

## Policy Analysis

## Emerging policy contradictions between the United Nations drug control system and the core values of the United Nations

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**Abstract**

This paper argues that the image of the UN as a benevolent organization is a crucial factor in the functioning of the global drug prohibition regime. It contends, however, that from certain normative perspectives, particularly that of harm reduction, it is possible to identify the emergence of policy contradictions between what can be broadly defined as the United Nations drug control system and the core values of the UN as laid out in the Charter and other key instruments from which the UN derives its image of benevolence. Four interrelated areas of perceived conflict are discussed: sovereignty and jurisdiction; human rights; the promotion of solutions to international economic, social, health and related problems; and the maintenance of international peace and security. It is suggested that such a situation may undermine a key mechanism for regime adherence. The paper concludes by offering some options that may exploit systemic contradictions and assist in instigating incremental change to the regime.

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The image of the UN as a benevolent organization is a crucial factor in the functioning of what, from the perspective of international relations theory, has been called the global drug prohibition regime; an international drug control framework based upon the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychoactive Substances (Nadelmann, 1990). It is true that in recent years the UN has toned down rhetoric associated with drug control and dropped terms like “evil” and “scourge” from its vocabulary. Nonetheless the regime continues to exert considerable pressure on nations to conform to the established norms of behaviour regarding control policies through the continuing prominence of language stating that those drugs defined as illicit are a “danger to mankind” and that the UN’s ideals consequently “transcend the traditional concerns of the international community” (Bewley-Taylor, 2001, 2003a, 2003b; Room, 1999). The potential reputational implications

of open deviation from such norms are often important factors in determining how signatory nations to the UN drug control treaties formulate and apply domestic drug legislation (Andreas, 1999; Bewley-Taylor, 2003b). This is consequently an increasingly pressing issue for administrations in a growing number of countries that, having signed the conventions in good faith some time ago, now believe that the contemporary situation within their own borders require policies that lean towards the harm reduction paradigm; especially in relation to injection drug use (IDU).

While this is the case, such a mechanism for regime adherence is perhaps being weakened. Fundamental to the UN’s benevolent image are of course the ideals laid down in the Charter; the key document to which the organization’s activities ultimately refer. Yet, from certain normative perspectives, significant policy contradictions seem to be emerging between some parts of what we can broadly define as the UN drug control system and the UN Charter and other key UN instruments. The UN drug control system is complex. It can be described, however, as a number of key specialist drug control organs which administer the treaties and other UN bodies connected with the drug issue; all entities

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that within this context can be usefully termed constellations.

A central constellation within the UN drug control system is the Office on Drugs and Crime (UNODC). A key pillar of the UNODC work programme is providing assistance to Member States in the ratification and implementation of the prohibition oriented drug control treaties. As the single umbrella for UN activities relating to both drugs and crime, under the UNODC also operate the Centre for International Crime Prevention (CICP) and the UN International Drug Control Programme (UNDCP). The CICP runs programmes against human trafficking, corruption and organized crime while the UNDCP is the body responsible for coordinating international drug control activities. Its governing body is the Commission on Narcotic Drugs (CND or Commission). Established in 1946 as a functional commission of the Economic and Social Council (ECOSOC) the CND is the UN's central policy making body on the issue of drugs. Another key drug control organ within the UN drug control system is the International Narcotics Control Board (INCB or Board). Established in 1968 by an article in the Single Convention, the Board is responsible for overseeing the implementation of the three UN drug control Conventions. While it is true that the quasi-judicial body is technically independent, its 13 members serving in their personal capacities, the INCB as we will see possesses considerable influence within the UN drug control system.

