the purpose of negotiating a global proposal for illegal drugs. However, flaws are increasingly appearing in this supposedly universal model which, in fact, is based on a fragile consensus.

With the UN Single Convention of 1961, it was agreed to gradually eliminate opium over a 15-year period, and coca and cannabis within 25 years. The Single Convention was established as a universal system for controlling the cultivation, production, distribution, trade, use and possession of narcotic substances, with special attention on substances derived from plants: opium/heroin, coca/cocaine and cannabis. In the four lists of the Convention, more than a hundred substances are classified under various degrees of control. Of the more controversial classifications on the list, coca leaves appear in List I, and cannabis appears in both Lists I and IV, which is reserved for the most dangerous substances.

The 1971 Convention on Psychotropic Substances developed in response to the diversification of drug use, introduced controls on the use of more than a hundred psychotropic drugs, such as amphetamines, LSD, ecstasy, valium, etc., which are again distributed into four lists. Compared with the strict controls imposed on plant-based drugs, the 1971 treaty imposed a weaker control structure, due to pressure from the European and North American pharmaceutical industry during the negotiations.

As a response to the growing illegal drug market during the Nineteen Seventies and Eighties, the 1988 Convention Against Illicit Traffic provided measures against narcotraffic, money laundering and the deviation of chemical precursors, as well as agreement on mutual legal assistance, including extradition. The Convention also reinforced the obligation of countries to apply the sanctions of criminal justice to combat all the aspects of production, possession and global trafficking of drugs.

Ten years after the third convention was adopted, the international community gathered in New York for the general assembly on drugs, or UNGASS. The search for a consensus, the backbone of the UN's operations, proved to be no easy task, owing to the many divisions that existed. On one hand, there were those who said – in relation to the 1988 treaty – that “*the convention is an instrument with teeth and now we should make it bite*”, in other words, those who wanted to dedicate UNGASS to reaffirming and reinforcing the worldwide system of control. On the other hand, particularly in some Latin American countries, there were those who believed the current regime is biased because it emphasizes the producer countries of raw material (coca and opium). This group spoke of the need to search for a better balance under the motto of “shared responsibility”. More attention should be given to the problem of consumption, funds for alternative development, and more rigorous measures against money laundering and to prevent the deviation of precursors. In other words, there should be more emphasis, on those parts of the market where the responsibility lies with the developed countries. In addition, there was a third group for whom the inability, until now, to stop the growing problems, raises the question of the validity of the policies carried out and for this reason – on the European side – more pragmatic harm reduction strategies had already been introduced, which were far removed from the North American ideology of zero tolerance.

The 1998 UNGASS resulted in a series of Action Plans on the themes of reducing demand, chemical precursors, amphetamines, money laundering, and alternative development. A new deadline was also included in the Political Declaration – after the failure of the deadlines of the 1961 Convention – to “eliminate or significantly reduce the illicit cultivation of the coca bush, the cannabis

plant and the opium poppy by the year 2008". In view of the demand, a commitment was made to "achieve significant and measurable results" for the year 2008.

The same question that dominated the 1998 UNGASS - reaffirm or reassess – emerged again in the 2008-2009 review. This is what will happen in 2008-2009:

- No new UNGASS will be celebrated. The review process has been delegated to the Commission on Narcotic Drugs which meets each year in Vienna.
- In March 2008, there were two days of Thematic Debate – a special part of the session of the Commission – dedicated to the achievements and obstacles encountered on the path to accomplishing the objectives of UNGASS. The United Nations Office on Drugs and Crime (UNODC) elaborated the balance report, the main document of the debate.
- After that a "period of reflection" started with working groups, to prepare a summit in 2009 in which the conclusions should be drawn for the future.
- In March 2009 there will be a "high level segment" (with the participation of ministers of various countries) at the session of the Commission on Narcotic Drugs, to arrive at a new Political Declaration and/or any other instrument that results from the period of reflection.
- The civil society will have opportunities to take part in the entire process, guided by the Vienna NGO Committee on Narcotic Drugs. An NGO summit is planned for July 2008, to gather the opinions of civil society on the UNGASS review, based on various regional meetings which took place at the end of 2007 and beginning of 2008.

V. Perspectives and main challenges

In conclusion, taking up the original considerations, the principles for a better balance between protection and repression and the different areas of debate, what are the perspectives and principle challenges in this process of 2008-2009?

