

Chapter III.

Analysis of the world situation

A. Global issues

1. Legalization, decriminalization and depenalization: important differences

370. In its annual report for 2020, the Board remarked that strengthening international cooperation in drug control required a collective understanding of common challenges and the identification of mutual approaches to key concepts and issues. The Board notes that there continue to be divergences among Member States and stakeholders in the drug control field in the interpretation of certain terms and concepts related to drug control, and continues to encourage an accurate and consistent rendering of the legal obligations and concepts contained within the three drug control conventions.

371. While the Conventions themselves do not define the concepts of “legalization”, “decriminalization” or “depenalization”, they nonetheless contain provisions that cover the adoption by States parties of legal and policy frameworks to address drug-related behaviours, including the commission of serious offences, the commission of offences of a lesser relative gravity and the commission of offences by persons who use drugs.

372. The Board considers it important to recall that the international drug control conventions continue to provide wide latitude to States in designing differentiated approaches to the handling of drug-related behaviours according to their relative gravity and to the particular circumstances of the persons suspected of having perpetrated them.

373. The Board recognizes a growing trend among States parties to the international drug control conventions to apply the relevant provisions by adopting laws, policies and regulations that provide for alternatives to conviction and punishment for the personal use and possession of controlled substances.

374. The Board notes that the justifications advanced by States parties for this approach include the recognition of drug use and dependence as an issue primarily related to health, the desire to avoid responses to personal use and possession that may be considered overly punitive and lead to overincarceration and the recognition of the potentially disproportionate impact of certain responses on vulnerable groups including women, minority groups and economically disadvantaged populations.

375. However, policies that remove criminal sanctions for personal drug use and minor drug offences, commonly referred to as “decriminalization” by Member States, should be distinguished from policies that explicitly permit the non-medical and non-scientific use of internationally controlled substances and entail no penalty, whether criminal, administrative, civil or otherwise, for the personal use or possession of a particular substance.

376. The legalization of drug use is also frequently associated with the regulation and commercialization of internationally controlled substances for non-medical and non-scientific purposes, in violation of the international drug control conventions.

377. Therefore, the Board recalls that the terms “legalization” and “decriminalization” should not be used

interchangeably and that they should be differentiated when describing legislation and policies, in particular in terms of the level of control, as regards all requirements of the international drug control conventions.

378. An additional term, “depenalization”, has also been used by Member States and has at times been confused with other descriptions of frameworks designed to reduce reliance on imprisonment for drug-related offences. While the concept of depenalization is used less frequently, it has been used as synonymous with “decriminalization”, in particular in French- and Spanish-speaking States, in that it also refers to the removal of criminal sanctions for certain conduct involving controlled substances. However, with a view to using drug control terminology in a consistent and precise manner, the Board notes that the term “depenalization” should be differentiated from the term “decriminalization”, as an entirely distinct concept. “Decriminalization” refers to the process through which an offence is reclassified from “criminal” to “non-criminal” through legislative action. The behaviour in question remains an offence but may be addressed through other means than criminal law. In contrast, the concept of “depenalization” describes a situation in which the behaviour in question remains a criminal offence but in which there is a reduction of the use of existing criminal sanctions, which does not require changes to the law, as in the case of decriminalization. Accordingly, a depenalization approach may include the adoption of mechanisms such as police diversion practices, conditional sentences and the widening of prosecutorial discretion as an alternative to criminal prosecution. In such cases, the offender might be required to undergo treatment or rehabilitation as a condition for release from criminal liability.

379. The flexibility afforded to States, therefore, rests in the choice of sanctions to be applied to proscribed drug-related behaviours. Such sanctions may involve the application of alternative measures to criminal conviction and punishment that include treatment, education, aftercare, rehabilitation and social reintegration for minor offences, as specified in article 36, paragraph 1 (b), of the 1961 Convention as amended and article 22, paragraph 1 (b), of the 1971 Convention. The 1988 Convention also addresses drug-related offences and sanctions, although article 3, paragraph 1 (c) and paragraph 2, thereof specify that the requirement for the establishment of criminal offences is subject to a State’s constitutional principles and the basic concept of its legal system. The 1988 Convention also provides, in article 3, paragraph 4 (c), that, for cases of a minor nature, parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the

offender uses drugs, treatment and aftercare. Flexibility in responding to minor drug-related offences therefore derives from both the plain reading of the provisions of the conventions and the principle that States parties may respond to unlawful drug-related conduct in accordance with their constitutional principles and the basic concepts of their legal systems.

380. In sum, measures to decriminalize the personal use and possession of small quantities of drugs are consistent with the provisions of the drug control conventions. In fact, the Board has consistently explained that the conventions were designed to protect the health and well-being of people, including through the avoidance of disproportionate criminal justice responses to the possession of drugs related to personal use or dependence. It is at the discretion of States parties to the conventions to adopt policies and laws that are public health-oriented in response to minor drug-related offences, albeit with due regard for essential treaty provisions such as article 4, paragraph (c), of the 1961 Convention as amended and article 3, paragraphs 1 (a) and (b), of the 1988 Convention.

381. As mentioned above, the wider use of alternatives to conviction and punishment for drug-related behaviours of a minor nature, or for those offences committed by people who use drugs, is aimed at preventing criminal justice responses to a public health issue from becoming disproportionate. **The Board takes this opportunity to reiterate that proportionality should be a guiding principle in drug-related criminal justice matters and to explain that the adoption of alternative measures can constitute an integral part of a balanced and human rights-based approach to drug policy.**

382. INCB appreciates its ongoing dialogue with States and civil society groups on identifying ways to further the objectives of the international drug control conventions through the adoption of balanced and proportionate approaches founded on respect for human rights and the advancement of public health and welfare.