Operating at some distance, but still very much within the sphere of the core constellations of the UN drug control system, are the Joint United Nations Programme on HIV/AIDS (UNAIDS), the World Health Organization (WHO) and the United Nations Development Programme (UNDP). The issue of blood borne virus transmission through injecting drug use and the belief that the disinhibiting properties of psychoactive substances led to high-risk sexual behaviours that individuals might otherwise avoid saw UNAIDS concerned with drug policy from its creation in 1995. The Programme's connection with the UN drug control system became more direct, however, when in 1999 the UNDCP became the seventh cosponsor of UNAIDS. The WHO, itself a cosponsor, evaluates medical, scientific and public health aspects of psychoactive substances in relation to the 1961 and 1971 Conventions and makes recommendations to the CND accordingly. Its mandate additionally includes working with the INCB to ensure that, within the parameters of the treaties, the drug control policies of Member States guarantee the medical availability of narcotic drugs, especially codeine and morphine, for pain control. The UNDP is also a cosponsor of UNAIDS since its mandate includes helping countries to build and share solutions to the challenges of HIV/AIDS. Additionally, it is connected to the drug issue through involvement in drug crop eradication and substitution programmes.

Any discussion of the UN Charter, other instruments, and policy positions within the UN drug control system as defined by the drug control treaties, must also be prefaced with a note on treaty interpretation. It has been said that within

international law interpretation is an art not a science. And furthermore, that art is never free from political considerations (Akehurst, 1982). Indeed, today reform minded nations that are no longer in agreement with many of the provisions contained within treaties are seeing the drug conventions in a very different light to prohibition-oriented states and some constellations within the UN drug control system. It is such divergence in interpretation of the conventions, particularly when they are viewed through the lens of harm reduction, which often leads to the identification of inconsistencies between the operations of parts of the system and the broader goals and values of the UN as a whole.

Although to a certain extent interrelated, perceived contradictions with these goals and values can be usefully classified under four headings. The relationships between the issues within each of these categories are obviously complex and multifaceted. In the interest of space and clarity, discussions here will be kept relatively brief. Nonetheless, it is hoped that generalizations have been avoided as much as possible.

### Sovereignty and jurisdiction

As noted, much of the current tension between some parts of the UN drug control system, principally the INCB, and sovereign states surrounds interpretations of provisions within the drug control treaties.

The INCB has long adopted a rigidly prohibitionist interpretative position on the Conventions (Transnational Institute, 2003a). Accordingly, in recent years we have witnessed an annual dance between the Board and governments wishing to pursue harm reduction strategies such as drug injecting rooms and heroin prescription, more liberal policies towards the possession of cannabis for personal use and the medicinal use of the drug. Nation states are careful to work within what they regard to be the limits of international law. And the INCB annual report often claims that actions are contrary to the letter or the spirit of the conventions (INCB, 1999, 2001, 2002, 2003, 2004; MacCoun & Reuter, 2001). While it is within its mandate to comment upon any perceived infractions, the Board, some would contend, is beginning to exceed its remit.

Despite technicalities concerning its place within the UN system, for example, the annual report is independent of any other UN body (Fazey, 2003), the Board appears to have come perilously close to conflicting with the Organization's position on UN intervention "in matters that are essentially within the jurisdiction of any state" (UN Charter, 1945, Article 2, Paragraph 7).

Consequently, criticism of the UK Government's 2003 decision to reclassify cannabis and that of the Canadian Supreme Court in 2001 to allow the medicinal use of the drug arguably went beyond acceptable comment. In the case of the UK, as Under Secretary of State Bob Ainsworth noted in a letter to the Secretary of the INCB, the Board used alarmist language, omitted any reference to scientific evidence on which the decision to reclassify was based and presented the

decision in a misleading way to the media (Ainsworth, 2003; Travis, 2003). Such action can be seen to have impacted on the policy process and debate within the UK. Similarly, it is questionable whether it is the place of the INCB to query a decision of the Supreme Court of any country, or “interfere with the separation of the polity and the judiciary” (Fazey, 2003).

