



International Narcotics Control Board

September 11, 2015

ON THE NEED FOR A REVIEW OF THE RELATIONSHIP BETWEEN DRUG CONTROL AND HUMAN RIGHTS CONVENTIONS AT UNGASS 2016

As you have been asked by CND to contribute fully to the preparations for the special session in 2016, in particular by submitting to the Commission on Narcotic Drugs, through the Executive Director of the United Nations Office on Drugs and Crime, specific recommendations on the issues to be addressed at the special session, we, the Alliance for Rights-Oriented Drug Policies (AROD), hereby bring to your attention an issue that hitherto has been overlooked.

This issue has to do with the failures of prohibition and the relationship between the UN drug control and human rights conventions, and we regretfully observe that although a wide variety of UN member states, IGOs, and NGOs have underscored the need for an unbiased review of fundamental issues concerning drug policy and that future drug policies must be based on respect for human dignity, liberty, democracy, equality, solidarity, the rule of law and human rights, issues such as these are likely to be ignored at UNGASS 2016.

A REFUSAL TO DEAL WITH FUNDAMENTALS

Of course, the official documents all give lip service to such ideals: We have seen UN bodies and public officials again and again declare their allegiance to an open and inclusive debate where all stakeholders and perspectives are heard. They talk highly of “the importance of a comprehensive, multi-dimensional and collaborative approach to finding practical and sustainable solutions to the drug issues facing communities throughout the world”;¹ they talk of “addressing all the consequences of the world drug problem, including in the health,

¹ *High-level General Assembly Thematic Debate in support of the process towards the 2016 Special Session of the General Assembly on the World Drug Problem*, New York, 7 May 2015.



social, human rights, economic, justice and security fields,”² and they seem genuinely concerned about “the importance of a broad, transparent, inclusive and scientific evidence-based discussion . . . on the most effective ways to counter the world drug problem, consistent with the three international drug control conventions and other relevant international instruments.”³ They have even declared time and time again that at its special session on the world drug problem in 2016, the General Assembly should “address substantive issues on the basis of the principle of common and shared responsibility and in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights,”⁴ and that “special attention should be given to all human rights-related matters.”⁵

Still, such fine words seem to be little more than window dressing, conceivably put in place to cover up a more sinister reality. And for those who look more closely, it seems evident that there are powerful forces at play, forces that will go to great lengths to ensure that any discussion on the future of drug policy are firmly grounded within the parameters of the current law-and-order paradigm.

We find this highly unfortunate, and we think it betrays a dishonest and biased approach—an approach that is more influenced by high officials’ psychological defense mechanisms than sincere aspirations to deal with reality.

There is, after all, plenty of evidence to suggest that in respect to key thematic areas (such as drugs and health, drugs and crime, drugs and development, and drugs and human rights) drug prohibition has proved to be a bigger problem than the drugs themselves, contributing to a worsening crisis in these areas. And while prohibitionist-minded officials continuously struggle to ignore this evidence, it is well known amongst drug policy researchers. In fact, virtually every commission who has studied this issue has confirmed the same, and as most reports on drug policy expand on this factual picture, you are hard pressed to find a knowledgeable scholar who will disagree.⁶

2 Ibid.

3 *Special Segment: Preparations for, the Possible Outcomes of and Organizational Matters Relating to the Special Session of the General Assembly on the World Drug Problem to Be Held in 2016*, Report of the Secretariat, E/CN.7/2014/17, p. 4.

4 Ibid.

5 Ibid, p. 5.

6 For more on this, as well as every other contention made here, see Roar Mikalsen, *To End a War: A Short History of Human Rights, the Rule of Law, and How Drug Prohibition Violates the Bill of Rights* (attachment).



This should come as no surprise to officials at the INCB, for the allegations and the evidence behind them has already been presented elsewhere. As part of the UNGASS preparatory process, you have seen Mr. J. Calzada, Secretary General of the National Drugs Bureau of Uruguay, point out that your assumption that criminal sanctions are an effective way to eliminate drug use is not borne out by the evidence, and that it would be senseless to continue pursuing current policies in the hope of achieving results.⁷ You have seen UN agencies such as UNDP and NGOs such as the Global Commission on Drug Policy, ENCOD, Transform Drug Policy Foundation, Health Poverty Action, Open Society foundations, the West Africa Commission on Drugs, IDPC and INPUD try to impress upon UN officials in charge of the preparatory process the fact the degree of criminalization has little to no impact on the prevalence of drug use;⁸ that many of the harms and costs that are associated with drug use are substantially driven by prohibition, and that it is absurd to justify the status quo by the claim that drug use is harmful “when the perverse irony is that prohibition itself creates, drives, and perpetuates drug-related harms.”⁹

Together with the Organization of American States, these actors have presented information suggesting that some form of legalization is the only sensible solution to the drug problem,¹⁰ and they have pointed out the importance that you act on the available evidence and organize a thorough review of the pros and cons of prohibition versus alternatives.

