



GROUPEMENT ROMAND D'ETUDES DES ADDICTIONS

Politikfeldanalyse zur internationalen Drogenpolitik

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Analysis of the International Drug Control System

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Abbreviations

ARQ: Annual Reports Questionnaire

CDC: Centers for Disease Control and Prevention

CEB: Chief Executives Board for Coordination

CFLA: Federal Commission on Questions related to Addictions (in French: *Commission fédérale pour les questions liées aux addictions*)

CND: Commission on Narcotic Drugs

ECOSOC: United Nations Economic and Social Council

EMCDDA: European Monitoring Centre for Drugs and Drug Addiction

EU: European Union

GA: United Nations General Assembly

GCDP: Global Commission on Drug Policy (GCDP)

GDP (PPP): Gross Domestic Product (Purchasing Power Parity)

HIV: Human Immunodeficiency Virus

IAHPC: International Association for Hospice & Palliative Care

INCB: International Narcotics Control Board

LSTUP: Law on Narcotic Drugs (in French: *Loi sur les stupéfiants*)

NDARC: National Drug and Alcohol Research Centre

NSP: Needle and Syringe Programs

OST: Opioid Substitution Therapy

OHCHR: Office of the High Commissioner for Human Rights

PWID: People Who Inject Drugs

SDG: Sustainable Development Goals

UN: United Nations

UNAIDS: Joint United Nations Programme on HIV and AIDS

UN CEB: United Nations Chief Executive Board of Coordination

UNDP: United Nations Development Programme

UNGASS: United Nations General Assembly Special Session on Drugs

UNODC: United Nations Office on Drugs and Crime

WHO: World Health Organization

1. Introduction

1.1 Background

Switzerland's current drug policy, founded on the 4 pillars, dates from the 1990s. In hindsight, it can be considered a success. Nevertheless, things have changed since then. Countries have adopted new legal frameworks and it is time for Switzerland to draw up a state of affairs report and to outline the drug policy that it wishes to promote and lead in the next ten years. The basis for this report lies in the request of the author of the Postulate ('Postulat Rechsteiner'), to the Swiss government to draw up a state of affairs review of the country's drug policy, taking into account the current developments at the national and international levels. This report focuses on the developments that have taken place internationally and presents the current state of affairs regarding a certain number of countries' drug policies, according to specific indicators. It complements the reports that the Federal Commission on Questions related to Addiction (CFLA) is producing on the adequacy of the Drug Law (LStup; RS812.121) and the relevant decrees, in light of scientific and social development of the past 10 years. Ultimately, this report will form part of the material which the Federal Council will rely upon to produce a report to Parliament by the end of 2019 on the perspectives of the Swiss drug policy for the next ten years.

Where is the current international drug control system at?

The first question that needs to be addressed when examining the developments of the international drug control system is what exactly the international drug control system is. For the purposes of this paper, it is considered to mean the international bodies, mandated to specifically examine drug-related questions: the UN Office on Drugs and Crime (UNODC);¹ the

¹ The United Nations Office of Drugs and Crime (UNODC) was established in 1997 through a merger between the United Nations Drug Control Programme and the Centre for International Crime Prevention. UNODC is mandated to assist Member States in their struggle against illicit drugs, crime and terrorism. In the Millennium Declaration, Member States also resolved to intensify efforts to fight transnational crime in all its dimensions, to redouble the efforts to implement the commitment to counter the world drug problem and to take concerted action against international terrorism. See <https://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutopfor> for more information.

Commission on Narcotic Drugs (CND);² and the International Narcotics Control Board (INCB).³ However, these bodies are not the only ones acting in the field of drugs in the international arena, as will be seen throughout this study. Other (health, human rights and other actors) are starting to address drug-related questions more closely, from their respective points of view. Nevertheless, UNODC, INCB and CND remain the entities that are consistently referred to when discussing the international drug control regime. In fact, the three Drug Control Conventions (1961, 1971 and 1988) are considered the cornerstone of the international drug control system (Bewley-Taylor and Jelsma, 2012). Naturally, the system wouldn't exist without State governments interacting with the international drug control system so they can also be considered part of the wider system.

There are also a number of regional organisations⁴ as well as civil society (for example, the International Drug Policy Consortium which has grown to be the biggest network of civil society actors working in the field of drug policy; Harm Reduction International and others); and actors such as the Global Commission on Drug Policy that have emerged on the scene in the past 10 years. The three Drug Control Conventions (hereafter 'the Conventions'): the Single Convention on Narcotic Drugs of 1961; the Convention on Psychotropic Substances of 1971; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 are the foundation upon which the international system is based.⁵ The Conventions operate with the intention of creating an appropriate balance between penal sanctions, the degree of real and/or potential harm associated with specific drugs and their therapeutic usefulness. Indeed, as affirmed in the preambles of all the Conventions, an

² The Commission on Narcotic Drugs (CND) was established by the Economic and Social Council (ECOSOC) in 1946, to assist the ECOSOC in supervising the application of the international drug control treaties. In 1991, the General Assembly (GA) expanded the mandate of the CND to enable it to function as the governing body of the UNODC. In 1999 the CND was requested to structure its agenda with two distinct segments: a normative segment for discharging treaty-based and normative functions; and an operational segment for exercising the role as the governing body of UNODC. See <https://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop> for more details.

³ The International Narcotics Control Board (INCB) is an independent, quasi-judicial expert body established by the Single Convention on Narcotic Drugs of 1961. The INCB has 13 members, each elected by the Economic and Social Council for a period of five years (and they may be re-elected). The INCB has the authority to assess worldwide scientific and medical requirements for controlled substances and monitors what it deems to be compliance with the provision of the conventions. Both the CND and the INCB rely for administrative and technical support upon the UNODC. See <https://www.incb.org/incb/en/about.html> for more details.

⁴ See for example: Organization of American States (OAS), 2014, *The OAS Drug Report: 16 months of debates and consensus*; and West Africa Commission on Drugs, 2014, *Not Just in Transit: Drugs, the State and Society in Western Africa*, as examples of reports revealing the tendencies and important drug-related milestones in specific regions.

⁵ See the Outcome Document of the 2016 UNGASS, available at <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf> (p.2).

important guiding principle of the treaty framework is a concern for the ‘health and welfare’ of humankind.⁶

Milestones of the past ten years

In terms of drug policy developments in the past decade, a couple of moments stand out: 2008 with the UNGASS Review⁷; the Political Declaration and Plan of Action of March 2009 (Commission on Narcotic Drugs, 2009); and the UN General Assembly Special Session of 2016 held in New York in April 2016, which produced the UNGASS Outcome Document. One of the big changes in the past years, has also been that the Human Rights Council of the United Nations, based in Geneva, has become more concerned with drug policy issues, manifested by its adoption of two resolutions focusing on the question of drugs, in April 2015 (Human Rights Council 28th session, 2015) and March 2018 (Human Rights Council 37th session, 2018).

There is no longer a consensus on drug control

Already in 2008, when Mr. Fedotov, the Executive Director of the United Nations Office on Drugs and Crime (UNODC) was asked how the UN could pretend there is consensus on how to tackle what has become known simply as the ‘world drug problem’ when some countries are legalising cannabis while in others people are executed for trafficking it, he answered: ‘it’s a very broad consensus’ (Bewley-Taylor and Jelsma, 2016).

Most of the recent literature appears unanimous in its conclusion that a consensus no longer exists (Bewley-Taylor, D., 2012; Jelsma, M and Metaal, P., 2004.). In fact, new trends are emerging, as evidenced by Uruguay becoming the first country in 2013, to pass a bill to establish a legally regulated market for cannabis (Castaldi, 2013) and which has been said to mark a ‘tipping point in the failed war against drugs’.⁸ As one commentator recently noted:

Uruguay is part of an overall trend of alternative drug policies that have emerged in Colorado and Washington states, in countries like Spain, Portugal, the Czech Republic and the Netherlands, and in discussions throughout Latin

⁶ See United Nations (1961), Preamble, for example.

⁷ Of particular interest, see the Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly (Costa, A.M 2008).

⁸ Martin Jelsma, Coordinator of the Drugs & Democracy Programme at the Amsterdam-based Transnational Institute (TNI) continued: ‘The trend is becoming irreversible: the era of a globally enforced cannabis prohibition regime is drawing to a close.’ (see <https://www.tni.org/en/pressrelease/uruguays-pioneering-cannabis-regulation-marks-tipping-point-failed-war-drugs>)

*America. It is clear that the drug policy debate is growing in breadth and sophistication and will not easily be reduced again to false choices and empty slogans.*⁹

The UN drug policy debate appears more polarised than ever (Bewley-Taylor, 2012). In recognition of the failure and harms of prohibition, some jurisdictions have moved to legally regulate cannabis for adult recreational use, while at the same time other approaches, such as the one taken by President Duterte of the Philippines have led to some 27,000 extrajudicial killings in just two years (Human Rights Watch, 2018). What these tensions mean for the international drug control system will be explored further in section 3 'Results' below.

How successful has the world been in achieving the drug policy goals it set out in 2009?

Article 36 of the Political Declaration of 2009 established 2019 as the target date 'to eliminate or reduce significantly and measurably the illicit cultivation of opium poppy, coca bush and cannabis plant; the illicit demand for narcotic drugs and psychotropic substances; and drug-related health and social risks; the illicit production, manufacture, marketing and distribution of, and trafficking in, psychotropic substances, including synthetic drugs; the diversion of and illicit trafficking in precursors; and money-laundering related to illicit drugs (Commission on Narcotic Drugs, 2009). As the International Drug Policy Consortium's 2018 shadow report entitled *Taking Stock: a Decade of Drug Policy* illustrates, the carnage that the 'War on Drugs' has wreaked over the past decade is demonstrated by these horrific figures: a 145 per cent increase in drug-related deaths over the last decade, totalling a harrowing 450,000 deaths per year in 2015. At least 3,940 people executed for a drug offence over the last decade, with 33 jurisdictions retaining the death penalty for drug offences in violation of international standards. Around 27,000 extrajudicial killings in drug crackdowns in the Philippines; more than 71,000 overdose deaths in the United States in 2017 alone; a global pain epidemic around the world, resulting from restrictions in access to controlled medicines, which has left 75 percent of the world's population without proper access to pain relief; mass incarceration fuelled by the criminalization of people who use drugs – with 1 in 5 prisoners incarcerated for drug offences, mostly for possession for personal use.

⁹ Transnational Institute (TNI) citing Tom Blickman, in "Uruguay's pioneering cannabis regulation marks tipping point", available at <https://www.tni.org/en/pressrelease/uruguays-pioneering-cannabis-regulation-marks-tipping-point-failed-war-drugs>.

Where are we now?

UN Member States held a Ministerial Segment immediately prior to the 62nd Session of the Commission on Narcotic Drugs (CND) in March 2019 ‘to take stock of the implementation of the commitments made to jointly address and counter the world drug problem, in particular in the light of the 2019 target date set out to eradicate or significantly reduce the overall scale of the illegal drug market and to look to the future for the next ten years of UN drug control’. The high-level event resulted in a Ministerial Declaration¹⁰ that provides a general framework for UN drug policy between 2019 and 2029. In addition, right before the Commission on Narcotic Drugs, the UN ‘Common Position on the implementation of the international drug control policy through effective inter-agency collaboration’ of the UN Chief Executive Board (CEB), chaired by the UN Secretary General and representing 31 UN agencies was published (United Nations Chief Executive Board for Coordination, 2019). The Common Position frames what the UN agencies should be doing on drug policy in health, law enforcement, protection of communities, development and others, all within the framework of international treaties and the Sustainable Development Goals (SDGs). Finally, in March 2019, the International Guidelines on Human Rights and Drug Policy, produced by the International Centre for Human Rights and Drug Policy, together with the United Nations Development Programme (UNDP) and other partners, were launched in Vienna. They also contain a number of highly relevant points to keep in mind when examining the current state of the international drug control system as well as future developments. For present purposes, the research questions that remain to be looked at in depth are: 1) What is the current state of polarization in terms of individual countries’ drug policy priorities? And 2) what might the future of the international drug control system look like?

1.2 Research objectives

The primary aims of this research are therefore to:

- 1) examine the present-day situation with regard to the current international drug policy system’s dynamics; and
- 2) based on an analysis of how these dynamics have evolved in the past 10 years, set out possible future scenarios for the international drug control system in the years to come.

¹⁰ Commission on Narcotic Drugs 62nd session, Ministerial declaration on 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, March 2019, available at <https://www.unodc.org/unodc/en/commissions/CND/2019/2019-high-level-ministerial-segment.html>.

2. Methodology

2.1 Literature review

A preliminary literature review of most relevant UN and other government, civil society and academic documents focusing on the international drug policy framework was conducted in order to place the present international drug control system within the context of its historical and political developments; as well as to better understand the tensions and dynamics at the heart of the system today (see the full bibliography in Appendix 4). The review includes setting out how the international drug policy framework has evolved since the Political Declaration and Plan of Action were adopted in 2009 and what this has looked like at the national level. In order to determine this, countries' drug policies and practices need to be examined in more detail.