Beyond these issues INCB criticism is also problematic with regard to sovereignty because it effectively deters some states from even exploring the latitude within the current treaty system; a domestic policy option that, regardless of the Board’s protestations to the contrary, is not definitively outlawed by the conventions. Denmark, for example, recently reversed plans for the introduction of safe injecting rooms after INCB criticism of the proposal (Wolfe & Malinowska-Sempruch, 2004).

## Human rights

Scholars of many aspects of international relations acknowledge the problematic nature of defining human rights and applying associated values across political and cultural boundaries. Our discussion here will not dwell on the complexities surrounding the UN and the construction and application of human rights norms. Suffice it to say, the existence of some 80 UN treaties covering various aspects of human rights reflects the Organization’s long standing commitment to address the issue (Fasulo, 2004). With this in mind, the dominant prohibitive ethos of the UN drug control system can be seen to be increasingly at odds with the Organization’s position on human rights. It is possible to identify points of tension within various key documents notably the UN Charter (Preamble, Article 1, Paragraph 3 and Article 55, Paragraph c), the 1948 *Universal Declaration of Human Rights* (Article 25) and other UN instruments including the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychoactive Substances; the only drug treaty to mention human rights. It states that all measures to eradicate cultivation of and demand for illicit substances must “respect fundamental human rights” (UN, 1988, Article 14, Paragraph 2).

Yet, while the INCB has argued, “Protecting the well-being of the individual and society is the purpose of prohibiting the non-medical use of drugs, which is certainly not an attempt to limit human rights . . . . The prevention of drug abuse problems by means of national and international control and demand reduction activities can be regarded as a basic human right of the individual and society” (INCB, 1994, p. 22) most international treaties and conventions have until very recently remained largely unexamined with respect to their compliance with human rights agreements (Riley, 1998).

Leaving aside broader philosophical claims that the right to use psychotropic substances is a human right in itself (Van Ree, 1999) this lacuna in the debate on international drug control is surprising. Problematic drug use, particularly involving

IDU, can after all trigger a wide variety of human rights infringements, especially when drug users are marginalized and their rights considered unworthy of respect; a situation that occurs primarily because of prejudice and stigmatisation (Gillmore, 1996; Open Society Institute, 2005).

While increasing numbers of nations are exploiting the latitude of the extant treaties, the very nature of the global drug prohibition regime and hence the predominantly criminal law approach pursued by the UN drug control system can in some cases be questioned within the context of human rights. As will be discussed in more detail below, the mixed messages concerning harm reduction interventions coming from the UNODC and the reluctance of other key constellations within the system to support strategies like injecting rooms can be seen to sit uncomfortably with the fundamental human rights of injecting drug users. This is a phenomenon increasingly highlighted by non-government organizations concerned with drug policy and HIV/AIDS issues. For example, in 2003 Human Rights Watch called for the CND and the UNODC’s predecessor, the United Nations Office for Drug Control and Crime Prevention, to support an amendment of the international drug conventions to call explicitly for the legalization and promotion of syringe exchange services and other methods of sterile exchange access (Cohen, 2003). A 2004 report by the Canadian HIV/AIDS Legal Network also provides a much needed discussion of harm reduction, human rights and international law and lucidly argues that an “obvious partnership” seems to exist between harm reduction and human rights (Elliot, Kerr, Csete, & Wood, 2004).

Beyond potential and very real conflicts involving the rights of injecting drug users, it has also been argued that imprisonment for so-called “soft” drug offences is disproportionate to the offence and therefore “violates the inherent dignity of persons, the right to be free from cruel and degrading punishment and the right to liberty” as set out in such instruments as the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Universal Declaration of Human Rights (Sinha, 2001).

## The promotion of solutions to international economic, social, health and related problems

The predominance of the prohibitive paradigm within the UN drug control system can, at many levels, be seen to be increasingly out of step with the UN’s far reaching purpose of promoting solutions to international economic, social, health and related problems as addressed in the UN Charter. For example, in the Preamble, Article 1, Paragraph 3, and Article 55, Paragraph [b]. It is also possible to identify areas of tension with provisions concerning health within The International Covenant on Economic, Social and Cultural Rights of 1976 (Elliot, Csete, Palepu, & Kerr, 2005).

