



Amsterdam Center for International Law
University of Amsterdam



RESEARCH PAPER SERIES

SHARES Research Paper 82 (2016)

The Practice of Shared Responsibility in relation to International Drug Control

Patrick Gallahue

Open Society Global Drug Policy Program, Essex University

Cite as: SHARES Research Paper 82 (2016)
available at www.sharesproject.nl and SSRN

Forthcoming in: André Nollkaemper and Ilias Plakokefalos (eds.), *The Practice of Shared Responsibility in International Law* (Cambridge University Press, 2016)

The Research Project on Shared Responsibility in International Law (SHARES) is hosted by the [Amsterdam Center for International Law](http://www.acil.uva.nl) (ACIL) of the University of Amsterdam.

The research leading to this paper has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP7/2007-2013) / ERC grant agreement n° 249499.

The Practice of Shared Responsibility in relation to International Drug Control

*Patrick Gallahue**

1. Introduction

In 2012, the International Narcotics Control Board (INCB) chose ‘shared responsibility’ as a central theme of its annual report.¹ The report, by the so-called ‘guardian’ of the drug control treaties – established in 1968 in accordance with the Single Convention on Narcotic Drugs of 1961² – described the principle of shared responsibility as ‘a joint undertaking involving government institutions, the private sector, civil society, local communities and individuals who have agreed to work together as partners and who have a shared mutual obligation for concerted action at different levels in response to the drug challenge’.³ The INCB Annual Report calls on states and non-state actors to engage in concerted action to achieve the aims of the international drug control conventions.⁴

This focus on shared responsibility is in line with Article 2 of the 1988 United Nations (UN) Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention) which provides that ‘[t]he purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit

* Patrick Gallahue is a Communications Officer for the Open Society Global Drug Policy Program and is a PhD candidate at the Essex University School of Law. He has written widely on human rights and drug policy and is the author or co-author of the reports: ‘Partners in Crime: International Funding for Drug Control and Gross Violations of Human Rights’ (2012); ‘The Death Penalty for Drug Offences: Global Overview 2011’; and ‘Complicity or Abolition? The Death Penalty and International Support for Drug Enforcement’ (2010), which were written for the London-based non-governmental organisation *Harm Reduction International*. He holds a BA from Long Island University, Brooklyn Campus, and an LLM in International Human Rights Law from the National University of Ireland, Galway. The research leading to this chapter has received funding from the European Research Council under the European Union’s Seventh Framework Programme (FP7/2007-2013)/ERC grant agreement n° 249499, as part of the research project on Shared Responsibility in International Law (SHARES), carried out at the Amsterdam Center for International Law (ACIL) of the University of Amsterdam. All websites were last accessed in December 2014.

¹ International Narcotics Control Board, ‘Report of the International Narcotics Control Board for 2012’, (E/INCB/2012/1), Chapter I entitled ‘Shared responsibility in international drug control’, available at www.incb.org/incb/en/publications/annual-reports/annual-report-2012.html (INCB Report 2012).

² Single Convention on Narcotic Drugs (as amended by the 1972 Protocol, 976 UNTS 3), New York, 30 March 1961, in force 13 December 1964, 520 UNTS 204 (Single Convention).

³ INCB Report 2012, n. 1, para. 1. ‘Shared responsibility’ as used by the INCB, and in this chapter, thus refers to a set of primary obligations and concerted action based on such obligations, rather than, as in most of the other chapters in this volume, to the consequences of breach of an international obligation.

⁴ *Ibid.*, para. 50.

traffic in narcotic drugs and psychotropic substances having an international dimension.’⁵ The treaty thus broadly requires cooperation between states parties in order to suppress illicit traffic in narcotic drugs.

The focus on shared responsibility of all actors to ‘safeguard public health and reduce the risks that drug problems will pose to future generations’⁶ is a timely contribution. While it is clear that unilateral action often will be ineffective, the consequences of the concerted action that the INCB calls for deserve equal attention. There has been growing concern that the international drug control regime has not been successful at its stated goals. Worse, it may result in a number of harmful outcomes including increased violence, instability and corruption. Recent years have seen damning reports of serious human rights abuses resulting from drug control. Examples include the deprivations of the right to life⁷ arbitrary detention,⁸ torture and other forms of cruel inhuman or degrading treatment or punishment,⁹ and

⁵ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988, in force 11 November 1990, 1582 UNTS 95 (1988 Convention).

⁶ INCB Report 2012, n. 1, para. 51.

⁷ UN Human Rights Committee (HRC), ‘Concluding observations: Thailand’, CCPR/CO/84/THA (8 July 2005), para. 14; HRC, ‘Concluding observations: Sudan’, CCPR/C/SDN/CO/3 (29 August 2007), para. 19; UN Commission on Human Rights, Extrajudicial, summary or arbitrary executions: report by the Special Rapporteur, submitted pursuant to Commission on Human Rights Resolution 1996/74, UN Doc. E/CN.4/1997/60 (24 December 1996); UN Human Rights Council, ‘Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions’, A/HRC/4/20 (29 January 2007), paras. 51–52; HRC, ‘Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum: Communications to and from governments’, A/HRC/14/24/Add.1 (18 June 2010), at 45–46; UN Human Rights Council, ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’, A/HRC/10/44 (14 January 2009), para. 66.

⁸ UNODC, ‘Drug control, crime prevention and criminal justice: A human rights perspective’. Note by the Executive Director (Commission on Narcotic Drugs, Fifty-third session, Vienna, 8–12 March 2010), UN Doc. E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1, para. 45; Human Rights Watch, ‘“Skin on the Cable”: The Illegal Arrest, Arbitrary Detention and Torture of People Who Use Drugs in Cambodia’, 25 January 2010; Human Rights Watch, ‘Somsanga’s Secrets: Arbitrary Detention, Physical Abuse, and Suicide inside a Lao Drug Detention Center’, 11 October 2011.

