The Evolution and Modernisation of Treaty Regimes: The Contrasting Cases of International Drug Control and Environmental Regulation

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Abstract

The UN based framework for international drug control, what has been usefully described as the global drug prohibition regime, has since its creation displayed some capacity to evolve. This is the case both in terms of formal structures and accompanying norms. Recent moves by at present a small number of jurisdictions towards the legal regulation of cannabis for non-medical and non-scientific purposes has, however, highlighted the existence of systemic inertia in the face of unprecedented challenge. The adoption of a policy choice that operates outside the boundaries of the extant international legal architecture has brought into focus structural limits in the regime's capacity to respond to changes in circumstances and the requirements of some of its members. The resultant obstacles and accompanying recourse by states to creative legal argumentation contrasts with approaches found within the regime for environmental regulation and its underpinning Multilateral Environmental Agreements (MEAs). In this case a variety of structures and bodies characterise a more dynamic and responsive framework. It is argued here that while we should be alert to issue area specificity, much can be learned from MEAs and their approach the regime evolution, particularly in relation to governance structures and the use of Conferences of the Parties. Seeking lessons from other regimes takes on more significance as regime members diverge in their approach to addressing the 'world drug problem.'

Key words

Global drug prohibition regime (GDPR), cannabis, multilateral environmental agreements (MEAs), regime evolution, inertia, operating system, normative system, Conference of the Parties (COPs)

1. Introduction

Effective international regimes are not static constructs. While there remains definitional variation concerning exactly what constitutes a regime – a situation that exists not only across but also within the increasingly synergistic disciplines of International Relations (IR) and International Law (IL)[1] - there is general agreement that they operate in terms of 'lifecycles'[2]

[1] Simone Schiele, *Evolution of International Environmental Regimes: The Case of Climate Change*, (2014), pp. 54-7 and Shirley V. Scott, *International Law in World Politics*, (3rd ed. 2017), pp. 149-51. On the links between the two disciplines see David Armstrong, Theo Farrell and Helene Lambert, *International Law and International Relations*, (2012) and Jeffrey. L. Dunoff and Mark A. Pollack, *Interdisciplinary Perspectives on International Law and International Relation: The State of the Art*, (2013).

and consequently 'tend to change more or less profoundly during their lifetime.'[3] Still an area of relatively limited study, the concept of regime evolution takes on increasing salience in light of a significant expansion in the number of international legal instruments in operation today. As the International Law Commission noted in 2006, 'the volume of multilateral - "legislative" – treaty activity has grown manifold in the past fifty years.'[4] Furthermore, such expansion has been accompanied by an increase in 'the scope of topics and subjects addressed by treaty law,' with treaty growth being 'especially marked in economic affairs, as well as in the areas of human welfare and the environment.'[5]

Although various processes and degrees of regime evolution can be observed across all three categories, this article focuses on examples from the fields of human welfare (broadly defined) and the environment; more specifically the treaty regime based upon the United Nations (UN) drug control conventions and the regime for environmental regulation and its underpinning Multilateral Environmental Agreements (MEAs). With a basis in comparative analysis, our aim here is to contribute to the understanding of why – relative to a dynamic regime like that dealing with transnational environmental concerns – what has been usefully called the 'global drug prohibition regime'[6] (GDPR) appears to possess limited evolutionary capacity in the face of changing circumstances and requirements of some regime members.

As a common characteristic of most regimes, tensions within the GDPR among states themselves as well as between states and monitoring bodies is not new.[7] Nonetheless, recent shifts in the way that a still small but growing number of jurisdictions are choosing to deal with the illicit use of cannabis within their territories has arguably brought the GDPR to a point of unprecedented crisis. The introduction of regulated markets for the non-medical and non-scientific use of cannabis at national and sub-national levels has been fervently criticised by the Vienna-based body responsible for monitoring states' implementation of the treaties. For the International Narcotics Control Board (INCB or Board) such policies clearly operate beyond the confines of international law.[8] Moreover, the policy approach has been condemned by a range of states that favour the prohibition-oriented approach privileged by the regime and – not unreasonably – view regulated cannabis markets as a profound threat to regime integrity.[9] Though the notion of a 'Vienna Consensus' on drugs has arguably never

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[2] From the perspective of IL, see for example, Panos Merkouris, *The Political Economy of International Treaties* (2014) p. 3. Regarding IR see Martha Finnemore and Kathryn Sikkink, 52, 4 "International Norm Dynamics and Political Change", 52, 4 *International Organization*, (1998) pp. 887-917 and Wayne Sandholtz and Kendall W. Stiles, *International Norms and Cycles of Change*, (2008)

[3] Thomas Gehring and Sebastain Oberthür, "Expanding Regime Interaction" in A. Underdal and O. Young (eds.), *Regime Consequences: Methodological Challenges and Research Strategies* (2004), pp. 251

[4] United Nations General Assembly, International Law Commission, Fifty-Eighth session, Geneva, 1 May – 9 June and 3 July – 11 August 2006, A/CN.4/L.682, 13 April 2006, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law', Report of the Study Group of the International Law Commission, Finalized by Martti Koskenniemi, p.10

[5] Beth. A. Simmons and Richard. H. Steinberg (eds.), *International Law and International Relations*, (2006), p. xxx

[6] Ethan. A. Nadelmann, "Global prohibition regimes; the evolution of norms in international society", 44, 4 *International Organisation* (1990) pp. 479-526

[7] David. R. Bewley-Taylor, *International Drug Control: Consensus Fractured*, (2012)

[8] See International Narcotics Control Board, *Report of the International Narcotics Control Board for 2017* (2018), pp. 35-6 and Press Release, UN Information Service, Statement of the President of the INCB, Raymond Yans (2013) < http://www.unis.unvienna.org/unis/en/pressrels/2013/unisnar1173.html>

[9] International Drug Policy Consortium, *The 2017 Commission on Narcotic Drugs. Report of Proceedings* (2017), pp. 11-12 < http://fileserver.idpc.net/library/CND-Proceedings-Report-2017_ENGLISH.pdf> and International Drug Policy Consortium, *The 2016 Commission on Narcotic Drugs and its Special Segment on*

borne serious scrutiny, the current and apparently growing dissensus around cannabis takes the regime into unknown and uncertain territory. There is much to be said for the view of Bennett and Walsh: 'No treaty can survive the collapse of political consensus supporting it. And no treaty *system* can endure if it cannot cope with changing political conditions. Sustainability in international law depends not only on commitment but also on resilience and adaptability' (original emphasis).[10] With legally regulated recreational cannabis markets already operating in Uruguay and at the sub-national level, the United States, poised for roll out in Canada and under serious discussion in a range of disparate states including the Netherlands, Jamaica and New Zealand, political conditions are certainly changing.

We are not the first to note the role of inertia in stymying regime adaptability.[11] The original contribution of this article, however, lies in its detailed examination of processes and mechanisms of 'change' within the GDPR and, using a comparative frame, the search for possible structural contributions to rigidity and stasis. In so doing, we hope to help move current discussions concerning the tensions presently surrounding the operation of the GDPR beyond the narrow confines of drug policy analysis and locate them within the broader context of IL, IR and wider investigation of regime evolution and modernization in general.

Additional to the fact that environmental regimes have arguably been the subject of the most study on evolution and change,[12] the focus on MEAs as a principle comparator to the GDPR rests on two factors. The first of these is the important, although very different, role that the advancement of scientific knowledge plays in the lifecycle of both regimes. The second relates to the regimes' age and the associated structures and mechanisms that come with them. As will be discussed, such factors go some way to help explain why from an IL perspective the GDPR has been described as 'Jurassic' with its underpinning drug conventions 'so stubbornly resistant to change compared to other treaty systems' that they almost seem '"frozen in time."'[13]

Liphardt's maxim concerning the 'how' rather than the 'what' underpins the methodological utility of the comparative approach, or 'method', to examine the contrasting regimes and the legal instruments of which they comprise.[14] While the units of this analysis are examples of multilateral conventions and associated bodies rather than nation states, a comparative framework still not only forces the recognition of diversity across cases, but also steers us towards identification and a degree of explanation. [15] Analysis is framed from the IR perspective in terms of regime theory, but we deliberately deploy an approach more in line

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Preparations for the UNGASS on the World Drug Problem. Report of Proceedings (2016), p. 9 < http://fileserver.idpc.net/library/CND-proceedings-document-2016_ENGLISH.pdf>

[10] Wells Bennett and John Walsh, *Marijuana Legalization is an Opportunity to Modernize International Drug Treaties* (2014), p. 25 <https://www.brookings.edu/wp-content/uploads/2016/06/CEPMMJLegalizationv4.pdf>

[11] See, for example, Neil Boister, "Waltzing on the Vienna Consensus on Drug Control? Tensions in the International System for the Control of Drugs," 29, 2 *Leiden Journal of International Law* (2016), p. 408-9 and Michael Tackeff, "Constructing a Creative Reading: Will US State Cannabis Legislation Threaten the Fate of the International Drug Control Treaties, 51 *Vanderbilt Journal of Transnational Law*, (2018), pp. 266-7.

