

2022 | CND THEMATIC DISCUSSIONS

21-22 SEPTEMBER 2022

CND

BACKGROUND NOTE

“Responses not in conformity with the international drug control conventions and not in conformity with applicable human rights obligations pose a challenge to the implementation of joint commitments based on the principle of common and shared responsibility”



UNODC

United Nations Office on Drugs and Crime
Secretariat to the Governing Bodies

At its 62nd session in March 2019 the Commission adopted by consensus the Ministerial Declaration entitled “Strengthening Our Actions at the National, Regional and International Levels to Accelerate the Implementation of our Joint Commitments to Address and Counter the World Drug Problem”. In the 2019 Ministerial Declaration, Member States, while acknowledging that tangible progress had been achieved over the past decade, noted with concern the persistent and emerging challenges posed by the world drug problem and committed to accelerating, based on the principle of common and shared responsibility, the full implementation of the 2009 Political Declaration and Plan of Action, the 2014 Joint Ministerial Statement and the 2016 UNGASS outcome document, aimed at achieving all commitments, operational recommendations and aspirational goals set out therein. Member States committed in para 7 of the “Way forward” to support the CND in continuing transparent and inclusive discussions involving all relevant stakeholders on effective strategies to address and counter the world drug problem, including through the sharing of information, best practices and lessons learned. Member States further resolved to review in the CND in 2029 the progress in the implementation of all international drug policy commitments, with a mid-term review in 2024.

Following the format used for the thematic discussions held within the CND since 2016, the multi-year workplan foresees the organization of inter-active meetings, every autumn, in the period up to 2024, to address the challenges identified in the “Stocktaking”- part of the Declaration, through the implementation of the provisions and recommendations contained in the three policy documents (2016, 2014, 2009) as committed to in the “Way forward”- part of the 2019 Ministerial Declaration. These thematic discussions aim to support and facilitate other actions identified in the “Way forward”-part, including actions identified in para 9:

- **For the period 2019-2022**, there would be a meeting of 2 to 3 days (duration depending on the cluster) every year which would focus on the implementation of all commitments to address a number of challenges identified, thereby covering during this 4 year’s period all the challenges identified in the “Stocktaking part” of the 2019 Ministerial Declaration. Additional days could be added at a later stage, should the Commission agree to add additional topics during the implementation of the workplan.
- **For 2023**, immediately preceding the mid-term review, there would be a comprehensive stock-taking of progress made in implementing all international drug policy commitments to address the challenges identified in the Ministerial Declaration.

In line with the 2019 workplan, the 2022 Thematic Discussions focus on the following theme:

“Responses not in conformity with the three international drug control conventions and not in conformity with applicable international human rights obligations pose a challenge to the implementation of joint commitments based on the principle of common and shared responsibility”.

In terms of preparations for the meeting, the first day will be focused on the international drug control conventions and the second day on the human rights obligations – but the topic is to be read as one.

The present background note by the Secretariat has been prepared to facilitate dialogue and an active exchange during the Commission’s thematic discussions, providing examples of relevant topics to the theme under discussion, while not comprehensively addressing all aspects of the discussion. The background note draws upon, among others, reports and documentation of the United Nations Office on Drugs and Crime (UNODC), the International Narcotics Control Board (INCB) and the World Health Organization (WHO), as well as other UN entities, international and regional organizations, and intergovernmental bodies. The relationship between drug policies and human rights has been addressed by a number of UN entities and experts from different angles, including the Office of the High Commissioner for Human Rights (OHCHR) and the Special Procedures of the Human Rights Council, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Development Programme (UNDP), and UNODC is working closely with these partners in its programmatic work. A detailed description of all these efforts would, however, go beyond the scope of this background note.

In the 2019 Ministerial Declaration, Member States identified the challenge that responses not in conformity with the three international drug control conventions – the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 – and not in conformity with applicable international human rights obligations would pose a challenge to the implementation of joint commitments based on the principle of common and shared responsibility. This background note looks at the different elements of the challenge, but the gist is that Member States agreed that both the provisions of the conventions and human rights obligations need to be implemented to live up to the commitment made to accelerate the implementation of the concrete policy commitments in the 2009, 2014 and 2016 policy documents.

Looking at the policy commitments, **Member States have underscored** in all their policy documents adopted since 2009 that **the need to effectively address and counter the world drug problem in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights**, as well as reiterated that **the three international drug control conventions constituted, with other relevant international instruments, the cornerstone of the international drug control system**. The three international drug control conventions enjoy near-universal adherence and ratification, and the Parties to the conventions are bound to implement the obligations arising from those treaties in full respect of their other obligations under international law, including international human rights obligations. The conventions were adopted to protect the health and welfare of humankind, with the intention to make essential medications available for the relief of pain and the alleviation of suffering, while protecting the people, particularly the most vulnerable, from the potentially dangerous effects of controlled substances.¹

In her statement at the occasion of the 2021 Human Rights Day, the President of the INCB, the quasi-judicial monitoring body for the implementation of the international drug control conventions, underscored that the conventions had to be implemented in a manner consistent with international human rights standards, and that **compliance with the drug control conventions could lead to the direct and positive fulfilment of human rights, which was vital for the realization of the right to health**.² In its 2021 Annual Report, the INCB further recalled that *“the fundamental goal of the international drug control conventions, to safeguard the health and welfare of humanity, includes the full enjoyment of human rights. States’ actions that violate human rights in the name of drug control policy are inconsistent with the international drug control conventions”*.³

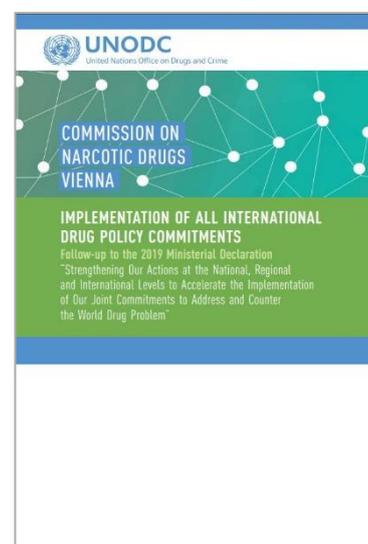
¹ 2014 E/CN.7/2014/CRP.5; Drug policy provisions from the international drug control Conventions, p.2.

² 2021 Statement of the INCB President on the Occasion of Human Rights Day. https://www.incb.org/incb/en/news/news_2021/statement-by-the-incb-president-on-the-occasion-of-human-rights-day--10-december-2021.html

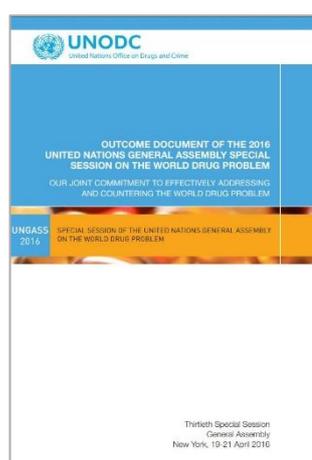
³ 2021 Report of the International Narcotics Control Board, para 904, p.125.

In its 2021 Annual Report, the INCB highlighted that the international drug control conventions, supplemented by additional control measures adopted by the General Assembly, the Economic and Social Council (ECOSOC), and the Commission on Narcotic Drugs, were an expression of the international community's commitment to finding concerted responses to common challenges in the spirit of joint and shared responsibility. As already mentioned in the introduction, the three international drug control conventions and human rights obligations also feature prominently throughout policy documents adopted by the Commission since 2009.