2. Use of social media in the promotion of the non-medical use of drugs

383. When the Internet was established, it was imagined as a network with vast opportunities for society in terms of access to information, service provision and participation. While many of those opportunities did materialize, the Internet was also readily exploited by criminals to

carry out illegal activities, including drug trafficking. The darknet is a clear example of the way in which criminal groups have been able to leverage the potential provided by the Internet to their advantage.

384. Similarly, when social media platforms emerged, there was considerable optimism about their role in society in terms of fostering communication and connections. They were intended to offer immense opportunities for social engagement and for sharing opinions and content with a wide range of people; a modern agora. Again, while some of those expectations did materialize, a darker side emerged, with hate speech, bullying, racism, shaming and other negative behaviours being provided with simple and effective platforms that had not been previously available. Among those negative behaviours, the facilitation and glamorization of non-medical drug use feature prominently. Sellers offering cannabis, prescription painkillers and other controlled substances can be found easily with a quick search. With a massive number of active users, social media platforms have been increasingly used as a tool for promoting the non-medical use of drugs.

385. Young people are the main users of social media platforms. They are also an age group with high rates of drug use worldwide. Peer pressure and other forms of social influence play an important role in the decision by young people to engage in drug use. These factors are amplified by their use of social media platforms. Social norms, risk perception and behaviours related to substance use and drug use in particular are shaped on these platforms. One of the most prominent features of social media is that every user is not only a receiver, but also a generator and disseminator of information.

386. There have been several studies on the link between exposure to social media platforms and drug use. Some studies have found a significant association between substance use-related exposure and actual substance use. A study of a random sample of cannabis-related posts on Instagram collected during one week in 2014 found that cannabis content was prevalent and that most of the posts studied normalized and promoted cannabis use both in its traditional, plant-based form and in other forms, including edibles and concentrates. The study also found that advertisements for cannabis on Instagram were explicit and strategic. Numerous tactics were utilized, including discounts, sales, contests and giveaways of cannabis-related products. A content analysis of tweets about cannabis and alcohol found that more than half normalized use of both substances and that one quarter indicated a preference for cannabis over alcohol on the basis of the belief that cannabis was safer and that its effects were preferable to those related to alcohol use.

387. Another study, on the exposure of young adults to alcohol- and cannabis-related content on Twitter, found that greater exposure to content that promoted or glamorized alcohol and cannabis use was significantly associated with a greater likelihood of current and heavy episodic drinking and current cannabis use. Exposure to a disproportionate number of posts and/or amount of content showing or promoting substance use might also lead to an overestimation of peer use, which is associated with a reduction in perceived risk and likely to result in greater use. Exposure to social media content promoting substance use can also be detrimental for patients seeking recovery from drug dependence, thereby increasing the risk of relapse.

388. The association between social media exposure to drug use content and actual use was aggravated by COVID-19 when, as a result of lockdown measures, young people increased their use of social media. This increase, together with an increase in anxiety and distress, may have led to increased substance use.

389. Beyond the use of cannabis and other substances such as cocaine and amphetamines, the non-medical use of prescription medicines, especially by young people, is also linked to the use of social media. Despite being illegal, the purchase of prescription medicines on the Internet without the necessary prescription is common in some countries. For example, social media platforms contributed significantly to the popularization and increasing misuse of codeine and promethazine hydrochloride cough syrups in combination with soft drinks or alcohol, which has been popularized on such platforms by some rap singers in their music and videos. Fans emulate them and post similar videos and images of their own use. Moreover, the use of social media by self-help patient groups may have also inadvertently contributed to the increase in the use of strong opioids for the treatment of pain without proper prescription and dosage, which in turn may have played a role in the extensive consumption of strong opioids that is at the origin of the opioid epidemic in some countries.

390. The way in which social media platforms work is exacerbating the problem. As a result of the algorithms on the basis of which social media platforms work, people who follow accounts that promote or normalize drug use receive a stream of similar or related messages, videos and content that exposes them again and again to images and videos depicting drug use. This creates an echo chamber that reinforces and confirms their previous choices and opinions.

391. Other elements of social media platforms that contribute to the problem are the role of influencers and the

fact that the platforms provide for the sharing of comments, which give users immediate feedback from peers. Influencers are increasingly promoting drug use content, with videos and messages glamorizing it. Initially, some influencers may do it to promote their own image and receive positive feedback from followers; however, when the number of followers of an influencer reaches a certain size, companies may recruit the influencer to promote their products through the production of online content for a financial reward. This has happened with fashion, cosmetics and other products, but it has also happened with drug-related products (in particular cannabis and cannabis-related substances) and prescription medicines.

392. Article 10, paragraph 2, of the 1971 Convention states that each party shall, with due regard to its constitutional provisions, prohibit the advertisement of psychotropic substances to the general public. There are legal issues that need to be considered, in particular in relation to the right to free speech. However, this right has to be considered in the context of the right to health for the public and also the societal need to protect vulnerable groups, such as young people. Governments should require social media companies to take a more active role in moderating their platforms and in limiting messaging and content that are not legal, such as the advertisement and promotion of the non-medical use of drugs. Social media companies should also take action independently by self-regulating their platforms and eliminating problematic and illegal content in the same way as for other illegal activities, for example, trafficking in children. The experience of the INCB GRIDS Programme shows that, by working with Internet marketing platforms, it is possible to take action to eliminate the sale of illicitly produced drugs on those platforms.

393. Social media platforms may be legally registered in one country, but they have a global reach. This makes it hard for national authorities to bring legal cases against users who promote illegal activities, such as the promotion, distribution or sale of controlled substances for non-medical purposes. It is necessary for Governments to develop effective cooperation mechanisms to ensure that social media platforms are not exploited as safe havens by those promoting illegal behaviours.