[12] See for example Helmet Breitmeier, Oran. R. Young and Michael M, Zürn, *Analysing International Environmental Regimes: From Case Study to Database*, (2006), Daniel Bodansky and Elliot. Diringer, *The Evolution of Multilateral Regimes: Implications for Climate Change*, (2010) and Schiele, *supra* note 1)

[13] Heather Hasse, *International Law and Drug Policy Reform*, Report of a GDPO/ICHRDP/TNI/WOLA Expert Seminar, (2014), pp. 34-5 <http://www.swansea.ac.uk/media/Expert%20Seminar%20Report%20-%20International%20Law%20&%20Drug%20Policy%20Reform.pdf >

[14] Arend Lijphart, "Comparative politics and the Comparative Method" 65, 3 *The American Political Science Review* (1971), p. 682.

[15] Mattei Dogan and Dominique Pelassy, *How to Compare Nations*, (1990)

with the descriptive component of what Levy has referred to as the 'atheoretical' or 'configurative-idiographic' than a search for nomothetic rules. [16]

To help better understand the mechanics of regime evolution, or indeed inertia, the article looks to the work of Diehl, Ku and, more recently, Zamora and their exploration of the dynamics of international law. Although not seeking to test their explanatory framework, we draw on their organizational approach and the identification of two distinct but inter-connected aspects of international law and the associated framework for interstate discourse and cooperation. These are mechanisms for 'cross-border interactions', what they call the 'operating system', and those that 'shape the values and goals these interactions are pursuing', the 'normative system.'[17] As has been discussed elsewhere, a variety of factors can help explain the resilience of the GDPR to substantive change;[18] many of which, including political dynamics, fit well with the framework offered by Diehl and colleagues. Of particular interest here, however, is the potential role of treaty structures and mechanisms in generating inertia and instances where the 'operating system may be more resistant to change and not always responsive to alterations in the normative system';[19] a situation that as the case of cannabis policy and the GDPR reveals, leads to asynchronous change with the former to some extent lagging behind the latter and the changing perspectives of some regime members. Beyond content analysis of a range of legal documents and reports, where appropriate primary research for the article also draws on material generated from participant observation and off-the-record meetings and discussions with government officials within the international drug control sphere.[20]

The article begins with an overview of the GDPR. This includes a detailed discussion of operating and normative mechanisms, processes and examples of regime 'change' and transformation as well as their limitations. It then moves on to a brief overview of a selection of MEAs. Here the focus is the operating system and one of the key structural elements of the environmental regime that allow for dynamic change; the existence of a Conference or Meeting of the Parties and related legal structures. These allow for not only regular treaty monitoring and review but also the incorporation of far-reaching changes to environmental instruments. Examples of these mechanisms and other relevant features are explored specifically through structural analysis of aspects of the 1987 Montreal Protocol, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the UN European Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Arhus Convention).

The article concludes by confirming the view that in all issue areas successful regimes must have the capacity to evolve and modernize, a process vital for the maintenance of regime integrity. When examined alongside MEAs, we suggest that where the GDPR is concerned, relative structural homeostasis and an accompanying lack of serious discussion of regime

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[16] Jack S. Levy, "Qualitative Methods in International Relations", in F. Harvey (ed) *Millennial Reflections on International Studies,* (2002), p. 435.

[17] Charlotte Ku and Paul F. Diehl, "International Law as Operating and Normative Systems: An Overview," in C. Ku and P.F. Diehl (eds), *International Law: Classic and Contemporary Reading,* (1998), pp. 31-5, Paul. F. Diehl, Charlotte. Ku and Daniel Zamora, "The Dynamics of International Law: The Interaction of Normative and Operating Systems" 57, 1 *International Organization* (2003) pp. 43-75 and Paul. F. Diehl and Charlotte. Ku, *The Dynamics of International Law*, (2010), p. 2.

[18] David Bewley-Taylor, "Refocusing metrics: can the sustainable development goals help break the 'metrics' trap and modernise international drug control policy?" 17, 2 *Drugs and Alcohol Today* (2017), p. 99.

[19] Diehl, Ku and Zamora, *supra* note 17, p. 48.

[20] Bewley-Taylor has been a member of non-government organization and country delegations to the UN Commission on Narcotic Drugs for over ten years.

evolution may be in part a result of antiquated operating mechanisms. Furthermore, it is posited that in the absence of viable mechanisms for structural change, states wishing to move beyond the confines of the extant regime may need to consider avenues that, while in conformity with international law, are more innovative than in issue areas where more dynamic legal structures are in place.

2. The global drug prohibition regime

The GDPR is an almost universally accepted treaty-based system currently built on a suite of three UN treaties. These are little known examples of so-called 'suppression conventions" that underpin a range of prohibition regimes in international law.[21] Dating back to the first decades of the twentieth century, the bedrock of the regime in its current form is the 1961 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol); one of the many multilateral instruments to be agreed during the exceptional period of treaty making activity in the third quarter of the twentieth century (1951-1975).[22] As in other issue areas, these pieces of hard law are accompanied by periodic soft law instruments (Political Declarations and variations thereof), including the outcomes of United Nations General Assembly Special Sessions. The conventions are also supported by several treaty bodies and agencies to create what is intended to be an internally coherent and mutually reinforcing legal framework.

The regime's overarching goal as expressed in the preamble of the Single Convention is to safeguard the 'health and welfare' of humankind. In so doing it applies a dual imperative: to ensure an adequate supply of pharmaceuticals for the licit market – including World Health Organization (WHO) listed essential medicines - and at the same time prevent the non-scientific and non-medical production, supply and use of narcotic and psychotropic substances. Within this context, the system has been developed on two interconnected tenets. First, a deeply held belief that the best way to protect health and reduce what has become known simply and somewhat vaguely as the 'world drug problem' and the harms associated with it is to minimize the scale of - and ultimately eliminate - the illicit market. And second, that this can be achieved through a reliance on prohibition oriented and supply-side dominated measures.[23] In this way, and while permitting some deviation from its authoritative norm, from an IR perspective the regime has successfully generated a powerful prohibitionist expectancy in relation to how its members approach the non-medical and non-scientific use of substances scheduled in the UN drug control conventions.[24]

2.1 The GDPR's (limited) Capacity for Change

[21] See Nadelmann, *supra* note 6, pp. 479-526. Nadelmann uses the term 'global prohibition regime' to describe the various regimes that have been developed to prohibit certain activities globally. On 'suppression conventions' see Neil Boister, *Penal Aspects of the UN Drug Conventions*, (2001) p 3 and "Human Rights Protections in the Suppression Conventions", 199, 2 *Human Rights Law Review* (2002), p. 210. This contrasts with a purely historical perspective that focusses on the UN drug control treaties in isolation. See, for example, John Collins, "Regulation as Global Drug Governance: How New Is the NPS Phenomenon?", in O. Corazza, A. Roman-Urresstarazu (eds), *Novel Psychoactive Substances: Policy, Economics and Drug Regulation*, (2017), p. 25.

[22] Simmons and Steinberg, *supra* note 5, pp. xxx-xxxi

[23] See 'General Obligations' of the Single Convention, Article 4, 'The parties shall take such legislative and administrative measures as may be necessary…(c), 'Subject to the provisions of this Convention. To limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.'

[24] Bewley-Taylor, *supra* note 2

As suggested above, the GDPR certainly has some capacity for change and evolution. Viewing treaties as core to any regime's operating system and 'an important repository of modes or techniques for change'[25] several processes can be identified to show how the GDPR has changed overtime. While the course of multilateral drug control is sometimes portrayed as 'a smooth continuum connecting events in the first decade of the twentieth century to the present day; an arc of unbroken progress incorporating both soft and hard law instruments alike', a strong case can be made that the Single Convention itself was more than just a consolidating treaty.[26] Rather, although largely successful in achieving this goal, its passage should be regarded as a significant 'watershed' event when the 'multilateral framework shifted away from regulation and introduced a more prohibitive ethos to the issue of drug control'.[27]

Moreover, in codifying into a single instrument most of the pre-1961 'foundational treaties', the Convention was originally intended to be the last word in international drug control.[28] Nonetheless, in response to changes in the nature of the illicit drug market in the following years, member states – notable amongst them the US – felt it necessary to strengthen and expand the UN control framework at various points. Consequently, as well as itself being altered in 1972, the Single Convention was supplemented by the 1971 Convention on Psychotropic Substances and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This was an expansion and evolution of the regime paradoxically necessitated by the ineffectiveness of the Single Convention itself.

From an operating system perspective, it is also important to appreciate not only the capacity of the GDPR to expand its purview through the development of new instruments but also the availability of structural mechanisms for change within the conventions themselves. Key among these is treaty modification, a process that allows for constant adjustment in the scope of the GDPR via the scheduling procedure. While 'often viewed as an obscure issue' scheduling 'lies at the core of the functioning of the international drug control system.'[29] Determinations are based on recommendations from the WHO, or more precisely its Expert Committee on Drug Dependence. These are passed to the Commission on Narcotic Drugs (CND or Commission). A functional Commission of the Economic and Social Council (ECOSOC or Council), the regime's Vienna based 53-member central policy making body makes decisions on adding, removing or transferring between schedules or conventions narcotic drugs and psychotropic substances under international control as laid out in the Single Convention and the 1971 Convention. Provisions concerning changes in the 'scope of control' are contained within articles 3 and 2 of those Conventions respectively. Additionally, in line with Article 12 of the 1988 Convention, the Commission, decides on the inclusion in, deletion from or transfer between its 'tables' 'Substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances,' more commonly referred to as pre-cursors. This decision is made upon recommendations from the INCB. Created under the Single Convention and established in 1968, the Board is the product of a merging of two much older bodies: The Permanent Central Opium Board, created by the 1925 International

[25] Diehl and Ku, *supra* note 17, p. 2.