Common across **the 2019 Ministerial Declaration, the 2016 UNGASS outcome document, the 2014 Joint Ministerial Declaration and the 2009 Political Declaration and Plan of Action** is the assertion by Member States that the three international drug control conventions and other relevant instruments constitute the cornerstone of the international drug control system⁴; and the reaffirmation of the “unwavering commitment” to ensuring that all aspects of demand and supply reduction and related measures, as well as international cooperation are addressed in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights, with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States, all human rights, fundamental freedoms, the inherent dignity of all individuals and the principles of equal rights and mutual respect among States⁵. The following paragraphs detail how the respective policy documents address the cross-cutting subjects of drugs and human rights vis-a-vis the international drug control conventions.



The **2019 Ministerial Declaration** welcomed the efforts made by States parties to the international drug control conventions to comply with the provisions and ensure the effective implementation of the conventions urging all Member States that had not yet done so to consider taking measures to ratify or accede to those instruments.⁶ In the preamble, Member States reiterated the commitment to respecting, protecting, and promoting all human rights, fundamental freedoms and the inherent dignity of all individuals and the rule of law in the development and implementation of drug policies.⁷ Member States further recognized that there were persistent, new, and evolving challenges that should be addressed in conformity with the international drug control conventions, which allow for sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs, consistent with the principle of common and shared responsibility and applicable international law.⁸



In the **2016 UNGASS outcome document**, Member States reaffirmed the need to address key causes and consequences of the world drug problem, including those in human rights, in line with the principle of common and shared responsibility, and to recognize the value of comprehensive and balanced policy interventions.⁹ Member States dedicated a standalone chapter to discuss operational recommendations relating to the cross-cutting subjects of drugs and human rights. In the chapter, the **first sub-chapter** of recommendations relates to **“drugs and human rights, youth, women, children, vulnerable members of society, and communities”** and contains nine recommendations, among others, focused on (1) enhancing the knowledge of policymakers and the capacity of national authorities to ensure that national drug policies fully respect all human rights and fundamental freedoms; (2) ensuring non-discriminatory access to health, care and social services for persons in prison or pretrial detention and women, including detained women; (3) promoting effective supervision

⁴ 2019 Ministerial Declaration, p.2; 2016 UNGASS Outcome Document, p.2; 2014 Joint Ministerial Statement, para 2, pp.1-2; 2009 Political Declaration and Plan of Action, para 3, p.8.

⁵ 2019 Ministerial Declaration, p.1; 2016 UNGASS Outcome Document, p.2; 2014 Joint Ministerial Statement, para 1, p.1; 2009 Political Declaration and Plan of Action, para 1, p.8.

⁶ 2019 Ministerial Declaration, p.2.

⁷ 2019 Ministerial Declaration, p.1.

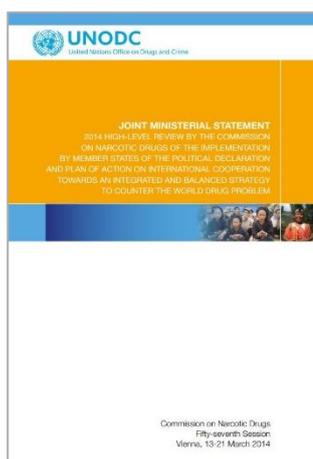
⁸ 2019 Ministerial Declaration, p.2.

⁹ 2016 UNGASS Outcome Document, p.4.

of drug treatment and rehabilitation facilities; (4) identifying and addressing protective and risk factors and conditions that make women and girls vulnerable to exploitation and participation in drug-related crime; (5) taking into account the specific needs of underage drug offenders and children affected by drug-related crime; (6) implementing age-appropriate measures; (7) mainstreaming a gender perspective; and (8) ensuring that measures to prevent the illicit cultivation of and to eradicate plants containing controlled substances respect fundamental human rights.¹⁰ The **second sub-chapter** relates to “**proportionate and effective policies and responses, as well as legal guarantees and safeguards pertaining to criminal justice proceedings and the justice sector**” and contains six recommendations, among others, focused on (1) enhancing the development and implementation of alternative or additional measures with regard to conviction or punishment in appropriate cases; (2) promoting proportionate national sentencing policies, practices and guidelines for drug-related offences, including the circumstances enumerated in article 3 of the 1988 Convention; (3) enhancing access to treatment of drug use disorders for those incarcerated, (4) taking into account the specific needs and possible multiple vulnerabilities of women drug offenders when imprisoned; and (5) ensuring legal guarantees and due process safeguards pertaining to criminal justice proceedings.¹¹

Both sub-chapters also contain recommendations calling upon Member States to consider, on a voluntary basis, when furnishing information to the Commission on Narcotic Drugs pursuant to the three international drug control conventions and relevant Commission resolutions, the inclusion of information concerning, inter alia, the promotion of human rights and the health, safety and welfare of all individuals, communities and society in the context of their domestic implementation of the conventions, including recent developments, best practices and challenges, as well as information, lessons learned, experiences and best practices on the design, implementation and results of national criminal justice policies, including, as appropriate, domestic practices on proportional sentencing, related to the implementation of the international drug control conventions, including Article 3 of the 1988 Convention.¹²

In addition, Member States, in the 2016 UNGASS outcome document, noted with concern that the availability of internationally controlled drugs for medical and scientific purposes, including for the relief of pain and suffering, remains low to non-existent in many countries of the world, and highlighted the need to enhance efforts at all levels to address the situation.¹³ It was also the first time Member States devoted a **standalone chapter**¹⁴ to operational recommendations on **ensuring the availability of and access to controlled substances, while preventing their diversion**. This coheres with the commitment by the international community, enshrined in the international drug control conventions, to make adequate provision to ensure, and to not unduly restrict, the availability of controlled substances that are considered indispensable for medical and scientific purposes.¹⁵



In the 2014 Joint Ministerial Statement, Member States recognized that the world drug problem continues to pose a serious threat to the health, safety, and well-being of all humanity, in particular youth, leading to the loss of human lives.¹⁶ The need “to review and update legal frameworks and law enforcement institutions, taking into account applicable international human rights obligations” was specifically highlighted as a general challenge and priority for action.¹⁷ The **three standalone chapters** on “**Demand reduction and related measures**,”¹⁸ “**Supply reduction and related measures**,”¹⁹ and “**Countering money-laundering and promoting judicial cooperation to enhance international cooperation**”²⁰ elicited a range of issues relating to the cross-cutting subjects of drugs and human rights, some of which were dealt with further in the 2016 UNGASS outcome document. These include, among others, the issues of protecting vulnerable members of society, including children, youth, and women; international cooperation in addressing drug-related crimes; access to controlled substances for medical and scientific purposes; access to

¹⁰ 2016 UNGASS Outcome Document, chapter 4, pp.14-16.

¹¹ 2016 UNGASS Outcome Document, chapter 4, pp.16-17.

¹² 2016 UNGASS Outcome Document, chapter 4, recommendations (h), (k).

¹³ 2016 UNGASS Outcome Document, p.2.

¹⁴ 2016 UNGASS Outcome Document, chapter 2.

¹⁵ The International Drug Control Conventions, Part One (Single Convention on Narcotic Drugs as amended by the 1972 Protocol), p. 23; Part Two (Convention on Psychotropic Substances of 1971), p.78.

¹⁶ 2014 Joint Ministerial Statement, para 6, p.2.

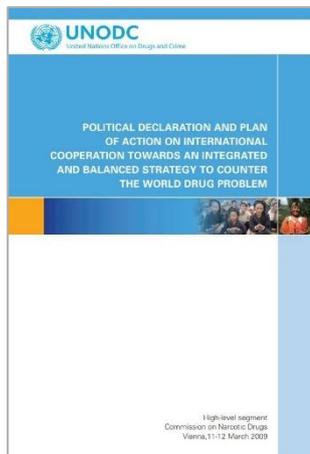
¹⁷ 2014 Joint Ministerial Statement, para 30, p.7.

¹⁸ 2014 Joint Ministerial Statement, chapter A.

¹⁹ 2014 Joint Ministerial Statement, chapter B.