394. Social media are used to promote risky behaviours, such as the non-medical use of drugs, but they could and should be used to promote healthy behaviour, with appropriate and tailored prevention messages and content to balance the flow of content promoting non-medical drug use. **Social media are a critical tool for reaching vulnerable groups, such as young people, and national authorities should consider investing more resources in the**

development and implementation of drug prevention programmes and activities that make use of social media with tailored, engaging and entertaining messages and content.

395. In addition, more needs to be done in relation to research on the use of social media platforms to promote the non-medical use of drugs. Real-time big data on the non-medical use of drugs need to be collected and analysed to provide Governments and practitioners with a better understanding of the problem. Such information could be useful to health-care practitioners and law enforcement agencies as an early warning system for the detection of new drug use and distribution trends and practices that would otherwise be discovered only once they have taken hold.

3. Timely supply of controlled substances for the provision of quality essential care in humanitarian settings

396. Defined as “a disaster requiring international support (humanitarian assistance) to meet the basic needs of the affected population”,⁴² an international humanitarian emergency may be caused by a natural disaster or a human-made event, and can occur suddenly or gradually. According to the Office for the Coordination of Humanitarian Affairs of the Secretariat, as of June 2021, close to 240 million people worldwide faced hunger, armed conflict, displacement and the impacts of climate change and the COVID-19 pandemic and required immediate humanitarian assistance.

397. The onset of COVID-19 in 2020, together with an increasing number of disasters caused by climate change and armed conflict, not only significantly increased the number of persons requiring humanitarian assistance but also greatly compounded the risks in the humanitarian operating landscape. The latest estimates by the Office for the Coordination of Humanitarian Affairs suggest that the number of the most vulnerable people in June 2021 rose by 200 per cent when compared with 2015. As armed conflicts and disasters become more unpredictable, frequent and protracted in nature, humanitarian operations have also become much more complex and difficult. This trend is unlikely to abate any time soon, as more localized emergency situations continue to be fuelled by greater

⁴²Mark Anderson and Michael Gerber, “Introduction to humanitarian emergencies”, in *Health in Humanitarian Emergencies: Principles and Practice for Public Health and Healthcare Practitioners*, David Townes, ed. (New York, Cambridge University Press, 2018).

political tensions and unexpected climate change in different parts of the world.

398. Along with the notable increase in the demand for humanitarian assistance, the demand for quality essential care in humanitarian settings has also risen considerably. In particular, with the protracted nature of the events in these settings, greater emphasis is being placed on the provision of quality essential care to displaced populations. Palliative care, pain management, surgical care and anaesthesia, and mental and psychological support are important components of the immediate assistance required in humanitarian settings.

399. A number of internationally controlled substances, for instance, morphine, diazepam and phenobarbital, which are listed by WHO as essential medicines and are often included in emergency health kits, are vital for pain management, palliative care, surgical care and anaesthesia and the treatment of mental health and neurological conditions. Others, such as fentanyl and midazolam, are used in many countries to treat patients admitted to intensive care units with COVID-19. Unfortunately, the timely supply of these controlled substances to sites of humanitarian emergencies is often impeded by the additional administrative requirements for their import and export, with some even being taken out of emergency health kits so as to minimize the possible delays that their presence may cause to the provision of humanitarian assistance.

400. The international community has long noted the urgent need for a practical solution to this obstacle. The Model Guidelines for the International Provision of Controlled Medicines for Emergency Medical Care, published by WHO in 1996, represented the first concerted effort to expedite the supply of controlled substances during emergency situations through simplified control measures. During emergency situations, for instance, those that arose as a result of the explosion in Beirut in August 2020, the severe impact of the COVID-19 pandemic in Brazil and India and the earthquake in Haiti in August 2021, competent national authorities may permit the export of controlled substances in the absence of the corresponding import authorizations and/or estimates. Furthermore, estimates for controlled substances in urgent deliveries may be submitted by the exporting country instead of the importing country.

401. Since the beginning of 2020, when an increasing number of countries were declaring national emergencies relating to COVID-19, the effectiveness of simplified control measures has been tested. A review and discussion of the lessons learned in their implementation among competent authorities, international humanitarian

organizations and related United Nations agencies were conducted by INCB during two online meetings held on 18 and 19 March 2021. The outcome document of those meetings, entitled “Lessons from countries and humanitarian aid organizations in facilitating the timely supply of controlled substances during emergency situations”, contains important actions that Governments can take to improve their emergency preparedness and sets out procedures that they can follow during emergency situations. **Specifically, Governments are strongly encouraged to review existing national legislation on controlled substances and make amendments and/or adopt new provisions that allow for greater flexibility in the import and export of controlled substances during emergency situations, with clear specifications of the conditions under which such flexibility can be exercised. All relevant front-line workers responsible for the delivery of controlled substances should also be made aware of the emergency procedures and be trained in their use.**

402. In recognition of World Humanitarian Day 2021, and given that access to controlled substances in humanitarian emergencies remains constrained, INCB, UNODC and WHO issued a joint statement on 8 September 2021 calling for a collective effort to facilitate the timely supply of controlled substances during humanitarian crises. In an increasingly complex and uncertain world, in which controlled substances remain vital in the provision of quality essential care to affected populations, more effective inter-agency collaboration is crucial. Together with the help of international humanitarian organizations and other United Nations agencies, the Board will continue to monitor and review the implementation of simplified control measures during emergency situations, so as to ensure the timely supply of controlled substances to alleviate the pain and suffering of the most vulnerable.