These are not the only actors who have pointed out the importance of a honest, inclusive and open debate at UNGASS 2016: In the run-up to this meeting the United Nations University has pointed out a host of little recognized, detrimental side-effects of prohibition,¹¹ as well as the importance of seizing the special session as an opportunity to evaluate and adjust drug control arrangements to ensure that they reflect the original

7 Inter-Parliamentary Union, *Panel Discussion on the Legalization of Drugs: Can it Help Curb Organized Crime?* p. 2

8 UNDP, *Perspectives on the Development Dimensions of Drug Control Policy*, March 2015; Jean-Paul Grund & Joost Brecksema, *Coffee Shops and Compromise: Separated Illicit Drug Markets in the Netherlands*, Open Society Foundations, 2013; Transform Drug Policy Foundation, *Drug Decriminalisation in Portugal: Setting the Record Straight*, 2014; Artur Domosławski, *Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use*, Open Society Foundations 2011; see also *infra* note 10.

9 INPUD, *Drug User Peace Initiative: A War on the Health of People who Use Drugs*, 2014, p. 1

10 Organization of American States, *The Drug Problem in the Americas*, 2013; Transform Drug Policy Foundation, *How to Regulate Cannabis: A Practical Guide*, 2014; Transform Drug Policy Foundation, *After the War on Drugs: Blueprint for Regulation*, 2009; IDPC, *The Road to UNGASS 2016: Process and Policy Asks from the IDPC*, November 2014; Global Commission on Drug Policy, *Taking Control: Pathways to Drug Policies that Work*, 2014; Catherine Martin, *Casualties of War: How the Drug War is Harming the World's Poorest*, Health Poverty Action, 2015; WACD, *Not Just in Transit: Drugs, the State and Society in West Africa*, An Independent Report of the West Africa Commission on Drugs, June 2014.

11 United Nations University, *Improving the Development Impact of Drugs Policy: Meeting Note from a Luncheon Roundtable*, July 2014.



concern of the drug control conventions—that is, “the health and welfare of mankind.”¹² Your Secretary-General, Ban Ki-moon, has called for a “wide-ranging and open debate that considers all options.”¹³ The Assistant Secretary-General of the UN Development Program, Jessica Faieta, has underscored that rather than engaging in limited reforms of existing policies, it is “crucial to undertake a paradigm shift.”¹⁴ The General Assembly has reaffirmed “that countering the world drug problem must be done in full conformity with the purposes and principles of the Charter of the United Nations and other provisions of international law, including the Universal Declaration of Human Rights.”¹⁵ And the head of United Nations University’s UN Office, James Cockayne, has warned that if the CND does not broaden its horizons in its preparations for UNGASS 2016, this special session will be seen by the media and the global public as disconnected from current realities on the ground, and as avoiding a “wide-ranging debate” in favor of the status quo.

Among other things, Mr. Cockayne has mentioned the permissibility and practicality of regulating the supply of certain scheduled substances (notably cannabis) as among the important issues currently excluded from the UNGASS draft agenda.¹⁶ Also other actors such as the OAS and European Union have stated that the outcome of UNGASS should be a concise and focused document reflecting the debate on different approaches to tackling the world drug problem. They have underlined the importance of considering new approaches that are based on knowledge and scientific evidence,¹⁷ ensuring a firm evidence-base for future policies, one that is based on respect for the principles of equality, proportionality, human rights and the rule of law—and that this can only be achieved if issues that have been ignored for too long get the attention they deserve. As the UNDP has reminded the treaty bodies:

“Ultimately, the UN’s involvement in drug control should be a means to achieve its core objectives as embodied in the UN Charter and the Universal Declaration of Human Rights, and enshrined in numerous treaties: peace, development, and human rights. Therefore, a clearer consideration and evaluation of the impact of

12 United Nations University, *The Road to UNGASS 2016 on the World Drug Problem: Meeting Note from a Roundtable Discussion*, November 2014, p. 1.

13 Remarks of the Secretary-General at the special event on the International Day against Drug Abuse and Illicit Trafficking, New York, 26 June 2013.

14 United Nations University, *The Road to UNGASS 2016 on the World Drug Problem: Meeting Note from a Roundtable Discussion*, November 2014, p. 2.

15 *General Assembly resolution 68/197 of 18 December 2013*.

16 *Ibid*, p. 2.

17 AG/RES. 1 (XLVI-E/14): Reflections and Guidelines to Formulate and Follow up on Comprehensive Policies to Address the World Drug Problem, September 19, 2014.



drug policies impacts on these key objectives would greatly enhance the debate. UNGASS 2016, and preparations thereto, provide important opportunities for a comprehensive discussion of successes and challenges around drug control policy . . . and ultimately, to promote system-wide coherence with respect to global drug control strategies.”¹⁸

All this considered we find it more than a little bit curious that INCB officials and others seem so eager to ensure that the future of drug policy is only discussed within the framework of the current law-and-order paradigm. From the documentation you have received, it is perfectly clear that no honest, unbiased review of the status quo can commence without discussing alternatives to prohibition—and yet high officials, while giving lip service to the principles of human rights and the importance of evidence based policies, continue the preparatory process unabated under the prejudiced opinion that future policies must be firmly set within the current law-and-order paradigm.