⁹ E. Iakobishvili, ‘Inflicting Harm: Judicial corporal punishment for drug and alcohol offences in selected countries’ (London: Harm Reduction International, 2011).

widespread infringements on the right to the highest attainable standard of health,¹⁰ among others.¹¹ These are sometimes referred to as the ‘unintended consequences’ of drug control.¹²

Despite the fact that the 2012 Report recognises that addressing shared responsibility calls for apportionment of responsibility between multiple actors and for ‘mutual accountability and liability’;¹³ little is said on potential adverse consequences of concerted action. Yet, these questions of ‘accountability and liability’ of multiple actors and the functioning of the system itself cannot be overlooked. Drug control projects are pursued with shared resources and intelligence, and such cooperative endeavours potentially facilitate human rights violations. As the UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote, ‘[t]he United Nations agenda includes action to curb drug use and other activities related to illicit drugs, in addition to the pursuit of human rights. When it comes to implementing coordinated programmes, in practice these objectives are potentially in tension.’¹⁴ In some instances, attempts to reform drug laws in order to mitigate these ‘unintended consequences’, have been criticised as being in opposition to the shared responsibility (in terms of the requirement to engage in concerted action) of drug control.¹⁵

This chapter will highlight the flashpoints between concerted action in drug control on the one hand and human rights, on the other. It will respectively survey how the relevant conventions call for concerted action (section 2), and identify possible harmful effects arising out of such concerted action, which may be in violation of international law (section 3). It will then focus on actual examples of how particular cases of concerted action have resulted in harmful effects, and responses thereto (section 4), as well as on a series of wider ‘unintended

¹⁰ See, for instance, ‘Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Mission to Sweden’, UN Doc. No. A/HRC/4/28/Add.2 (28 February 2007), para. 60; A. Grover, Foreword, ‘Harm Reduction and Human Rights, The Global Response to Drug Related HIV Epidemics’ (London: Harm Reduction International, 2009); Foreword, ‘Global State of Harm Reduction 2008: Mapping the Response to Drug-Related HIV and Hepatitis C Epidemics’ (London: Harm Reduction International, 2008); 2009 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, n. 7, paras. 57, 71, 74; ‘Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 November to 1 December 2008’, Strasbourg, 8 December 2009.

¹¹ See D. Barrett and M. Nowak, ‘The United Nations and Drug Policy: Towards a Human Rights-based Approach’, in A. Constantinides and N. Zaikos (eds.), *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa* (Leiden: Brill/Martinus Nijhoff, 2009), 449.

¹² See UN Office on Drugs and Crime, ‘Making drug control “fit for purpose”: Building on the UNGASS decade’, Doc. E/CN.7/2008/CRP.17 (7 March 2008), 10–11.

¹³ INCB Report 2012, n. 1, para. 2.

¹⁴ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/67/275 (9 August 2012), para. 88.

¹⁵ ‘Uruguay’s move to legalize cannabis endangers global anti-drug effort, UN agency says’, *UN News Centre*, 11 December 2013.

consequences' (section 5) that do not so neatly fit into a legalistic human rights framework. These outcomes are increasingly straining what has traditionally been a rigid drug control system that is upheld by proponents as a shared responsibility of the international community.

2. Obligations for individual and concerted action

The first steps of the international drug control system were taken in the early 20th century with the intention to eradicate opium addiction in China. The Chinese government, which suffered tremendous rates of opium addiction from a trade essentially forced upon it by colonial powers, introduced an imperial edict focused on preventing use, treating addiction and punishing illicit trade.¹⁶ To control supply, the Chinese struck an agreement with the British to phase out the supply of opium to the country.¹⁷ The results could be described as a considerable success.¹⁸ In the two years following the agreement, China reported a reduction of internal production of more than 13,000 tonnes of opium.¹⁹ This agreement 'set the tone for the next 60 years of drug control negotiations'.²⁰

The United States (US), which developed its own cause for concern vis-à-vis opium, also began calling for greater international control of the drug. At US insistence, a commission opened with the participation of 13 states.²¹ The parameters of the discussion would not only 'flavour' later discussions, but would have an indelible impact on the future of the entire drug control regime. Medical or scientific uses of opium were protected but the US delegation lobbied for a narrow definition of legitimate use.²²

The drug control regime continued to evolve over the next 50 years to prohibit additional substances for non-medical use, including cocaine, cannabis and other substances. The system also prescribed new controls as well as additional activities intended to combat drugs.²³ Many of these earlier agreements were limited in scope and contained a number of opt-outs

¹⁶ H. Wright, 'The International Opium Commission' (1909) 3(4) AJIL 829.

¹⁷ See J. Sinha, 'The history and development of the leading international drug control Conventions', Parliamentary Research Branch Report Prepared for the Canadian Senate Special Committee in Illegal Drugs, 2001; K. Bruun, L. Pan, and I. Rexed, *The Gentlemen's club: International control of drugs and alcohol* (University of Chicago Press, 1975), 9.

¹⁸ Wright, 'The International Opium Commission', n. 16, at 847.

¹⁹ Ibid.

²⁰ Sinha, 'The history and development of the leading international drug control Conventions', n. 17, at 6.

²¹ Wright, 'The International Opium Commission', n. 16, at 852.

²² Sinha, 'The history and development of the leading international drug control Conventions', n. 17, at 7.

²³ UNODC, 'A Century of International Drug Control' (2009).

affording a wide measure of flexibility to states parties. But in 1961, these agreements were consolidated into a single instrument that would obtain near universal acceptance.²⁴ It effectively ‘upheld and expanded existing controls and in its breadth was the most prohibitionist document yet concluded’.²⁵ The 1961 Single Convention on Narcotic Drugs (Single Convention) now serves as the ‘bedrock of the global drug control regime’.²⁶

The Single Convention – as amended by a 1972 Protocol – placed certain drugs under regulatory oversight with differing control measures depending on their risk of ‘abuse’.²⁷ It requires parties, within their domestic constitutional principles, to craft domestic criminal legislation for a number of activities associated with drugs and their cultivation, manufacture, import/export and sale. Article 4(c) of the Single Convention requires states parties ‘to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs’.²⁸ The terms of the Single Convention have been described by Bewley-Taylor as ‘privileging a penal and prohibition-oriented approach to all aspects of the drug issue’.²⁹

While the Single Convention’s proscriptive terms were mostly entrusted to individual governments, in the 1980s states took steps to develop a regime intended ‘to attack more forcefully, through cooperation and concerted action, the complex problem of drug trafficking and all its implications’.³⁰ The resulting 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in effect, ‘internationalised’ the war on drugs.³¹ This treaty introduced a series of new measures for states to fight illicit traffic, including cooperative interstate activities that had not been described in such detail in the earlier treaties. The INCB writes: ‘While states parties have an individual responsibility to comply with the provisions of the international drug control conventions, those conventions also

²⁴ D.R. Bewley-Taylor, ‘Challenging the UN drug control conventions: problems and possibilities’ (2003) 14(2) *IJDP* 171.

²⁵ Sinha, ‘The history and development of the leading international drug control Conventions’, n. 17, at 21.

²⁶ Bewley-Taylor, ‘Challenging the UN drug control conventions’, n. 24, at 171–179.

²⁷ ‘Abuse’ is a word that is left undefined by the treaty.

²⁸ 1961 Single Convention on Narcotic Drugs, n. 2; Convention on Psychotropic Substances, Vienna, 21 February 1971, in force 16 August 1976, 1019 UNTS 175.

²⁹ D.R. Bewley-Taylor, *International Drug Control: Consensus Fractured* (Cambridge University Press, 2012), 5.