[26] See David. Bewley-Taylor and Martin. Jelsma, "Regime change: Revisiting the 1961 Single Convention on Narcotic Drugs," 23 *International Journal of Drug Policy* (2012) pp. 72-81.

[27] *Ibid*

[28] *Ibid*, p. 80.

[29] Christopher Hallam, David Bewley-Taylor and Martin Jelsma, *Scheduling in the international drug control system*, 25, Transnational Institute-International Drug Policy Consortium, Series on legislative Reform of Drug Policies, (2014), p. 1 < https://www.tni.org/files/download/dlr25_0.pdf>

Opium Convention and the Drug Supervisory Body, created by the 1931 Convention for Limiting the Manufacture and Regulating the Distribution of Narcotics Drugs. According to its own literature, the INCB is the 'independent and quasi-judicial expert body' for 'monitoring and supporting Governments' compliance with the international drug control treaties.'[30]

At a more substantive level, the drug control treaties also allow for revision through amendment; the formal alteration of a convention article or articles. This option is provided for in Article 47 of the Single Convention, Article 30 of the 1971 and Article 31 of the 1988 Convention. Procedures for amending both the 1961 and 1971 Conventions are almost identical. Parties can at any time notify the UN Secretary-General (UNSG) of a proposal for an amendment, including the reasoning behind the move. The UNSG then communicates the proposed amendment and reasons for it to the parties and ECOSOC, which, depending upon their responses, decides on how to proceed. The amendment procedure of the 1988 Convention differs subtly from its antecedents. In the first instance, the Council is bypassed and the UNSG proceeds on his or her own authority to circulate the proposed amendment and the reasoning behind it to the parties to the Convention and asks whether they accept it.[31]

It was the use of Article 47 of the Single Convention that began the process leading to the Amending Protocol in 1972. Then, owing much to the energetic endeavours of Washington D.C., ECOSOC passed a resolution calling for a plenipotentiary conference to amend the Convention[32] with US diplomats arguing that it was 'time for the international community to build on the foundation of the Single Convention, since a decade has given a better perspective on its strengths and weaknesses.'[33] Held in Geneva, the resulting conference was sponsored by 31 nations, attended by representatives from 97 states and considered an extensive set of amendments. The product of the meeting, the Protocol Amending the Single Convention on Narcotic Drugs, was signed on 25 March 1972 and came into force in August 1975.[34] Rather than making dramatic changes to the Single Convention, the Amending Protocol fine-tuned existing provisions relating to the drug estimates system, data collection and output, while also strengthening law enforcement measures and extradition and the functioning of the Board.[35] Importantly, following provisions within the 1971 Convention, it drew attention to the need to provide treatment and alternatives to penal sanctions for drug users.

All that said, while Article 47 facilitated appreciable treaty revision in the early 1970s and substances are scheduled and rescheduled on a regular basis, both amendment and

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[30] <https://www.incb.org/incb/en/index.html>

[31] For a detailed discussion on modification and amendment see David R. Bewley-Taylor, "Challenging the UN Drug Control Conventions: Problems and Possibilities", 14, 2 *International Journal of Drug Policy* (2003), pp. 174-6.

[32] ECOSOC resolution 1577, 21 May 1971. Although not mentioned in Article 47, the Council may submit proposed amendments to the General Assembly for 'consideration and possible adoption in accordance with Article 62, paragraph 3 of the United Nations.' *Commentary on the Single Convention on Narcotic Drugs, 1961,* (1973), pp. 462-463

[33] United Nations, 'Memorandum of the United States of America Respecting its proposed Amendments to the Single Convention on Narcotic Drugs, 1961,' E/CONF.63/10 in *United Nations Conference to Consider Amendments to the Single Convention on Narcotic Drugs, 1961 (Geneva 6 – 24 March 1972): Official Records,* vol. 1 (1974), pp. 3-4 cited in M. Jelsma, "UNGASS 2016: Prospects for Treaty Reform and UN System-Wide Coherence on Drug Policy", *Journal of Drug Policy Analysis* (2016)

[34] See Bewley-Taylor and Jelsma, *supra* note 28, pp. 78-79. For a detailed account of the protocol see Nelson G. Gross and G. J. Greenwald, "The 1972 narcotics protocol," 2 *Contemporary Drug Problems* (1973) pp. 119-163

[35] Neil Boister, *Penal Aspects of the UN Drug Conventions* (2001), pp. 47-48.

modification of all three conventions are highly susceptible to blocking action of states wishing, for whatever reason, to preserve the existing shape of the regime. This is a situation that as Deihl, Ku and Zamora demonstrate in relation to the role of 'leading states', is not unique to this issue area.[36]

In terms of alteration of schedules, and with its origins dating back to the 1931 Convention,[37] the Single Convention requires a simple majority of CND member states. For the 1971 Convention a decision of two-thirds is required. Both treaties also include a facility whereby the request of one Party can trigger the appeal of a scheduling decision to the Council, whose majority-based verdict is final.[38] Although the Board rather than WHO takes the lead in the modification process, similar issues pertain regarding the 1988 Convention. Like the 1971 Convention, the Commission's decision must be carried with a two-thirds majority and again any Party can initiate a review of the CND's decision by the Council. As with the earlier Conventions, ECOSOC may confirm, alter, or reverse the decision of the Commission.

Similarly, procedures within all three treaties allow even limited opposition to a proposed amendment to thwart the initiative. For both the 1961 and 1971 Conventions, if no Party rejects the amendment within 18 months after circulation 'it shall thereupon enter into force.' (Article 47 (2) and Article 30 (2) respectively). However, if a proposed amendment is rejected by one or more parties the Council may follow suit in 'response to objections and the substantial arguments provided'[39] or decide whether a conference should be called to consider the amendment. As well as operating on a more generous timetable, provisions within the 1988 Convention differ somewhat in other respects. According to Article 31 (1), if a proposed and circulated amendment has not been rejected by any party within 24 months, 'it shall be deemed to have been accepted and shall enter into force in respect of a Party…' However, moving away from 'tacit approval' within the earlier treaties,[40] this comes into effect ninety days after 'that party has deposited with the Secretary General an instrument expressing its consent to be bound by that amendment.' In this case, if the proposed amendment is rejected by any party, the UNSG must consult with the parties and 'if a majority so requests, bring the matter to the Council which may decide to call a conference.' (Article 31 (2)).

The origins of the provisions for amendment within the current UN conventions appear to stem from articles concerning 'revisions' in the 1931 Convention and the 1936 Convention for the Suppression of the illicit Traffic in Dangerous Drugs, the only foundational treaties to contain such mechanisms.[41] The approach may also have been influenced by Article 22 of the 1953 Protocol for Limiting and Regulating the Cultivation of the poppy Plant, the Production of, International Whole Trade in and Use of Opium.[42] This was a treaty that came into force

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[36] Diehl, Ku and Zamora, *supra* note 17, p. 60.
[37] Hallam, Bewley-Taylor and Jelsma, *supra* note 31, p. 3.
[38] *Ibid*

[39] International Drug Policy Consortium Advocacy Note, *Correcting a historical error: IDPC calls on countries to abstain from submitting objections to the Bolivian proposal to remove ban on the chewing of the coca leaf*, (2011) < https://www.tni.org/files/publication-downloads/idpc_advocacy_note_-_support_bolivia_proposal_on_coca_leaf.pdf >
[40] *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Done at Vienna on 20 December 1988*, (1998) pp. 412-13.
[41] Article 33, 1931 Convention for the Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, (as amended by the protocol signed at Lake Success, 1947) and Article 25 of the 1936 Convention for the Suppression of the illicit Traffic in Dangerous Drugs (as amended by the protocol signed at Lake Success, 1947) <https://treaties.un.org/doc/Treaties/Temp/1999/01/13/Ch_VI_7p.pdf>
[42] Article 22 <https://treaties.un.org/doc/Treaties/1963/03/19630308%2002-01%20AM/Ch_VI_14p.pdf >

in 1962 only to be superseded by the 1961 instrument in 1964.[43] Although the thresholds and bodies involved in the pre-UN treaties differ to those within the existing regime, the option of convening all the parties to discuss proposed amendments is complicated relative to more recent instruments in other issue areas, including MEAs. This is the case in spite of efforts at the 1961 plenipotentiary conference to reduce the complexity of the process contained in early drafts of the Single Convention. As a reading of the *travaux* reveals, discussions around the amendment procedures focused on keeping the process of whether to convene a conference to consider amendments as simple as possible with the outcome leaving much discretion with ECOSOC.[44]

As such, despite some differences in approach for both modification and amendment, the result is essentially the same. Formal mechanisms for revision exist within all the treaty texts and consequently generate the impression of evolutionary capacity. Yet, in reality substantive change is difficult to achieve. On this point, it is worth recalling a message within the first edition of the *World Drug Report* in 1997. Then the United Nations International Drug Control Programme, forerunner of the current UN agency responsible for coordinating international drug control activities, the United Nations Office on Drugs (UNODC), noted that 'Laws – even the international Conventions – are not written in stone; they can be changed when the democratic will of nations so wishes it.'[45] With regard to amendment in particular, while remarkably progressive for a UN document, sentiment within the publication belies the daunting political and procedural obstacles confronting any member state or states wishing to initiate a formal change of the current regime. This is particularly so during the current era when, unlike the early 1970s, there is significant divergence in the way regime members are choosing to deal with substances deemed illicit for anything other than medical and scientific purposes. Further complicating the situation is the often-contradictory approach to protecting regime integrity deployed by parties who are themselves deviating in one way or another from the regime's authoritative norm; a point to which we will return.