2.2 Indicators for the current state of affairs of countries' drug policies

With a view to providing a picture of various countries' drug policies and practices, 24 countries were chosen together with the Federal Office of Public Health. A few additional countries were added by the researchers to provide for more information from certain regions, amounting to a total of 33 countries (see Appendix 1, Table 1).

With regard to how to evaluate national drug policies, a first point of reference is the Annual Report Questionnaire (ARQ) which is the key mechanism by which the UN system collects data on various aspects of the world's illicit drug market, in order to monitor and better understand the state of the 'world drug problem'. The ARQ includes information on countries' 'legislative and institutional framework'; 'comprehensive approach to drug demand reduction and supply'; the 'extent and patterns of drug use'; and the 'extent and patterns of trends in drug crop cultivation, drug manufacture and trafficking'.¹¹ Nevertheless, the UNODC has itself noted that there remain considerable problems with the reporting system, not only with regard to the low response rates but also with regard to the significant variation in the quality of data provided (Bewley-Taylor and Nougier, 2018; CND 2010a;). Improving the quality of the existing data is clearly an issue of concern but so is the need to expand the kinds of indicators that are being

¹¹ UNODC, "Annual Reports Questionnaire (ARQ)". Available at https://www.unodc.org/unodc/en/commissions/CND/Sessions-Roundtables-ARQ/Sessions-Roundtables-Arq_ARQ.html.

included in the data collection. The data must also look at the harms associated with the policies trying to prevent the illicit drug markets; and not only the law enforcement process indicators themselves. Hence, wider elements that provide information about a whole range of aspects touched upon by drug policy such as public health, security and law enforcement, respect for human rights, access to drug markets and the consequences of drug policies must be included. This is in line with the Sustainable Development Goals (SDGs) and moving more towards relevant human development indicators to further the establishment and use of more appropriate metrics in this field (GCDP, Position Paper, 2018).

It is along these lines and as a result of the original literature review that was carried out, that the following categories of indicators to evaluate national drug policies were decided upon: public health, law enforcement, human rights, market regulation and unintended consequences (see Appendix 1, Table 2 for further details). Our list of indicators does not pretend to be exhaustive, nor can it represent the full picture of countries' drug policies. Choices had to be made and others may have gathered and categorised indicators differently. We chose to examine the indicators that we considered to be directly related to the international drug control system. This means that certain important questions debated at the national level, such as for example 'prevention of drug abuse' and issues concerning the protection of young persons which are important to Swiss internal drug policy discussions, were not included.

The collection of data according to the selected indicators provides a snapshot of the current state of affairs of the chosen States' drug policies as well as a tool to describe the situation with regard to drug policy for each country. It may also constitute a basis upon which to understand current developments and determine scenarios for what the international drug policy system may look like in the future. It was important to present the same number of indicators per category, so as to not overemphasize one dimension over another. Appendix 2a) includes the detailed results of our data collection for each of the 33 countries examined.

Four of the dimensions: public health, human rights, law enforcement and market regulation directly represent drug policies measures: all of the indicators are actions taken by governments, directly (or indirectly, through the work of NGOs with NSP/OST programs for example) or by the State's resources. The fifth dimension aims to reflect various consequences that drug policies may have on consumers, and thus explains the category's name: 'Unintended Consequences'. We consider this dimension to reflect a sample of the indirect consequences of States' drug policies.

Concerning our data sources, we prioritised internationally recognized sources, starting with the most relevant United Nations Offices (such as UNODC and UNAIDS), institutes working on drug policy questions, significant scientific research studies and world-renown newspapers. We gave priority to UN data since their datasets are usually the most global and inclusive ones, but where robust academic studies were more precise in their data collection or provided information on more countries within our list, we selected those sources. During the data collection phase, it became clear that several datasets vary in quality, because of a lack of data or of standard definitions for certain indicators across countries (within UN data). For these reasons, comparisons are relatively arduous, and conclusions should be drawn with caution. For more details, Appendix 2b) explains the choice of indicators and the selected data sources for each of the 15 indicators.

2.3 Case studies

In addition to the indicators relating to the current state of affairs of countries' drug control policies, a few brief case studies are included to add to the picture and provide a deeper understanding of international drug control policy developments in the past years. It should be noted that our case studies are a summary of events that occurred in countries where major changes were made with regard to drug policy. The countries that have been chosen are Portugal and the Czech Republic for their experiences with decriminalising drugs; and Bolivia and Uruguay for the changes they made in relation to the coca leaf and cannabis, respectively. The examination of these case studies goes to the question of what options exist if a State wishes to legalise a specific substance or make another legal change that would appear to go against what the international drug control conventions prescribe. This point also constitutes a key question in relation to a State's future relationship with the international drug control system as well as what precise role and shape the latter will have in the future, which is addressed in section 4 below.

2.4. Expert interviews on the international drug control system and its future

The second part of this study focuses on the future scenarios for the 'international drug control system'. It is based on the original literature including developments over the past ten years, both at the national and international levels, as well as the interviews conducted with experts in

this field. The specific objectives of the interviews are to: 1) explore how the actors of the international drug control system perceive the system; 2) distinguish their various views with regard to the relevance and importance of the international drug control conventions; and see what they consider to be the current tendencies and directions in which the international drug control system is most likely heading.

Given the provisional and prospective character of this part of the research, the choice was made to approach the questions from an exploratory, inductive perspective, using qualitative research methods, in particular semi-structured interviews. This was based on a number of criteria: in addition to being able to gather in-depth information, the way the interviews were structured meant that the interviewees could use their words freely and answer the questions as they saw fit; to a certain extent, he or she could make use of his or her imagination while trying to project him or herself into the future. This method also enables the researcher to identify opinions, perceptions and ways of thinking that underlie various positions taken by the interviewees. These kinds of dimensions are often more difficult to capture when using other more traditional data collection tools, such as questionnaires or directive interviews which would, in the present case, have had a limiting effect on the person's ability to express his or her views on the questions asked. It is for these reasons that the method of semi-structured interviews, with open-ended questions was chosen.

For the sampling, our choice of interviewees was made in an intentional, non-random manner, based on the following criteria: a) competence of the person, in other words that the interviewee possessed a certain level of knowledge and expertise in the field of international drug control policy; b) practical and operational aspects: the accessibility and availability of the person within the time frame when the research was conducted; c) the exemplarity principle meaning that the objective was to collect information from a variety of actors: representatives of State missions to the UN in Vienna; UN agencies; and international civil society actors. The list of experts interviewed¹² can be found in Appendix 1, Table 3.

The questions focused on: the context of the international drug control system (covering points such as the importance and role of the international drug control conventions); the priorities

¹² Please note that, for ethical reasons, the names and details of the persons interviewed for this study were kept anonymous.

within the international drug control system (for example, how important human rights, health, peace and security, the development, and transnational organised crime are); and future possible scenarios for the international drug control system. For the data analysis, an analytical grid was created in order to compare and contrast the different answers by means of a thematic analysis. The experts' answers were divided up into 3 main categories: 1) perceptions/representations of the international drug control system; 2) recent developments and trends (in the past ten years); and 3) future tendencies. Second, the data was codified and categorised using the ATLAS.ti software and a vertical analysis of each interview as well as a horizontal analysis of all of the data collected was conducted. In this way, special attention was given to thematic and lexical recurrences. Moreover, a typology and classification of the different points of view that were expressed by the experts was established in order to determine the level of polarity of the views expressed.

3. Results

3.1 Snapshot of national drug policies

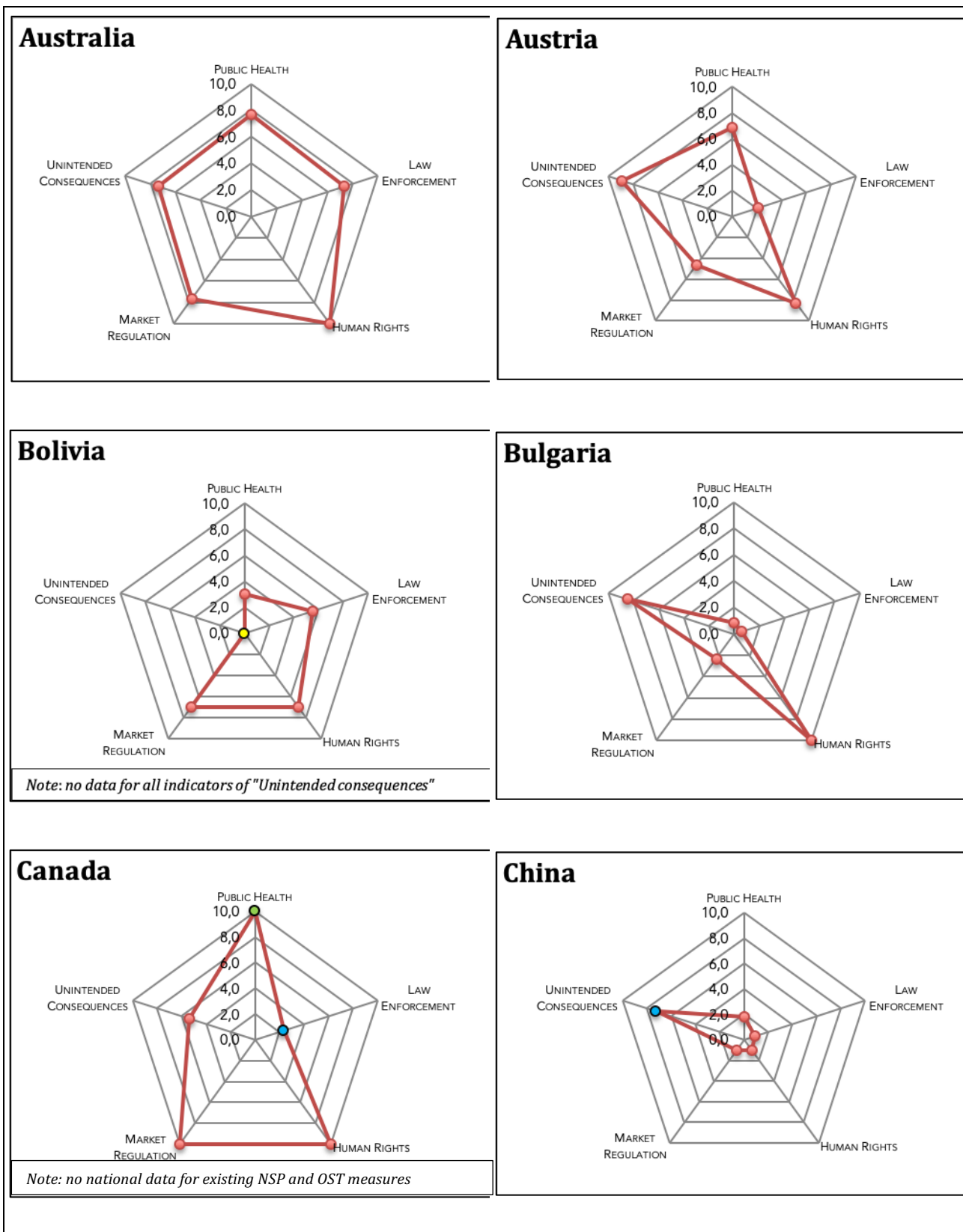
3.1.1 Spider graphs and indicators

The results of the national drug policies evaluation are summarised as ‘spider graphs’, also known as ‘radar charts’ or ‘Kiviat diagrams’. The index and explanation for the scaling of these graphs can be found in Appendix 3. We first developed all 15 indicators on the spiders, and then calculated a mean value for each dimension (based on its 3 corresponding indicators), so as to simplify the data visualization. The objective of the present analysis is to describe general data patterns, based on the spiders. With this analysis, our goal is to compare actual drug policies around the world, in terms of priorities given to various domains, listed in section 2.2 (*Indicators for the current state of affairs of countries’ drug policies*). This may reveal important differences between countries, and therefore possible polarization (or not) in the drug policy debate, depending on the level of divergence or convergence of priorities. A first conclusion from our findings is that a non-negligible number of countries simply do not collect or share much data on drug policies.

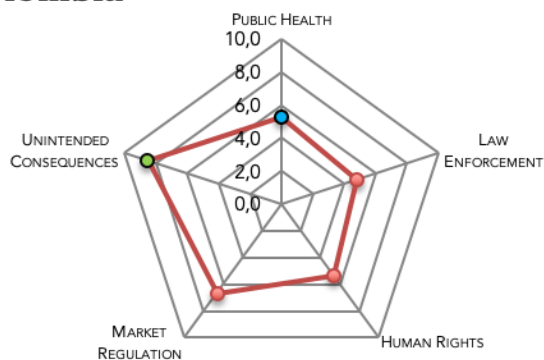
It should be recalled that throughout the spiders, a higher score means that the government is more active in or places more emphasis on a particular domain. The 5-branched-spiders, which show the mean values for each dimension, are presented below. If data was missing, that indicator was excluded from the calculation of the mean. As mentioned in section 2.2 above, the 5th category (‘unintended consequences’) must be understood as a list of indicators indirectly representing the State’s action in this field. If a country has a high score, it means that fewer of these phenomena are observed. In other words, the score is inversely related to the magnitude of the issue. Also, compared to other indicators, lack of data for harm reduction measures (OST and NSP indicators) represented the absence of national data, notwithstanding the existence of such services. Finally, we put colours on marks so as to represent data that was missing for one or more indicators:

- *Blue mark*: lack of data for one indicator (or 2 indicators of the dimension used),
- *Green mark*: lack of data for two indicators (or 1 indicator of the dimension used),
- *Yellow mark*: lack of data for three indicators (represented by a mean score of 0).