³⁰ Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, UN Doc. E/CN.7/589 (20 December 1988), at 1–2, para. 3.

³¹ See D. Stewart, ‘Internationalizing the War on Drugs: The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances’ (1989-1990) 18 *DJILP* 387, at 387; N. Boister, ‘Book Review: Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances’ (2001) 50 *ICLQ* 466, 466–467.

contain elements of shared responsibility ... In fact, many articles of the 1988 Convention require international cooperation and coordination if they are to be effectively and fully implemented.’³²

As with earlier treaties, the 1988 Convention introduces requirements to prohibit certain activities and to fight the cultivation and production of drugs, as well as prevent their traffic.³³ The treaty seeks regulatory processes be put in place, such as the requirement that states parties ‘[e]stablish and maintain a system to monitor substances’ frequently used in the manufacture of narcotic drugs and psychotropic substances. On the cooperative level, the 1988 Convention requires (with many caveats) partnership with other parties. For example, Article 7(1) requires states to ‘afford one another ... the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to’ proscribed activities in Article 3(1) of the 1988 Convention. Article 9(1) of the 1988 Convention also calls on states to ‘co-operate closely with one another’ with a view to establishing bilateral or multilateral agreements be entered into, in order to avoid potential conflicting national standards.³⁴

These requirements reflect a mix of domestic and transnational obligations. For example, Article 14 of the 1988 Convention ‘is notable in specifically recognizing this broader dimension of the requirement for national action and international cooperation’.³⁵ The Article requires ‘appropriate measures’ be taken to prevent the illicit cultivation of plants used to make certain drugs and for their eradication. Article 14(3)(a) also sets forth the possible types of cooperation that may be pursued in eradication efforts.³⁶

³² INCB Report 2012, n. 1, at 2, para. 9. This seems to define ‘shared responsibility’ as any cooperative obligation. However, much of the development of the drug control regime would indicate that the shared responsibility of drug control is seen as being considerably broader. Namely, that states have a responsibility to bring the drug trade under control within their own territories to limit opportunities for drugs to spill into illicit channels.

³³ See Articles 3, 14, 15 and 17 of the 1988 Convention, n. 5.

³⁴ Commentary to the 1988 Convention, n. 30, para. 9.4.

³⁵ *Ibid.*, para. 14.1; See Article 22 of the 1961 Single Convention on Narcotic Drugs, n. 2, which more clearly establishes obligations on the domestic front.

³⁶ *Ibid.*, 1988 Commentary, at 302, para. 14.18.

3. The war on drugs and human rights

This prohibitionist approach to the drug control treaties has been implemented in vastly different ways around the world with potential human rights implications.³⁷ For example there are 33 countries or territories that prescribe the death penalty for drug-related offences despite criticism from UN human rights bodies that argue capital drug laws violate international law.³⁸ Under international human rights law, as enshrined in the International Covenant on Civil and Political Rights (ICCPR),³⁹ the use of capital punishment is significantly restricted, namely under Article 6(2) of the ICCPR, which states that the death penalty may only be legally applied for what the ICCPR terms ‘most serious crimes’.⁴⁰ UN bodies further endorsed the ‘most serious crimes’ threshold in a 1984 resolution of the UN Economic and Social Council, which upheld nine safeguards on the application of the death penalty, which assert that capital punishment should be used ‘only for the most serious crimes’.⁴¹ This resolution, which was endorsed by the UN General Assembly, held that such offences were limited to those ‘with lethal or other extremely grave consequences’.⁴² Human rights bodies have since explicitly stated that drug offences are not ‘most serious’, nor do they entail ‘lethal or other extremely grave consequences’.⁴³

Since the adoption of these treaties in the 1970s, 1980s and 1990s, the number of countries that prescribe the death penalty for drugs increased from around ten in 1979 to 36 in 2000.⁴⁴ This alarming spike corresponded with the global trend towards abolition of the death penalty for all crimes. There are now as many as 1,000 people executed some years for drug related

³⁷ See D. Barrett and others, ‘Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy’ (London: Harm Reduction International and The Beckley Foundations, 2008).

³⁸ P. Gallahue, R. Gunawan, F. Rahman, K. El Mufti, N.U. Din, and R. Felten, ‘The Death Penalty for Drug Offences: Global Overview 2012 – Tipping the Scales for Abolition’ (London: Harm Reduction International, 2012).

³⁹ International Covenant on Civil and Political Rights, New York, 16 December 1966, in force 23 March 1976, 999 UNTS 171 (ICCPR).

⁴⁰ R. Lines, ‘A “most serious crime”? – The death penalty for drug offences and international human rights law’ (2010) AJ 21.

⁴¹ UN Economic and Social Council, ‘Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty’, Resolution 1984/50 (25 May 1984).

⁴² UN General Assembly, Human rights in the administration of justice, UN Doc. A/RES/39/118 (14 December 1984).

⁴³ HRC, ‘Concluding observations: Thailand’, n. 7, para. 14; HRC, ‘Concluding observations: Sudan’, n. 7, para. 19.

⁴⁴ While the numbers vary between sources this rise was reported by the UN Commission on Crime Prevention and Criminal Justice, ‘Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty’, UN Doc. E/CN.15/2001/10 (29 March 2001); R. Lines, ‘The Death Penalty for Drug Offences: A Violation of International Human Rights Law’ (London: Harm Reduction International, 2007); R. Hood and C. Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford University Press, 2008), 137.

offences.⁴⁵ Many of these executions were carried out after trials that did not meet international fair trial norms,⁴⁶ thus making any capital sentence imposed an arbitrary deprivation of life.⁴⁷ Reportedly, some of those killed committed their crimes as minors.⁴⁸

Apart from the death penalty, there are at least a dozen states that apply corporal punishments such as whipping, caning, or flogging for drug or alcohol offences, in violation of the prohibition on torture or cruel, inhuman or degrading treatment or punishment.⁴⁹ In states that enforce policies of compulsory drug treatment, widespread incidents of arbitrary arrest and detention with no due process protections are frequently documented. Many facilities fail to meet basic medical and human rights standards in addition to documented cases of forced labour.⁵⁰ There have been reports of torture or cruel, inhuman or degrading treatment or punishment in these facilities. In some instances, ‘treatment’ centres are run by military or security forces and reports of forced labour, sexual violence, beatings, whippings and other abuses are common.⁵¹

Beyond the punitive excesses of certain states, the criminalisation of a vulnerable group has contributed to public health crises. Repressive drug laws or heavy-handed enforcement are widely understood to drive people away from life-saving health services and into high-risk environments, thus facilitating the spread of blood-borne viruses such as HIV and hepatitis C.⁵² State actions that aggravate the prevention of epidemics represent a significant human

⁴⁵ P. Gallahue, ‘The Death Penalty for Drug Offences Global Overview 2011 – Shared Responsibility, Shared Consequences’ (London: Harm Reduction International, 2011), at 5.

