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DRUG POLICY PRIORITIES IN THE WAKE OF THE JUNE 1998 DRUG SUMMIT

As we near the close of the millennium, drug¹ use is increasing at an alarming rate, resulting in devastating consequences to national economies and people's lives.² The United Nations (UN) estimates that: more than 3% of the world's population illegally consumes drugs annually;³ drug use poses "a significant risk to [the] health" of approximately 15 million people;⁴ "drug-related crime costs, law enforcement costs and health costs, range from 0.5 to 1.3 percent of gross domestic product in most consumer countries;"⁵ and the \$400 billion turnover of illicit drug trade constitutes 8% of total international trade.⁶ Accordingly, UN Secretary-General Kofi Annan has dubbed the drug problem a "contemporary plague."⁷

The "war on drugs"⁸ has inundated the American criminal justice system.⁹ Drug prohibition has increased the flow of people through trial and appellate courts¹⁰ and has exacerbated congestion in incarceration facilities.¹¹ In the United

1. This Note adopts the United Nations International Drug Control Programme (UNDCP) definition of the term "drug." See UNITED NATIONS INTERNATIONAL DRUG CONTROL PROGRAMME, WORLD DRUG REPORT 10 (1997) (citing WHO Expert Committee on Drug Dependence, *Twenty-eighth Report* (1993)) [hereinafter UNDCP]. "Drug" refers to "all psychoactive substances . . . 'any substance that, when taken into a living organism, may modify its perception, mood, cognition behaviour or motor function.'" *Id.* Despite their psychoactive properties, the UNDCP World Drug Report classifies alcohol, tobacco and solvents as "substances" rather than "drugs." *Id.*

2. See *Social and Economic Costs of Illicit Drugs*, 35 UN CHRON. 7, 7 (1998).

3. See *Drug Stats*, 35 UN CHRON. 36, 43 (1998).

4. See *Social and Economic Costs of Illicit Drugs*, *supra* note 2, at 7.

5. *Id.*

6. See *Laundering Money*, 35 UN CHRON. 28, 31 (1998).

7. Kofi Annan, *Perils Without Passports*, 35 UN CHRON. 3 (1998).

8. United States President, Richard Nixon, declared the "war on drugs" in 1971. See PETER T. ELIKANN, *THE TOUGH-ON-CRIME MYTH: REAL SOLUTIONS TO CUT CRIME* 162 (1996). Elikann argues that the "war on drugs" has been ineffective and proposes that the federal government allocate more funding to measures aimed at reducing demand, which he defines as "rehabilitation and preventive education" rather than to supply side measures, which he defines as "law enforcement and interdiction." *Id.* at 166-71.

9. See *id.* at 162-63.

10. See *id.* at 94-96.

11. See *Developments In The Law—Alternatives to Incarceration*, 111 HARV. L. REV. 1863, 1900 (1998) (surveying treatment-based programs that have been de-

States, a person is arrested for drug law violations every 20 seconds¹² and 117 people are incarcerated for drug law offenses every day.¹³ The costs of prohibition of drug use include: erosion of the Fourth Amendment of the United States Constitution which protects against "unreasonable search and seizure;"¹⁴ reduced quality of life in inner-cities;¹⁵ "overdoses and toxic reactions" due to the lack of regulation of the "safety, potency, or purity of drugs;"¹⁶ and lack of access to adequate medical care for drug addicts.¹⁷

The supply of illegal drugs is inextinguishable and drug abuse will be reduced only if priority is given to non-punitive demand side measures.¹⁸ Demand side measures focus on a broad spectrum, from preventing initial use to treating and rehabilitating drug addicts.¹⁹ Supply side measures refer to efforts to reduce production of drugs,²⁰ efforts to stop the smuggling of drugs across national borders,²¹ police intervention to prevent distribution of drugs,²² and strategies to "attack the managerial and financial systems of underground

signed as alternatives for offenders who abuse drugs).

12. See *Drug War Clock* (visited Nov. 6, 1998) <<http://www.drug-sense.org/wodclock.htm>> (on file with author).

13. See *id.*

14. U.S. CONST. amend. IV. See STEVEN B. DUKE & ALBERT C. GROSS, *AMERICA'S LONGEST WAR: RETHINKING OUR TRAGIC CRUSADE AGAINST DRUGS* 123-27 (1993).

15. See DUKE & GROSS, *supra* note 14, at 160-71.

16. *Id.* at 193.

17. See *id.* at 197-98. "[T]he users spend all or most of their disposable income on drugs, the prices of which are inflated by prohibition, rather than on medical care or medical insurance . . . [and] become part of the criminal underclass, for whom contact with health-care agencies might get them in trouble with the law." *Id.* at 198.

18. See *id.* at 228; Jerome H. Skolnick, *Rethinking the Drug Problem*, 121 DAEDALUS J. AM. ACAD. ARTS & SCI. 133, 154 (1992); BARRY STIMMEL, *DRUG ABUSE AND SOCIAL POLICY IN AMERICA: THE WAR THAT MUST BE WON* 93-116 (1996).

19. See BROR REXED ET AL., WORLD HEALTH ORGANIZATION, *GUIDELINES FOR THE CONTROL OF NARCOTIC AND PSYCHOTROPIC SUBSTANCES IN THE CONTEXT OF THE INTERNATIONAL TREATIES* 115 (1984).

20. Antiproduction efforts include: "eradicating crops of opium poppies, coca and marijuana in producer countries; supporting crop-substitution programs; destroying laboratories and processing facilities; arresting producers; . . . denying producers the use of transportation networks;" and controlling precursor chemicals used in processing drugs. DUKE & GROSS, *supra* note 14, at 201.

21. See *id.* at 203-07.

22. See *id.* at 207-08.

business," such as "money-laundering controls, forfeitures of drug-related assets and criminal prosecution of drug-marketing conspirators"²³ Proponents of demand reduction initiatives point out, among other things, that drugs can be grown all over the planet,²⁴ with small tracts of land yielding large crops,²⁵ that synthetic substitutes can meet the demand for heroin and cocaine,²⁶ and that there are many trade routes and concealment methods for smuggling drugs.²⁷ The argument for the inevitable failure of supply side efforts posits, in essence, that as long as there is a demand for drugs and buyers are willing to pay prices in excess of production costs, government intervention cannot succeed in terminating trade.²⁸ Nonetheless, many countries devote more funding to reducing the supply of, rather than the demand for drugs.²⁹

Although in the 1960's and 1970's international treaties focused on supply side measures, demand reduction³⁰ has

23. *Id.* at 208.

24. "At least one fourth of the planet is hospitable to the cultivation of coca or heroin." *Id.* at 222.

25. *See id.* at 203. Duke and Gross explain that "a mere 200 square miles (128,000 acres) of coca and another twenty-five square miles (16,000 acres) of opium poppy are all that is needed to supply America's entire markets for cocaine and heroin." *Id.*

26. *See id.* at 219-21.

27. *See id.* at 205. For instance, a reinforced concrete tunnel, 30 feet underground, built to "professional standards," was used to smuggle cocaine from Mexico to Arizona. *See id.*

28. *See* Mack Tanner, *International Drug Suppression Follies*, in *NEW FRONTIERS IN DRUG POLICY* 343, 344 (Arnold S. Trebach & Kevin B. Zeese eds., 1991); WILLIAM S. BURROUGHS, *NAKED LUNCH* xii (1991). Burroughs expresses the futility of interdiction efforts in the introduction to *Naked Lunch*:

If you wish to alter or annihilate a pyramid of numbers in a serial relation, you alter or remove the bottom number. If we wish to annihilate the junk pyramid, we must start with the bottom of the pyramid: *the Addict in the Street*, and stop tilting quixotically for the "higher ups" so called, all of whom are immediately replaceable. *The addict in the street who must have junk to live is the one irreplaceable factor in the junk equation.* When there are no more addicts to buy junk there will be no junk traffic. As long as junk need exists, someone will service it.

Id.

29. According to the UNDCP, less than 15% of Australia's 1992 drug control budget was allocated to treatment and prevention programs. *See* UNDCP, *supra* note 1, at 249. Treatment and prevention were allocated less than 1% of Colombia's (1995), 30% of Pakistan's (1995), and 31% of the U.K.'s (1993-94), public drug control budgets. *See id.* at 259, 283, 311.

