Erosion of Norms Established by Hegemonic Actors

*The Case of the Drug Prohibition Regime*

Student: Nadya Nikolaeva Stoynova

Student Number: s1901885

Supervisor: Dr. David Shim
Abstract

**Key words:** Drug prohibition, hegemony, norm erosion, moral norms

This thesis looks at the historical context in which the drug prohibition norm emerged and came to be internationally upheld with the advent of the United States as a global hegemon. The drug prohibition norm was established domestically due to a particular convergence of factors in the specific context – far-reaching socio-economic changes producing significant anxiety and unrest, the influx of immigrants and the changing status of minorities. Many of the substances banned today were freely available and were widely consumed. As the awareness of their addictive potential grew, so did the impetus to regulate them. However, the prohibitionist drive initially developed due to associations of particular drugs and routes of administration with “backward” minorities, and with time became naturalized. The thesis also outlines how the regime was gradually eroded, basing its insights on the theoretical framework of norm disappearance developed by Panke and Peterson (2012). As the global drug prohibition regime became established, certain contradictions in its core logic became internationalized. The discrepancies between the spirit and the letter of the regime, along with unforeseen changes in the environment, allowed new morally justified initiatives to take root and spread. The challenges to the regime grew until today its main defender is in open breach of the provisions of the treaties. The fervor with which the US pursued prohibition both domestically and internationally, together with international drug bodies, also did much to discredit the regime. What the international drug prohibition regime shows about norm attrition dynamics is that international norms can be eroded even when they are fiercely protected by a hegemon but this is likely to happen incrementally, and when a competing norm of the same nature and order emerges and is legitimized.
I hereby declare that this thesis, “The Erosion of Norms Established by Hegemonic Actors: The Case of the Drug Prohibition Regime”, is my own work and my own effort and that it has not been accepted anywhere else for the award of any other degree or diploma. Where sources of information have been used, they have been acknowledged.

Nadya Nikolaeva Stoynova

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Introduction

In 2009 the global drug control system celebrated its hundredth year anniversary and is today one of the most widely subscribed normative regimes on the international stage. From the initial efforts to control trade in opium to the Single Convention, the regime has been steadily expanding in scope and membership since its beginning. Often it has been one of the few areas where governments with completely different positions on almost everything else agree on.

Behind this façade of agreement however, tensions have been simmering, and it now appears that consensus on the issue of drugs has been significantly undermined. Uruguay has become the first country to legalize the recreational use of marihuana which has put it in direct contravention of the drug control treaties. The same has been done by the states of Colorado, Washington, Washington DC, Oregon and Alaska in the United States, the historical champion of the drug prohibition regime. While these are the most visible and drastic developments in the field of international drug policy, the principles of harm reduction and lenient or non-punitive approaches to dealing with drug consumers have for a while been sitting uncomfortably with the core prohibition norm.

The current thesis will seek to contribute to the nascent understanding of norm erosion by offering an in-depth analysis of the emergence, development and eventual weakening of the drug prohibition norm. Drawing on the established concept of hegemony and combining it with the theoretical framework on norm decay developed by Panke and Peterson (2012), the importance of factors contributing to the decay of an initially strong moral norm established by a hegemonic actor. The historical context in which the prohibition norm arose is given special attention since it illuminates the inconsistencies that the norm contained from its very beginnings. The prohibition norm arose in the nineteenth century United States, in a time of significant societal changes and resulting anxieties about the modern human condition. With time, however, the norm has been de-contextualized and the United States, which became the new superpower managed to establish it as the international standard. While it achieved impressive adherence, the prohibition norm proved ill-suited to deal with changes in the environment and other, morally justified initiatives emerged to address pressing challenges. The inconsistencies that the norm contains, together with gaps in international law as codified in the international drug treaties, could later be used by actors wishing to change the regime. Aggressive enforcement by the US, other prohibitionist governments and international drug bodies propped up the regime for a while but now seem ultimately unable to ensure survival in its current form.
**Theoretical Background**

**Norm erosion**

During the 1990s interest in International Relations (IR) shifted away from the preoccupation with material capabilities and scholarship on norms proliferated. Many aspects of norm dynamics have been now been addressed, such as how norms emerge, are diffused on the international level and the conditions under which they take root on the national level. Finnemore and Sikkink’s (1998) seminal work outlined the life cycle of a norm in three stages: norm emergence, norm cascade and internalization (ibid). Other authors, like Jeffrey Checkel (1997) examined the factors that facilitate norm diffusion on the domestic level, the mechanisms through which this occurs as well as the most important actors taking part in the process, depending on the structure of the polity. Variation in compliance with norm has also been examined (e.g. Legro, 1997; Checkel, 2001), as has been the way norms have been adapted to on the local level to suit pre-existing customs and norms (Capie, 2008). Nevertheless, despite the wealth of knowledge that has been accumulated, other areas still remain underexplored.

One largely overlooked area of norm dynamics is the process of norm erosion. So far the emergence of norms has been examined in detail, with norm erosion taken as the normal consequence of that process. However, norms can also disappear completely and that dynamic has not been theorized extensively. Panke and Peterson (2012) give sustained attention to the factors that result in the degeneration of norms. In simple terms, a norm will erode when a non-compliance cascade occurs. However, non-compliance by one or a few states is not sufficient. If the norm is still upheld by the vast majority of actors, non-compliance by a few states will either be sanctioned or ignored. The norm can be described as sufficiently eroded when breaches become so commonplace that they are no longer referred to as non-compliance (Ibid).

Panke and Peterson (2012) recognize two possible scenarios that erosion of a norm results in – norm disappearance and norm substitution when there is an alternative norm. The process of norm degeneration can be rapid or incremental. The factors influencing if and how a norm degenerates are the following: stability of the environment, the willingness of other actors to enforce compliance and the precision of the given norm. An unstable environment means that the “policy or regulatory field to which the norm in question belongs, there are many new norms evolving in a short period of time, or new scientific or technological insights trigger a paradigm shift, or many related norms are suddenly violated, so that the regulative, technological or normative context in which the norm in question is
situated changes very quickly.” (Ibid: 724). Thus, the functionality of the norm is important for the desire of members of the regime to protect its integrity. Norm precision, on the other hand, refers to the “the extent to which norms have clearly defined procedures, and to which they have exceptions related to the applicatory scope” (Ibid: 725). An incumbent norm can be rapidly weakened if the environment surrounding it is unstable, other actors are unable or unwilling to punish non-compliance and the norm is highly precise. It is likely that the norm will be weakened even quicker if there is no centralized authority such as an international court to enforce compliance. On the other hand, if the norm is imprecise, the environment is stable but breaches are still not punished, a state which wants to subvert the norm is better off doing so in an indirect way. This approach is like flying under the radar, achieving objectives that sit uncomfortably with the core norm but avoiding the costs of direct and open incompliance. Nevertheless, according to the authors, lack of sanctions against non-compliance is a necessary condition for norm degeneration.

**Traditional views on hegemony**

In order to understand why and how a norm is being challenged, it is also necessary to establish how the particular norm came to be internationally upheld. Finnemore and Sikkink’s (1998) seminal work on the life cycle of norms would seem as an obvious choice in such an endeavor. However, Finnemore and Sikkink’s framework is not so well applicable to the drug prohibition regime, as the focus is mostly on domestic norm entrepreneurs and how they spread norms that later come to bind other states. While the drug prohibition regime also has its origins in the domestic efforts of norm entrepreneurs in the US, the subsequent role of the US federal government as the regime’s proponent and main supporter is an essential characteristic (Nadelmann, 1990). In fact, without US leadership, it is questionable whether prohibition would have achieved global status at all. Finnemore and Sikkink (1998) indeed do not discount for the role of a hegemon in establishing norms on the international stage, but they take that to be only a subset of the instances of norm diffusion. However, in the current case, it makes sense to account for the prohibition norm’s international establishment as accurately as possible, since the way a norm came to be upheld bears significance on processes of norm erosion.

Therefore, insights from another theoretical tradition, more well-honed to the drug prohibition regime will be used, as it illuminates an important factor bearing on the stability of norms, namely the existence of a hegemon. The concept of hegemony has a rich tradition in International Relations. The basic argument at the center of hegemonic stability theory is that the existence of a hegemon is necessary for the establishment of cooperative arrangements such as free trade regimes and collective security on the international stage. The hegemon sets up a system furthering his interest and bears the costs for its establishment and enforcement. Kindleberger (1973), one of the first proponents of hegemonic stability theory states that the economic havoc of the Great Depression could have been alleviated by a
hegemon taking leadership of the world economy. Gilpin (1981) and Krasner (1976) similarly argue that a hegemon will establish an international order that suits his own preferences by providing public goods such as system stability and security. However, the rise of an aspiring hegemon leads to a rise in instability and war and the regime built by the hegemon disappears with a serious challenge to his power (Gilpin, 1981). Keohane (1984), on the other hand, allows for the continuation of a regime established by a hegemon even after his decline.

Nevertheless, there are substantial differences between how the relationship between the hegemon and secondary states is to be defined. Snidal (1985) in his exploration of the perspectives on hegemonic stability recognizes two general strands of thought - benevolent leadership based on the provision of public goods or coercion. Kindleberger, as Snidal (Ibid) has argued, envisions a somewhat curious situation in international relations in which other states actually exploit the hegemon as he provides a public good enjoyed by all. Keohane on the other hand, while also being considered as a proponent of benevolent leadership model recognizes the possibility for exploitation on part of the hegemon. Nevertheless, this occurs usually through a manipulation of costs and opportunity sets for other states (Keohane, 1980). Taking a somewhat middle ground, Gilpin (1981) stipulates that the hegemon both provides international order, a public good, but also manages to extract contributions from secondary states. As Snidal (1985) argues, Gilpin’s logic implies that states are likely to tolerate the arrangement as long as the benefits they receive outweigh the costs they are required to pay.

**Hegemony and norms**

When looking through the literature on hegemonic stability theory it is easy to see that it is largely based on the distribution of material capabilities. This is not surprising as it has been the purview of realism and neo-realism. Drug prohibition, however, is a normative regime. The norm at its core, while not unconnected to issues of political economy and power (something which will be addressed in subsequent sections) is fundamentally based on a specific understanding of morality. Therefore, reconciling the prohibition regime with realist and neo-realist accounts on hegemony is difficult for several reasons.

Firstly, both benevolent leadership and coercion models see the existence of hegemony based on the cost-benefit calculations of both the dominant state as well as secondary states. The problem with views on morality is that when they enter costs-benefit calculations they change their dynamics fundamentally, away from rational calculation. A staggering amount of costs can be incurred in pursuit of the eradication of something which is considered inherently “bad” or “immoral”. The effort can still be justified even if the goal is far from being achieved or even unlikely to be achieved ever. Both when the drug prohibition regime was being established and during later stages costs associated with it were in many cases miscalculated – potential pitfalls were ignored or intentionally obscured as were
unforeseen costs which emerged later on and were poorly accounted for by the regime (Bewley-Taylor, 2012).

Secondly, and not unconnected to the previous argument, the goals that normative regimes pursue fit awkwardly the definition of public goods. As Rubin (2002: 145) has remarked, “we could define living in a drug free society as a public good, but that will be stretching the terminology”. Indeed public health is a public good (ibidem), but it is questionable to what extent it is synonymous with a drug free society. At best normative regimes are seen as “second order” public goods by rational choice theorists (Hechter and Opp, 2001). The issue of norms and ideas has been a thorny one for a while especially for neorealism. Nevertheless, many of the classical authors on hegemony did give some credence to norms. Gilpin (1981) for example admits that a hegemonic regime is in part maintained through non-material factors such as prestige and similarity in values between the states involved. Keohane (1984) also states that legitimacy in hegemonic relations should also be accounted for by theory.

Other scholars have given much more sustained attention to the importance of norms in hegemonic arrangements. Nevertheless, as Kupchan (2014) notes, works addressing the normative components of hegemony are still relatively few. Ruggie (1982: 382), for example argues that the form of hegemony as in the distribution of capabilities in itself does not say much: “power may predict the form of the international order, but not its content.” In Ruggie’s (1982) view, since social purpose and power do not always go hand in hand, it is possible for a regime to survive a decline in hegemonic power if it serves a social purpose which states share. He agrees with Keohane (1984) that the instruments of a regime might be changed in such a situation but the normative framework is likely to remain. Even with the existence of a hegemon, no regime might be established if there is a lack of convergence in terms of social purpose (Ruggie 1982). The opposite is also possible. Ikenberry and Kupchan (1990), on the other hand, outline how a hegemon can socialize other states to accept hegemonic norms. They advance three hypotheses about the process: socialization is most likely after a war and associated political turmoil on the domestic level; socialization has occurred successfully when elites accept the norm; and despite the fact that socialization works on the level of beliefs, it is nevertheless still intimately connected to material aspects of power. Three other factors are also important for the internalization of norms: depending on their intrinsic appeal, some norms will be more easily adopted than others; socialization is intersubjective - meaning that the secondary states are not just passive recipients but they can influence the content of the norms and last but not least, once norms are effectively adopted, they can still change and produce variation as encounter local conditions, pre-existing norms etc. (Ibid).

Nevertheless, when talking about hegemony and ideas it is impossible not to mention Antonio Gramsci. Gramsci’s (1971) view of hegemony is holistic as it considers material and ideational aspects of domination, the part that elites and the masses play in establishing and upholding it and considers the role of both agency and structure. Hegemony as Gramsci (1971) sees it involves the imposition of both
the economic structure and relations preferred by the dominant classes but also their values and norms. Gramsci (1971) termed these hegemonic values and norms the superstructure. The superstructure covers all aspects of life – politics, education, family relations, art, religion, etc. (Ibid). These values and norms advance the interests of the dominant class but they are couched in terms designed to give the impression that they actually advance the interests of the whole society (Ibid). These beliefs, norms and values are perpetuated by the institutions set up by dominant classes. Critical theorist scholars such as Cox (1981) have drawn on Gramsci’s ideas and applied them at the international level in the study of construction of world orders. Cox (1981: 139) defines hegemony as “a coherent conjunction or fit between a configuration of material power, the prevalent collective image of world order (including certain norms) and a set of institutions which administer the order with a certain semblance of universality”.

However, something that neo-Gramscians have often disregarded as Hopf (2013) argues is the concept of common sense. Common sense is the taken for granted beliefs that the masses hold not only in terms of political economy, but in more general terms about what means is to lead a good life, what type of societal arrangements are legitimate (Ibid). Gramsci (1971) contends further that the values and norms of the ruling classes cannot be seriously incongruent with common sense if they are to be adopted as the superstructure. Therefore, common sense is norms and ideas of the dominant classes that come to be uncritically absorbed by the masses as if they are in the universal interest of the whole society (Gramsci, 1971). Gramsci is especially suitable to explorations of moral norms, since it accounts for popular sentiments. Once a moral norm becomes established as common sense it is often de-coupled from its socioeconomic and historic origins and can go unquestioned, necessitating substantial challenge to effect change.