Global overview of the spider graphs, by country (in alphabetical order)

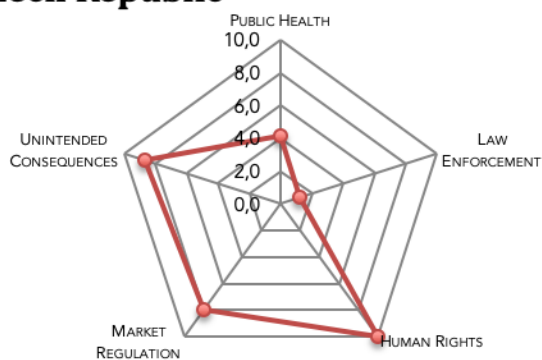


Colombia

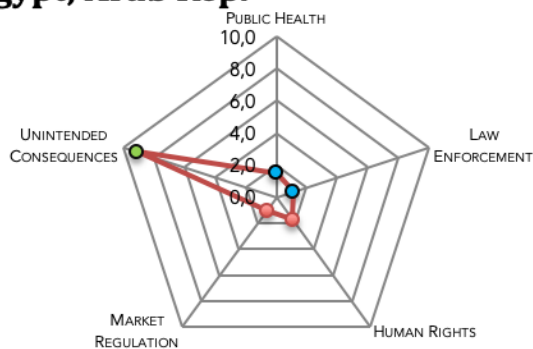


Note: no national data for existing OST measures

Czech Republic



Egypt, Arab Rep.



Note: no national data for existing NSP measures

France

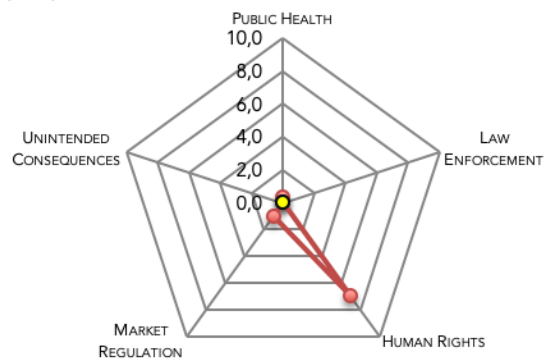


Germany

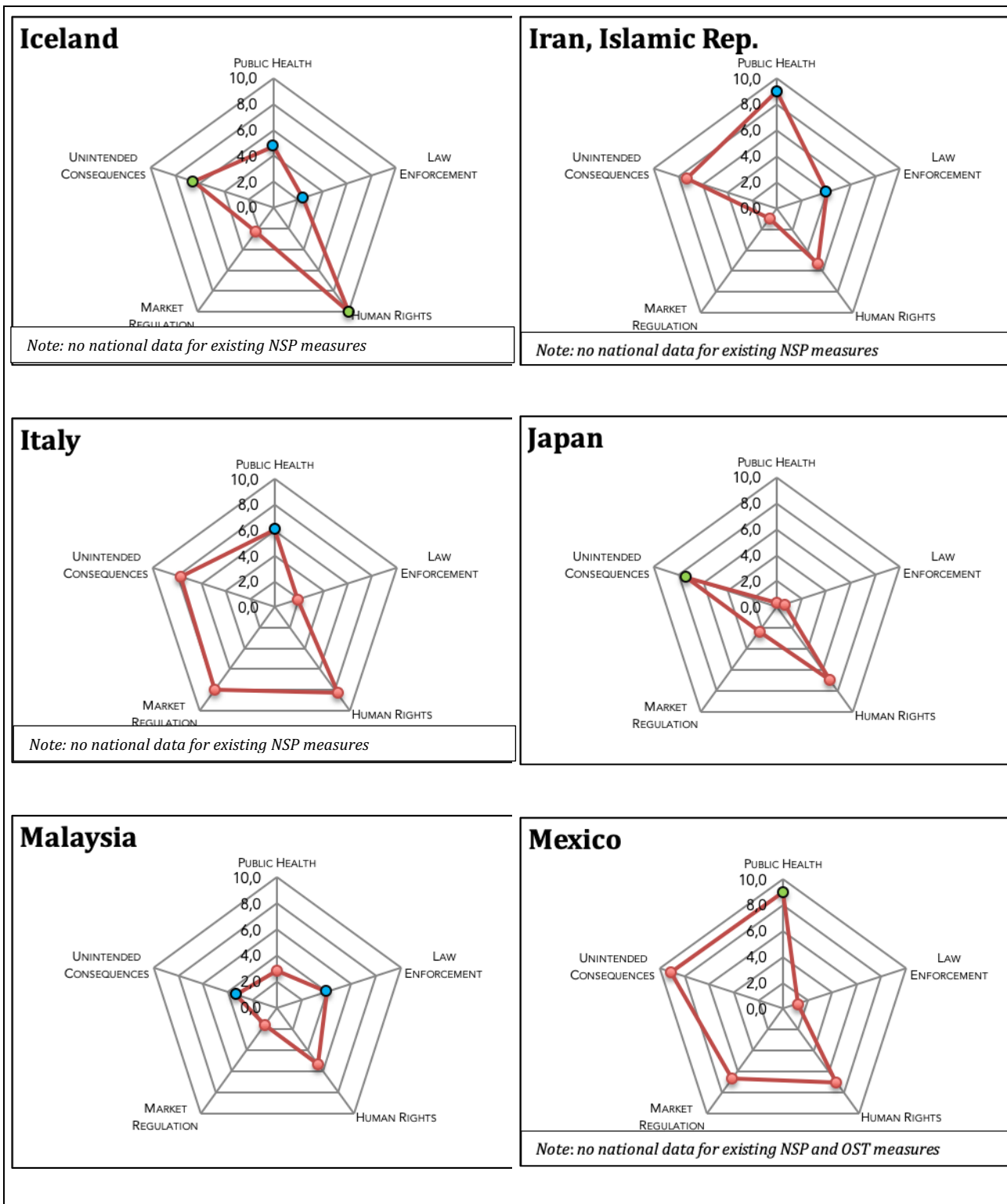


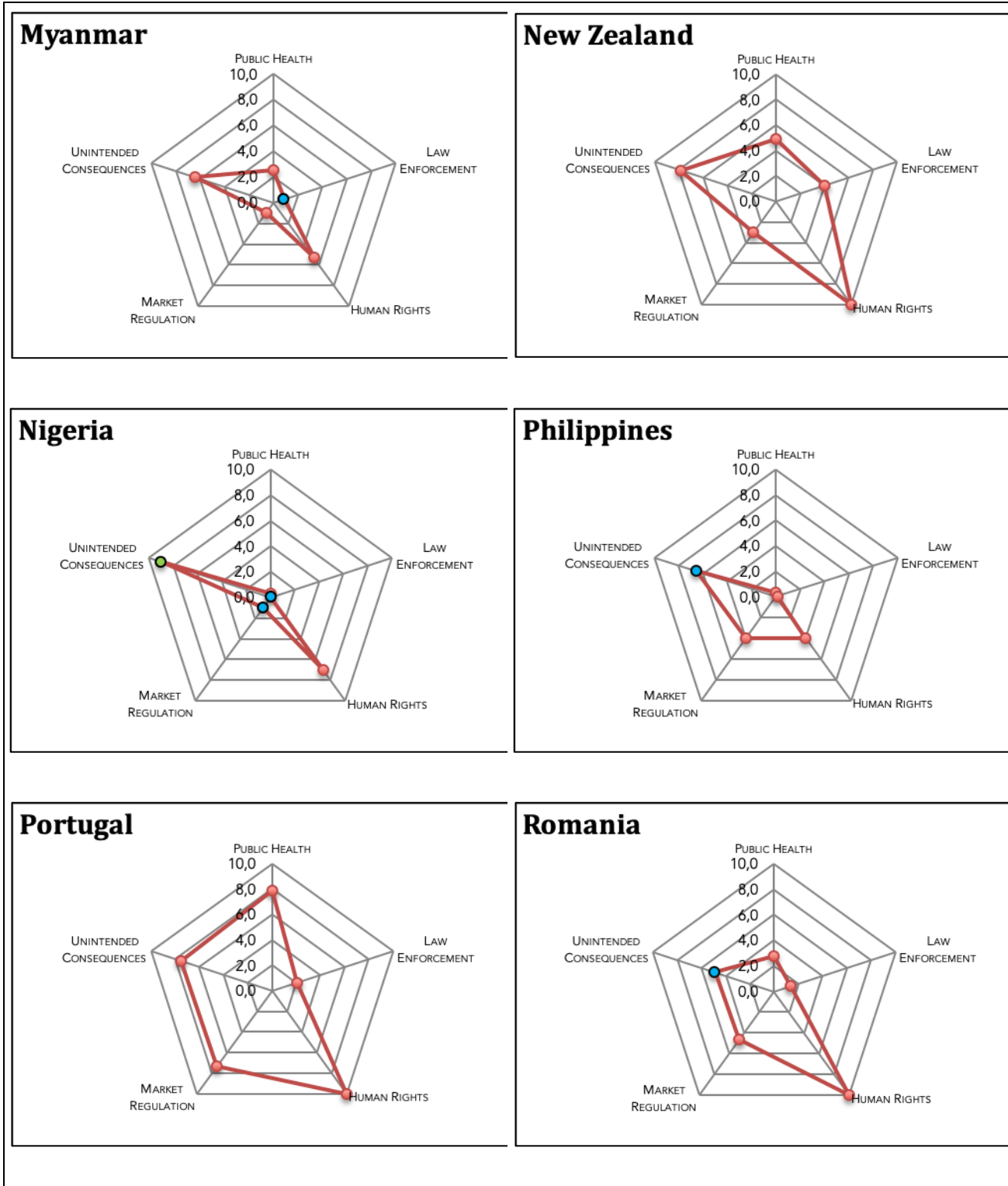
Note: no national data for existing NSP measures