30. The Declaration on the Guiding Principles of Drug Demand Reduction provides that the term "drug demand reduction" is "used to describe policies or

been receiving more attention in the last ten years.³¹ The importance of developing and implementing demand reduction policies is a recurring theme of the twentieth special session of the United Nations General Assembly devoted to countering the world drug problem³² together (Drug Summit), held in New York last summer, and the preparatory sessions preceding it.³³

This Note explains how demand reduction emerged as a priority in the international efforts to reduce drug abuse and advocates that the international community develop new approaches to demand reduction. Part I of the Note puts the Drug Summit into perspective by chronicling the incorporation of demand reduction measures into international law. Part II explores the Drug Summit in greater detail, focusing on the

programmes directed towards reducing the consumer demand for narcotic drugs and psychotropic substances covered by the international drug control conventions The distribution of these narcotic drugs and psychotropic substances is forbidden by law or limited to medical and pharmaceutical channels." *Report of the Commission on Narcotic Drugs Acting as Preparatory Body for the Special Session of the General Assembly Devoted to the Fight Against the Illicit Production, Sale, Demand, Traffic and Distribution of Narcotic Drugs and Psychotropic Substances and Related Activities on its Second Session*, G.A. Draft Res. II, U.N. GAOR, 20th Special Sess., Annex, Supp. No. 1, at 24, U.N. Doc. A/S-20/4 (1998) [hereinafter *Report of the CND*].

31. See discussion *infra* Part I.

32. The General Assembly defines the "world drug problem," in the Political Declaration adopted at the conclusion of the Drug Summit, as: "The illicit cultivation, production, manufacture, sale, demand, trafficking and distribution of narcotic drugs and psychotropic substances, including amphetamine-type stimulants, the diversion of precursors, and related criminal activities." *Report of the CND*, *supra* note 30, at 20.

33. See *Putting Out the Fire*, 35 UN CHRON. 2 (1998). The CND held its preparatory session from March 16-21, 1998 at the UN office in Vienna. See *Report of the CND*, *supra* note 30, at 5. One of the items on the CND's agenda was review of a draft of the Demand Reduction Declaration. See *id.* at 7. According to Roberta Lajous, Mexico's Permanent Ambassador to the UN in Vienna, and chairperson of the intergovernmental working group which drafted the Declaration on the Guiding Principles of Drug Demand Reduction:

Internationally, the problem of illicit drugs has traditionally been seen as one of production—the "guilty" countries were those that produced. But now there is a clear tendency to look at both ends of the problem. Of course, production has to be fought and every effort has to be made to reduce or abolish it, but at the same time we know that the problem is also one of supply and demand. So, realistically, something has to be done also at the other end—the demand side.

Roberta Lajous, *On the Most Important Issues at the Special Session*, 35 UN CHRON. 23 (1998).

Declaration on the Guiding Principles of Demand Reduction.³⁴ Part III concludes this Note by advocating that the international community follow up on the Drug Summit by implementing programs that reduce the harms associated with drug abuse.

I. THE INTERNATIONAL LEGAL FRAMEWORK

The "international legal framework for the control of psychoactive drugs"³⁵ consists of the 1961 Single Convention on Narcotic Drugs³⁶ (1961 Convention), the 1972 protocol amending it³⁷ (1972 Protocol), the 1971 Convention on Psychotropic Substances³⁸ (1971 Convention), and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances³⁹ (1988 Convention). In addition, the General Assembly has issued many resolutions, declarations, and plans of action regarding drug policy.⁴⁰ While declara-

34. See *Report of the CND*, *supra* note 30.

35. REXED ET AL., *supra* note 19, at 9 (this term was used in a WHO publication, to refer to the treaties in effect in 1984). There are also many bilateral and multilateral international agreements regarding drug control in force. See, e.g., Mutual Cooperation Agreement for Reducing Demand, Illicit Production and Traffic of Drugs, Sept. 22, 1998, U.S.-Para., T.I.A.S. No. 12397; Agreement on Precursors and Chemical Substances Frequently Used in the Illicit Manufacture of Narcotic Drugs or Psychotropic Substances, May 28, 1997, U.S.-E.U., 36 I.L.M. 1692. Also, drug-related issues, such as elimination of trafficking, have been raised in the context of the Summit of the Americas: Declaration of Principles and Plan of Action, Dec. 11, 1984, 34 I.L.M. 808.

36. Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1407 [hereinafter 1961 Convention].

37. Protocol Amending the Single Convention, Mar. 25, 1972, T.I.A.S. No. 8118 [hereinafter 1972 Protocol].

38. Convention on Psychotropic Substances, Feb. 21, 1971, T.I.A.S. No. 9725 [hereinafter 1971 Convention].

39. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, UN Doc. E/CONF.82/15 (1988), 28 I.L.M. 493 [hereinafter 1988 Convention].

40. See, e.g., *Declaration on the Control of Drug Trafficking and Drug Abuse*, G.A. Res. 39/142, U.N. GAOR, 39th Sess., Supp. No. 51, 101st plen. mtg., U.N. Doc. A/39/51 (1988), reprinted in KEY RESOLUTIONS OF THE UNITED NATIONS GENERAL ASSEMBLY 1946-1996 461 (Dietrich Rauschning et al. eds.); *Global Programme of Action Against Illicit Narcotic Drugs*, G.A. Res. 44/141, U.N. GAOR, 44th Sess., Supp. No. 49, 82nd plen. mtg., U.N. Doc. No. A/44/49 (1990), reprinted in KEY RESOLUTIONS OF THE UNITED NATIONS GENERAL ASSEMBLY 1946-1996 462 (Dietrich Rauschning et al. eds.). In addition, UN organs publish reports and other materials related to drug policy. See, e.g., UNDCP, *supra* note 1. A survey of all relevant resolutions and UN publications is beyond the scope of this Note.

tions and resolutions of the UN General Assembly set normative standards,⁴¹ unlike international agreements, they are not "legally binding."⁴²

While the 1961 Convention, the 1972 Protocol, and the 1971 Convention contain provisions relating to drug demand reduction,⁴³ they "give no details as to the institutions or establishments necessary for these efforts, nor do they describe the methodology or techniques to be used."⁴⁴ The conventions are considerably more exhaustive in their coverage of supply side measures. For instance, the 1961 Convention clearly classifies the drugs it governs⁴⁵ and mandates differing treatment for the drugs based on their classification.⁴⁶ Also, it creates the Commission on Narcotic Drugs (CND)⁴⁷ and the International Narcotics Control Board (INCB)⁴⁸ and delineates their functions.⁴⁹ The 1961 Convention sets forth four schedules which exhaustively list the drugs that the convention regulates.⁵⁰ The World Health Organization (WHO) and CND

41. See Gregory J. Kerwin, *The Role of United Nations General Assembly Resolutions in Determining Principles of International Law in United States Courts*, 1983 DUKE L.J. 876, 880; RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102 reporter's notes (1987).

42. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, *supra* note 41, § 301 (1987). "The General Assembly is in no sense a legislative body, despite some surface similarities. Nonetheless, some international legal scholars and political leaders are willing to accept General Assembly resolutions as a source of customary international law." Aaron Schwabach, *The United Nations Convention on the Law of Non-Navigational Uses of International Watercourses, Customary International Law, and the Interests of Developing Upper Riparians*, 33 TEX. INT'L L.J. 257, 259 (1998) (citations omitted).

43. See 1961 Convention, *supra* note 36, art. 36; 1972 Protocol, *supra* note 37, arts. 14-16; 1971 Convention, *supra* note 38, arts. 20, 21.

44. REXED ET AL., *supra* note 19, at 101.

45. See 1961 Convention, *supra* note 36, scheds. I-IV.

46. See *id.* art. 2.

47. See *id.* art. 5. The CND is one of the commissions of the Economic and Social Council. See REXED ET AL., *supra* note 19, at 18-19. "It is the central policy-making body of the United Nations system for dealing in depth with all questions related to the global effort of drug abuse control." *Id.* at 19.

48. See 1961 Convention, *supra* note 36, art. 5. "A major responsibility of the [International Narcotics Control] Board is to endeavour, in cooperation with governments, to limit the cultivation, production, manufacture and utilization of drugs controlled by the conventions to amounts necessary for medical and scientific purposes." REXED ET AL., *supra* note 19, at 21.

49. See 1961 Convention, *supra* note 36, arts. 8-9.

50. See *id.* scheds. I-IV. In addition, parties are to apply "such measures as may be practicable" to drugs not covered by the convention which "may be used in the illicit manufacture of drugs." *Id.* art. 2(8). The 1971 Psychotropic Convention

share responsibility for modifying the schedules.⁵¹

Parties to the convention are to take necessary legislative and administrative measures "to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs" in schedule I.⁵² Schedule I includes, among other substances, cannabis (and its resins, extracts, and tinctures), cocaine, and opiates.⁵³ Parties are to provide estimates of drug requirements,⁵⁴ statistics on production, utilization, consumption, import and export, seizure and disposal, and existing stocks of these drugs to the INCB.⁵⁵ In addition, parties are to control the manufacture,⁵⁶ and the domestic⁵⁷ and international trade⁵⁸ of schedule I drugs, and to seize or confiscate "drugs, substances and equipment used in or intended for the commission of any of the offenses"⁵⁹ listed in article 36. The article 36 offenses are:

Cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of [the 1961 convention], and

expanded the schedules so that schedule I includes hallucinogens such as LSD, mescaline, and psilocybin, schedule II includes types of central nervous stimulants (e.g., amphetamines) known to be highly addictive that have little or no therapeutic usefulness, and schedule III includes barbituates which have therapeutic uses which have been seriously abused. For a more thorough description of the changes to the schedules, see REXED ET AL, *supra* note 19, at 36-37. See also 1971 Convention, *supra* note 38, scheds. I-IV. The 1988 Convention also modified the schedules, adding substances often used in the illegal manufacture of synthetic drugs. 1988 Convention, *supra* note 39, tbls. I-II.