²⁰ 2014 Joint Ministerial Statement, chapter C.

prevention and treatment; alternatives to conviction and punishment; and alternative development. Notably, the chapter on “Countering money-laundering and promoting judicial cooperation to enhance international cooperation” specifically called on Member States to promote, in the framework of international cooperation, the use of law enforcement techniques consistent with national legislation and international law, including applicable human rights obligations.²¹



The **2009 Political Declaration and Plan of Action** dedicated a **section** to addressing human rights, alongside dignity and fundamental freedoms, **in the context of drug demand reduction**. In that section, Member States acknowledged that there was insufficient emphasis on human rights and dignity in the context of drug demand reduction efforts, in particular, regarding access to the highest attainable standard of health services.²² Member States were called upon to (1) ensure that drug demand reduction measures respect human rights and the inherent dignity of all individuals and facilitate access for all drug users to prevention, health-care and social services; (2) promote meaningful livelihood activities and employment to steer individuals away from drugs; and (3) develop demand reduction programmes that focus on primary prevention, early intervention, treatment, care, rehabilitation and related support services, aimed at promoting health and social well-being among individuals, families and communities and reducing the adverse consequences of drug abuse for individuals and society as a whole, which are in full compliance with the international

drug control conventions.²³ The 2009 Political Declaration and Plan of Action also touched on availability and access in terms of drug demand reduction services and controlled substances for medical and scientific purposes. Member States reaffirmed their commitment to work towards the goal of universal access to comprehensive prevention programmes and treatment, care, and related support services²⁴; and called for continued cooperation with UN entities to ensure the adequate availability of controlled substances for medical and scientific purposes, including for medication-assisted therapy relating to the treatment of drug dependence²⁵. The document further focused on the issue of alternative development and explicitly stated that the overall aims of development assistance are “human rights protection” and “poverty eradication.”²⁶ Member States were called upon to develop alternative development programmes while fully respecting relevant international instruments, including human rights instruments. In terms of international cooperation, Member States were encouraged to advance cooperation in the areas, including law enforcement, in a way that was consistent with relevant and applicable international human rights obligations.²⁷

²¹ 2014 Joint Ministerial Statement, chapter C, para 45, p.16.

²² 2009 Political Declaration and Plan of Action, Part I(A), chapter 3, para 5, p. 20.

²³ 2009 Political Declaration and Plan of Action, Part I(A), chapter 3, para 6, p.20.

²⁴ 2009 Political Declaration and Plan of Action, para 20, p.11.

²⁵ 2009 Political Declaration and Plan of Action, Part I(A), chapter 5, para 10(b), p.21.

²⁶ 2009 Political Declaration and Plan of Action, Part II(D), chapter 3, para 47(c), p.45.

²⁷ 2009 Political Declaration and Plan of Action, Part II(D), chapter 3, para 47(b), p.45.

THE COMMISSION ON NARCOTIC DRUGS AND THE THREE INTERNATIONAL DRUG CONTROL CONVENTIONS

The Commission on Narcotic Drugs was established by ECOSOC through resolution 1946/9(I) of 1946 to assist the Council in supervising the application of the international drug control conventions. In 1991, the General Assembly expanded the mandate of the Commission to enable it to function as the governing body of UNODC. Today, the Commission has normative functions under the three international drug control conventions:

- The Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol (1961 Convention)
- The Convention on Psychotropic Substances of 1971 (1971 Convention)
- The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (1988 Convention)

These conventions have two goals: (1) preventing the abuse of psychoactive substances and (2) ensuring their availability for medical and scientific purposes. The 1961 Convention was elaborated to regulate drugs that have cannabis-, cocaine- and opium-like effects. With the appearance of new psychoactive drugs, such as amphetamine-type stimulants (e.g. “ecstasy”), Member States deemed it necessary to create a new treaty, and thus the 1971 Convention came into existence. The 1988 Convention places precursors – substances frequently used to illicitly manufacture narcotic drugs and psychotropic substances – under international control and provides for additional measures against drug trafficking and for international cooperation in relation to the substances scheduled under the three international drug control conventions. The conventions recognize that effective measures require co-ordinated and universal action amongst countries – with the “shared” or “joint” responsibility at the heart of international cooperation and at the core of the work of the Commission on Narcotic Drugs. The COVID-19 pandemic, as a global health emergency, has also once more demonstrated the crucial need for the international community to work together towards the overarching goals of the three international drug control conventions.

The implementation of the provisions of the drug control conventions and the policy commitments adopted by the Commission since 2009 is also crucial to further the attainment of the 2030 Agenda on Sustainable Development. From illicit cultivation and production to trafficking and non-medical drug use, the world drug problem, with all its ramifications, is intertwined with a vast array of social, economic, and environmental issues. The importance of this interaction is recognized by the most recent policy documents of the Commission, with Member States stressing that the efforts to achieve the Sustainable Development Goals (SDGs) and to effectively address the world drug problem were complementary and mutually reinforcing. In light of the principle of common and shared responsibility, SDG 17 – the importance of partnership – is a central element in the conventions and the Commission’s policy documents, from judicial cooperation in countering the illicit traffic in narcotic drugs and psychotropic substances, the commitment to enhance cooperation among health and law enforcement officers, the exchange of good practices and lessons learnt to the commitment to improving data collection, monitoring and accountability and to ensuring policy and institutional coherence.

In the foreword of the 2021 INCB special report on the occasion of the sixty years anniversary of the 1961 Convention and the fifty years anniversary of the 1971 Convention, it was highlighted that ***“the drug control system was a balanced system that is geared towards improving public health and welfare and based on the underlying principles of proportionality, collective responsibility and compliance with international human rights standards. Implementing the system meant putting the health and welfare of humankind at the core of drug policies, applying comprehensive, integrated, and balanced approaches to elaborating drug control policy, promoting human rights standards, giving higher priority to prevention, treatment, rehabilitation, and the reduction of the negative consequences of drug abuse, and strengthening international cooperation based on common and shared responsibility.”***²⁸

²⁸ 2021 INCB Report - Celebrating 60 Years of the Single Convention on Narcotic Drugs of 1961 and 50 Years of the Convention on Psychotropic Substances of 1971, p.iii.
https://www.incb.org/documents/Publications/AnnualReports/AR2020/Supplement/00_AR2020_supp_full_document.pdf.

PROTECTING THE HEALTH OF HUMANKIND BY PLACING THE MOST PREVALENT, PERSISTENT, AND HARMFUL SUBSTANCES UNDER INTERNATIONAL CONTROL

To serve their dual purpose, the conventions established a control regime, requiring Governments to ensure access and availability to controlled substances for medical and scientific purposes, while preventing their diversion from licit sources to illicit channels and their illicit production, manufacture, distribution and trafficking. The three conventions provide, among others, a framework for the international community to deal with substances that are considered a threat to public health, outlining a step-by-step approach to placing substances under international control. This normative function carried out by the Commission on Narcotic Drugs is key in protecting the health and welfare of humankind, and foresees an assessment by expert bodies, including on evidence of dependence potential of the substance, actual abuse and/or evidence of likelihood of abuse, as well as therapeutic applications of the substance. The expert bodies, recommending the Commission to take action, are the Expert Committee on Drug Dependence of the World Health Organization for the 1961 and 1971 Conventions, and the INCB for the 1988 Convention. More information on the scheduling procedures under the three international drug control conventions, as well as an eLearning tool for all interested stakeholders, is available on the website of the Commission:

https://www.unodc.org/unodc/en/commissions/CND/Mandate_Functions/Mandate-and-Functions_Scheduling.html



IMPLEMENTING CND SCHEDULING DECISIONS - UNODC CAPACITY BUILDING FOR NATIONAL LABORATORIES, MANUALS AND REFERENCE MATERIALS

