

1. The essence

- The United Nations is a membership organization where the countries of the world are members. The official position of UN on drug policy issues are consensus decisions made by the Commission on Narcotic Drugs or the General Assembly. The latest documents from these bodies do not call for or mention decriminalization.
- The UNGASS Outcome Document from 2016 focus on proportionality in sanctions, i.e. that reactions to use of, position of and trade in illegal drugs shall be proportionate to the gravity of offences. This is a clear message to countries with harsh justice policies and punishment practices.
- The UN drug conventions do not commit Member States to punish drug use or possession. They commit countries to react to the use of and trade in narcotic drugs in order to reduce supply and demand and by that to contribute to reducing drug-related harm inflicted on individuals and the society.
- Like in national governments, there are also differences of approaches and opinions within the UN system. Sub-bodies, working groups and even individual staff members may express other opinions than the UN official position on drugs. This is the case for the issue of decriminalization. This, however, cannot be interpreted as “United Nations appeal to Members States to decriminalize drug use”.
- UN agencies that approach drug problems from a so-called harm reduction perspective are more positive to decriminalization than the official UN position, in the sense that some of these agencies mention decriminalization explicitly or even recommend it to Member States.
- When referring to UN documents in national debates such references have to be precise and include the many nuances that are embedded in most UN texts.

2. What is “decriminalization”?

The concept of “decriminalization” is typically defined like this: “Decriminalization is the reclassification in law relating to certain acts or aspects of such to the effect that they are no longer considered a crime, including the removal of criminal penalties in relation to them”. (Wikipedia).

Decriminalization may also have a slightly different meaning, namely to reduce (not remove) society’s reactions to drug use (shorter sentences, lower levels of fines, higher levels of accepted users doses etc). This is also called de-penalization (reduction in the use of existing criminal sanctions).

This means that the implementation of decriminalization in countries that have chosen to do so is practiced differently from one country to the other, depending on the national drug situation, legislation practices and political climate in each country.

3. What is The United Nations?

The United Nations is basically a member organization¹. The countries of the world are the members of UN, and the official positions of UN, strictly speaking, are documents and text that are approved by the 193 Member States in plenary, by consensus and in the body authorized to speak on behalf of UN on that particular issue.

The highest-ranking body of the UN is always the plenary sessions of the General Assembly. Like in many other organizations, the authority of the General Assembly is delegated to sub-organs when the assembly is not in session. In the case of drug policy, the standing policy-making body of the UN is the Commission on Narcotic Drugs (CND), located in Vienna. The CND has 50 odd members serving on a rotation basis. These Member States have voting rights in the formal sessions of the CND, while in practice all Member States have the opportunity to take part in the deliberations of CND, both in the formal sessions and in the preparatory and informal meetings.

In all important policy issues, the CND functions on the basis of consensus among the Member States. This means that conclusions are most often compromises between Members States that may have very differing opinions on controversial issues.

Consequently, the official position of the United Nations in drug policy issues are plenary decisions in the Commission on Narcotic Drugs (or in the UN General Assembly).

4. UN – a complex organisational set-up

All organizations, small or large, normally have a set-up of many sub-bodies, committees, working groups and persons who have been assigned specific tasks and authorities. This is also the case for the United Nations. The UN has a huge and very complex structure of sub-bodies, offices and officers spread all over the globe.

Like in any national or local government structure, all the UN bodies and persons are not streamlined. Even though the ideal is that organizations should be 100 per cent streamlined in the sense that everybody involved are speaking with the same tongue, this never happens. One reason for this is that sub-bodies and individuals may be working with the same issue from different perspectives, with staff with different technical and professional training and with different national and cultural backgrounds. Such differences can be found between different UN agencies, within each UN agency and even between sections or individual leaders in each of these agencies.

This must be kept in mind when trying to understand what the official UN positions are, in drug policies for instance. If you do cherry picking you will be able to find almost any position expressed by someone within the UN system. However, one cannot claim that “the UN has said this or that” without referring to whom said it and with which mandate.