Indeed, while as in other issue area regimes norms are important in the overall functioning of the GDPR, they are particularly relevant to the last aspect of its operating system to be discussed here, the generation of resolutions and decisions by bodies such as the CND, ECOSOC and the UN General Assembly. An important component of treaty evolution, arguably it is here where amalgamation of the regime's operating and normative systems is most obvious and Diehl and colleagues' system 'nexus' can be seen.[46] This is the case since, working within the over-arching principles of the regime framework, resolutions and decisions do much to reaffirm or adjust the regime's normative tone and character. Although non-binding, resolutions in particular are considered to have some moral weight. This is particularly so regarding the products of the CND's 'Committee of the Whole' (CoW), the technical committee where resolutions are negotiated and agreed upon before being submitted to the CND Plenary, and then ECOSOC, for the formality of adoption.[47] It is consequently in the CoW that on some occasions parties engage in laboured and even heated debates and negotiations on specific issues and how they relate to interpretative practice around both the letter and the spirit of the treaties. Considerable diplomatic capital may be

[43] William. B. McAllister, *Drug Diplomacy in the Twentieth Century: An International History*, (2000), pp. 179-184, 202-204 and David. R. Bewley-Taylor, *The United States and Drug Control, 1909-1997* (1999), pp. 92-93.
[44] *United Nations Conference for the Adoption of a Single Convention on Drugs, New York – 24 January – 25 March 1961, Official Records. Volume I: Summary Records of Plenary Meetings*, (1964) (E/CONF.34/24), pp. 175-177.
[45] United Nations International Drug Control Programme, *World Drug Report* (1997), p. 199.
[46] Diehl, Ku and Zamora, *supra* note 17, p. 53.
[47] <https://www.unodc.org/unodc/en/commissions/CND/CND_Meetings-Current-Year.html>

invested in this process because interpretations that remain uncontested by other parties within the Commission can over time become part of acceptable scope for interpretation and shift the regime's normative focus.[48] It is plausible to suggest that the intensity of negotiations around not only some CND Resolutions but also more prominent soft law instruments such as Political Declarations is in some ways a result of the lack of realistic structural modalities for formal revision of the regime.

On this point, the GDPR is certainly not free from the maxim that treaty interpretation is an art not a science. Utilization of the existing flexibility and ambiguity within the texts has over the years permitted a significant number of states increasingly dissatisfied with the punitive, and as growing evidence reveals ineffective,[49] approach privileged by the conventions to engage in a process of what can be called 'soft defection'. Rather than quitting the regime, utilizing the inherent flexibility within the treaties these states have chosen to deviate from its prohibitive norm. Such an approach creates policy space at the national level while allowing the parties to technically remain within the legal boundaries of the Conventions. Since norms are crucial to the essential character of any regime, such a process of what should be considered normative attrition represents a form of regime transformation. Crucially, however, in this case the transformation involves regime weakening and changes *within* rather than a more substantive change *of* the regime. This would require a significant alteration in normative focus via formal treaty revision or other processes.

While regime transformation through soft defection can be identified from the early years of the contemporary UN regime, it has been especially prominent since the late 1990s. The last twenty-years or so have seen a growing number of parties engage with not only the public health-oriented harm reduction approach, but also implement the depenalization or decriminalization of the possession of drugs for personal use, particularly in relation to cannabis, as well as medical marijuana schemes.[50] Such a shift has had much to do with an improving evidence-base concerning the effectiveness of market interventions, particularly in relation to health oriented versus law enforcement dominated approaches. This has also been accompanied by an increasing realization of the tension that often exists between drug policy and human rights norms and obligations; a tension that is exacerbated by the GDPR. As Barrett and Nowak highlighted in 2009, 'Unlike human rights law, which focuses to a large extent on the protection of the most vulnerable, the drug conventions criminalise specifically vulnerable groups. They criminalise people who use drugs, known to be vulnerable to HIV, homelessness, discrimination, violence and premature death…'[51] In this regard in particular it is difficult to argue with the view that, although the drug control treaties are certainly impressive in terms of participation, 'their operation has been an almost unmitigated failure,

[48] David Bewley-Taylor and Martin Jelsma, *The UN drug control conventions: The limits of latitude*, 18, Transnational Institute-International Drug Policy Consortium, Series on Legislative Reform of Drug Policies, (2012), p. 3.

[49] For one of the most recent meta-level non-UN authored trend analyses of the international market see, Peter Reuter and Franz Trautman, *A report on the global illicit drug markets, 1998-2007* (2009). For an overview of the 'thriving' and increasingly diversified market see the UN *World Drug Report 2017* <https://www.unodc.org/wdr2017/field/Booklet_1_EXSUM.pdf >

[50] Bewley-Taylor, *supra* note 7, passim

[51] Damon Barrett and Manfred Nowak, "The United Nations and Drug Policy: Towards a Human Rights Based Approach", in A. Constantinides and N. Zaikos, (eds.) *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, (2009), p. 557.

producing consequences directly opposite to those envisaged.'[52] Paradoxically, while legitimizing space for policy plurality at the domestic level, through working within its overarching architecture the process of soft defection actually helps to sustain the existing operating structures. Moreover, as the Board's changing interpretative stance on several policy choices demonstrates, at a system level the regime has an impressive ability to absorb normative shifts.

2.2 From soft defection to recalibration and breach.

The process of soft defection and absorption can only go so far, however. While containing considerable flexibility, a reading of the treaties, their accompanying commentaries and *travaux* as well as related state practice reveals that the plasticity of the treaty system is not infinite.[53] Recent years have witnessed the policy choices of several parties, or territories therein, reveal not only the regime's shortcomings in dealing with advances in scientific knowledge and international human rights law, but also its suborn resistance to substantive change. The result has been the forced use of extraordinary legal procedures and recourse to what can be regarded as unconvincing legal argumentation. The latter has created a state of legal limbo that does little for either the credibility or integrity of the regime and generates potential problems for international law well beyond the realms of transnational drug policy.

As has been well documented elsewhere,[54] in an effort to reconcile its international obligations under the GDPR with its new constitution, the government of Bolivia moved to amend the Single Convention in March 2009 by removing two sub-paragraphs of Article 49 that bans coca leaf chewing. This was the first attempt at treaty amendment since 1972. As entitled under the provisions of Article 47, a group of 17 states presented objections within the 12-month period established by the procedure and blocked the amendment.[55] Having had the option for amendment denied, La Paz consequently had little choice but to withdraw from the Single Convention, (via Article 46, Denunciation), and re-accede with a reservation, pursuant to Article 50 (3). This is a legitimate although only occasionally used practice deployed in the 'absence of alternative paths to resolve legal conflicts.'[56] The success of the procedure was predicated on the hope that less than one-third of the parties to the Convention would object. Ultimately only 15 countries, considerably short of the necessary 62, rejected the move and Bolivia's re-accession entered into force with its reservation on February 10, 2013. This marked the end of an arduous process bringing its coca chewing policy into compliance with international law.

It is not insignificant that efforts to block Bolivia's proposed amendment to the Single Convention were led by the US, a long time and particularly active defender of the GDPR and a Party no doubt troubled by policy shifts concerning the recreational use of cannabis. Despite, due to the unique character of the issue, the fact that any resultant changes would – as has been now shown - have only a limited direct impact on the US or any of the other

[52] Richard Volger and Shahrzad Fouladvand, "The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 and the Global War on Drugs" in P. Hauk and S. Peterke (eds), *International Law and Transnational Organized Crime* (2016), p. 107.

[53] Bewley-Taylor and Jelsma, *supra* note 48.

[54] See for example, Transnational Institute press release, 'Bolivia wins a rightful victory on the coca leaf: Creates positive example for modernizing the UN drug conventions <https://www.tni.org/en/article/bolivia-wins-a-rightful-victory-on-the-coca-leaf-0> and TNI website more generally. Also see Bruce Reidel, "I'd like to Make a reservation: Bolivian Coca Control and Why the United Nations Should Amend the Single Convention on Narcotic Drugs," 49, 711 *George Washington International Law Review*, (2016-17).

[55] See Objections and support for Bolivia's coca amendment <http://druglawreform.info/en/issues/unscheduling-the-coca-leaf/item/1184-objections-and-support-for-bolivias-coca-amendment>

[56] Transnational Institute press release, *supra* note 54

objectors, the amendment was opposed on the grounds that it would damage the integrity of the regime. An unconvincing legal argument bearing in mind the longstanding and widespread practice of coca chewing within parts of Bolivia. Ironically, this position was maintained at the same time as the first of a steady trickle of US states moved to create regulated markets for the recreational use of cannabis; a policy choice that by all reasonable treaty interpretations is not permissible within the current confines of the GDPR.[57]

Even though the creation of legally regulated markets for the non-medical and non-scientific use of cannabis within a state or any territories thereof represents a clear breach of international law, the US Federal government has constructed a legally dubious, but politically seductive, argument around dynamic interpretation and treaty flexibility to defend the awkward position in which it finds itself.[58] A problematic legal justification has also been deployed by Uruguay, which in 2012 became the first nation state to pass a bill to legally regulate the cannabis market from seed to sale. In the Uruguayan case, however, while acknowledging that the treaty system may require 'a revision and modernization' at some point,[59] Montevideo defends its position by referring to the need to respect other legal obligations, particularly those regarding human rights principles. These, according to this perspective, should always take precedence over drug control in case of any doubt. Moreover, the government claims its policy decision is fully in line with the drug control treaties' original objectives, which they have subsequently failed to achieve: the protection of the health and welfare of humankind.[60]

Such 'untidy legal justifications'[61] have certainly permitted both the US and Uruguay to deflect much criticism concerning what are widely regarded to be breaches of certain treaty obligations. That said, despite justifiable criticism from the INCB and some member states, the more widespread calculated political denial that currently pervades the conference rooms of Vienna[62] is unlikely to remain tenable in the long term. A reluctance to address the 'elephant in the room'[63] is no doubt the result of a complex mix of factors that go beyond the scope of this article, including the particular nature of drug control as an issue area of multilateral concern. Nonetheless, it is plausible to suggest that the existence of this legal netherworld can in part be explained by the GDPR's internal architecture, including its non-compliance structures.

