

ARTICLE 103 AND THE WAR ON DRUGS

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I. INTRODUCTION

The war on drugs is greatly controversial. Some voices applaud its efforts while others vehemently condemn its implications for human rights and emphasize its futility, noting that “arresting and incarcerating tens of millions of people in recent decades has filled prisons and destroyed lives and families without reducing the availability of illicit drugs or the power of criminal organizations.”¹ Put shortly, the war on drugs has been a series of “coordinated campaigns by governments over the last fifty years to enforce the prohibition of drugs largely through the coercive suppression of production and criminalization of drug use, possession, and supply.”² Various critics of the war on drugs have emphasized the abuse of human rights it has fostered, with groups like Human Rights Watch “call[ing] on governments to decriminalize all personal use and possession of drugs.”³ While demands for the decriminalization or legal regulation of drugs is not free of controversy, approximately thirty countries have begun some form of decriminalization.⁴ However, those states that opt for

1. *The ‘War on Drugs’ Has Failed, Commission Says*, LEADERSHIP CONF. EDUC. FUND (June 11, 2011), <https://civilrights.org/edfund/resource/the-war-on-drugs-has-failed-commission-says/>.

2. *Why We Need Drug Policy Reform*, OPEN SOC’Y FOUNDS., <https://www.opensocietyfoundations.org/explainers/why-we-need-drug-policy-reform> (June 2011).

3. *Drugs and Human Rights*, HUM. RTS. WATCH, <https://www.hrw.org/tag/drugs-and-human-rights> (last visited May 23, 2022).

4. *Which countries have decriminalised and how?*, CITY-WIDE DRUGS CRISIS CAMPAIGN, <https://www.citywide.ie/decriminalisation/countries.html> (last visited May 23, 2022).

decriminalization or legal regulation of drugs face not only domestic opposition, but also the obstacle of their international treaty obligations concerning drug policy. This article seeks to explore what legal routes are available to national legislators to derogate from international drug treaties in the name of human rights.

II. INTERNATIONAL DRUG REGULATION

Despite different perspectives towards drug regulation around the world, upwards of 180 countries have ratified three international treaties on drugs: the Single Convention on Narcotic Drugs of 1961 (amended by the 1972 Protocol) (hereinafter, the 1961 Convention), the Convention on Psychotropic Substances of 1971, and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.⁵ These treaties call for joining parties to take legislative and administrative measures to “limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.”⁶ Drugs refer to narcotic and psychotropic substances, such as opium poppy, coca bush, and cannabis plants.⁷ These treaties further prescribe that drug activity which falls outside of their limits should be considered punishable offences.⁸ Stricter or more severe measures of enforcement are allowed if “such measures are desirable or necessary for the prevention or suppression of illicit traffic.”⁹ The International Narcotic Control Board (INCB) governs adherence to these treaties as “the

5. Single Convention on Narcotic Drugs, Mar. 30, 1961, 520 U.N.T.S. 151; Protocol amending the Single Convention on Narcotic Drugs, 1961, Mar. 25, 1972, 976 U.N.T.S. 3; Convention on Psychotropic Substances, Feb. 21, 1971, 1019 U.N.T.S. 175; United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, 1582 U.N.T.S. 95.

6. 1961 Convention on Narcotic Drugs, *supra* note 5, art. 4.

7. 1988 Convention on Narcotic Drugs and Psychotropic Substances, *supra* note 5, art. 24; *see* 1961 Convention on Narcotic Drugs, *supra* note 5 (providing a full list of drugs is provided in the schedule of the 1961 treaty).

8. 1961 Convention on Narcotic Drugs, *supra* note 5, art. 36; 1971 Convention on Psychotropic Substances, *supra* note 5, art. 22.