To protect the health and welfare of humankind, the decisions taken by the Commission to place substances under international control, or change their control regime, need to be translated into action on the ground. The decisions are usually reflected in national drug control frameworks, and practitioners need to know how to identify and analyze the substances that the Commission has added to the schedules and lists of the Conventions. Since the early 1980s, the UNODC Laboratory and Scientific Service has provided Member States, in light of the scheduling decisions of the Commission, with manuals and guidelines that aim to harmonize the establishment of recommended methods of analysis for national drug testing and toxicology laboratories. For example, in 2017, in response to global developments and actions taken by the Commission, UNODC published a manual to deal specifically with the analysis of the growing class of fentanyl and analogues, focusing on testing in biological tissues and fluids, to assist with the investigation of fentanyl-related poisonings and deaths. The manual provides information on the pharmacology and toxicology of fentanyl and its analogues, followed by the provision of validated analytical methodologies, using a range of analytical techniques. The UNODC Laboratory and Scientific Service also provides reference samples of narcotic drugs, psychotropic substances and precursors under international control to national drug testing and toxicology laboratories in countries with limited resources and actively participating in the UNODC International Collaborative Exercises (ICE) programme, to build the capacity of national stakeholders to fully implement the decisions taken by the Commission.²⁹

²⁹ <https://www.unodc.org/unodc/en/scientists/laboratory.html>

PROTECTING CHILDREN AND YOUNG PEOPLE

The 2022 World Drug Report highlighted that **adolescence (12–17 years of age) can be a critical risk period for substance use initiation, even if the highest levels of drug use are seen at later ages**. Data shows that in many countries, the current generation of adolescents is experiencing a level of drug use which is higher than the summary lifetime experience of previous generations. In 2018, UNODC devoted one of the booklets of the World Drug Report to *“Drugs and Age”*, highlighting that **drug use and associated health consequences are highest among young people, and that many young people were involved in the drug supply chain due to poverty and lack of opportunities for social and economic advancement**. Adolescents that have developed drug use disorders are often extremely vulnerable and only a very small minority have access to specialised services that can cater to their needs. When youth become trapped in a cycle of drug use, as opposed to being engaged in legitimate employment and educational opportunities, distinct barriers are raised to the development of individuals and communities³⁰, in turn affecting the health and welfare of humankind that the international drug control conventions seek to protect.

The concern for children and young people in contact with controlled substances is also addressed in the international drug control conventions, specifically the 1988 Convention. In its preamble, Member States expressed their concern with the steadily increasing inroads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances, and particularly the fact that children are used in many parts of the world as an illicit drug consumers market and for the purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity.³¹ Children that have been recruited, used and exploited by organized criminal groups for the purposes of illicit production, distribution and trade in narcotic drugs and, in the absence of effective child protection and health systems, end up being dealt with by the criminal justice (or specialized juvenile justice) system as alleged offenders. This has serious impact not only on the opportunities for children to develop their full potential as constructive citizens, but also has serious economic and social costs.



UNODC Prevention, Treatment and Rehabilitation Branch:
<https://www.unodc.org/unodc/en/drug-prevention-and-treatment/#:~:text=UNODC%20Prevention%2C%20Treatment%2C%20and%20Rehabilitation,rehabilitation%20services%2C%20including%20for%20children>

Children with substance abuse problems present a significant health challenge, as research demonstrates that early non-medical drug use contributes to higher likelihood of future drug use disorder incidents in such children. Of particular concern are children living with an adult who illicitly uses drugs or has a drug use disorder, children living and working on the streets, orphans, particularly children in conflict areas, and children in contact with the justice system. In the policy documents of the Commission, the protection of children and youth is central to joint efforts to address the world drug problem. In the 2019 Ministerial Declaration, Member States recognized that appropriate emphasis should be placed on individuals, families, communities and society as a whole, with a particular focus on women, children and youth, with a view to promoting and protecting health, including access to treatment, safety and the well-being of all humanity.³³ Specific references and operational recommendations can be found in all three policy documents from 2009, 2014 and 2016 – based on the commitment by Member States to place the safety, health and well-being of all members of society, in particular youth and children, at the centre of joint efforts.

Human rights standards require that special attention be afforded to the protection of children from drug use and prevention of the use of children in the illicit production and trafficking of such substances. For example, the Parties to the Convention on the Rights of the Child have committed in Article 33 to “take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”³² Children with substance abuse problems present a significant health challenge, as research demonstrates that early non-medical drug use contributes to higher likelihood of

³⁰ 2018 UNODC World Drug Report, Booklet 4, p.3ff.

³¹ 1988 Convention, preambular part.

³² Convention on the Rights of the Child, Article 33

³³ 2019 Ministerial Declaration, preambular part.

THE IMPORTANCE OF INTERNATIONAL COOPERATION IN ADDRESS DRUG-RELATED CRIMES

Drug trafficking and other forms of drug-related crimes can have major implications for the safety and well-being of citizens all over the world, undermining political and economic stability, affecting individuals and communities alike. Since such offences typically involve multiple jurisdictions, fall under the investigation and enforcement mandate of different domestic agencies, and often involve close cooperation between public and private sector actors. (e.g. shipping companies, airlines, banks), international cooperation is crucial in addressing drug-related crime. Enhanced cooperation is crucial to disrupting and dismantling opportunity-seeking criminal organizations. Strengthened border management strategies, coordination with cross-border counterparts and professional skills capacity building for border agencies require close cooperation among Member States. The importance of international cooperation is highlighted in all the Commission's policy documents as well as the three international drug control conventions, with clear recommendations on how enhanced cooperation can be realized.

For example, in the 1961 Convention, Article 35 addresses **action taken against illicit traffic of controlled substances**, underscoring, among others, that having due regard to their constitutional, legal and administrative systems, the Parties shall: (a) *make arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic; to this end they may usefully designate an appropriate agency responsible for such co-ordination;* (b) *assist each other in the campaign against the illicit traffic in narcotic drugs;* (c) *co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic;* and (d) *ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner.*³⁴



UNODC Container Control Programme:
<https://www.unodc.org/unodc/en/ccp/index.html>

From a human rights perspective, the international drug control conventions promote **safety from crime and violence** and a **corresponding duty of State authorities to prevent and suppress drug trafficking and other related organized-crime activities**. This, at the same time, **requires that State authorities act in compliance with the rule of law and international standards and norms** concerning, inter alia, the use of force, the protection of victims, and the treatment of offenders. In addition to addressing illicit drug trafficking and other forms of organized crime, the illicit cultivation is another key pillar of supply reduction. The relationship between efforts to prevent illicit cultivation and human rights is, for example, underscored in the 1988 Convention, where Article 14 (2) addresses measures to prevent the illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, and highlights that those measures shall respect fundamental human rights and take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.³⁵

³⁴ 1961 Convention, Article 35 (a)-(d)

³⁵ 1988 Convention, Article 14 (2).

ACCESS TO CONTROLLED SUBSTANCES FOR MEDICAL AND SCIENTIFIC PURPOSES

The three international drug control conventions collectively enshrine the commitment by the international community to make adequate provision to ensure, and not to unduly restrict, the availability of controlled substances considered indispensable for medical and scientific purposes. Notwithstanding the universally recognized medical indispensability of narcotic drugs and psychotropic substances, millions of people across the world continue to suffer due to lack of access to controlled medicines. The INCB “estimates that 92 per cent of morphine is consumed in countries in which only 17 per cent of the world population lives”, while “75 per cent of the world population, predominantly in lower-income countries, is left with limited or no access to proper pain relief”.³⁶ Rational use of internationally controlled essential medicines, such as those listed in the schedules of the international drug control conventions and contained in the WHO Model List of Essential Medicines, is key.