¹ www.un.org: The United Nations is an international organization founded in 1945. Currently made up of 193 [Member States](#), the [UN and its work](#) are guided by the purposes and principles contained in its founding [Charter](#).

5. The most authoritative UN documents on drug use

This section presents a selection of UN documents that are relevant to or address the issue of decriminalization. The list is not exhaustive.

5.1 The UN drug conventions

The three global drug conventions are by far the most authoritative UN documents on drug issues. Since they are international conventions, they are not only documents adopted in UN meetings but also signed or ratified by the Member States after national decisions in the respective countries. The conventions are:

- The Single Convention on Narcotic Drugs of 1954, as amended by the 1972 Protocol;
- The Convention on Psychotropic Substances of 1971;
- The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

It has been clarified over the last years that the UN drug conventions do not require member states to punish drug users.

On the one hand, signatories to the drug conventions have committed themselves “to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs”. On the other hand, “when abusers of drugs have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration...”.

In other words, if Member States find it appropriate, they may choose not to convict or punish drug use or possession and rather apply other types of responses to the use and possession of drugs.

5.2 The UNGASS Outcome Document

The UNGASS Outcome Document - *Our Joint Commitment To Effectively Addressing and Countering The World Drug Problem* – is the most comprehensive recent position document from the United Nations, adopted by the UN General Assembly in New York in 2016².

5.3 The 2019 Ministerial Declaration

In 2019 the Commission on Narcotic Drugs held a high-level meeting to sum up the last ten years of efforts to combat drug problems. The meeting concluded with a “Ministerial declaration on strengthening our actions at the national, regional and international levels to accelerate the implementation of our joint commitments to address and counter the world drug problem”³.

The 2019 declaration is basically a renewed commitment to the consensus reached in UNGASS three years earlier, so these two documents can be discussed as one.

² <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

³ https://www.unodc.org/documents/commissions/CND/2019/Ministerial_Declaration.pdf

These two most recent consensus documents on drugs do not mention nor call for decriminalization of drugs by the Member States. The concept of decriminalization is not mentioned at all as there is not a consensus among the members around this issue. The trend has rather been that a new consensus has been established around some other principles:

- the principle of proportionality in sanctions; i.e. a justice policy where the severity of penalties is proportionate to the gravity of offences;
- development of alternative or additional measures to conviction or punishment;
- drug problems should be understood and addressed with health assistance and social support systems rather than with – or in addition to – punishment.

From the outset of international drug policy after World War two, drug use was largely considered a security issue by many members states and, consequently, drug use was addressed mainly by police interventions and legal sanctions, in some countries also by armed forces. This was not the primary intention in the single convention text, as can be seen in the text above. Members states were free to use treatment, health care, rehabilitation etc. rather than punishment to combat drug problems.

6. Statements from other UN entities

6.1 The International Narcotics Control Board

The International Narcotics Control Board (INCB) is “an independent, quasi-judicial expert body established by the Single Convention on Narcotic Drugs of 1961”. The Board members are technical experts who serve in a personal capacity and not as government representatives. The mandate of the International Narcotics Control Board (INCB) under the international drug control treaties is to ensure, in cooperation with Governments, that adequate supplies of drugs are available for medical and scientific uses, to prevent the diversion of drugs from licit sources to illicit channels and to prevent illicit production, manufacture, distribution and trafficking (art. 9 of the 1961 Convention). ... The Board also maintains a permanent dialogue with Governments to assist them in complying with their obligations under the international drug control treaties and, to that end, recommends, where appropriate, that technical or financial assistance be provided.

INCB publishes with regular intervals reports on how the international drug conventions are implemented by the Members States and arising challenges. One such document is the INCB Alert from 2019⁴. (INCB Alert: E/INCB/2019/Alert.12) The document says this, among many other things:

- For minor drug-related offences including possession of small quantities of drugs for personal use committed by people who abuse drugs, the conventions do not oblige States to adopt punitive responses.
- State approaches to dealing with criminal behaviour committed by persons affected by drug use and addiction has become more differentiated in recent years... many States

⁴ https://www.incb.org/documents/News/Alerts/Alert12_on_Convention_Implementation_June_2019.pdf

have come to recognize drug use and dependency as a public health concern requiring responses that are health-centred and less reliant on punitive sanctions.