51. For an excellent discussion of the interplay between the CND and WHO in modifying schedules, see Frederic L. Kirgis, *Specialized Law-Making Processes*, in *THE UNITED NATIONS AND INTERNATIONAL LAW* 65, 79-81 (Christopher C. Joyner ed., 1997).

52. 1961 Convention, *supra* note 36, art. 4(1)(c).

53. *Id.* sched. I. Additionally, the opium poppy, the cannabis bush, and the coca leaf are subject to restrictions related to cultivation and international trade. See *id.* arts. 23-28.

54. *Id.* art. 19.

55. *Id.* art. 20(1)(a)-(f).

56. *Id.* art. 29.

57. *Id.* art. 30.

58. *Id.* arts. 30-31.

59. *Id.* art. 37.

any other action which in the opinion of such Party may be contrary to the provisions of [the 1961 Convention].⁶⁰

These offenses are to be punished, subject to a Party's constitutional limitations, when committed intentionally and penalties such as "deprivation of liberty" are to be imposed for "serious offenses."⁶¹

Schedule II drugs include various forms of codeine and morphine.⁶² These drugs are "more commonly used for medical purposes and need[] less strict control because of the smaller risk of abuse."⁶³ These drugs are subject to the same controls as schedule I drugs⁶⁴ but may be sold by prescription, subject to the restrictions of article 30.⁶⁵ Schedule III lists preparations of schedule II drugs, and preparations of cocaine or opium or morphine containing a negligible amount of these drugs.⁶⁶ Schedule III drugs are subject to the same control as schedule II drugs, but their international trade is subject to fewer restrictions.⁶⁷ Schedule IV includes drugs which have "particularly dangerous properties but very limited therapeutic use"⁶⁸ such as heroin.⁶⁹ Schedule IV drugs are included in schedule I.⁷⁰ In addition, parties are to adopt "special measures of control" to deal with the "particularly dangerous properties"⁷¹ of these drugs and may completely prohibit production, manufacture, export and import, trade, possession or use except for research under government control.⁷²

In order to comply with the international legal framework, signatories to the conventions must "adopt appropriate legislation, introduce necessary administrative and enforcement measures and cooperate with the international drug control organs,

60. *Id.* art. 36.

61. *Id.*

62. *Id.* sched. II.

63. REXED ET AL., *supra* note 19, at 35.

64. *See* 1961 Convention, *supra* note 36, art. 2(2).

65. *Id.*

66. *Id.* sched. III.

67. *See id.* art. 2(3).

68. REXED ET AL., *supra* note 19, at 36.

69. *See* 1961 Convention, *supra* note 36, sched. IV.

70. *Id.* art. 2(5).

71. *Id.* art. 2(5)(a).

72. *See* REXED ET AL., *supra* note 19, at 36; 1961 Convention, *supra* note 36, art. 2(5).

as well as with other countries.”⁷³ While the 1961 Convention indicated how governments were to control the supply of drugs based on their scheduling,⁷⁴ what information signatories must provide to the INCB,⁷⁵ and how criminal laws should address drug-related offenses,⁷⁶ it did not articulate standards for demand reduction that countries may follow. The sole reference to demand reduction efforts is to be found in article 38, titled “[t]reatment of drug addicts,” which provides:

1. The parties shall give *special attention* to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts.
2. If a party has a *serious problem of drug addiction* and its economic resources permit, it is desirable that it establish *adequate facilities* for the effective treatment of drug addicts.⁷⁷

The 1961 Convention left much discretion to its signatories by using terms such as “special attention,”⁷⁸ “serious problem of drug addiction,” “adequate facilities” and “effective treatment”⁷⁹ without defining the terms in the Convention’s definitional section.⁸⁰ Although, through article 38, the international community recognized that it was desirable to treat drug addicts, it neither articulated a policy which signatories could readily implement nor did it delineate the role of international organs in developing demand reduction measures.⁸¹ Moreover, any existing provisions related to demand reduction in previous treaties were superceded by the 1961 Convention.⁸²

73. REXED ET AL., *supra* note 19, at 15.

74. See 1961 Convention, *supra* note 36, art. 2.

75. See, e.g., *id.* arts. 19-21.

76. See *id.* arts. 36-37.

77. *Id.* art. 38 (emphasis added).

78. *Id.* art. 38(1).

79. *Id.* art. 38(2).

80. See *id.* art. 1.

81. See *id.* art. 38.

82. See *id.* art. 44. Indeed, one of the functions of the 1961 Convention was to unify and simplify the nine legal agreements on narcotic drugs that were in force. See *The Beginnings of International Drug Control*, 35 UN CHRON. 8-9 (1998).

It was not until the early 1970's that international treaties began to articulate how UN member states should go about reducing demand for drugs.⁸³ Article 15 of the 1972 Protocol amended article 38 of the 1961 Convention by changing its title to "Measures against the Abuse of Drugs" and changing its text to read:

1. The Parties shall give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved and shall coordinate their efforts to these ends.
2. The Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of drugs.
3. The Parties shall take all practicable measures to assist persons whose work so requires to gain an understanding of the problems of abuse of drugs and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of drugs will become widespread.⁸⁴

(The language used in article 20 of the 1971 Convention, is nearly identical to the modified article 38 but refers to the substances listed in the Protocol's amended schedules as "psychotropic substances,"⁸⁵ rather than drugs.) The 1972 Protocol also modified article 38 of the 1961 Convention by adding a provision encouraging signatories to promote regional centers for scientific research and education⁸⁶ and allowing parties to

83. The 1971 Convention and the 1972 Protocol did not enter into force until the mid-1970's. See REXED ET AL., *supra* note 19, at 129. The 1961 Convention as amended by the 1972 Protocol did not enter into force until August 8, 1975. See *id.* The 1971 Convention did not enter into force until August 16, 1976. See *id.*

84. 1972 Protocol, *supra* note 37, art. 15.

85. 1971 Convention, *supra* note 38, arts. 1, 20. For a description of the changes to the schedules, see discussion *supra* note 50.

86. 1972 Protocol, *supra* note 37, art. 16. One of the regional organizations that was designed to facilitate multilateral cooperation for reducing trafficking, production and use of drugs is the Inter-American Drug Abuse Control Commission (CICAD) which was established by the Organization of American States in 1986. *CICAD: Inter-American Drug Abuse Control Commission* (visited Nov. 6,

treat drug-abusing offenders in addition to or instead of punishing them.⁸⁷

A vacuum was created by the 1971 Convention and the 1972 Protocol because they set forth "early identification, treatment, education, after-care, rehabilitation and social reintegration"⁸⁸ as elements of demand reduction programs but identified neither the institutional actors that would take an active role in shaping the programs nor the methods to be used to reduce demand.⁸⁹ It is said that nature abhors a vacuum and will act to fill it.⁹⁰ Indeed, the UN system filled the vacuum created by the conventions of the 1970's by giving a leadership role in demand reduction to the WHO.

In 1980, the thirty-third World Health Assembly acknowledged the role and responsibility of the WHO regarding the abuse of drugs⁹¹ and the General Assembly's request that the WHO and other UN bodies design models for preventing drug abuse, and treating and rehabilitating drug abusers.⁹² Thereafter, the WHO began a study on implementation of the 1961 and 1972 Conventions in developing countries⁹³ by combining information provided by the host governments⁹⁴ and knowl-

1998) <<http://www.oas.org/EN/PROG/w3/en/cicad-structure.htm>> (on file with author). Part of CICAD's mission is to reduce the demand for drugs. See *CICAD: Inter-American Drug Abuse Control Commission: Anti-Drug Strategy in the Hemisphere* (visited Nov. 6, 1998) <<http://www.oas.org/EN/PROG/w3/en/cicad-basic-documents-strategy.htm>> (on file with author).

87. See 1972 Protocol, *supra* note 37, art. 14. See also 1971 Convention, *supra* note 38, art. 22.

88. REXED ET AL., *supra* note 19, at 101.

89. See 1972 Protocol, *supra* note 37, art. 15.

90. See BENEDICTUS DE SPINOZA, *ETHICS* 15 (G.H.R. Parkinson ed., Andrew Boyle trans., The Guernsey Press Co. 1993).

91. See REXED ET AL., *supra* note 19, at 11 (citing *World Health Assembly Resolution, WHA33.27*, in 2 *HANDBOOK OF RESOLUTIONS AND DECISIONS OF THE WORLD HEALTH ASSEMBLY AND THE EXECUTIVE BOARD* 91 (5th ed. 1983)).