On the supply-side of the drug issue questions can be raised with regard to the practical relationship between

some Alternative Development policies in Latin America and broader UN goals. It should be made clear that no UN agency has ever been directly involved in forced crop eradication efforts (Jelsma & Metaal, 2004). Nonetheless, growing evidence suggests that the inclusion of a dominant forced eradication component within strategies supported by the UNDCP has a counterproductive impact upon efforts to reduce poverty (Jelsma & Metaal, 2004; Transnational Institute, 2002). To be sure, policy contradictions become more apparent when the focus of harm reduction is widened to include the application of its principles to supply-side issues (Arganaras, 1997; Jelsma & Metaal, 2004).

As noted above in relation to the discussion of sovereignty, on more traditional demand-side issues the high profile of the INCB's hard line position on harm reduction strategies arguably inhibits the application, and in some instances even discussion, of evidence based policies within sovereign nations. Consequently, the implications of such a position appear to run counter to the UN's Millennium Development Goals concerning halting and beginning to reverse the spread of HIV/AIDS by 2015 (UN Millennium Declaration, 2000).

Reluctance to deviate from a situation where the secondary harm caused by drug control policies often seems to exceed the primary harm of drug use itself, or indeed the practice of drug cultivation, does not arguably create an environment within which solutions to many contemporary international problems are easily promoted. Furthermore, in the case of HIV/AIDS, current policies can be seen to have serious implications for international security.

### **The maintenance of international peace and security**

At a UN Security Council Session on AIDS in Africa in 2000, US Vice President Al Gore remarked that the virus was "a real and present danger to world security" (Spectar, 2003). Indeed, at the same session the Security Council made history by adopting a resolution highlighting this very fact. More recently, the UN International Crisis Group also pointed out that HIV/AIDS must be viewed as a security crisis with the potential to affect peoples, states and the international community in a similar fashion to more traditional forms of conflict (UN ICG, 2001). Indeed, there is increasing acknowledgment from a variety of sources that HIV/AIDS should be viewed as a global security issue (Spectar, 2003; UN General Assembly, 2001; US Department of State, 2000). Epidemics of the virus can have a dramatic destabilizing effect upon societies by impacting individuals, households, families, workplaces and communities and ultimately national economies and development. As such HIV/AIDS certainly has the potential to impact not only the maintenance of regional stability but also, within an increasingly interconnected international environment, may have implications for global security. While most discussion of this issue focuses on sub-Saharan Africa and sexually transmitted HIV/AIDS, injection drug use is increasingly significant in the spread

of the virus. The HIV epidemic is growing exponentially in Eastern Europe and countries of the former Soviet Union. In these regions intravenous drug users and their sexual contacts account for most new infections. A similar pattern is seen in Asia. It is estimated that 10% of all new HIV infections worldwide are now attributable to IDU; this figure rises to 30% outside Africa (Elliott et al., 2005; Hunt, Trace, & Bewley-Taylor, 2005). In Russia it is around 75%. Consequently, while the vectors may be different, it is possible that the security implications of both sexual and IDU-driven epidemics would be similar. Furthermore, it is worth noting that IDU-driven HIV epidemics spread faster than those relating to sexual transmission. It is true that in geopolitical terms the end of the Cold War and the demise of the Soviet Union reduced the significance of the Asian Heartland and surrounding nations; the so-called Rimland. That said, the stability of states within these regions clearly remains crucial in political, economic and military terms. Political and economic stability here are perhaps of particular salience with the emergence of terrorist activity in some nations within what was known as the Rimland.

Within the context of international peace and security, the position of some constellations within the UN drug control system can then be seen as increasingly incongruous with Article 1, Paragraph 1 of the UN Charter. This states "The purposes of the United Nations are: to maintain international peace and security, and to that end take effective collective measures for the prevention and removal of threats to the peace" (UN Charter, 1945).