⁴⁶ See UN Human Rights Committee ‘Concluding observations of the Human Rights Committee: Iran (Islamic Republic of)’, UN Doc. CCPR/C/79/Add.25 (3 March 1993), paras. 12, 20; UN Working Group on Arbitrary Detention ‘Report: Visit to the Islamic Republic of Iran’, UN Doc. E/CN.4/2004/3/Add.2 (27 June 2003).

⁴⁷ *Reid v. Jamaica*, Communication No. 355/1989, HRC, UN Doc. CCPR/C/51/D/355/1989 (1994).

⁴⁸ See ‘Annual Report of the Death Penalty in Iran in 2010’ (Iran Human Rights, 23 February 2011).

⁴⁹ Human Rights Committee, ‘General Comment 20’, Article 7, UN Doc. HRI/GEN/1/Rev.1 (1994), at 30, para. 5; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/13/39 (9 February 2010), para. 63; See also, Iakobishvili, ‘Inflicting Harm’, n. 9.

⁵⁰ ‘Skin on the Cable’, n. 8; Human Rights Watch, ‘Where Darkness Knows No Limits: Incarceration, Ill-Treatment and Forced Labor as Drug Rehabilitation in China’, 7 January 2010; Human Rights Watch, ‘The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam’, 7 September 2011.

⁵¹ In 2012, a dozen UN agencies including the United Nations Office on Drugs and Crime, the Office of the High Commissioner for Human Rights, UNAIDS, United Nations Children’s Fund (UNICEF) and United Nations Development Programme (UNDP), among others, called for the closure of these centres citing human rights concerns. See ILO, OHCHR, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, World Food Programme, WHO, UNIADS: ‘Joint Statement – Compulsory drug detention and rehabilitation centres’, March 2012.

⁵² See for instance The Global Commission on Drug Policy, ‘How the Criminalization of Drug Use Fuels the Global Pandemic’, June 2012; The Global Commission on Drug Policy, ‘The Negative Impact of the War on Drugs on Public Health: The Hidden Hepatitis C Epidemic’, May 2013; D. Wolfe and J. Cohen, ‘Human Rights and HIV Prevention, Treatment, and Care for People Who Inject Drugs: Key Principles and Research Needs’ (2010) 55 JAIDS S56.

rights concern, vis-à-vis ensuring the right to the highest attainable standard of health.⁵³ The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health wrote:

Criminalization of drug use and possession are implicated in violation of several human rights, including the right to health. Other infringements of the right to health are less direct, but occur as by-products of the skewed focus of the international drug control regime: for instance, insufficient access to essential medications. The Special Rapporteur considers that each of these violations is traceable ultimately to a disproportionate focus on criminalization and law enforcement practices at the expense of the enjoyment of the right to health and reduction of harms associated with drugs.⁵⁴

The question is whether such harmful effects of drugs control can in any way be seen as a result of the obligations for individual and concerted actions contained in the various conventions.

In principle, the drug control regime does not necessarily call for stringent measures with adverse human rights effects. For instance, while a number of states cling to ineffective and inhumane zero-tolerance policies, the drug control regime has proven to be flexible enough to accommodate many health-based approaches. The Single Convention's limitation of drugs for 'medical and scientific purposes' provides states parties with enough flexibility to introduce health-based interventions such as decriminalisation for personal use, heroin-assisted therapy and substitution treatments.⁵⁵ These policies and services mitigate the potential harms of drug

⁵³ See, for example, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/65/255 (6 August 2010).

⁵⁴ Ibid. This ground-breaking document adds: 'Three treaties form the core legal framework of the United Nations international drug control regime ... These treaties currently bring hundreds of illicit substances under international control, criminalizing virtually every aspect of the unauthorized production and distribution of those substances, although production, distribution and possession for medical and/or scientific purposes is permitted. The treaties have been ratified by over 181 States and have guided the development of drug policies throughout the world. A number of United Nations bodies enforce the three drug control treaties and are required to promote and protect human rights, as identified in Articles 1 and 55 of the Charter of the United Nations. When the goals and approaches of the international drug control regime and international human rights regime conflict, it is clear that human rights obligations should prevail', at para. 9.

⁵⁵ K. Krajewski, 'How flexible are the United Nations drug conventions?' (1999) 10 IJDP 329. Nevertheless, many of these services were furiously resisted by international drug control authorities, which claimed governments that provided them were in breach of the treaties. The International Narcotics Control Board went as far as to accuse governments that introduced supervised injection rooms – where people are allowed to inject drugs under the supervision of a medical professional – with facilitating drug abuse and drug trafficking. See Report of the International Narcotics Control Board for 1999, Doc. E/INCB/1999/1, para. 176. For more on the INCB, see J. Csete, 'Overhauling oversight: Human rights at the INCB', in J. Collins (ed.) *Governing the global drug wars* (London: LSE IDEAS Special Report, 2012), 63. J. Csete and D. Wolfe, *Closed to Reason: The International Narcotics Control Board and HIV/AIDS* (Toronto: Canadian HIV/AIDS Legal Network and the International Harm Reduction Development Program of the Open Society Foundations, 2007).

use, including overdose, blood-borne viruses and bacterial infections.⁵⁶ While, it is incumbent upon states parties to implement any treaty according to customary international law norms and the obligations enshrined in the human rights treaties that they are party to, it would appear that the drug control conventions may have been used to justify stringent action with adverse effects on human rights. In this context it is relevant that the Single Convention notes that states parties are not precluded from ‘adopting measures of control more strict or severe than those provided by this Convention’.⁵⁷ Formally, this does not legitimise measures in violation of human rights. However, it cannot be excluded that this may be read as legitimising strict measures of the type described above, including the imposition of the death penalty. Indeed, the Commentary notes, ‘[p]ermissible substitute controls would be, for example ... the imposition of the death penalty in place of “imprisonment or other penalties of deprivation of liberty”’.⁵⁸

Another point to note is that the 1988 Convention includes few express restraints with respect to human rights. It has been written that ‘the 1988 Convention does not particularise any protections’,⁵⁹ much less provide any guidance or due diligence. The Commentary to the penal provisions of Article 3 of the 1988 Convention states that

[w]hile it is important to stress that the Convention seeks to establish a common minimum standard for implementation there is nothing to prevent parties from adopting stricter measures than those mandated by the text should they think fit to do so, subject always to the requirement that such initiatives are consistent with applicable norms of public international law, in particular norms protecting human rights.⁶⁰

However, neither the treaty nor the Commentary provides any direction to the relevant human rights norms or even instruments where they are enshrined, such as the ICCPR.