We are here to tell you that we, the Alliance for Rights-Oriented Drug Policies, strongly reject any effort to ensure that the debate about future policies remains firmly entrenched within this paradigm.

You have seen overwhelming evidence to suggest that the law and order approach to drug policy has failed and that a regime of controlled government regulation would be a more effective and humane approach to the drug problem. Still, there seems to be not only an ongoing effort to make sure that any discussion about future drug policies starts with the assumption that prohibition is the best way to protect the health and welfare of humanity, but there also seems to be an aversion for looking into what exactly the “drug problem” is.

Insofar as the INCB is a part of this effort we find it to act contrary to its mandate. We therefore remind you that your mandate *does not prescribe a blind faith in prohibition*, but an open mind as to what kind of policies are best suited in reducing the harms caused by the different drugs.

Thus, we note with grave concern any action on your part that fails to reflect an unbiased attitude towards what changes in the existing drug control machinery that might best serve humanity. Together with Mexico, Colombia, Ecuador, Uruguay, Costa Rica, Guatemala, the Czech Republic and other actors, we reject any attempt to turn the UNGASS 2016 into a talk club supportive of the status quo, and we find such prohibitionist preferences deeply disturbing as most experts on drug policy will agree that the war on drugs, including its

¹⁸ UNDP, *Perspectives on the Development Dimensions of Drug Control Policy*, March 2015, p. 3



foundation, the UN drug control conventions, are political and not evidence-based constructs. Indeed, as a majority of drug policy researchers agree that rather than protecting the public health and welfare (which was the whole point of the drug conventions), the global drug control regime has only succeeded in making matters worse, it appears obvious that we need to look *beyond* the parameters of prohibition to find a just and effective solution to the world drug problem.

THE NEED FOR A FUNDAMENTAL REVIEW OF UNDERLYING PREMISES AND PRESUMPTIONS

This means that officials cannot simply assume that the premises and presumptions that brought prohibition into being are valid today. Officials must have the courage to reconsider whether or not they reflect current knowledge, for *only if their beliefs mirror reality* can drug prohibition be compatible with human rights.

It is after all a fact that no matter the future direction of our drug policies, they must be harmonious with fundamental human rights standards and principles like that of autonomy, dignity, proportionality and equality. They must be effective ways of dealing with harms, they must be the least intrusive means available, and they must be evidence-based constructs reasonable people can agree on. *No one in their right mind will claim otherwise*, and as grave doubts exist whether or not this is currently the case, it seems clear that UNGASS 2016 must go back to basics: its prime objective should be an all-inclusive evaluation of what we have learned after nearly a century of prohibition, and the purpose of this evaluation should be to have the relationship between the drug control conventions and human rights conventions reviewed in light of the factual reality.

In this regard, important questions that must be considered are: What exactly is the drug problem? What part of it is prohibition related and what part is pharmacologically related? What is the historical origin of drug prohibition? Is it the result of a proper political process? Did officials back then listen to expert advice and build their policy on facts, or could it be the result of a moral panic, brought into being by nothing but prejudice and fear mongering officials' self-serving agendas? What effect has prohibition had on the supply and demand of illicit drugs? Has it proven itself efficient, or are there fatal flaws in the strategy that cannot be amended? To what extent has the drugs economy corrupted our social order? Are the good guys and bad guys clearly defined, different groups, or has the illicit economy corrupted society to the point where entire governments are in on it? If so, how realistic is the goal of winning the war on drugs? Is this war effort really necessary, or are there other alternatives to prohibition, less intrusive and more efficient at protecting the health and welfare of mankind? And last but not least, how does our catalogue of rights compare to this factual picture?



So far prohibitionists have not been willing to look into such questions. Until this day, they have embraced a policy of fear without giving any consideration to whether or not their fear is misplaced, and in order to maintain their punitive policy they have studiously ignored all evidence of its failure. We see this clearly in the UN drug control machinery, for rather than objectively evaluating what the problem actually is, the workings of this machinery has been skewed and biased in favor of the prohibition ideology and its terminology has never admitted to any positive benefits deriving from drug use. On the contrary, in order to justify a war on drugs and the goal of a drug-free world, the negative dimensions of drug use have been its sole focus and the message has been that the consumption of illicit drugs (unlike alcohol) is always problematic and must never become accepted as a way of life.

The fact that leading UN officials such as Antonio Maria Costa has compared the legalization of drugs to the legalization of pedophilia, human trafficking, and arms smuggling¹⁹ speaks volumes about the perceived drug threat and the flawed reasoning behind the drug war. In our view, this one-sided approach has been a recipe for disaster, for there is ample evidence to suggest that not all drugs are as bad as the prohibitionists seem to think. On the contrary, we are certain that a balanced review of the issue would find that a large majority of users are thankful for their drug of choice, that their use is unproblematic for society, and that the misuse of certain drugs are essentially a symptom of deeper issues our civilization is struggling with.