The moral norm against recreational drug use

Above the notion of moral norms was alluded to. The drug prohibition norm stems from the more general, moral norm, that recreational drug use is immoral. It is useful to look briefly towards this subset of norms as it illuminates the different challenges that the drug prohibition regime pose for reformers compared to regimes that are more in the remit of the economy, such as monetary regimes. Skyrms and Harms (2008: 434) define moral norms simply as “rules of morality, those that people actually follow, and those that we feel people ought to follow, even when they don’t”. Obviously not all norms are moral - breaching societal norms suggests deviance but not always moral failure. While there are competing views on the matter, many scholars agree that if not all then at least a significant proportion of moral norms are culturally determined (Skyrms and Harms, 2008).

The morality of altering one’s state of mind has been considered by philosophers ever since ancient Greece. Epicurian philosophy sees pleasure seeking is a normal human trait and something people
should be doing, although in moderation (Inwood, 1994). Other philosophers in history, like Michel de Montaigne (transl. 1980), supported the position that pleasure seeking is good. Competing views exist as well. Stoic tradition, for example, discounts the active pursuit of pleasure as potentially seriously harmful and advocates restraint (Sellars, 2006). When it comes to mind-altering substances, arguments against them are based on the harm they cause to oneself and to others. Philosophers like Puffendorf (trans. 2012) and Kant (transl. 1997) have stipulated a duty not to harm oneself. John Stuart Mill (1869/2011), however, has argued that society has the moral right to punish only when harm on others has been done. Religion is of course also important in this context. Christianity views intoxication as a sin (Ferentzy, 2001), as does Islam (Baasher, 1981).

Therefore, the debate about whether one is allowed to consume mind-altering substances has been ongoing for a long time. Nevertheless, since intoxication with substances involves both harm to one’s self and others and has been sanctioned by major religions, it is not surprising that the majority in society upholds a strong moral norm against recreational drug use in general and illicit drug use in particular. Still, the view that drug use is inherently bad has been deeply ingrained in the populations of many countries. While breach of moral norms undeniably warrants serious condemnation, it is not a given that all such incompliance should be punished by law. Sanctions can vary from condemnation and stigmatization to criminal punishment such as prison time (Gusfield, 1967).

Prohibition can be described as a second order moral norm in the sense that it governs how a breach in the first order moral norm against recreational drug use is to be dealt with. However, the context in which these norms emerged and were coupled together is rarely discussed and as it became the new common sense, the boundary between them as complementary but not inseparable norms has become completely obscured (Tupure and Labate, 2012). The next sections will explore in detail the context in which the normative framework emerged.

**Structure**

The thesis will be structured as follows. Firstly, using the insights of scholars focusing on the normative dimensions of hegemony such as Gramsci (1971) and Ikenberry and Kupchan (1990), the following chapter will trace the history of drug prohibition and how it became established as the new common sense through the efforts of the United States. These two perspectives can be combined for a comprehensive explanation, since Ikenberry and Kupchan (1990) focus more on the how, or the mechanics through which norms come to be internationally upheld, Gramsci’s interpretation of hegemony account for the why and the what, or what was established and why it was important and durable.
Next, with the help of the Panke and Peterson’s (2012) framework on norm erosion, the extent to which the norm at the core of the drug prohibition regime has challenged will be addressed. The global drug prohibition regime presents the perfect opportunity to trace the erosion of a widely adopted norm. Along the way the issues of environmental stability, norm precision and sanctions against non-compliance will be addressed. However, in extension of Panke and Peterson’s (2012) argument about centralized authority, more sustained attention will be paid to the role of the hegemon and the international institutions set up to protect the regime. This way, by zooming in on a particular case study and examining it in detail, this thesis will shed more light on the relative importance of different configuration of factors influencing norm erosion.

The following broad arguments relating to erosion dynamics will be made. Firstly, a norm can degenerate even if there are sanctions against non-compliance. In fact, in certain situations it might be exactly over-enforcement that undermines the regime. Generally, a hegemon who is willing and able to enforce compliance is a stabilizing factor in its own right and a non-compliance cascade will be more difficult and costly to achieve. When a hegemon exists, the environment is unstable and the norm is imprecise, it still be challenged but it is most likely that this will happen incrementally. The more unstable the environment is, however, the harder the hegemon has to work to ward off any challenge towards the norm. Yet, the harder the hegemon has to work, the higher the chance that he needs to use coercive means as well, thus diminishing the legitimacy of such interventions. At some point then hegemonic effort can become counter-productive and serve to undermine the norm rather than strengthen it. Consequently, the hegemon’s ability to legitimately sanction non-compliance is compromised, it is likely that the incremental degeneration process will speed up and the core of the norm will be directly challenged.

Secondly, the way the context in which the norm emerged and the way it developed historically is essential for understanding erosion dynamics. Only by tracing how the norm became dominant is it possible to account for the inherent contradictions contained in many normative regimes and how these come to be exploited by reformers who want to challenge the norm. The drug control regime as it was established internationally contains a mismatch between the normative spirit of prohibition, the way it was codified in international law by the treaties, and the way its strongest proponents thought it should function in practice. The regime was thus challenged as well as protected along these different lines. In other words, norm precision and the normative environment can hardly be understood without a comprehensive analysis of the norm not only as it stands at the moment but also how it emerged and morphed into what is currently.

Thirdly, the nature of the norm matters along with its environment and precision. Only once a norm with the same significance (in the case of moral norms, the alternative should have competing moral underpinnings) gains credence can a shift in a deeply entrenched normative regime occur. Also
depending on the nature of the norm, the actors most likely to bring about an alternative norm might differ. Due to their criminal status under prohibition, drug users are a vulnerable and stigmatized group. Thus, the push for alternatives came from narrow sources, namely grassroots organizations (like associations of drug users), as well as epistemic communities and professional groups working closely with this subset of the population (such as health care professionals, social workers etc.). This is in contrast to the movement that championed prohibition, which constituted a variety of groups and held popular appeal across the middle class (Levine and Reinarman, 2004). Epistemic communities and professional groups generally have much more weight in lobbying for change due to their status as specialists and respectable members of society.

History of the Drug Prohibition Regime

This chapter will outline the most important cornerstones and actors that made the regime what it is today. As was already alluded to in the previous chapter, the drug prohibition regime was largely pushed through by the US as its leading protagonist. While the United States was no doubt the leading actor, the whole enterprise can generally be described as a Western construct.

Beginnings – temperance movements

The origins of prohibition can be traced to temperance norms widely held in the US and other predominantly Northern and Western European countries. Temperance movements emerged in these countries during the nineteenth century and their views were influenced by the larger context of the industrialization and urbanization processes with their far reaching consequences for societies (Eriksen, 1990). Temperance movements were made up of religious activists who saw alcohol as the root cause of many societal evils and advocated abstinence from its consumption. Nevile (1993) emphasizes the importance of Protestant values of individual liberty coupled with self-sufficiency and self-restraint as underlying the push for temperance. The US movement, largely transplanted from England (Kleiman and Howdan, 2011) was the most well organized, well-funded and most radical (Nevile, 1993), a fervor that would later be applied to the drug issue as well. Gusfield (1986) has described prohibitionists as utopian moralists convinced in the righteousness of their position that abstinence will alleviate a whole range of social ills.

In actuality, however, initial temperance movements were not oriented towards ensuring total abstinence but instead campaigned against the drinking of spirits and advocated moderation (Hanson et
Moreover, they did not envision official measures but rather wanted to raise social awareness and ensure condemnation of binge drinking (Ibid). However, in a process similar to the later anti-drug crusade, alcohol consumption by predominantly Catholic Irish, German and Italian immigrants in the growing American cities, prompted the temperance movement to re-orient itself towards ensuring abstinence by way of official prohibition (Ibid).

The American Anti-Drug Crusade

Two broad clusters of factors played a significant role in the formation of the American anti-drug crusade – domestic and foreign policy considerations. On both levels, strong moral convictions were a crucial part of the mix. Nevertheless, material interests were also important and a combination of the two underlined the often uncompromising position that the US took on the matter.

Domestic

In the mid-nineteenth century use of and addiction to narcotics in the US was not a novelty, as they were main ingredients in many freely sold medicinal concoctions (McAllister, 2000). Abuse among wealthier classes did not go unnoticed - intoxication was frowned upon and religious circles opposed it openly as immoral. The effect that opium produced in those using it came to be seen as incompatible with the duties of Christians and capitalists (Bewley-Taylor, 2002), but use was generally condoned. Nevertheless, as the variety and potency of substances increased, growing rates of drug dependence among the white population came to be viewed with concern. However, the response to iatrogenic addiction among the higher classes was geared towards regulation. The desire of the medical profession to reign in self-medication through receiving the sole right to prescribe medicines and the pharmaceutical lobby’s wish to protect their products from unregulated propriety tonics also played an important role (Reinarman, 1994). Other manufacturing and business interests supported and financed moral campaigns against vices as they stood to profit greatly from the existence of a “sober, industrious and docile workforce” (Woodiwiss, 1998: 15).

Similar to issues with alcohol, the anti-drug campaign had strong moralistic overtones and was led by religious figures and groups. Furthermore, with drugs the strong prohibitionist drive was also prompted by a despised minority’s drug use. The push towards prohibition came as a reaction to the perceived proclivity of Chinese coolie laborers to smoke opium, a different administration route which came to be associated with that minority groups (Ibid). In fact only a small proportion of these immigrant workers would use the drug (Reinarman, 1994). However, the Chinese in general were seen as an alien, corrupting force. White women who smoked opium with Chinese immigrant laborers were seen as victims of the “filthy, idolatrous” Chinese who were said to use the drug to entice white women into sexual slavery (Baumohl, 1992). On the other hand, self-medicating with concoctions containing

al., 2015).
morphine was widespread and the average addict tended to be middle class white women (Bewley-Taylor, 2002). Anti-drug crusaders as well as other groups such as the white Workingmen’s party whose members vied with the Chinese for jobs, readily exploited the strong anti-immigrant sentiment which existed for their own agendas (Reinarman, 1994). The tactic paid off and the San Francisco Opium Den Ordinance, passed in 1875. The Smoking Opium Exclusion Act passed in 1909 was the first federal law prohibiting non-medical use of a particular substance (Ibid). Both laws were clearly targeted against the Chinese as they aimed to eliminate the smoking of opium, the traditional administration route of that minority and to shut down opium dens usually frequented by coolie laborers (Ibid). Opium based medicines widely used by the white middle class population were left outside the scope of prohibitive laws (Ibid). As the procedures about prescription and dispensing of medicines became more standardized iatrogenic addiction declined, the visibility of the predominantly low-class, non-white addicts who engaged in crime to sustain their habit increased, further inflaming racist and anti-drug attitudes (McAllister, 2000).

Similarly, the shift of cocaine and opiate addicts from predominantly white middle class abusers to poor African Americans led to the criminalization of the drugs and served to demonize both the substances and these communities (Ibid). Therefore, the crusade against drugs like the one against alcohol owes much of its success to racist and xenophobic attitudes against disadvantaged working class minorities, which reinforced the image of drugs as an immoral force contributing to the poverty and criminality of mostly foreign and black deviants. Laws regulating drugs in general were passed (as the 1890 Congressional Act taxing morphine and opium), but the prohibitionist drive came about once the link between drugs, disfavored racial minorities and other deviants and thus with poverty, criminality and promiscuity, was firmly established in the mind of large portions of the population (Reinarman, 1994). The media played a significant role in this process by strongly exaggerating accounts of the effects of drugs on users (Musto, 1999). The view of drugs as a scourge gradually became the new common sense among the majority white population. The larger societal context should of course not be underestimated as the combination of societal processes of industrialization, urbanization, immigration and fights for emancipation fueled into growing anxieties about modern life. Therefore, the push for alcohol prohibition and the anti-drug campaign were part and parcel of a general tendency among late nineteenth century Americans to demand more control over a whole host of behaviors that were perceived as unacceptable and immoral (Woodiwiss, 1998).

**International**

While domestically moves towards prohibition were well underway, the drive that prompted the US to engage seriously in the matter of international drug control came when the US acquired the Philippines at the end of the Spanish-American war in 1898 (Bewley-Taylor, 2002). Washington inherited a state opium monopoly which it viewed as a problem. The newly appointed Episcopal Bishop of the Philippines
Charles H. Brent was a key figure in the international anti-opium movement who pursued the eradication of opium in the Philippines through gradual prohibition (UNODC, 2009). However, despite such efforts smuggling continued on a large scale undermining any attempt to curb use. Brent who had close connections with the Governor General of the Philippines William H. Taft as well as US President Theodore Roosevelt convinced them of the need for international control in order to prevent the smuggling of illegal opium in territories where it is prohibited (Ibid). Thus the US took upon itself to set up a conference on the matter and assumed for the first time the leadership role in the fight for international drug prohibition.

The strong moralistic overtones of the religious movements testify that they were preoccupied with the cause at least primarily as a result of their convictions. However, once the matter passed in the realm of American foreign policy, other more practical considerations were also pursued. An important component that bolstered the appeal for leading the crusade against opium was the opportunity to warm up to the Chinese government and to establish favorable trade relations (McAllister, 2000). Therefore, the anti-drug crusade was part and parcel of the impulse to advance Washington’s position on the international stage.

**China**

China was arguably the country with the most serious opium problem. Use of the drug was widespread and it came to be despised due to adverse consequences of addiction but also, in no small measure, to close associations of the substance with Western intervention (McAllister, 2000). As drug use spread through all levels of society, China was using more and more currency to pay for opium. Since the beginning of the eighteenth century, opium use was seen as serious economic threat as well as a moral vice. In 1796 and 1799 Imperial edicts banned the import of opium which, however, resulted in widespread smuggling by foreign companies in partnership with corrupt Chinese officials (Ibid). The tensions rose when the government made a forceful attempt to suppress this practice, leading to the first Opium War of 1838, won by Britain in 1842. Even though opium remained nominally illegal the relaxation of trade restrictions imposed by the British led to a large increase in imports. The Second Opium War of 1856 put China on its knees – tariff autonomy was lost, Westerners received extensive trade privileges, the opium ban was repealed and the government opted to impose taxes instead (Ibid). China, considering it faced abuse on a large scale, was very much in favor of the international control of opium (Sinha, 2001). While opium was indeed used on a large scale, more recently some historians have shown that the scale of the problem was often exaggerated and most users could still lead normal lives (Newman, 1995). Similarly, Dikotter et al. (2004: 3) exploring the use of opium in China found that “in most cases habitual opium use did not have significant harmful effects on either health or longevity”.

