DRUG CONTROL AND HUMAN RIGHTS IN
INTERNATIONAL LAW

Human rights violations occurring as a consequence of drug control and enforcement are a growing concern, and raise questions of treaty interpretation and of the appropriate balancing of concomitant obligations within the drug control and human rights treaty regimes. Tracing the evolution of international drug control law since 1909, this book explores the tensions between the regime’s self-described humanitarian aspirations and its suppression of a common human behaviour as a form of ‘evil’. Drawing on domestic, regional and international examples and case law, it posits the development of a dynamic, human rights-based interpretative approach to resolve tensions and conflicts between the regimes in manner that safeguards human rights. Highlighting an important and emerging area of human rights inquiry from an international legal perspective, this book is a key resource for those working and studying in this field.

Dr Richard (Rick) Lines is a key figure in the emerging field of human rights and drug policy. His work explores areas including international drug control law, prisoners’ rights, harm reduction and the death penalty for drug offences. He is Chair of the International Centre on Human Rights and Drug Policy at the Human Rights Centre, University of Essex, where he is a Visiting Fellow. He holds a PhD in Law from the University of Middlesex.
DRUG CONTROL AND
HUMAN RIGHTS IN
INTERNATIONAL LAW

RICHARD LINES

Foreword by WILLIAM A. SCHABAS

Middlesex University, London, and Universiteit Leiden
For my parents, Kathy and Malcolm, who taught me to recognise right from wrong, to have a healthy scepticism of authority and to always root for the underdog.
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FOREWORD

The control of narcotic drugs has been a concern of the international community from long before the creation of the United Nations and, with it, the modern legal system for the protection of human rights. The International Opium Convention of 1912 was the first international drug treaty. It was followed by the International Convention relating to Dangerous Drugs in 1925 and the International Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs in 1931. The Covenant of the League of Nations had given the organisation explicit responsibility for ‘the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs’. No similar formulation appears in the Charter of the United Nations, to whom the responsibilities of the League in the area of narcotic drugs were nevertheless transferred.

When the United Nations was established, human rights was given great prominence in its activities. There were several important references to the protection of human rights in the Charter of the United Nations. Its entry into force was followed by the negotiation of the International Bill of Rights. The crowning achievement was adoption of the Universal Declaration of Human Rights, on 10 December 1948 in Paris. Perusal of the travaux préparatoires of the Declaration does not suggest any interest at all in the subject of drugs. More generally, within the framework of United Nations activities, drug control was then only one issue among many international concerns.

But over the years, the focus on drugs within the activities of the United Nations appears to have gathered some steam. Today, one of the main institutions within the United Nations is called the Office on Drugs and Crime. There is a kind of equivalence within the United Nations, with its Office on Drugs and Crime based in Vienna and its Office of the High Commissioner for Human Rights based in Geneva. Some have called them ‘parallel universes’, although it would not be fair to suggest that the Vienna-based drugs and crime officials are indifferent to human
rights any more than one can say the Geneva-based human rights officials neglect issues relating to drugs and crime. But like crime, the relationship between human rights and drugs remains enigmatic. This important study by Richard Lines provides much needed clarity in this respect. It also maps out a way forward.

Drug use and drug-related harms are of course a serious concern that impact on the right to health, enshrined in Article 25 of the Universal Declaration of Human Rights as well as in subsequent treaties such as the International Covenant on Economic, Social and Cultural Rights. From a human rights perspective, the so-called drug addict must be viewed not as a problem but as a person. Not only does this compel an approach based upon protection and the reduction of harm, it also shifts the emphasis to the abuses of human rights associated with campaigns to deal with drug use as well as the manufacture and traffic of illicit substances.

Although millions are affected by violations of human rights associated with drug suppression, the most acute form this takes is in the use of capital punishment. The sometimes hysterical obsession with criminalisation of drugs at the international level has provided a pretext for several States to impose capital punishment for drug-related offences. They frame the justification for the death penalty with language about protecting society. Obviously, the international drug treaties say nothing about the death penalty. The UN Office on Drugs and Crime speaks clearly about the inadmissibility of capital punishment, be it for drug crimes in particular or more generally.