In other words, we believe that the “drug problem” has more to do with cultural factors than pharmacological properties of drugs. We believe that we have a lot to learn from other times and places where drug use was (and remains) an unproblematic part of life, and that a more mature society would deal with the problematic symptoms of drug abuse in a more respectful and intelligent manner.

Prohibitionists, of course, may disagree. These, however, are not controversial assertions and more and more people are calling for a fundamental review of drug policy.

Indeed, that was the very reason why countries such as Colombia, Mexico and Guatemala demanded the UNGASS meeting in 2016, and even if certain hardliners are doing their best to keep the upcoming review firmly embedded in the prohibitionist paradigm, you can no longer take for granted that a law and order approach to the drug problem is the best way to protect the health and welfare of mankind. An open and frank debate *must go* beyond this

¹⁹ Statement by the United Nations Under-Secretary-General and Executive Director of the United Nations Office on Drugs and Crime, Mr. Antonio Maria Costa, to the Opening of the high-level segment of the Commission on Narcotic Drugs at its fifty-second session.



assumption; it must begin with the fundamentals and not only deal with the criticism specifically leveled against the scheduling system (which is hopelessly outdated and does not reflect current knowledge about the different drugs' potential for use and abuse) but also the system of prohibition in general.²⁰

It also goes without saying that to ensure a balanced approach, this issue can only be decided under the auspices of an independent, impartial, and competent committee.

There are too many egos involved—and too much power, prestige, and money at stake—to let prohibitionist agencies with a perceived interest in the status quo review their own policies. There is a wealth of scholars who have documented that the history of drug prohibition is the history of how biased officials have got their way with lies, deceit, misconceptions and false notions of moral superiority—and had reason at any point been allowed to intervene, their fraudulent policies would quickly have been exposed. Hence, to preserve the integrity of future policies, the outcome of UNGASS should be an open investigation where both sides are heard, where all available evidence is considered, where the validity of underlying premises is carefully reviewed, and where human rights considerations and implications are clearly outlined and contextualized.

This proposition is hardly controversial. For even though prohibitionists and abolitionists disagree about the way forward, the importance of ensuring that all aspects of drug policy are addressed in full conformity with the purposes and the principles of the Charter of the United Nations, international law, and the Universal Declaration of Human Rights is something we all, presumably, agree upon. At the very least Heads of State, ministers and government representatives from 132 countries have all confirmed their unwavering commitment to such policies in adopting the *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem*, and in the run-up to UNGASS 2016 we have seen every official document highlight the importance of aligning drug policies with human rights commitments. UN officials and others have underscored the need for a people-centered approach, an approach in line with the principles of autonomy, proportionality, non-discrimination, human dignity, solidarity, the rule of law and human rights, and many have

²⁰ As to the classification system, if it should be retained at all, it must be revised so that it reflects a scientific scale of harm (and thus includes tobacco and alcohol); not before this is done will it be possible to rationally defend a system of prohibition, and as to the latter, any unbiased approach to the problem of dangerous drugs must include the possibility of controlled availability—that is, some form of legalization.



also pointed out that a balanced drug policy approach must uphold human rights by devoting special attention to the most vulnerable groups of people.²¹

Thus, it is only natural that we begin with this base as our common ground.

After all, we all, presumably, want what is best for society, which would be the most beneficial and least intrusive policy. The purpose of human rights law is to provide us with a standard which ensures that any government policy conforms to this test of reason, and as all UN bodies and member states are duty bound to respect human rights, any opposition to such a fundamental review must be seen for what it is—as a disgraceful effort to sabotage an open and unbiased debate in order to preserve human rights violating doctrines.

These may be harsh words, but for too long have prohibitionists succeeded in holding evidence-based drug policies at bay. It is not too farfetched to say that since its inception, most experts have been opposed to drug prohibition,²² and as part of the preparatory process you have seen drug policy researchers and NGOs point out the unscientific basis of the current scheduling system (among other things referring to the classification of cannabis as “a glaring historical error”).²³ These scholars and activists see the status quo as a result of “hardliners’ rhetoric, denial, manipulation, selective presentation, misrepresentation and suppression of evidence, selective use of experts, threats to funding, and purging of ‘defeatists’ from the UN system,”²⁴ and it is now more than 20 years since the UN Secretary General pointed to civil society’s increasing impatience with the bureaucratic institutions who fail to address issues that deeply concern them.²⁵

21 See for instance *High-level General Assembly Thematic Debate in Support of the Process Towards the 2016 Special Session of the General Assembly on the World Drug Problem*, New York, 7 May 2015.

22 As professors John F. Galliher, David P. Keys and Michael Elsner stated: “*Since the 1960s, few criminologists or criminal law professors have supported government drug policies. To this day, those setting . . . drug policy continue to ignore expert legal, academic, and medical advice. In the academic community there is now a clear recognition of long-standing patterns of both the ineffectiveness of, and racism inherent in . . . drug law enforcement. Indeed, opposition to contemporary . . . drug control policy has become normative in the academic community.*” Galliher, Keys & Elsner, *Lindsmith v. Anslinger: An Early Government Victory in the Failed War on Drugs*, vol. 88 of *Journal of Criminal Law and Criminology* (1998), p. 681.