Nevertheless, at the time the Middle Kingdom became a poster child for drug prohibition, a convenient ally and case in point that the US could refer to in its quest for prohibition.

**Europe**

In Europe processes similar to the ones in the US were taking place. For much of the eighteenth century opium was viewed in a conflicting way. On one side, intoxication was stigmatized but on the other, it provided middle class intellectuals with a different spiritual experience. Signifying the moral superiority that Europeans felt, the problems that opium caused in China were perceived to stem from the backwardness of the Chinese society. Indeed as Padwa (2012:33) has observed while opium “pleased the philosophical European with thoughts of transcendence, it would tantalize the Oriental with images that reflected the allegedly “backward” spirit of the East.”

However, as science was advancing, the public had access to more and more potent substances leading to a spread of iatrogenic addiction. By the turn of the nineteenth century Western governments were becoming concerned with the unrestricted use of drugs. The result was a push towards professionalization of the medical and pharmacological profession. With time a new generation of drug addicts emerged, now increasingly associated with unsavory elements of society and there was general agreement that regulations is needed (McAllister, 2001). The focus, however, was on regulation rather than prohibition which was viewed as impractical for its propensity to foster illegal smuggling and was opposed by colonial governments (Ibid).

**International Drug Diplomacy**

**The Shanghai Opium Commission, 1909**

The Shanghai Opium Conference was the first international effort to control the trade in opium. As already mentioned, the conference was convened on the initiative of US President Roosevelt, and Bishop Charles H. Brent was chosen as president of the conference. However, as the delegates were not given plenipotentiary powers, the result of the meeting was non-binding recommendations prepared by the Shanghai Opium Commission, most of which were concerned with China.

Nevertheless, as Sinha (2001) notes, the conference did set a precedence in the sense that the US aggressively displayed its prohibitionist bent by insisting on the idea that drugs may only be legitimately used for narrowly defined Western-centric scientific and medical purposes, a position it will hold on to since. Similarly, the overwhelming focus on controlling drug supply that will persist in the development and operation of the drug regime was already apparent. Washington believed that if production is tightly controlled, no surplus will be available for illegitimate use on its territory (Bewley-Taylor, 2002),
thus exporting the responsibility for suppression efforts to producing countries. The colonial powers, on the other hand, as parties profiting from the trade were arguing that a more loosely defined quasi-medical use should be allowed. In the end, the International Opium Commission arrived at the following conclusion: “that the use of opium in any form otherwise than for medical purposes is held by almost every participating country to be a matter for prohibition or for careful regulation; and that each country in the administration of its system or regulation purports to be aiming, as opportunity offers, at progressively increasing stringency” (cited in Chatterjee, 1981: 37).

The Hague Conference 1912

The Shanghai Commission was not much of a success as governments that attended continued to pursue their course of action. Already in 1909, therefore, the American delegates were lobbying for a follow-up conference that would enshrine the principles in a binding and stricter form (McAllister, 2000). The US agenda for the meeting was overly ambitious but the interests of the governments represented were not conductive to a comprehensive treaty. Raw material producing countries such as Persia and India saw drug use as a domestic issue and wanted to keep the right to export opium to willing parties (Ibid). Britain, in an attempt to deflect attention from its own involvement in the opium trade, pointed to increases in the use and trade in manufactured drugs such as morphine, heroin and cocaine (Sinha, 2001). The British government hoped that if agreement is reached on these substances too, it would help British pharmaceutical companies to compete with German leaders in the sector. Thus, for the first time these substances were suggested as needing international controls in terms of licensing, manufacturing and distribution. Germany, however, substantially weakened treaty provisions on the matter and insisted on unanimous ratification of all producing, manufacturing and consuming countries for the convention to enter into force (Ibid).

The Hague Convention recognized the principle that only use for scientific and medical purposes was legitimate when it came to opium (Mott and Bean, 1998). Tentative and diluted as they were, the following steps were agreed on: the subjection of trade in raw opium including exports and imports to control by national laws; the gradual suppression of opium smoking; the establishment of national laws to limit consumption to legitimate purposes and to impose a system of licensing on the manufacture and distribution of cocaine, heroin and morphine; the passing on to information on national laws and statistics related to the drug trade to the Netherlands, which is to administer the treaty (Ibid).

1925 Geneva Opium Conventions

The post-World War I decision of the United States not to join the League of Nations meant the organization paid special attention to drug control. Since it was an issue the Americans were passionate about, strong initiatives on part of the League could strengthen its position and earn the favor of Washington (McAllister, 2000). Therefore, the new bodies had every incentive to strengthen the
developing regime. Although the American fervor for drug prohibition did not wane in the inter-war period, views on internationalism in Washington colored involvement with the League.

As the League began work on administering The Hague treaty, it focused on etiological questions such as what constitutes legitimate need and the factors behind addiction. The Opium Advisory Committee (OAC) created in 1920 was the main drug control body, while the League Health Committee advised on medical issues. Already in the beginning, however, there were disagreements between OAC representatives and the League Health Committee, which led to abandonment of etiological issues (Mott and Bean, 1998). Instead, and marking the way it will be done in the future, the League focused on “helping ‘normal’ and ‘deserving’ people, not least because doing so enabled all parties to avoid troublesome questions about societal factor contributing to deviance” (McAllister, 2000). Even the agencies that dealt with welfare issues preferred to deal with other, less controversial vulnerable groups. Covert American involvement in OAC deliberations also went a long way in stopping definitional and sociological discussions on the nature of drug use and abuse (Ibid).

In an attempt to warm up to the Americans, the OAC proposed the drafting of a new treaty (McAllister, 2000). Since there was little agreement between governments on the issue, it was decided to split states in two groups to hold their own plenipotentiary meetings – producers of raw materials and manufacturers, resulting in the two conventions. In contrast to the Hague Conventions which were concerned with domestic controls, the focus of the Geneva conferences was focused on establishing control mechanisms on the transnational level (Sinha, 2001). Signatories of the first Convention were to sell opium only through government run monopolies and were required to end trade in 15 years (Ibid). The most important provisions of the second Convention included the requirement that all persons involved in trade with controlled substances be subject to licensing, that all such transactions be documented, that both exporting and importing governments agree to transactions and that coca leaves, crude cocaine and cannabis be placed under international control as well (Ibid). Governments were further required to submit detailed statistics on production, sales import and exports to a new body, the Permanent Central Opium Control Board (PCOB) which would monitor trade (Ibid). However, as American insistence on the principle of scientific and medical legitimate use for all these substances was rejected, the US walked out and did not ratify the convention (McAllister, 2000).

**1931 Geneva Narcotics Manufacturing and Distribution Limitation Convention**

Despite the aforementioned efforts at international and domestic control, drug problems were growing. Smuggling was flourishing, and pharmaceutical companies once subjected to stricter controls could just move to a state that had not ratified the 1925 Geneva Conventions (Ibid). The most important provision of the 1931 Convention required parties to provide the PCOB with estimates of their domestic need for scientific and medical purposes on the basis of which the PCOB is to calculate manufacturing limits.
Another body, the Drug Supervisory Body (DSB) was created to administer the system. Despite being undermined by article 26 which did not require governments to assume responsibility for their colonies, the Convention was still widely ratified as a number of countries hoped it can provide a blueprint for future efforts at arms control (Sinha, 2001).

The 1931 Convention was an important step in the establishing the drug prohibition regime for the following reasons (McAllister, 2000). Firstly, it clearly delineated between licit and illicit transactions and it established a body to coordinate the licit trade. Secondly, it received an impressive number of ratifications. Thirdly, once the system was implemented, it demonstrated that it can work well when governments were willing to cooperate. Serious problems remained, however. Persia had not ratified the existing treaties and continued opium production and export unabated (Ibid). Latin American states did not have much interest in cooperating with the League and the international regime in general so coca cultivation resumed (Ibid). Illicit trafficking and recreational use were far from eradicated, leading to criticism of the law-enforcement, supply focused regime.

1936 Geneva Trafficking Convention

The 1936 Convention was the first to deal with punishing illegal activities related to the drug trade, since all previous conventions focused on delineating and controlling licit undertakings. The Convention stipulates that states should punish by imprisonment or other such sanction all actions related to trafficking. The US led by Jerry Anslinger, the chief of the Federal Bureau of Narcotics and a pivotal actor in American drug policy for his 33 years in office, insisted on the criminalization of all activities related to the cultivation, production, manufacture and distribution of controlled substances but this proposal was rejected and the US did not sign the convention which it considered as too weak (Taylor, 1969).

1961 Single Convention

The Single Convention incorporates and widens the controls that was imposed by previous documents. Legitimate need estimates remained as well as the requirement to submit statistics about all aspects of the licit drug trade. The International Narcotics Control Board (INCB) took over the duties of the DSB and the PCOB. Control was extended to the cultivation of opium poppy, coca bush and cannabis plant, once again placing significant burden for producing states (Ibid), which are required to destroy these plants even if they are just growing in the wild.

Similarly, the Convention requires states to criminalize all activities related to “cultivation, production, manufacture, extraction, preparation, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation contrary to the provisions of this Convention” (UNODC, 2013: 55). If the infractions are committed willingly and are serious, they should be punished by imprisonment or a similar sanction (Ibid). Demand side issues are only mentioned in
passing. All quasi-medical use is prohibited, including of opium, coca leaves and the cannabis plant (all components, excluding leaves). The countries that could demonstrate a traditional use in these substances were allowed a 25 year period to eradicate all illegitimate use.

Substances where divided in four schedules subject to increasing stringency of control. Schedule IV is the harshest schedule containing substances deemed dangerously addicting while having no medicinal value. Washington insisted on the inclusion of cannabis in that schedule, despite available evidence indicating the fallacy of such a move (Sinha, 2001). The possibility to add and remove or change the scheduling of substances was also added, which only previously existed under the 1925 Convention (Chatterjee, 1981). The WHO although nominally included in the regime by way of its expertise was still held at arm’s length since the final decision about adding or removing a substance from the schedules remained with the CND (ibid). Although the Convention was less stringent than Anslinger had hoped for, the US was largely satisfied by the coverage and consistency that was ensured (ibid). While the Convention signifies a certain degree of compromise between different groups of states, it nevertheless represents the culmination and firm establishment of the prohibition regime globally as previous conventions were largely “restrictive commodity agreements” (Carstairs, 2005: 61). The Single Convention, on the other hand, is more comprehensive and prohibitionist in the fact that it pays greater attention to individual users (ibid).

1971 Convention on Psychotropic Substances

After World War II use of synthetic psychotropics such as LSD, amphetamines and barbiturates rose in the West increasing exponentially during 1960s. Western governments could no longer ignore this new group of drugs, not only because of domestic use but also due to pressure from producer states of traditional narcotics. Compared to negotiations of the Single Convention negotiations, the camps were entirely reversed. Raw material producing states who thus far bore the brunt of the vast majority of drug control efforts were this time pushing for more controls, while manufacturing states with their serious pharmaceutical lobbies were on the defensive (McAllister, 2000).

Despite this dynamic, the 1971 Convention both upholds the regime by prohibiting all use except for medical and scientific purposes. However, it places significantly less strict controls, reflecting the interests of manufacturing states. For example, while the 1961 Convention places the plants that narcotic substances come from, the 1971 Convention only controls the isolated psychoactive components, leaving plants such as mushrooms, the peyote cactus and other outside of its scope. The most glaring omission, however, is the lack of requirements for the provision of estimates on legitimate use, together with the omission of derivatives (Sinha, 2001).

Already showing its proactive stance in protecting and extending the regime, however, these inconsistencies were redressed by the INCB, which asked parties to submit information about
psychotropics not officially required by the Convention (Ibid). As raw material producing states fulfilled this request, other states were pressured and shamed into doing the same (ibid). Similarly, the CND and the WHO later simply stated that derivatives were covered by the Convention and recalcitrant governments were persuaded to accept that due to international pressure. This remarkable turn of fortunes showed three significant developments. Firstly, the regime had taken a life of its own that could no longer be influenced with such an ease even by the hegemon that brought it about. Indeed, the US had aspired initially to have significant control over the United Nations as a whole, a hope which proved misguided (Bewley-Taylor, 2002). Secondly, international agencies tasked with upholding prohibition were settling into their roles.Thirdly, states which were initially opposed to international drug control efforts had acquired a stake in the regime and were effectively coopted. This turnaround was taking place already in the fifties as many states realized that they can receive significant funds, mainly from the US, as foreign aid in support of their efforts to eradicate the illicit drug trade (McAllister, 2000). These funds were overwhelmingly used to shore up countries’ repressive apparatuses (Levine, 2003).

1972 Protocol Amending the Single Convention

In an attempt to fight rising addiction rates on the domestic front, the Nixon administration launched the ‘War on Drugs’. After the 1960s counterculture movement waned, as part of the renewed impetus for fighting the drug scourge, the US launched an offensive both on the domestic as well as on the international front. A plenipotentiary conference was convened in 1972 at the behest of Washington. The resulting Protocol was a mixed success for the United States. On the one side, issues of treatment and care for addicts as alternative or supplement to incarceration were pushed through in order to apply to substances controlled by the Single Convention and attempts to limit licit opium production were thwarted (Bewley-Taylor, 2002). Nevertheless, the US succeeded in establishing the United Nations Fund for Drug Abuse Control (UNFDAC), which was from the beginning a largely US funded organization implementing crop substitution projects and other law enforcement initiatives, mainly in opium producing countries where such efforts were heretofore unsuccessful (McAllister, 2000). The INCB also received an extension of its mandate as issues of preventing “illicit cultivation production and manufacture of, and illicit trafficking in and use of, drugs” (UNODC, 2013: 32).

1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

As drug trafficking and use continued increasing in spite of the consolidation of the regime, during the 1980s, it was felt that trafficking in drugs was aided by the lack of agreed standards of criminal law (Sinha, 2001). Contrary to the other two core drug control treaties, the 1988 Convention is essentially a criminal law instrument, requiring the streamlining of national legislation in criminalizing all issues relating to “manufacture, transport or distribution of materials, equipment and substances for the
purpose of illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances” (UNODC, 2013: 127). Other aspects are addressed such as international cooperation and information exchange, anti-money laundering legislation and provisions on the confiscation of assets. Most significantly, for the first time the criminalization of possession, purchase and cultivation of drugs for personal use was explicitly required.