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[57] See INCB *supra* note 8, Bewley-Taylor and Jelsma, *supra* note 50, Lord Carlile of Berriew, CBE, QC and Sarah Clarke (2013) *The UN Drug Conventions – Room for Flexibility,* Legal Opinion commissioned by All-Party Parliamentary Group for Drug Policy Reform.

[58] Jelsma, *supra* note 35, David Bewley-Taylor, Martin Jelsma and Damon Barrett, "Fatal Attraction: Brownfield's flexibility Doctrine and Global Drug Policy Reform", *Huffpost*, The Blog, (2015) <https://www.tni.org/en/article/fatal-attraction-brownfields-flexibility-doctrine-and-global-drug-policy-reform > For a critique of the application of dynamic interpretation see Rick Lines, Damon. Barrett and Patrick Gallahue, "Guest Post: Has the US just called for unilateral interpretation of multilateral obligations?" *Opinio Juris* 18 (2014) <http://opiniojuris.org/2014/12/18/guest-post-us-just-called-unilateral-interpretation-multilateral-obligations/#more-31427>

[59] David Bewley-Taylor, Tom Blickman and Martin Jelsma, *The Rise and Decline of Cannabis Prohibition: The History of Cannabis in the UN Drug Control System and Options for Reform*, (2014) p. 68.

[60] *Ibid*, p. 69.

[61] *Ibid*, p. 68.

[62] Bewley-Taylor, CND Participant observation 2016-18. Also, International Drug Policy Consortium, *supra* note 7

[63] David Bewley-Taylor et al, *Cannabis regulation and the UN treaties – strategies for reform* (2016) <https://www.tni.org/files/publication-downloads/cannabis_regulation_and_the_un_drug_treaties_june_2016_web_0.pdf>

The INCB's relies primarily on 'naming and shaming' what it deems to be errant parties into changing their behaviour.[64] It is true that the Single Convention allows for some consultation in this regard. According to Article 9 all measures taken by the INCB must be 'with the intent to further the cooperation of Governments with the Board and to provide the mechanism for a continuing dialogue between Governments and the Board which will lend assistance to and facilitate effective national action to attain the aims' of the Convention. Nonetheless, this structure does not easily allow for or actively encourage more inclusive and responsive discussion with other parties and provides little guidance concerning the Board's role in resolving instances of treaty breach beyond the use of Article 14. Compounding this predicament, its formal powers under this Article are limited to recommending an embargo on the import and export of drugs to a Party seen to be 'endangering' the aims of the Single Convention. This is an inherent paradox within the instrument that demonstrates how its prohibition-oriented character generates tensions with the regime's own overarching goal, 'the health and welfare of mankind'. Indeed, Article 14 has never been triggered, although some states – notably Afghanistan – have been called to account in line with the mechanism. The 1988 Convention is also an exceptional case of a UN treaty that does not have any monitoring or review mechanism because the INCB mandate was limited to the precursor control regime established under Article 12. Moreover, for many years the Board benefitted from the US's unofficial and unilateral policing role, including the 'certification' and 'Presidential determination' processes.[65] Although Washington D.C still flexes its considerable diplomatic muscle within the issue area, its own position vis-à-vis regulated cannabis markets at the state level puts the US in an awkward position internationally.

The US stance on cannabis legalization is not inconsequential. It might be argued that if the US interpretative position attracted a significant level of political acceptance and became part of an extended practice of flexible treaty interpretation, it may open room for manoeuvre. Other parties might be able to apply similar arguments, not only to legally justify cannabis regulation, but for other contested policy options that may emerge.[66] Nonetheless, not only would such a unilateral 'a la carte' approach to multilateral treaty obligations have consequences in other issue areas, a key question remains, where would the judgement on the use of flexibility lie? As Lines, Barrett and Gallahue presciently argued in 2014, 'the flexibility that the US seeks for itself may not extend to others at all'[67]; a prediction confirmed by US-Jamaican narco-diplomacy in 2015. Then, in response to early and generalised discussions concerning the creation of legal cannabis markets on the island, Washington, D.C. strongly opposed any move on the grounds that Jamaica was a transit country.[68] With such a complex and often contradictory politico-legal environment framing discussion - or more accurately stifling discussion - on cannabis at the CND, the future remains unclear. However, the recent decision of the Canadian government to openly admit that moves by the Trudeau administration to establish a regulated for market the drug will result in the country 'being in contravention of certain obligations related to cannabis under the UN drug conventions'[69] seems likely to do much to influence the choices of other states

[64] H. Richard Friman, "Behind the Curtain: Naming and Shaming in International Drug Control" in H.R. Friman, *The Politics of Leverage in International Relations: Name, Shame and Sanction*, (2015), pp. 143-164.
[65] Julie Ayling, "Conscription in the War on Drugs: Recent reforms to the US drug certification process", 16, 6 *International Journal of Drug Policy* (2005), pp. 367-83.
[66] Bewley-Taylor, Blickman and Jelsma, *supra* note 59, p. 70.
[67] Lines, Barrett and Gallahue, *supra* note 58.
[68] Bewley-Taylor, off-the-record discussions with Jamaican government official, March 2015.
[69] David Bewley-Taylor, Tom Blickman, Martin Jelsma and John Walsh, "Canada's Next Steps on Cannabis and the UN Drug Treaties," *iPolitics*, (2018) < https://ipolitics.ca/article/canadas-next-steps-on-cannabis-and-the-un-drug-treaties/>

struggling to deal with the structural rigidity of the regime. This is particularly so if, as appears to be the case, the state of non-compliance is intended to only be temporary while appropriate legal avenues are explored to adjust Canada's relationship with the regime. As the emerging literature on the topic on treaty reform, including other articles in this special issue, demonstrates, there are various options available for parties to pursue, each with their own advantages and shortcomings.[70]

In the foreword to its annual report for 2016, the INCB President stated that while '…some actors will continue to talk about the need to "modernize" the treaties and their provisions; INCB is of the view that the international drug control system continues to provide a modern and flexible structure that can meet the world's drug control needs for today and tomorrow.'[71] In so doing, despite growing challenges to such a perspective,[72] the Board dismisses the concept of regime evolution and modernization and the fact that substantive structural change does take place in other issue areas. Examples can be found in a range of other contemporary transnational issues of concern. This includes the global anti-money laundering regime based around the UN Convention against Transnational Organised Crime (UNTOC or Palermo Convention) and the UN Convention against Corruption (UNCAC), both of which build upon provisions within the 1988 Convention.[73] Another example can be found within the realm of international trade policy. As the transition from the regime based around the General Agreement on Tariffs and Trade (GATT), a system emerging from the same post war environment as the GDPR, to the World Trade Organisation demonstrates, evolution is not always smooth.[74] This was the case even amidst a widespread realization among parties that the GATT was 'no longer as relevant to the realities of world trade as it had been in the 1940s.'[75] Yet, clearly change can and does occur. Within the context of this discussion, however, it is instructive to examine the modernization of the regime for environmental regulation. While it would be unwise to attempt to draw direct parallels between the two regimes, a specific focus on some of the mechanisms within a selection of its MEAs reveals the dynamic nature of a truly modern regime.

3. Regime change and modernization in the environmental regime

In contrast to the GDPR and its poor alignment with international human rights law, the regime for environmental regulation has been exemplified by a robust evolution of Multilateral Environmental Agreements the structures of which allows for taking into account the development of International Environmental Law (IEL); defined as 'substantive, procedural and institutional rules of international law that have their primary objective the

[70] See for example, Robin Room et al, *Cannabis Policy: Moving Beyond Stalemate* (2010), Robin Room, "Reform by Subtraction: The Path of Denunciation of International Drug Treaties and Reaccession with Reservations", 23, 5 *International Journal of Drug Policy* (2012), pp. 401-6, David Bewley-Taylor et al, *Cannabis Regulation and the UN Drug Treaties: Strategies for Reform*, (2016) <http://www.swansea.ac.uk/media/Cannabis%20Regulation%20and%20the%20UN%20Drug%20Treaties_June%202016_web%20(1).pdf> and Tackeff, *supra* note 13.

[71] International Narcotics Control Board, *Report of the International Narcotics Control Board for 2016*, (2017), p. iii

[72] See, for example, International Drug Policy Consortium, *supra* note 11 and Bewley-Taylor CND Participant Observation.

[73] William Gilmore, "Money Laundering" in N. Boister and R.J. Currie (eds), *Routledge Handbook of Transnational Criminal Law*, (2014), pp. 332-337 and Peter Reuter and Edwin M. Truman, *Chasing Dirty Money: The Fight Against Money Laundering* (2004), p. 89.