23 Christopher Hallam, Dave Bewley-Taylor & Martin Jelsma, *Scheduling in the International Drug Control System*, Series on Legislative Reform of Drug Policies No. 25, TNI IDPC June 2014. For a comprehensive overview of the scientific research refuting the usual claims made about cannabis, see also International Centre for Science in Drug Policy, *State of the Evidence: Cannabis Use and Regulation*, 2015.

24 Martin Jelsma, *Drugs in the UN system: the Unwritten History of the 1998 United Nations General Assembly Special Session on Drugs*, *International Journal of Drug Policy* 14, 2003, p. 181. See also ENCOD Statement to UN CND, December 2014.

25 Martin Jelsma, *Ibid*, p. 183



Since then, things have gone from bad to worse, and 17 years after 770 scholars—including more than a hundred judges and professors of law—wrote to the UN Secretary General, complaining about human rights violations in the name of the war on drugs, stating that is causing more harm than drug abuse itself, and asking the UN to initiate a truly open and honest dialogue regarding the future of global drug control policies, we are still waiting for it to manifest.²⁶

No excuse can be found for this. Even though prohibitionists obviously have a lot invested in the status quo, they cannot continue to ignore the mounting evidence of the fundamental failures of current policies—at least not without subjecting themselves to criminal liability—and so, unless your commitment to evidence-based drug policies, the UN Charter, and the principles of human rights is wavering, we expect you to act on your obligations and recommend to the CND and others that the relationship between the drug control and human rights conventions are properly reviewed at UNGASS 2016.

In a debate where opinions and stances are so divergent and polarized this can help us all move forward, and insofar as we all agree that the future of drug policy must be evidence-based, that it must be possible to defend in principle, and that the way forward (whatever it may be) must be in compliance with the UN Bill of Rights, this will be a useful starting point. Our catalogue of rights, after all, is clearly defined, and building as it does on principles of proportionality, equality, justice, and non-arbitrariness, it should be easy enough to check whether or not current policies are in compliance with human rights law.

THE HUMAN RIGHTS ISSUE

However, looking at the UN drug control bodies' comments on drug policy and its relationship to human rights, it seems clear that there is some confusion as to how exactly the human rights issue relates to drug policy. We would like to clarify this by emphasizing that the human rights conventions *do not only* protect drug users from torture and capital punishment. They protect *all people* against arbitrary, disproportional, dysfunctional and discriminatory government interference with their lives, and they establish certain criteria that *all laws* must comply with.

To understand how these criteria invalidate the drug law, we must remember that the fundamental premise from which all else follows is that the individual is to have as much freedom, self-determination and responsibility as practically possible. In order to justify any

²⁶ See Public Letter to Kofi Annan, June 1, 1998 at <http://www.drugpolicy.org/publications-resources/sign-letters/ungass-public-letter-kofi-annan>.



limitation on our freedoms, therefore, the State must prove that “just requirements of morality, public order and the general welfare” necessitate it.

This means that our officials must demonstrate that the law satisfies the tests of legality, necessity, reasonableness and legitimate purpose. To succeed in this endeavor, they must show that the separation between licit and illicit drugs makes sense and that they have good reasons for criminalizing illicit drug users. The only way they can do this is by first demonstrating in specific fashion the precise nature of the threat (i.e. the illicit drugs). Then they must show that the drug law is necessary to combat this threat; that it is effective in doing so; and that it at the same time preserves the interests of the individual and society. Among other things, this means that the prohibition not only must be effective in curbing the supply and demand of the illicit drugs, but that it must be *the least intrusive* instrument amongst those which might achieve a protective function. *All these criteria must be met*, for only in doing so can the prohibitionists demonstrate that the law strikes a fair balance between the rights of the individual and the interests of the community.

This is the essence of the test of reason, and if the State fails to show that the drug law meets these criteria, then we are dealing with an arbitrary, disproportionate and discriminatory practice—and we have a clear violation of our catalogue of rights.

It must be made perfectly clear that this is an issue our officials have not previously considered. One reason for this is that when these policies came into being, the situation pertaining to the illicit drugs was manifestly different and we didn’t know enough about drugs or the consequences of prohibition to put two and two together and challenge the law from this perspective.

Half a century later, however, we know better. We have learned that whether we are talking about licit or illicit drugs, there are the same supply and demand mechanisms in effect and the same varying patterns of use, and we have learned that alcohol and tobacco, each in their own way, are the worst of all drugs for society and users alike. Not only that, but we have also discovered that the degree of criminalization has little to no influence on the user population; that the problems generated by prohibition (organized crime, corruption, violence, disease, deaths by overdose, etc.) are worse than the problems caused by the drugs themselves; and that a health-oriented approach, like the one we have for alcohol, is a much more sensible solution to the drug problem.