**The drug prohibition regime in perspective**

Prohibition achieved its global common sense status by a successful coupling of an already pre-existing social norm against excess and intoxication in many societies with the prohibitive ethos the US established as it rose to superpower status. Ikenberry and Kupchan’s (1990) postulation that norms are better implanted after a war or other major political turmoil is especially relevant in the case of the drug prohibition regime which was bolstered not by one but two world wars each of which saw the US move closer to hegemony.

World War I proved a very fertile ground for the tightening of drug control both domestically and internationally. Drug scares were constructed as smuggling increased exponentially and reports of abuse among soldiers surfaced (Mott and Bean, 1998). At the same time many states were plagued by shortages in licitly manufactured drugs (McAllister, 2000). Moreover, the inclusion of ratification of the Hague Convention as a condition to peace fulfilled the requirement of universal ratification. Previously recalcitrant governments, most notably Germany and Turkey were forced to accept the Convention (Ibid). Notably, the newly created League of Nations and its agencies were put in charge in enforcing the provisions. Thus World War I ensured the spread of drug prohibition to important reluctant states and established the nascent international bureaucracy to deal with the issue of drugs.

World War II cemented the status of the US as the only superpower along with the USSR and ensured that whatever opposition may be left in colonial governments is incapacitated (Bewley-Taylor, 2002). In the years before the War the League diminished in importance and drug issues faded to the background as states were stockpiling narcotics in expectation of the coming conflict (Ibid). Nevertheless, the regime persisted. After the War’s end when the US truly assumed center stage, reconstruction efforts began. It is important not to overstate the willingness of European powers to always shoulder the prohibition regime. Indeed, they would often serve as a counterweight to Washington’s most ambitious demands but it was before the World War II that European powers could offer more resistance. After the ascension of the US, they were most often cooperative, ensuring more significant victories only when their interests matched those of the US or when they presented a united front (Bewley-Taylor, 2002).
Needless to say, the diversity of views, motives and national circumstances resulted in discrepancies between the way different countries handled the problem of drug abuse and trafficking but governments would generally operate within the regime or do their best to justify anything that the US considered a deviation.

The regime that was eventually established can be distinguished by the following core features – prohibition of recreational use; strict regulation of medical and scientific use; strong focus on limiting supply and thus on states that produce raw materials such as opium poppy, coca leaves etc.; heavy law enforcement orientation; little concern with the wellbeing of addicts, public health measures and other demand side issues such as general questions about the reasons behind addiction and abuse. The 1946 Lake Success Protocol transferred responsibility over the drug regime from the defunct League to the United Nations. The Commission on Narcotic Drugs (CND) replaced the OAC, while the PCOB and BND retained their functions of gathering statistics and estimating legitimate need but were later replaced by the INCB. Anslinger and other like-minded individuals made sure that the CND was an independent organization reporting to the Social and Economic Council (ECOSOC), and thus circumscribed influence from other agencies like the World Health Organization (WHO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) which could deflect focus from law enforcement and supply control. (Sinha, 2001). The apparent interest of the USSR in etiological issues helped cement American aversion to such considerations.

The form the regime took can be explained by the fact that it was driven by a strong moralistic drive, which was informed as much by the actual harms that drugs produce as by associations with backward minorities and cultures. The regime contained many decidedly “irrational” features from its very beginning - it was predicated on notions of the moral superiority of the white, Christian West. The regime is very much a Western construct as it prohibits the substances that were generally alien to these societies. As Padwa (2012) notes, the primary drugs of choice for Europeans and their descendants in America are alcohol and tobacco. Indeed, these substances are currently widely regulated and even proscribed in some societies (e.g. alcohol in some Muslim majority countries) but there was no push to prohibit them on the international level. While the US has indeed had its own short-lived domestic experiment with alcohol prohibition and has entertained the idea for its international imposition, the failure of this initiative is glaring in contrast to the success of drug prohibition. A strong and durable alcohol prohibition norm could not take hold in Western societies since long-standing indigenous consumption precluded the attribution of solely negative qualities to the substance that came with associations with disadvantaged and alien minorities - elites remained prolific alcohol consumers together with lower classes. This is well illustrated by the fact that once Prohibition was passed in the US, despite the crusade being largely middle class, consumption among wealthier groups did not wane but was rather transformed towards drinking more hard liquor, and mixed drinks such as martini which became fashionable (Levine and Reinarman, 2004).
Material interests played a part both in hindering and bolstering the desire of the US and other, predominantly Western states to impose the regime more fully. Colonial governments in Europe were reluctant to forego the revenue that they generated through the trade in opium. The pharmaceutical lobby ensured a much more diluted treaty when it came to their products. Nevertheless, the US has generally pursued the goal with fervor, as it is obvious from its often uncompromising stance. The presence of individuals with strong moral convictions against recreational drug use among American diplomats was instrumental in advancing the cause. As McAllister (2000) has observed with some irony, Hamilton Wright who for some time led the American offensive had become “addicted to the cause of opium suppression”. Similarly, Jerry Anslinger pursued the goal as much officially as he did through placing unofficial but very real pressure to other governments to comply with the system.

Even if it can be argued that the regime served the interests of its main architects during the years of its formation, as the next chapters will show, with time both domestic and international costs increased substantially. Still, the American federal government remained firmly behind its convictions and acted as an enforcer of the regime. The international agencies set up under the League of Nations to deal with the question of drugs and later reconstituted in the UN bodies added another, international layer to the regime and one more cluster of actors with vested interest in the upkeep of the regime.

**Enforcing the War on Drugs**

As was already mentioned, some countries were coopted as they realized they can receive funding designated to help them in the war against drugs and which would directly feed into countries law enforcement institutions. This allowed the US to use its economic leverage to cajole states into compliance or force them when necessary. One way this has been done is through a process of certification the US has instituted, which measures the compliance of different states with their obligations under the drug control system and other international agreements (Andreas and Greenhill, 2010). The scheme has been highly politicized and decertification brings both reputational and economic costs in terms of withdrawn aid and trade agreements (Ibid). The mechanism has been used by Washington to unilaterally interfere in the domestic policy making of other states and to push for zero tolerance policies towards drugs even when they are not required by the treaties. Furthermore, the US has also coupled the war on drugs to the fight of organized crime and the war on terrorism which entails even more trouble for states that deviate (Bewley-Taylor, 2002).

Latin America has traditionally been considered Washington’s backyard and it is the site of large scale production and trafficking activities. Therefore, the US has paid special attention to the region and
interventions there are illustrative. The United States has poured an estimated 25 billion dollars (Youngers and Rosin, 2004) in shoring up the capacity of Latin American states to combat illicit drug cultivation. While spending on anti-drug initiatives abroad has deceased somewhat after the economic crisis of 2008, Washington still devotes significant funds to the War on Drugs. In 2010 it was estimated that the War on Drugs has cost the US 215 billion dollars (Lyman, 2013). The sum that the US administration has requested from Congress for fiscal year 2016 for all federal drug control programs is 27.6 billion dollars of which 1.6 billion is earmarked for foreign assistance (Rosen, 2015). Military and police assistance and training programs have been provided in Colombia, Bolivia, Peru, Ecuador and Mexico. Despite the funds being used for fighting cartels and crop eradication, successes were limited and usually produced only a temporary dent in the supply of drugs, while having a myriad other negative side effects stemming from the ingenuity and flexibility of black market actors.

As Bagley (2012) notes the crop eradication and cartel busting activities have been unsuccessful in the long term, due to a balloon effect whereby cultivation is simply moved to another place and trafficking routes are diversified. An example of this dynamic is the military campaign launched by Mexican president Felipe Calderon, co-financed with the help of 2.3 billion US dollars through the Merida Initiative (US Department of State, 2015), which drove Mexican cartels to expand their activities into Central American states such as Honduras and Guatemala (Bagley, 2012). Another unintended consequence is the cockroach effect whereby once a big cartel is busted it is replaced by many smaller criminal organizations which take over drug production and trafficking activities (Ibid). The balloon and cockroach effect have resulted in an explosion of drug related violence across Latin America. In the 1990s coca cultivation moved from Bolivia and Peru to Colombia (Ibid). While the state managed to beat the biggest cartels, their places were taken over by left wing Revolutionary Armed Forces of Colombia (FARC) and right wing United Self-Defense Forces of Colombia (AUC) guerillas and as these two formations vied for control over the drug market, violence sky-rocketed (Bagley, 2006). In response to this the US launched Plan Colombia providing 8 billion dollars to the Latin American state to fight back organized crime (Bagley, 2012). While the initiative did have some success in scaling back paramilitary groups, as of 2010 Colombia remains a major source of coca leaf and cocaine and violence has been rising again (Ibid).

Thus, far from eradicating the problem, the US has actually led to an increase in profits for organized crime (Duke and Gross, 2014), giving them more opportunity to infiltrate and corrupt law enforcement institutions and undermine state control. Moreover, the strengthening of military capacity that has been financed by the US has given rise to justifiable fears among civilian leaders (Youngers and Rosin, 2004). As Youngers and Rosin (2004: 1) have noted in “one nation after another, U.S. drug control policies are undermining human rights and democracy and causing enormous damage to some of the most vulnerable populations in the hemisphere”. Aside from the financial costs that Washington has incurred, its reputation in the region has been badly damaged by its often forceful interference in internal affairs
The growing resentment against US drug policy is well illustrated by former Costa Rican president Laura Chinchilla, who stated while she was still in power that Costa Rica is no longer “willing to be hooked onto that convoy of destruction, of militarism, of exorbitant expenditure, that distracts states from their efforts toward social investment. That is why we say we need to search for alternatives” (Armenta et al, 2012: 7). However, despite a growing consensus across the region that repressive drug policies are failing, something which will be looked at in more detail later, criminal law is still applied to drug offenders irrespective of the scale of the offence leading to continuous growth in the prison population convicted for drugs in Latin America, with the main targets being consumers and low-level dealers (Corda, 2015; Corea et al., 2015).

The War on Drugs as it was enforced domestically in the US also resulted in significant harms to drug users, disadvantaged communities and the public at large. While prison population has increased in many countries as a result of prohibition, the situation in the US has been especially dramatic. There too, the majority of the burden has fallen on low level consumers and dealers (Green, 1998) and disadvantaged communities of color (e.g. Bush-Baskette, 1998; Gilmore and Betts, 2013). Drug offences continue to be the biggest reason for incarceration in the US. As of January 2015, fifty one percent of offenders in federal prisons were convicted for drug charges (US Sentencing Commission, 2015). There are more people imprisoned for drug offences only in the US than for all crimes in France, England, Germany and Japan combined (Gray, 2001). The US has a 100,000 more people incarcerated for non-violent drug offences than all European Union countries for all crimes combined (Wood et al., 2003). Similarly, resulting from the strict interpretation of prohibition, Laurie and Druker (1997) have estimated that the cost of treating HIV infections among drug users which could have been prevented by the early adoption of needle exchange programs between 1987 and 1995, to be between 244 million and 538 million dollars. Moreover, as Gray (2001: 2) has noted the War on Drug has also resulted in a significant loss of civil liberties. Thus, apart from the international costs of upholding the regime, the domestic costs of prohibition have also been very high.

Turning tides

Despite the successful export of drug prohibition and the advent of Nixon’s War on Drugs, drug use and abuse in the West skyrocketed. The 1960s were marked by an expansion of the use in hallucinogens and other psychotropics, while the 1980s and 1990s saw a significant rise in opiate use and addiction in the West, along with a co-occurring crack cocaine epidemic mainly in the US (Reinarman, 1994). As the problem expanded, the prohibition regime has needed more and more commitment from states in terms of resources while delivering limited successes. The failures of drug prohibition prompted many
countries to redirect focus to demand reduction initiatives alternative to incarceration, as at least a complement to the dominant supply reduction strategy. The advent of the HIV/AIDS epidemic further strained the legitimacy of the overwhelming focus on supply eradication. Sharing of contaminated needles emerged as the principle way of the disease’s transmission in most parts of the world (Bewley-Taylor, 2012). While it appears that since recently drug use has been stabilizing or even falling in the developed world, especially when it comes to more traditional narcotics, drug consumption in the developing world and of new substances is increasing (UNODC, 2010). This points to another new challenge that the regime has encountered – the fast proliferation of substances not under international control which can easily be tweaked to be legal once the original substance is made illegal. While the international drug control system has dealt with the absorption of a number of new substances, the scale of this new challenge is unprecedented (Hallam et al., 2014).

With time inconsistencies with other normative regimes began to appear, increasing environmental instability. Most importantly, apparent conflicts with human rights norms in terms of the rights to health of drug users (Jurgens et al., 2010), rights of indigenous peoples to their traditional practices (Tupure and Labate, 2012) and challenges to civil rights like the right to privacy (Duke and Gross, 2014). Another problematic area is punishment, both of drug users and traffickers. Some countries like China, for example execute drug traffickers, while other countries punish users severely for even small quantities like Russia. The use of the death penalty can be considered as a disproportionately cruel punishment (Leechaianan and Longmire, 2013) and thus a serious breach of human rights law (Lines, 2008; Zilney, 2010). Considerations about human rights are inextricably linked with harm reduction initiatives and lenient treatment of drug users as they to a significant extent form the moral justification behind such policies.

Harm reduction

It is in this unstable environment that the concept of harm reduction emerged as an alternative to zero tolerance approaches to manage the risks associated with drug use. Harm reduction initiatives have existed since at least the 1920s, when morphine and heroin were prescribed to people with opioid addictions (Rhodes and Hedrich, 2010) and already during the 1970s the WHO was recommending the adoption of policies to alleviate problems associated with recreational drug use (Ball, 2007). However, the term itself gained currency in the 1980s to denote a set of initiatives aimed to reduce blood borne diseases and especially HIV/AIDS among the injecting drug user (IDU) population (Smitson, 2007). Many of now established interventions began as peer to peer outreach programs, such as needle exchanges driven by drug users in Amsterdam (Cook et al., 2010). These were later picked up and expanded on by governments due to advocacy by those working closely with drug users.
Harm reduction has been variably defined as a “principle, concept, ideology, policy, strategy, set of interventions, target and movement” (Ball, 2007: 684). Harm reduction usually refers to the following core set of interventions – needle substitution programs (NSPs), opiate substitution therapy (OST), controlled prescription of heroin (CHP) and drug consumption rooms (DCRs). Harm reduction predominantly deals with IDUs since they are the population which is exposed to most drug related risks. However, other initiatives targeting other segment of drug users is exist as well, such as the provision of clean crack pipes and the testing of ecstasy to ascertain safety and purity. Treatment both voluntary and compulsory has been considered by some practitioners and policy makers as harm reduction as well.