- In such cases, the three conventions provide the possibility for alternatives to conviction or punishment through treatment, education, aftercare, rehabilitation and social reintegration.
- Alternative reactions are, in many cases, more productive, more humane and more proportionate than punitive sanctions. It must be remembered that this most of all addresses policies in countries with harsh judicial systems.
- Although many Members States have increasingly been using alternative reactions, such measures are still underutilized.

6.2 Chief Executives Board for Coordination (CEB)

The UN System Chief Executives Board for Coordination (CEB) is the main instrument for coordination between 31 UN agencies – including the UNODC; the United Nations Office on Drugs and Crime. CEB meets twice a year, is composed of the top leaders of the UN agencies and is chaired by the UN Secretary-General. In other words, the CEB is an administrative organ, not a policy-making body. It shall basically coordinate positions taken by the Members States in the various UN agencies.

CEB's main responsibility is to serve as an internal coordination mechanism that provides high-level system-wide strategic guidance, promotes coherent leadership, shared vision, and enhanced cooperation, and considers forward-looking solutions in response to mandates stemming from the governing bodies of its member organizations.

The Chief Executives Board for Coordination (CED) adopted in 2018 a document titled "United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration"⁵. (CEB/2018/2). One chapter addresses drug policy, and this text is often referred to as "the UN ask Member States to decriminalize drug use". That is stretching it too far (see the paragraphs below).

Conclusion 20 of the document reads: "In closing, the Secretary-General underscored that the common position was not aimed at prescribing policies on drugs, but served as a useful internal tool for the United Nations system to speak with one voice and pursue coherent and coordinated efforts to address the drug problem".

The formulation that is often quoted in national debates, and often in isolation, is this: Member States should "promote alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use". The essence of this is that the CED calls for more humane and less harsh treatment of drug users, a call which is highly relevant in many countries that practice inhumane legislation and law enforcement. The document says that drug decriminalization can be one option for Member States, but not the only option, and decriminalization is an option only if the individual Member States find it appropriate.

⁵ https://unsceb.org/sites/default/files/imported_files/CEB-2018-2-SoD.pdf

Using terms like “in appropriate cases”, “if appropriate” etc. is common in UN language, as the UN has no mandate to dictate national policies in Member States. The UN can only list alternatives and leave it up to national governments to decide. This is different if a position is part of international binding treaties and conventions (like the UN drug conventions or the Convention on the Rights of the Child).

In most of the essential drug policy documents from the UN system the principle of taking a “comprehensive, balanced, integrated, evidence-based, human rights-based, development-oriented and sustainable approach” is repeated time and time again. However, the challenge of striking the right balance between various types of interventions is left to the individual Member States as the balance has to be based on local realities. Some countries will need more of this, others will need more of that.

Other relevant statements from this document are, among others:

“Acknowledge that the conventions allow for sufficient flexibility for countries to design and implement national drug policies according to their priorities and needs, consistent with the principle of common and shared responsibility and applicable international law”;

“To support the development and implementation of policies that put people, health and human rights at the centre, by providing a scientific evidence-based, available, accessible and affordable recovery-oriented continuum of care based upon prevention, treatment and support, and to promote a rebalancing of drug policies and interventions towards public health approaches”.

6.3 “HIV and young people who inject drugs”

This is a document from 2015 published by around ten UN agencies, including WHO and UNODC⁶. It is a technical brief on how one can improve the situation of young people who inject drugs with particular focus on populations at higher risk of HIV, including people who sell sex, men who have sex with men and transgendered people. One of the paragraphs addresses criminalization of drug use and reads:

“Laws criminalizing use or possession of drugs or of injecting equipment can deter people from seeking services because of their fear of arrest and prosecution. These laws may deter harm-reduction service-providers from offering assistance including because of concerns about their own legal liability. Criminalization of drug use also reduces the future employment prospects of those who have been convicted and can lead to financial instability”.