92. See *id.*

93. See *id.* at 12. WHO study groups visited Kuwait, Malaysia, Morocco, Nigeria, Panama, and Thailand. See *id.* The WHO had already obtained information during studies undertaken prior to the WHA33.27 resolution from countries including Argentina, Finland, Jordan, Madagascar, the USSR, and the People's Republic of China. See *id.* at 13.

94. "Basic study materials, such as collections of laws, regulations, descriptions of the structure and function of health and law enforcement authorities, organizations and institutions, were prepared . . . [before visits from WHO country study groups], as were reports on pertinent investigations and drug control, and on the use and abuse of psychoactive substances. Additional material requested was also provided." REXED ET AL., *supra* note 19, at 13.

edge obtained through visits to "leading personalities in government, health, research, law enforcement and commerce" of these governments.⁹⁵ These reports were made available to the host governments, the INCB, the CND, and other UN bodies.⁹⁶ The study and the comments it generated from WHO research centers and other UN agencies led to the WHO's publication of *Guidelines for the Control of Narcotic and Psychotropic Substances: In the Context of International Treaties (WHO Guidelines)*.⁹⁷

The *WHO Guidelines* describe measures undertaken by the international community and national governments to restrict the use of drugs to legitimate scientific and therapeutic purposes, and reduce the illicit supply and demand of addictive drugs.⁹⁸ With respect to demand reduction, the *WHO Guidelines* note that the conventions in force (the 1961 Convention, its amending Protocol, and the 1971 Convention) "do not define the term 'prevention' or give concrete examples of activities which would be effective in preventing drug abuse."⁹⁹ Because of this lack of specificity in the conventions, the WHO set forth its understanding of the appropriate goals of demand reduction programs.¹⁰⁰

The approach of the *WHO Guidelines* (WHO approach) begins with the baseline assumption that there are many reasons for and methods of drug use and that it may be "unrealistic" to prevent all nonmedical use.¹⁰¹ The WHO understands the appropriate goal of prevention to be harm reduction—"limitation of the more individually and socially harmful effects of drug use."¹⁰² Accordingly, the WHO posits that reduction programs should consist of primary, secondary, and tertiary prevention measures. Primary prevention measures aim at preventing nonusers from experimenting and occasional users from becoming chronic ones.¹⁰³ Secondary and tertiary

95. *Id.*

96. *See id.*

97. *Id.* at 14.

98. *Id.*

99. *Id.* at 114.

100. *See id.* at 114-21.

101. *Id.* at 115.

102. *Id.*

103. *See id.* Compare the WHO definition with that of the UNDCP, which defines primary prevention measures as those which aim "to prevent or at least delay the initiation of illicit drug use." *Reducing Illicit Demand for Drugs* (visited

prevention activities focus on "preventing or reducing the number and severity of problems associated with non-medical use . . . [and] preventing the worst effects of chronic drug abuse by means of treatment and rehabilitation."¹⁰⁴

The WHO approach encourages dissemination of information about drug abuse.¹⁰⁵ However, the WHO is skeptical about the use of mass media campaigns focusing on potential users, and suggests that the proper roles for the media are: to allay unfounded fears; to explain drug policy to the public; to trigger the formation of discussion groups; and to provide short, accurate messages about drug use and services that provide help and advice.¹⁰⁶ The WHO approach recommends dissemination of information about drugs that is "accurate and believable" (consistent with pharmaceutical knowledge and the experience of users),¹⁰⁷ discourages the use of "scare' tactics"¹⁰⁸ and suggests that the most efficient way to provide young people with a drug education is through its integration into traditional areas of study such as "biology, social studies

Jan. 14, 1999) <<http://www.undcp.org/undcp/ga/themes/demand-4.htm>> (on file with author).

104. REXED ET AL., *supra* note 19, at 115. The UNDCP defines the goals secondary prevention measures as "helping people who are illicit drug abusers to break their habits" and the goals of tertiary prevention measures as "reducing the adverse consequences of drug abuse, such as the spread of AIDS." *Reducing Illicit Demand for Drugs*, *supra* note 103.

105. See REXED ET AL., *supra* note 19, at 116-18.

106. See *id.* at 117. "Sensationalism" is one of the perceived risks of using the media for drug education. See *id.*

107. *Id.* at 116. Information that is consonant with both scientific knowledge and experience is currently available on the world wide web. For instance, the Oxford Council on Alcohol and Drug Use maintains a site as part of its Libra Project. It divides its discussion of illicit drugs into sections: "What is it?," "What does it do?," "What are the risks?," and "Legal Status." *General Information: Heroin* (visited Nov. 6, 1998) <<http://www.brookes.ac.uk/health/libra/heroin.html>> (on file with author). It also contains information such as how much a habit costs, what to do with someone who is overdosing, and length of jail sentences. *Id.*

108. See REXED ET AL., *supra* note 19, at 116. For an example of the use of scare tactics, see the web site of Drug Watch International, an organization whose purpose is "to provide the public, policymakers, and the media with current drug information, factual research and expert resources, and to counter measures aimed at drug legalization." *Drug Watch International: Summary* (visited Jan. 30, 1999) <<http://www.drugwatch.org>> (on file with author). One of the articles featured on the web site lists gruesome (undocumented) anecdotes of crimes perpetrated by drug addicts, in support of the proposition that drugs should not be legalized. See *Slaughter of the Innocents* (visited Jan. 30, 1999) <<http://www.drugwatch.org/Documents/DWLP1.html>> (on file with author). The list ends with a poem attributed to a fetus "dead prenatally from drug use." *Id.*

and civics"¹⁰⁹ and into health education programs.¹¹⁰ The role of "the local community"—family, friends, school, and the workplace—is to prevent "nonusers and occasional users from becoming chronic ones" and to reduce the "individual and community problems associated with nonmedical use."¹¹¹

The norms advocated in the *WHO Guidelines* were incorporated into the most recent piece of the international legal framework for the control of psychoactive drugs, the 1988 Convention.¹¹² Article 14 of the 1988 Convention proposes that Parties adopt the recommendations of UN specialized agencies such as the WHO.¹¹³ Article 14 specifically urges adoption of demand reduction measures in the *Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control*¹¹⁴ (CMO). The incorporation of the CMO into the 1988 Convention is a significant milestone in the evolution of international drug policy because two of its four sections deal with demand side measures.¹¹⁵ In devoting equal attention to supply and demand side measures, the CMO marked a departure from the conventions of the 1960's and 1970's which placed far less importance on demand side measures.¹¹⁶ The CMO is also significant because it defined objectives and methods of demand reduction programs and identified key actors from the local community level to international organizations.¹¹⁷ The CMO has been referred to by a number of General Assembly resolutions that have followed it.¹¹⁸

The CMO was adopted during the International Conference on Drug Abuse and Illicit Trafficking, which was held in Vienna from June 17-26, 1987, and attended by delegates from international, nongovernmental and regional organizations.¹¹⁹

109. REXED ET AL., *supra* note 19, at 119.

110. *See id.* at 118.

111. *Id.* at 119.

112. 1988 Convention, *supra* note 39.

113. *Id.* art. 14.

114. REPORT OF THE INTERNATIONAL CONFERENCE ON DRUG ABUSE AND ILLICIT TRAFFICKING: DECISION OF THE CONFERENCE, U.N. Sales No. E.87.1.18, sec. A. (1987), available in 26 I.L.M. 1637 [hereinafter CMO].

115. *Id.* chs. I, IV.

116. *See* sources cited *supra* notes 36-38.

117. *See* CMO, *supra* note 114, at 1647-65.

118. *See, e.g., Global Programme of Action Against Illicit Narcotic Drugs, supra* note 40, at 462; *Report of the CND, supra* note 30, at 26.

119. CMO, *supra* note 114, at 1637.

It is comprised of chapters that set forth measures for reducing the demand for, the supply of, and trafficking in drugs, and providing treatment and rehabilitation to drug abusers.¹²⁰ The targets set forth in the chapter on demand reduction are: assessing the extent of drug abuse through statistical studies and epidemiological surveys; harmonizing national and regional data collection methods; using the media and private and public schooling to discourage initial use by children and educate them and their families about the benefits of a drug-free lifestyle; preventing drug abuse in the workplace; and collaboration among community organizations, health and social agencies, and law enforcement.¹²¹ It prescribes measures to be undertaken by a range of organizations from civic groups to international organizations.¹²²

In the section on rehabilitation and treatment, the CMO acknowledges the role of the WHO in giving policy guidance for treating addicts.¹²³ The CMO then recommends taking an inventory of existing treatment methods, evaluating their effectiveness, and integrating them into the range of services offered by primary health care plans.¹²⁴ These include training personnel, using prophylactic measures to reduce transmission of communicable diseases (caused by behaviors such as sharing hypodermic syringes), treating drug addicted offenders in the criminal justice system, and reintegrating former addicts into society.¹²⁵

There are some significant distinctions between the *WHO Guidelines* and the CMO approaches to drug demand reduction. Essentially, while the CMO aims at creating a drug-free world,¹²⁶ the WHO approach seeks to decrease harm in a world that it perceives will always include some drug us-

120. *See id.* at 1644.