In other words, as we have wised up, we have learned that the idea of prohibition is built on a series of faulty premises, prejudices that can be traced back to a massively overblown enemy image and the moral panic that follows. And when we take into account that (1) the separation between licit and illicit drugs is nonsensical and (2) that less invasive—and more



prudent—means that the law-and-order approach are available, we also have a sound basis for arguing that today’s policies are incompatible with key human rights standards and principles.

After all, we have just seen that the equality principle protects us against discriminatory practices, while the proportionality principle defines certain criteria that all laws must comply with in order to be compatible with our catalogue of rights. And as most experts on drug policy agree that (1) the separation between licit and illicit drugs makes no sense and (2) that a health-oriented approach, like the one we grant the users of alcohol and tobacco, is a much more sensible solution to the drug problem, it seems clear that we are dealing with a violation of the equality principle. Furthermore, because these policy analysts also agree that (3) drug prohibition can never achieve its goal of a drug free world; (4) that there are less invasive means available, more fit to minimize the harms caused by drug use; and (5) that the harms associated with prohibition far outweigh the harms caused by drug use, it also seems clear that drug prohibition is incompatible with the principle of proportionality.

This being so, we can—should the prohibitionists not prove otherwise—conclude that we are dealing with a human rights violation.

Prohibitionists, of course, are likely to disagree. They build their analyses from the opposite set of premises, and in their minds they have good reasons for treating drug users differently than alcohol users. Be that as it may. They are free to prove the superiority of their policy to an independent, impartial and competent commission—and this is what we expect you to recommend at UNGASS 2016.

No less will suffice, as this issue can only be resolved by going beyond mere contentions.

If the prohibitionists’ reasoning is confirmed by the factual picture, they have nothing to fear—no prestige, money, and power will be lost. Instead they will have the opportunity to once and for all prove that their policy is a valid and honest approach to the problems associated with drug abuse, and that the majority of commissions and drug policy experts who has looked into this issue before them are wrong in their criticisms. As this criticism is constantly increasing, this should be a most welcome treat, allowing prohibitionists to silence all opposition and continue their crusade, having proved that theirs is a righteous cause.

However, if this commission should conclude that the drug reform activists’ reasoning are better aligned with the factual reality, this would not only prove that the logic behind prohibition is retarded and that the punitive paradigm clearly is incompatible with the provisions of the international drug control treaties (which is to protect the public health



and welfare); it would also mean that *drug prohibition itself* violates fundamental principles of human rights, and that our officials are duty bound to cease their persecution of all drug law violators.

Now, this little summary may be not be sufficient to convince those UN officials who are most dedicated to the prohibition ideology, and to further clarify the situation you hereby receive a copy of *To End a War*. In case any of the allegations above seem dubious or unfounded, we invite you to read this book as it will tell you everything you need to know: (1) it elaborates on why our drug policies are incompatible with human rights; (2) it specifies which articles in the UN International Bill of Human Rights that proves a violation; and (3) it also enlarges on our civil servants' obligations in this situation.

You can also, if you want to learn more about all this, visit our website at www.rodpolices.org. In the reading room section you will find an abundance of scholarly works that support the factual picture as summarized by *To End a War*, and as you can see there are many drug policy experts and professors of law who will conclude that drug prohibition represents a discriminatory, arbitrary, and disproportional practice.

We would like to emphasize that if this is so, then there can be no doubt that we are dealing with a gross violation of human rights. The purpose of human rights law is to protect us from such practices, and so we ask the INCB to do what you can to ensure that our drug policies' relationship to the human rights conventions is properly reviewed.

In this regard, you have a special responsibility to the world community for several reasons: (1) because the United Nations was instrumental in the process of establishing the international framework for drug prohibition; (2) because the UN drug control conventions, the essence of this framework, have proven to be the result of misguided assumptions and erroneous beliefs; (3) because the irrational persecution of drug law violators and the destructive side-effects of prohibition are becoming more obvious each day, making the relationship between these conventions and the human rights conventions increasingly disputed; (4) because several U.S. states, in obvious tension with the international drug control treaties, have legalized recreational cannabis use, and more can be expected to follow; (5) because UN member states like Uruguay also have a regulated cannabis market, and because more countries are thinking along the same lines; (6) because there is increasing tension between such regimes and more punitive oriented ones (as evidenced by the fact that the INCB and other prohibitionist agencies have already made clear their view that such regimes are in breach of their treaty obligations); (7) because this tension can only be satisfactorily resolved by looking at the drug control conventions' relationship to the human rights conventions; (8) because the United Nations' *raison d'être* is to protect fundamental principles of human rights, to secure the advancement of human rights law,



and to ensure that human rights conventions are respected; (9) because the reputation of the UN as a benevolent organization depends on your actions; and (10) because INCB officials do not only have a reputation to uphold, but also a duty to comply with the rule of law.

As UNGASS 2016 now draws near, we therefore ask that you consider very carefully your obligations to the UN Bill of Rights and get your priorities straight. With Resolution 57/5, the CND has taken upon itself to take all possible measures to ensure an adequate, inclusive and effective preparatory process for the special session, and it has asked the General Assembly to reaffirm that, at its special session on the world drug problem in 2016, it will address substantive issues on the basis of the principle of common and shared responsibility and in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights.

