

EUROPEAN PARLIAMENT

1999



2004

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

4 February 2003

WORKING DOCUMENT

on the UN conventions on drugs

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

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Introduction

On 16-17 April 2003, the ministerial segment of the Economic and Social Council of the United Nations will meet in Vienna. Another meeting is already planned for 2008. These meetings coincide with the two target dates for achieving goals agreed upon by the General Assembly in 1998.

2003 was established as target date for new or enhanced drug demand reduction strategies and programmes set up in close collaboration with public health, social welfare and law enforcement authorities. It is also the deadline for national legislation and programmes giving effect to the Action Plan against Illicit Manufacture, Trafficking and Abuse of Amphetamine-type Stimulants and their Precursors, adopted at the General Assembly in 1998. Moreover, States that have not yet done so, are requested to adopt by the year 2003 national money-laundering legislation and programmes in accordance with relevant provisions of the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, as well as the measures for countering money-laundering, adopted at the session in 1998.

The second target date is 2008. At this date, the States aim to have eliminated, or at least significantly reduced, the illicit manufacture, marketing and trafficking of substances listed in the Conventions.

Therefore, the conference in April 2003 can be seen as an important occasion, where current policies can be reaffirmed, or changes and reservations should be expressed and proposed.

The European Union will be represented by an official delegation, hopefully composed by members of the three Institutions. It is in this framework that the European Parliament has decided to express its opinion on some of the aspects debated in Vienna.

Three UN conventions

At the international level, drug policies are determined by three United Nations Conventions: the Single Convention on narcotic drugs of 1961, the Convention on psychotropic substances of 1971 and the Vienna Convention against the illicit traffic of narcotic substances of 1988.

The Single Convention on narcotic drugs of 1961 states that the *"possession, use, trade in, distribution, import, export, manufacture and the production of drugs is exclusively limited to medical and scientific purposes"*.

To achieve this result the Parties to this Convention have established guiding principles, the implementation of which is entrusted to international control organs.

Essentially, the text provides for two complementary forms of intervention and control: the first, which is of a preventative nature concerns the licit, scientific and medical market; the second, of a repressive nature, concerns illicit traffic, drug abuse and drug addiction.

Control of the licit market is based on a set of national and international preventive measures, which apply to substances classified as narcotic drugs (art. 2 and 3). These measures oblige the States to provide to the control organs - the Commission on Narcotic Drugs of the Economic and Social Council and the International Narcotics Control Board (art. 5 to 18) -

estimates of national drug requirements (art. 19), production statistics (art. 20) and regular reports to inform them of the situation in their country.

Control of illicit traffic should, according to the 1961 Single Convention, begin by controlling cultivation. The illicit production of the opium poppy, coca leaf and cannabis is the major source of drug traffic. Unable to intervene at the source, international law hopes to discourage it by repressive measures aimed at dissuading drug traffickers. Three provisions to this effect are set out in the Single Convention: a recommendation to the States that serious offences in matters of drug trafficking are liable to "adequate" punishment (art. 36), a measure relating to the confiscation of seized substances (art. 37) and measures for international penal assistance and cooperation, particularly in matters of extradition (art. 35). This cooperation was pushed further in the Vienna Convention of 1988 against the illicit traffic of narcotic drugs and psychotropic substances. This in fact strengthens the severity of the previous provisions concerning extradition (art. 6), as well as international mutual judicial assistance (art. 7), repressive procedures (art. 8) and the provisions relating to illicit cultivation (art. 14), whilst instituting a specific procedure for finding drug traffickers, via controlled deliveries (art. 11), and arguably create new international crimes such as incitement.

The 1971 Convention, which closely resembles the Single Convention, establishes an international control which is clearly less rigorous for the so-called "psychotropic" substances, generally produced by the pharmaceutical industry. The similarity of the drafting of both texts therefore allows the amendments proposed to the Single Convention to be transposed, *mutatis mutandis*, to the 1971 Convention.

