

THE CONVENTIONS AND THE LEGALIZATION OF THE NON-MEDICAL USE OF DRUGS

*Draft intervention by Mr. Raymond Yans¹ at
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I am honoured to take part in this event because it was precisely here, in Stockholm, that this great initiative to deal with the issue of preventing drug use began. Over the years, ECAD and the mayors of the cities that provide its leadership and vision have been spearheading efforts to promote drug abuse prevention among youth and in urban centres, one of the areas where the drug problem is frequently most acutely felt. Such efforts to promote prevention and provide treatment are fundamentally based on a humane and human-centred approach to the drug problem and as part of the commitment of Governments to the drug control treaties that provide the framework for our efforts.

In this regard, I praise your efforts in working to uphold and take action within the framework of the UN drug control conventions and assure you that your efforts to coordinate actions to counteract the drug problem, focusing especially on young people, will continue to be recognised by the world community, including by INCB.

The topic I have chosen to talk to you about today centres around one of the areas that has been the focus of action of European Cities Against Drugs, namely, concern about proposals and initiatives towards the legalization of the non-medical use of drugs. In recent years, such initiatives have emerged in popular culture, in a number of countries outside the governmental sectors and most recently in Uruguay and the US States of Colorado and Washington regarding cannabis. Such initiatives go against the objective and letter of the international drug control conventions, which is to limit the use of drugs exclusively to medical and scientific purposes.

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Today, many talk about “recreational use” of controlled substances, but the States, in drafting the conventions and providing guidance for their implementation, only recognised medical and scientific use, and all other uses are defined by the treaties as “abuse”. Thus, Governments committed themselves to ensuring that the use of controlled substances is exclusively limited to medical and scientific purposes and to preventing the illicit use of drugs and providing for treatment, rehabilitation and reintegration of those unfortunate enough to fall under the spell of drugs.

Governments in drafting the treaties did not have a “prohibitionist” frame of mind, as some today suggest, but had the protection of health foremost in their minds, and set up a legal and regulatory framework at the international level, to be instrumented at the national levels, to protect and promote the health and welfare of citizens.

Nothing has changed with regard to the impact of the misuse of drugs on the health and well-being of society. If anything, matters are even more complex and dangerous today, with drugs of higher potency and greater toxicity. Thus, the developments in some parts of the world pose a challenge to the international drug control system and, most importantly, represent a grave and potential threat to public health.

Furthermore, a step towards the legalization of non-medical use of drugs would create a legal demand for those drugs, at least in those jurisdictions where such initiatives succeed, and, consequently, the current restrictions in respect of supply (cultivation, production, manufacture, trade and distribution) would have to be replaced, abolished or fundamentally changed in those jurisdictions.

History offers a very sad example of the consequences of such a change that had an immense cost in human lives and well-being, though as this is well over hundred years ago many may not have the knowledge of it or dismiss it as irrelevant. However, the result of such initiatives could be similar to the situation that developed in China in the nineteenth century, when, after the Opium Wars, the country was forced to accept the free availability of opium. Following that action, the number of opium addicts in the country increased drastically to an estimated 20 million and that country suffered the consequences of drug abuse epidemics for much of the following 100 years. It is to be said that the drug abuse problem of China also spread around the world, leading to, fifty years after the first Opium War, a process of reassessment by the earlier promoters of

free-trade in drugs that led to the establishment almost a hundred years ago of the first treaties to control and regulate the opium trade, limiting use strictly to medicinal purposes. It would be ironic if society and world leaders do not recall the lessons of history.

The arguments put forward by advocates of legalization do not withstand critical evaluation, and tend to run contrary to general experience. The proposals in favour of legalization have tended to present possible legalization benefits against the costs of maintaining existing legal controls, without adequately addressing either the benefits of those controls or the social and economic costs of removing them. Permitting the recreational use of drugs could have a substantial and irreversible adverse impact on public health and social well-being.

To illustrate, some of the arguments of concern, some of which have already been mentioned by Mr. McKeganey but that are important to remember, are, for example, that:

- “Legalization is justified, since law enforcement has failed to control illicit supply or to reduce illicit demand”; this argument, however, ignores the fact that legal sanctions have helped to deter or delay potential abusers, thereby limiting the growth of the illicit market.
- Advocates also mention that “given current levels of access to illicit drugs, legalization would only have a minimum adverse impact on current drug abuse levels and would thus generate few additional health, safety or behavioural problems”; this idea, however, ignores the potential expansion of demand by individuals and society, particularly among young people, which could follow the removal of legal barriers, the freeing of entrepreneurial initiative and the lowering of market prices. It also ignores the possibility that there may be a substantial increase in economic and social costs, particularly to health-care systems (given the global experience with alcohol and tobacco abuse). This may include a sharp increase in costs resulting from accident-related injuries and other health-related problems.
- It is said as well that “legalization would remove the so-called “evils” created by drug laws, such as corruption, violence and drug-related crime, which are worse than the drugs themselves”; this argument assumes that drug-related black markets and corruption would significantly decline, but surely no community would accept making available, without any restriction, all drugs of abuse to all existing and

potential abusers (including children) at sufficiently low prices. Even if one assumes that crime to support personal drug abuse may decline, crime committed under the influence of drugs, as well as chronic violence in the family and in the community, may increase. The assumption that organized criminal activity and related violence would significantly decrease may underestimate the capacity of organized crime to adjust to changing conditions without significant loss of economic, political or social power.