9. 1988 Convention on Narcotic Drugs and Psychotropic Substances, *supra* note 5, art. 24.

independent and quasi-judicial monitoring body for the implementation of the United Nations international drug control conventions.”¹⁰

Due to their obligations under international law,¹¹ countries that have ratified these treaties are limited in how they may legislate their own drug laws, although a few states have been able to circumvent these general prohibitions. For example, although the United States has allowed for the legal regulation of cannabis under the laws of certain U.S. states, it nevertheless maintains that it fulfills its obligations under international treaties because federal law still prohibits cannabis.¹² As another example, Bolivia withdrew and re-acceded to the 1961 Convention to enter a reservation allowing the chewing of coca leaf, a traditional practice in Bolivia.¹³ Other attempts at reconciling legal obligations have included exploring flexible interpretations of “medical and scientific purposes”¹⁴ and resorting to (even late) reservations, alongside the option of *inter se* modifications.¹⁵

10. *Report of the International Narcotics Control Board*, UN-LIBRARY, <https://doi.org/10.18356/ce8360ba-en> (last visited May 23, 2022).

11. See Vienna Convention on the Law of Treaties art. 26, 23 May 1969, 1155 U.N.T.S. 331.

12. Wells C. Bennett and John Walsh, *Marijuana Legalization is an Opportunity to Modernize International Drug Treaties*, BROOKINGS, Oct. 15, 2014, <https://www.brookings.edu/research/marijuana-legalization-is-an-opportunity-to-modernize-international-drug-treaties/>.

13. Bolivia to re-accede to UN drug convention, while making exception on coca leaf chewing, UN OFFICE ON DRUGS AND CRIME, <https://www.unodc.org/unodc/en/frontpage/2013/January/bolivia-to-re-accede-to-un-drug-convention-while-making-exception-on-coca-leaf-chewing.html>.

14. *Guidance on Drug Policy- Interpreting the UN Drug Conventions*. ALL PARTY PARLIAMENTARY GROUP FOR DRUG POLICY REFORM, https://www.unodc.org/documents/ungass2016/Contributions/Civil/APPG_for_Drug_Policy_Reform/Guidance_print_copy.pdf (last visited May 23, 2022).

15. An *inter se* modification is provided by Article 41 of the Vienna Convention which states that “two or more parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if ... [it is not] incompatible with the effective execution of the object and purpose of the treaty as a whole.” *The UN Drug Control Conventions*, TRANSNATIONAL INSTITUTE, <https://www.tni.org/en/publication/the-un-drug-control-conventions>; John Walsh and Martin Jelsma, *Regulating Drugs: Resolving Conflicts with the UN Drug Control Treaty System*, 1(3) J. ILLICIT ECONS. & DEV. 226 (2019), <https://jied.lse.ac.uk/articles/10.31389/jied.23>.

Particularly pertinent to this article is the example of Uruguay, that passed Law 19.712 in 2013 which enabled itself as a sovereign state to assume control over the regulation of commercial cannabis,¹⁶ stating that it is the “obligation of States to guarantee the priority [of human rights] over other international agreements.”¹⁷ Subsequently, Uruguay has articulated that prohibitive drug policies affect the right to life (due to the unintended effects of violent and illicit markets), the right to privacy, the right to non-discrimination and principle of proportionality, and the right to health.¹⁸ Despite the provision in the international treaties that measures taken in prohibiting drugs must respect human rights,¹⁹ the INCB stated that Uruguay would be “in complete contravention to the provisions of the international drug control treaties” by passing Law 19.712. Furthermore, the INCB urged Uruguay’s full compliance to the international treaties, and even accused Uruguay of having a “pirate attitude” towards the United Nations.²⁰ Although the Commission on Narcotic Drugs placed cannabis in a less restrictive category of substances in subsequent years,²¹ the INCB had made clear that Uruguay broke international law by allowing for the regulation of cannabis. Even beyond the specific (and evolving) classification of cannabis, there are those who advocate for further decriminalization and legal regulation of a larger category of substances.²² Although assumed to be in violation of international law, there is a legal basis to argue in favor of domestic decisions that aim to advance the protection of human rights over obligations to international treaties.

16. MARIHUANA Y SUS DERIVADOS [Ley N. 19.172] art. 2 (Uru.), <https://www.pensamientopenal.com.ar/system/files/2015/09/doctrina42001.pdf>.

17. IMPACT OF THE WORLD DRUG PROBLEM IN THE EXERCISE OF HUMAN RIGHTS (National Drug Board), <http://www.wola.org/sites/default/files/Drug%20Policy/AportedeROUalaUNGASS2016enDDHHENG.pdf>.