Another international security issue receiving attention within the UN in recent years is that of the growth of various types of transnational organized crime. Indeed, this phenomenon is increasingly perceived as a major threat to the international peace and security of the post-Cold War world. It is possible to argue, however, that issues of systemic conflict arise with regard to the UNODC's integrated approach to crime prevention and drug control; an approach it would seem that will get closer with the proposed merging of the UNDCP and CICP. To illustrate this point it is perhaps simplest to quote a chief in one of Colombia's so-called drugs cartels. In an undercover recording he expressed his gratitude for the drug war and stated that it was actually "good for business" (Levine, 1990).

Such a dynamic gains more resonance when we consider the issue of terrorism and its increasing profile within the work of the UNODC (Jelsma & Metaal, 2004). A growing body of research is illustrating the connection between the prohibitive drug policies sanctioned and legitimised by the UNODC and the UN drug control treaties and terrorism (Carpenter, 2005; Oscapella, 2001). It can be argued that the market distortion caused by prohibition ensures that, through various means, some terrorist groups can gain access to the financial resources necessary to conduct their activities. This is not to say that money generated through what has been called a "prohibition premium" is the sole source of funding. Nonetheless, it is difficult to image that many terrorist



groups around the world would have access to as much money without the intervention of the economic mechanisms that come with prohibition. Consequently, as commendable as they may be, the UNODC's Global Programmes including those against Corruption, Organized Crime, including the Transnational Organized Crime Convention, and Terrorism are all at a fundamental level being undermined by the dominant position of prohibition within the Drug Programme and its associated bodies. The UNODC's pursuit of drug policies based predominantly on criminal sanction arguably facilitates organized crime and economic corruption and creates an environment whereby terrorist groups can gain access to substantial revenue streams: all of which do little to maintain international peace and security.

### **Highlighting emergent policy contradictions: options to assist in an incremental change to the regime**

Within the context of this discussion there are a number of small steps that could be considered by nations hoping to move along the path to some sort of drug policy repatriation (Fazey & Bewley-Taylor, 2003) and the development of domestically designed pragmatic multi-dimensional policies.

#### *Coordinate responses to INCB public criticism*

As a low-cost statement of intent governments could consider coordinating their responses to any comments from the INCB that are seen to exceed its mandate and conflict with Charter goals concerning jurisdiction. Such action could come as a prelude to a number of other moves including a formal Declaration (Andenas & Spivak, 2003) or a Memorandum of Understanding (Wolfe & Malinowska-Sempruch, 2004) concerning treaty interpretation and the emergence of some form of group of like-minded states (Bewley-Taylor, 2003b).

#### *Exploit avenues provided by the 1998 Declaration on the Guiding Principles of Drug Demand Reduction*

Nations facing criticism from the Board and prohibition-oriented nations for liberal interpretations of the conventions that include some harm reduction measures would do well to further cite the Declaration and the Action Plan developed to implement the Guiding Principles on Demand Reduction. Representing the recent views of governments of Member States of the UN, both can be legitimately used to support needle exchange programmes as well as injecting rooms since both reduce the negative health consequences of drug use.

The legitimacy of the harm reduction approach with reference to international commitments was enhanced with the pronouncement of the UN Declaration on the Guiding Principles of Drug Demand Reduction in 1998. Negotiations surrounding the final form of the document required wording

that would be acceptable to all the States involved, including prohibition-oriented nations like the USA. Eventually under the heading of Guiding Principles agreement was reached with, "Demand reduction shall: (i) Aim at preventing the use of drugs and at reducing the adverse consequences of drug abuse". Later it is reiterated under the heading of "Tackling the Problem," "Demand reduction programmes should cover all areas of prevention from discouraging initial use to reducing the negative health and social consequences of drug abuse" (UN Political Declaration, 1999). The Action Plan developed to implement the UN General Assembly Special Session's (UNGASS) Guiding Principles on Demand Reduction also committed countries themselves to offer "the full spectrum of services, including reducing the adverse health and social consequences of drug abuse" (UN Action Plan, 2000).