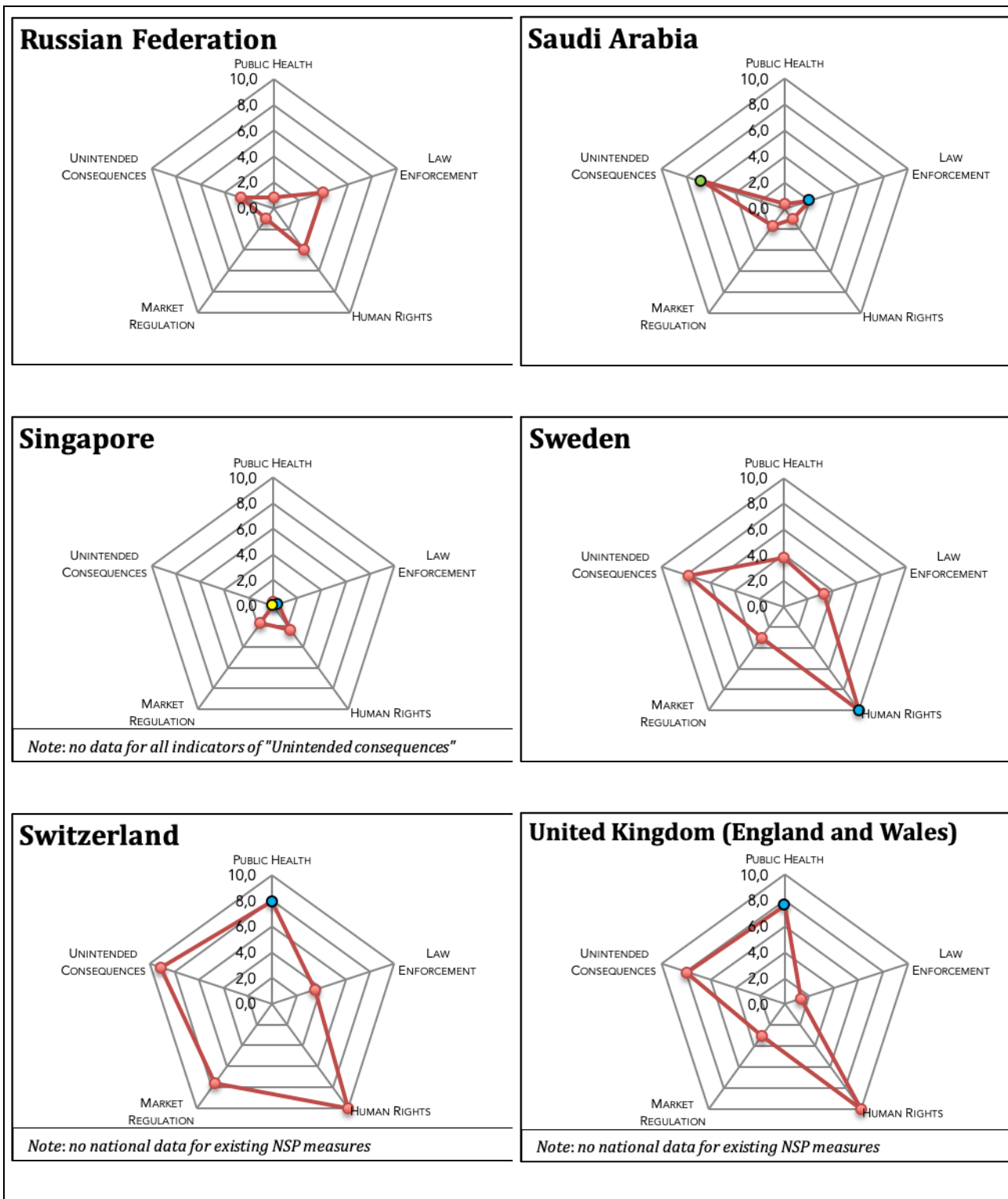
Ghana

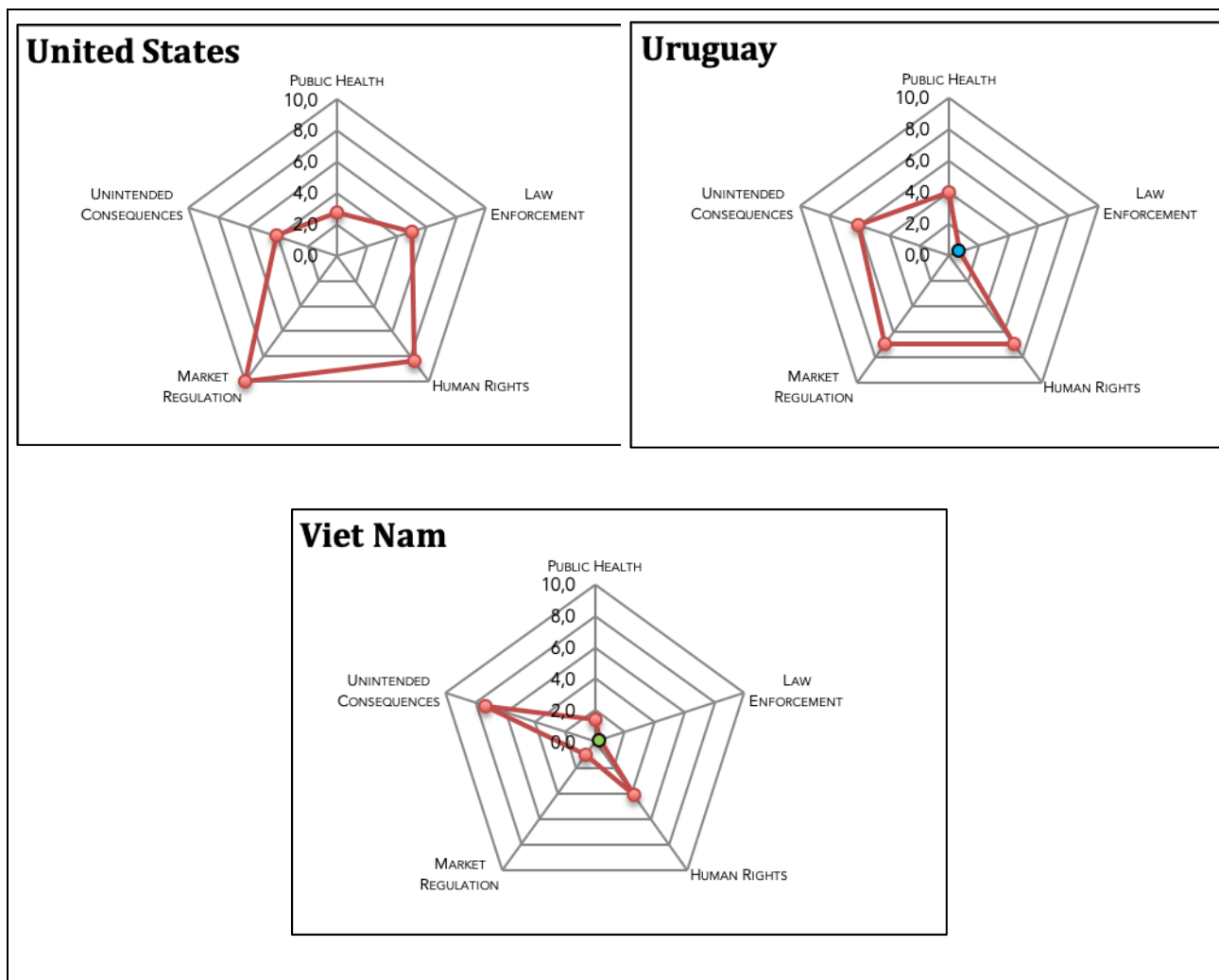


Note: no data for all indicators of "Unintended consequences"









General observations on the spider graphs

The spiders provide valuable information for each of the 33 selected countries. When trying to identify groups of countries, some significant discrepancies in terms of political priorities, or at least an absence of global homogeneity can be identified.

Generally speaking, it is clear that the data patterns present a number of variations. The profiles do not converge towards a generally observable set of priorities, as the international system might expect the countries to follow. Indeed, even from a regional point of view, differences appear. There are some similarities between countries' situations, but a global convergence does not emerge. For example, some countries that pursue health-oriented drug policies, don't support human rights in their drug policies, while others do. This diversity of political priorities can have different origins. First, some countries don't collect or share data on the relevant points examined, while others have precise data collection methodologies. The diversity of data

availability makes it more difficult to describe and compare countries (e.g. Iceland has 5 indicators without data). Then, it has to be remembered that our graphical representations only allow us to visualize and describe countries based on common indicators. The specificities of each country can't be seen on these kinds of graphs, such as for example extrajudicial killings being carried out or the particularly traumatic historical contexts or periods that some countries experience (or experienced in the past). Important societal issues, such as poverty or political instability, may interfere with national drug policies, but are not able to be taken into consideration in our analysis. There may therefore be a number of reasons why some countries present particular scores. Our graphical representations are not intended to explain observed similarities or differences, but rather to inform us about the current priorities that governments are pursuing. Nonetheless, some general observations can be made.

For instance, we can interpret the spiders in the following way: small, constrained spiders represent a lack of existing drug policies, while far-reaching, more extensive spiders point to drug policy being a more prominent policy issue in the particular country. When examining the results of our 15 indicators, for some countries, it appears that they do not have any real drug policy in place, since available statistics are missing. Indeed, the scores can suggest an absence of government priorities or actions: a comprehensive drug policy may not really be implemented in practice. Often, political agendas, without human rights or public health support, promote an important security-oriented rhetoric against drugs, but on our graphs, it rarely appears so (e.g. Singapore). Actually, some countries usually depicted as being progressive when it comes to public health and human rights have higher scores for the 'law enforcement' dimension (e.g. Australia) than other States, generally considered to have more 'repressive' policies.

Similarities and convergences between countries

While the general observation is that there is no homogeneous drug policy, a few similarities observed in the data are nonetheless worth examining in more detail. For certain dimensions and indicators, groups of countries converge into similar scores. This is the case for the unintended consequences-, human rights- and market-related indicators. A few examples are presented below.

Unintended Consequences

With regard to HIV levels, there seems to be a general convergence among Western countries

having lower HIV infection rates among the population of PWID, while Asian countries exhibit higher HIV scores. Even here, a few exceptions must be noted: Russia has the highest HIV score in the list of countries examined, and Romania presents higher HIV prevalence rates compared to other European countries.

Human Rights Indicators

Indicators related to human rights appear to provide the clearest convergence of countries' policies: at the United Nations level, most countries that voted against regarding human rights in addressing the 'world drug problem' at the 37th UN Human Rights Council (UNHRC) session in March 2018 are also the ones that still implement the death penalty as a potential sanction for drug-related offences. These countries are geographically located in Asia, the Middle East and in Africa.¹³ However, here as well, special cases must be singled out: Russia discredited human rights in their statements at the last CND session (March 2019), however the country does not implement the death penalty, unlike the Philippines, which voted against at the UN Human Rights Council 2018 Resolution on drugs. Finally, a major bi-polarization can be observed between countries trying to include and protect human rights in drug policies (mostly Western and Latin American countries) and countries that retain the death penalty or explicitly exclude human rights from drug policies.

Market Indicators

For this dimension, it is essential to note the significant bi-polarization on the topic of access to essential medicines: all Western countries (and Japan) included in our list present at least moderate consumption of pharmaceutical opioids, while the rest of the countries have low to very low or even virtually no access to essential medicines. Another indicator of divergence is the openness to recreational drug consumption, with the most progressive countries being located either in Europe or America. All Asian, African and Middle Eastern countries on our list of countries display prohibitive agendas on the matter.

3.1.2 Case studies of specific countries

The explanations or reasons for "Why is it like this?" are better understood when a country's

¹³ The United States has a symbolic provision where drug offences can be punished by capital punishment. Nevertheless, there are no known cases where this provision has been applied.

drug policy history can be analysed; and even more so when countries have experienced important changes in their drug policies. The primary reason why we chose Portugal, the Czech Republic, Bolivia and Uruguay as the case study countries for our research is that they each experienced major shifts in their drug policies in the last decades. The following short case studies present insights with regard to drug-related health issues (such as HIV prevalence) and public health-oriented drug policies (for Portugal and the Czech Republic), and the political openness to exploring alternative approaches to drugs and respecting human rights in drug policies, in Uruguay and Bolivia.

Portugal

Portugal's present-day drug policy has its roots in the radical shift taken by the Portuguese government at the end of the 20th century, in total opposition to then dominant "War on Drugs" culture that had started in the 1960s. In the past, drug use was not considered a health problem in Portugal, but that changed in the 1970s. Artur Domoslawski (2011) suggests a few hypotheses that could have led to the rise of drug use in Portugal:

- The end of Salazar's dictatorship and a greater openness to the world,
- The return of citizens from the former colonies to Portugal,
- The return of soldiers from the African wars,
- The open growth and use of drugs (mostly cannabis) in former Portuguese colonies.

In the 1980s, the most used drugs in Portugal were cannabis-based products, but heroin quickly came onto the drug market, brought from India and Pakistan through Mozambique, a former Portuguese colony. When the two dominant groups of Pakistani heroin smugglers were arrested, a multitude of smaller groups arose and started to transport heroin from the Netherlands. Thus, the heroin market and their actors became invisible to the government and the authorities found it impossible to stop the flow of substances. At the same time, the heroin consumption method changed from smoking and injecting.

It is at this moment that drug use developed into a political issue and a concern for society. Using and dealing drugs were still on the same level of criminal severity. In fact, drug consumption wasn't that high¹⁴ but Portugal had one of the highest prevalences of problematic use (meaning

¹⁴ Around 8% of the Portuguese population admitted using drugs at one point in their lives at the end of the 1990s, one of the lowest figures in Europe at the time.

consuming by injection, especially heroin¹⁵). The public health issue became more alarming in the early 1990s: with the main HIV infection vector being drug use (and around 60% of heroin users being HIV positive). The perception of the problem was also increasing in importance, because of its visibility. It became so important that, according to a EuroBarometer survey, the Portuguese people considered drug-related issues to be the “main social problem” at that time. During these years, the public and private sectors started to create drug treatment clinics, but syringe and needle exchange programs were forbidden, because they were seen as encouraging people who use drugs to commit a crime. The criminalization and stigmatization of people who use drugs constituted deterrents for people who use drugs to seek out for medical help. As the number of people who use drugs and patients continued to rise, the social concern surrounding drugs grew into a political issue followed by important debates. In 1998, this led the government to respond with the appointment of a committee of specialists (notably social activists, psychologists, sociologists, lawyers and doctors), that presented their recommendations eight months later. A new philosophy was proposed: the committee agreed on the fact that drug use has negative impacts on public health, but drugs don't require people who use drugs to be incarcerated at high levels. Since criminalizing use prevented consumers from undergoing treatment, they advocated for complete drug use decriminalization. “Fight the disease, not the patients” became the new rule. This recommendation was followed by the government, which created a Dissuasion Commission to substitute for criminal courts for drug-related cases. Furthermore, the State started to finance more than 60 harm reduction projects, mostly subcontracted to NGOs. The government finally transformed their new philosophy into a new law in 2000 (known as Law 30/2000), which passed in 2001, and which legally decriminalized drug possession, acquisition and consumption for personal purposes.