4. Manufacture and proliferation of fentanyl analogues

403. Fentanyl and fentanyl analogues continue to drive increases in the number of overdose deaths attributed to synthetic opioids in Canada and the United States. However, the role of fentanyl analogues in overdose deaths is often undetected and thus underreported, as the identification of such analogues requires specialized toxicology testing. According to the latest statistics published by the Centers for Disease Control and Prevention in the United States, 100,306 overdose deaths were recorded in the 12-month period ending in April 2021. Overdose deaths from opioids were estimated to have increased to 75,673 during that period, up from 56,064 the year before,

and overdose deaths from synthetic opioids (primarily fentanyl) also increased.

404. In a study published in 2021 of post-mortem forensic cases over the four-year period 2017–2020 in the United States, it was found that carfentanil, a fentanyl analogue approximately 10,000 times more potent than morphine and 100 times more potent than fentanyl (scheduled in 2018 under the 1961 Convention as amended), and 3-methylfentanyl, a fentanyl analogue with an estimated potency 400 to 6,000 times greater than that of morphine, were circulating on the illegal drug market, in particular in the north-east of the country.⁴³ Another study in the United States found that, in 2016 and 2017, a fentanyl analogue had been detected in 20.6 per cent of overdose deaths,⁴⁴ with carfentanil being linked to a substantial portion of such deaths. The rising prevalence of fatalities associated with fentanyl in Canada indicates that lethal fentanyl and fentanyl analogue use has spread outside the country's major urban centres into rural and isolated parts of the country (mostly concentrated in western Canada, primarily British Columbia, and moving east, centring in Ontario). In Yukon, for example, opioid deaths doubled in 2020 compared with 2019, with 80 per cent involving fentanyl.

405. The number of deaths linked to fentanyl and fentanyl analogues in Europe may have been underestimated. In England and Wales in 2017, the majority of the 51 drug-related deaths recorded as involving NPS were associated with fentanyl analogues. In 2017, 77 per cent of NPS with opioid effects reported for the first time to the European Union early warning system were fentanyl derivatives. The Government of Scotland reported that opioids had been involved in 89 per cent of overdose deaths in Scotland in 2020. In October 2021, EMCDDA reported that case-based data communicated to the European Union early warning system had documented over 250 deaths in which fentanyls and other new opioids were implicated.

406. The mixing of synthetic opioids with other substances, in particular heroin, has been correlated with an increased number of opioid deaths in parts of the United States. The ongoing COVID-19 pandemic and the associated border closures, which have affected trafficking routes from Latin America and South-West and South-East Asia and resulted

⁴³Carolina Noble and others, "Detection of two potent synthetic opioids carfentanil and 3-methylfentanyl in forensic investigations during a four-year period 2017–2020", *Emerging Trends in Drugs, Addictions, and Health*, vol. 1 (2021).

⁴⁴Julie O'Donnell and others, "Notes from the field: overdose deaths with carfentanil and other fentanyl analogs detected – 10 states, July 2016–June 2017", *Morbidity and Mortality Weekly Report*, vol. 67, No. 27 (July 2018).

in heroin shortages, could lead to the adulteration or substitution of heroin with more harmful synthetic opioids, including more potent fentanyl analogues.

407. Given that the proliferation of fentanyl analogues more potent than fentanyl are increasingly linked to a substantial proportion of deaths resulting from synthetic opioid overdose in localities severely affected by the global opioid crisis, **the Board encourages Governments to direct more attention at the national level towards monitoring new fentanyl analogues in circulation and testing for fentanyl analogues in overdose toxicology examinations.** These efforts should provide a better picture of the prevalence of fentanyl analogues in the supply of synthetic opioids and help track their proliferation, while also helping to monitor the potency and risks associated with new fentanyl analogues.

408. In the United Kingdom, all substances with a psychoactive effect not already controlled under the Misuse of Drugs Act 1971 are illegal under the New Psychoactive Substances Act 2016; all unscheduled fentanyl analogues intended for recreational use are effectively banned. While this legislation has been found to be effective in eliminating the open sale of analogues of controlled substances and reducing the consumption of such analogues within the population, it has been recommended that the controls be extended to other analogues and precursors.

409. In 2018, the Drug Enforcement Administration of the United States ordered the temporary ban of all fentanyl-related substances, a ban that was later extended by the United States Congress in 2021 and is still in effect to date. Despite the ban and generic drug law regulations for fentanyl analogues, analogues such as carfentanil and 3-methylfentanyl are still frequently found mixed with heroin or fentanyl. Moreover, the emergency class-wide scheduling of fentanyl analogues has been linked to the recent increase in the circulation of novel synthetic opioids not chemically related to fentanyl.

410. In 2019, the Government of China enacted legislation to control all fentanyl-related substances. The legislation criminalized the unlawful manufacture, export and sale of all fentanyl analogues. As noted by the Board in its report for 2020, this led to a sharp drop in the amount of fentanyl-related substances of alleged Chinese origin being seized globally. Together, the controls instated by China and the United States led to a decrease in the amounts of newly identified fentanyl analogues seized globally from 2018 onwards.

411. Despite these steps, in a 2021 report by the United States-China Economic and Security Review Commission,

it was claimed that China-based fentanyl traffickers used several methods to circumvent the ban and conceal their illicit activities. Such methods include altering the name of the substance or displaying only an image and operating on password-encrypted websites, private groups on social media and messaging applications that connect illicit fentanyl consumers and sellers while avoiding detection by law enforcement authorities in China and the United States,⁴⁵ resulting in highly flexible supply chains. China has taken several practical steps to address exploitation of the industry by traffickers and tackle online fentanyl sales. Measures introduced include the class-wide scheduling of fentanyl and related substances, the investigating of online sales and mandating the postal and parcel industry to take specific measures aimed at combating trafficking in those substances.