Medicines used to treat moderate to severe pain include non-opioids, opioids and adjuvant medicines. The goal of controlling for diversion and non-medical use should not interfere with, or limit, the rational use of essential medicines for patients with legitimate medical needs.³⁷ WHO found that an unintended consequence of controlling substances, such as opioid analgesics and benzodiazepines, could be the overly stringent regulation of those with a variety of medical uses, including pain relief, opioid overdose reversal and epilepsy control.³⁸

The lack of access and availability has been further exacerbated by recent international developments, such as the COVID-19 pandemic, which has resulted in interruptions of the medicines supply chain. In a joint statement³⁹ on access to internationally controlled medicines during the COVID-19 pandemic, INCB, WHO and UNODC highlighted the need to ensure access to controlled medicines, such as sedatives and analgesics for intubation protocols for the treatment of patients with COVID-19 and called on Governments to ensure that the procurement and supply of controlled medicines in countries meet the needs of patients. The statement further underscored that in acute emergencies, it was possible under the international drug control conventions to utilize simplified control procedures for the export, transportation and supply of medicinal products containing controlled substances, especially in cases where the competent authorities in the importing countries may not be operating at full capacity. The joint statement further highlighted the importance of ensuring that the needs of existing patients who require controlled medicines for the management of their health conditions are not forgotten in times of crisis, and that non-COVID patients continue to have access to the controlled medicines they require for the management of pain and palliative care, surgical care and anaesthesia, mental health and neurological conditions, and for the treatment of drug use disorders.⁴⁰

³⁶ INCB, *Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes. Indispensable, adequately available and not unduly restricted* (2015), p. iii.

³⁷ 2018 UNODC Technical Guidance on Increasing Access to, and Availability of Controlled Drugs for Medical Purposes: Key Areas of Focus, p.7

³⁸ 2019 WHO: The Public Health Dimension of the World Drug Problem: How WHO works to prevent drug use, reduce harm, and improve safe access to medicines, p.8.

³⁹ <https://www.unodc.org/unodc/en/frontpage/2020/August/incb-who-and-unodc-statement-on-access-to-internationally-controlled-medicines-during-covid-19-pandemic.html>

⁴⁰ INCB, WHO and UNODC statement on access to internationally controlled medicines during COVID-19 pandemic <https://www.unodc.org/unodc/en/frontpage/2020/August/incb-who-and-unodc-statement-on-access-to-internationally-controlled-medicines-during-covid-19-pandemic.html>

CONTROLLED SUBSTANCES CRITICAL FOR COVID-19 TREATMENT

According to the 2021 INCB Annual Report, a number of substances under international control have proven to be crucial for the treatment of patients with severe cases of COVID-19. For example, midazolam, a benzodiazepine in Schedule IV of the 1971 Convention and included in the WHO Model List of Essential Medicines, is widely used in preoperative sedation. In the context of the COVID-19 pandemic, the substance was reportedly used widely to sedate patients with COVID-19 admitted to intensive care units.⁴¹ The report further outlined that at the outset of the pandemic, in early 2020, there were reports of shortages of medicines containing midazolam in some parts of the world, in part driven by higher demand for the substance and in part owing to delivery and transport challenges associated with the closure of borders adopted by some countries at that time.

The issue of access and availability was also addressed in the 2021 Statement of the Commission on Narcotic Drugs on the impact of the coronavirus disease (COVID-19) pandemic on the implementation of Member States' joint commitments to address and counter all aspects of the world drug problem, with the Commission noting "the difficulties encountered by Member States in ensuring the continued access to and availability of internationally controlled substances for medical and scientific purposes throughout the world"⁴², and inviting Member States, "subject to the availability of resources, to further strengthen measures, strategies, and inter-agency and international cooperation and partnerships, to ensure the access to and availability of controlled substances for medical and scientific purposes, which may improve responses to future emergencies, including emergency medical care situations".⁴³

AVAILABILITY OF PHARMACEUTICAL OPIOIDS

With regard to the access and availability of controlled substances for medical and scientific purposes, the 2022 World Drug Report found that the availability of pharmaceutical opioids continued to be highly unequal across regions and subregions. It was noted that the highest amounts available per capita of opioids under international control for medical purposes continued to be concentrated in North America, with Western and Central Europe, and Australia and New Zealand also above the global average. However, the discrepancy in availability compared with other regions continues to be extremely large, with the number of standardized doses of opioids controlled under the 1961 Single Convention available per 1 million inhabitants being about 7,500 times higher in North America than in West and Central Africa in 2020, a ratio similar to 2019.⁴⁴

PALLIATIVE CARE – MANAGING END OF LIFE

Palliative care is another key area related to both availability of and access to controlled substances under international control, as well as human rights obligations. Strong opioids, such as morphine, are essential for the treatment of pain due to cancer, HIV/AIDS, and other serious illnesses, or due to traumatic injuries, burns and surgery. Despite being included in the WHO Model List of Essential Medicines, morphine, for example, has globally not been accessible at all times in adequate amounts, in the appropriate dosage forms, with assured quality and adequate information, and at a price the individual and the community can afford.⁴⁵ In 2020, WHO estimated that each year, around 40 million people were in need of palliative care, with globally only about 14% of people who need palliative care receiving it.⁴⁶ WHO further estimated, in its *2018 Guide to Integrating palliative care and symptom relief into primary health care*, that globally 5.5 million terminal cancer patients and one million end-stage HIV/AIDS patients suffer each year without adequate treatment for moderate to severe pain. According to WHO, palliative care includes the prevention and relief of suffering of adult and paediatric patients and their families facing the problems associated with life-

⁴¹ Report of the International Narcotics Control Board 2021, para 139, p. 26.

⁴² 2021 CND, Resolution 64/1, p. 3, para. 12.

⁴³ *Ibid.*, p. 5, para. 30.

⁴⁴ 2022 UNODC World Drug Report, booklet 3, p79.

⁴⁵ 2018 WHO Integrating palliative care and symptom relief into primary health care : A WHO guide for planners, implementers and managers [9789241514477-eng.pdf \(who.int\)](https://www.who.int/news-room/fact-sheets/detail/palliative-care), p.41.

⁴⁶ <https://www.who.int/news-room/fact-sheets/detail/palliative-care>

threatening illness. These problems include physical, psychological, social and spiritual suffering of patients and psychological, social and spiritual suffering of family members.⁴⁷

With its resolution 67.19 in 2014, the World Health Assembly affirmed that access to palliative care and essential medicines for medical and scientific purposes manufactured from substances under control, including opioid analgesics such as morphine, in line with the three international drug control conventions, contributed to the realization of the right to the enjoyment of the highest attainable standard of health and well-being. With the resolution, Member States were urged to review, and, where appropriate, revise national and local legislation and policies for controlled medicines, in line with the international drug control conventions. In its resolution 63/3, the Commission on Narcotic Drugs referred to the potentially increasing need for palliative care among ageing populations and the rise of non-communicable and other chronic diseases worldwide and affirmed that access to internationally controlled substances for medical and scientific purposes, including for palliative care and emergency medical care, contributes to the right to the enjoyment of the highest attainable standard of physical and mental health.⁴⁸ In the operative part of the resolution, Member States were encouraged to include in their education, awareness-raising and training programmes information on how cultural attitudes towards the management of health conditions, as well as the relief of pain, are acting as an impediment to access to and the availability of internationally controlled substances for medical purposes, including palliative care, for all those in need, including drug users.