[74] Bewley-Taylor, *supra* note 7, pp. 282-283.

[75] WTO, *Understanding the WTO* (2010), p. 17 cited in Bewley-Taylor, *supra* note 7, p. 283.

protection of the environment'.[76] As Schiele has pointed out, 'While MEAs are multilateral treaties concluded under international law and may therefore be mistaken for static legal instruments, they frequently provide for the establishment of an institutional apparatus and specific processes which allow for their constant dynamic evolution'.[77]

With the UN Environmental Programme (UNEP) a 'particularly important organization in the evolution of conventions and instruments in the field of environmental protection'[78] the environmental regime and the instruments of which it is comprised are unique in the way that they incorporate fast changing IEL and its principles. For example, even older MEAs such as the Convention on the Prohibition of Trade of Endangered Species of Fauna and Flora (CITES), which at its inception was essentially a trade convention, has evolved over time to acquire an ecological dimension. This brought it into line with purely ecological MEAs such as the 1992 Convention on Biological Diversity. Such an evolutionary process was possible through the adoption by CITES' governing body of a decision to incorporate into the Convention the precautionary principle; a new principle underlying IEL that aims to provide guidance in the development and application of International Environmental Law where there is scientific uncertainty.[79] Indeed, there are several characteristics of MEAs that allow for such flexibility and the possibility of adjusting treaties to consider changing scientific knowledge and development of IEL.

First, and key among these, is the form of the governance structure of MEAs. Rather than a limited membership functional commission of ECOSOC, or officially the Council itself, as is the case with the GDPR, the highest decision-making body of MEAs is the Conference of the Parties (COPs), in some instances called the Meeting of the Parties (MOPs).[80] All states that are Parties to a convention are represented at the COP where they regularly and explicitly review treaty implementation and take decisions necessary to promote their effective operation.

The first MEA which established a form of COP was the 1971 Ramsar Convention on Wetlands of International Importance. Another example from the same era is the London Convention on the Prevention of Marine Pollution in 1972. Although the COP within both instruments possessed limited power, Schielle points out that the first MEA to establish a 'modern' COP with more comprehensive powers was CITES. Indeed, 'all three conventions were negotiated under the auspices of the UNEP, which implies that a learning process with the gradual evolution of the modern concept of a COP took place.'[81] Treaties subsequently negotiated under UNEP also establish a modern COP with far-reaching competences.[82] There remains some debate surrounding the precise power of COPs. Nonetheless, there is general agreement that, among other things including performing an important and regularized reviewing function, the organs are 'responsible for the dynamic evolution of MEAs, providing permanent fora for their further development and revision'.[83]

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[76] Philippe Sands et al, *Principles of International Environmental Law* (3rd ed., 2012), p. 13.
[77] Schiele, *supra* note 1. Also see Bodansky and Diringer, *supra* note 12.

[78] Malcolm. N. Shaw, *International Law*, (2008), p. 846.
[79] Sands et al, *supra* note 76, p. 218.
[80] This is also a feature within the field of non-proliferation. Scott, *supra* note 1, p. 162.
[81] Robin R. Churchill and Geir Ulfstein, "Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law, 94, 4, *The American Journal of International Law* (2000), p. 630.
[82] Schiele, *supra* note 1, p. 40.
[83] Volker Röben, "Institutional Developments under modern international environmental agreements", in A. von Bogandy and R. Wolfrum (eds.), *Max Planck Yearbook of United Nations Law* (1999), Vol. 3, pp. 363

Following the steps set out in the MEA and the rules of procedure, a COP adopts legally binding or non-binding decisions containing further commitments of parties. 'This function', it has been noted, 'establishes a more effective alternative to ad hoc diplomatic conferences negotiating specific issues'. It is also important to note that COPs are cheaper than in terms of cost.[84] Discussion exists concerning precisely how COPs differ to diplomatic conference and on this point Brunnée sees them 'hybrids between issue-specific diplomatic conferences and the permanent plenary bodies of international organizations,' pointing out that '…there has been considerable interest in shifting patterns in MEA-based law-making processes, prompted in large measure by the sense that conventional processes are too sluggish to produce timely responses to global environmental decline.' [85]

Second, and of considerable importance, is the integration within the structure of MEAs of formalized and permanent technical and expert bodies that act in an advisory capacity to the COPs and are especially well equipped to deal with various aspects of the agreements' areas of concern. This contrasts with the GDPR where there is arguably limited opportunity for discussion of scientific advances and improvements in understanding, particularly with the traditional – although now changing - marginalization of the WHO within the drug control regime. Within the realm of MEAs, the centrality of expertise is not a particularly recent innovation. Even the 70-year-old International Whaling Commission (IWC), consisting of Commissioners representing all State parties to the 1946 International Convention of the Regulation of Whaling (ICRW) has a very well-developed structure consisting of three main committees, prominent among those the Scientific Committee.

Third, the legal structure of some MEAs allows for the incorporation of far-reaching changes. These include provisions, called 'enabling clauses', which defer to future decisions of the COPs certain developments or a clarification of a treaty regime. These have been described as 'in general giving a specific mandate to the Conference of the Parties…to elaborate (more detailed) rules in a particular area without providing for specific amendment procedure.'[86] Within this context, as will be discussed, compliance procedures play an important role. As Klabbers notes, they 'may well be considered as integral parts of the institutionalization of international environmental law.' Further, he points out, 'the procedures tend to be non-adversarial in nature, tend to not focus on "breach" but on "non-compliance" and tend to result in making recommendations to the parties as to how to assist the state in non-compliance.'[87] In the following sections we offer a brief examination of specific MEAs to highlight some of these features, as well as other relevant mechanisms pertaining to dynamic evolution.

3.1 The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Annually, international wildlife trade is estimated to be worth billions of dollars and to include hundreds of millions of plant and animal specimens. The trade is diverse, ranging from live animals and plants to a vast array of wildlife products derived from them, including food products, exotic leather goods, wooden musical instruments, timber, tourist curios and

[84] Schiele, *supra* note 1 and Geir Ulfstein, "Treaty Bodies" in D. Bodansky, J. Brunnée and E. Hey (eds.), *The Oxford Handbook of International Environmental Law* (2007), p. 881

[85] Jutta Brunnée, "COPing with Consent: Law-Making Under Multilateral Environmental Agreements," 15, *Leiden Journal of International Law* (2002), p. 15-16.

[86] Malgosia Fitzmaurice, "Consent to be Bound – Anything New under the Sun?", 74 *Nordic Journal of International Law* (2005), pp. 487-8.

[87] Jan Klabbers, *International Law*, (2013), p. 264.

medicines.[88] One of the oldest and most expansive MEAs currently in existence, CITES accords varying degrees of protection to more than 35,000 species of animals and plants, whether they are traded as live specimens, fur coats or dried herbs. The species covered by the Convention are listed in three Appendices, according to the degree of protection they need. The decision-making body for CITES is the COP, which is established in Article 11 of the Convention. The Convention's Secretariat is administered by the UNEP, as laid down in Article 11 (1). Between the regular meetings of the COP the Standing Committee oversees implementation. For scientific issues the Conference of the Parties established an Animals Committee and a Plants Committee.

Indeed, CITES is one of the MEAs which has evolved the most through the resolutions of the COP. As noted above, as a trade convention signed in early 1970s, it was not originally based on any ecological principles. However, it evolved on the basis of COP resolutions such as Conf. 9.24 (COP15) that adopted the precautionary principle. CITES is also very flexible as parties can take out a 'reservation' on species listings, in which case they are treated as a non-Party to the Convention with respect to that species until their reservation is withdrawn.

Like other MEAs, CITES has also developed a strict non-compliance procedure (NCP). As an example of the Convention's ability to change substantively over time, the establishment of the NCP followed developments in the Montreal Protocol.[89] The main organ in charge of non-compliance is the Standing Committee which advises on measures to the COP. There are several measures that can be adopted in cases of non-compliance, with national reports that are subject to in-depth review by the special organs at the heart of the process.

3.2 The 1987 Montreal Protocol on Substances that Deplete the Ozone Layer

The Montreal Protocol on Substances that Deplete the Ozone Layer (MP), a Protocol to the 1985 Vienna Convention for the Protection of the Ozone Layer, was designed to reduce the production and consumption of ozone depleting substances to diminish their abundance in the atmosphere, and thereby protect the earth's fragile ozone layer. The original Montreal Protocol was signed on 16 September 1987 and entered into force on 1 January 1989. The instrument is considered a success story. The UNEP has predicted that the ozone layer should be back to its pre-1980 levels and condition between 2050 and 2075.

Crucially, the legal and organisational structure of the MP is designed to respond to new scientific discoveries and consequently act in a rapid manner. It has a classical amendment procedure, which means ratification by the parties of the Protocol as laid out in the Vienna Convention on the Law of Treaties (VCLT). The MP was amended four times to enable, among other things, the control of new chemicals and the creation of a financial mechanism to enable developing countries to comply. Specifically, the Second, Fourth, Ninth and Eleventh MOPs to the Montreal Protocol adopted, in accordance with the procedure laid down in paragraph 4 of Article 40 of the VCLT, four Amendments to the Protocol; the London Amendment (1990), the Copenhagen Amendment (1992), the Montreal Amendment (1997) and the Beijing Amendment (1999). Through amendment the Montreal Protocol also included explicitly the precautionary principle in its provisions, thus keeping abreast with the developments in environmental law.

