

## DRUG USE AND THE RIGHT TO HEALTH: AN ANALYSIS OF INTERNATIONAL LAW AND THE MEXICAN CASE

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**ABSTRACT.** *This article is an analysis of international and Mexican law regarding the prohibition of drug use and the right to health. It argues that the decriminalization of personal drug use in domestic legislation is not prohibited by the 1961 Single Convention on Narcotic Drugs and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Therefore, a health-oriented system to resolve the problem of drug use is not optional for the binding States, but an obligation according to the normative content of the right to health under international law. Therefore, given that Mexico has ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the right to health has constitutional status, the criminalization of drug use or drug possession for personal use is a violation of the Mexican Federal Constitution and the ICESCR.*

**KEY WORDS:** *Drug use, criminalization of drug abuse, drug dependence, human rights, international law, right to health.*

**RESUMEN.** *El presente artículo es un análisis sobre la prohibición del consumo de drogas y el derecho a la salud tanto en el derecho internacional como en el nacional. El argumento principal es que la ausencia de criminalización del consumo personal de drogas en la legislación nacional no está prohibido por la Convención Única de 1961 sobre Estupefacientes y la Convención contra el Tráfico Ilícito de Estupefacientes y Sustancias Psicotrópicas de 1988 y, por ende, un sistema orientado a la prevención y rehabilitación para resolver el problema del consumo y adicción a las drogas no es opcional, sino obligatorio a la luz del contenido internacional del derecho a la salud. En ese sentido, y dado que México es parte de las referidas convenciones y se otorga estatus constitucional a los derechos humanos, como el derecho a la salud reconocido en el Pacto Internacional de Derechos Económicos, Sociales y Culturales, se considera que la sanción penal del consumo o de la estricta posesión de drogas para el consumo es una violación directa a la Constitución Federal y al mencionado tratado internacional.*

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PALABRAS CLAVE: *Consumo de drogas, criminalización del consumo, adicción, dependencia, derechos humanos, derecho internacional, derecho a la salud.*

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I. INTRODUCTION

In the past five decades, drug control has become a major concern in Mexico and the rest of the world.<sup>1</sup> In 1961, the members of the United Nations adopted the Single Convention on Narcotic Drugs (1961 Single Convention) with the intention to prevent non-medical use of narcotic and psychotropic drugs.<sup>2</sup> The idea behind the convention was to establish international rules to inhibit the supply of drugs and, thus, reduce the risks of drug use and protect the health of the population.<sup>3</sup>

Before and after the 1961 Single Convention, almost all countries have decided to criminalize both the supply and the demand of drugs. With some recent exceptions, such as the Netherlands and Spain, most nations punish any kind of production, possession, purchase and cultivation of drugs.<sup>4</sup> Nation-States believe the criminalization approach is enough to deter drug production and drug use. The main targets are the behaviors themselves and

<sup>1</sup> International Narcotics Control Board [INCB], *Report of the International Narcotics Control Board 2008*, Chapter I, U.N. Doc. E/INCB/2008/1, U.N. Sales No. E.09.XI.1, available at [http://www.incb.org/pdf/annual-report/2008/en/AR2008\\_Chapter\\_I.pdf](http://www.incb.org/pdf/annual-report/2008/en/AR2008_Chapter_I.pdf).

<sup>2</sup> Single Convention on Narcotic Drugs, 1961, March 25, 1961, U.N.T.S. available at [http://www.incb.org/pdf/e/conv/convention\\_1961\\_en.pdf](http://www.incb.org/pdf/e/conv/convention_1961_en.pdf). This convention was amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs.

<sup>3</sup> *Id.*

<sup>4</sup> LIANA SUN WYLER, CONGRESSIONAL RESEARCH SERVICE, INTERNATIONAL DRUG CONTROL POLICY (2011), available at <http://fpc.state.gov/documents/organization/107223.pdf>.

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