CHAIR'S INITIATIVE ON ACCESS AND AVAILABILITY



Pursuant to the commitment made by the Commission on Narcotic Drugs in all its main policy documents to improve the availability of and access to controlled substances for medical and scientific purposes, the Chair of the sixty-fifth session of the Commission is leading an initiative to scale up the implementation of the international drug policy commitments on improving the availability of and access to controlled substances for medical and scientific purposes. This initiative involves a global campaign to raise awareness for the subject of access and availability and issues within its domain, such as the need for sustainable funding. To kickstart the initiative, a high-level event – the Joint Call to Action – was held in Vienna on the opening day of the sixty-fifth regular session of the Commission on Narcotic Drugs. The Chair of the Commission, the Executive Director of UNODC, the Director General of WHO, and the President of INCB joined forces to call on the international community to honour

the commitments they have made towards ensuring the availability of and access to controlled substances for medical and scientific purposes, including in emergency situations, to ensure that no patient is left behind. The event was livestreamed on Twitter and watched by more than 13,000 people around the world.

Following the Joint Call, Chair's events were held at the UN Headquarters in New York on 8 June 2022 and the Palais des Nations in Geneva on 6 September 2022, to boost the outreach of the initiative. On 10 October 2022, the Chair will be holding a one-day forum in Vienna, which will unite experts in this field and the day will be dedicated to discussing and raising awareness for the global crisis of lack of access to controlled substances for medical and scientific purposes. Complementing the events in Vienna, New York and Geneva, a social media campaign is ongoing on the Commission's Twitter account, "@CND_tweets" under the dedicated hashtag #NoPatientLeftBehind, to raise awareness for the subject of access and availability. More information on the Chair's initiative, including the One-Day Special Forum on 10 October, is available on the website of the Commission: https://www.unodc.org/unodc/en/commissions/CND/session/65_Session_2022/availability_and_access.html

⁴⁷ 2018 WHO Integrating palliative care and symptom relief into primary health care : A WHO guide for planners, implementers and managers [9789241514477-eng.pdf \(who.int\)](https://www.who.int/publications/i/item/9789241514477-eng), p.5.

⁴⁸ 2020, CND Resolution 63/3, PPs12 and 13.

According to the 2022 World Drug Report, an estimated **284 million people worldwide aged 15–64 had used a drug within the last 12 months in 2020**. Of the estimated 284 million people who used drugs in the past year, approximately **13.6 per cent are estimated to suffer from drug use disorders**. This means that their drug use is harmful to the point where they may experience drug dependence and/or require treatment. This corresponds to a prevalence of drug use disorders of 0.76 per cent of the global population aged 15–64.⁴⁹ According to the 2022 World Drug Report, approximately 11.2 million people inject drugs. Of these 11.2 million people, it is estimated that approximately one in eight is living with HIV, amounting to 1.4 million people worldwide.⁵⁰ Looking at the treatment of the drug use disorders, the 2022 UNODC World Drug Report estimates that in the period 2015–2019, an estimated minimum of 7 million people with drug use disorders worldwide received drug-related treatment each year, which amounts to **approximately 1 in 5 people with drug use disorders receiving treatment**.⁵¹

The three international drug control conventions require States parties to “take all practicable measures” for the prevention of abuse of controlled narcotic drugs and psychotropic substances and for their early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved and to coordinate their efforts to these ends. The Conventions, for example the 1961 Convention in Article 38⁵², also recognize the necessity to train qualified professionals in these fields, thereby implying that prevention and treatment should not rely on spontaneous and unqualified initiatives. The prevention and treatment of drug use disorders must be, hence, based upon appropriate scientific methods, evidence-based and cost-effective interventions, and good practice indicated by institutional guidelines as a result of scientific findings.⁵³ Article 38 (3) of the 1961 Convention further requires the Parties to “take all practicable measures to assist persons whose work so requires to gain an understanding of the problems of abuse of drugs and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of drugs will become widespread.”

UNODC TRAINING FOR POLICYMAKERS

With a view to enhancing the understanding of prevention and treatment, in line with the Article 38 (3), UNODC offers the “UNODC Policymakers Training Package on the Nature, Prevention, and Treatment of Drug Use Disorder” tailored to policymakers, with key decision-making responsibilities from the health, law enforcement, counter-narcotics, education and other relevant social sectors, with a view to supporting Member States in developing appropriate policies, strategies, programmes and interventions targeted at preventing drug use and increasing the availability of and access to comprehensive systems of care for people affected by drug use and drug use disorders. The tool aims at, among others, outlining evidence-based and cost-effective national drug demand reduction strategies from different points of view—based on different competencies, different institutional roles, and different backgrounds, as well as strengthening the capacity of policymakers to support drug policies which are in line with the international drug control conventions as they relate to protecting the lives of people affected by substance use disorders whilst ensuring safety and security of the population.⁵⁴ Law enforcement policies and practices also play a critical role in ensuring that people who use drugs have access to essential services. To support collaboration between law enforcement organizations and civil society organizations in the context of HIV and drugs, UNODC is implementing capacity building programmes on HIV prevention, treatment and care jointly for law enforcement officers, representatives of civil society organizations, and networks of people who use drugs in all high-priority countries.⁵⁵

According to the UNODC Prevention, Treatment and Rehabilitation Section, global public health approaches in drug dependence treatment and care have been the springboard of existing good practices and remain the most fertile ground for the development of innovative and effective responses. The best results are achieved when a comprehensive multidisciplinary

⁴⁹ 2022 UNODC World Drug Report, Booklet 2, p.29.

⁵⁰ 2022 World Drug Report, Booklet 2, p.32ff.

⁵¹ 2022 World Drug Report, Booklet 2, p.44ff

⁵² 1961 Convention, Article 38, (1), (2), (3)

⁵³ E/CN.7/2014/CRP.5; Drug policy provisions from the international drug control Conventions, p.7ff

⁵⁴ https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_Policymakers_TrainingPackage.pdf

⁵⁵ <https://www.unodc.org/unodc/en/hiv-aids/hiv-and-law-enforcement.html>

approach, which includes diversified pharmacological and psychosocial interventions, is available to respond to the different needs of the patient. Even taking into account the requirements for the delivery of evidence-based treatment, its costs are much lower than the indirect costs caused by untreated drug dependence (e.g. imprisonment, unemployment, law enforcement, health consequences). Research studies indicate that for every \$US 1 invested in evidence-based treatment, up to \$US 7 are saved in terms of costs for drug-related crime and criminal justice. When savings related to health care are included, total savings can exceed costs by a ratio of 12 to 1.⁵⁶



UNODC Prevention, Treatment and Rehabilitation Branch: <https://www.unodc.org/unodc/en/prevention/life-and-social-skills.html>

Prevention of non-medical drug use and the treatment of drug use disorders is closely linked with the **human right to health** which is recognized in numerous international instruments. Article 25.1 of the Universal Declaration of Human Rights affirms: “Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services”.⁵⁷ The right of everyone to the enjoyment of the highest attainable standard of physical and mental health is recognized by the States Parties to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which states in Article 12.⁵⁸ that the steps to be taken to achieve the full realization of that right shall include those necessary for, among others, the creation of conditions which would assure to all medical service and medical attention in the event of sickness, which would also relate to the prevention and the treatment of drug use disorders. As the Special Rapporteur on the Right to Health highlighted in the report to the General Assembly A/65/255 focused on the relation with the international drug control system, **the enjoyment of the right to health of all people who use drugs, including those with drug use disorders, is applicable irrespective of the fact of their drug use.**⁵⁹

⁵⁶ <https://www.unodc.org/unodc/en/treatment-and-care/introduction.html>

⁵⁷ Universal Declaration of Human Rights, Article 25.1.

⁵⁸ International Covenant on Economic, Social and Cultural Rights, Article 12.2.

⁵⁹ A/65/255, 2010, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para 7, p.5.

ALTERNATIVES TO CONVICTION OR PUNISHMENT

In the 2016 UNGASS outcome document, one of the sub-chapters dealing with drugs and human rights focuses on “Proportionate and effective policies and responses, as well as legal guarantees and safeguards pertaining to criminal justice proceedings and the justice sector”. In its 2021 Annual Report, INCB further underscored that “**proportionality should be a guiding principle in drug-related criminal justice matters**” and that “the adoption of alternative measures can constitute an integral part of a balanced and human rights-based approach to drug policy”⁶⁰.