121. *See id.* at 1648-65.

122. *See id.* at 1644. The organizations are broken into three categories: (1) National level; (2) Regional level; (3) International level. *See id.* Category 1 includes: governments, professional associations, academic institutions, NGO's, communities, parents, and individuals. Category 2 includes: regional intergovernmental and nongovernmental organizations. *See id.* Category 3 refers to bodies of the United Nations system and other (unspecified) international organizations. *See id.*

123. *Id.* at 1709.

124. *Id.*

125. *See id.* at 1707-21.

126. *Id.*

ers.¹²⁷ The WHO integrates measures aimed at nonusers, casual users, and chronic users into its discussion of demand reduction.¹²⁸ The CMO, by contrast, devotes little attention to reducing the harms to users who are not addicts, focusing instead on preventing initial use and rehabilitating addicts¹²⁹ and does not meaningfully address the many levels of drug use between abstinence and addiction.¹³⁰ Considering that the UN estimates that millions of people use drugs each year,¹³¹ demand reduction measures should be designed to address varying levels of use, rather than merely targeting nonusers and chronic users.

The second difference between the approaches of the *WHO Guidelines* and the CMO is the underlying goals of demand reduction measures. The WHO is concerned with medical and social consequences of drug abuse.¹³² The CMO, by contrast, is replete with moral overtones and views demand (and supply) reduction as a means of "banishing an acknowledged evil" and "rescuing human beings from a precarious situation."¹³³ The

127. See generally REXED ET AL., *supra* note 19.

128. See *id.* at 115, 119.

129. The CMO does not distinguish between "misuse" and "abuse" of drugs, defining both as illicit, as distinguished from medical, uses. CMO, *supra* note 114, at 1648. The conventions do not draw a distinction either. According to UNDCP, the drug control conventions do not define the term "drug abuse" and utilize "use," "misuse," and "abuse" interchangeably to refer to using illicit substances or using licit substances without a prescription or at a higher dose than prescribed. See UNDCP, *supra* note 1, at 11. The UNDCP acknowledges that the term "drug abuser" does not distinguish between "infrequent, habitual, or dependent use" and utilizes the term "abuse" within its 1996 world drug report to refer to "harmful use." *Id.*

130. See Richard J. Dennis, *The Drug War is Immoral: Toward a Moral Drug Policy*, in NEW FRONTIERS IN DRUG POLICY 51, 53 (Arnold S. Trebach & Kevin B. Zeese eds., 1991) ("The fact is that drug use is as harmless for 90 percent of users who are not addicts as alcohol use is for the 90 percent of the drinking public who are not alcoholics."); Norbert Gilmore, *Drug Use and Human Rights: Privacy, Vulnerability, Disability, and Human Rights Infringements*, 12 J. CONTEMP. HEALTH L. & POLY 355, 367 (1996) ("There is no sharp separation between so-called social users and addicted users, but rather a continuum of increasing levels of use and increasing levels of risk.").

131. See CMO, *supra* note 114, at 1643.

132. "Any discussion on prevention must be couched in terms of flexible responses to actual situations. Reduction of demand can then be studied in specific situations and in terms of specific drugs, and the goal of prevention will be seen as the limitation of the more individually and socially harmful effects of drug use." REXED ET AL., *supra* note 19, at 115.

133. CMO, *supra* note 114, at 1647-48.

CMO raises Orwellian-type privacy concerns when it makes statements such as “[i]t is in the community’s interest to ensure that leisure time is used constructively”¹³⁴ and promotes national drug testing programs.¹³⁵ Moreover, the recurring theme of primary prevention measures is that “enlightened”¹³⁶ people will choose a “healthy drug-free life-style.”¹³⁷ Society is to be “alerted” that using addictive drugs leads to “perversion of moral values[,] and antisocial and criminal behaviour.”¹³⁸

The CMO urges the media to voluntarily refrain from advocating legalization, glamorizing drugs, and reporting the street value of seizures.¹³⁹ Instead, the media is urged:

To enhance the public image of a drug-free life, to disparage the drug-taking habit that has spread to certain classes of society, to induce all population groups to become health conscious and to realize the hazards associated with drug abuse, and to urge parents, teachers, community leaders and persons in public life to set an example by abstaining from drug abuse.¹⁴⁰

The role that the CMO designates for the media is clearly more ambitious than the one proposed by the WHO. While the WHO approach advocates that the media provide accurate information which may help users and nonusers make in-

134. *Id.* at 1661.

135. *See id.* at 1659.

136. References to enlightenment include: “It is essential that all individuals in the . . . education system . . . should be *enlightened* about the risks of drug abuse.” *Id.* at 1654 (emphasis added). “Representatives of . . . police, customs service [and the] judiciary might give talks describing their operations against drug abuse . . . indicating the willingness of the agencies to co-operate in local initiatives to enlighten the population about the dangers of drug abuse.” *Id.* at 1660 (emphasis added).

137. *Id.* at 1654. In fact, the term “drug-free” appears 10 times in the section on demand reduction. *See id.* at 1654-64 (“healthy drug-free life-style;” “healthy drug-free life-style;” “drug-free life;” “drug-free sport, cultural and leisure time facilities and activities;” “drug-free lifestyle;” “drug-free leisure-time activities;” “drug-free cultural and sporting activities;” “drug-free events;” “drug-free life-style;” “drug-free life”).

138. *Id.* at 1656.

139. *See id.* at 1662-65.

140. *Id.* at 1664.

formed choices,¹⁴¹ the CMO approach is to ask the media to proselytize the benefits of being drug-free.¹⁴²

The CMO marked an unfortunate departure from the pragmatic approach of the WHO by injecting a moralistic tone into the international discourse on demand reduction rather than focusing on the need to reduce the harm to drug users. Although there has not been another international drug convention since 1988, the General Assembly has continued to articulate norms for demand reduction. In 1990, the General Assembly adopted a Political Declaration and Global Programme of Action that elaborated on drug reduction norms.¹⁴³ The Political Declaration proclaimed 1991 to 2000 to be the United Nations "Decade Against Drug Abuse."¹⁴⁴ The Global Programme of Action (1990 Program) recognized that the demand for narcotic drugs and psychotropic substances was increasing and that there are social causes "at the root of the [drug] problem."¹⁴⁵ In light of the complex causes of drug abuse, the 1990 Program created a multidisciplinary network for demand reduction, expanding the roles of the United Nations Educational, Scientific and Cultural Organization, the United Nations' Children's Fund, the United Nations Development Programme, the World Health Organization, the International Labour Organisation, and other bodies of the UN system, "in collecting and disseminating information and exchanging experience."¹⁴⁶ In addition, States were offered financial support from the United Nations Fund for Drug Abuse

141. *See id.*

142. The CMO acknowledges the fine line that separates voluntary compliance with national authorities and censorship and provides:

The appropriate authority could consider establishing channels of communication through which suggestions or recommendations might be addressed, informally and without implying any interference that might smack of censorship, to persons or bodies responsible for the management of radio or television broadcasting or other mass media.

Id. at 1664.

143. *Political Declaration and Global Programme of Action Adopted by the General Assembly at its Seventeenth Special Session, Devoted to the Question of International Cooperation Against Illicit Production, Supply, Demand, Trafficking and Distribution of Narcotic Drugs and Psychotropic Substances*, G.A. Res. S-17/2, 8th plen. mtg. (1990) in *KEY RESOLUTIONS OF THE UNITED NATIONS GENERAL ASSEMBLY 1946-1996* 463, 463-71 (Dietrich Rauschnig et al. eds.).

144. *Id.* at 465.

145. *Id.* at 466.

146. *Id.*

Control as an incentive to collect data on the extent of and trends in drug abuse¹⁴⁷ and were asked to provide detailed information about results of and difficulties encountered in implementing demand reduction programs.¹⁴⁸

The 1990 Program stressed the importance of reducing illicit demand for drugs through "treatment, rehabilitation, and occupational reintegration of former drug addicts,"¹⁴⁹ rather than by preventing initial use. The media was encouraged to support international and national demand reduction strategies, without being encouraged to censor drug-related material.¹⁵⁰ The role of information and education programs was seen as increasing awareness of harmful effects of drugs,¹⁵¹ as opposed to the CMO approach of proselytizing the benefits of a drug-free life-style.¹⁵² The 1990 approach was consonant with the WHO position that preventing initial use will not eliminate non-medical use of drugs, and that prevention programs should aim at reducing harmful effects of drug abuse in the existing addict population.¹⁵³

Since 1990, a structural change has shaped the contours of international demand reduction policy. The United Nations International Drug Control Programme (UNDCP) was created in 1990,¹⁵⁴ integrating the "structures and functions of the Division of Narcotic Drugs, the secretariat of the International Narcotics Control Board and the United Nations Fund for Drug Abuse into a single international drug control programme based at Vienna."¹⁵⁵ The Economic and Social

147. *See id.*

148. *See id.* at 466-67.