412. Because of the potency of many fentanyl analogues, manufacturers often traffic them in small quantities, anonymously exploiting freight forwarders and postal or express courier services to ship them in small packages across the world. E-commerce platforms and the darknet may also be exploited by vendors marketing fentanyl analogues through the use of a variety of techniques to evade screening and detection by platform administrators. **The Board encourages Governments to work with the GRIDS Programme and its public-private partnership initiative to engage relevant industry sectors with the goal of voluntarily identifying, preventing and eliminating vendors attempting to exploit legitimate industry for the purposes of trafficking in dangerous substances not under international control.**

413. Different regions could also be at risk of becoming hotspots for the illicit manufacture of highly potent fentanyl analogues, as indicated by recent seizure data. The seizure by police in Myanmar of a large amount was considered by UNODC as a cause for concern, and the Office issued a warning that countries in South-East Asia were well positioned to produce synthetic opioids. Similarly, the Drug Enforcement Administration of the United States has warned that the production of fentanyl-related substances could expand beyond identified source countries because fentanyls, their precursors and their analogues have no geographical source boundaries, unlike many non-synthetic substances of abuse.

414. To assist Governments in their efforts to address this problem, INCB maintains a list of over 140 fentanyl-related substances with no current medical, industrial or

other legitimate uses. **The Board invites Governments and industry partners to use the list as a practical tool to facilitate actions to counter the manufacture, marketing, movement and monetization of the substances on the list.**

415. **The Board encourages Governments to make full use of the IONICS online communication platform.** IONICS is dedicated to real-time communication of incidents involving suspicious shipments, including fentanyl analogues. IONICS users can analyse intelligence related to the manufacture and distribution of fentanyl-related substances with no known medical use, along with information on other suspicious substances. Coordination between law enforcement focal points has resulted in the identification of transnational distribution networks of dangerous substances.

Role of precursors

416. One reason for the proliferation of fentanyl analogues is the fact that they can be manufactured in several ways. This is coupled with the practical difficulties in controlling the various precursor chemicals for such manufacture. Prior to 2017, illicitly manufactured fentanyl was suspected of being synthesized from NPP or ANPP using the so-called Siegfried method. Both chemicals were placed in Table I of the 1988 Convention as of 18 October 2017. However, as early as 2018, traffickers had already started to seek alternatives to those chemicals.

417. Results from forensic impurity profiling now suggest a shift to alternative synthesis methods that do not rely on NPP or ANPP. Instead, several non-scheduled chemicals and pre-precursors, as well as precursors and chemical intermediates used in the synthesis of fentanyl, have been reported. Another trend has been trafficking in chemically masked fentanyl precursors.⁴⁶ However, trafficking trends in relation to non-scheduled fentanyl precursors are difficult to discern because of the potency of the end products and the correspondingly small size of precursor consignments. Further, as in the case of fentanyl analogues, the Internet has been used in the trafficking of these fentanyl precursors; several have been found listed on online business-to-business platforms.

418. Apart from the shift to non-scheduled chemicals, another trend that has supported the proliferation of

⁴⁵Lauren Greenwood and Kevin Fashola, "Illicit fentanyl from China: an evolving global operation", Issue Brief (Washington, D.C., United States-China Economic and Security Review Commission, 2021).

⁴⁶Chemically masked precursors are derivatives of controlled precursors. They are chemicals that are not under international control but that can be converted easily into the corresponding controlled precursor; the concept of masked precursors is based on what is known in organic synthesis as protection group chemistry.

fentanyl has been the shift to new regions and territories to source the precursors. In 2018, India was identified as a possible source of fentanyl following the seizure of 11 kg of the substance at an illicit laboratory. The consignment was destined for Mexico and the seizure led to the identification and arrest of Indian and Mexican nationals. Subsequently, in December 2018, 100 kg of the precursor NPP was seized, again in India. The consignment was also destined for Mexico.

419. In response to those developments, which follow the pattern observed in relation to other controlled precursors, some countries have strengthened national controls on fentanyl precursors, which are often generic in nature. The group scheduling of fentanyl-related substances by China also covers a group of substances that could be used as precursors of fentanyls (benzylfentanyls). Canada introduced national controls over three precursors of fentanyl and fentanyl analogues (ANPP, NPP and benzylfentanyl) under an extended scope of control that also includes the derivatives and analogues of those substances. Similarly, the Government of the United States controls the fentanyl precursor 4-AP and some of its chemically protected derivatives, as well as benzylfentanyl and norfentanyl. In view of the risks associated with fentanyl and fentanyl analogues, in 2020, the Advisory Council on the Misuse of Drugs of the United Kingdom recommended that consideration be given to expanding precursor control to cover simple variants of ANPP. In October 2021, the Government of the United States proposed that three precursors of fentanyl be included in the tables of the 1988 Convention (see para. 67 above). Other countries that have enhanced controls over fentanyl precursors include India and Mexico. However, the extent and scope of such controls vary from one country to another.

420. To assist Governments in their efforts to address this problem, INCB closely monitors developments and has continuously updated its limited international special surveillance list, which is a list of chemicals not under international control but which have been frequently reported in illicit drug manufacture, to include precursors of fentanyl and fentanyl analogues. The list is aimed at alerting authorities and relevant industry sectors to the possible misuse, in illicit drug manufacture, of chemicals on the list and at facilitating public-private cooperation. Since 2013, the list also includes “extended definitions”, namely, substances closely related to those under international control. Several non-scheduled precursors of fentanyl and of fentanyl analogues are included in it. Further, PICS provides a secure, web-based platform for the sharing of information and trafficking incidents related to precursors, including internationally

non-scheduled chemicals. **The Board encourages Governments to make full use of its tools and resources such as the limited international special surveillance list and PICS to prevent diversion of and trafficking in non-scheduled precursors, including fentanyl precursors.**

421. The Board has highlighted the issue of non-scheduled chemicals and designer precursors in the illicit manufacture of drugs, including of fentanyl and its analogues, in its annual reports, its reports on the implementation of article 12 of the 1988 Convention and a conference room paper for the Commission on Narcotic Drugs at its sixty-third session, as well as during its operational activities. **The Board strongly advocates taking concrete action at the global level to address this issue and has supported several initiatives in this regard, including the development of practical tools for Governments to use.**

5. Coping with the challenging evolution of chemical precursors

The 1988 Convention and the precursor control system

422. The framework for the international control of precursors was established by the 1988 Convention, in particular article 12 thereof. Today, the Convention enjoys near-universal adherence. In addition, the Economic and Social Council and its subsidiary body the Commission on Narcotic Drugs have issued a number of resolutions reiterating the provisions and expanding the framework of control of the Convention.