Furthermore, under the heading of Guiding Principles the preamble of the Declaration says that drug control strategies should be formulated "in accordance with the principles of the Charter of the United Nations and international law, in particular, respect for the sovereignty and territorial integrity of States, human rights and fundamental freedoms and the principles of the Universal Declaration of Human Rights . . ." (UN Political Declaration, 1999). This appears to open up the possibility of justifying various policy options, which have been denied by the very strict interpretation of the Conventions (Bewley-Taylor & Fazey, 2003).

#### *Raise the profile of "pragmatic constellations" in the UN drug control system*

As is now well-documented, significant policy conflict exists on the principle of harm reduction within the UN drug control system itself (Jelsma & Metaal 2004; Wolfe & Malinowska-Sempruch, 2004). What has been called the core triangle of the UNDCP, CND and INCB in the main follow a path that contradicts that pursued by WHO, UNAIDS and the UNDP. These "pragmatic constellations" already use the harm/risk reduction concept as a matter of course (Transnational Institute, 2003b). Furthermore, as an example of intra as well as inter agency inconsistency one only has to look at the UNODC itself. As noted, the UNODC is a cosponsor of UNAIDS and is involved with harm reduction programmes at the regional level. Yet a few years ago its Executive Director, Antonio Maria Costa, called harm reduction "a battleground of recrimination, perpetuating an increasingly unhelpful debate" (UNODC, 2003). Mr. Costa has since then at times adopted a more conciliatory tone and attempted to increase consistency on the issue. Nonetheless, as will be discussed below, the UNODC remains unable to find a coherent position on harm reduction. Reform minded nations might consequently benefit from highlighting the inconsistencies not only between constellations but also in regard to the broader goals and values of the UN, particularly in reference to human rights and international security. Reference to this dynamic could influence not only policy direction

within the UN drug control system but also further legitimize endeavours to develop practical policies at a national level.

Such recognition may also reinforce the position of a programme like UNAIDS and, with or without similar declarations from nation states, encourage it to make a specific declaration on harm reduction measures, albeit perhaps using different terminology. A move of this type may be increasingly pertinent bearing in mind the somewhat surprising position adopted by UNAIDS Executive Director, Peter Piot, at the 48th session of the CND in Vienna in March 2005. While summarizing the main points of the thematic debate on HIV/AIDS Piot played down the significant level of support among nations for needle exchange and other harm reduction measures. It has been suggested that this was driven by a desire to avoid direct conflict with the US (Transnational Institute, 2005b).

It is also perhaps worth noting that, while constellations within the UN drug control system have formal roles to play, there is no reason why over time relationships between them should not change. As such, and with sufficient support from individual states, a body like UNAIDS could in the future challenge the prominence of the INCB and its influence in often creating a somewhat restrictive atmosphere for discussions among Member States themselves and between constellations.

Furthermore, the personnel in and consequently the political make-up of individual bodies is not set in stone. For example, although members of the INCB sit in their personal capacities, in reality it is often very difficult to decouple individual and national perspectives. For many years individuals, and hence in many instances nations, favouring strict treaty interpretation have dominated the Board. The United States' loss of its seat during the Board's elections in 2002 demonstrates that it is possible for nations favouring strict treaty interpretation to lose authority within the INCB. Equally, the energetic and ultimately successful lobbying by the US to re-gain its seat in 2003 shows how states can use informal diplomatic channels to reclaim influence. It is worth remembering of course that the US has the capacity to be more persuasive than most other nations.