The document uses the terms “can” and “may”, probably because very many drug users seek health assistance, and many service providers offer a wide range of harm reductions services, in spite of the fact that drug use is illegal.

⁶ <https://www.who.int/publications/i/item/WHO-HIV-2015.10-eng>

In too many countries health services to drug dependents are poor or largely non-existent. In such cases decriminalization of drug use will not influence the number of drug users who get help with their addictions. It should also be taken into account that many drug users are not motivated to or willing to seek health assistance, whether drug use is criminalized or not.

6.4 The UN High Commissioner for Human Rights (UNHCR)

The Commissioner presented in 2017 a report to the Human Rights Council with the title “Study on the impact of the world drug problem on the enjoyment of human rights” (A/HRC/30/65). The study focused on “on the impact of the world drug problem on the enjoyment of human rights, and recommendations on respect for and the protection and promotion of human rights in the context of the world drug problem, with particular consideration for the needs of persons affected and persons in vulnerable situations”.

The report discusses a wide range of human rights issues, like access to treatment, health care in prisons, essential medicines, arbitrary arrest and detention, torture, death penalties and rights of indigenous people, to mention a few of the headlines.

The conclusions most of all address the situation in countries practicing harsh and inhumane justice policies. One of the conclusions has a broader target group: “Taking into account the severe impact that a conviction for a drug-related offence can have on a person’s life, consideration should be given to alternatives to the prosecution and imprisonment of persons for minor, non-violent drug-related offences. Reforms aimed at reducing overincarceration should take into account such alternatives”.

The report also calls for reform of policies “to address the disparate impact of drug policies on ethnic minorities and women” and that “Children should not be subjected to criminal prosecution, but responses should focus on health education, treatment, including harm reduction programmes, and social reintegration”.

6.5 Joint United Nations statement on ending discrimination in health care settings

This document⁷ is signed by twelve UN entities concerned with discrimination in health care settings towards some of the most marginalized and stigmatized populations. It says that discrimination in health care settings takes many forms and is often manifested when an individual or group is denied access to health care services that are otherwise available to others. It can also occur through denial of services that are only needed by certain groups, such as women.

The signatories call upon all stakeholders to join forces in committing to targeted, coordinated, time-bound, multisectoral actions in a number of areas. One of their recommendations is:

“Reviewing and repealing punitive laws that have been proven to have negative health outcomes and that counter established public health evidence. These include laws that criminalize or otherwise prohibit gender expression, same sex conduct, adultery and other

⁷ <https://www.who.int/gender-equity-rights/knowledge/ending-discrimination-healthcare-settings.pdf>

sexual behaviours between consenting adults; adult consensual sex work; drug use or possession of drugs for personal use; sexual and reproductive health care services, including information; and overly broad criminalization of HIV non-disclosure, exposure or transmission.”

This recommendation has to be interpreted with each specific national situation as backdrop. The document addresses situations where a country’s laws and implementation of the laws prevents drug users from getting health care services. Consequently, national authorities have to analyze if this is a real problem in their country – or if there are many other reasons for drug users not getting access to health services.

6.6 A Public Health and Rights Approach to Drugs

Prior to the UNGASS meeting in New York in 2016, UNAIDS published a report titled “A Public Health and Rights Approach to Drugs”⁸ (UNAIDS / JC2803E). Quotes from the report:

“There is irrefutable evidence that new HIV infections drop sharply when people who inject drugs have access to harm reduction and other public health programmes. Property crimes are reduced, public security is increased and there are improved health outcomes for people who inject drugs. Alternatives to criminalization and incarceration facilitate access to health services and enable drug use to be treated as a health condition rather than as a crime”.