Changes in the MP, under Article 2(9), also introduced a new procedure of adjustments, which may concern a tightening up of the elimination procedure. This provision thus enables the parties to the MP to adopt decisions which, in the event of not reaching consensus, are

[88] See <https://www.cites.org/eng/disc/what.php> and Pierre-Marie Dupuy and Jorge E. Viñuales, *International Environmental Law* (2015), pp. 167-173.
[89] Sands et al, *supra* note 76, p. 164.

taken on the basis of a majority vote that then bind all parties. This is a revolutionary provision, which develops the original Protocol.

In addition to adjustments and amendments to the MP, the MOP to the Protocol meet annually and take a variety of decisions aimed at enabling effective implementation of this important legal instrument. By the 22nd MOP in 2010 the parties had taken over 720 decisions.

One of the most important achievements of the MP relative to this discussion, however, is the establishment of the Non-Compliance Procedure. It is worth noting that the NCP was adopted by the Decision of the MOP on the basis of the so-called 'enabling clause' of the MP in Article 8: 'The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance.' As such, it was not adopted on the basis of the MP itself. Rather, a permanent NCP was adopted at MOP-4 (1992). It has the Implementation Committee as the body to receive and consider reports of non-compliance. Non-compliant parties are given notice of the allegations and an opportunity to respond. The Committee must report any recommendations to the MOP. The permanent non-compliance mechanism was reviewed and amended at MOP-10. The amendments, *inter alia*, required the Implementation Committee to report persistent patterns of non-compliance to the MOP and make appropriate recommendations to maintain the integrity of the Protocol.

The MP is the first MEA to incorporate multilaterally determined penalties into its range of non-compliance responses. However, it is vital to stress that although containing provisions for sanctioning non-compliant states, the central aim of the NCP is to provide assistance. The punishment component can be considered as little more than a sideshow. As Yoshida notes, 'Compared with traditional judicial settlements that usually require time-consuming processes, the NCP regime seems more flexible, simple and rapid.' Moreover, 'In light of the step-by-step negotiation process of the NCP regime, which seeks feasible and amicable solutions, the international mechanism shows a scrupulous respect for the sovereignty of ozone regime member states.'[90]

3.3 The 1998 UN European Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention)

The Aarhus Convention is a new kind of environmental agreement. It 'establishes a number of rights of the public (individuals and their associations) with regard to the environment.' Moreover, parties to the Convention are required to make the necessary provisions so that public authorities (at national, regional or local level) will contribute to these rights to become effective. The Convention provides for the 'right of everyone to receive environmental information that is held by public authorities, 'the right to participate in environmental decision-making' and the 'right to review procedures to challenge public decisions' that have been made without respecting these two rights or 'environmental rights in general.'[91] As such, the subject of the Convention goes to the heart of the relationship between people and governments. The Convention is not only an environmental agreement, with for example its implementation of Principle 10 of the Rio Declaration (the procedure for environmental rights), it is also a Convention about government accountability, transparency and responsiveness. Speaking as the instrument came into force in 2001, the UN Secretary-

[90] Osamu Yoshida, "Soft Enforcement of treaties: The Montreal Protocol's Noncompliance Procedure and the Functions of Internal International Institutions," 10, 95 *Colorado Journal of International Environmental Law*, (1999), p. 99.
[91] <http://ec.europa.eu/environment/aarhus/>

General, Kofi-Annan, stated that 'The Aarhus Convention is the most ambitious venture in environmental democracy undertaken under the auspices of the United Nations.'[92] For Mary Robinson, United Nations High Commissioner for Human Rights, it represented a 'remarkable achievement not only in terms of protection of the environment, but also in terms of the promotion and protection of human rights.' '[I]t is truly a trailblazer', she said.[93]

Beyond these 'trailblazing' high-order principles, however, the Convention also contains many important general features. Namely, it adopts a rights-based approach, it is a 'floor' not a 'ceiling' in terms of minimum standards, it prohibits discrimination on the basis of citizenship, nationality or domicile against persons seeking to exercise their rights under the Convention and it has a wide definition of public authorities. Further, like the MP, the MOP is the Convention's main governing body. In its meetings, other Signatories and other States as well as intergovernmental and non-governmental organizations participate as observers.[94] Crucially, the mandate of the MOP is to keep under continuous review the implementation of the Convention and take the necessary measures required to achieve the purposes of the Convention.

Similarly, as with the MP's assessment panels that were established and approved at its first MOP in 1989, several other organs of the Convention have been established by the Aarhus Convention MOP since the instrument came into force. For example, a 'Working Group of Parties' has been set up to oversee the implementation of the work programme for the Convention between meetings of the parties. This is 'the same composition' as the MOP itself but meets more regularly.[95] Other Convention bodies include the Bureau of the Meeting (elected at the MOP in 2014), the Task Force on Access to Justice (established at the first MOP in 2002), the Task Force on Public Participation (adopted at the 2010 MOP) and the Task Force on Access to Information (established by the MOP in 2011).

Arguably the greatest success of the Aarhus Convention, however, is its Compliance Committee. Article 15 of the Convention on review of compliance, required the Meeting of the Parties to establish 'optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of the Convention', that is to say through the 'enabling clause'. Following this obligation, the Meeting of the Signatories established a Working Group to prepare such a mechanism. At its first session (October 2002), the MOP adopted Decision I/7 on review of compliance and elected the first Compliance Committee.

The parties consequently now regularly address issues of compliance based on the Committee's reports. The Compliance mechanism can be triggered in several ways including by a party making a submission about its own compliance.[96] At the Committee's recommendation, it adopts decisions on general issues of compliance and also decisions on compliance by individual parties.[97] The Compliance Committee is a crucial interface between the public and the parties and underpins the openness and transparency of the Convention. Writing in 2007, Koester noted that experience with the mechanism 'so far demonstrates that

[92] <http://www.unece.org/press/pr2001/01env15e.html>
[93] <https://www.unece.org/env/pp/statements.05.11.html>
[94] For a discussion of the role of NGOs, see Marianne Dellinger, "Ten Years of the Aarhus Convention: How Procedural Democracy is Paving the Way for Substantive Change in International Environmental Law," 23, *Colorado Journal of International Environmental Law & Policy* (2012), pp. 361-3.
[95] <https://www.unece.org/env/pp/mop.html>
[96] <https://www.unece.org/env/pp/ccbackground.html>
[97] <http://www.unece.org/env/pp/ccbackground.html>

it is possible to deal with compliance issues in an open and transparent manner.'[98] It is a unique mechanism built into the Convention, ensuring that it is continuously under review and that the Convention's parties are in compliance with its provisions.

4. Concluding remarks

It is axiomatic that 'Circumstances do not stay static once a treaty has entered into force.'[99] Yet, as we have discussed in the preceding pages, not all regimes have the same capacity to evolve and modernise in response to those changing situations. Indeed, relative to the MEAs discussed here, and the environmental regime of which they are a part more generally, the treaties underpinning the GDPR display a resistance to adapt to not only the changing requirements of some Parties, but also advances in scientific knowledge and international human rights law that often underpin policy shifts at the national level. Although normative adjustments taking place within the extant framework via 'soft defection' have permitted a degree of modernization, structural impediments to go further are placing the regime into an increasingly awkward state of limbo. A combination of factors, prominent among them governance structures and monitoring-review and non-compliance mechanisms, has led to a remarkably homeostatic system and a situation that arguably puts the integrity and credibility of the GDPR at risk; a condition that chimes with Diehl, Ku and Zamora's view that where the operating system does not respond to normative changes 'suboptimal legal arrangements' result.[100] This state of affairs will no doubt provoke different reactions depending upon one's view of the regime's prohibitive-orientation. Nonetheless, it is important not to ignore the central role it plays - although not always efficiently - in ensuring access to drugs for medical and scientific purposes.

In contrast, as useful examples of dynamic MEAs, the three Agreements discussed here clearly indicate that successful and relevant regimes must possess the capacity to evolve. Unlike the suite of drug control conventions that in many respects appear designed to maintain the status quo, CITES, the MP and the Aarhus Convention all have evolutionary capacity built into their very DNA. It is important to stress that within the realm of environmental regulation the mechanisms for change are in the main predicated on a tightening of the regime in line with advances in scientific knowledge and IEL. Nonetheless, it is instructive to move beyond the Vienna drug control silo and draw lessons from other parts of the UN system and beyond where dynamism is more representative of regime operation.

As discussed, a key mechanism for evolution of MEAs is via resolutions and decisions of the COPs/MOPs that are guided and assisted by the specialist bodies of the Agreements. In fact, the provisions of environmental conventions have evolved so greatly through such decisions that the original text only provides a very general framework. These conventions have the original legal tool of decision-making to update the text without recourse to a cumbersome procedure of amendment. Lack within the GDPR of both COPs to the treaties and specialist scientific bodies with a genuine capacity to review implementation in line with the 'health and welfare' of humankind arguably exemplifies its Jurassic character.