As a general obligation, the international drug control conventions of 1961 and 1971 require States Parties to establish measures to limit the production, manufacture, export, import and distribution of, trade in, and possession of controlled substances, to medical and scientific purposes, subject to the provisions of those conventions.⁶¹ While the drug control conventions also require that a number of activities that are not in accordance with their provisions be established as criminal offences, Parties may provide alternatives to conviction or punishment in cases of a minor nature, as well as in cases of possession, purchase or cultivation of controlled substances for personal consumption. Such alternative measures may include education, rehabilitation or social reintegration, as well as, treatment and aftercare, as outlined, for example, in Article 3, paragraph 4 (c) of the 1988 Convention.⁶² Additional and more general guidance on the establishment and implementation of alternative measures, at the pre-trial, sentencing and post-sentencing stages is contained in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders (the Bangkok Rules).



UNODC https://www.unodc.org/docs/treatment/Coercion_Ebook.pdf

The conventions are sensitive to the specific needs of people with drug use disorders in contact with the criminal justice system. For example, with regards to actions contrary to the provisions of the 1961 Convention, that should be considered punishable offences, Article 36, paragraph 1 (b) states that “when abusers of drugs have committed such offences, the parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers shall undergo measures of treatment, education, aftercare, rehabilitation and social reintegration”. A similar provision is included in Article 22, paragraph 1 (b) of the 1971 Convention.⁶³ In its 2021 Annual Report, INCB underscored that “*since the international drug control conventions do not require the imposition of criminal sanctions for drug-related crimes of lesser gravity, including those committed by people who use drugs, minor offences can be responded to effectively through alternatives to conviction and punishment that reflect the nature of drug use and dependence as public health issues*”.⁶⁴

As highlighted in all three conventions, **Parties are provided with some flexibility in the determination of responses to actions not in line with the provisions of the conventions.** In exercising this flexibility, Member States have adopted different approaches, including the decriminalization of certain drug-related offences.

⁶⁰ 2021 Report of the International Narcotics Control Board, para 381, p.54.

⁶¹ 1961 Convention, Article 4(c), 1971 Convention, Article 5(2)

⁶² Art. 3, para 4 (c) of the 1988 Convention.

⁶³ Article 22, para 1 (b) of the 1971 Convention.

⁶⁴ 2021 Report of the International Narcotics Control Board, recommendation 8, p.125.

THE PORTUGUESE MODEL

One of the most prominent examples of “decriminalization” that is often cited in the international debate is the so-called “Portuguese model”. Established in Portugal under Law 30/2000 since 2001, the law decriminalises the acquisition, possession, and use of drugs by persons who consume drugs, and establishes a mechanism aiming primarily to the dissuasion of drug use. The acquisition and possession of drugs is still deemed an offence but sanctioned by administrative measures rather than by criminal punishment – provided the quantity held by the offender does not exceed ten days’ worth of personal supply. With this, the law remains within the ambit of Article 4 of the 1961 Convention. Former INCB President Werner Sipp explained in further detail the “Portuguese model” in relation to the international drug control conventions at a side event at the reconvened 58th session of the Commission on Narcotic Drugs in December 2015. His speech is available at:

https://www.incb.org/documents/Speeches/Speeches2015/statement_reconvened_CND_side_event_portugal.pdf

In this regard, it is important to differentiate “decriminalization” from “depenalization” and “legalization”, which are different concepts, not all of which are in compliance with the provisions of the international drug control conventions. In its 2021 Annual Report, INCB devoted a sub-chapter to discussing “legalization”, “decriminalization” and “depenalization”, highlighting that “*while the Conventions themselves do not define the concepts of “legalization”, “decriminalization” or “depenalization”, they nonetheless contain provisions that cover the adoption by States parties of legal and policy frameworks to address drug-related behaviours, including the commission of serious offences, the commission of offences of a lesser relative gravity and the commission of offences by persons who use drugs*”.⁶⁵ While “decriminalization” or “depenalization” can refer to policies that remove criminal sanctions for personal drug use and minor drug offences, but do not permit the non-medical use of controlled substances, the “legalization” of drug use is associated with the regulation and commercialization of internationally controlled substances for non-medical and non-scientific purposes, in violation of the international drug control conventions.⁶⁶ INCB has recently clarified that “measures to decriminalize the personal use and possession of small quantities of drugs are consistent with the provisions of the drug control conventions”.⁶⁷

UNODC TREATMENT AND CARE OF PEOPLE WITH DRUG USE DISORDERS IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM: ALTERNATIVES TO CONVICTION OR PUNISHMENT

During its 58th session, the CND adopted resolution 58/5 entitled “*Supporting the collaboration of public health and justice authorities in pursuing alternative measures to conviction or punishment for appropriate drug related offences of a minor nature*”. In that resolution, the Commission invited UNODC - in consultation with States and, as appropriate, other relevant international and regional organizations - to “*provide guidelines or tools on the collaboration of justice and health authorities on alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature*”. In response to this, UNODC and WHO launched the initiative “**Treatment and Care of People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment**” at the 59th session of the CND in 2016. This initiative aims to enhance the knowledge, understanding, scope and potential for alternative measures to conviction or punishment. In line with the international drug control conventions and other relevant international instruments, including human rights treaties and UN standards and norms in crime prevention and criminal justice,⁶⁸ it explores options to divert people with drug use disorders who are in contact with the criminal justice system to treatment. UNODC and WHO developed a **publication on treatment of drug use disorders as alternatives to conviction or punishment**⁶⁹, with a view to exploring access to treatment for people with drug use disorders in contact with the criminal justice system as an alternative to conviction or punishment, as a component of a comprehensive health and justice response which is in line with good medical practice, which helps to reduce prison overcrowding, thus contributing to public health and safety in line with international legal and medical standards and tools.

⁶⁵ 2021 Report of the International Narcotics Control Board, para 371, p.53.

⁶⁶ 2021 Report of the International Narcotics Control Board, paras 375ff. p.53ff.

⁶⁷ 2021 Report of the International Narcotics Control Board, para 371, p.53.

⁶⁸ These instruments include for example the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Tokyo Rules and Bangkok Rules. For compilations of relevant instruments, see OHCHR, The Core International Human Rights Treaties (2014) and UNODC, Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice (2016).

⁶⁹ https://www.unodc.org/documents/UNODC_WHO_Alternatives_to_conviction_or_punishment_ENG.pdf

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The UN Guiding Principles on Alternative Development, developed in the framework of the Commission on Narcotic Drugs, refers to alternative development, among others, as “an integral component of policies and programmes for reducing drug production” and “an important, viable and sustainable option for preventing, eliminating or significantly and measurably reducing the illicit cultivation of crops used for the production and manufacture of narcotic drugs and psychotropic substances through tackling poverty and providing livelihood opportunities”⁷⁰, with Member States reaffirming, among others, that **development-oriented drug policies and programmes should be undertaken in accordance with the purposes and principles of the Charter of the United Nations, international law and, in particular, respect for the sovereignty and territorial integrity of States, protection of human rights and fundamental freedoms in accordance with the Universal Declaration of Human Rights, and the principle of common and shared responsibility**. As highlighted above, Article 14 (2) of the 1988 Convention addresses measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, and also highlights that those measures shall respect fundamental human rights and take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.⁷¹



UNODC Alternative Development: <https://www.unodc.org/unodc/de/alternative-development/index.html?ref=menuside>

Alternative development is an important part of development-oriented balanced drug control policy. Efforts to eliminate illicit crop cultivation can impact the income source and employment opportunities of farmers and farm labourers. Many small-scale farmers in drug-producing countries grow illicit drug crops out of poverty and the absence of viable licit alternatives. Coca, opium poppy and cannabis are non-perishable, high-value commodities that can be grown in marginal terrain, in poor soil, with limited or no irrigation.ⁱ