- A parallel can be seen in what happens when a regulated control market gets out of control, as provided by the recent experience in some countries with the abuse of medicinal opiates, from where, in some cases licit, medicinal use with medical prescriptions, a massive abuse problem of opiate analgesics has developed, with questionable prescribing practices and illicit supply and diversion chains developing. Similarly, for those countries that permit the cultivation of cannabis for medical purposes sometimes the schemes in place do not take full account of the requirements set out in the 1961 Convention. And sometimes even those schemes designed in full compliance with the treaty may be poorly implemented and/or monitored and can become what can only be referred as *so-called “medical cannabis” programmes*. *In a few cases, such schemes have been seen* literally as “smoke” screens for the distribution of cannabis for non-medical purposes, de fact legalization. Some studies are already showing increases in the health impact on abuse with the result that, some of the jurisdictions that have implemented programmes that did not meet treaty requirements, are now beginning to revisit and revise their regulatory frameworks.

The debate on legalization of the recreational (non-medical) use of drugs, together with its media coverage, reflect the widespread misunderstanding of the obligations of Parties under the international drug control treaties, particularly with regard to the extent to which parties are required to penalize non-medical personal consumption by drug abusers. It is necessary to clarify these obligations before examining some of the main arguments put forward by advocates of legalization. Here also, institutions like ECAD can play an important educational role with the authorities at the national governmental level.

In general, parties to the Single Convention on Narcotic Drugs of 1961 and the Convention on Psychotropic Substances of 1971 are required to limit to medical and

scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs. To that end, each party to the 1961 Convention is required in article 4 of that Convention to take "such legislative and administrative measures as may be necessary" and each party to the 1971 Convention is required in article 5 of that Convention to take "such measures as it considers appropriate".

Under certain conditions, the 1961 Convention, the 1971 Convention and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 also require parties to establish as punishable offences a wide range of activities relating to controlled drugs. None of the conventions require illicit drug consumption to be established as a punishable offence. Instead the conventions deal with illicit drug consumption indirectly in their provisions on activities such as the cultivation, purchase or possession of illicit drugs. In so far as these activities are engaged in for the purpose of non-medical personal consumption:

- (a) None of the conventions requires a party to convict or punish drug abusers who commit such offences even when they have been established as punishable offences. The party may choose to deal with drug abusers through alternative non-penal measures involving treatment, education, after-care, rehabilitation or social reintegration. Nevertheless, a party may choose to apply penal sanctions in such cases, since each convention permits a party to adopt more strict or severe measures than those provided by the convention if, in its opinion, such measures are desirable or necessary to prevent or suppress illicit trafficking.

Often a most important humanistic element of the treaties is ignored both by the detractors of the treaties, but unfortunately sometimes by the very authorities that are responsible for their implementation. And this relates to dealing with the drug abuse problem.

The 1961 Convention in its article 38 and the 1971 Convention in Article 20 provide the evidence of the intent of the Parties to follow a balanced and humane approach to the drug problem. In these articles, the treaties establish an obligation, on the part of States, to give special attention to drug abuse prevention, treatment and rehabilitation, and request Governments to provide for the training of professional care workers. We all have an obligation to stress and remind Parties of the fact that the Conventions emphasize

a holistic and humane approach to the drug problem where drug users are seen as individuals in need of assistance and not as criminals.

Most of the debates on legalization of the non-medical (i.e. recreational) use of drugs are at present centred on cannabis. Since the adoption of the 1961 Convention, very potent types of cannabis have been developed, new products like "cannabis oil" or "hashish oil" (e.g. "cannabis concentrate") have appeared on the illicit markets and new technologies have been applied to increase the THC content of cultivated cannabis plants resulting in cannabis with high concentrations of active ingredients, sometimes 4 or 5 times or even more the THC content of the cannabis of the 60's and 70's. The emerging scientific literature on the impact on health of these new forms of cannabis is still incomplete, but the initial findings point to significant health risks and negative consequences.

In this context, one needs to draw attention, as INCB has done, to the fact that in 1961 the introduction of the international control of cannabis took place at a time when serious cannabis abuse problems did not exist in developed countries. Countries in which cannabis consumption was "traditional" implemented the provisions of the 1961 Convention. If cannabis were to be legalized today for purposes outside the treaties, those developed countries would bear an enormous responsibility: they would be obliged to justify, at the same time, their 1961 decision to prohibit cannabis and their new decision to add cannabis to other legalized substances like alcohol and tobacco.

The international drug control system is based upon the principle of common and shared responsibility, and relies upon universal implementation: "a chain is only as strong as its weakest link".

Therefore, measures and action against trafficking in and abuse of drugs can only be effective if carried out universally in a concerted and coordinated and balanced way, in accordance with the international drug control treaties. In this regard, I would like to join and support some of the final comments made by Mr. McKeganey with regard to the action of INCB.

The treaties are very clear: the Board must operate "in **co-operation with Governments**, and subject to the terms of this Convention", referring specifically to the 1961 Convention and the efforts to limit the cultivation, production, manufacture and use of

drugs to an adequate amount required for medical and scientific purposes, to ensure their availability for such purposes and to prevent illicit cultivation, production and manufacture of, and illicit trafficking in and use of, drugs”.

Confrontation may have a place in this dialogue. Even if diplomacy and constructive engagement have been and will remain foremost in our minds and have been the practice of the Board in its relationship with Governments. One further point, is that unlike others, the Board is not only guided but constraint by the treaties, as are the Governments, in that the treaties, as they are today, do not provide for experimentation but reserve the use of drugs “exclusively to medical and scientific purposes”.

It is with this spirit of cooperation that I conclude my intervention. Once again I would like to thank you for the opportunity to participate at such an important event. I hope we keep working alongside to tackle the complex problem of drug abuse.