The 1988 Convention is most controversial. It supplements and strengthens the earlier Conventions. The 1961 and 1971 Conventions aim to limit the use of 'narcotic' and 'psychotropic' drugs to medical and/or scientific purposes. They require parties to create 'punishable offences' to control the use of certain drugs, placing controls on manufacture, production, cultivation, importation, purchase or possession. The 1988 Convention goes further. It requires parties to establish breaches of its terms as criminal offences under their domestic law, including the possession, purchase and cultivation of illicit drugs for personal

In local, regional, national and European discussions on the effectiveness and the consequences of the current policies towards drugs, the United Nations conventions are often referred to as reasons why changes are not possible. However, these conventions are drafted and ratified by the member States, and these Member States are also in the position to propose amendments and/or to repeal the conventions.

At the following conference, two important issues should be debated:
an initiative for an evaluation of the effectiveness of the three UN conventions and the methods chosen to fight the problems of drug abuse
the desirability of amending the Single Convention on Narcotic Drugs of 1961, in order to rationalise the classification of the substances that are listed.

EVALUATION

There is probably a world-wide consensus on the urgent need to reduce the amount of harm caused by drugs. However, there is much debate whether the methods chosen, being mainly measures to reduce the illicit supply and the demand for drugs, are effective. It could be proposed to organise a conference of the United Nations in 2004 in order to evaluate the effect of the UN conventions on drugs and, when appropriate, to draw lessons for the future.

Such an evaluation should provide an accurate understanding of the effectiveness of the UN Conventions as regards in particular:

- the reduction of both the spreading and the demand of illicit drugs
- their social and health-related consequences especially on harm-reduction strategy,
- the drug-related criminality, both petty crime and the organized criminal networks, with their consequences on the entire society including decision-making process, economy and finance.

MODIFYING THE UN CONVENTIONS

The parallel existence of the Single Convention and the 1971 Convention have led to certain illogical effects such as the fact that a plant (cannabis) containing at most 3% of a principle element is dealt with more severely than the pure substance at 100% (tétrahydrocannabinol or THC). To put this right, a reclassification of certain substances is required.

The reclassification of certain substances from the Single Convention and its possible reclassification in the Vienna Convention do only change the provisions on use and not the provisions and prohibition on cultivation (art. 26 and 28 of the Single Convention). The prohibition of the cultivation of plants cannot be abolished merely by a reclassification. The removal of this control could only be done by amending the treaty. This restriction, peculiar to cultivated plants internationally controlled, somewhat diminishes the interest of the reclassification technique for natural cultivated drugs.

Article 47 of the Single Convention provides for the possibility of the contracting Parties requesting that the Convention be modified through the amendment procedure.. Most interesting for improving the convention in the short term is the article for reclassification (article 3).

1. The technique of reclassifications in article 3.

The technique of reclassification in article 3 of the Single Convention is interesting since it allows one to change both the list of classified substances and the regime accompanying them. Furthermore, it can be used at any time, at the initiative of any contracting Party, and it has the advantage of attacking one of the most debatable aspects of the international control: the classification of **narcotic drugs** in the schedules of the Single Convention.

Let us recall that the Convention sets out over a hundred substances classified into four schedules, arranged as follows:

- **Schedule I**: it includes opiates, both natural (opium) and semi-synthetic (morphine, heroin), derivatives of coca (cocaine) and cannabis (hashish), as well as numerous synthetic substances (pethidine, methadone,...),
- **Schedule II**: it includes substances used for medical purposes and requiring a less rigid control in view of the lesser risk of abuse. It includes a natural opiate (codeine) and synthetic substances (propiram, dextropropoxyphene).
- **Schedule III**: it is the schedule of exemptions. It excludes a series of pharmaceutical preparations made from substances not entailing abuse or ill effects. Such is the case for certain powders and liquids with a low dosage of opium.
- **Schedule IV**: it includes some drugs from Schedule I that are considered to have particularly

dangerous properties and an extremely limited therapeutic value. It includes opiates both semi-synthetic (heroin, desomorphine) or synthetic (Ketobemidone, etorphine), as well as cannabis and cannabis resin.