423. The 1988 Convention illustrates the commitment of Governments to the principle of shared responsibility and regulatory controls to ensure the availability of chemical substances for legitimate purposes while preventing their use in the illicit manufacture of narcotic drugs and psychotropic substances. More than 30 years after the Convention entered into force (in November 1990), there are clear signs that enhanced precursor controls are achieving effective results through appropriate national regulatory frameworks. Nevertheless, there is a need for more comprehensive and systematic implementation of the Convention’s provisions by Governments, and there are new challenges that have become increasingly important in a changing world.

424. Currently, adding a chemical to the tables of the 1988 Convention is the only mechanism for subjecting it to a legally binding framework at the global level.

Importantly, the scheduling process (notification, assessment by the Board and decision by the Commission on Narcotic Drugs) applies only to individual substances. It needs to be restated that the goal of the process is not the outright banning of a given substance but rather the implementation of enhanced controls to ensure that international movements do not hide illicit purposes.

Challenges to international precursor control: non-scheduled substances

425. The issue of non-scheduled chemicals has gained importance over the past decade, with major increases in the sophistication, diversification and scale of illicit drug manufacturing operations. There are virtually no limitations to the range of chemicals and manufacturing methods that could potentially be employed in illicit drug manufacture, especially synthetic drug manufacture; they include chemicals and manufacturing methods previously considered unusable in illicit settings. In terms of supply, chemicals fall broadly into two categories:

(a) Chemicals that are available off the shelf and are traded regularly for legitimate purposes. Such chemicals include benzaldehyde, methylamine and esters of phenylacetic acid;

(b) Designer precursors that are purpose-made, close chemical relatives of controlled drugs or precursors and can be easily converted into those controlled substances. They usually have no legitimate use and are therefore not traded widely or regularly.

426. With few exceptions, all recent assessments undertaken by the Board for scheduling under the 1988 Convention were of designer precursors. This development started with *alpha*-phenylacetonitrile, the international scheduling of which in 2014 coincided with the emergence of *alpha*-phenylacetamide, a chemical subsequently placed under international control, in 2019. More recently, methyl *alpha*-phenylacetate (methyl 3-oxo-2-phenylbutanoate), a close chemical relative and pre-precursor of amphetamine and methamphetamine, was placed under international control as of 3 November 2020. A similar development appears to have begun in the area of fentanyl precursors. Following the international scheduling of NPP and ANPP in 2017, a number of non-scheduled chemicals, including designer precursors of fentanyl and a few of its analogues, have emerged.

427. Since 2014, the Board has been drawing attention to the challenges that the proliferation of non-scheduled chemicals, including designer precursors, pose to

international drug control efforts, and has prepared several policy and guidance documents, including:

(a) Thematic chapters on precursors in the reports of the Board for 2014 and 2018 on the implementation of article 12 of the 1988 Convention;⁴⁷

(b) A conference room paper for the Commission on Narcotic Drugs at its sixty-third session, held from 2 to 6 March 2020, entitled “Options to address the proliferation of non-scheduled chemicals, including designer precursors – contribution to a wider policy dialogue”;⁴⁸

(c) A draft option paper that provides a list of practical and concrete measures and approaches that Governments could consider implementing to address the proliferation of non-scheduled chemicals and designer precursors through national action and international cooperation. The paper was disseminated to Governments in August 2021 to help advance the policy dialogue on the matter and was adopted by the Board as a guidance document in November 2021.

428. These documents reflect the evolution of information exchange and good practices gathered as part of a series of events convened or supported by INCB (see figure XII below).

429. The Board has also developed technical tools and materials, which are available on the INCB website to competent national authorities and which are aimed at enhancing the capacity of national law enforcement and regulatory authorities to identify and address the ever-growing range of non-scheduled chemicals.

Options for addressing the proliferation of non-scheduled chemicals and designer precursors