18. *Id.*

19. 1988 Convention on Narcotic Drugs and Psychotropic Substances, *supra* note 5, art. 14.

20. INCB President urges Uruguay to remain within the international drug control treaties, noting draft cannabis legislation, UNITED NATIONS INFORMATION SERVICE, https://www.incb.org/documents/Publications/PressRelease/PR2013/press_release010813.pdf.

21. *UN Commission reclassifies cannabis, yet still considered harmful*, UN NEWS (Dec. 2, 2020), <https://news.un.org/en/story/2020/12/1079132>.

22. *Drugs and Human Rights*, HUM. RTS. WATCH, <https://www.hrw.org/tag/drugs-and-human-rights> (last visited May 23, 2022).

III. THE U.N. CHARTER

Article 103 of the U.N. Charter states that “in the event of a conflict between the obligations of the Members of the United Nations and the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”²³ There are obligations in the U.N. Charter to recognize human rights; Articles 55 and 56 state that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all”²⁴ and that “all Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the [respect and observance of human rights].”²⁵

The International Court of Justice (ICJ) has confirmed the supremacy of the U.N. Charter over any international treaty²⁶ and over all regional agreements.²⁷ However, the supremacy of Article 103 has not been uncontroversial. Some academics have expressed that courts should interpret Article 103 in a harmonious nature,²⁸ as opposed to a hierarchically superior position over other treaties.²⁹ Nevertheless, such an interpretation does not

23. U.N. Charter art. 103.

24. *Id.*, art. 55.

25. *Id.*, art. 56.

26. See Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Provisional Measures, 1992 I.C.J. Rep. 114, 116, ¶ 42 (Apr. 14); Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Provisional Measures, 1992 I.C.J. Rep 3, 15, ¶ 39 (Apr. 14) (expressing the primacy of the U.N. Charter over the Montreal Convention).

27. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Jurisdiction and Admissibility, 1984 I.C.J. Rep. 392, 440 ¶ 107 (June 27) (expressing the primacy of the U.N. Charter over all regional, bilateral, and even multilateral arrangements of parties).

28. Harmonious construction refers to “such construction by which harmony or oneness amongst various provisions of an enactment is arrived at. When the words of statutory provision bear more than one meaning and there is doubt as to which meaning should prevail, then such meaning should be adopted by which the words best harmonize with the subject and the subject enactment.” Tusharika Singh, *Doctrine of Harmonious Construction*, LEGAL SERVICE INDIA, <http://hdl.handle.net/1814/26374>; see Al-Jedda; Johann Ruben Leiss, *Article 103 of the UN charter: strict hierarchy as a last resort*, EUROPEAN UNIVERSITY INSTITUTE (2012).

29. Kushtrim Istefi. *The Application of Article 103 of the UN Charter in the European Courts: The Quest for Regime Compatibility on*

give permission for member states to derogate from the U.N. Charter, and “obligations contained within international drug control treaties may not be used as a basis for violating concomitant international human rights obligations.”³⁰

IV. HUMAN RIGHTS AND THE REGULATION OF DRUGS

Given such an obligation, it is pertinent to explore how the decriminalization and regulation of drugs may implicate human rights. While it is true that Article 55 does not specify or elaborate on particular human rights, this “lack of precision . . . cannot be considered a serious obstacle.”³¹ Following from the human rights framework provided by Uruguay,³² this article focuses on three human rights with implications in the prohibitive provisions of the international drug treaties: the right to life, the right to health, and the right to non-discrimination. These rights are protected by the Universal Declaration of Human Rights, other legally binding international treaties, and customary international law.

A. *Right to Life*

The right to life³³ not only imposes on states the obligation to not take

Fundamental Rights. EUROPEAN UNIVERSITY INSTITUTE (2012); see also Ignaz Seidl-Hohenveldern, *Hierarchy of Treaties* in ESSAYS ON THE LAW OF TREATIES (Jan Klabbers & Ren Lefeber eds., 1988).

30. UNDP, International Guidelines on Human Rights and Drug Policy (2020), <https://www.undp.org/publications/international-guidelines-human-rights-and-drug-policy>.

