



Policy analysis

Secondary harm mitigation: A more humanitarian framework for international drug law enforcement



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ABSTRACT

This article introduces the concept of 'secondary harm mitigation' as a framework for improving the humanitarian credentials of international drug law enforcement agencies. The concept is rooted in a critical analysis of the compatibility of the harm reduction philosophy with Australia's international drug law enforcement practices. On a utilitarian level, the net benefits of international drug law enforcement are determined to be, at best inconclusive, arguably counterproductive and in most cases, incalculable. On a humanitarian level, international drug law enforcement is also determined to be problematic from a criminological standpoint because it generates secondary harms and it is indifferent to the vulnerability of individuals who participate in illicit drug trafficking. Accordingly, the article concludes that a philosophy of harm reduction grounded in the public health perspective is inadequate for mitigating secondary harms arising from Australia's efforts to combat international illicit drug trafficking. A tentative list of secondary harm mitigation principles is presented and the article argues that secondary harm mitigation should replace supply reduction as a core tenet of Australia's National Drug Strategy. The article also concludes that secondary harm mitigation may provide a viable framework for stimulating a productive dialogue between those who advocate prohibition and those who call for decriminalisation at the global level.

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Introduction

The Outcome Document adopted at the UN General Assembly Special Session on Drugs (henceforth UNGASS) 'reaffirm[ed] [the UN's] commitment to the goals and objectives of the three international drug control conventions . . . and [to] prevent[ing] and counter[ing] their illicit cultivation, production, manufacturing and trafficking' (UNGA S-30/1, 2016). The 'adverse public health and social consequences of drug use' were briefly acknowledged but the UNGASS ultimately reasserted the UN's commitment to 'all aspects of demand reduction . . . supply reduction . . . and international cooperation'. It noticeably contained no explicit reference to 'harm reduction' or 'harm minimization'. The marginalisation of the harm reduction philosophy in the Outcome Document is noteworthy because governments around the world have incorporated harm reduction into their national drug strategies since the 1980s. This suggests that international supply reduction will continue to form the core of the UN's drug strategy in years to

come. One question this prompts is, are international efforts by police to reduce supply fundamentally compatible with ideas like harm reduction and harm minimization? The answer depends in part on how the concept of harm is defined as this has implications for who is deemed to be deserving of humanitarian protections from the coercive effects of the 'war on drugs'.

This article deviates from previous attempts to explore the relationship between supply reduction and harm reduction (see Greenfield & Paoli, 2012) by considering their compatibility from a criminological perspective. It begins by considering how the harm reduction philosophy has come to influence domestic policing practices around the world. This review highlights that key principles underpinning popular understandings of harm reduction are exclusively concerned with addressing 'primary harms' (Nadelmann, 1993) linked to individual drug use. This means that its 'value-neutral' stance towards drugs does not extend to individuals involved with supply. The remainder of the article highlights why this is problematic by examining the utilitarian and humanitarian consequences of international drug law enforcement practices in Australia where supply reduction and harm reduction are pillars of the National Drug Strategy (NDS; see Australian Government, 2016).

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On a utilitarian level, our analysis illustrates that the net contribution of Australian anti-trafficking efforts to the minimization of primary drug-related harms is inconclusive and probably immeasurable. Our utilitarian analysis also identifies significant indirect economic costs associated with international drug enforcement efforts including the cost of imprisoning individuals convicted of trafficking offences. On a humanitarian level, we illustrate that international supply reduction also generates indirect or 'secondary harms' (Nadelmann, 1993) experienced by individuals who participate in drug trafficking activities. Evidence from the existing literature on drug trafficking and media reports suggest that drug law enforcement practices often generate coercive consequences for vulnerable individuals caught up in the drug trade, including people with a history of substance use, women, ethnic minorities, older people, and individuals with intellectual disabilities. Revisiting the Bali 9 case prompts further questions about the adequacy of current guidelines used by the Australian Federal Police (AFP) to manage or limit the punitive consequences of their international drug law enforcement efforts.

Based on this analysis, we conclude that the harm reduction philosophy is largely irrelevant for the purpose of mitigating these secondary harms because it seeks only to mitigate deliberate harms arising from drug enforcement efforts. Accordingly, we articulate a normative foundation for a concept of 'secondary harm mitigation' that is centred on four principles: 1) prioritize compassion and understanding; 2) challenge policies and practices that result in avoidable harm; 3) uphold the universality of human rights; and 4) promote responsible global practice. In the Australian context, we call for secondary harm mitigation to replace 'supply reduction' as a pillar of the NDS. Internationally, we suggest that secondary harm mitigation might also offer a politically palatable framework for negotiating the current impasse between prohibition and decriminalisation at the global level.