⁵⁶ There has, however, been a robust debate about whether or not the treaties can also accommodate a legal, recreational market for some illicit drugs. Bewley-Taylor writes, ‘[u]nlike any moves towards the legalization of recreational drug use by any of its members, the operationalization of harm reduction principles does not require any formal alteration of the provisions of any of the conventions nor full-blown defection from them’, see Bewley-Taylor, *International Drug Control*, n. 29, at 97. For a different view see J. Collins, ‘Surprising source offers signs the global “war on drugs” may be ending’, *Reuters Analysis and Opinion Blog*, 28 October 2014; I. Dunt, ‘Desperate scenes as drug law enforcers try to preserve the status quo’, *Politics.co.uk Blog*, 15 October 2014; ‘US calls for major reinterpretation of international drug laws’, *Vox.com*, 14 October 2014. Whatever the case, it is now well accepted that harm reduction and its accompanying principles have been accepted by international public health and human rights bodies, as well as the UNODC. See D. Barrett and P. Gallahue ‘Harm Reduction and Human Rights’ (2011) 16(4) *INTERIGHTS Bulletin* 188, at 188.

⁵⁷ Article 39 of the 1961 Single Convention on Narcotic Drugs, n. 2.

⁵⁸ Commentary on the Single Convention on Narcotic Drugs, 1961, UN Doc. E.73.XI.1 (1973), at 449–50.

⁵⁹ N. Boister, ‘Human Rights in the Suppression Conventions’ (2002) 2 *HRLR* 199, at 208.

⁶⁰ Commentary to the 1988 Convention, n. 30, at 49, para. 3.3.

Only one Article in the 1988 treaty explicitly mentions human rights, Article 14, which requires parties ‘to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants’. However, once again, neither the 1998 Convention nor the Commentary provide much illustrative guidance about what rights are at risk or steps to protect them.

On matters such as mutual legal assistance, states are encouraged to look to other instruments for inspiration, such as the 1990 Model Treaty on Mutual Assistance in Criminal Matters.⁶¹ This document does reference human rights in the preamble, as well as in the section on procedure, which specifies that processes to handle incoming and outgoing requests for assistance in criminal matters ‘should be in conformity, wherever applicable, with international and regional human rights instruments’.⁶² However, this model treaty is only intended as a constructive template for governments, and hardly clarifies the requirement that various parties respect human rights norms in national legislation as well as cooperative activities.

It can be observed that the 1988 Convention does identify other legal regimes that must be honoured. For example, Article 17, which calls for international cooperation on the suppression of illicit traffic by sea, specifies that such collaboration must be done ‘in conformity with the international law of the sea’. Specific instruments are also identified in the Commentary. Similarly, Article 19 of the 1988 Convention to suppress the use of the mails for illicit traffic, states that parties shall do so ‘in conformity with their obligations under the Conventions of the Universal Postal Union’.

While the 1988 Convention is mostly silent on the human rights dimensions of drug enforcement, protection may be offered under domestic law. The treaty repeatedly emphasises that requests for assistance or cooperative agreements should proceed as ‘allowed by the domestic law of the requested Party’⁶³ or ‘subject to its constitutional principles and the basic concepts of its legal system’.⁶⁴ Therefore those countries that include human rights guidance

⁶¹ Ibid., 19, at 200.

⁶² Model Treaty on Mutual Assistance in Criminal Matters, adopted by UN Doc. A/RES/45/117 (14 December 1990) (subsequently amended by UN Doc. A/RES/53/112 (14 December 1990)), at 157. A similar example includes encouragement for states ‘to examine state practice’ such as the Custom Cooperation Council’s Model Bilateral Agreement on Mutual Administrative Assistance in Customs Matters (June 2004), which contains significant preambular language on human rights (available at www.wcoomd.org).

⁶³ Article 7(3) of the 1988 Convention, n. 5.

⁶⁴ Article 3 of the 1988 Convention, *ibid.*

in their drug control programmes have some relevant sources by which to restrain problematic activities.

Nevertheless, even deference to domestic legal systems appears to be primarily concerned with ensuring states as much flexibility as required only insofar that they implement the obligations of the 1988 Convention. For example Article 9(1) of the 1988 Convention requires parties to ‘co-operate closely with one another, consistent with their respective domestic legal and administrative systems’. The Article is drafted to be ‘sufficiently general to accommodate the various approaches to be found in the legal and administrative systems of the parties’.⁶⁵ Though it can certainly be read to include domestic processes intended to prevent aid or assistance for internationally wrongful acts, the Commentary makes it appear ‘that these limitation clauses are more concerned with the “fit” of international and domestic penal systems than with the protection of individual human rights’.⁶⁶ Boister writes in his review of the 1988 Commentary that ‘[t]he potential clash with human rights is openly acknowledged and sensitivity is urged, although not required’.⁶⁷

4. Shared responsibility for cooperation and assistance

There are varying levels of responsibility for the human rights violations listed above that can extend beyond those governments that directly commit unlawful acts like illegal executions and arbitrary detentions. Given the cooperative terms of the treaty, responsibility for serious abuses potentially embraces not only the governments that commit or fail to prevent such acts, but also those states parties providing financial or technical aid that may facilitate their commission.

In fact, with respect to capital punishment, it has been possible to identify people executed in violation of international law, who were captured with financial or technical drug control assistance from external partners (some that condemned the very action they had facilitated).⁶⁸

⁶⁵ Commentary to the 1988 Convention, n. 30, at 216, para. 9.2.

⁶⁶ Boister, ‘Human Rights in the Suppression Conventions’, n. 59, at 208–209.

⁶⁷ Boister, ‘Book Review: Commentary on the United Nations Convention’, n. 31, at 467.

⁶⁸ R. Lines, D. Barrett, and P. Gallahue, ‘Complicity or Abolition? The Death Penalty and International Support for Drug Enforcement’ (London: Harm Reduction International, 2010).

The Iranian government, for instance, is one of the world's most prolific executioners with drug offences comprising the vast majority of death sentences.⁶⁹ However, as a major transit country for Europe-bound drugs,⁷⁰ Iran receives considerable financial and technical assistance from the UN and European states that oppose capital punishment. France, for example, provided Iran with drug-sniffing dogs through UN project 'IRNI50', which also employed German and Hungarian law enforcement authorities to train Iranian canine units.⁷¹ Drug sniffing dogs were critical in major drug busts and were involved in interdicting quantities that equalled almost 8 per cent of annual seizures in 2010, helping increase seizures from the previous year.⁷² Similar increases and seizures were seen in airport programmes and UN-trained border posts that received millions of dollars in financial aid from European donors.⁷³

In some instances, governments actually boasted of capturing individuals, who were later executed, with European and UN assistance. For example, Han Yongwan and Tan Xiaolin were both high-level traffickers captured in 2005 and 2003 respectively, who were nabbed as part of a joint operation with China, Thailand and Myanmar, and subsequently executed in China. The border liaison offices that helped apprehend these men were supported by the UN with European Union funding.⁷⁴ In fact, the operation was celebrated as a 'larger success' by the UN Office on Drugs and Crime (UNODC), and posters of Han and Tan's handover to Chinese authorities were displayed at the 2009 High Level Segment of the UN Commission on Narcotic Drugs.⁷⁵ Incidents such as this are hardly exceptions.⁷⁶

⁶⁹ Amnesty International, 'Death sentences and executions in 2013', 27 March 2014, ACT 50/001/2014, at 5; Amnesty International, 'Death Sentences and Executions 2012', April 2013, ACT 50/001/2013, at 6; 'Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran', UN Doc. A/HRC/25/61 (2014), paras. 80, 86.