These schedules show that the main criterion for the classification of a substance is its medical use. In view of the principle according to which the only licit uses are those for medical or scientific purposes (art. 4), plants or substances deprived of this purpose are automatically considered as particularly dangerous. Such is the case for cannabis and cannabis resin which are classified with heroin in group IV for the sole reason that they lack therapeutic value. A reason which is in any event disputable, since cannabis could have numerous medical uses.

One of the most fundamental challenges to this system of classification concerns the different treatment of narcotic drugs and psychotropic substances. Historically this is a result of the refusal (by almost one vote, during the preparatory discussions of the Single Convention) to classify barbiturates with internationally controlled substances.

This refusal is indeed partially at the origin of the Convention on psychotropic substances adopted in Vienna in 1971. This Convention was requested by developing countries, which did not understand the difference between natural psychotropic substances (opium, coca, cannabis) and synthetic psychotropic substances from the pharmaceutical industry (amphetamines, barbiturates, hallucinogens...). Thus, for example, although barbiturates, amphetamines and synthetic hallucinogens (LSD 25, PHP, MBA, NDMA...) are clearly more powerful and addictive than cannabis or the coca leaf, they were not at that time subject to any international control. The unfairness of the situation therefore leads the UN to bring psychotropic substances within the scope of control.

Psychotropic substances are today classified by the Vienna Convention (art. 1) into four schedules:

- **Schedule I:** it includes dangerous drugs creating a serious risk to public health, and whose therapeutic value is doubtful or nil. It includes synthetic hallucinogenics (LSD 25, DMT) and tetrahydrocannabinol (THC).
- **Schedule II:** it includes stimulants of the amphetamine type, of limited therapeutic value, as well as some analgesics such as phencyclidine, which is of no therapeutic value to man.
- **Schedule III:** it includes barbiturate products with fast or average effects, which have been the object of serious abuse even though useful therapeutically.
- **Schedule IV:** it includes hypnotics, tranquilizers (benzodiazepine) and analgesics, which engender an appreciable dependence, but are mainly, used in therapy.

This classification repeats the criteria of therapeutic value, but in fact is more or less based on whether a substance belongs to one of the four pharmacological groups: hallucinogens (Schedule I), amphetamines (Schedule II), barbiturates (Schedule III), tranquilizers (Schedule IV).

It is striking to note that a comparison of the classifications of narcotic drugs and psychotropic substances does not in the least coincide with the health and social danger posed by the products concerned. Substances that only engender a slight dependence are classified amongst narcotic drugs whereas highly addictive substances are classified amongst psychotropic

substances. Therefore, one is surprised to learn that in international law, LSD, mescaline, psilocine and other synthetic hallucinogenics DMT, STP... are not narcotic drugs, but psychotropic substances. Better yet, whereas the cannabis plant is classified amongst the most dangerous narcotic drugs, its principal element, tetrahydrocannabinol or THC is only a psychotropic substance. It is difficult to explain how a plant containing at the most 3% of a principal element is dealt with more severely than the pure substance at 100%.

Therefore, it would be useful to attempt to reorganize these schedules by using the reclassification procedure for a certain number of narcotic substances. This enables one to transfer them from one schedule to another, to reclassify them as a psychotropic substance, or by purely and simply deleting them from the list of internationally controlled substances.

The rules concerning proposing changes to the schedules of the 1961 Convention are provided for in Article 3 which defines the conditions for modifying the scope of international control. The United States have already once followed this path, when it proposed to reclassify dextropropoxyphene.

Apart from the above-mentioned techniques (reclassification and amendment), the Conventions themselves also contain provisions for reservations (which is only possible at the time of signature, ratification or accession) and denunciation, which can be used at any time.