149. *Id.* at 467.

150. The sole reference to the role of the media in demand reduction is: "The mass media shall be encouraged to publish and disseminate information in support of national and international strategies for the elimination of illicit demand for narcotic drugs and psychotropic substances." *Id.*

151. *See id.*

152. The CMO provides, in pertinent part: "Indications are that the impact of preventive education is greatest when it: (c) promotes a healthy drug-free life-style as a primary goal, as opposed to placing emphasis . . . on the negative effects of drug abuse." CMO, *supra* note 114, at 1654, para. 58(c).

153. *See supra* text accompanying notes 101-02. *See also* REXED ET AL., *supra* note 19, at 115-16.

154. *See* UNDCP, *supra* note 1, at 169.

155. *United Nations International Drug Control Programme*, G.A. Res. 46/104, 74th plen. mtg. (1991) in *KEY RESOLUTIONS OF THE UNITED NATIONS GENERAL ASSEMBLY 1946-1996* 471, 471-72 (Dietrich Rauschning et al. eds.) [hereinafter

Council's Commission on Narcotic Drugs is to give guidance to the UNDCP and monitor its activities.¹⁵⁶ Ten percent of UNDCP's budget comes from the UN's general budget so that it may undertake "normative activities in the areas of treaty implementation and legal affairs as well as some advisory services."¹⁵⁷ The remaining ninety percent comes from voluntary contributions from governments and non-governmental organizations, and is aimed at assisting developing countries in implementing obligations created by international drug control treaties.¹⁵⁸ The UNDCP remains an important actor in both supply and demand reduction activities because of its leadership role in "all United Nations Drug Control activities."¹⁵⁹

By the early 1990's, the international community had come a long way from the aspirational demand reduction provision of the 1961 Convention. Over the course of thirty years, UN member states had agreed upon a normative framework for demand reduction policies and created a multidisciplinary network of UN bodies to develop and implement antidrug abuse programs.

II. DRUG DEMAND REDUCTION 1998

From June 8-10, 1998, the United Nations General Assembly conducted the twentieth special session of the General Assembly devoted to countering the world drug problem (Drug Summit) at the UN headquarters in New York.¹⁶⁰ The Drug Summit marked the tenth anniversary¹⁶¹ of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.¹⁶² Thirty five heads of state, including President Bill Clinton, and representatives from 150 countries attended.¹⁶³ The slogan of the session was "A Drug-Free World: We Can Do It!"¹⁶⁴ At its close, the General Assembly

UNDCP Resolution].

156. *Id.*

157. UNDCP, *supra* note 1, at 169.

158. *See id.*

159. UNDCP Resolution, *supra* note 155, at 472.

160. *See Putting Out the Fire*, *supra* note 33, at 2.

161. *Id.*

162. 1988 Convention, *supra* note 39.

163. *See Clinton, UN to Discuss War on Drugs* (visited Jan. 12, 1999) <<http://www.lindesmith.org/news/unnews3.html>> (on file with author).

164. *See Kofi Annan, supra* note 7, at 3. *See also* UNDCP, *General Assembly*

adopted a Political Declaration,¹⁶⁵ the Declaration on the Guiding Principles of Drug Demand Reduction (Demand Reduction Declaration),¹⁶⁶ and Measures to Enhance International Cooperation to Counter the World Drug Problem (Measures to Enhance International Cooperation or Measures).¹⁶⁷ Recognizing that drug demand reduction is "an indispensable pillar in the global approach to countering the world drug problem together,"¹⁶⁸ UN member states established the "year 2003 as a target date for new or enhanced drug demand reduction strategies and programmes set up in close collaboration with public health, social welfare and law enforcement authorities" and committed "to achieving significant and measurable results in the field of demand reduction by the year 2008."¹⁶⁹

There is considerable disagreement as to what, if anything, the Drug Summit contributed to international drug policy. Press releases issued by the UN and information available on the UNDCP web site paint a very different picture of the significance of the Drug Summit than do newspaper articles from sources independent of the UN.¹⁷⁰ The distinc-

Twentieth Special Session[:] *World Drug Problem[:]* 8-10 June 1998 (visited Sept. 24, 1998) <<http://www.un.org/ga/20special/>> (on file with author).

165. See *Report of the CND*, *supra* note 30, at 20.

166. See *id.* at 5.

167. See *id.* at 29. A UN Press Release issued on June 10, 1998 describes the Political Declaration, Demand Reduction Declaration, and the Measures. See *Press Release GA/ 9422: States Pledge to Significantly Reduce Demand for and Supply of Illicit Drugs by 2008, as Assembly Concludes Special Session* (visited Jan. 14, 1999) <<http://www.un.org/News/Press/docs/1998/19980610.ga9422.html>> (on file with author).

168. *Report of the CND*, *supra* note 30, at 22.

169. *Id.* at 22-23. Notwithstanding the focus on drug demand reduction, the Drug Summit was devoted to adopting measures to: reducing the diversion of precursor chemicals and the manufacture and use of amphetamine-type stimulants; enhancing judicial and law enforcement cooperation; countering money laundering; eliminating illicit crops; and promoting alternative development. See *Putting Out the Fire*, *supra* note 33, at 2.

170. *Compare United Nations to Host Global Summit* (visited Jan. 13, 1999) <<http://www.undcp.org/undcp/gass/nar635er.htm>> (on file with author) ("For the first time, national leaders from throughout the world will gather together to agree to: the first truly global strategy to control drugs; the first international agreement on demand reduction; and the goal of substantially reducing and eventually eradicating the illicit cultivation of opium, coca and other narcotic crops in the next ten years.") with *The UN and Drugs*, *ECONOMIST*, June 13, 1998, at 45 ("A cause as noble and ill-defined as the much ballyhooed 'war on drugs' was bound to end up at the United Nations. The predictable result was ponderous speeches on 'our

tion, in essence, is that the UN claims to have made unprecedented strides in the area of demand reduction¹⁷¹ while authors writing for publications independent of the UN posit that the Drug Summit continued to give priority to supply side measures even though they have proven to be ineffective.¹⁷²

While the UNDCP describes the Demand Reduction Declaration as "the first international agreement on demand reduction,"¹⁷³ the Lindesmith Center, an observer at the preparatory meetings for the Drug Summit,¹⁷⁴ posits that the Drug Summit covered the same topics as the session held ten years before it.¹⁷⁵ The UN's statement, if not wholly inaccurate, is misleading for two reasons. First, the Demand Reduction Declaration was indeed the first international agreement on demand reduction in the sense that no previous General Assembly resolution had dealt *solely* with demand side measures. However, as previously discussed, demand reduction was mentioned in each of the Conventions in force, and elaborated on in the CMO and the 1990 Program.¹⁷⁶ Second, the term "international agreement" suggests that the international community is bound to enact legislation based upon the Demand Reduction Declaration. This is not the case. According to the Restatement (Third) of Foreign Relations Law of the United States, declarations are not legally binding, but rather set forth

common global challenge,' multinational chaos in the corridors ('like trying to get out of a third-world country during a coup,' grumbled a cameraman), a few unrealistic pledges, the distant but unmistakable sound of the buck being passed from one government to another, and the looming question of who is going to pay for it all.").

171. See *United Nations to Host Global Summit*, *supra* note 170.

172. See, e.g., *The UN and Drugs*, *supra* note 170 ("The notion that drug production can be eliminated seems quixotic. The drug industry is like an old mattress: whenever it is pushed down in one area, it springs up in another."); *United Nations General Assembly Special Session on Drugs: June 8-10, 1998* (visited Jan. 12, 1999) <<http://www.drugsense.org/ungass.htm>> (on file with author) ("Despite the failure of the U.S. Drug War, the UN is marching toward worldwide war on drugs. They refuse to evaluate current policy or consider the concerns of experts and officials opposed to the war.").

173. See *United Nations to Host Global Drug Summit*, *supra* note 170.

174. See *Background Info on UNGASS-World Drug Problem, June 8-10, 1998* (visited Jan. 12, 1999) <<http://www.lindesmith.org/news/background.html>> (on file with author).

175. See *Some Facts to Keep in Mind when Listening to the UNDCP* (visited Jan. 12, 1999) <<http://www.lindesmith.org/news/unfacts.html>> (on file with author).