⁷⁰ UNODC, 'World Drug Report 2012', June 2012, at 29.

⁷¹ République Française, 'Cooperation against drug trafficking: a new step in the cooperation between France and Iran against drug trafficking' (n.d., since removed); 'Iran, information document on behalf of the Political Committee by Josette Durrieu' (France, Socialist Group), Doc. A/2078, 28 June 2010, at section VII (since removed); UNODC, '2008 Annual Project Progress Report, INRI50', copy on file with author; UNODC, '2010 Annual Project Progress Report, IRNI50 – Integrated border control in the Islamic Republic of Iran – Phase I', copy on file with author; Annual Report, 'Islamic Republic of Iran: Drug Control in 2011' (Iran Drug Control Headquarters, 2012).

⁷² K. Karaj, 'Iran's Anti-Narcotics Dog Capacities Continuously Enhanced By UNODC', *UNODC Stories from Islamic Republic of Iran*, 27 June 2011.

⁷³ For a full breakdown see 'Partners in Crime: International Funding for Drug Control and Gross Violations of Human Rights' (London: Harm Reduction International, 2012).

⁷⁴ UNODC, 'Border Liaison Offices in Southeast Asia 1999–2009: Ten Years of Fighting Transnational Organized Crime' (n.d.), at 5.

⁷⁵ See 'Partners in Crime', n. 73, at 5–8.

⁷⁶ *Ibid.*; Reprieve, 'European Aid for Executions', November 2014, at 13; Lines et al., 'Complicity or Abolition?', n. 68.

The International Law Commission (ILC) has warned against this type of support in forbidding aid or assistance in the commission of internationally wrongful acts.⁷⁷ Giorgio Gaja, Special Rapporteur on the responsibility of international organisations of the ILC wrote that ‘an international organization could incur responsibility for assisting a State, through financial support or otherwise, in a project that would entail an infringement of human rights of certain affected individuals’.⁷⁸ This is a very real concern with respect to states like Iran that receive drug control aid despite widespread human rights abuses.

Human rights standards and mechanisms have shown considerable capacity to apportion responsibility in relation to acts of multiple states involved in the commission of human rights violations. Iran has been roundly criticised for its use of the capital punishment,⁷⁹ and donors too have been increasingly under fire for possible complicity. For example, UN Secretary General Ban Ki-moon in 2012 wrote:

[C]ooperative assistance – such as technical or financial aid, provision of materials, intelligence-sharing and mutual legal assistance – could facilitate the apprehension of alleged drug offenders, who may be subject to the death penalty in violation of international human rights law. There has been developing recognition of the need to systematize international law enforcement efforts to ensure that cross-border cooperation does not lead to penalties that would violate international human rights law. Donor States and international organizations that provide support to drug-control projects in retentionist States need to ensure that such assistance does not facilitate and legitimize the use of the death penalty in cases that would not be acceptable in accordance with international standards and safeguards.⁸⁰

There are developing – if still insufficient – human rights guidelines for donors and international organisations responsible for implementing multilateral drug control projects.⁸¹ In 2012, the UN Office on Drugs and Crime released a position paper on human rights that states:

⁷⁷ ILC Report on the work of its sixty-first session, 4 May to 5 June and 6 July to 7 August 2009, UN Doc. A/64/10 (2009), ch. IV.

⁷⁸ G. Gaja, ‘Third report on responsibility of international organizations’, UN Doc. A/CN.4/553 (13 May 2005), para. 28.

⁷⁹ ‘Iran: UN experts condemn public execution of juvenile and reiterate call for immediate halt on death penalty’, *OHCHR News*, 23 September 2011.

⁸⁰ ‘Question of the death penalty report of the Secretary-General’, UN Doc. A/HRC/21/29 (2 July 2012), paras. 26–27.

⁸¹ See, for instance, UNODC, ‘UNODC and the Promotion and Protection of Human Rights’, Position Paper, 2012, available at www.unodc.org/documents/justice-and-prison-reform/UNODC_Human_rights_position_paper_2012.pdf; HM Government, Overseas Security and Justice Assistance, ‘Human Rights Guidance’, 15 December 2011, available at www.gov.uk/government/publications/overseas-security-and-justice-assistance-osja-guidance.

A key starting point ... is to first understand the full human rights context and implications of UNODC policies and actions in all dealings with states and other organisations. This includes recognizing those situations in which activities funded by the organisation risk being misused by states and hence indirectly aiding or assisting in human rights abuses.⁸²

The paper recommends conducting an assessment of potential risks and severity of abuses occurring in particular environments.⁸³ It adds, ‘basic principles for determining when UNODC assistance may indirectly aid or assist in human rights violations include the nature of the UNODC connection, interaction, or technical support and its closeness to a sustained pattern of human rights violations.’⁸⁴ In extreme cases it recognises support can be frozen or withdrawn.

Similarly, the UK’s Foreign and Commonwealth Office has implemented an Overseas Security and Justice Assistance guidance document in 2011, which applies to a number of areas including drug control and counter-terrorism. The guidance establishes a process that includes an assessment of contextual risk to human rights, identification of legal risks associated with a project, steps to mitigate the risk, or the decision of whether to proceed at all. The document states:

While UK assistance overseas in the field of security and justice can help achieve both security and human rights objectives in a particular country (e.g. effective investigation of a specific crime, protecting the public, proportionate use of force, enhancing procedural fairness in criminal trials, reforming a corrupt and dysfunctional armed force or police service), the assistance itself can sometimes present human rights risks, which in certain circumstances may give rise to legal, policy or reputational risks for the UK.⁸⁵

This guidance ‘applies to both case specific assistance and broader, often longer term capacity building assistance’.⁸⁶

Such guidelines, in effect, have the potential to give concrete meaning to the idea underlying Article 16 of the Articles on Responsibility of States for Internationally Wrongful Acts⁸⁷ (or Article 14 for the Articles on the Responsibility of International Organizations).⁸⁸

⁸² ‘UNODC and the Promotion and Protection of Human Rights’, *ibid.*, at 5.