Harm reduction as a general concept as well as separate interventions have been hotly debated. Practitioners, policymakers and academics disagree about the ideological underpinnings. Different ethical arguments for harm reduction can be divided in three groups. The first set of arguments can be termed the pragmatic group which takes a non-moralistic approach to drug use and was a dominant view when harm reduction as a paradigm was emerging (e.g. Erickson et al, 1997). Advocates of pragmatism acknowledge drug use as a reality and abstinence as not always a viable option, especially in the short-term. Thus interventions should not necessarily be concerned with eliminating drug use but rather with reducing and managing the immediate risks associated with it (Ball, 2007). An important goal of harm reduction is thus enabling public health practitioners to come in contact with the most vulnerable drug user populations that in general eschew contact with institutions due to the criminal nature of their activities.

Protection of human rights has often been invoked as providing moral justification for harm reduction. Some practitioners have cautioned against such an approach, however, since it inevitably leads traditional harm reduction into becoming a more politically invested enterprise. As Keane (2003) argues, the application of human rights standards to harm reduction might undermine the successes already achieved, since there are different categories of human rights norms such as the rights of collectivities versus individual rights and there is often tension between them. To argue, however, that harm reduction is not a morally invested enterprise is somewhat of an untenable position (Loff, 2006), since these interventions undoubtedly protect the right to health, a human right which is not suspended even with regard to persons who engage in crime. Therefore, harm reduction is justified by the underlying argument that minimizing drug related morbidity and mortality is morally justified in and of itself, regardless the orientation of drug policy as regards recreational consumption.

Pragmatic harm reduction is at the very least, a temporal limitation to zero tolerance approaches to eradication of recreational use. Harm reduction advocates take drug use as a reality at this moment and try to minimize the harms that emerge from it today, even if in the long term goal is to work towards a drug free world. This is often seen as the strength of harm reduction as it allows helping drug addicts
even in the context of prohibition and to avoid the pitfalls around making moral judgments (Keane, 2003). Nevertheless, this view of drug use has still put harm reduction on a collision course with many staunch prohibitionists due to the underlying normative underpinnings of prohibition.

The second group couches harm reduction in more politically loaded terms, as part of an agenda for drug law liberalization (Davoli et al., 2010). The spectrum of views here is wide, ranging from decriminalization of use to repealing prohibition in favor of regulation or even legalization. Nevertheless, what unites the advocates of this interpretation of harm reduction argue that a significant portion of the harms associated with drugs are not innate to drug use per se but are rather a result from prohibition (Ibid). Therefore, harm reduction should also preoccupy itself with eradicating infringements of the rights of addicts that come as a result of being labeled a criminal. The most liberal proponents of this thesis view drug use itself as a human right (Southwell, 2010).

The third group of harm reduction proponents views only a certain set of programs compatible with drug prohibition such as treatment (often forced) as acceptable. This position, however, has often been described as dishonest since it discounts all interventions that do not require abstinence and thus does not address a significant portion of the harm related to drug use (Keane, 2003). As Robin Room (2005: 377) has argued, such a position amounts to a high-jacking of the concept to serve a prohibitionist agenda, something that the US, the UNODC and the INCB have tried to do.

**Adoption across the world**

Harm reduction is now the standard in the European Union. Differences in coverage between countries persist but significant policy transfer has occurred in Europe (European Commission, 2008) as NSPs and OST have been instituted in all member states. Additionally, Europe has led the way in establishing the arguably most controversial harm reduction measure, DCRs, of which there are currently 86 in 7 countries (European Monitoring Center for Drugs and Drug Addiction, (EMCDDA), 2015). Outside of Europe there are only two such facilities – Insite in Vancouver and a safe injection room in Sydney. Out of five countries which prescribe heroin to addicts, four are in Europe and the last one is in Canada (Bewley-Taylor, 2012). European countries have been the primary proponents of harm reduction on the international level as well.

Numerous other states, even some which insist on strict prohibition have instituted harm reduction services. Of note are such programs in the United States and Sweden. Sweden is the bulwark of the zero tolerance approach in Europe. Due to its low prevalence rates, it has been pointed to as an example of the success of very restrictive policies despite analyses pointing to the traditionally strong Swedish temperance culture as the reason behind low levels of drug use (e.g. van Solinge, 1997). The UNODC has even released a report entitled *Sweden’s Successful Drug Policy: A review of the Evidence* in 2007. Despite being distrustful of harm reduction, Sweden has nevertheless instituted such programs. Even
though coverage has been judged by the EMCDDA as limited, at the end of 2014 five NSPs operated in Sweden and a sixth one was opened in October 2014 (EMCDDA, 2015), OST is also available.

Harm reduction services exist in the US too. NSPs are only provided on state level, as the federal government passed a Congressional ban on the funding of such programs with federal money (Bewley-Taylor, 2012). The same ban precludes the United States Agency for International Development (USAID) from funding organizations involved in running NSPs. At the end of 2008, an estimated 184 NSPs operate on the territory of thirty six US states (Guardino et al., 2010). OST, in contrast is funded with federal money (Bewley-Taylor, 2012). Other countries that came to be strictly prohibitionist such as Iran operate harm reduction programs. China, which has very harsh drug laws, nonetheless provides OST and NSPs (International Harm Reduction Association (IHRA), 2008). Altogether, eighty countries around the globe offer some measure of harm reduction services (Bewley-Taylor, 2012), which is very significant since as Finnemore and Sikkink (1998: 901) have noted that tipping usually occurs when the number of states subscribing to a new norm reaches at least one third.

**Depenalization and decriminalization**

Depenalization refers to the retention of formal punishment but relaxation of penalties associated with an offence (Pacula et al., 2004). Decriminalization, on the other hand, means the removing of an offence entirely from the scope of criminal law and relegating it to civil law sanctions such as fines and other. States under the prohibition regime have applied both de facto and de jure depenalization and decriminalization (Ibid).

**Cannabis**

Most countries which have adopted a more liberal approach to the use of a substance have done so with regard to cannabis. France has reduced penalties for possession of marijuana since the 1990s and the UK reclassified marijuana from class B to a class C drug in 2004 (Room et al., 2010). Similarly, Brazil introduced penalties alternative to prison sentences (Bewley-Taylor, 2012). Like with harm reduction programs, lenient treatment of cannabis possession exists within the United States due to its federal system of government. In the 1960s before Nixon’s War on Drugs, there was a generally more tolerant stance on the drug. While some states toughened up as a result of the new anti-drug rhetoric, by 1989 a significant number of states had reduced the penalties and forty three allowed offenders to avoid mandatory jail sentences through diversion programs (Ibid). In the US state of Alaska, citizens are allowed to possess up to four ounces of cannabis for personal use in their home (Transnational Institute (TNI), 2013). In Australia, despite its overall prohibitionist turn since 1997, local authorities have effectively decriminalized possession of small amounts of cannabis, replacing criminal penalties with a variety of fines and other alternatives (Maag, 2003).
As with harm reduction, Europe has led the way in establishing tolerant policies. As of 2009, twenty-five European states have adopted some degree of non-punitive approach to cannabis use by either de facto or de jure decriminalization (Bewley-Taylor, 2012: 196-205). For instance, Germany retains criminal sanctions but these are not enforced on the recommendation of the Federal Constitutional Court (Graessler, October 2010). Nevertheless, the dynamic is not confined to Europe. Other countries such as Pakistan, Cambodia, India and Egypt where cannabis has a long established traditional use prior to the establishment of prohibition have de facto allowed its use and some of these states have even allowed the operation of underground dispensaries while retaining harsh penalties under domestic law (TNI, 2013). In total about seventy countries have applied some form of de facto or de jure decriminalization or depenalization (Bewley-Taylor, 2012), pointing to the significance of alternatives to zero tolerance approaches.

**Possession of all drugs**

Not many countries, however, have taken the more radical step of decriminalizing the possession of all drugs. So far only two European countries, Portugal in 2001 and the Czech Republic in 2010, and Mexico in 2009 have done so. The Czech Republic introduced criminal sanctions for possession of all drugs in 1999 in order to align its legislation with obligations under the Single Convention, but small quantities remained a misdemeanor (Blickman, 2014). The regulation passed in 2010, however, saw the government stipulate what is to be considered a small amount per illegal drug, setting a relatively high bar for possession punishable by fines (Ibid, 2014). Portugal has adopted a somewhat different approach. The amendment in Portuguese law establishes so called Commissions for Dissuasions of Drug Addiction, which deal with instances of possession of drugs within the limits considered for personal use. In applying administrative sanctions, the Commissions make a distinction between individuals addicted to drugs and casual users. In dealing with persons deemed to not be dependent and who have no prior infractions, the Commissions are allowed by Article 11(1) of the decriminalization law to suspend proceedings (Greenwald, 2009). When dealing with addicts, Commissions can apply a variety of sanctions such as warnings, fines, suspension of government benefits, suspension of the right to practice certain professions etc. (Ibid). Nevertheless, if the addict agrees to undergo treatment, even if there are previous violations, Commissions are allowed to suspend proceedings, which is what is usually done in practice (Ibid).
Fit with the Prohibition Regime

The Intractability of the Prohibition Norm

Bewley-Taylor (2012: 330) has noted that harm reduction programs and lenient policies dealing with users can be described as contrary to the spirit of the conventions but not to the letter. This difference between the underlying normative logic (the spirit) of the regime and the codification in treaty law and how it relates to the consistency of the regime and the stability of the norm is explored below.

The Spirit of the Regime

Prohibition can be described as second-order moral norm – its status depends on the underlying moral norm against recreational use of drugs. In other words, prohibition is morally justified because drug use for recreational purposes is immoral. Prohibition is thus a norm governing how a breach of the moral norms against recreational drug use should be addressed - official punishment administered by state authorities and in its strictest interpretation, by criminalization of recreational consumption. It is complimentary to the norm against recreational drug use but it should not be seen as a natural or only possible response. That is why the issue of recreational drug consumption and not supply related activities is actually at the heart of prohibition – if recreational drug use in itself is not immoral, then cultivation, production and sale to satisfy such demand in and of themselves are not either. Thus the drug prohibition regime has naturalized one type of response as the normal sanctioning mechanism that should go with a breach of the moral norm held by many against drug use for pleasure.

As it can be deduced from the historical account of how it became prominent in the US and later exported, the norm against recreational drug use actually evolved from the previously existing norm against excess, which applied to all substances with a strong potential for intoxication such as coffee and alcohol (Wienberg and Bealer, 2001). Nevertheless as these were the drugs whose use had become entrenched in the West, there was more adequate and rational awareness about their effects. Substances which had been introduced later and were consumed in particular ways and patterns by foreigners were much more quickly labeled as dangerous. Thus the moral norm against excess remained for drugs like tobacco and alcohol, while the moral norm against recreational use became attached to other substances like opium, cocaine etc. and/or particular routes of administration, due to associations with disfavored minorities. Later on, the norm against recreational use was extended in scope and applied to consumers from the white incumbent population too as drugs came to be viewed as inherently dangerous. The norm against excess, since it allows for some recreation drug use went together with a second order moral norm of regulation as a means to reduce negative consequences, while the norm against recreational use was immediately coupled with the prohibition norm. Such coupling, it should be kept in mind, is not inevitable but has become common sense, obscuring the
boundaries between the first-order norm against recreational use and the second order norm of official prohibition.

The prohibition regime as enforced by the US contains within itself an interesting paradox. On the one hand, compared to for example the ban on slavery, prohibition of drug use for recreational purposes is fundamentally different in the fact that it proscribes a consensual activity that individuals (at least initially) choose to engage in. Use of substances for consciousness alteration has persisted throughout history because it brings benefits beyond mere pain relief (Walton, 2002). Indeed as Weil (1986: 17) has stated “the ubiquity of drug use is so striking that it must represent a basic human appetite”. Attempts to eradicate the behavior completely are thus unlikely to be successful. Slavery has persisted for a long time as well but in comparison involves harm to others stemming from its very existence as a practice. In contrast, drug use for recreational purposes, provided it is not prohibited, usually becomes harmful to others once it becomes abuse and results in addiction.

The prohibition norm, on the other hand, obscures the extent to which the harm comes solely from drug use per se, something which has been observed by many critics of the regime. The prohibition norm does not alter the behavior itself. Rather, it changes the societal perception of and reactions to recreational drug use, and so create separate harms by punishing consensual behavior and instill the idea that these additional harms stem from drug use in and of itself. Considering the goal of the treaties is to protect health and welfare, the prohibition norm appears to be rather unsuited to achieving this. Since it is at best dubious that the proscribed behavior can be eradicated completely along with the black markets it creates, prohibition necessitates a significant amount of funds to sustain it on the societal level, while it ruins lives on the individual level.

**The Regime as Codified in the Treaties**

The prohibition norm as envisaged by the United States and many other zero tolerance minded governments, is not synonymous with international law as codified in the treaties. The spirit of the norm as it developed historically and as the US wanted to impose it was not carried over in the treaties completely, since they were the result of a certain degree of compromise. The US as the normative champion of prohibition has nevertheless has done its best to push zero tolerance interpretations both unilaterally and through international organizations with the help of sympathetic governments even when a strict interpretation is not mandated by the treaties.

A separate exploration of treaty obligations is therefore necessary to fully map the spectrum of rules that states need to observe. The purpose and object of treaties as stipulated in the preamble of the Single Convention, is the “the protection of health and welfare of mankind” from the “serious evil” of drug addiction (Ibidem), forming the core goal of the drug control regime (Room and Reuter, 2011). In terms of the treaties then, the prohibition norm governs how the protection is to be ensured – through
the limitation of drug use to medical and scientific purposes. Medical and scientific purposes, however, are not defined leaving some scope for interpretation. Some countries, for example, have seen the prescription of opiates to addicts as a legitimate medical use, while other such as Russia for example sees this as condoning and even furthering illegal use (Elovich and Drucker, 2008).

Nevertheless, only uses compatible with the Western conceptions of medical practice seems to be allowed as quasi-medical and religious traditional uses are treated ambiguously under the regime (Tupure and Labate, 2012). On the one hand, the Single Convention prohibits long established traditional uses of coca leaves and cannabis amongst other. On the other hand, under the 1972 Convention the cultivation of plants themselves is not prohibited which appears to allow for the continuation of traditional uses of ayahuasca and other psychoactive plants (Sinha, 2001). Similarly, the 1988 convention takes “due account of traditional licit uses, where there is historic evidence of such use” (UNODC, 2013: 149). However, the conflict between treaties in this regard has not been addressed, an issue which prompted radical action by Bolivia with regard to coca leaf chewing to be addressed later on.