It is difficult to provide any precise figure about the number of executions carried out worldwide, essentially because of the refusal of the People's Republic of China to provide any data. What we can say is that China is responsible for thousands of executions each year of which a significant portion is for crimes related to drug traffic. In Iran, which has the highest rate of execution per capita, the death penalty is on the increase, contrary to general trends. There the vast majority of executions are for drug crimes. Some countries in Southeast Asia continue to execute drug traffickers although the numbers are relatively small. There the rhetoric used to justify maintaining capital punishment, in a region where the death penalty seems to be losing momentum, is its alleged value in combating the drug trade.

The executioners face a major international legal obstacle. Not only the applicable human rights treaties but also customary international law require that any States that continue to carry out capital punishment confine its use to the ‘most serious crimes’. Drug crimes cannot, according to contemporary legal authority, be included in this category.
Detention has always been at the forefront of human rights concerns. The earliest human rights treaty of general application, the European Convention of Human Rights, allows for detention ‘of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants’. But the provision does not seem ever to have been applied in the context of drugs, suggesting that European practice does not in fact countenance this. Very recently, the United Nations Commission on Crime Prevention and Criminal Justice adopted the Mandela Rules, a much-updated version of the Standard Minimum Rules that have been in force since the 1950s. The Mandela Rules reflect progressive attitudes to the detention of offenders and others deprived of their liberty.

Yet alongside these very positive developments sits the terrible reality that many hundreds of thousands of people are deprived of their liberty for drug-related reasons, many of them individuals who are dependent upon drugs and those whose only crime is possession. Then are the multitudes of petty traffickers, ‘mules’ and other poor players in the global drug trade. In addition to the human rights violations associated with the detention itself, which may often be characterised as arbitrary, are the appalling prison conditions that must be endured.

Francis Bacon once said ‘the remedy is worse than the disease’. That seems an apt portrayal of the relationship between drug control and human rights. It may be impossible to forsake the remedy at the present time. But it can be greatly attenuated by a much-heightened role for human rights norms and principles. Both prevention and repression of drug use need more human rights than they get today.

Richard Lines initially wrote this book as a doctoral thesis that I had the honour to supervise. The word ‘supervise’ is a bit of a grandiose term because with the best students, and Rick was one of them, the academic director plays a very minor role. It was clear from the outset that this would be the work of a scholar énâge, who would aspire to the highest standards of scholarly achievement yet always with an eye to the practical. I think this has been accomplished. This study is a precious contribution on a long-neglected issue. Campaigning to change the approach of international law to drug control so that it is more in line with human rights standards needs more than an authoritative monograph, but at the same time the campaign cannot fulfil its objectives without one.

Prof William A. Schabas OC MRIA
PREFACE

On 28 September 2015 I found myself sitting in the United Nations headquarters in Geneva, observing the first-ever panel at the UN Human Rights Council on ‘the impact of the world drug problem on the enjoyment of human rights’. What the session lacked in content, it more than made up for in significance.

Ten years earlier, when I and a tiny handful of colleagues around the world began the work of developing the subject of human rights and drug control into a serious issue of international legal scholarship, research and advocacy, the idea of the Human Rights Council convening such a session was only a fantasy. At that time, there was little serious discourse on the human rights impacts of drug control, either within the scholarly literature or the work of UN bodies. At the time we started this work, gaining even a cursory mention of ‘human rights’ in the context of drug control within the statements of the UN Commission on Narcotic Drugs, UN Office on Drugs and Crime, the Office of the High Commissioner for Human Rights or the many UN human rights treaty bodies or Special Procedures was a hard-won achievement. Few of us would have imagined in those early days that the Human Rights Council would stage a thematic session specifically on the topic, into which over twenty Member States and over forty non-governmental organisations would make formal written submissions.

Even fewer of us would have imagined that human rights would be selected as one of the cross-cutting themes to be formally examined during the UN General Assembly Special Session on the World Drug Problem in April 2016. The inclusion of human rights within the Special Session on drugs is even more surprising given the experience the previous time human rights was seriously debated within a UN drug control forum. That debate took place in March 2008, during the annual meeting of the UN Commission on Narcotic Drugs in Vienna, when the first human rights resolution ever to come before that body was proposed. I was also
present at that session, and along with a handful of colleagues assisted supportive Member States in efforts to have it adopted.

During those debates, many States argued that having the Commission even consider a resolution on human rights was absurd, a feeling summed up neatly by the Chinese delegation, which stated that it was ‘not appropriate to address human rights within the mission of CND’ and that it was ‘ridiculous to require us to work in accordance with human rights law’.\(^1\) In this hostile environment, even agreeing on a simple preambular statement recognising the sixtieth anniversary of the 1948 Universal Declaration of Human Rights was the subject of heated debate, and this during the year that the UN had proclaimed the celebration of that anniversary its key overarching theme.