⁸³ *Ibid.*, at 6.

⁸⁴ *Ibid.*

⁸⁵ HM Government, ‘Human Rights Guidance’, n. 81, para. 3

⁸⁶ *Ibid.*, para. 5

⁸⁷ Articles on Responsibility of States for Internationally Wrongful Acts, ILC *Yearbook* 2001/II(2).

In extreme cases, concern for contributing to human rights abuses has caused some countries to withdraw counter-narcotics aid from governments that use drug control as a pretence to violate international norms. In recent years, the United Kingdom, Denmark and Ireland, all withdrew support from Iran's drug control programme, citing human rights concerns.⁸⁹ The Irish Minister of State at the Department of Foreign Affairs told reporters that the government withdrew its support from Iran because it 'could not be party' to funding the death penalty.⁹⁰

This kind of guidance and action reflects how human rights can influence the shared responsibility of drug control. However, drug control can lead to other outcomes for which the onus cannot so easily be placed on a single actor, as might be the case with a government that applies the death penalty or an agency that is complicit in unlawful executions. The following section looks at these scenarios.

5. Shared responsibility for wider harmful outcomes resulting from international drug control

Apart from the serious human rights violations referred to above, the drug control regime has also had a wider set of negative consequences. It has clashed with the forces of instability, weak governance, corruption and the simple laws of supply-and-demand. While black market violence is certainly not the exclusive offspring of drug control, it does thrive off of it, and the vast wealth amassed by criminal organisations from drugs must be understood as a function of the creation of a multi-billion dollar underground industry. These are among the 'policy impacts' of the drug control regime.⁹¹ While the human rights consequences of these impacts are very real, these are often indirect and not so easily linked to a single actor, and their causes transcend the disposition of any particular government.

According to the UNODC, there are five principal 'unintended consequences' of drug control. These include, first, a 'huge criminal black market'; second, 'policy displacement' in which law enforcement is prioritised above public health; third, the so-called 'balloon effect' which

⁸⁸ Articles on the Responsibility of International Organizations, ILC Report on the work of its sixty-third session, UNGAOR 66th Sess., Supp. No. 10, UN Doc. A/66/10 (2011).

⁸⁹ J. Doward, 'Has Britain's war on drugs led to more executions in Iran?', *The Guardian*, 15 September 2012; 'Denmark ends Iranian drug crime support', *The Copenhagen Post*, 9 April 2013; '[Irish] Government ceased anti-drug programme funding over Iran death penalty fears', *RTÉ News*, 8 November 2013.

⁹⁰ '[Irish] Government ceased anti-drug programme funding', *ibid*.

⁹¹ For more on this discussion see the 'Count the Costs' briefings, a collaborative project aiming to reduce the impact of the war on drugs, available at www.countthecosts.org/.

describes when tighter controls drive the drug trade out of one country and into another; fourth, ‘substance displacement’ when new drugs are developed to replace prohibited ones; and fifth, the stigmatisation of people who use drugs.⁹² Not all of these impacts can directly be translated into a strict legalistic human rights framework. Yet, cumulatively, there seems to be a clear connection.

Addressing these issues present enormous normative challenges. For example, a criminal black market for drugs is the by-product of prohibition. The Global Commission on Drug Policy writes:

When the United Nations Single Convention on Narcotic Drugs came into being 50 years ago, and when President Nixon launched the U.S. government’s war on drugs 40 years ago, policymakers believed that harsh law enforcement action against those involved in drug production, distribution and use would lead to an ever-diminishing market in controlled drugs such as heroin, cocaine and cannabis, and the eventual achievement of a ‘drug free world’. In practice, the global scale of illegal drug markets – largely controlled by organized crime – has grown dramatically over this period.⁹³

One of the most obvious effects of this growth has been bloody turf wars for parts of the trade, most notably in Latin America. Criminal organisations with links to the drug trade in the Americas are estimated to be responsible for roughly 150,000 murders in the region in recent years.⁹⁴ Most recently, Mexico’s drug war is believed to have resulted in at least 60,000 deaths between 2006 and 2012.⁹⁵

The ‘balloon effect’ has wrought enormous impacts on Mexico’s neighbours as well. Caught between the US border and Colombia, Guatemala is situated at one of the world’s busiest transit routes for illegal cocaine. Improved air and sea interdiction has pushed more of the trade through Central American countries. The International Crisis Group writes:

About 95 per cent of the cocaine in the U.S. comes through Central America and Mexico, according to U.S. government assessments. The amount shipped directly from South America to Mexico has declined dramatically over the past five years as Mexican authorities put more pressure on the cartels. While in 2006 55 per cent of the illegal narcotics heading for the U.S. landed first in Mexico, by 2010 that amount had dropped to just 7 per cent. Instead, drug shipments land first in Central America ... the

⁹² ‘Making drug control “fit for purpose”’, n. 12, at 10–11.

⁹³ The Global Commission on Drug Policy, ‘War on Drugs’, June 2011, at 4.

⁹⁴ Organization of American States, ‘The Drug Problem in the Americas: Analytical Report’, Doc. OEA/Ser.D/XXV.4 (May 2013), at 76.

⁹⁵ *Ibid.*

amount [of US-destined drugs] coming ... through Guatemala [increased] from 9 per cent to 17 per cent.⁹⁶

Violence has followed the trade. The homicide rate in Guatemala has doubled since the 1980s to more than 40 per 100,000 inhabitants.⁹⁷

It would be an overstatement to assume that the drug trade is the sole factor driving violence in the Latin American region. However, it is a contributing element to the financial and political capital afforded to many violent actors.⁹⁸

Human rights activists have decried many of the impacts of these ‘unintended consequences’, such as torture, enforced disappearances,⁹⁹ impunity,¹⁰⁰ and extrajudicial killings.¹⁰¹ They have in some cases identified parties alleged to be responsible. However, human rights bodies have generally taken aim at particular abuses and abusers rather than the drug control regime itself. Human Rights Watch is one notable exception. In June 2013, the organisation wrote:

National drug control policies that impose criminal penalties for personal drug use undermine basic human rights ... To deter harmful drug use, governments should rely instead on non-penal regulatory and public health policies ... Governments should also take steps to reduce the human rights costs of current drug production and distribution policies ... Among the steps should be reforming law enforcement practices and exploring alternatives for legal regulation that would reduce the power of violent criminal groups ... International drug conventions should be interpreted and, where necessary, revised to ensure that they do not prohibit or discourage governments from adopting policies that would enable them to reduce the human rights costs of current policies.¹⁰²

However, this is difficult when the activities that are contributing to these impacts are precisely the kinds envisioned by international treaties, such as the 1988 Convention. If prohibition remains the foundation of the drug control regime, at least according to some

⁹⁶ International Crisis Group, ‘Guatemala Drug Trafficking and Violence’, Latin America Report No. 39, 11 October 2011, at 7.