V.1 An honest assessment

The question appears to remain focused on the dichotomy between reaffirming or reassessing. The UNODC will try, throughout this period, to argue that encouraging progress has been achieved in relation to the objectives and goals of the UNGASS for 2008, as it did at the mid-term review in 2003. Now its line of defense is based on the fact that the world has achieved a market stabilization, thanks in its view, to all the measures which the member States have adopted in the context of the implementation of the Action Plans of the 1998 UNGASS. The vision they seek to promote is that without the strong commitment to the fight against drugs, agreed ten years ago, the world will suffer an illegal drugs epidemic comparable with the levels of consumption of alcohol and tobacco.

The lack of considerable advances by the 2008 deadline, in "eliminating or significantly reducing" the drug market, should cause a significant group of countries to question the current policies on drugs. These countries should bear in mind the fact that all the attempts to control this market by means of repressive measures have not managed to create a shortage of psychoactive substances or to stop the production of any of the substances (cocaine, ATS, cannabis) and in the case of opium/heroin, production has even doubled. Almost throughout the world it is easy to find these products, at lower prices than a decade ago. Furthermore, the anti-drug efforts have generated serious collateral damage in terms of the crisis in the prison system, and violations of human rights. It will be difficult to conclude that the world is on the right track and that there is no reason for a reformulation.

A debate document for the review, presented at the Vienna session in March 2008 by the Executive Director of the UNODC, Mr. Antonio Maria Costa, presents a series of interesting proposals for making drug control 'Fit for purpose', which is the title of his contribution. Mr. Costa speaks of the need to 'humanize' our drug control system, because in his opinion, there are too many people in prison, with huge amounts of resources being spent on repressing drugs, but too little for prevention, treatment, rehabilitation and harm reduction, and a lot of emphasis is being given to the destruction of the illicit crops, with few resources being spent on helping the development of peasant farmers. He also highlights the need to lessen the unintended negative consequences, and – for the first time – openly defends the

principle of harm reduction, emphasizing that the *“implementation of the drug Conventions must proceed with due regard to health and human rights”*.

V.2 Accept the concept of Harm reduction at UN level

Introducing the philosophy of harm reduction in the UN system was no easy task, and was roundly attacked. The key triangle in the UN drug control machinery (the Commission, the UNODC and the INCB) has systematically rejected, until now, the use of these terms in the policy debate, due to strong pressure from the USA which has threatened to cut funding for the UNODC. This attitude is in contrast with the attitudes taken by agencies like the WHO, UNAIDS and UNDP, which are already using the concept of harm reduction. Thus, the system-wide coherence and acceptance of this concept throughout the UN system are at stake.¹⁴

The words of Costa indicate that the time has come to take major strides in the adoption of the concept of harm reduction. This concept should form a normal part of the UN debate, just as it is already being practiced in a large part of the world. Also, the last report of the INCB reflects a slow progression towards wider acceptance of the term. But it will be a turning point when the high-level meeting of the Commission on Narcotic Drugs in 2009 adopts the discourse and concept of harm reduction, without any ambiguity.

V.3 Total respect for human rights

Article 25 of the Universal Declaration of Human Rights states that *“everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”*.¹⁵ Since 1948, medical care has been consecrated as a human right for all, including drug addicts. However, in the March 2008 session, it was difficult to

¹⁴ For more details, see: *The United Nations and Harm Reduction, TNI Drug Policy Briefing 12, March 2005*. <http://www.tni.org/policybriefings/brief12.pdf>

¹⁵ Universal Declaration on Human Rights, Article 25, General Assembly, Resolution 217 A (III) of 10 December 1948.

adopt a resolution by the Commission on Narcotic Drugs which simply demands total respect for human rights in the efforts to control drugs.

Human rights are at the very core of the UN system, thus it should be made clear that the efforts to control drugs cannot in any way violate the Charter and Universal Declaration, or any of the treaties on human rights adopted by the international community, such as socioeconomic rights, rights relating to health, and the rights of indigenous groups. For this, clear rules are needed on the proportionality of the sentences, as well as explicit recognition of the human rights of drug users, traders and peasants involved in illicit cultivation.

V.4 Improve the effectiveness of the UN agencies

Both the UNODC and the INCB have been beset by numerous controversies in the last decade. A problem with the UNODC is that it relies heavily on voluntary donations, which gives the main donors greater decision-making power, thereby limiting its role as an independent agency offering reliable information. This goes against the multilateral spirit which first led to the creation of a drug control agency within the UN.