While certain politicians regarded this new policy as problematic (warning that drug use would rise and that Portugal would become a drug-tourism country), the aftermath of this shift was globally positive, as presented by George Murkin (2016) from the Transform Drug Policy Foundation. Indeed, newly diagnosed HIV cases among PWID declined from 1'016 cases (in 2001) to 56 (in 2012), and a similar downward trend was observed for Hepatitis C and B among clients of drug treatment centres. The level of drug use in Portugal is still below the European

¹⁵ Among 16 to 18 years olds, the prevalence of heroin use was 2.5% (1999). In 2001, around 0.7% of the Portuguese population was estimated to have used heroin at least once in their lives, the second highest figure in Europe, after England and Wales (1%).

average, and it actually decreased for the high-risk population (15-24 years old), as did the rates of past-year and past-month drug use among the general population. In addition, the drug-related deaths¹⁶ dropped from 80 (in 2001) to 16 (in 2012) and the number of drug offence cases sent to criminal courts declined from 14'000 (in 2000) to around 5'500 to 6'000 (in 2012).

Portugal's example reveals that the political and cultural backgrounds of a country are crucial to understand the actual drug policy shift in a country. In the case of Portugal, the country faced an urgent public health problem and decided to implement a national strategy that went against the mainstream approach of the international system. The discussion explains why the country has implemented a widespread harm reduction system and approach, a low judicial-oriented policy, and how it dealt with high HIV infection rates among PWID. To respond to what was happening in the field, the Portuguese government privileged its own practical solutions, and for that had to drift away from INCB's recommendations.

Czech Republic

Our primary source for the Czech case study was Joanne Csete's (2012) research on Czech drug policy history. After the Second World War and the Communist takeover of the Czech State, the Soviet approach to drugs could be summarised as one of denial and repression of drug use. Drugs were considered a sign of "Western democracies' decadence". Even if the 'iron curtain' limited the drug flow coming into the country, the manufacture of drugs was present in Czechoslovakia. In the 1960s, codeine, ephedrine, benzodiazepines and barbiturates were commonly used in some Czech cities. An increase in popularity of homemade opiates (hydrocodone-based) and crystal methamphetamine (also known as 'pervitin', a widely used drug during World War II) occurred during the 1970s, until pervitin dominated the drug scenes in the 1980s. During all those decades, treatment services for people who use drugs were limited. It was not until 1987 that a psychiatrist, Dr. Skála, started providing needle exchange programs and substitution therapies for people with opiate dependence. His approach was based on the inclusion of patients in the choice of therapy, in opposition to rigid Soviet-inspired health services. In 1989, the rule of the Communist government and its role as a Soviet puppet ended, leading to the establishment of the newly created Czech Republic. As new freedoms emerged from previous repressive politics, the Penal Code was reformed, notably with the abolition of the death penalty

¹⁶ Here, drug-related deaths represent the deaths caused by drug use ("*as a result of the use*"), which is clinically assessed, and exclude the deaths where traces of drugs were present in the body.

and the decriminalization of drug possession for personal purposes. At that time, drug policy was not an important societal debate, but this changed with the new openness to the world. As depicted by Dr. Pavel Bém, former national drug coordinator and future Mayor of Prague:

“Under the previous government, certain social problems were purposefully ignored or simply suppressed to the point of non-recognition. Drug abuse is among those problems and just as we are learning the fine points of the free market system, we find ourselves newcomers to the role of fighting drug abuse and drug traffic.” (at the Conference on Drug Abuse, Paris, 1991)

As the previous hydrocodone-based drugs were replaced with heroin coming from outside the country, Prague became a transit point for cocaine and pervitin continued to be popular. The media presented the growing drug scene as a societal problem and drugs turned into a political issue. The health sector and addiction therapists such as Dr. Skála became more and more overwhelmed with people’s growing health needs related to drug use. In 1992, health professionals working in the field of addiction and NGOs sent a Memorandum to the government, alerting it to the worrying drug policy situation and lack of adequate legal framework; and said they would be willing to help address the issue. The Czech government acted quickly and created the National Drug Commission (NDC), an inter-ministerial entity, mandated to build and coordinate a national drug policy. The adopted approach was to abandon criminal sanctions for drug use and develop health services for drug consumers, including harm reduction services. Increasingly, drug issues, including drug use prevention, came within the scope of the Ministry of Health. On a local level, drug coordinators worked with district drug commissions. In 1995, a UN assessment program noted an increase in heroin consumption in the Czech Republic but stated that pervitin was still the most used drugs in the country. The INCB and certain Czech political parties became more and more opposed to the adopted philosophy of decriminalization, and under pressure, the Parliament passed a bill in 1998 criminalizing drug possession, but only when drug amounts were considered ‘greater than small’. This preserved some form of decriminalization for personal possession. Following this slight shift, the NDC launched a major scientific evaluation of the new law’s impact. The research questions focused on the relationship between the criminalization of drug possession and the effects on availability, consumers, health consequences and social costs. Their conclusions came out in 2001 as follows: the availability of drugs didn’t decrease, the drug consuming population

increased, there was no reduction of new cases of drug use, and the additional ‘social cost’ was estimated at around 1 million US\$. Finally, the research also suggested making a distinction between types of drugs. The government reacted to the report and asked the Ministries of Health and Justice to propose such a distinction, which ended up being the differentiation between cannabis and other illicit drugs. The Criminal Code was revised but not until 2009, since important legislative efforts were being made for the Czech entry into the European Union. Sentences for possession of cannabis quantities ‘greater than small’ softened. Details regarding the actual decriminalized quantities followed and were proclaimed by a Government Decree.

Among the people entering drug dependence therapy, about 60% were using pervitin, 23% heroin and 18% cannabis. Cannabis consumption in the Czech Republic is one of the highest in Europe,¹⁷ but the most problematic drug remained pervitin, which is often injected. Interestingly, HIV prevalence among PWID in the Czech Republic was reported at below 1% (in 2010), unlike other European countries (especially from the former Soviet bloc) where it was much higher. Experts interviewed in Csete’s study (2012) agreed that this could be associated with the early availability and accessibility of low-threshold harm reduction services. Around 30% of ‘problematic drug users’ are in the capital, Prague, which encompasses many health and social services, which were supported by Dr. Bém as the Mayor of the city. This could also explain the aforementioned good level of low-threshold service coverage.

Bolivia

During the 1980s, Bolivia’s drug policy was very much aligned with the United States’ philosophy of the ‘War on Drugs’. Coca growers were pursued and sometimes even killed by the special military-like units of the UMOPAR (*Unidad Móvil Policial para Areas Rurales*), Bolivia’s anti-narcotic police. The government at the time was supported by the United States and the DEA (*Drug Enforcement Administration*) on the ground to eradicate coca fields. Multiple human rights violations are suspected to have taken place until the early 21st century in Bolivia.¹⁸ In fact, the crop eradication plan was a failure: the Andean Information Network estimates that at the end of the 1990s, for every hectare of eradicated coca field, another 0.63 hectare was replanted. At the time, future President Evo Morales defended the Cocalero Union (including coca farmers). After winning the elections in 2006, President Evo Morales made a speech denouncing the

¹⁷ In 2009, the estimated « last year » prevalence of cannabis use among 18-24 years old was 38%.

¹⁸ Andean Information Network, “Human Rights and the War on Drugs”, available at <http://ain-bolivia.org/2007/01/human-rights-and-war-on-drugs/>

prohibition of coca leaf chewing and showing a bag full of coca leaves to UN delegates.¹⁹ He stated that his government would support the control of coca leaf cultivation, but not a complete prohibition of the plant like before. Again, at the CND in 2009, President Morales urged countries to acknowledge the historical mistake of prohibiting coca leaf chewing and comparing it to an addiction in the 1961 UN Convention. Indeed, coca leaf chewing is often referred to as part of Andean natives' culture. In 2011, Bolivia took the unprecedented step of withdrawing from the UN Drug Control Conventions, to later re-join with a reservation for the coca leaf. In doing so, it followed-up on already having instituted a system of 'social control' of coca leaf production domestically. The Bolivian case represents an important shift in drug policy based on the cultural use of drugs, and defending a philosophy rooted in human rights.

Uruguay

In the 1970s, Uruguay followed the path taken by other States (such as the Netherlands) and stated that cannabis-related issues were a personal matter and that cannabis use didn't affect others. The conclusion that drug use and minor drug possessions (which wasn't defined) shouldn't be criminalized was made official in 1974 by Law 14.294. The Uruguayan government further developed its drug policy in the 1980s by establishing an inter-ministerial entity called the National Drug Council (*Junta Nacional de Drogas*, or JND), whose mission was the effective fight against narcotrafficking and drug dependence. This changed with President Batlle (2000), who focused on a harm reduction approach and made the JND more open to drug policy debates. Years later, another President fast-forwarded these changes: José Mujica, a former anti-system guerrilla who was imprisoned during the dictatorial period (1973-1985). At the end of the dictatorship, Mujica became a politician, joining the *Frente Amplio*, a left-wing coalition. When he won the 2010 elections and started his Presidency, he promoted social tolerance through multiple projects, such as the legalisation of abortion, and the reconciliation with former officials of the dictatorship. The plan for a State-regulated cannabis market was also one of his proposals.

The next year, the Parliament voted on a draft bill, which proposed the establishment of a legally regulated cannabis market. President Mujica's government was the catalyst for this change, even if the majority of Uruguayans were against the proposition at the time.²⁰ Mujica argued that it

¹⁹ Noticias ONU, "Presidente de Bolivia defiende derecho a cultivar coca", Available at <https://news.un.org/es/story/2006/09/1087541>

²⁰ Le Point, "'Pépé' Mujica, le président qui ose legaliser le cannabis", available at https://www.lepoint.fr/monde/pepe-mujica-le-president-qui-ose-legaliser-le-cannabis-09-08-2013-1712724_24.php.

was a public health solution: that it brings people who use cannabis out of the shadows and makes it easier to help those who need it the most, by treatments funded by the money made from the regulated sale and trade of cannabis. Also, it was a solution made to fight the drug traffickers' market and its related violence. Finally, the plan provides for more tolerance towards medical and personal use and social club cultivation of cannabis. The regulation system was to be supervised by a newly created body, the IRCCA (*Instituto de regulacion y control del cannabis*). This institute is headed by the JND and the Ministry of Health, and manages the production licenses, the distribution in drug stores and the registration and anonymisation of users. Also, it aimed to study drug use tendencies across the country. This regulation system is completely reserved for Uruguayan nationals and therefore forbidden to all foreigners, so as to prevent "drug tourism". The project was made official in 2013 by Law 19.172 of the Uruguayan Parliament, which came into force in 2014. The INCB criticized Uruguay's drug policy shift in 2013, since cannabis was only to be used for medical or scientific purposes. The government argued that it based its approach on health and human rights principles, and appealed to the precedence of human rights principles over drug control obligations.

Also, in terms of security, it was noted that there were no deaths related to cannabis use, but instead 80 violent deaths were recorded related to drug trafficking. Uruguay's move coincided with similar shifts in the U.S. States of Colorado and Washington, and a few years later in several more American States.

It is difficult to evaluate the impact of this shift in drug policy. Since the beginning of the 21st century, the use of cannabis has become increasingly popular, going from 0.5% (in 2001) to 6.5% (in 2014) for 'last-month use' estimates (Junta Nacional de Drogas, 2016). More time would be needed to study the influence on drug use and illegal cannabis markets. What is clear is that Batlle's focus on public health and Mujica's will to change the drug policy were the major reasons why Uruguay adopted its present approach. Even if it went against the UN Conventions, the Uruguayan government defended its own interests first: protecting its citizens from drug cartels and from drug addiction, by shifting to a State-regulated cannabis market. It should also be noted that former President Mujica warned that if this shift didn't meet the expected results, the government should change its course, always looking for practical solutions and avoiding building policies solely upon moral values.

3.2 The international drug control system

3.2.1 Drug control system: representations

Stemming from the idea that individual perceptions and social representations constitute specific indicators that can reveal convergences and divergences of views, as well as complementarities and tensions with regard to the international drug control system, the main themes that emerged from the expert interviews were identified, classified and compared.

The first point to note is that the majority of interviewees were in agreement that the international drug control system is firmly based on the 3 UN Drug Control Conventions. A second, cross-cutting theme that transpired was the discrepancy or gap between discourse and practice on the one hand, and between the symbolic level of the normative system (the set of rules and norms relating to drugs) and the realities on the ground on the other. 'Realities', in plural, precisely because of the diversity of national socio-cultural, political, geographical and economic contexts. Indeed, the majority of interviewees highlighted this point. Nevertheless, perceptions converged on certain matters, exemplified for example by the views expressed by an international civil society expert and a delegate from a permanent mission to the UN conveying how on the one hand, in the past few years a number of - primarily Western - countries have progressively been paying more attention to health and harm reduction services for people who use drugs, notably with the implementation of heroin-assisted treatment programs for example, at the same time others adopt a completely different approach, manifested for instance by application of the death penalty for drug trafficking cases.