176. See CMO, *supra* note 114.

shared norms.¹⁷⁷

It seems more accurate to describe the Demand Reduction Declaration as a restatement and reframing of the principles articulated in the 1987 CMO. It expressly refers to the CMO in discussing the need to harmonize the methods used to collect data and evaluate existing demand reduction strategies.¹⁷⁸ Like the CMO, it discusses the needs of youth and drug-abusing offenders, the role of the media, and the need to review existing programs and disseminate the results of the evaluations to those interested.¹⁷⁹

Unlike the CMO, the Demand Reduction Declaration does not discuss primary prevention separately from tertiary prevention measures, but rather sets forth a spectrum of prevention measures.¹⁸⁰ Demand reduction programs are to include dissemination of information, educating the public/increasing public awareness, "early intervention, counselling, treatment, rehabilitation, relapse prevention, aftercare and social reintegration."¹⁸¹ Another point of departure is that it does not speak in terms of a drug-free society, but rather in terms of "reducing the negative health and social consequences of drug abuse" (harm reduction).¹⁸² Thus, the Demand Reduction Declaration underscores the importance of the measures set forth in the CMO in 1987 and presents them in a more succinct form. It also undoes the CMO's bifurcation of demand side measures and treatment/rehabilitation oriented measures by identifying the common underlying goal of harm reduction.

Apart from their disagreement as to whether the Drug Summit was the first agreement of its kind, the UN and critics of its drug policy have dramatically different views on how drug policy should be formulated in the years ahead. UN sources and sources independent of the UN draw different conclusions from the statistics compiled by the UN about drug production, trade, and consumption.¹⁸³ While the UN con-

177. See *supra* notes 41-42 and accompanying text.

178. See *Report of the CND*, *supra* note 30, at 26.

179. See *id.* at 27.

180. See *id.* at 24, 26.

181. *Id.* at 26.

182. *Id.* at 24-25. Of course, the slogan of the Drug Summit is "A Drug-Free World—We Can Do It!" *United Nations General Assembly Special Session on Drugs: June 8-10, 1998*, *supra* note 172.

183. See *The UN and Drugs*, *supra* note 170, at 45.

cludes that more resources should be committed to reducing the supply of drugs, critics of UN drug policy argue that interdiction efforts are failing and should cease.¹⁸⁴

The UN estimates that "[s]ince 1985, opium production has tripled and cocaine production has doubled."¹⁸⁵ UNDCP statistics indicate that authorities seized larger shipments of cocaine, heroin, marijuana, and amphetamine-type stimulants (ATS) in 1996 than they did in 1990.¹⁸⁶ In addition, the UN reports that consumption of heroin, cocaine, marijuana, and ATS has increased in the 1980's and 1990's.¹⁸⁷ These statistics evidence that larger amounts of drugs are being grown (and manufactured), that the increased quantities produced are being transported transnationally, and that the increased supply is being distributed and consumed. The UN responds to these statistics with seemingly undue optimism. The UNDCP web site provides:

Years of drug control activities have identified what works and what does not, from alternative crop development projects to drug surveillance and interdiction of illicit drug trafficking. Armed with this know-how, and the most sophisticated technologies, countries will devise new strategies to eliminate the drug trade based on a solid foundation.¹⁸⁸

The Measures to Enhance International Cooperation reflect a renewed commitment to supply side measures. The supply side initiatives set forth in the Measures include: reducing the manufacture of ATS, maintaining more stringent control over precursor chemicals that are used to manufacture ATS, countering money laundering, increasing cooperation among law enforcement personnel and judicial systems, eradi-

184. See *United Nations General Assembly Special Session on Drugs: June 8-10, 1998*, *supra* note 172.

185. *Working Toward a Drug Free World: General Assembly Special Session* (visited Jan. 14, 1999) <<http://www.undcp.org/undcp/gass/gassbro.htm>> (on file with author).

186. See *Information Sheet No. 2: Key Statistics: Illicit Drug Production, Trafficking and Consumption* (visited Jan. 14, 1999) <<http://www.undcp.org/undcp/gass/info2.htm>> (on file with author) (providing statistics on production, trafficking, and consumption of drugs).

187. See *Drug Stats*, *supra* note 3, at 36, 39, 43 (1998).

188. *Impetus for Change* (visited Jan. 14, 1999) <<http://www.undcp.org/undcp/gass/gassbro.htm>> (on file with author).

cating illicit crops, and promoting alternative development.¹⁸⁹ Essentially, the UN has responded to increased production, trade, and consumption of drugs by renewing its commitment to the supply side provisions of the 1988 Convention.¹⁹⁰

Critics of UN drug policy do not dispute UN statistics.¹⁹¹ Instead, they supplement them with figures from the American front on the war on drugs, including an increase in federal spending, from \$1.65 billion in 1982 to \$15.2 billion in 1997,¹⁹² the eight-fold increase in the number of people incarcerated for drug offenses in the U.S.,¹⁹³ and increased civil rights violations.¹⁹⁴ Critics of UN drug policy, including former UN Secretary General, Javier Perez de Cuellar, former American Secretary of State, Charles Schultz, Nobel Peace Prize Laureate Oscar Arias, and many other prominent personalities, signed a letter which appeared on the front page of the *New York Times* on the first day of the Drug Summit, which asserted that the "global war on drugs is now causing more harm than drug abuse itself."¹⁹⁵ The letter went on to say that "[s]carce resources better expended on health, education and economic development are squandered on ever more expensive interdiction efforts."¹⁹⁶

Critics of American drug policy are calling for an "armistice" in the war on drugs.¹⁹⁷ Their argument is similar to the

189. See *Report of the CND*, *supra* note 30, at 29-53.

190. For instance, precursors are to be regulated "on the basis of the existing framework for precursor control provided by article 12 of the 1988 Convention," related resolutions, and INCB recommendations. *Id.* at 32. Penalties for diversion of precursors are to be based on article 3 of the 1988 Convention. *See id.* at 36. Mutual legal assistance is to be provided based on article 7 of the 1988 Convention. *See id.* at 41.

191. Critics of UN drug policy do not dispute the accuracy of the UN's estimate, but rather offer it as evidence in support of the proposition that UN drug policy is ineffective. *See, e.g., Some Facts to Keep in Mind When Listening to the UNDCP*, *supra* note 175.

192. See *United Nations General Assembly Special Session on Drugs: June 8-10, 1998*, *supra* note 172.

193. See Farhan Haq, *United Nations: Critics Say Drug War Has Failed* (visited Jan. 12, 1999) <<http://www.lindesmith.org/news/unnews1.html>> (on file with author).

194. See Peter Passell, Editorial, *Economic Scene: Economic Theory Won't Provide Easy Answers in the Drug War*, N.Y. TIMES, June 11, 1998, at D1.

195. *Public Letter to Kofi Annan*, N.Y. TIMES, June 9, 1998, at 13A.

196. *Id.*

197. Reverend Finlator, one of the founding members of the Religious Coalition for a Moral Drug Policy, argues that the United States should admit defeat in the

WHO approach to demand reduction in that it stems from a belief that it is unrealistic to expect a drug-free world.¹⁹⁸ Organizations, including Common Sense for Drug Policy, argue that it was unfortunate that the UN adopted "A Drug-Free World-We Can Do It!" as the slogan of the Drug Summit given the failure of the American War on Drugs.¹⁹⁹ They advocate that the U.S. approach be "human pragmatism"—treating drug abuse as a health and social issue rather than a moral issue.²⁰⁰ Critics of the drug war mentality emphasize the importance of implementing harm reduction programs²⁰¹ including sterile needle exchanges²⁰² and methadone maintenance programs.²⁰³ Some of the more liberal proponents of harm reduction programs support the legalization of drug use, arguing that violence, profits made by organized crime syndicates, civil liberties violations, and increased imprisonment are harms that may be avoided if drug use is legalized.²⁰⁴

war on drugs and declare an "immediate armistice." W.W. Finlator, *A Farcical War We Can't Win*, in *NEW FRONTIERS IN DRUG POLICY* 64, 65 (Arnold S. Trebach & Kevin B. Zeese eds., 1991). For a thought-provoking discussion of the negative repercussions of using the metaphor of war to describe antidrug efforts, see Derral Cheatwood, *Rhetoric's Effect on Murder*, in *NEW FRONTIERS IN DRUG POLICY* 69, 69-76 (Arnold S. Trebach & Kevin B. Zeese eds., 1991).

198. See *United Nations General Assembly Special Session on Drugs: June 8-10, 1998*, *supra* note 172.

199. See *id.* The evidence in support of the alleged failure of the American war on drugs includes the decrease in drug prices, the increase in their purity and consumption, rising AIDS rates related to intravenous drug use, and declining ages of initial use. See *id.*

200. See *id.*

201. See Ethan A. Nadelmann, *Thinking Seriously About Alternatives to Drug Prohibition*, 121 *DAEDALUS: J. AMER. ACADEMY ARTS & SCIENCES* 85, 88 (1992). Nadelmann explains:

Harm reduction policies seek to minimize the harms that result from illicit drug use. Rather than attempt to wean all illicit drug users off drugs by punitive means, harm reduction policies begin with the acknowledgement that some users cannot be persuaded to quit. These policies then seek to reduce the likelihood that they will contract or spread diseases such as hepatitis and AIDS, overdose on drugs of unknown purity and potency, or otherwise harm themselves or others.

Id.