“Commit to treating people who use drugs with support and care, rather than punishment. UNAIDS believes that this objective can only be achieved by implementing alternatives to criminalization, such as decriminalization and stopping incarceration of people for consumption and possession of drugs for personal use”.

“Adapt and reform laws to ensure that people who use drugs do not face punitive sanctions for the use of drugs or possession of drugs for personal use. Countries should consider taking a range of measures including alternatives to criminalization, incarceration, penalization and other penalties solely based on drug use or possession of drugs for personal use. These measures include decriminalization, steps to reduce incarceration or removal of administrative penalties and de-penalization”.

This document calls for harm reduction services to drug users and the development of alternative sanctions to arrests and incarcerations. Decriminalization is one option for governments, or reductions in incarceration rates, or less severe penalties – all depending on the national situation and needs.

6.7 Development Dimensions of Drug Policy (UNDP)

United Nations Development Programme published in June 2019 a report that focuses on development dimensions of drug policy⁹. It is described as a discussion paper that reviews some of the ways that countries continue to use the flexibility available in the drug conventions

⁸ https://www.unaids.org/sites/default/files/media_asset/JC2803_drugs_en.pdf

⁹ Development Dimensions of Drug Policy <https://www.undp.org/publications/development-dimensions-drug-policy>

to promote inclusive development, human rights, public health, and evidence-informed approaches.

Under the heading “Alternatives to arrest and incarceration for low-level drug offences” the report focuses among others on decriminalization of use and possession of drugs for personal, non-medical, non-scientific use. The text represents nothing new compared to the documents presented above in this paper.

It starts by referring to the fact that the UN drug conventions permit the decriminalization of illegal drugs and then lists some UN documents that have mentioned decriminalization, eg. The United Nations system common position from 2018 that calls for promotion of alternatives to conviction and punishment in appropriate cases (See section 6.2 above).

The next sections of the discussion paper have a useful presentation of countries that one way or the other have taken steps towards decriminalization.

7. Final comments

The United Nations system offers excellent opportunities for sharing experiences and learning lessons from other countries. Recommendations from UN agencies as well as more informal inputs collected from other countries through debates in the UN system can add value to the national drug policy debate in all Member States.

At the same time, the following concerns should be taken into account when “playing the UN card” in national debates:

UN recommendations are *per definition* general and normally not country-specific in character. Such recommendations always have to be customized to the national and local situation in each country. Circumstances on the ground may vary greatly from one country to the other, even between regions within each country, and such local circumstances have to be the foundation for the design of policies.

Secondly, when referring to UN documents in national debates such references have to be precise and include the many nuances that are embedded in most UN texts. Nuanced language is a part of the toolbox in international diplomacy and necessary for being able to reach consensus in difficult negotiations. Such nuances can for instance be the two words “as appropriate” or a remark in the preambular of a document where it says something like “with due respect for cultural, political or religious differences”. This means that a UN recommendation can be relevant or acceptable in some countries but not in others and that it is up to the Members States individually to decide their national policies.

Many UN documents, in particular those published by sub-agencies, may focus on one specific aspect of a broader problem. One such example is documents that address HIV, drug injections and needle sharing. Recommendations in such documents may be relevant for

countries where HIV infection-rates are high and where syringe use is prevalent, but not that relevant in countries without such a local drug situation.

Finally, national drug policies have to be comprehensive, balanced and adapted to local realities. This requires a mix of many interventions and the composition of this mix must be decided at national and local level. In order to get the right mix, governments must take into account that most interventions have both upsides and downsides. One intervention may have a positive effect on one aspect of the drug problem and at the same time have a negative impact in other problem areas. This is also the case for decriminalization of drug use. It may ease the situation of certain groups of drug users, but it can also lead to a greater acceptance of drug use in the youth population and by that create new groups of problem users. This has not necessarily been taken into account when some UN agencies recommend decriminalization. Governments, however, should ideally have a broader approach to their national drug policies.

Dag Endal

Former Project Coordinator, FORUT Norway