The last component is the concrete measures through which prohibition is actualized. Under the treaties, this is the criminalization of all activities related to the illicit market, except possession for use, which may be treated more leniently by way of escape clauses and omissions, and the strict control of all licit transactions. Here the disconnect between the spirit of the prohibition norm and how it has been officially codified is most obvious – supply related activities are given much more sustained attention, when the prohibition norm is predicated on the harmfulness and immorality of recreational use. The space for experimentation that the treaties allows will further be explored in terms of the policies outlined above that have emerged to respond to a changing situation. How the US, international institutions and other prohibitionist governments have reacted to such initiatives will also be looked at. These actors have often attempted to plug the holes in the treaties and bring about the full actualization of the spirit of the prohibition norm in its most zero tolerance variant they favor.

**Harm Reduction**

When exploring the gradual erosion of normative regimes, two assumptions can be safely made. A minimum requirement for an emerging practice or a norm to be seen as challenging should be incongruence with the norm at the center of a regime. Yet, in order for a practice or a norm to be only gradually eating away at the incumbent norm, it should be at the same time able to successfully coexist with the rival regime, in other words, it should not be diametrically opposed.

There is nothing in the treaties which precludes the adoption of harm reduction policies. In fact it could be argued that they allow for such interventions. Article 38 of the 1961 Convention requires parties to
“treatment, education, after-care, rehabilitation and social reintegration” of drug users (UNODC, 2013: 57). The 1971 Convention and 1972 Amending Protocol echo these commitments. Since the terms ‘care’ and ‘treatment’ have not been specified, harm reduction cannot be unequivocally excluded. Moreover, UN agencies like the WHO and UNAIDS have wholeheartedly supported harm reduction and have done much to push for its mainstream acceptance (Bewley-Taylor, 2012). These two organizations have consistently reported on the extensive evidence supporting harm reduction. UNAIDS has asserted its position more and more vocally with time. In his last year as Executive Director of UNAIDS, Peter Piot expressed his view that it is time for “the CND to face reality and fully embrace harm reduction and substitution therapy” (UNAIDS, 2008). However, UNAIDS and the WHO have generally been marginalized in CND deliberations (Bewley-Taylor, 2012: 159).

Yet harm reduction has not escaped intense criticism by prohibitionists. This is the case since harm reduction is at the very least at odds with the first order moral norm against recreational use. Pragmatism was indeed needed for harm reduction interventions in order to operate at all in many places. This impartiality towards recreational use, however, does not diminish the tension with the underlying norm. The pragmatic justification is an attempt to take out the issue of recreational use outside the scope of morality, making it incompatible with the very normative heart of the regime. This is obvious in differential treatment of NSPs and OST by the US. If OST is defined as medical use as part of treatment then it is not at odds with the first order moral norm. As already mentioned, the US has federally funded OST programs. On the other hand, NSPs and DCRs cannot be justified in a way that is not contradictory to the first order moral norm. This is also why harm reduction only in its “coopted” version, when it pursues total abstinence, is unequivocally endorsed by zero tolerance actors like the INCB. Nevertheless, harm reduction initiatives have managed to exist for more than thirty years because of gaps in the treaties (Bewley-Taylor, 2012). This has given an opportunity for harm reduction as a politically invested enterprise to be more vocally pursued, because the pragmatism notion had managed to carve out enough ideological space to allow for such an extension of efforts.

**Lenient Approaches to Drug Use**

Reframing the debate in terms of harm naturally brought on questions about the origin of harm and led to experimentations with lenient approaches towards drug users. With time more evidence was uncovered “that links drug harms to policies that emphasize strict law enforcement against drug users; an unintended consequence of international drug control conventions. The continuum of ‘combination interventions’ available to harm reduction thus extends from drug treatment through to policy or legal reform and the removal of structural barriers to protecting the rights of all to health” (Rhodes and Hendrich, 2010: 19). Temporally, depenalization and decriminalization gained traction for the most part after the spread of harm reduction, even though lenient criminal and even administrative sanctions
have existed since at least the 1970s as well (Bewley-Taylor, 2012). In some places, the two moved alongside each other, but the general trend internationally is depenalization or decriminalization following the institution of harm reduction (see tables in Bewley-Taylor, 2012: 72-90; 196-205).

Depenalization and decriminalization, like harm reduction have now come to co-exist with the regime. Depenalization, be it de facto or de jure is not problematic under the conventions, since it retains penalties but makes them more lenient. With regard to decriminalization, the situation is more complex. The 1961 and 1971 treaties do not require parties to establish use as a criminal offense, but possession is only allowed for only “under legal authority” (UNODC, 2013: 53). Nevertheless, parties are only required to criminalize possession in the context of illicit trafficking but not for personal use (Boister, 2001). The 1988 convention does require a state to criminalize possession for personal use of all drugs but it allows it them to do so subject to their “constitutional principles and the basic concepts of its legal system” (UNODC, 2013: 129) thus allowing some latitude, provided it is found that criminal sanctions are unconstitutional. In 2009, for example, the Argentinian Constitutional Court ruled that punishments for possession for personal use are unconstitutional (Armetna et al., 2012). Furthermore, the same convention allows for the application of alternatives to conviction and punishment in minor cases (Boister, 2001). Thus, decriminalization of possession is relatively easily justifiable within the context of the treaties.

Depending on the policy in question, the degree of fit with both the letter and spirit of the regime differs. Depenalization in general is unproblematic – it is not precluded even by the strictest interpretation of prohibition. However, the closer a states goes down the spectrum to decriminalization, the closer it comes to a conflict with the spirit of the regime, at least with the stricter reading of the second order prohibition norm. Therefore, decriminalization and sometimes depenalization have been challenged by staunch prohibitionists. However, in contrast to harm reduction such criticism appears to be more muted general as part of the overall liberalization of attitudes towards drug use. This can be explained by the fact that lenient policies against drug users challenge only the strictest form of the second order norm regulating the response towards recreational use, not its inherent moral status.

**Resisting Change, Protecting the Regime**

In this section, the reactions against the aforementioned interventions will be teased out in more detail. It should be kept in mind, however, that there are so many example of resistance against such initiatives, that the ones presented below are just a fraction and serve as an illustration rather than a comprehensive review. Moreover, where there has been significant scientific research in support of the
policies, this will be addressed in a cursory manner. Still opposing policies that command scientific confidence is a risky endeavor which serves to lay bare the moralistic underpinnings of the regime.

The costs that governments have incurred for applying the aforementioned policies are both material as well as reputational. The US obviously has a lot of ways at its disposal to punish those that it views as breaching the conventions whether they are at fault or not. The material costs associated directly and solely with Board condemnation are not great – at worst it has the power to recommend an import or export embargo on licit drugs for a state it considers in breach. However, all other costs (reputational, economic etc.) associated with a treaty breach should not be underestimated. This is obvious in the way states try their best to couch their policies within the regime, even when their assertions are dubious.

The US

Harm Reduction

Harm reduction initiatives have always been regarded as suspect by individual prohibition advocates and ardent regimes supporters such as United States, Sweden and Russia. Harm reduction is seen as at best condoning and at worst encouraging drug use. Unsurprisingly, the US has been particularly hostile towards harm reduction, even though such programs operate on its territory. Washington and other prohibitionists have attempted and often succeeded to stifle the advancement of harm reduction initiatives as a globally recognized approach for ensuring the health of drug users. Harm reduction has been strongly opposed despite the wealth of evidence which shows that NSPs do not increase use prevalence (e.g. Lurie and Reingold, 1993; Barreras and Torruella, 2013), reduce risky injecting behavior (e.g. Wodak and Cooney, 2004) and that especially when paired together with OST are successful in reducing disease transmission rates (e.g. van den Berg et al., 2007). OST also reduces mortality among drug users (e.g. Davoli et al., 2007). Similarly, DCRs have been shown not to increase crime (e.g. Freeman et al., 2005), while reaching the most vulnerable populations and improving their health by decreasing drug overdose and disease transmission (Hedrich, 2004).

The US has unsurprisingly been the primary protector of the regime against the encroachment of non-abstinence public health initiatives. Pressure has been applied both in overt and covert manner unilaterally, through engaging particular governments and in the context of negotiations in international institutions, by stalling negotiations, threatening to withdraw funding and obscuring or denying scientific data not in line with its convictions (Bewley-Taylor, 2012).

One example among many of the unilateral American pressure successfully preventing a CHP initiative in another country is illustrative. Australia’s stake in the legal production of opium on the island of Tasmania was used to effectively stifle attempts to introduce a CHP trial when in 1996 a high ranking US drug official visited the island and cautioned about going soft on drugs (Hamilton, 2001). The visit took
place shortly before the INCB was considering an expansion of the number of legally sanctioned opium poppy growers in Tasmania, indicating that if Australia backs down, the US will support its bid (ibid). CHP programs in Switzerland have also attracted much criticism from the USA and so have DCRs (Bewley-Taylor, 2012).

The US has on numerous occasions made erroneous statements regarding scientific evidence on harm reduction initiatives. The US delegation in 2004 upon a release of a common position statement on opioid addiction treatment by the UNODC, UNAIDS and WHO, argued that “needle distribution not only promotes drug abuse but may well also accelerate the spread of HIV/AIDS” (Ibid: 139). This position contradicted even the findings of US institutions such as the 2000 Report by the US Assistant Secretary for Health and the US Surgeon General (Ibidem). Perhaps most telling as to the lengths that the US is willing to undermine the legitimacy of harm reduction is the launch of the Journal of Global Drug Policy and Practice in 2007. While on the surface it appears as a legitimate peer reviewed journal, there is evidence of bias as it has published articles misrepresenting data on harm reduction. The journal has been criticized for not being actually peer reviewed (Solomon, 2007) and for publishing politically motivated pieces (Collier, 2009), which can be used by politicians as a justification for undermining harm reduction efforts. The journal is published by the Drug Free America Foundation, an NGO favoring zero tolerance approaches and is financed by the Office of Juvenile Justice and Delinquency Prevention, which is part of the US Department of Justice (Ibid). The timing when the journal was created indicates that it is meant to serve as a counter to the International Harm Reduction Association’s International Journal for Drug Policy (Bewley-Taylor, 2012: 139). Commenting on the controversial publications, Kerr, Wood and Montaner (2008: 142-143) have noted that “to our knowledge, this is the first time a lobby group such as the Drug Free America Foundation has created for itself a venue for the dissemination of opinion essays, which to the untrained eye could easily be mistaken for a scientific journal”.

**Lenient Approaches to Drug Use**

Even though decriminalization and depenalization are perfectly justifiable under the treaties, the US, supported by other prohibitionist governments have still resisted. When in 2001 Jamaica was deliberating on allowing marijuana for personal use for religious purposes, Washington urged the country to abide by its international obligations or otherwise risk decertification (Chevannes, 2004). Similarly, in 2004 Mexico’s then President Vicente Fox’s last minute decision to roll back the decriminalization of small amounts of marihuana was attributed to pressure by the Bush administration (Bewley-Taylor, 2012: 210). Canada was also warned against decriminalization, with the US threatening to tighten border controls which would have deleterious effects for the Canadian economy (Ibid). International agencies advocating for such policies or even for more scientific research on the matter have also been targeted. The WHO Program of Substance Abuse which was created in the beginning of the UN Decade on Drug Abuse was very proactive in its task on researching addiction. The report that
the Program released in 1995 found that coca leaf chewing is not harmful and can in fact have benefits, and that cocaine use is generally less harmful than tobacco and alcohol (TNI, 2010). These findings could have had a serious impact on policies, especially in Latin American states. The US reacted promptly to the findings of the study, threatening that “if WHO activities relating to drugs failed to reinforce proven drug control approaches, funds for the relevant programmes should be curtailed” (Ibid). The report was never published, Program’s staff was drastically reduced and it was pushed back to practical irrelevancy (Hallam et al., 2014).

**International Control Bodies**

The current regime is administered by three principal control bodies. In 1997 the United Nations International Drug Control Program (UNDCP) and the Crime Prevention and Criminal Justice Division merged into one body, the Office for Drug Control and Crime Prevention, renamed in 2002 as the United Nations Office on Drugs and Crime (UNODC) (Sinha, 2001). The UNODC provides technical and administrative support to the CND and INCB and coordinates drug control activities (Bewley-Taylor, 2012). The CND is the main drug policy making body of the UN comprised of fifty-three member states delegations. It has the power to make decision on the scheduling of substances taking into account recommendations and findings of the WHO (Ibid). The CND has the final word in this matter and its decisions can only be overridden by ECOSOC (Ibid).

The INCB as an independent body from both governments and the UN itself, made up of thirteen members elected by secret ECOSOC ballot, which is supposed to keep into account equitable geographical representation and that the elected officials possess knowledge of the drug situation in producing, manufacturing and consuming countries (Ibid). The members should “by their competence and impartiality command general confidence” (Ibid: 32). The INCB has three main functions – administering the system of estimates and ensuring the adequate supply of narcotics for licit purposes without spills in the illicit market, monitoring the control system for precursors and recommending changes in the schedules under the 1988 Convention and it acts in quasi-judicial capacity through “permanent dialogue” with governments to ensure sufficient implementation of treaty provisions (Bewley-Taylor and Trace, 2006). It was further given the power to recommend to parties to suspend trade with a state in breach of the Convention (Jelsma, 2010).

**Harm reduction**

As a consequence of their own interest in perpetuating the regime as well as US influence, the UNODC and especially the INCB have had a notoriously onerous stance on harm reduction. Negotiations at the Commission on Narcotic Drugs (CND), on the other hand, based as they are on consensus, have meant that resolutions dealing with harm reduction tabled by sympathetic countries emerge in a severely
watered down version which does not even mention harm reduction explicitly and avoids direct references to initiatives that do not insist on abstinence (Bewley-Taylor, 2012). The most significant and recent example is the lack of reference to harm reduction in the Political Declaration and Action Plan released in 2009, a century after the first international drug control effort (High Level Segment CND, 2009). The Commission sessions are often used by prohibitionist countries to voice their support for the regime and opposition to harm reduction (Bewley-Taylor, 2012).

The Executive Director of the UNODC in office between 2002 and 2010, Antonio Maria Costa has been highly critical of the “spreading in some countries of a permissive culture favoring the right to abuse drugs” (UNODC, 2003: 9). In 2002 UNODC staff was forced to tweak language and funding streams after the US threatened to withdraw financing due to the organization’s involvement with a project in Brazil which featured harm reduction initiatives (Bewley-Taylor, 2012). Even the mere expectation of negative reaction by the US has been sufficient for self-censorship to occur in the UNODC (Ibid). Another manifestation of this is the attempt to co-opt and twist the meaning of harm reduction already mentioned before. Reversing his position, in 2003 Costa stated that “in effect every drug control measure practices harm reduction” (Costa, 2003).