The INCB generally interprets the conventions in a very strict way, often going beyond its mandate and condemning the national policies practiced by a particular country, based on alternative interpretations of the conventions, an attitude which often leads to tensions.¹⁶ The attitude of the INCB is not in accordance with the basic principles of the United Nations in terms of transparency, system-wide coherence, and the participation of civil society. The period of reflection in the UNGASS review process also offers a good opportunity to evaluate and improve the effectiveness of the agencies.

¹⁶ *The International Narcotics Control Board: Current Tensions and Options for Reform*, IDPC Briefing Paper 7, February 2008.
http://ungassondrugs.org/images/stories/IDPC_BP_07_INCB_TensionsAndOptions_EN.pdf

V.5 Open the doors for a review of the three Conventions

The current system of treaties has undoubted inconsistencies:

1) It is necessary to resolve the real tensions that arise between the conventions, and certain harm reduction practices, like the drug consumption rooms. The urgent need to halt the HIV/AIDS epidemic is already sufficient justification for not placing any more obstacles in the way of effective responses, with rules established half a century ago, when this danger to worldwide public health did not exist.

2) The obligatory nature of the articles which establish penal sanctions for possession, sale and cultivation – including for small amounts for personal use or for the subsistence of a family – creates obstacles to the search for a better balance between protection and repression. Greater flexibility is needed, to confront the crisis in the prison system, and to set the gradual reduction of illegal crops in the context of resolving and preventing conflicts and guaranteeing respect for human rights.

3) Countries wishing to experiment with the legal regulation of the cannabis market, using the WHO Framework Convention on Tobacco Control, as an example, should have the flexibility to do so. Countries that think maintaining a total prohibition of cannabis is the best way of protecting the public health can continue with their current policies, just as some Islamic countries continue to ban alcohol.

4) A solution needs to be found urgently for the situation of the coca leaf, that will compensate for the injustice of the colonial attitude which denies the value of the ancient Andean culture. Coca leaves need to be removed from the Schedule I of the Single Convention of 1961 and the obligation to abolish chewing and other uses of coca in its natural form cancelled.

There are other problems with certain articles in the conventions, but these four points deserve a special effort to reelaborate the worldwide legal framework for drug control. After 50 years, it is time to modernize the system and, for example, arrive at a new Single Convention that will replace the three existing treaties. If countries truly want to strike a better balance between protection and repression, they should lose the political fear that currently dominates them, and leads them to believe that interfering with the sacred conventions would be like opening a Pandora's box.

There is no other way out of the stalemate in which the world finds itself, other than honestly recognizing that the treaties on drugs are outdated instruments, full of inconsistencies. As stated in the first UN *World Drug Report*, 1997, published just before the UNGASS: *“Laws – and even the International Conventions – are not written in stone. They can be changed when the democratic will of the nations so wishes it”*.

The legal experts of the UNODC also added in a confidential memorandum prepared on request of the INCB in 2002, in relation to the HIV/AIDS crisis, that: *“It could even be argued that the drug control treaties, as they stand, have been rendered out of synch with reality, since at the time they came into force they could not have possibly foreseen these new threats.”*¹⁷

It is encouraging that in his last debate document, Mr Costa affirmed that *“there is indeed a spirit of reform in the air, to make the conventions fit for purpose and adapt them to the reality on the ground that is considerably different to the time they were drafted. With the multilateral machinery to adapt the conventions already available, all we need is: first, a renewed commitment to the principles of multilateralism and shared responsibility; second, a commitment to base our reform on empirical evidence and not ideology; and thirdly, to put in place concrete actions that support the above, going beyond mere rhetoric and pronouncement”*.¹⁸

The year 2012, a century after the approval of the first international treaty on drug control, would be a symbolic and opportune time to do it.

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Martin Jelsma - TNI

mjelsma@tni.org

TRANSNATIONAL INSTITUTE - TNI
Drugs & Democracy Programme
De Wittenstraat 25
1052 AK Amsterdam
The Netherlands
Tel: + 31 20 662 66 08
Fax: + 31 20 675 71 76
Email: mjelsma@tni.org
<http://www.tni.org/drugs>
<http://ungassondrugs.org>

¹⁷ E/INCB/2002/W.13/SS.5, *Flexibility of treaty provisions as regards harm reduction approaches*, prepared by the Legal Affairs Section of the UNDCP for the 75th session of the INCB, September 30, 2002. <http://www.tni.org/drugsreform-docs/un300902.pdf>

¹⁸ E/CN.7/2008/CRP.17, *“Making drug control ‘fit for purpose’: Building on the UNGASS decade”*, Report by the Executive Director of the United Nations Office on Drugs and Crime, as a contribution to the review of the twentieth Special Session of the General Assembly, March 7, 2008.