Very few (three) interviewees described the drug control system in a neutral and purely descriptive manner. When asked to characterise the current international drug control system, the majority of experts made interpretative judgments and voiced criticism of the system, adjectives such as 'restrictive', 'repressive', 'dogmatic', 'obsolete', 'retrograde', 'ideological' or 'inward-looking'. With regard to the perceptions of the three Drug Control Conventions, experts shared widely diverging opinions, which were in complete opposition at times. For example, one expert stated:

"Certain trends are happening where Member States are clearly acting in contravention of the Conventions. I speak specifically of cannabis, that really is something which for non-medicinal and non-scientific use, that is of serious concern to us because that gives the impression that it's alright. It's sort of eroding and undermining the role or sanctity of the Conventions. We see that as serious threats to the International Drug Control

System.”

This points to the sanctification of the Conventions by some States. At the other end of the spectrum, another expert pointed to the dynamic and adaptability of the international system's normativity:

“Conventions cannot be written in stone. Even the Bible has been updated several times. One day, maybe, Russia and those like-minded countries are the biggest threat towards the Conventions because if they don't allow any kind of flexibility whatsoever, you will have the Canada solution more and more often, and you will have destroyed the Conventions, or they will become very weak.”

Even if these two representations can be said to be at opposite ends of a continuum, they nonetheless both agree that threats exist which may lead to the weakening the system. Profound levels of divergence between countries stem from the root and nature of the 'threats'. For example, in the first case just mentioned, the threat consists of States not complying with the Conventions, while for the second, it is the inflexibility of the positions and interpretations of the Conventions by some countries that behave like watchdogs or guardians of the treaties which may lead other countries to ultimately break their international obligations. In other words, both change and continuity of the system may be perceived as potentially undermining factors.

This is also in line with the tension voiced by a number of experts: between the will of some countries to keep the Conventions exactly as they are, in order to protect the common basis upon which States are expected to cooperate, and the will of others to elaborate new forms of drug policy that better respond to their national and local needs. The following two statements illustrate precisely this tension:

(Expert 1) *“It's time for Member States to stand up and share their concerns. The Conventions should be maintained as they are, as a basis of more international cooperation. If you start to push them, there's the fear that these Conventions end up very disintegrated and that there will be no common basis”.*

(Expert 2) *“We had a domestic situation that wasn't ok, and not addressing it would put Canada frankly philosophically out of the line with the core of the real goals of the framework. We had unacceptably high use, unacceptably high use among youth, and no public health interventions. So as far as the whole system that helps the Conventions function, this situation for Canada was out of line. Maybe it's Canadian but you had to do something. It's a consideration that Canada continues to take very seriously, but where*

the option wasn't on the table and we chose the least bad option. And we continue to be open and transparent to everybody asking, like INCB, about the position and how we intend to strictly regulate access."

In addition to these essential differences, most experts denounced the absence of human rights and health-oriented goals in the Conventions. They also lamented the fact that the treaties do not take into consideration national and regional characteristics, contexts and issues. These points are discussed in further detail in the following subsection.

3.2.2 A polarized system

When examining recent trends and priorities within the international drug control system, one central theme stood out from the different perspectives, opinions and interpretations that were shared: polarization. Even though the experts' points of view differ considerably – for example, one representative wholeheartedly reaffirmed the important role the Conventions play in the construction of a 'drug free society', while another fundamentally called into question the same Conventions and their objectives – most of the interviews revealed a number of discrepancies and divisions with regard to drug policy. Several dimensions may be considered as sources of this polarization. These dimensions are not necessarily mutually exclusive, but run through the international drug control system.

Strict prohibitionist versus pragmatic interpretations of the Conventions

The first point of divergence may be characterised as an ideological opposition between those States vehemently defending a narrow and punitive-based interpretation of the Conventions, and morally speaking working towards the ideal of a 'drug-free society' – and those supporting a broader and more pragmatic interpretation, in the sense of exhibiting an openness to referring to and incorporating other internationally agreed instruments such as the Universal Declaration of Human Rights that may compete with or diminish the Drug Control Conventions' relative importance.

Even if new trends have been developing in the past ten years, an expert pointed to the significant resilience of the prohibitionist approach which has been the predominant interpretation of drug policy at the international level since the Conventions came about. Confirming this imbalance, the majority of interviewees considered 'law enforcement' to be the dimension that has been and is still given highest priority within the international drug control

system.

Policy priorities: national versus international drug issues

The experts' answers with regard to how they perceive the main drug issues in the world today were very diverse: most agreed that, while drug use (and transnational organized crime) is unquestionably a global issue, the real challenges are primarily regional and national in nature. Along these lines, the high violence rates of drug-related crimes in Mexico, for example, are not observed in Norway, where the main concern is heroin injection and its related health risks and this makes a difference in what countries consider to be drug policy priorities in their countries, as well as internationally. Of course, even if some experts praised the advances made with regard to human rights now being taken into more consideration internationally (at least notionally), many denounced the multiple human rights violations in the name of prohibition, as exemplified by the extrajudicial killings that are taking place in the Philippines, representing one of several examples of severe human rights violations occurring in the name of drug policy. Moreover, there may be variations in how much attention is given to certain drug-related issues, based on the magnitude of the negative drug policy-related consequences experienced by a country or region. One expert illustrated this point by highlighting that:

“There may be also more regional variations, since health issues that drug policy worsens and underscores vary somewhat, like the overdose crisis in America is driving a big discussion on drug policy, it is not having the same prominence in certain parts of the world, but other bad things like HIV HEPC in Eastern Europe for example are.”

Heterogeneity of national policies and practices

The results of the examination of country priorities, policies and practices, illustrated in the spider graphs reveal a wide heterogeneity of national policies and practices. For example, there is no homogeneity of harm reduction measures (OST-NSP) between countries, with figures varying from no harm reduction measures at all to extensive implementations (more than 600 needles/PWID/year for example). Nor was a homogeneity of market regulation apparent, with profiles revealing policies at different ends of a market regulation spectrum: prohibition of medical use of cannabis at one end and legalization of cannabis in a few countries at the other (along with the legalisation of coca leaf in Bolivia for example). Law enforcement measures also showed significant variety, with a high disparity revealing that most States in fact are not that

active in strictly implementing drug policy security measures. The case studies provide a good illustration of how countries have adopted drug policies that respond to their national needs and that may in some cases be either more public health and human rights-oriented for example, often distancing themselves from a strict prohibitionist reading of the Conventions. Others, such as Saudi Arabia and the Philippines, are sticking to repressive drug control policies, once again revealing a lack of homogeneity among States.

Another important point related to national policies and practices relates to the importance of cultural and historic contexts. With the scaling up of the War on Drugs and the toughening of drug laws around the world after the 1988 Convention, an increasing number of countries started to turn away from the Conventions' repressive approach in practice and presented various proposals for reform at the national level. The drive started in European countries, Canada and Australia, where harm reduction programmes (including needle exchange, methadone substitution therapy, safe drug consumption rooms) were introduced and grew to become accepted as a crucial part of the countries' drug policies. Another type of national-level reform that was carried out was decriminalisation, as explored in further detail in the Portuguese case study. Since that time, more States have adopted similar measures and, in several countries today, the possession of psychoactive substances for personal use is no longer a crime. Moreover, some States have started to review their drug laws to introduce human rights and the principles of proportionality in sentencing. Major proposals to reform drug control laws have also been implemented in Latin American countries, illustrating further moves away from a strictly prohibitionist reading of the Conventions.

Finally, in terms of national policies and practices, what appears from the literature review, the country profiles and interviews conducted for this report is that notwithstanding the present lack of a common and shared understanding on international drug policy, a few informal groupings, on specific subjects are forming. For example, in recent years, there has been a growing consensus on the topic of access to essential medicines, as evidenced by the 2010 CND Resolution 53/4, focusing on promoting adequate availability of controlled medicines²¹ and

²¹ Commission on Narcotic Drugs Res. 53/4, Promoting Adequate Availability of Internationally Controlled Narcotic Drugs and Psychotropic Substances for Medical and Scientific Purposes While Preventing their Diversion and Abuse (Mar. 12, 2010) http://www.unodc.org/documents/commissions/CND/Drug_Resolutions/2010-2019/2010/CND_Res-53-4.pdf. See also Res 54/6 https://www.incb.org/documents/Psychotropics/Resolutions/CND_Res-54-6.pdf

calling on States to take steps to improve the availability of narcotic drugs for medical purposes, in accordance with the recommendations of the WHO. On another subject, the fact that the 2018 figures on the death penalty for drug offences has shown a significant downward trend in recent years, with known executions falling below 100 globally (HRI, 2018) can be seen as an area of concern where relative levels of consensus can be seen to exist.

International drug control conventions versus national legislation

A further element that came out of the interviews as constituting a factor underlying the polarization of the system, is the reaffirmation by certain countries of the primacy of the Drug Control Conventions, while others place a higher value on national legislation and local needs, interests and priorities. As one expert shared:

“I will say that, I personally would like to see more openness by those countries that deal with their issues and try to accommodate to their new concerns, but I don’t see that. On the other sides, countries that were innovating, they’re not doing it to challenge the regime, but for many reasons: public health, human rights approach, for Mexico it is the violence. In Canada, they’re not thinking « we want to challenge this », but for national reasons. It’s not going to be easy in the near future to say: « The regime is changing », it’s going to be on a more local and national level, like co-existing.”

The observation that ultimately countries need to respond and adapt to their national situation regardless of what the UN Conventions prescribe was a position commonly held by the interviewees. As another expert stated, the national interest will more and more be put forward in the debate:

“(…) but I think that some countries like Bolivia are going that way: they’re fed up, they’ll say « We respectfully withdraw from the Conventions, they’re not in our national interest, our national interest is best served by X-Y-Z ». And I think that’s what’s gonna happen at some stage. Our effort should be at the micro level.”

Several academics have addressed this topic of legality, confirming that although States may have certain obligations under international law, domestic law remains determinant (Bewley-Taylor and Jelsma, 2012; Krajewski, 1999).

In conclusion, even if the theme of polarization of the system can be found throughout nearly all of the interviews, there are naturally variations in how this polarization is perceived. Indeed, some of the persons interviewed see the present dynamics as a real threat to the stability of the

international drug control system, with the erosion of the previously existing (prohibitionist) consensus, while others consider the current polarization to be the manifestation of a fundamental inadequacy between the international drug system's normative aspirations and States' social, political and even historical realities.

3.2.3 An unquestionable failure

The results of the literature review and the interviews conducted for this study reveal that the objectives of the international drug control system, which had two main aspects: the limitation of production to legitimate purposes and the prevention of the illicit traffic, have not been met (House of Commons Home Affairs Select Committee 2002; IDPC 2018; Bewley-Taylor, D 2012). The commitments and targets set out in several UN documents (such as the Political Declaration on Countering the World Drug Problem adopted in June 1998 at the 20th Special Session of the United Nations General Assembly and the December 2009 Political Declaration and Plan of Action) have not been achieved. Instead, in many cases, the goals have resulted in punitive law enforcement, militarization, mass incarceration, forced treatment, and other negative and counterproductive policies. The 2009 Political Declaration and Plan of Action specifically set 2019 as the target date 'for States to eliminate or reduce significantly and measurably' illicit drug supply and demand, the diversion and trafficking of precursors and money laundering. However, none of the targets have been met. For example, with regard to the goal of eradicating drugs, UNODC, in its 2017 World Drug Report, clearly stated that the 'drug market is thriving', i.e. the opposite of what the international objectives were aiming for. Hence, the system can now be considered a failure. As one expert highlighted:

"By the measures that prohibition, of eliminating or significantly reducing the production and sale and use and so on of various substances, it will ultimately fail as it has failed so far. There's no reason to think that somehow something different will result, even if you do more of it. But more money will be spent, more effort will be made in pursuit of those objectives... It depends on what you define as your response and the success of that response, to an important problem."

With regard to the system, another interviewee noted:

"(...) it {organized transnational crime} will continue to be used as a justification for more of the same failed approach, contributing to more harm and deaths in communities."

Moreover, the traditional indicators prescribed by the international drug control system that are used to monitor the ‘world drug problem’ and which focus exclusively on measuring the scale of the illegal drug market, are not sufficient to paint an accurate picture of drug policies and practices today (Bewley-Taylor, D and Nougier, M, 2018 2018). The measures currently used by the international drug control system do not provide insight into the impact of drug policy on the key UN Charter commitments to health, human rights, development, peace and security (IDPC, 2018). As one expert put it:

“The failure to effectively counter the ever-growing problems related to the abuse of illicit drugs has led countries to call current, ideological policies into question and to experiment with more pragmatic approaches.”