To be sure, the UNODC has had to perform a precarious balancing act in order to ensure that it takes account of the state of scientific advancements in the field of drug policy without upsetting the US and other proponents of strict prohibition and risking their financial contributions. This task seems to have fallen disproportionately on the Executive Director as his statements have with time diverged more and more from the position of the rest of UNODC. For example in Costa addressing the Beyond 2008 NGO Forum stated that “governments, international institutions and all of you should not shy away from proclaiming the importance of avoiding drugs: A is for Abstinence. Unfortunately, the opposite is happening in many societies...Some of the messages I hear are startling: take drugs if you wish, and we teach you how to reduce the damage they cause” (Costa, 2008). On the other hand, UNODC has supported OST already in 2004 (Bewley-Taylor, 2012), and in 2008 it released a report outlining the harmful unintended consequences of the drug control system (UNODC, 2008a). Therefore, in recent years there has been a certain reversal in the position of the UNODC which now openly supports harm reduction (UNODC, 2015). Likewise, in 2012, the body has joined other UN agencies in denouncing forced treatment centers as they operate in some countries and has compiled human rights guidelines to inform its activities (UNAIDS et al., 2012). The Executive Director nevertheless continued to warn that the “vocal pro-drug lobby argues that the damage done by drug control is greater than the harm caused by drugs” (High Level Segment CND, 2009: 3).

In contrast to the UNODC, the INCB has generally not heeded calls to acknowledge the legitimacy of harm reduction initiatives that do not insist on abstinence. It has employed several tactics to shore up prohibition, such as naming and shaming through its annual report, raising awareness though media and
sending missions. On the other hand, it has been silent on controversial topics such as capital punishment for drug offences and forced treatment (Bewley-Taylor, 2012), reinforcing the idea that the Board supports all policies that are in line with strict prohibition even if they are incompatible with other areas of international law. It has clearly favored zero tolerance approaches and has attempted to downplay scientific consensus (Bewley-Taylor and Trace, 2006; Bewley-Taylor, 2012; Csete and Wolfe, 2007).

In 2002, despite scientific evidence to the contrary, Board President Philip Emafao stated that giving out new needles incites drug use which is contrary to the conventions (Csete and Wolfe, 2007). Additionally, echoing Costa, in 2003 the INCB which had heretofore staunchly opposed harm reduction stated that “the ultimate aim of the Conventions is to reduce harm” (INCB, 2004: 36). It has further stood behind its assertion that “treatment should be based on enabling individuals to become drug-free rather than on simply seeking to reduce some of the harm associated with continued levels of drug misuse” (INCB, 2012: 7). Moreover, despite the wealth of evidence showing the effectiveness of OST in treating opiate addiction, the INCB has equated with drug abuse in its 2011 Report (International Drug Policy Consortium (IDCP), 2012). The INCB has resisted even when, upon its request in 2002, the Legal Affairs Division (LAS) of the predecessor of the UNODC explored the legality of NSPs, OST and DCRs and confirmed they do not contravene the conventions. In fact, the LAS stated that “it could even be argued that the drug control treaties, as they stand, have been rendered out of sync with reality, since at the time they came into force they could not have possible foreseen these new threats” (UNDCP, 2002: 6).

Again in comparison to the UNODC which has acknowledged the need to protect human rights as integral to drug policy, the Board’s position on the matter has been perplexing. The INCB did not join the UNODC and other UN agencies in condemning forced treatment facilities despite evidence of significant human rights abuses, because according to then Board President Hamid Ghodse, the INCB does not concern itself with human rights (Csete, 2012). Despite this position, the 2011 INCB report did commend Vietnam, which operates one of the most extensive networks of such detention centers (Ibid). Instead, as it has done with harm reduction, the Board has tried in a rather unsophisticated way to reframe the debate on human rights in a way that would remove tension with the prohibition regime. In its 2011 Report, the Board claimed that being free from addiction is a human right (INCB, 2012: iii). However, the way the Board envisions it, being free from addiction appears to be more of an obligation than a right. Furthermore, as Harm Reduction International (2012) has stated, treatment, harm reduction and rehabilitation are actually recognized as part of the right to health. If the Board’s take on human rights is accepted as correct, it would mean that the state is liable every time that someone becomes addicted to drugs, since human rights should be enforceable (Ibid). It is very questionable if state parties would agree with such an extension of their duties.
**Lenient Approaches to Drug Users**

The INCB has praised repressive legislation as in the case of Bulgaria in 2004 when the country instituted laws mandating long prison sentences even for possession of very small quantities of drugs. With regard to that, the Board on a visit to Bulgaria stated that its legal framework is “well-developed” (Csete and Wolfe, 2007). Moreover, the Board was initially very hostile to Portugal’s decriminalization of possession for all drugs but realizing it has no legal basis for it, abandoned the pursuit. Similarly, in 2010 the Board criticized the intention of some countries in the Americas, including several US states to decriminalize possession for personal use, stating that such leniency towards controlled substances should be “resolutely countered” (INCB, 2010), a position it abandoned a year later. The UNODC while acknowledging the legality of lenient approaches expressed the view that “administrative sanctions were not in the mind of the drafters of the conventions” (UNODC, 2008b: 41). Cannabis, however, is the weak link in the regime and it is viewed as potentially destructive for the whole regime. That is obvious in the statement of then Board President Philip Emafo on the UK’s 2003 decision to downgrade cannabis to a less restrictive class: “It is important that consensus prevails in international drug control. No government should take unilateral measures without considering the impact of its actions and ultimately the consequences for an entire system that took governments almost a century to establish” (BBC, 2003).

**Legalization**

**Partial legalization**

Arguably the most long standing deviation to the regime is the Netherlands’ de facto legalization of cannabis. In an attempt to separate hard drugs and soft drugs at the retail level, the Netherlands implemented its policy in the mid-1970s. Formally, possession is an administrative offence and sale of cannabis is a criminal offence, however, punishments are not enforced (Silvis, 1996). Coffee shops, selling small amounts of marihuana are allowed to exist as long as they do not keep more than 500 grams at any single time (Ibid). Large scale cultivation remains a criminal offense and thus the supply of coffee shops comes from illegal growers, resulting in what has been termed “the backdoor problem” (Korf, 2008).

Spain, on the other hand, has de jure allowed the existence of cannabis social clubs in which, persons can cultivate cannabis together for consumption by the members only, which are entitled to a part of the harvest. In 1974 the Spanish Supreme Court ruled that possession for personal use and consumption
are not a crime (Alonso, 2011). In Barcelona in 1993 an association, Asociación Ramón Santos de Estudios Sobre el Cannabis, asked the public prosecutor if cultivation for personal use by adult is a criminal offense (Ibid). As the answer was no, the first such plantation began but the crop was confiscated while those involved were acquitted. The case was taken up by the Supreme Court, which ruled that cultivation is always criminal (Ibid). However, such grassroots initiatives persisted leading to revisions of the decision and the allowing for the possession even of large quantities where there is no intent of trafficking (Ibid). Nevertheless, the practice remains controversial and police still target the cannabis social clubs (Ibid). The Spanish club model has grown in popularity and proponents in other countries have tried to re-create it locally in Belgium, Switzerland, the UK and even France (TNI, 2013). Policy makers in Mexico, Germany and Portugal have also shown interest in the model (Ibid).

**Fit with the regime and resistance**

Both Spain and the Netherlands argue their policies are permitted under the regime. The Netherlands has stated that it fulfills the criteria, as sale, trafficking and even possession are illegal (Ibid). While the country is a party to the 1988 convention, it has entered a reservation emphasizing its right to deal with these offences on the basis of its constitutional and basic legal principles. The legal argument for the Spanish cannabis clubs, on the other hand, is that since the 1961 Convention does not require criminalization of consumption, it does not preclude cultivation for personal use (Ibid). Indeed, the constitutional principles escape clause also relates to the cultivation for personal use (UNODC, 2013: 129). However, as the Transnational Institute (2013: 4) has stated these are “practices difficult to defend without a dose of hypocrisy”, as it clearly goes against the spirit of the prohibition norm. It can be said to go against the letter as well, since the Single Convention practically prohibits all cultivation except for medical and scientific purposes. Thus the above examples have stretched treaty interpretation to its very limits, and as will be shown, for many, well beyond.

The Netherlands has since the inception of its policy been the target of sustained pressure on the side of the US and other states such as Sweden, China and Pakistan, as well as of the INCB, the CND and UNODC. Onerous remarks describing the country as a “narco-state” (Bewley-Taylor 2012: 141), Dutch children as walking around “like zombies” (Zimmer and Morgan, 1997: 48) and walking in Amsterdam as “impossible without tripping over junkies” (Reinarman, 1998) have been a normal feature of the rhetoric of American officials. As the tolerance towards cannabis has expanded within Europe, the pushback of prohibitionist governments in international fora as well as of UN drug control agencies, has grown considerably. The countries implementing such initiatives, realizing the tension with the regime have largely opted to stay on the defensive, rather than push for the recognition of such practices (Bewley-Taylor, 2012). Numerous attempts were made to reverse lenient policies at the CND. One such example is the tabling of Resolution 45/15 “Reducing demand for illicit drugs” in 2002, whose initial draft, supported by a number of Arab countries, Nigeria and the USA, included the criminalization of cannabis
use for non-medical purposes but the reference was removed after substantial efforts of European countries and Canada (Ibid). In 2008 another a similar resolution was tabled by the by Morocco on behalf of North African and Gulf states, which was aimed at criminalizing possession for personal use, which was later removed (Ibid). The same year Washington also proposed its own resolution which was aimed at pressuring states opting for depenalization and decriminalization, but the tone was later softened (Ibid).

Unsurprisingly, the INCB has also extensively criticized both de facto and de jure legalization moves. UNODC’s position has been ambivalent. Executive Director Costa has made sweeping remarks such as that “today the harmful characteristics are no longer that different from those of other plant based drugs such as cocaine and heroin” (UNODC, 2006: 2). On the other hand, UNODC’s 2006 World Drug Report emphasized the need to bridge the gap between the treaties and the situation in many countries with regard to cannabis. The central theme, however, is the need to fix the incongruence since otherwise lenient policies can result in “ruining the whole system” (UNODC, 2008a: 15).

Medical cannabis

In terms of medical cannabis, North America has led the way. Currently, there are twenty three US states which either allow medical marijuana or have decriminalized possession, or both (Bestrasniy and Winters, 2015). As of 2015, a further ten are considering decriminalization of personal possession, and fourteen the legalization of marihuana for medical purposes (Porter, 2014). However, the federal classification of marijuana mirrors that of the Single Convention as a dangerous drug with no medicinal values, creating serious inconsistencies and arrests for doctors, patients and dispensary operators functioning legally under state law (Room et al., 2008). Despite a legitimate need, however, the legalization of marihuana for medical purposes has often spilled into the recreational market further undermining prohibition (Bewley-Taylor, 2012). In Canada, medical marihuana was allowed in 2001. In Europe, Spain, Austria, Germany, Israel, Finland, Italy and the Netherlands operate limited medical marihuana schemes (Ibid).

Fit with the regime and resistance

While the definition of medical and scientific purposes is left up to states, marihuana itself is placed in the most restrictive schedules of both the 1961 and 1971 Conventions and is regarded as dangerous without having ant medicinal value. States usually apply the same classification of substances as envisioned in the treaties. Indeed, parties are not allowed to establish a “less “strict” or “severe” control system than that envisioned in the Convention” (Convention Commentary, 1973: 51). Thus the existence of medical marihuana schemes can be described as out of sync with the letter of the treaties but there is ambiguity here as well. While states are obliged to impose controls, they can decide how to
control drugs on the domestic level (United Kingdom Home Office, 2006). Still, “the international community expects countries to adopt broadly comparable controls” (Ibid: 19), such as harsher penalties for more dangerous drugs. Nevertheless, the use of medical marihuana is not per se out of sync with the spirit of the regime. Provided it is brought back in compliance with the letter of the treaties, it would no longer pose a problem for the regime. That, however, is would necessitate an amendment of the treaties or at the very least the removing of cannabis from Schedule IV of the Single Convention. Since there is probably not enough political commitment for the amendment of the treaties (TNI et al., 2014), re-scheduling is thus far the regime’s best bet. Still, considering that the Single Convention mentions marihuana as a dangerous drug on a numerous occasions outside of the schedules, even this move would not resolve the issue completely (Ibid).

In the fight for medical marihuana, some unfortunate victims have fallen. One such case is dronabinol, an isomer of the tetrahydrocanabinol, the main active ingredient in marihuana, given to cancer and HIV patients to relieve nausea and increase appetite. Dronabinol is controlled under the 1971 Convention and was initially placed under Schedule I. In 1989, following the recommendation of the WHO Expert Committee on Drug Dependence (ECDD) and recognizing the medical utility, the CND moved dronabinol to schedule II (Hallam et al., 2014). In 2006, the ECDD recommended moving dronabinol again to Schedule III ensure adequate access (Ibid). The CND has to vote on scheduling matters and a two third positive vote was needed but in this case the Commission decided not to vote at all. Initially the ECDD even considered Schedule IV even more appropriate but UNODC Executive Director Costa advised the WHO to reconsider its position and the recommendation was never forwarded to the CND (Ibid: 11). Thus, dronabinol was not rescheduled again, despite its medical properties and low chance of abuse, considering the large scale availability of cannabis around the world to be abused instead. It was the US which insisted on a consensus decision instead of voting, since at the time that the recommendation was tabled, medical cannabis was in the center of the political debate and an international and the federal government was anxious that rescheduling might strengthen the case of domestic advocates (Ibid). With regard to medical marihuana, the INCB has unsurprisingly also been critical, questioning the scientific basis for allowing such use, even though this is outside of its mandate and evidence in support is accumulating (Bewley-Taylor, 2012).

The Board, as the most agenda driven drug control body even appears prepared to undermine a central aspect of its duties, namely ensuring there is sufficient amount of narcotics for licit uses, in order to strengthen prohibition against the numerous challenges it faces. This is obvious in the case of ketamine which is an anesthetic widely used both in human and veterinary medicine. It is featured on the WHO List of Essential Medicines and is considered safer than morphine based anesthetics since it does not suppress the respiratory system (Ibid). It is also easy to use making it especially valuable in countries with less developed emergency care. However, it is also used recreationally as a hallucinogen, which prompted the INCB to request an evaluation of the addictive potential of the drug with a view to place it
under international control (Ibid). Despite the ECDD’s 2006 finding that there is no sufficient evidence to necessitate the scheduling of ketamine (WHO, 2006), the CND adopted a resolution urging parties to control the drug on the national level the same year (Hallam et al, 2014). The INCB also keenly advised state parties to control the drug domestically in the hopes that it will eventually be placed under international control, actions clearly outside of its mandate (INCB, 2007). In this endeavor the Board was supported by the with the US delegation, which described the performance of the INCB on the case as “outstanding” (IDCP, 2007: 3). At the same time the WHO was increasingly being criticized for its position against scheduling. In 2012, the ECDD reiterated its concern that scheduling of ketamine would result in a public health crisis in countries where no affordable alternative anesthetic is available” (Ibid). The issue is unresolved with zero tolerance countries still pushing for scheduling. The latest attempt was China’s 2015 proposal, which was withdrawn amid strong criticism (Scholten, March 2015). Such moves have been made even in the face of the INCB’s own admission that 5.5 billion or three quarters of the world’s population lack adequate access to pain alleviating medicines (INCB, 2015).