Looking back, we can see that progress has clearly been made in bringing about a more robust consideration of the human rights impacts of drug control. The story of that ten-year journey, conceptualised and driven by a small group non-governmental organisations working alongside an even smaller number of UN human rights monitors and scholars, is one that has yet to be written. Just as the full impact of that work, which has now been embraced and advanced by many others in government, the UN and civil society, has yet to be felt. While the human rights impacts of drug control are now increasingly becoming a mainstreamed part of the debate, moving from rhetoric to policy and programmatic change remains a significant challenge.

The barriers to achieving real human rights progress in this area are many and complex, and are exacerbated by the corrosive influence of decades of the ‘war on drugs’ mentality on the design, construction, implementation and measurement of ‘success’ of drug control efforts. In this legal and policy environment, drugs are seen as ‘a grave threat to the health and well-being of all mankind, the independence of States, democracy, the stability of nations, the structure of all societies, and the dignity and hope of millions of people and their families’\(^2\), to cite the 1998 UN Political Declaration on Drugs; people who grow, manufacture, transport or sell drugs are seen as existential enemies of the global community; and people who use drugs are at best seen as weak-willed victims of ‘chemical slavery’, and at worst as a ‘contagion’ threatening to spread throughout the ‘normal’ populace.

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1 Author’s notes from the meeting.
In such a climate, where millions of people are fundamentally and systematically dehumanised, it is hardly surprising that drug control and enforcement efforts have routinely resulted in mass violations of human rights. The real surprise is that it is only during the most recent part of the one hundred year history of international drug control law that such abuses have started to be recognised as a problem.

This book is an effort to contribute to the growing discourse and scholarship on the issue of human rights and drug control. In particular, it seeks to move beyond the identification of abuses and provide a legal framework for preventing those abuses. It offers guidance on the often contentious and misunderstood question of treaty interpretation in this context, and how concomitant obligations within international drug control law and international human rights law should be considered and balanced. Most importantly, it offers a framework to ensure human rights violations occurring in the name of drug control can never be justified by States or their defenders as a necessary and unavoidable part of fulfilling international drug control obligations.
ACKNOWLEDGEMENTS

There are many people who have assisted and supported me in the preparation of this book that I would like to thank.

First, I would like to thank Professor William A. Schabas and Dr Nadia Bernaz of the School of Law, Middlesex University, for their encouragement, advice and patience over the course of this project. I would particularly like to recognise Professor Schabas, who over nearly ten years as my postgraduate academic supervisor never ceased to be enthusiastic and encouraging of my research into what was, at the time I began, a non-existent area of international human rights scholarship. I am also grateful for his contribution of the Foreword to this book.

I would like to thank Professor Neil Boister of the University of Waikato, New Zealand, and Dr David Keane of Middlesex University for their review of an earlier draft of this manuscript and their encouragement to publish.

I would like to thank Professor Noam Lubell, Head of Law at the University of Essex, for his ongoing advice and support. I would also like to thank the faculty and students at the Human Rights Centre at the University of Essex, where as a Visiting Fellow I have been able to develop some of these ideas. In particular, I would like to recognise Professor Paul Hunt, whose work on the right to health in the context of drug policy during his time as UN Special Rapporteur was an early inspiration, and who has been a friend and mentor to me in this area.

I would like to thank my colleagues and the students at the International Centre on Human Rights and Drug Policy at the Human Rights Centre, University of Essex, where I have had the opportunity to explore many of the ideas that appear in this book. In particular, I want to thank my colleague, friend and co-founder of the Centre, Damon Barrett, whose ideas and research have been inspirational to my own thinking on these topics. Damon is one of those rare people with whom I have worked so closely over such a long period of time that it is often impossible to know where his ideas end and mine begin, and vice versa. Suffice it to say this
book would not exist without him. I also want to give a special thanks to Munira Ali for her help preparing the Table of Cases for the book.

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I would like to thank Jim Barnes, who taught me while I was still a teenager that the law could be used as a tool for achieving social change, and that doing that work was a lifetime’s calling.

I would like to thank my colleagues at Harm Reduction International. I would especially like to thank our former Executive Director, Professor Gerry Stimson, who encouraged me to pursue doctoral studies in this area.

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