In 2015, UNODC devoted a booklet of its annual World Drug Report to alternative development. In looking at the drivers behind illicit cultivation, it was noted that no single factor could explain why farmers grow illicit crops, that illicit cultivation was driven by situation-specific combinations of vulnerability and opportunity factors. The report further eluded that as survival and subsistence are real considerations for many households that engage in illicit crop cultivation, they are frequently risk-averse and take a variety of elements into account when they make decisions on narcotic crop cultivation. It was underlined that alternative development was as much about building licit alternatives for farmers who engage in illicit crop cultivation as it is about socioeconomic development and security in the creation of an enabling environment to reduce illicit cultivation over time; developmental facilities such as access to roads, the power grid and educational and health services; and socio-political and institutional factors, such as security, Government control and the rule of law.⁷² Improvement in governance and the rule of law, infrastructure and services can **create opportunities for licit economic development and for a diversification of livelihood strategies**, which in turn decreases the dependency of communities on illicit cultivation of drugs. Long-term political support is essential to the success of alternative development projects, as such support is required to build long-term licit alternatives and transfer skills in areas where alternative development takes place and **is equally important to creating the sphere where criminal opportunity preying on socio-economic vulnerability is reduced**.

⁷⁰ 2013, United Nations Guiding Principles on Alternative Development, General Provisions, 1.

⁷¹ 1988 Convention, Article 14 (2).

⁷² 2015 UNODC World Drug Report, Chapter 2, p.93ff.

UNODC ALTERNATIVE DEVELOPMENT PROGRAMMES

In partnerships with Governments and the private sector, UNODC facilitates the sale of alternative development products on national and international markets. Products of alternative development are produced with due respect for human rights and the environment, and farmers are often organized in associations, which guarantees direct ownership of the main stakeholders. The processing and commercialization of the products in cooperation with the private sector is an important part of the strategy, as it generates added value and thus income for the farmers. Alternative development products comprise a variety of different products, inter alia, coffee, chocolate, tea, beans, hearts of palm, honey, coconuts, dairy products and gourmet sauces. More information on UNODC alternative development programmes is available at: <https://www.unodc.org/unodc/en/alternative-development/alternative-development-products.html>

DISCUSSION QUESTIONS

Below is a set of discussion questions touching upon the different thematic sub-chapters in the background note.

THE THREE INTERNATIONAL DRUG CONTROL CONVENTIONS AND HUMAN RIGHTS

- How do implemented measures not in conformity with the international drug control conventions affect the international community's efforts to address the world drug problem?
- How do implemented measures not in conformity with international human rights obligations affect the international community's efforts to address the world drug problem?
- How can the Commission on Narcotic Drugs, as the main policy-making body in the UN system for drug-related matters, be best utilized to act as the forum to address challenges related to responses not in conformity with the three international drug control conventions and not in conformity with applicable international human rights obligations?

PROTECTING THE HEALTH OF HUMANKIND BY PLACING THE MOST PREVALENT, PERSISTENT, AND HARMFUL SUBSTANCES UNDER INTERNATIONAL CONTROL

- In line with the commitment to placing the most prevalent, persistent, and harmful substances under international control, what are some good practices to ensure swift national implementation of scheduling decisions taken by the Commission?
- What are some good practices to ensure that the implementation of Commission scheduling decisions is in line with the overarching goals of the conventions to protect the health and welfare of humankind?

PROTECTING CHILDREN AND YOUNG PEOPLE

- Can you share some national good practices focused on preventing the non-medical use of controlled substances among children and youth, as well as their recruitment, use and exploitation in the of illicit production, distribution and trade in narcotic drugs and psychotropic substances?
- What are the main obstacles to formulating and implementing gender-sensitive and age-appropriate policies in the area of drug control, and what measures could address them?
- What are the main factors to be considered in dealing with children at particular risk of drug use and children exposed to drug use at a very young age? And what factors are relevant in addressing children with drug use disorders that are in contact with the criminal justice system?
- Can you share national good practices on measures aimed to foster the interoperability, collaboration and cooperation between the health and justice sectors with a view to better promote and protect the rights of children who have substance abuse problems when in contact with the justice system?
- What are some strategies that can be implemented within the justice system to protect children and simultaneously increase awareness of the recommended drug use prevention and drug treatment protocols that can be implemented to further protect vulnerable children?

THE IMPORTANCE OF INTERNATIONAL COOPERATION IN ADDRESS DRUG-RELATED CRIMES

- The work of the Commission is based on the principle of common and shared responsibility. Can you share some examples of good practices, or challenges, in cooperating with other stakeholders at the regional or international levels in joint efforts to take action against illicit traffic in controlled substances?
- Drug-related crime is commonly of a cross-jurisdictional nature. Can you share some examples of regional or international cooperation that has allowed significant action to be taken against drug-related crime? How do you measure the impact of such cooperation?
- When implementing measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, how do you ensure that these respect fundamental human rights and take due account of traditional licit uses, and the protection of the environment, in line with the provisions of the drug control conventions?

ACCESS TO CONTROLLED SUBSTANCES FOR MEDICAL AND SCIENTIFIC PURPOSES

- Ensuring access to and availability of controlled substances for medical and scientific purposes is one of the overarching goals of the three international drug control conventions. Can you share some good practices that ensure at the national level that measures taken to control substances such as opioids do not lead to the overly stringent regulation of those with a variety of medical uses, including pain relief, opioid overdose reversal and epilepsy control?
- The international drug control conventions allow for the simplified control procedures in acute emergencies. Can you share experiences during COVID-19 where such simplified control procedures for the export, transportation and supply of medicinal products containing controlled substances were utilized?
- During the COVID-19 pandemic, what are some good practices to ensure that the needs of existing patients who require controlled substances, including for the management of pain and palliative care, surgical care and anaesthesia, mental health and neurological conditions, and for the treatment of drug use disorders, continued to be met?
- Substances controlled under the international drug control conventions are crucial for the management of palliative care. According to WHO, only a small percentage of those in need actually receive palliative care on a global level. What are some good practices to address how cultural attitudes towards the management of health conditions, as well as the relief of pain, are acting as an impediment to access to and the availability of internationally controlled substances for medical purposes, including palliative care?

PREVENTION AND TREATMENT

- The international drug control conventions call for its Parties to take all practical measures when it comes to demand reduction, and to assist persons whose work so requires gaining an understanding of the problems of abuse of drugs and of its prevention. What are some national good practices implemented to raise awareness and train policymakers and national authorities, such as law enforcement, to ensure that people in need have access to essential services?
- Can you share examples of national good practices that have been implemented to ensure that the domestic law enforcement of drug-related crime complies with international human rights obligations?

ALTERNATIVES TO CONVICTION OR PUNISHMENT

- Can you share national practices and effective models, how alternatives to conviction or punishment are implemented in line with the international drug control conventions?
- What actions are required to increase the offer of alternatives to conviction or punishment for personal consumption-related offences and other drug-related offences of a minor nature?
- To what extent do alternatives to conviction or punishment address the specific needs of people with drug use disorders and other groups disproportionately affected by contact with the criminal justice system?
- To what extent do alternatives to judicial proceedings or alternative measures to detention address the specific needs of children in contact with the justice system with drug use disorders?
- What are some good practices or challenges in implementing measures that make use of the flexibility in the determination of responses, while being in line with the three international drug control conventions and international human rights obligations?

ALTERNATIVE DEVELOPMENT

- What are alternatives to illicit crop cultivation that have proven to be successful in your country/region? What are the challenges when designing and implementing alternative development programmes?
 - What are some key factors to ensure that alternative development programmes are successful? How do you measure the impact of these programmes?
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