Full legalization

While the above examples are attempts, based on however far-fetched arguments, to stay within the remit of the treaties, government authorized legalization of whichever drug for recreational purposes is definitely contrary to both the spirit and the letter of the regime. David Bewley-Taylor (2012) has stated that harm reduction and decriminalization of possession for use, despite conflicting with strict readings of prohibition, has paradoxically strengthened the regime by being incorporated in it. They have served as propping up the regime by alleviating the most serious tensions, at least until a clear and undeniable breach of the regime emerges (ibid). This is exactly what has occurred in the last couple of years with regard to two substances - marihuana in the US and coca leaf in Bolivia – strengthening the argument that harm reduction, along with depenalization and decriminalization have actually undermined the regime sufficiently so that a direct challenge can go through.

Coca leaf chewing

In 2005, Bolivia elected a former coca leaf grower, Evo Morales as president. Since the beginning of his rule, Morales was committed to correcting the ban on coca leaf chewing. Similarly to the inclusion of cannabis in Schedule I and IV of the Single Convention, the inclusion of coca leaf chewing as an illegal practice is regarded by many as a historical mistake (Kim, 2014). The inclusion of coca leaf despite of long standing historical coca leaf chewing and coca tea drinking practices of Andean nations, was based
on the conclusions of the 1950 Commission of Inquiry into the Coca Leaf, which have since been widely criticized for their “arbitrariness, lack of precision and racist connotations” (Bewley-Taylor, 2012: 295). Bolivia has argued that the ban on coca leaf chewing goes against a number of other UN documents such as United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Human Rights Conventions. These arguments have garnered sympathy from many states in light of other issues surrounding treatment of people who use drugs (Ibid).

Bolivia had for decades attempted to correct what it sees as a serious injustice. In 2009, the country officially requested the CND to amend the Single Convention and remove the ban on coca leaf. The proposal was rejected when eighteen countries entered objections to the amendment, organized by the US (Ibid). In an unprecedented move, the Bolivian government withdrew from the Single Convention, officially effective in January 2012. It then requested to re-accede with a reservation against the ban on coca-leaf chewing for its territory. While the amendment proposal was defeated with only eighteen objections, the procedure for re-acceding can only be blocked by a minimum of a third from all members. The US tried to gather the necessary support but eventually failed and Bolivia successfully rejoined as a party to the treaty on 11 January 2013 (TNI, January 2013). Similarly, the INCB has campaigned heavily against Bolivian moves stressing that if successful they “would undermine the integrity of the global drug control system” (Ibid). In the end, fifteen of the required sixty-two objections were submitted, many of which were not even aimed at coca leaf chewing per se but rather at the procedure that Bolivia employed which was seen as potentially destabilizing (Ibid).

The success of Bolivia is significant as it showed that the regime is significantly weakened and the hegemon can no longer ensure that such direct challenges of the regime are stopped and might even not be willing to try. This is obvious in Morales’ initial hope that with the election of a more liberal US president in the face of Barack Obama, he might even receive support from Washington (Constable, November 2008). However, countering such an assumption, Washington promptly decertified Bolivia in 2009 after the country expelled the US Drug Enforcement Administration (Kraul, January 2009). In 2015, information surfaced indicating that the DEA launched a covert mission aimed at indicting Morales and members from his government for corruption and drug trafficking (Grim and Wing, September 2015). Apart from that US aid for drug control programs to Bolivia has been completely cut off (Ibid). It appears, however, that the US is fighting a losing battle. It is difficult to imagine that Bolivia would have succeeded without the general softening of the position of many countries regarding drug use. The growing awareness that the regime is flawed and has produced serious unintended consequences, together with the pursuit of alternative courses of action with a differing degree of fit with the regime meant that the time was opportune for more radical challenges.
Cannabis

In the US itself the tough on drug stance, usually politically expedient, began losing ground and public opinion changed, especially on marihuana. In fact, there seems to be quite a turnaround in public views on marihuana. The proportion of people in the US that see marihuana as immoral has fallen from 50 to 32 percent between 2006 and 2013, and in 2013 a slim majority was in favor of legalization (Glastone and Dionne, 2013). Importantly, this growth cuts across party affiliation and is observed in almost all population groups (Ibid). This led to the introduction of several popular initiatives on the state level, aimed at the legalization of marihuana for recreational purposes.

In November 2012, Washington voters approved Initiative 502 with 56 to 44 percent positive vote and the legal cannabis market began functioning in 2014. Initiative 502 even received the highest voter turnout at 81 percent (Ammons and Zylstra, December 2012). At the same time, voters in Colorado approved Amendment 64 with 55 to 46 percent and the legal market officially began operation on 1 January 2014. On 4 November 2014, three further states legalized marihuana for recreational purposes increasing the total to five – Alaska (52.2 to 47.8 percent in favor of Ballot Initiative 2), Washington D.C. (69.5 to 30.5 in favor of Initiative 71) and Oregon (56 to 44.4 percent in favor of Measure 91) (Caballero, 2015: 4). Further, legalization bills have been introduced in Arizona, Connecticut, Georgia, Florida, Maryland, Massachusetts and Vermont (Ibid). In New Mexico, the legalization bill has already been approved by the Senate Rules Committee (Ibid). In the states of Hawaii and Illinois, bills have been introduced which if adopted would allow possession and cultivation for personal use (Ibid). The legalization bills have presented the federal government with a tough decision. Nevertheless, in line with his more liberal stance, especially compared to his predecessor, President Obama has allowed the legalization experiment to continue by releasing the Cole memorandum in August 2013 encouraging federal prosecutors to focus on issues such as distribution of marihuana to minors and preventing the flow of marihuana revenue to criminal elements, essentially stating that the Department of Justice will not pursue activities in compliance with the new state laws (Garvey and Yeh, 2014).

Thus the legalization of marihuana on the state level compounded the already evident inconsistency between state and federal positions on drugs and especially marihuana, putting the US, the major proponent and enforcer of drug prohibition for the first time in open breach of the treaties. It is very possible that legalization spreads further as it appears that now it has become more politically expedient than zero tolerance - senator and presidential candidate Bernie Sanders has expressed support for removing cannabis from the federal list with dangerous drugs (Wang and Ingraham, October, 2015).

While in the US legalization has so far only occurred on the state level, in 2013 Uruguay became the first country to officially legalize and regulate sale of marihuana for recreational purposes nationwide. Legalization in Uruguay compared to that in US states, is government driven and very much prompted
by the opportune moment. This is obvious from the fact that according to polls public opinion is still set against legalization with 58 percent opposition (Rayman, December 2013). The future of the initiative seemed uncertain as it was initiated by outgoing president Jose Mujica and there was a distinct possibility that the new president would repeal the law. Nevertheless, the new president Tabare Vazquez allowed legalization to go forward, stating that there will be strict and close evaluation of the effect on society of this law” (Goni, December 2014). It is possible that Canada will join US states and Uruguay in legalizing marihuana as the newly elected Prime Minister Justin Trudeau has stated his intention to do so (Neate, October 2015).

Uruguay’s legalization is the boldest step taken so far but it is part and parcel of the general move in Latin America towards growing acceptance of the idea of legalization or at least for search for alternative routes. Now former Guatemalan president Perez Molina has stated: “We cannot eradicate global drug markets, but we can certainly regulate them as we have done with alcohol and tobacco markets” (cited in Armenta et al., 2012: 3). Other high-profile figures, such as former UN Secretary General Kofi Annan and Former Brazilian President Fernando Henrique Cardoso have also called for decriminalization of possession, curbing the war on drugs and the allowing of experimentation in drug policy (Annan and Cardoso, November 2013).

Unsurprisingly, UN drug control bodies have not been happy with this turn of events. The INCB has heavily criticized both the US and Uruguay. Board President Raymond Yans has accused Uruguay of having a “pirate attitude” towards the international system (Jelsma, 2013). Similarly, UNODC Executive Director Yury Fedotov has stated he does not see how legalization in the US and Uruguay “can be compatible with existing conventions” (Dahl, November 2014).

A new norm?

These developments on the international scene present a grave challenges to the existing regime. However, can legalization more broadly or legalization of cannabis be described as a new and viable norm to replace total prohibition? While it is possible that events in the US, Uruguay and possibly Canada and other Latin American states present the beginning stage of a non-compliance cascade, whether the legalization will be broadly adopted remains doubtful. Even if legalization of cannabis proves successful in reducing illegal markets without unreasonable increases in use or other negative consequences, states might still shy away from such policy options due to both practical and ideological reasons. The drug issue remains very politically loaded, despite efforts to introduce more evidence based policy making.
Moreover, prohibition is still the strongly entrenched common sense among a majority of states. Even European countries while often leading the way in introducing more lenient policies, have also given mixed signals such as the submission of objections by Germany and the United Kingdom to Bolivia’s proposed amendment (TNI, January 2013) and by the Netherlands and Portugal to Bolivia’s re-accession to the Single Convention (Ibid). During the 2014 CND High Level Segment, the US and Sweden were joined by the Italy, the UK, France, Canada and New Zealand in discussing a strategy to safeguard the treaties (Chatwain, 2015). Many countries, such as Russia, Sweden and China retain their staunchly prohibitionist stance. Thus, the Conventions as they stand will be defended by a large number of countries. Modifications and especially amendment of the treaties that can bring practice more in line with the conventions will not be easily achieved (TNI et al., 2014).

Furthermore, the situation in the US is perplexing. The direct breach of the Conventions and the way the Obama administration has responded domestically are confused by lingering opposition. Despite the Cole Memorandum, the US administration has also stated that it “steadfastly opposes legalization of marijuana and other drugs” (Office for National Drug Control Policy, 2015). Coupled with the federal government’s possibility to pre-empt state legislation, the future of marihuana legalization will depend on how the experiments go and whether there will be a significant change in the White House when a new president is elected (ibid). On the other hand, the power to preempt should not be overstated. The Federal Government can preempt laws but because of the Tenth Amendment does not have the right to force states to criminalize forms of behavior. While the legalization laws most likely cannot be pre-empted, this is not the case with regard to the regulatory frameworks put in place (Garvey and Yeh, 2014). Pre-emption will then create a lose-lose situation as states might end up having legalized marihuana but denied state oversight and control over the market, which hardly advances the federal goal (Ibid).

The US has formulated its altered position with regard to the drug issue, based on four pillars as formulated by William Brownfield, Assistant Secretary of the Bureau of International Narcotics and Law Enforcement Affairs. This modified position attempts to reconcile the situation on the ground and the US’s traditional prohibitionist stance. The four pillars are the following (Brownfield, October 2014): respect for the integrity of the treaties; acceptance of flexible interpretations; respect for different policy approaches, even if they involve legalization; continuation of the combat against criminal organizations involved in the drugs trade. Thus it is now definitely the case that states which wish to experiment with different policies, the time is right to do so. The United States’ ability to enforce the treaties in light of its own breach is significantly reduced and actually might serve to undermine the regime even more (TNI et al., 2014). Moreover, if Brownfield’s position is indeed the new US approach, it appears that the hegemon has resigned itself to the changing situation. It is more likely then, that relative freedom in terms of drug policy might become the new norm, where many states keep
complete prohibition, while others regulate some or even all drugs in their respective territories and everything in-between.

How this can happen is an important and difficult question. On the one hand, change is needed since the current situation has become unworkable and practice and the letter of the treaty are seriously out of sync. On the other hand, there is significant opposition to any change, which makes international consensus very difficult to achieve. In such an atmosphere states have to proceed cautiously, since denouncing the treaties altogether, amending them only between some parties (amendment inter se) or making retrospective reservations like that of Bolivia can lead to dangerous precedents in other areas of international law (Ibid).

Conclusion

The prohibition norm emerged and achieved common sense status during a period of significant social upheaval. The anxieties of industrialization produced a strong desire for the regulation of a whole host of behaviors. However, the first order moral norm against recreational use of drugs was coupled together with official prohibition, only when due to association with disliked and misunderstood population groups, drugs came to be viewed as inherently evil substances. This common sense position was successfully exported by the United States as it became a superpower. However, the inherent contradiction of the prohibition norm, its relative rigidness and the fact that the regime as codified in the treaties was less strict than the US wanted it to be, created openings where alternatives could emerge and become established, opening the door to questioning the regime and expanding the distance between practice and the conventions further. Nevertheless, proponents of zero tolerance put much effort in upholding the regime. Thus, from the beginning there was a mismatch between the spirit of the regime, its codification and the way the US wished the system would operate.

The challenges that the prohibition norm experienced were multiplied by the inflexibility of the zero tolerance countries, most prominently the US and UN drug control bodies to experimentation with different policies on the local level. Some of the policies that were pursued were in line with the treaties, but not with the spirit and were challenged. Together with the rigidity of procedures to reform the system, the opposition by states based on moralistic arguments harmed the legitimacy of the regime as it became increasingly clear that prohibition proponents want to keep the regime for its own sake. Indeed, if the coca leaf affair was resolved in another way and much earlier, as it could have been, Bolivia’s exit and re-accession to the Single Convention would not have occurred to set a precedent
which now other countries can follow if they so choose. The gradation of alternative norms that emerged in response to changing situations on the ground is easily discernable.

As the Washington’s ability to uphold the regime has been challenged, the regime has been left without teeth. It is questionable to what extent other states are willing or able to shoulder enforcement beyond their own borders. International control bodies have also had their legitimacy challenged as they are politicized (CND), driven by the wishes of biggest donors (UNODC) or themselves invested in the regime (INCB) or all of these. While the CND with its fifty-three representatives finds it hard to achieve progress, the UNODC has been more open to change and since recently has recognized harm reduction as part and parcel of legitimate interventions. However, the INCB has remained the staunchest proponent of the regime and has itself undermined the legitimacy. The precariousness that drug prohibition finds itself in is obvious by the fact that second United Nations General Assembly Special Session (UNGASS) on drugs was moved from 2019 for when it was scheduled, to 2016. The mess can be swept under the rug until then, but at UNGASS the issue of legalization will probably come to a head, necessitating at least some changes in the regime.
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