The slowly evolving position of the UNDCP on the issue of AIDS provides another example of not only what has been called system-wide consistency (Jelsma & Metaal, 2004) discussed above, but also the potential for the change of constellation attitudes. After becoming a cosponsor of UNAIDS the UNDCP, at the programming level only, began to openly take on board the approaches of UNAIDS linked directly to HIV/AIDS prevention (Wilson, 2002).

#### *Frame drug policy discussions in terms of international peace and security*

Reform minded nations could begin to frame discussions on drug policy more in terms of international peace and security. Apparent inconsistencies that exist between current UN

drug policies, the Charter and other instruments may be beneficial in discussions of the legal status of cannabis in a growing number of countries. The same goes for discussions of the increasingly pressing issue of HIV/AIDS and injecting drug use. This is particularly the case when prohibition-oriented nations and some members of the UN drug control system are likely to highlight what they see as the link between illicit drugs and international peace and security, namely terrorism, in the lead up to the UNGASS on drugs in 2008. It is not uncommon for individual drug users, rather than the policy of prohibition, to be singled out as sources of terrorist funding.

#### *Frame drug policy discussions in terms of human rights*

Mindful of the apparently increasing tensions between the position on harm reduction held by some constellations within the UN drug control system and the Organization's broader commitment to human rights, the issue appears to be a natural choice for the focus of further discussion. This seems to be particularly the case during a period when the Secretary General has placed the promotion of human rights at the centre of his vision for the future of the UN (Annan, 2005). Such an approach could, however, be problematic at a number of levels. First, as discussed by Elliot et al., perhaps in this instance the growing body of evidence surrounding the public health benefits of harm reduction interventions should be allowed to speak for itself. This is a position well made by Keane who comments "couching harm reduction in grander narratives of freedom and morality runs the danger of locating the debate even more firmly in the domain of those who feel they know the truth about how human beings should live" (Keane, 2003). This dynamic was perhaps in play at the 2005 session of the CND. Here a Brazilian proposal to discuss a resolution that made open reference to the Universal Declaration of Human Rights had to be withdrawn due to the attitude of and tactics deployed by the US. The US delegation claimed to have "fundamental problems with the language" of the resolution concerned with harm reduction and HIV/AIDS (Transnational Institute, 2005b).

Second, the issue of human rights is recognized as a flash-point in international drug policy debates. One reason is that "almost by definition, it involves the clash between individual rights and states rights, and thus it is easily redefined into an argument about national autonomy" (Room, 1997). Stressing the human rights angle may consequently sit uncomfortably with criticisms of the INCB concerning the inviolability of national sovereignty discussed above.

It is worth noting, however, that the traditional Westphalian notion of state sovereignty is gradually being eroded by the growth of issues requiring a truly transnational response. Key among these is the AIDS pandemic. Its disrespect of international boundaries is forcing an alteration of the way in which the rights of many states themselves are perceived (Spectar, 2003). Paradoxically then, should reform

minded nations wish to exploit policy contradictions within the UN, care must be taken not to weaken one conceptual strand of the argument through friction with another.

