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Review

A human rights view on access to controlled substances for medical purposes under the international drug control framework

Marie Elske C. Gispen*

Netherlands Institute of Human Rights (SIM) and Ethics Institute of Utrecht University, Achter Sint Pieter 200, 3512 HT Utrecht, the Netherlands

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ABSTRACT

The world is confronted with a major public health deficit caused by poor access to controlled essential medicines under the international drug control framework. This is affecting millions of patients on a daily basis and resulting in numerous human rights violations. The present review contextualises this deficit from a human rights perspective. Drug control efforts are informed by a twofold objective stemming from the double nature of scheduled substances: free access for medical purposes should be ensured, though non-medical use of substances such as opium should be restricted. The international drug control framework is, in theory, based on this twofold notion, however at the level of interpretation, monitoring, and implementation, a one-sided emphasis is demonstrated. By tracing a parallel between the obligations of states under the international drug control framework and those that derive from human rights law, the review shows that the two systems seem incoherent and conflicting in nature and flags the importance of cross-disciplinary research into drug control and human rights.

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* Tel.: +31 30 253 8407, fax: +31 30 253 7168.
E-mail address: m.e.c.gispen@uu.nl

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1. Introduction

As I was born into a family of doctors, pharmacologists and neuroscientists, my decision to become a lawyer seemed at odds with my family tradition. Whilst writing the present contribution to the *Festschrift* to honour my father Willem Hendrik Gispen, it dawned on me that nothing could be less true. By combining a possibly genetic interest in health matters and a personal interest in justice and well-being, I have found myself at a professional crossroads of law, ethics, and the life sciences; conducting research into access to controlled substances for medical purposes under the international drug control framework from a human rights perspective. I am fortunate to be privy to the perspectives of my family and their respective educational backgrounds and I would like to convey my gratitude to the editors of the European Journal of Pharmacology for their invitation to publish in this special issue.

To summarise, the international drug control framework includes the Single Convention on Narcotic Drugs, 1961 (Single Convention), the Convention on Psychotropic Substances, 1971 (1971 Convention), and the United Nations Convention on Illicit Traffic in Narcotic and Psychotropic Drugs, 1988 (1988 Convention). The preambles of the Single Convention and the 1971 Convention, describe the system's twofold foundational notion that the illicit use of drugs should be minimalised whilst access to controlled substances for medical and scientific purposes should be safeguarded. Although adoption of the system gathered momentum for the mainstreaming of international drug control, it is maintained that it ultimately fell short of maintaining its principally balanced focus demonstrated by its additional treaty provisions, implementation, and monitoring (Pettus, 2012; Gispen, 2012; Taylor, 2007). The result being that millions of people are affected daily by the unavailability of controlled substances for medical purposes. Consequently, the World Health Organization (WHO) (2010) reports that medical care is inadequate affecting pain and epilepsy treatments, opioid substitute treatment, obstetric care, surgery and acute care, amongst other things. A report by the Global Commission on Drug Policy (GCDP) (2011, 4) shows that at the same time drug misuse increases annually and the present drug control system's legitimacy and effectiveness is questioned in international debates.

The present review describes the background against which my research is carried out and aims to signify the importance of cross-disciplinary research into this particular field of study.[1] It sets out to identify the different objectives involved in drug control in light of the protection of public health. Against this background, it traces an overview of how these objectives informed the current international drug control framework. Subsequently, it focuses on the suggested failing of the present level of control by demonstrating a public health deficit taking place under the present drug control efforts resulting in many human rights violations. To show the system's suggested incoherence, it then turns to the human rights framework and identifies the respective human rights and obligations in this field. Finally, the clash between international drug control and human rights frameworks is explained and different cross-disciplinary research perspectives are presented. For reasons of scope and limitation, opioid analgesics and pain treatment are used as an example to contextualise the need for medical access to controlled substances, however, the general line of reasoning presented applies to other classes of medicines and treatments as well.

[1] The findings presented are based on the research underlying Chapter 1 of my broader research, and in part, on my work undertaken in preparation for the report written to the International Federation of Health and Human Rights Organisations: 'Poor Access to Pain Treatment: Advancing a Human Right to Pain Relief' (Gispen, 2012).

2. Background

2.1. The history of opium use

Since time immemorial, psychoactive substances such as opium have been used in many different traditional, cultural, religious, and medical practices throughout the world (UNODC, 2008a, 173; Kramer and Merlin, 1983, 29–33). Observations of its medical use to ameliorate pain go as far back as the Babylonians. Holzer and Lembeck (1983, 361) describe that in 4000 B.C. it was observed that the "dried exudate from unripe seed capsules of *Papaver somniferum*" called poppy, relieves pain, and promotes sleep and feelings of peace and well-being (Gispen, 2012, 13). Concurrently, its non-medical use or quasi-medical use (opium smoking) was a custom practiced all over the world but especially in China and other Asian countries (Ghodse, 2008, 90–91).

In the search for modern analgesia, it was only in the 19th century that the chief active principle of opium was distilled and named morphine after the Greek god of dreams (Gispen, 2012, 13; Holzer and Lembeck, 1983, 362). In these early days, the medical use of morphine was well regarded and its use was fairly unrestrained (Gispen, 2012, 13; Holzer and Lembeck, 1983, 362). Access only became problematic after the invention of the syringe and needle, which rapidly revealed the negative side effects of the non-medical use of morphine (Gispen, 2012, 13; Holzer and Lembeck, 1983, 362). In particular, the parental administration of morphine quickly increased dependence. This negative effect boosted the search for other entities to counter morphine dependence, which resulted in the distinction of diamorphine (heroin) in 1898. It soon became apparent that the addictive effects of the non-medical use of heroin were much stronger than of morphine (Holzer and Lembeck, 1983, 362).

2.2. Two objectives to regulate the use of psychoactive substances

2.2.1. Access for medical purposes

Taking into account opium's nature, the search for non-opioid analgesic entities that supersede the effectiveness of opioids is still a top priority in present pharmacological research. As long as no such alternative is discovered, however, it is widely supported by medical doctors that opioid analgesics are the most effective medicines to redress chronic pain syndromes, and if used to that end, enable people to better take care of themselves through participation and engagement in work and social life. Thus, if used in line with the medical guidelines set out in the WHO (1996, 14–16), morphine is still considered essential to treat pain. These guidelines contain the advice to doctors to treat their patients with oral opioid