Harm reduction, policing and drug-related harms

Harm Reduction International (HRI) identifies seven principles of harm reduction. The first three principles highlight the philosophy's utilitarian outlook while the remaining four principles are humanitarian. The first principle asserts that '[h]arm reduction is a targeted approach that focuses on specific risks and harms' associated with substance use (HRI, 2017). The implication is that the causes of these risks must be identified so that they can be addressed (HRI, 2017). The second principle states, '[h]arm reduction approaches are practical, feasible, effective, safe and cost-effective' (HRI, 2017). This principle exemplifies the pragmatic orientation of harm reduction and to this effect, HRI adds: '[i]n a world where there will never be sufficient resources, benefit is maximised when low-cost/high-impact interventions are preferred over high-cost/low-impact interventions' (HRI, 2017). The third principle states, '[h]arm reduction interventions are facilitative rather than coercive, and are grounded in the needs of individuals' (HRI, 2017). Accordingly, HRI proposes that 'keeping people who use drugs alive and preventing irreparable damage' should be prioritised above 'less feasible but desirable options' such as 'abstinence' (HRI, 2017).

The fourth principle states that '[h]arm reduction practitioners accept people as they are and avoid being judgemental' and 'oppose the deliberate stigmatisation of people who use drugs' (HRI, 2017). The fifth principle acknowledges that 'people who use drugs do not forfeit their human rights' and asserts, '[h]arm reduction opposes the deliberate hurts and harms on people who use drugs in the name of drug control and drug prevention, and promotes responses to drug use that respect and protect fundamental human rights' (HRI, 2017). The sixth principle

acknowledges that '[m]any policies and practices intentionally or unintentionally create and exacerbate risks and harms for drug users' and calls for harm reduction practitioners to 'challenge the international and national laws and policies that create risky drug using environments and contribute to drug related harms' (HRI, 2017). The final principle calls for 'transparency, accountability and participation' when it comes to developing, implementing and evaluating interventions (HRI, 2017).

The popularity of this philosophy is attributed to the concept's value-neutral stance when it comes to the moral status of drug use and the people who use drugs (Zajdow, 2005). It has therefore been described as occupying a 'middle road between right-wing prohibitionists and anarchic libertarians' (Hathaway, 2001: 126) and as aligning itself with a liberal (Hathaway, 2001) viewpoint that is politically palatable and difficult to oppose due to its utilitarian aspirations and scientific credentials (Nadelmann, 1993). In this respect, harm reduction represents a 'pragmatic response to a moral issue' (Zajdow, 2005: 196) yet has been criticized for its 'strict rationality' and its tendency to 'reinforce endangerment themes over drug use entitlement' (Hathaway, 2001: 125).

Proponents of harm reduction increasingly identify the police as a key partner or ally when it comes to implementing harm reduction programmes. 'Law enforcement and public health' (LEPH) has thus been identified as an emerging field of policy, practice and scholarship (van Dijk & Crofts, 2017). Many police organisations around the world are now selectively adopting elements of the harm reduction philosophy and working to translate them into practice. Major examples of harm reduction in policing include institutional support for (other) strategies such as needle-exchange programs and treatment agency referrals. The introduction of diversionary programs has also been developed to capitalise on police discretion in order to reduce drug user's formal contact with the justice system. These include cautioning programs, referral schemes aimed at diverting individuals into healthcare, housing and other services, and decriminalization of certain drug possession offences (van Dijk & Crofts, 2017). These moves to incorporate harm reduction represent a shared interest by many governments in reducing the fiscal costs associated with policing the war on drugs and to a lesser degree, a moral interest in alleviating the social harms it generates (Beckett, 2016; Caulkins & Reuter, 2016).

The success of harm reduction initiatives involving the police has been highly variable however. Even in cases where senior police managers are receptive to the philosophy, operationalising it can be difficult if it fails to resonate with different sub-cultures within the organisation (Bacon, 2016). For many police organisations then, harm reduction constitutes a significant challenge to institutionally entrenched understandings of police work and may therefore generate confusion or resistance from officers (Beckett, 2016). Perhaps unsurprisingly, the influence of the harm reduction philosophy over policing has been limited to domestic drug enforcement activities. This reflects the fact that the underlying principles of harm reduction are almost exclusively concerned with minimizing primary harms associated with drug use whereas international drug enforcement is focused on supply reduction (Caulkins & Reuter, 2016).

It is also important to note that the harm reduction principles are narrowly concerned with harms arising from drug use, what Nadelmann (1993) identifies as 'primary harms'. They are not concerned with 'secondary harms' or those arising from drug policies and laws (Nadelmann, 1993). Secondary harms are experienced by individuals who participate in the cultivation, manufacturing, distribution or sale of illicit substances. Examples include: infringements on personal liberty, violence (economic, compulsive and systemic), police invasion of personal privacy, fines, lost time and income, legal expenses, fear of apprehension

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