⁹⁷ *Ibid.*, at i.

⁹⁸ For more on the exploitation of political and financial capital from drugs, see V. Felbab-Brown, *Shooting Up: Counter-Insurgency and the War on Drugs* (Washington DC: Brookings Institution Press, 2010).

⁹⁹ See for instance Human Rights Watch, ‘Neither Rights Nor Security: Killings, Torture, and Disappearances in Mexico’s “War on Drugs”’, 9 November 2011.

¹⁰⁰ Human Rights Watch, ‘Uniform Impunity: Mexico’s Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations’, 29 April 2009.

¹⁰¹ Human Rights Watch, ‘Death and Drugs in Colombia’, 2 June 2011; Human Rights Council, ‘Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions’, UN Doc. A/HRC/14/24 Add. 6 (28 May 2010).

¹⁰² Human Rights Watch, ‘Americas: Decriminalize Personal Use of Drugs Reform Policies to Curb Violence, Abuse’, 4 June 2013.

analysts¹⁰³ (and probably a fairly large number of states parties), then there is limited room to manoeuvre. The terms of the drug control treaties – or at least their restrictive interpretation by some parties – confine governments’ abilities to experiment with alternatives that could address the black market.

For example, Uruguayan President, Jose Mujica, spearheaded an effort in 2013 to regulate the production and sale of marijuana in order to prevent ‘the violence’ that ‘consumes a lot of people who have nothing to do with it’.¹⁰⁴ When the law passed in the lower house, the International Narcotics Control Board responded almost immediately to say that:

Such a law would be in complete contravention to the provisions of the international drug control treaties, in particular the 1961 Single Convention on Narcotic Drugs, to which Uruguay is a party ... INCB urges the Uruguayan authorities to ensure that the country remains fully compliant with international law which limits the use of narcotic drugs, including cannabis, exclusively to medical and scientific purposes.¹⁰⁵

The INCB used somewhat gentler language when it responded to events in the US states of Washington and Colorado, where regulatory marijuana laws were introduced that were intended to ‘take sales out of the hands of criminals’.¹⁰⁶ When these referenda passed with sizeable majorities, the INCB wrote:

This constitutes a significant challenge to the objective of the international drug control treaties to which the United States is a party ... The Board stresses the importance of universal implementation of the international drug control treaties by all States parties and urges the Government of the United States to take necessary measures to ensure full compliance with the international drug control treaties in its entire territory.¹⁰⁷

¹⁰³ The prohibitionist underpinnings of the treaties, however, are worth debating. This chapter is not meant to support such a reading but rather suggests it is currently how many governments have chosen to apply the obligations of the drug control conventions. For more on the debate about the flexibility of this regime see, for example, J. Collins, ‘The State Department’s move to a more flexible diplomatic policy on drugs is a rational approach to a difficult question’, *London School of Economics and Political Science Blog on American Politics and Policy*, 1 December 2014; R. Lines and D. Barrett, ‘Guest Post: Has the US just called for unilateral interpretation of multilateral obligations?’, *Opinio Juris*, 12 December 2014.

¹⁰⁴ ‘Uruguay president wants to legalize marijuana as a “contribution to humanity”’, *Agence France-Presse*, 7 August 2013.

¹⁰⁵ United Nations Information Service, ‘INCB President urges Uruguay to remain within the international drug control treaties, noting draft cannabis legislation’, UNIS/NAR/1176, 1 August 2013. This is not to say that it can be guaranteed that regulation of cannabis in one small country will reduce violence in the region. However, President Mujica recognised the endeavour as an experiment to be studied and reformed if it failed.

¹⁰⁶ ‘Yes on 64: Campaign to Regulate Marijuana Like Alcohol’, see www.regulatemarijuana.org/regulation-works.

¹⁰⁷ INCB Report 2012, n. 1, at 11–12.

This creates a tension in the international system and pushes up against the limits of human rights responses. Currently, the consequences of the regime can be criticised by legal principles, such as proportionality and discriminatory impacts, while the (at least partial) causes of these impacts remain driven by international law.

This is not to say that the international community is completely handcuffed by the drug control regime. States are casting a very critical eye at the drug control system and are now turning to political mechanisms to review its impacts. For example, the Organization of American States recently produced a number of reports that analysed the current system¹⁰⁸ and considered possible alternatives,¹⁰⁹ including possible revisions of the drug control conventions. In addition, three Latin American states successfully pushed for a UN General Assembly on Drugs in 2016 to review the drug control regime. The INCB has criticised some of these moves.¹¹⁰

It is well understood that any substantive changes to the regime that will develop from these initiatives will be slow in coming. An oft-used analogy is that changing the international drug control system is ‘like turning around an ocean liner’.¹¹¹ While it is beginning to turn, it is also clear that the drug control system and its defenders will do their utmost to stand in the way. In addition, these forces will use the so-called ‘shared responsibility’ of drug control as a rhetorical barrier to any meaningful reform.

6. Conclusion

Drug control is frequently cited as a shared responsibility of the international community. However, the current approach to drugs has come with many costs including rampant human rights abuses. The transnational nature of international drug control means that multiple parties may be implicated in the abuses of a single state. Nevertheless, human rights bodies have proven capable of identifying certain wrongful acts, and the various obligations of each party, including those that aid or assist in their commission.

¹⁰⁸ ‘The Drug Problem in the Americas’, n. 94.

¹⁰⁹ Organization of American States, ‘Scenarios for the Drug Problem in the Americas 2013-2025’, OEA/Ser.D/XXV.3, May 2013.

¹¹⁰ International Narcotics Control Board Annual Report, ‘Message from the President’, 5 March 2013. For an analysis of this release, see: M. Wells, ‘UN Criticizes LatAm Drug Legalization Moves’, *InSight Crime Analysis*, 5 March 2013.

¹¹¹ ‘White House Czar Calls for End to “War on Drugs”’, *Wall Street Journal*, 14 May 2009.

Yet there are many unintended consequences of international drug control that are not so easily linked to a single rogue state or responsible party. Violent black markets, the so-called ‘balloon effect’ (in which the drug market is pushed from one place into another), and the development of new substances, have all been identified by the UNODC as unintended consequences of the current regime.

Governments that are attempting to address these consequences via drug law reform – or in some cases simple debate – face criticism from defenders of the *status quo*. In particular, reform-minded governments are frequently accused of challenging the so-called shared responsibility of drug control.

However in the face of terrible violence, the resilience of mobile drug markets and other consequences of the ‘drug war’, reform is gaining momentum. And the costs of a rigid drug control system’s shared responsibility are increasingly looking too great for many governments to sustain.