## Conclusions

Any discussion of the UN drug control system is incomplete without mention of major donors. While what has been called “pure institutionalism” does often cause institutions to assume a power of their own and socialize members into compliant behaviour (Young, 1989), the UN drug control system is in many ways the servant of the major donors. Indeed, the stance on harm reduction currently held by several constellations can be seen as a reflection of the position of some major donors. For example, the list of top donors to the UNODC and its predecessors has long included what can be considered zero-tolerance oriented states such as the USA, Sweden and Japan. A similar situation is noticeable with regard to the General Purpose Fund (GPF). This Fund can be freely allocated by the UNODC and is used to cover salaries and running costs on the UNODC offices. Countries that are the main contributors to the GPF are on balance more prohibitionist than other donors (Jensema & Thoumi, 2003). A recent notable example of how funding can buy influence involves the US and the UNODC. In November 2004, Mr. Costa met with the head of the US Bureau of International Narcotics and Law Enforcement, Robert Charles. At the meeting, Mr. Charles threatened to cut US funding to the UNODC unless Mr. Costa could assure him that it would abstain from any involvement in or support for harm reduction interventions, including needle exchange programmes. The US government is currently the biggest donor of the UNODC. It is perhaps no surprise then that the very next day Mr. Costa wrote a mea culpa letter to Mr. Charles making the required promises to secure continued US funding (Transnational Institute, 2005a). Furthermore, a consolidated 2004–2005 budget has been presented to integrate not only drugs and crime but also terrorism into single operational unit. It seems likely that such moves to incorporate terrorism played an important role in getting the US to double its contribution to the UNDCP’s Major Donors Fund in 2003 to US\$ 25 million (Jelsma & Metaal, 2004). As has been noted elsewhere there is a Sword of Damocles hanging over Mr. Costa’s head (Transnational Institute, 2005b). In statements and the adoption of policy positions, the Executive Director must be careful to appease large donors like the US who oppose interventions such as needle exchange as well as other donors who favour a broad array of harm reduction measures. Such a predicament is in many ways at the core of the UNODC’s continually confused stance on the issue. The issue of funding may also have played a role in the somewhat cautious position on harm reduction taken by the Executive Director of UNAIDS at the 2005 session of the CND mentioned above. Although the Netherlands has been the largest donor to UNAIDS for the past 5 years, when measured in accumulative funding over the past decade the US

is the leading nation (Transnational Institute, 2005b). Potential increases or cuts in contributions from the US could help explain why Mr. Piot was surprisingly reserved in his statements.

Within this context it would undoubtedly be possible to enhance the place of harm reduction within the UN drug control system if harm reduction oriented nations were to enlarge their donations to the point where they equalled or exceeded those from nations favouring zero-tolerance (Bewley-Taylor, 2004). Some observers may consider events at this year’s session of the CND as the prelude to such a move. The willingness of many nations to make a strong, if not completely successful, stand against US led efforts to thwart any increasing acceptance of harm reduction within the UNODC displayed an unusually determined and united front within the Commission. If what have been called harm reduction-friendly donors including Canada, Australia, Finland and the Netherlands matched this political resolve with increased contributions the stance of the UNODC could change. Such a process may be best pursued via the GPF where relatively small contributions from a number of nations could have a considerable impact in reducing the influence of the US (Transnational Institute, 2005b). Similar processes could be repeated elsewhere.

It is likely that the inconsistent position on harm reduction between constellations would be reduced if this were to happen. Contradictions between the UN drug control system and the broader goals and values of the UN as a whole as discussed here would also be reduced. Such contradictions would, however, not completely disappear. Even if the balance of donor contributions were to change, the fundamental nature of the global drug prohibition regime as determined by the treaties would not. Thus, while more widespread liberal interpretations could be used to justify the support and operation of many interventions, the conventions themselves would remain an obstacle to the expansion and acceptance of harm reduction. The flexibility of the conventions is limited, particularly when using a broad definition of the term harm reduction. Indeed, as noted elsewhere, if we view the global drug prohibition regime as a computer, zero-tolerance can be seen to be hard-wired while harm reduction can only operate through glitches in the software (Bewley-Taylor, 2004). As such even with a change of outlook from some constellations within the UN drug control system it seems likely that systemic conflicts with the UN would continue to exist especially with regard to human rights, the promotion of solutions to international economic, social, health and related problems and the maintenance of international peace and security as discussed above.

The fluid and politically charged nature of interpretation within the UN system means that alone the perceived inconsistencies discussed here will not facilitate a change in or of the current global drug prohibition regime. Nonetheless, these apparent contradictions, and others not discussed here, may place the UN drug control system in an increasingly difficult position vis-à-vis those signatories of the drug control

treaties wishing to create more policy space at a national level. When highlighted in parallel with evidence to suggest that the regime is out of sync with current scientific, sociological and environmental knowledge, the emergence of conflicts with broader goals and values of the UN will surely do little for its image of benevolence.

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