202. See DUKE & GROSS, *supra* note 14, at 302-06.

203. See Nadelmann, *supra* note 201, at 88.

204. See *id.* at 88-89; See also George C. Church et al., *Thinking the Unthinkable; As Frustration Mounts Over a Failed Policy, Serious People are Asking: Why Not End the Crime and Profits by Making Drugs Legal?*, *TIME*, May 30, 1988, at 12.

Clearly, the UN and its critics have very different views on whether supply side measures are effective solutions to the drug problem. It is not surprising, then, that critics of international policy that focuses on supply side measures were disappointed with the outcome of the Drug Summit.²⁰⁵

III. DRUG DEMAND REDUCTION POST-DRUG SUMMIT

The question that policymakers face is how the international community should formulate drug policy in the wake of the Drug Summit. On the one hand, measures should be aimed at reducing supply, so as to conform with the Measures to Enhance Judicial Cooperation²⁰⁶ and the international legal framework for the control of drugs. But a countervailing consideration is how to translate the increased international focus on demand reduction into public policy. One of the factors that policy makers should consider is the basic maxim that if one continues doing the same thing, one should expect the same results.²⁰⁷ Thus, if nations continue to devote most of their public drug control budgets to supply side measures, they can reasonably expect the number of drug users within their borders to keep rising.

By adopting the Demand Reduction Declaration, the international community has made the normative assertion that supply and demand are the two dimensions that antidrug efforts are to take. The challenge that the international community now faces is how best to allocate funding in order to reduce both the illicit supply of and demand for drugs.

One of the repeated themes of the Drug Summit was that supply and demand are equally important priorities in international antidrug efforts. In the opening lines of the Political Declaration, UN member states "reaffirm [their] unwavering determination and commitment to overcoming the world drug

205. See *United Nations General Assembly Special Session on Drugs: June 8-10, 1998*, *supra* note 172; Lonny Shavelson, *Noble Words, Empty Deeds: The War on Drugs Will Fail So Long as the Victims Don't Get Help* (visited Jan. 12, 1999) <<http://www.salonmagazine.com/news/1998/06/15news.html>> (on file with author).

206. See *Report of the CND*, *supra* note 30, at 29.

207. See *United Nations General Assembly Special Session on Drugs: June 8-10, 1998*, *supra* note 172 ("The UN should not be gearing up for a law enforcement-dominated world war. We cannot expect different results by investing more in policies which have already proven to be failures.").

problem through domestic and international strategies to reduce *both the illicit supply of and demand for drugs*.²⁰⁸ Along the same lines, the Demand Reduction Declaration calls on countries "to intensify . . . efforts in demand reduction and to provide resources towards that end."²⁰⁹ Pino Arlacchi, head of the UNDCP is quoted as saying, "supply and demand are equal evils, which must be attacked simultaneously and with similar vigour and conviction."²¹⁰

If demand and supply are indeed to be addressed simultaneously and with equal force as Mr. Arlacchi suggests then they should enjoy equal funding. Mr. Arlacchi has asked the international community to contribute \$5 billion towards reducing the supply of and the demand for drugs.²¹¹ Ostensibly, the best way to demonstrate that supply and demand are equal priorities would be to allocate \$2.5 billion (or half of the actual amount donated) to demand reduction measures. Similarly, national governments should be encouraged to allocate increased funding to demand side measures in the years to come.²¹²

If funding is allocated evenly, the UN drug control machinery can continue its efforts to reduce supply and will have incentive to evaluate existing programs to determine if they are cost-justified. Similarly, the increased funding for demand side measures could be used to evaluate existing programs, experiment with new programs, and fund the ones that have shown promising results. To devote equal funds to supply and demand side measures would be consonant with the norms expressed over the course of the Drug Summit.

Apart from the issue of what proportion of antidrug budgets should go towards funding demand side efforts, governments and the UNDCP (and other relevant bodies, such as the CND) must decide what shape demand reduction measures

208. *Report of the CND*, *supra* note 30, at 20 (emphasis added).

209. *Id.* at 24.

210. *Reducing Demand for Drugs* (visited Jan. 14, 1999) <<http://www.undcp.org/undcp/gass/ga/20special/featur/demand.htm>> (on file with author).

211. See William Dowell, *Man with a Grand Plan*, *TIME*, June 15, 1998, at 40.

212. See *The Drug War 'Cannot Be Won': It's Time to Just Say No to Self-Destructive Prohibition* (visited Jan. 30, 1999) <<http://204.168.83.126/lindq.htm>> ("Focusing resources in a lopsided manner on the interdiction of supplies ignores basic economic principles. As long as demand and profits are high, there is no way to cut off supply.")

should take—how to allocate funds among primary, secondary, and tertiary measures. Primary prevention measures aim at preventing initial use and thereby appeal to the liberal spirit and the notion that if potential users knew the harms that could be avoided, then they would not use drugs. However, this is not the case. The UNDCP's position is that "[w]hile widely used, general public information campaigns have demonstrated little effectiveness in changing behaviour."²¹³ Similarly, the UNDCP believes that antidrug messages are not effective school-based prevention methods.²¹⁴ The *WHO Guidelines*, the Demand Reduction Declaration, and drug policy scholars have pointed out that there are underlying socio-economic conditions, such as poverty, and the accompanying feelings of hopelessness, which trigger some people to abuse drugs.²¹⁵ The international community has to face the reality that antidrug campaigns will be ineffective if they fall on the deaf ears of people who believe that there is no opportunity cost for their drug abuse.

One of the accomplishments of the Demand Reduction Declaration was that it unified prevention measures, treatment, and rehabilitation under the rubric of demand reduction.²¹⁶ Rather than deeming treatment and rehabilitation to be separate policy initiatives from demand reduction—the distinction that the CMO had made—the Demand Reduction Declaration expanded the scope of demand reduction to include treatment and rehabilitation.²¹⁷ The distinction is merely semantic unless governments come to recognize that their demand side efforts must meet the needs of nonusers, addicts, and the full range of users.

While the effectiveness of prevention measures such as educational programs and ad campaigns remain subject to debate,²¹⁸ there is a growing consensus that treatment works.

213. *Reducing Demand for Drugs*, *supra* note 210.

214. *Id.* Rather than sending "antidrug" messages, the UNDCP opines, schools should offer recreational, sporting, and cultural activities as part of a "pro-health" campaign. *Id.*

215. See REXED ET AL., *supra* note 19, at 120; *Report of the CND*, *supra* note 30, at 24; Skolnick, *supra* note 18, at 154-56.

216. See *Report of the CND*, *supra* note 30, at 24.

217. See *id.*

218. See Jeff Elliot, *Drug Prevention Placebo: How DARE Wastes Time, Money, and Police*, REASON, Mar. 1995, at 14-21, reprinted in <<http://www.linde->

Dr. Alan Leshner, Director of the National Institute for Drug Abuse in the United States, which funds 85% of global research on drugs²¹⁹ describes addiction as a chronic, relapsing disorder.²²⁰ Therefore, Leshner explains, service providers should not expect that former addicts will remain drug-free, but rather accept relapse as "a step on the road of rehabilitation."²²¹ Jukka Sailas, an official at the WHO's Programme on Substance Abuse states that:

Careful and systematic research on the effectiveness of treatment for various psychoactive substances has shown that treatment indeed works and is cost-effective, despite a general opinion to the contrary.

....

Both pharmacological and non-pharmacological treatments have been evaluated and proven effective. Morbidity and mortality from psychoactive substance abuse can be effectively reduced by adopting strategies that do not focus primarily on stopping abuse, but on reducing the harm that use is causing.²²²

Not only is it possible to reduce the harms associated with drug abuse, but doing so may be cost-effective according to a recent ONDCP study cited by opponents to the priority placed on supply reduction.²²³ This ONDCP study found "that \$1 spent on treatment decreases drug use as much as \$7 spent on domestic law enforcement, \$11 on confiscating drugs at the border and \$23 to stop drugs at their country of origin."²²⁴ If studies point to the cost-effectiveness of drug demand reduction programs, as well as the success of treatment programs in reducing the harms associated with drug abuse, then it is unconscionable for governments to perpetuate the world drug problem by continuing to emphasize the importance of supply

smith.org/library/great.html> (on file with author).

219. See *Reducing Demand for Drugs*, *supra* note 210; President William Jefferson Clinton, Remarks by the President at UN General Assembly (June 8, 1998), available in 1998 WL 12974194.

220. See *id.*

221. *Id.*

222. *Id.*

223. See Shavelson, *supra* note 205.

224. *Id.*

side and primary prevention measures which have proven to be unsuccessful.

Twenty five years ago, the WHO recognized that it is unrealistic to hope for a drug-free society. As the UN's Decade Against Drug Abuse comes to a close and a new millennium begins, the international community must come to terms with the futility of trying to eliminate all drug abuse. The war on drugs is being lost. It is time to declare an armistice and take care of our walking wounded.

Tally M. Wiener