This can only be done by giving the problematic relationship between drug prohibition and human rights law full attention.

We suggest therefore that you look into the information hereby received, share it with other relevant UN entities and inter-governmental organizations, and present a proposal to the CND strongly recommending that the question of our drug laws' compatibility with human rights law becomes the focus of the debate. Failure to do so will represent a breach of your obligations to human rights, the rule of law and humanity, as all other matters are subordinate to this issue and any sensible discussion on the future of drug policy must begin by an effort by prohibitionists to answer the questions raised by the rights-oriented debate.

QUESTIONS WE WANT ANSWERED

Some of the questions raised by the rights-oriented debate are discussed above in general terms, but our organization has articulated four specific questions that must be answered to the satisfaction of an impartial, independent and competent commission in order for drug prohibition to be found compatible with human rights law. Provided that our civil servants recognize the rights-oriented debate, these questions are basically the same, and can, using marijuana as an example, be stated like this:

- Whereas all comparisons of the problems associated with marijuana and legal drugs like alcohol and tobacco demonstrate that the legal ones are more harmful to users' health and more destructive to us as a society: *How will you defend present policies? How can you, without building your drug policy on a discriminatory practice—and thus violate the principle of equality—argue in favor of a health-oriented approach toward alcohol users and a continued criminalization of marijuana users?*



- Whereas there is the same supply and demand factors involved when it comes to marijuana and other drugs like alcohol and tobacco, and whereas the different groups of drugs also have the same varying patterns of use associated with them: *How will you justify the persecution and the demonization of the drug law violators? What sort of crimes against his fellowmen has a marijuana producer, transporter or seller committed that an alcohol producer, transporter or seller has not?*
- Whereas virtually all of the world's leading drug policy scholars are in agreement that the drug laws have had worse consequences for society in general and users in particular than the drug use itself would have had, and whereas more and more organizations and commissions publish reports that confirm the same: *How will you, from the growing evidence base that suggests the cure (marijuana prohibition) is worse than the disease (marijuana use) defend current policies as measured against the principle of proportionality?*
- Whereas a majority of drug policy experts agree that there was a moral panic behind the outlawing of marijuana; whereas these professionals acknowledge that its current classification makes no sense; whereas scholarly works such as James Ostrowski's *Answering the Critics of Drug Legalization*, Douglas Husak's *Drugs and Rights*, and David A.J. Richards' *Sex, Drugs, Death, and the Law* have thoroughly refuted the traditional arguments in favor of criminalization; whereas scholars such as Eva Bertram, Morris Blachman, Kenneth Sharpe and Peter Andreas have documented fatal flaws in the strategy of prohibition that cannot possibly be remedied; whereas an independent, impartial, and competent tribunal (the Cannabis-tribunal in the Hague, 2008) has already qualified the prohibitionist argument as "based on fallacies" and "absolutely worthless", and whereas the drug laws thus seem to build their credibility on a series of faulty premises: Considering the fact that the enemy image of marijuana has proven vastly exaggerated; considering that the separation between the licit and illicit substances has proven an arbitrary divide; considering that that the evidence is increasingly clear that the drug laws have failed in reducing their supply and demand; considering that American, as well as European decriminalization experiments have shown a health-oriented approach to be more successful in dealing with the harms caused by drug use; considering that the cure has proven worse than the disease to the degree that the harms caused by prohibition now have become so enormous that they threaten to undermine the very fabric of our society; considering that paternalistic and moralistic arguments have failed, and considering that you can no longer justify prohibition on the basis that (1) it suppresses different types of crime, (2) that it protects our youth and the wellbeing of society, (3) that drug abuse has substantial economic and social



costs, (4) that marijuana use is intrinsically immoral and degrading in nature, (5) that its use is self-destructive, dangerous and may cause a variety of harms, including physical injury, addiction and death, (6) that it is a gateway drug, (7) that its use is not a victimless crime since it causes harm to others, and (8) that we do not know the consequences of legalization: *All this considered, what compelling reasons can there be for prohibition, and in what way are its means tailored towards its explicitly stated ends?*²⁷

These questions summarize the essence of the rights-oriented debate, and if drug prohibition really is compatible with human rights law, then it should be easy enough for prohibitionists to answer them.

So far, however, no one has been interested in doing so. As a matter of fact, prohibitionists in government and elsewhere have gone out of their way to ignore the implications of the rights-oriented debate; some have even gone so far as to suggest that drug users are exempt from the human rights conventions, and those among our civil servants who wish to continue this trend must invalidate this chain of reasoning and answer the following question:

- Whereas the fundamental principle from which our system of law follows is that the individual is to have as much freedom, responsibility, and self-determination as absolutely possible (that is, as compatible with a similar right and freedom of others); whereas to whatever degree our rights and freedoms shall be restricted weighty societal considerations must necessitate such actions (that is, they must be required for the protection of the general welfare and the purpose of securing due recognition and respect for the rights and freedoms of others); whereas the purpose of human rights law is to see to it that this is so and to protect the individual from undue, unjust, and arbitrary interferences; whereas at the core of the human rights conventions we therefore find certain legal principles, principles that are derived from the Wholeness concept, are mirrored in all humanitarian values, and bring together constitutional law, social contractarian thought and moral theory; whereas the articles of the conventions are the result of these principles and established to promote them so that their light can shine forth as we mature as a society towards greater levels of understanding; whereas these conventions thus is established to ensure to all people, *without distinction of any kind*, protection against discriminatory, unjust, arbitrary and disproportional practices; whereas this obviously includes the world's 200-300 million drug users, and whereas the objective of human

²⁷ Source references and documentation for all these allegations are found in *To End a War*.



rights law therefore is to secure *also to them* the rights and protections recognized in the human rights conventions: Considering that you undertake to strive for the advancement and observance of the rights and protections recognized in these conventions; considering that the principles you have a duty to promote and protect establish certain criteria that our system of law must be in accordance with in order to be lawful; considering that the abolitionists have assembled overwhelming evidence that the drug laws, as measured against these criteria, are found wanting; considering that these laws' societal function and consequence has been so devastating that they fulfill the criteria as gross human rights violations and crimes against humanity; considering that abolitionists have presented documentation that legal scholars and drug policy experts around the world have concluded the same; considering that former officials of such stature as UN Secretary General and High Commissioner for Human Rights are among the people who have attested to this factual picture; considering that you have been presented with four questions that must be answered to the satisfaction of an independent, impartial and competent tribunal if these scholars' and experts' conclusions are to be refuted; considering that the prohibitionist regime has never been submitted to the test of reason and that our officials hitherto have refused to respond to these questions; considering that *the rule of law demands that they be answered*, but that every official so far confronted with the matter has flouted his duties and denied us our right to an effective remedy; considering that up to 300 million drug users therefore are without the protection of human rights law and considering that the validity of the social contract and your credibility as civil servants now depends on the degree to which you take the promotion and observance of human rights law seriously; considering that your responsibility not only to the world's drug users, but humanity at large, the rule of law, and the human rights conventions you have a duty to protect and promote is clear; considering that objectively speaking there is no doubt that the abolitionists' concerns are valid and that in order to protect the integrity of the principles at the heart of the conventions you therefore need to see to it that human rights law rules supreme, that the matter is properly reviewed, and that these questions are satisfactorily answered; considering that if you fail to do so without adequately addressing the issues raised herein—that is, explaining *wherein* this chain of reasoning you disagree and/or *what more* corroboration we need to substantiate our contentions—it will become evident that your opposition to drug reform is blind; that it is motivated by ignorance and ignoble ambitions and that you are misusing your authority in an attempt to arrest the development of human rights rather than advance it; considering that in doing so you are, in effect, an enemy of all things good and decent, standing shoulder to shoulder with gangsters and war profiteers against the rule of law and the interests of the human race, and that you rightfully can be



persecuted as a willful participant in crimes against humanity: *All this considered, how will you explain your reasons for maintaining that the principles of human rights law do not apply to our drug laws? How will you explain your position and your rationale that the drug users somehow are exempt from a catalogue of rights that is inherent to every human being and that we are all supposed to enjoy?*

This is the great challenge facing prohibitionists, and should you find any civil servant, in the UN or elsewhere, insistent upon maintaining the status quo, then they must confront the rights-oriented debate head on and answer these questions to the satisfaction of an independent, impartial, and competent tribunal. The importance that they do cannot be overstated, *for only by answering these questions can they stand their ground; only by doing so can they show us that current policies are compatible with human rights; only by doing so can they assure the world's drug users that their rights are respected; and only by doing so can the State present itself as an adherent to the rule of law.*

Now that you are informed of this matter, your duties to international law are incontrovertible; *To End a War* expands on this bit, and as a representative of the world's drug users and human rights defenders we call upon you to take our catalogue of rights seriously.

It goes without saying that future drug policies must have a solid, rationally based foundation and addressing the questions raised by the rights-oriented debate is the only way the UN drug control machinery can move forward with integrity. As a preparatory body for UNGASS 2016, you have been tasked to address all organizational and substantive matters in an open-ended manner, and as the entire point of this special session should be to reinterpret the drug control conventions in light of changed facts, circumstances, norms, and social conditions, it would clearly fail its purpose as an opportunity to engage in an open and transparent, evidence-based discussion on achievements and remaining challenges if the failures of prohibition weren't readily admitted and reviewed in the context of human rights law.

The input already received from NGOs, IGOs and other actors is more than enough to point you in the right direction. We therefore ask that you act in accordance with your obligations to human rights, the rule of law, and humanity at large and assist us in having the relationship between the UN drug control conventions and the human rights conventions properly reviewed at UNGASS 2016.



On behalf of the world's drug users and human rights defenders we look forward to hearing from you regarding this.

Yours sincerely,

A handwritten signature in black ink that reads 'Roar Mikalsen'. The signature is written in a cursive style with a long, sweeping tail on the 'n'.

Roar Mikalsen
President of ARÖD