Distinct to MEA's, there is no forum where all the parties can, *on a regular basis*, engage in a process of substantive treaty review and easily discuss and move to resolve challenges to the regime deriving from divergent approaches among them. Had this been the case perhaps the

[98] Veit Koester, "The Compliance Committee of the Arhus Convention – An Overview of procedures and Jurisprudence", 37/2-3 *Environmental Policy and Law,* (2007), p. 92.
[99] Scott, *supra* note 1, p. 167.
[100] Diehl, Ku and Zamora, *supra* note 17, p. 71.

current dilemmas around cannabis, including a politically calculated state of denial among many member states,[101] might have been avoided or at least managed more satisfactorily. This is a point of concern as more states appear to be seriously considering following, in one way or another, Uruguay and Canada in their approach to the substance. As a reading of the Single Convention reveals, the Commission on Narcotic Drugs does not have an explicit mandate for treaty review.[102] This is derived indirectly, and in a generalised form, from the 1946 ECOSOC resolution establishing the Commission.[103] Yet, as a reading of official CND reports reveal, attention is only given to treaty implementation. Furthermore, even when debates move decennially - or thereabouts - beyond the conference rooms of Vienna for high-level reviews fundamental pressures invariably remain outside the scope of deliberations. It is certainly telling that discussion of the tensions thrown up by regulated cannabis markets was studiously ignored in New York at the 2016 UN General Assembly Special Session on the World Drug Problem.[104] It is important to highlight here that recourse through ECOSOC to a plenary conference to discuss amendment of a drug control treaty is likely to be opposed by many member states due to the additional financial costs involved.[105]

It is plausible to suggest that the form of the current GDPR structures can be explained as a legacy issue. The Single Convention after all inherited much of its internal apparatus from conventions dating to the pre-UN era. It is interesting to note, however, that despite the incorporation of COPs within instruments in other parts of the UN system in the early 1970s, for example CITES, the mechanism for review does not seem to have been considered during discussion for the 1972 Amending Protocol. Instead, the power of the INCB was bolstered. The legacy argument might also be applied in relation to the systemic disconnect between drug control and human rights; a situation that led Paul Hunt, the former Special Rapporteur on the right to the highest attainable standard of health to conclude that '[i]t is imperative that the international drug control system . . . and the complex international human rights system that has evolved since 1948, cease to behave as though they exist in parallel universes.'[106]

Regarding the operation of the INCB, there are clearly some similarities between its role within the GDPR to monitor and encourage compliance and that of NCPs within MEAs. For example, they both rely heavily on 'naming and shaming' in public fora and have limited realistic options concerning powers of sanction. That said, despite some mandated guidance on the Board's cooperation and constant dialogue with parties, NCPs within MEAs appear to be constructed more in terms of problem resolution and discussion among all parties; a process that again takes place through the COP. The suggestion here is not that NCPs should be transferred to the GDPR wholesale from MEAs, or indeed other treaty frameworks. The approach to non-compliance must clearly be tailored to suit the issue area. However, it seems fair to conclude that lessons can be learned from other issue area regimes, particularly in

[101] International Drug Policy Consortium, supra note 9, p. 32
[102] See article 8, 'Functions of the Commission.'
[103] ECOSOC Resolution 9 (I), February 1946, states that 'The Economic and Social Council, in order to provide machinery whereby full effect may be given to the international conventions relating to narcotic drugs, and to provide for continuous review of and progress in the international control of such drugs…'
[104] David Bewley-Taylor and Martin. Jelsma, 45, *UNGASS 2016: A Broken or B-r-o-a-d Consensus? UN summit cannot hide growing divergence in the global drug policy landscape*, (2016) <http://www.swansea.ac.uk/media/Broken%20or%20broad_FINAL.pdf >
[105] Cindy S. J. Fazey, "The Commission on Narcotic Drugs and the United Nations International Drug Control Programme; politics, policies and prospects for change", 14, 2 *International Journal of Drug Policy* (2003), p. 167.
[106] Paul Hunt, "Human Rights, Health and Harm Reduction: States' Amnesia and Parallel Universes", (International Harm Reduction Association 2008), p. 9. <https://www.hri.global/files/2010/06/16/HumanRightsHealthAndHarmReduction.pdf>

relation to the creation of venues for discussion. Indeed, pressure is mounting on the INCB to adopt a more constrictive position and move beyond the current 'treaties say no' approach to the current dilemma. This does not help states grappling with complex legal questions. Furthermore, that states like Uruguay and Canada, and at the subnational level, the US continue to engage with or plan for regulated cannabis markets in the face of condemnation does little for the Board's authority.

At an operating system level, a genuine de-Jurassifcation of the GDPR clearly requires considerable effort. Nonetheless, such endeavour seems worthy of consideration in the context of the changing national level drug policy landscape and the resultant tensions generated between domestic legislation and international law. Although the issue of cannabis regulation is currently highlighting systemic shortcomings, it is unlikely to be the last challenge to the existing prohibition-oriented UN drug control architecture.[107] Extraordinary options such as unilateral denunciation with re-accession and reservation may allow an individual state to realign national policy with international obligations under the drug control treaties. Yet, such a piecemeal approach will do little to help modernize the regime to the point where it will allow for continuous changes in approach across a range of currently prohibited substances. Moreover, such processes are unlikely to act as catalysts for necessary systemic shifts to bring international drug control into line with international human rights law,[108] or, within an era where international law is increasingly fragmented, other obligations derived from what can be usefully understood as intersecting regime complexes.[109] Amongst other suggestions for structural change,[110] for the long-term operation of the regime it is certainly worth considering the integration of COPs[111] and investigating their potential comparative advantages over functional commissions. This could be the first stage in an incremental process whereby parties to the drug control treaties could begin to discuss structural evolution that allowed for differentiated engagement according to their own circumstances, contingent of course on adherence to certain human rights standards. In the shorter term, or perhaps in parallel, engagement by a group of like-minded states with the option of modification *inter se* among themselves appears to be a promising route towards the facilitation of what Boister has called 'a multispeed drug control system'[112] operating within the boundaries of international law. And here again a Conference of the Parties mechanism may have a useful role to play. In this case it would be in the form of a Conference of the *Inter Se* Parties (COISP) to regularly review the agreements and enable further evolution based on lessons learned, and in particular to prevent violation of the rights of the other parties in the principal conventions.[113]

The suggestion of integrating COPs in one way or another is not as farfetched as it might at first appear. This is particularly so since, in addition to possessing their own ECOSOC

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[107] Wayne Hall, "The future of the international drug control system and national drug prohibitions", 113, 7 *Addiction* (2017), pp. 1210-1223.
[108] Boister, *supra* note 21, p. 227.
[109] Robert O. Keohane and David G. Victor, "The Regime Complex for Climate Change", 9, 1 *Perspectives on* (2011), pp. 7-23. Within the issue of international drug policy, obligations can be seen to be derived from a range of issues beyond human rights, including indigenous rights and environmental law.
[110] See for example, Bruce Riedel, "I'd Like to make a Reservation: Bolivian Coca Control and why the United Nations Should Amend the Single Convention on Narcotic Drugs," 49, 3 *George Washington International Law Review*, (2016-2017), pp. 711-47.
[111] Hasse, *supra* note 13, p. 35.

[112] Boister, *supra* note 11, p. 409.
[113] Martin Jelsma, Neil Boister, David Bewley-Taylor, Malgosia Fitzmaurice and John Walsh, *Balancing Treaty Stability and Change: Inter se modification of the UN drug control conventions to facilitate cannabis regulation*, (2018), pp. 34-5 <http://www.swansea.ac.uk/media/balancing_treaty_stability_and_change.pdf>

mandated functional commission,[114] closely related UN conventions already incorporate this mechanism for regular treaty review. Both the 2000 UNTOC and the 2003 UNCAC contain inbuilt provisions for a 'Conference of the Parties to the Convention'; Articles 32 and 62 respectively. Moreover, the former includes provision for the addition of new instruments to create 'a system that can easily be supplemented by additional protocols in the future which may then focus on other specific, maybe new, upcoming areas of transnational organised crime.' [115] The UNTOC, which like all the drug treaties not only falls under the remit of the UNODC but is also conceptually linked to the drug control treaties – and built upon the 1988 Convention specifically - [116] was seen to break new ground in this regard. Writing in 2004, Clark noted 'Article 32 of the Transnational Crime Convention is innovative procedurally in the international criminal law area.'[117] COPs, as experience in international crime control and elsewhere including MEAs reveals, should not be considered a silver bullet. Problems abound. Nonetheless, they, and related scientific and other committees and advisory bodies that come with them, could be a rewarding area of further study in relation to drug policy. As the late Harvard Law Professor and International Court of Justice Judge Richard R. Baxter wrote in 1980, 'The lawyer is indeed a social engineer and in that role, he must be able to invent or produce machinery that will assist in the resolution of disputes and differences between states. He must be prepared to fine-tune the law, to exploit its capacity for adaption to the needs of the parties and to promote movement and change'.[118] Within the complex and cross cutting field of international drug policy, the same might be said for IR scholars, diplomats and international civil servants.

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[114] The Commission on Crime Prevention and Criminal Justice. This replaced the Committee on Crime Prevention and Control through a 1992 ECOSOC resolution (1992/1).

[115] For an overview see Andreas Schloenhardt, "Transnational organise crime" in N. Boister and R.J. Currie (eds.), *Routledge Handbook of Transnational Criminal Law*, (2014), pp. 409-33.

[116] Michael Woodiwss and David Bewley-Taylor, *The Global Fix: The Construction of a Global Enforcement Regime*, (2005) < https://www.tni.org/files/download/crime2.pdf>

[117] Roger S. Clark, "The United Nations Convention against Transnational Organized Crime', 50, 161 *Wayne Law Review*, (2004) p. 183.

[118] Richard R. Baxter, "International law in 'her infinite variety'", 29, 4 *International and Comparative Law Quarterly* (1980), p. 566.