In other words, the common and shared understanding with regard to the goals set out in the relevant drugs-related UN documents no longer exists. The case studies referred to in section 3.1.2 reveal that States have implemented measures according to different interpretations of the Conventions, no longer adhering to one, single view or understanding as was first the case with the prohibitionist interpretation of the Conventions that quickly grew to be the dominant approach of the international community. Along similar lines revealing fractures in the system, the ‘Vienna consensus’ which up until the end of the 2000s could be said to characterize the nature of international drug policy discussions at the Commission on Narcotic Drugs (CND) in Vienna, no longer exists.²²

3.2.4 In search of a new leadership

With regard to leadership, there no longer seems to be the same level or strength of leadership that existed at the time the Drug Control Conventions came into being. Indeed, the ‘War on Drugs’ approach, which for so long dominated the international drug control system approach to drugs, had been initiated by the United States. However, since then, the U.S. has changed its position. It no longer holds the leadership position it once did, in terms of providing clear guidance for where the States and the international drug control system are headed. As one interviewee put it:

“(...) the US government, I mean we were the leader of the War on Drugs, handed off the baton to Russia, we stepped back with Obama as leaders of this war as they promised. Russia seized that baton. And so, there’s this legitimization of a highly punitive approach and then with

²² Note, the ‘Vienna consensus’ meant that the final wording of a CND Resolution was only as strong as the agreed language of the lowest-common denominator.

what's going on in Hungary, in Poland, in Brazil, examples of countries going in a backward direction."

With regard to the future goals of the international drug control system, the Ministerial Declaration 2019 that came out of the High-Level Segment of the 62nd CND in March 2019, is distinctive in that, unlike the high-level gatherings before it, which had produced the UNGASS Outcome Document or the Political Declaration and Plan of Action of 2009, it did not set out a plan of action for the coming years. This lack of future strategy is in opposition to the clear plans of actions found in the 1998 and 2008 UNGASS gatherings.

It is also worth referring to the Global Call of Action on the World Drug Problem, led by the Trump administration and co-sponsored by 129 States, on the 24th of September 2018 at the United Nations General Assembly in New York, which called for a return to the 'War on Drugs' paradigm.²³ The non-negotiable text had not been the subject of any consultation between States, in opposition to the extensive multilateral negotiations that go into drug policy documents agreed by States at the UN. The Trump initiative can be considered an attempt to demonstrate a consensus that no longer exists, including among a number of the signatories, who were apparently heavily pressured to sign onto the statement. Of further relevance in terms of illustrating the contested global vision on international drug policy priorities, the Call stands in stark contrast with the Global Commission on Drug Policy's 2018 report *Regulation* which was launched in Mexico City on the same day. The report examines how governments can move to regulate drugs as a realistic and responsible alternative to prohibition and provides avenues for countries to move forward in line with the United Nations goals of peace, development, and human rights for all.

4. International Drug Control System: future scenarios

4.1 Evaluation of treaty reform scenarios

²³ The Intercept, 'Trump Gets 100 Countries to Sign On to His U.N. Drug War Plan, Ignoring Changing Thinking on Human Rights and Legalization'. Available <https://theintercept.com/2018/09/25/donald-trump-united-nations-drugs>.

One of the primary objectives of this research was to set out possible future scenarios for the international drug control system. As has been seen previously in section 3.2.2, the consensus that for so long prevailed at the international level in the form of the dominant prohibitionist approach to drug policy, no longer exists. Faced with the tension regarding the interpretation of the Drug Control Conventions and a growing number of States' dissatisfaction with the current set-up and functioning of the international drug control system, questions of system reform become inevitable. In fact, the Global Commission on Drug Policy warned a few years ago that "if serious reform options are not explored, the system risks becoming more and more redundant with reform-minded States deciding to distance or step away from it." (GCDP, 2014).

Based on the existing literature and the expert interviews conducted for this research, what options for reform currently exist and which ones are more or less likely to be explored? The Global Commission on Drug Policy (GCDP), in its 2018 Report *Regulation: the Responsible Control of Drugs* (pages 36-40) addressed the question of potential reform of the drug control system, setting out 5 main possibilities. For the purposes of our study, the open-ended questions about the possible future scenarios of the international drug control system were based on these already existing options, with slight adaptations where we saw fit. The options we proposed to the experts were as follows:

- *New system*: The multilateral approach is preserved, or re-enforced, but with a shift in focus. This would imply a new vision that could be supported by Member States, with a common understanding of the issues on the table and their order of priority. It would result in a new system, with the signature of a new or several Conventions, probably including a new governance of the system.
- *Adaptation of the current system*: The multilateral approach is preserved, in the continuity of the past. States agree to update their understanding of the current drug control system, by adapting their vision to the new challenges posed in the UNGASS Outcome Document. This may result in amendments of the existing Conventions.
- *Respectful non-compliance*: The system remains static and does not manage to reform. It stays as it is and does not succeed in creating a new vision that corresponds to the needs of Member States. Therefore, the multilateral approach is fading, as the States drift away in practice, and no longer bother to completely fulfill the Conventions' agendas. The system could continue to live for a long time, as an autonomous agency of the UN system, but without a grip on the reality.

- *End of the drug control system*: A significant group of States collectively break away from the Conventions, because it does not reflect their views anymore. This would result in the collapse of the drug control system, founded on a common and shared responsibility. Part of the present UN system activities may still be carried out, on specific issues, but the multilateral approach would no longer be effective and each State (or group of States) would address drug-related issues on their own.
- *“Drug War rebirth”*: The present drug control system returns to its former vision of a “war on drugs”. The various debates opened up by UNGASS 2016 come to an end and consensus is restored, on the same premise as before (eradicate drugs completely), but with the necessary changes in practice to make it consensual.

A new system

With regard to the possibility of crafting a new international treaty that would replace the current Drug Control Conventions, similar to the one proposed by the Global Commission on Drug Policy in 2014, the objective of which was to ‘regulate medical and scientific uses of drugs and embrace the regulation of drugs for non-medical uses, in pursuit of the same set of UN goals’ (Global Commission on Drug Policy, 2014), none of the persons interviewed were of the view that this scenario was the most plausible form that reform of the current drug control system would take. In fact, the experts’ views on this possibility included the following:

“There will be no new Convention agreed, anytime soon. It will take at least a decade (but probably longer) before it happens”;

“Would anybody want to start renegotiating another Convention? I hardly think so”;

“Something would have to happen on a large scale for that, like 9-11. It would need a lot of energy for everybody to sit down together and thinking about a drug convention for the 21st century. For the time being, I don’t see this coming. It’s slowly and surely coming but not in a big bang. But it will depend a lot on geopolitical developments”;

“There’s no appetite for negotiating that, there’s no mood to get a new Convention. It would be quite problematic.”

First, Member States do not appear keen to rewrite the system. Second, given the various levels of polarization discussed in section 3.2.2, reaching agreement among States on an entire new international treaty focusing on drug policy would be highly problematic.

Adaptation of the current system

If the Drug Control Conventions are not dissolved and replaced, there is still the option of amending the existing Drug Control Conventions, but this avenue would face similar challenges to replacing the treaties with a new one. Indeed, although the Drug Control Conventions include provisions setting out the relevant procedures needed to be followed to amend or reform the treaties, such amendments require a consensus among State Parties. Once again, given the level of disagreement and diverging views with regard to the regulation of certain substances exhibited between States in recent years (such as the views expressed by some States in response to Canada's recent move to legalise cannabis), it is highly unlikely that they would be able to reach agreement on the provisions to be amended, let alone their precise content. Indeed, one expert put it as follows: *"I doubt there's going to be any agreement on amendments to the existing Conventions, of any significance"*. The only exception may be with regard to the topic of improved access to essential medicines, for example. As will be discussed further below, due to the fact that there is now a more widespread consensus on this issue, it may be one area where amendments to the provisions of the Drug Control Conventions may be made in the future.

When discussing the possibility of treaty amendments, a few experts also mentioned the possibility of withdrawing from the Conventions (and then re-joining with reservations), as Bolivia had successfully done in relation to the traditional use of the coca leaf, but it is questionable how widely this approach may be applied to other drugs.

Respectful non-compliance

Several experts pointed to the option that some analysts have coined 'respectful non-compliance' (Bewley-Taylor, D et al, 2016), as the most likely model to be explored further in the coming years. The experts' views were heavily based on the changes that certain countries have carried out in recent years with regard to the regulation of cannabis in particular. Canada formally acknowledged that with its decision to regulate cannabis, it is "in contravention of certain obligations related to cannabis under the UN drug conventions" (Senate of Canada, 2018). What at present remains unknown is how countries will manage the implications of such moves. Interestingly, when Uruguay defended its cannabis regulation model in the international arena, it did so by referring to the importance of human rights and arguing that the State's duty to protect and promote human rights overrides the international drug control conventions' obligations (Junta Nacional de Drogas, 2015). It is possible that in the future, justifications for

national drug policy changes will be made on similar grounds of promoting the health and welfare of humankind and the core values of the UN charter; and more widely be in alignment with global goals set out in the Sustainable Development Goals.

End of the drug control system

It became clearly apparent from the interviews conducted for this research that States do not wish to ‘rock the boat’ unless there is absolutely no other choice. Political and diplomatic considerations, as well as a State’s reputation and standing within the international community are important factors which point to governments preferring to make changes to their drug policies without breaking the system or being excluded from it. An additional reason for not wanting to dismantle the system entirely is that the Drug Control Conventions also play an important role in regulating the scientific and medical use of drugs, and there is still a strong consensus on this issue. The 1961 Single Convention affirms that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes. However, the barriers to essentially controlled medicines remain significant in a number of countries. The international consensus on the importance of access to controlled medicines has been growing in recent years. In 2010 the CND adopted Resolution 53/4, focusing on promoting adequate availability of controlled medicines²⁴ and calling on States to take steps to improve the availability of narcotic drugs for medical purposes, in accordance with the recommendations of the WHO. Along similar lines, the 2014 World Health Assembly Resolution endorsing the integration of palliative care into healthcare systems called for States to ensure that efforts to prevent diversion do not result in inappropriate regulatory barriers to access to medicines; and further urged States to ‘review, and, where appropriate, revise’ law and policy to ‘improve access and rational use of pain management medicines’ (World Health Assembly, 2014). The gradual international recognition of the crucial nature of the access to essential medicines question culminated in a set of progressive operational recommendations on access to controlled medicines in the 2016 UNGASS Outcome Document. Indeed, several challenging issues, such as human rights, harm reduction and decriminalization, were addressed at the 2016 UNGASS.

²⁴ Commission on Narcotic Drugs Res. 53/4, March 12, 2010, http://www.unodc.org/documents/commissions/CND/Drug_Resolutions/2010-2019/2010/CND_Res-53-4.pdf. See Also Resolution 54/6 https://www.incb.org/documents/Psychotropics/Resolutions/CND_Res-54-6.pdf

A “Drug War” rebirth

Although the 2016 UNGASS Outcome Document has been said to include the most progressive language to date on human rights, harm reduction and access to controlled medicines within a consensus-based document from the UN on drug policy (Lines and Barrett, 2016), progress in the realm of human rights and public health was nevertheless tempered by the fact that the goal of promoting a ‘society free of drug abuse’ was also reaffirmed (UNGASS 2016). It may well be that alongside governments enacting health and human rights-based drug policies and regulating certain substances up until now prohibited under the Drug Control Conventions, others will continue to implement repressive, law-enforcement based drug policies, based on the ‘War on Drugs’ slogan.

This does not mean that the entire system will reverse back to an all-repressive strategy, that has to be followed by all Members States. The step towards harm reduction and human rights has been firmly taken by some States and rolling back to former prohibitionist approaches is seen as highly unlikely due to domestic constraints, especially in the Americas and Europe. Nonetheless, the Call for Action launched in September 2018 by the Trump administration with the support of 129 countries attempted to do so, but it did not receive serious attention from other stakeholders. While the persistence of highly repressive policies in various regions around the world is still very likely to remain, the scenario of a ‘re-birth of the Drug War’ at the international level should be abandoned.

4.2 The future of the international drug control system

What we have discussed so far allows us to draw some basic lines for the future of the international drug control system. Based on some of the key points highlighted below, we then propose a possible scenario for the future of the international drug control system.

4.2.1 Fading multilateralism

It appears likely that more and more States will distance their practice from a common understanding of the Drug Control Conventions, in one way or another, without having the will to change the texts. The interpretation of the Conventions is expected to continue to develop in various directions, based on specific agendas. It is likely that more States will continue to make changes to their national drug policies, so as to be able to commercially regulate non-medical

drug use. It might not be a frontal breach, but a justification of change, based on the reference to or inclusion of other, overarching documents such as the UN Charter or the Sustainable Development Goals (SDGs). For example, Uruguay and Canada have made use of various UN documents to allow them enough room to justify their own actions. They presented their cases in a respectful, diplomatic way, while distancing themselves from a rigid interpretation of the Conventions.

In the same way, other States continue their all-out repressive *human rights – abusive* strategies and keep their distance from human rights or public health agendas, advocated by UN bodies. They don't see a need for reform of the system either, as the conservative reading of the Conventions is more in line with their country profiles. Without a common framework, and various interpretation of norms, the multilateral approach is due to be rejected. With no interest in the collapse of the system, but no reform in sight, stakeholders are learning to cope with a loose system. Far from the prescriptive spirit of the 1998 UNGASS that was tied together around a common vision, States have recently been gaining autonomy. Since they have failed to reach consensus on the question of drug use itself, States now accommodate their differences within a system which they do not have the courage or strength to reform.