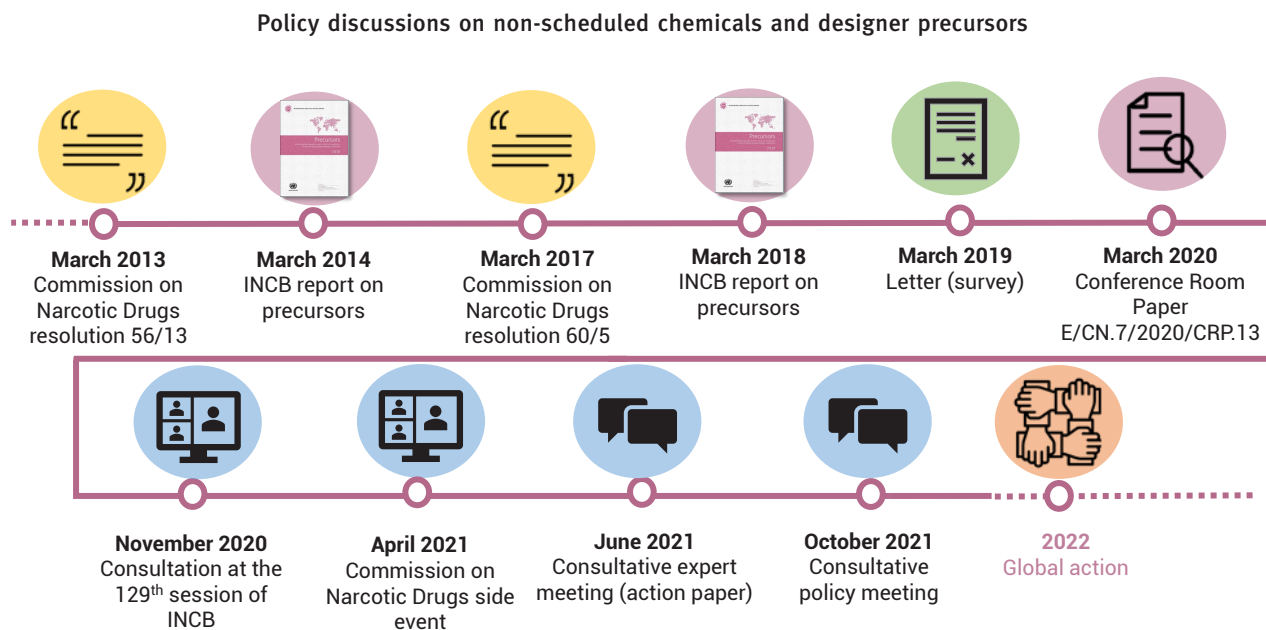
International legal framework

430. The 1988 Convention provides guidance for the development of national legislation to address non-scheduled chemicals and designer precursors. In the past, as explained in paragraph 427 (a)–(c) above, INCB has pointed to the applicable provisions, namely article 13 (Materials and equipment), especially when applied together with article 3 (Offences and sanctions), article 12, paragraph 8 (on the monitoring of domestic manufacture

⁴⁷E/INCB/2014/4 and E/INCB/2018/4.

⁴⁸E/CN.7/2020/CRP.13.

Figure XII. Milestones in the policy discussion on non-scheduled chemicals and designer precursors



and distribution), and article 24 (Application of stricter measures than those required by the Convention). In addition, article 12, paragraph 13, of the Convention provides for the periodic review by the Commission on Narcotic Drugs of the adequacy and propriety of Tables I and II, which list and provide for the control regime of substances. Options for addressing non-scheduled chemicals at the national level are also summarized in various Commission resolutions, including resolutions 56/13 and 60/5.

431. INCB has encouraged Governments proposing the scheduling of a chemical to consider the scope of control so that closely related substances can also be considered under the same regime. In 2018, the Board itself did so when it submitted a complementary notification on the international scheduling of 3,4-MDP-2-P methyl glycidic acid (“PMK glycidic acid”) in connection with the notification by the Government of Argentina on the scheduling of the ester and sodium salt of that substance. In addition, INCB has recommended and supported measures to increase the speed of the international scheduling process by using, *inter alia*, a scaled-down assessment questionnaire for designer precursors with no known legitimate uses and a shorter deadline for submitting responses.

National legislation, measures and approaches

432. Important elements of action to address non-scheduled chemicals are measures and legislation at the

national level. A distinction needs to be made in this regard between chemicals that are not controlled internationally under the 1988 Convention but that are under national control, and emerging chemicals that are not controlled at either the national or the international levels. From the replies received to a survey sent in 2019, the Board is aware that many Governments have no legal basis to act with respect to chemicals in the second category, being able to act only with respect to chemicals that are already under national control.

433. In response to the same survey, some Governments reported the following strategies for overcoming the absence of legal provisions applicable to particular non-controlled chemicals: (a) treating non-scheduled chemicals as “materials” within the meaning of articles 3 and 13 of the 1988 Convention; (b) treating the use of non-scheduled chemicals as a preparatory act or an act of assistance in the commission of a drug-related offence; (c) seizing such chemicals as evidence in the investigation and prosecution of other drug-related offences; and (d) applying sanctions and seizing non-scheduled chemicals for violation of customs law in the case of mislabelling or misdeclaration.

434. Despite the challenges, INCB is aware of practical and innovative national approaches. These approaches include: (a) adding the chemicals concerned to national lists of controlled chemicals; (b) subjecting the chemicals to an extended scope of control that also includes derivatives and analogues, similar to the approach taken for the

generic scheduling of drug end products; and (c) prohibiting the import, export, transport or possession without a permit of chemicals that can be easily converted into a drug or drug precursor and for which no legitimate industrial uses are known.

435. The urgency of addressing the issue was acknowledged by the European Commission in November 2020 during its evaluation of the drug precursor policy of the European Union and the subsequent establishment of an ad hoc expert working group comprising licensing authorities, customs authorities, police forces, forensic laboratories, judicial authorities and the chemical and pharmaceutical industries.

International cooperation, exchange of information and intelligence

436. Exchange of intelligence and actionable information by law enforcement authorities is essential in identifying links between cases, launching backtracking investigations (including for non-criminal cases) and preventing future cases involving non-scheduled chemicals using similar *modi operandi*. The Board promotes such exchange through Project Prism and Project Cohesion and with the help of PICS, but there is still uneven participation in these initiatives between regions and countries.

437. In order to foster and enhance cross-border cooperation, the Board has recommended a more active approach, by means of which government authorities inform their counterparts in transit and destination countries more systematically about known outbound shipments containing non-scheduled chemicals, so that the receiving authorities can anticipate and take action on incoming shipments. In many cases, substances that are not scheduled at the international level may be controlled at the national level, which facilitates enforcement action. The INCB information package on the control of precursors, available to government officials on the secure website of the Board, provides a list of substances that are not listed in Tables I or II of the 1988 Convention but that are controlled domestically in different countries.

438. As a specific contribution to improving the knowledge of the landscape of non-scheduled chemicals and building on the fact that certain chemicals not under international control are controlled nationally in some countries, the Board is looking to make available a tool to interested Governments for the exchange, on a voluntary basis, of information about planned exports of chemicals under national control but not under international control. The new tool would expand upon and

complement the Board's PEN Online system, which is used to exchange information about planned shipments of chemicals listed in Tables I and II of the 1988 Convention.

Public-private partnerships

439. Public-private partnerships have come to play an increasingly significant role in global precursor control. The basic concept of such partnerships is enshrined in article 12, paragraph 9 (a), of the 1988 Convention, which requires Governments to apply any system to monitor international trade in substances in Tables I and II of the Convention in close cooperation with manufacturers, importers, exporters, wholesalers and retailers, who are to inform the competent authorities of suspicious orders and transactions. INCB has recommended that suspicious cases and denied requests or orders should also be communicated to it, as part of a global alert mechanism.

440. In contrast to public-private cooperation related to controlled chemicals, cooperation related to non-scheduled chemicals is voluntary in nature and requires the involvement of a wider range of industries and operators. The Board has highlighted cooperation with industry as an essential component of any national approach to addressing the proliferation of non-scheduled chemicals and designer precursors. As there is a risk that companies operating at the edge of legality through the supply of these substances may benefit from such cooperation, it is essential for national authorities and manufacturers to understand the functioning of local markets and to maintain an overview of legitimate enterprises. **The Board encourages Governments to secure the cooperation of the private sector, subject to domestic legislation, to prevent the marketing and sale of non-scheduled chemicals and designer precursors over the Internet, including on social media platforms, on a voluntary basis.**

441. The Board's limited international special surveillance list of non-scheduled substances⁴⁹ is an important component of Governments' voluntary cooperation with industry. The list contains 56 individual chemicals that are known to be used as alternatives to controlled substances in illicit drug manufacture. Since 2013, it has also included extended definitions that capture common derivatives and other closely related chemicals that can be converted into scheduled precursors by readily applicable means. The list was further updated in 2019 to include chemicals that do not have any known legitimate

⁴⁹The Board established the list in 1998, pursuant to Economic and Social Council resolution 1996/29. The list is available as part of the Board's information package on the control of precursors and is regularly updated.

uses, with a view to providing Governments with a tool to put incidents involving such substances in context and to take the necessary action.

Technical assistance, capacity-building and awareness-raising

442. Given the technical complexity of non-scheduled chemicals and despite the Board's efforts over the past decade, there is a continued need for awareness-raising and capacity-building to address the proliferation of non-scheduled chemicals and designer precursors at the global level. Specifically, and considering the absence of legislation, the awareness-raising and training of criminal justice practitioners, in particular prosecutors and judges, on the specificities of drug-related crime involving synthetic drugs and precursors, including the role of non-scheduled chemicals and designer precursors, are critically important.

The way forward: the international precursor control system – a living mechanism

443. The 1988 Convention was developed and adopted more than three decades ago, on the basis of the situation that prevailed at the time it was drafted. On several occasions, the Board has stated that, in its opinion, to make the precursor control system fit for the twenty-first century, there is a need to refocus international precursor control by placing more emphasis on preventive action (industry cooperation and domestic controls) and law enforcement action (stopping or seizing shipments of chemicals that are known to be or suspected of being used for illicit purposes).

444. In order to deal with series of chemically related substances and with substances that do not have legitimate uses and/or are not traded regularly for legitimate purposes, it is important to consider approaches that allow intervention in suspicious cases without requiring the application of all regulatory control measures, which might overburden authorities and industry alike.

445. A number of options are now available, including those that build upon national experiences, measures and approaches designed to control national markets and movements of substances. Recent examples of voluntary scheduling at the national level have been provided by Canada, China, India, Mexico and the United States. These approaches have proved to be greatly effective and efficient in the interim period.

446. The Board trusts that its contributions and the consultative process that it has facilitated over the past two years will lead to a set of concrete, practical actions that are agreed widely and enable the international community to reach consensus on a mechanism to prevent non-scheduled chemicals and designer precursors from reaching illicit laboratories, thus preventing the proliferation of drugs, NPS and synthetic opioids, while minimizing the associated administrative burden. The Board looks forward to continued collaboration with Governments to further advance the issue.

B. Africa

An increasing number of countries in Africa are permitting the cultivation of cannabis for medical or scientific purposes. Of those countries, some have authorized the use of cannabis for medical purposes domestically, while others allow cultivation only for export.

Determining the extent of drug use in Africa continues to be impeded by the limited amount of available information and prevalence data. Nonetheless, owing to demographic changes, the number of people who use drugs in Africa is projected to rise by 40 per cent by 2030.

1. Major developments

447. More countries in Africa are permitting the cultivation of cannabis for medical, scientific or industrial purposes. Among countries in the region that permit the cultivation of cannabis for such purposes, some permit cultivation only for export, while others allow the use of cannabis for medical purposes domestically. For 2022, three countries in Africa have submitted estimates to the Board on the cultivation or use of cannabis for medical and scientific purposes.

448. On the basis of current prevalence rates, drug use in Africa is projected to rise by 40 per cent by 2030, according to UNODC. The increase is attributed to demographic changes over the decade as the population is comparatively young and the rate of drug use is higher among younger people. In addition, it is projected that the population of Africa will grow more rapidly than that of other regions.

449. Trafficking in cocaine continues to pose a major challenge to Africa, in particular North and West Africa, with the region being used as a trans-shipment hub along