The results of our research reveal that the possibility of a group of States in a particular region or collectively united by their stance on a specific issue (such as cannabis regulation or advocating for human rights and public health-based drug policies) slowly drifting away from the Conventions is perceived as highly likely. In fact, some interviews referred to the fact that it is already starting to happen informally, with regional customary practice starting to form, in Latin America and Western Europe, for example. Finally, this may not necessarily equate to the Vienna Convention on the Law of Treaties provision for a group of Member States to modify a treaty 'amongst themselves' but rather arise through collective State practice moving in particular directions, depending on national and regional needs, priorities and contexts.

The multilateral approach is therefore fading away, as the UN no longer provides a framework for common action. Without its prescriptive dimensions, the UN system evolves into a forum where we discuss our differences.

4.2.2 A new progressive agenda of the UN system

The dynamics that are currently developing will also affect the roles and responsibilities of relevant UN agencies. How precisely this will play out is still not certain, but would no doubt have to support ‘system-wide coherence’. In January 2019, the UN Chief Executives Board (CEB) for Coordination, a group of leaders from 31 member organisations, which sits under the chairmanship of the United Nations Secretary-General, agreed upon a UN Common Position on Drug Policy.²⁵ Significantly, the Common Position calls for the decriminalisation of drug use and drug possession and provides that relevant UN agencies should “promote the increased investment in measures aimed at minimising the adverse public health consequences of drug abuse, sometimes referred to as harm reduction ...”; “enhance access to controlled medicines for legitimate medical and scientific purposes, including the relief of pain and treatment of drug dependence”; and highlights important human rights considerations (UN Chief Executives Board for Coordination, 2019). Although not legally binding, this Common Position, provides an indication of the UN system distancing itself from a narrow prohibitionist interpretation of the Conventions and reflects a significant shift in thinking on drug policy in the wider present-day UN system.

The change of tone within the UN is astonishing. In the 1990s, Switzerland was unanimously condemned as foolish for medically prescribing heroin. Ten years later, the WHO recognized the relevance of this approach, that is now widely accepted by the international community. Further major shifts were yet to come. In 2008, the process of review of the five action plans (adopted in 1998) provided the international community with the opportunity to discuss the need for reform. However, it did not succeed and new action plans were agreed in line with the strategy that had so far been followed (the ‘War on Drugs’). However, the next decade would completely shift the attention of the UN system. Before, countries like Switzerland or Portugal were singled out for their unorthodox drug policies. Now, the death penalty for drug offences, or the lack of access to essential medicines is at the center of international drug policy discussions and decisions. After a ‘crusade’ against drug use, the same agencies are now advocating for the decriminalization of drug use, and come close to the most progressive countries, such as

²⁵ The full title of the Common Position is ‘United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration’. See UN Chief Executives Board for Coordination, 2019.

Portugal or Uruguay, and can even adhere to positions put forward by the Global Commission on Drug Policy.

The changes described above should also be looked at in connection with the current practices of Members States. The influence of the new progressive tone of the UN on current national policies remains unclear, as this broader understanding of the UN system is not yet reflected in significant changes at the national level, or only in a minority of them, mainly in the Americas. Is this new progressive agenda of the UN system a result of a shift in global trends? Or is it simply a sign of Western countries' influence on the system?

4.2.3 A kaleidoscopic paradigm

The major UN agencies' new unity around a progressive agenda shall not be seen as a paradigm that is supported by all stakeholders. Members States remain very much heterogenous in practice, and this does not seem to change, as we have seen above in the "Results" section of this report. They express their differences, so far without succeeding in agreeing on a common understanding of the whole.

It is hard to design the international drug control system as a single entity, with a unique perspective. Since UNGASS 2016, numerous UN agencies have started to look at the drug issue from their own perspective, thus creating a variety of visions and priorities. On the other hand, the negotiations around UNGASS did not produce a consensus on a new vision, but rather listed various strategies, albeit without clearly favouring one of them. The up until now prevailing interpretation of the drug control system is now being challenged by many and has lost its stability.

For Member States, this multipolar system with various understandings at play creates new opportunities, as States can argue for the pursual of their own goals and adapt their understanding of the rules to their national agendas. It also has important consequences for the system itself. With no clear leadership, or consensual vision, it becomes easier for the different stakeholders to take part in the debate, each from their own perspectives. More and more themes related to the international drug control system are being incorporated, adding further complexity and confusion to determining precisely which direction the system should be moving in. This broader vision of drug policy is reflected in the new role that Geneva is taking in this debate. Originally restricted to the UN agencies with a specific mandate, located in Vienna

(UNODC, CND, INCB), the drug debate has now expanded to a much bigger circle of international community stakeholders, mainly related to human rights, health, security, environment and development.

Finally, we can try to design a new scenario, based on our findings. As stated above, the 'respectful non-compliance' (n°3) scenario might be the most interesting one, as it points to a fading multilateralism, mostly confirmed by our analysis. However, it is not enough and we need to go beyond this dimension to address the specific dynamics of the system itself.

4.2.4 A scenario for 2029: a temporary stalemate situation

It is no longer a question of 'complying' with the rules, as there is no agreement anymore on what the precise rules are. The loss of a shared paradigm and a common understanding of the system itself might be one of the major characteristics of the situation today. The texts are still there, the former paradigm is still active, but several new layers have been added to the system. Its complexity and the various positions taken by Member States have prevented the system from updating itself or modifying its main paradigm. This situation will most likely prevail for the coming decade. This creates a 'stalemate' situation, where the system does not move. The progressive agenda of the UN bodies is not consensual among Member States, who continue to follow their own domestic agendas, influenced by different socio-cultural contexts. It has not managed to reform the system. Stakeholders have progressively been getting used to living in a polymorphic system, without a common vision. The only developments that may be expected to occur lie in purely technical issues, where a relative consensus still exists, such as with regard to access to essential medicines, conflicts or the death penalty. Beyond these specific issues, we can expect a continuation of various State practices, with a system failing to enforce a new paradigm, which would replace the former, no longer valid, 'War on Drugs' approach.

Over a longer period of time, we can hope for a new paradigm to emerge. The discussions needed to integrate all of the interconnected variables of a renewed drug policy debate will take time. Today, there is no sign of such a move. On one side, States have tried to instigate reform since 2008, but repeatedly failed. On the other side, the end of the 'Drug War' paradigm in the Americas and the West in general have broadened the gap between these countries and the more repressive ones.

In the long term, a new consensus might still be plausible, or even necessary. Highly potent substances will always benefit from being regulated. This new international paradigm might be less prescriptive for Members States and focus more on regulation aspects, more in line with the original goals of the 1961 Drug Control Convention. Such a new consensus, if it comes one day, is not expected to be reached in the coming decade. The debate will go on and active States such as Switzerland need to continue to engage with the system for new ideas to emerge.

5. Conclusion

Our report comes to the conclusion that multilateralism in the drug control system is fading away. The failure to eradicate drugs as the system originally set out to do, has led to the questioning of the current international strategy and put the need for reform at the center of the discussion, especially with regard to human rights, health, security and development. However, no consensus seems to be emerging between States, as a multilateral approach is more and more called into question.

Originally, the international drug control system was designed to bring national strategies together in a global effort, with actions to be carried out by every State under a single framework, to achieve common goals. This has not happened. On the contrary, we have seen that the pace of UN Member States updating their national drug strategy has increased. Switzerland was one of the first to do so in the 1990s, due to health and public safety challenges being faced in Swiss cities. Portugal then developed a new approach, where the criminal sanctions for drug offences were removed in the early 2000s, while the health issue spread across Europe, with harm reduction measures. Now, even the legal status of certain drugs has been challenged, by Bolivia with regard to the coca leaf, and by Canada and Uruguay for cannabis. In the meantime, a lot of States are still pursuing a 'Drug War' agenda and still refuse even to endorse the term 'harm reduction'.

In each of the case studies of this report, we have highlighted the importance of endogenous factors, that are specific to a particular history, culture or national situation. Drugs are a matter of context, and it is extremely difficult to bend various forms of use into a single framework. Today, Canada sees cannabis as a new developing market, as the consumption of cannabis-related products becomes tolerated in society, similar to the situation with regard to alcohol. Latin America States are first concerned by ending the disastrous consequences of the drug war. In Europe, health and human rights dominate the agenda, while at the same time the repressive agenda continues in some parts of the region. Yet other States continue to pay little attention to the question of drugs, with very few resources devoted to the subject, as can be seen from the spider graphs, despite important declarations in UN fora.

In order to face these increasing challenges, the international drug control system is slowly adapting in order to survive. It is trying to incorporate new dimensions, ranging from the

environment, gender, conflict, indigenous rights, essential medicines, corruption, to the death penalty and others. New critical elements are being integrated in the debate, but without renewing the paradigm. The system is becoming a big reservoir of ideas, which are oftentimes contradictory among themselves, but that nonetheless reflect the heterogeneity of the whole.

The Outcome Document of UNGASS 2016 illustrates this situation. It provides Member States with a list of possible measures, where they can do their 'cherry-picking', according to their domestic agendas, but the document does not clearly settle the debates behind it. Diverging visions are included in one document and States can choose the paragraphs of their choice, thereby still remaining on board, but no longer having to adhere to a common agenda.

With no consensus on the overall goal (e.g. to eradicate use, protect human rights, increase public health, etc.), the international drug control system no longer provides the necessary leadership for impacting national practices. There is no longer a common agenda, as the different parts of the Outcome Document are in fact so wide-ranging and simultaneously sometimes inconsistent. At the same time, today, we are witnessing a new balance between UN agencies. Whereas before the monopoly lay with Vienna-based agencies (INCB, CND, UNODC), the drug control system now includes other actors, such as the Office of the High Commissioner for Human Rights (with the Human Right Council), the World Health Organisation or the United Nations Development Programme, based in Geneva and New York. This makes the issue much more complex to shape into a single vision.

Alongside the weakening of a UN common position on drugs control, States are getting bolder, and appear to be less fearful of the repercussions of acting in breach of the Conventions. As a result, we expect to see more and more disparities between national drug strategies. Without the guidance of a strong leadership and a firm vision inherited from a legitimate multilateral system, States will inevitably return to their domestic agendas and respond to national actors' demands.

Furthermore, the energy needed to draft a new drug control system seems to be lacking. As other issues around the globe, such as global warming or migration, gain more traction, the drug control system is receiving less attention from world leaders. The 2016 UNGASS has not been followed by another event of the same magnitude. On the contrary, the March 2019 review of the UN international drug control strategy resulted in a 'non-event', with poor high-level

attendance which marked the end of the common plans of actions that had been set ten years beforehand, and that constituted the core of States' collaboration. The shared priority of addressing the question of drugs has decreased significantly. A sense of disillusion seems to dominate, as the old and relatively simple ideas of the Drug War are no longer valid, and States weren't able to agree on a new strategy and paradigm to move forward. Without the 'magic' solution of drug eradication, international and national actors are left to their own agendas. There are so many complex new challenges that the courage to address them on a multilateral level seems to have vanished.

A move to restore a global paradigm might in fact no longer be possible in today's world context. In the 1960s, a specific combination of factors enabled a common understanding to take hold. At that time, the opponents of the Cold War had a common interest in the so-called 'War on Drugs' and the other countries around the world had very little influence on the UN agenda. The situation that prevailed then no longer exists. The world has become more multi-polar and complex. The human rights framework is currently challenged by powerful States that no longer agree to follow the Western agenda when it comes to individual rights, which is a core element of the drug control debate today.

With the end of the 'War on Drugs' at the global level, we will abandon a global policy that has proven to be wrong, and has created far more suffering and problems than it has delivered benefits. There is also the risk that, at the same time, we will lose the multilateral framework of the UN conventions and agencies that were originally crafted to tackle common issues on drug control, such as the regulation of medicines, which were at the basis of the first Drug Control Convention. The growing consensus on access to essential medicines could help save parts of the system and encourage new areas of collaboration. This might be more on a technical and practical basis, with less emphasis on drugs themselves and their place in society. Debating whether to form a new consensus with a broader vision on this point should therefore be abandoned, as nothing appears to be in sight. Instead, we should focus on specific issues that States are experiencing, such as access to essential medicines, for instance. This would further international collaboration on certain drug-related questions, and preserve the functionality of the system, albeit with reduced objectives.

6. Appendices

Appendix 1: Methodology Tables

Table 1: List of countries examined

Table 2: Indicators for national drug policy descriptions

Table 3: List of interviewees

Table 4: List of questions for the international drug policy experts

Appendix 2a: Complete dataset on countries, according to specific indicators

Appendix 2b: Comments on indicators

Appendix 3: Explanation code and design for the 'spider graphs'

Appendix 4: Bibliography