31. Schlüter, Bernhard, *The Domestic Status of the Human Rights Clauses of the United Nations Charter*, 61(1) CAL. L. REV. 110 (1973).

32. NAT'L DRUG BD., IMPACT OF THE WORLD DRUG PROBLEM IN THE EXERCISE OF HUMAN RIGHTS (2015) <http://www.wola.org/sites/default/files/Drug%20Policy/AportedeROUalaUNGASS2016enDDHHENG.pdf>.

33. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 3 (Dec. 10, 1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights art. 6, 16 Dec. 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; African Charter on Human and Peoples' Rights art. 4 [Banjul Charter], 27 June 1981, 21 I.L.M. 59; Arab Charter on Human Rights arts. 5, 6, May 22, 2004; European Convention for the Protection of Human Rights and Fundamental Freedoms art. 2, Nov. 4, 1950, 312 E.T.S. 5 (as amended by Protocol United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988); American Convention on Human Rights art 4., Nov. 22, 1969, 9 I.L.M. 673; see W. Paul Gormley, *The Right to Life in International Law*, 16 Denv. J. Int'l L. & Pol'y 191, 193 (1987) (deeming the right to life to be jus cogens, peremptory, and a right ergo omnes).

lives, but also the obligation to protect lives within its jurisdiction.³⁴ This includes situations in which the state knows that persons are at real and immediate risk from third-party actors.³⁵ Although a state cannot be accountable for all lives lost in such situations, the right to life imposes an obligation to provide the necessary regulatory frameworks to protect these lives.³⁶ Countless lives are lost to third-party actors due to the prohibition of drugs. The U.N. Office on Drugs and Crime has stated that “the first unintended consequence [of global drug control] is the creation of a criminal black market.”³⁷ Because of prohibition, the drug industry is necessarily controlled by criminal actors, who “kill or bribe their way” to operate the drug markets.³⁸ Although it is difficult to establish a definite number of homicides linked to illicit drug markets, in Mexico alone, the number of drug-related homicides is estimated to be in the tens of thousands since the beginning of Mexico’s war on drugs.³⁹ Furthermore, areas in Central America in which narcotics are heavily trafficked suffer from higher homicide rates.⁴⁰ The violence created by the prohibition of

34. Centre for Legal Resources *ex rel* Valentin Câmpeanu v. Romania, App. No. 47848/08 §130 (July 17, 2014), <https://hudoc.echr.coe.int/fre?i=002-9574>; see *Guide on Article 2 of the European Convention on Human Rights*, EUROPEAN COURT OF HUMAN RIGHTS (Dec. 31, 2021), https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf.

35. Nencheva & Others v. Bulgaria, App No. 48609/06, § 108 (June 18, 2013), <https://hudoc.echr.coe.int/eng?i=001-120956>; Mastromatteo v. Italy, App. No. 37703/97, § 68 (Oct. 24, 2002), <https://hudoc.echr.coe.int/fre?i=002-9978>.

36. Lopes de Sousa Fernandes v. Portugal, App No. 56080/13, §187-190 (Dec. 15, 2015), <https://hudoc.echr.coe.int/eng-press/?i=003-5255508-6524432>.

37. *World Drug Report*, UNODC, 163-66 (2009), https://www.unodc.org/documents/wdr/WDR_2009/WDR2009_2.1.pdf.

38. *Id.*

39. Claire Schaeffer-Duffy, *Counting Mexico’s Drug Victims is a Murky Business*, NATIONAL CATHOLIC REPORTER (Mar. 1, 2014), <https://www.ncronline.org/news/world/counting-mexicos-drug-victims-murky-business>; see International Narcotics Control Board 2010, Intl. Narcotics Control Board, (March 2, 2011) https://www.incb.org/documents/Publications/AnnualReports/AR2010/AR_2010_English.pdf; Guillermo Trejo and Sandra Ley, *High-Profile Criminal Violence: Why Drug Cartels Murder Government Officials and Party Candidates in Mexico*. (Cambridge Univ. Press 2019), Sept. 5, 2019.

40. Gabriel Demombynes, *Drug Trafficking and Violence in Central America and Beyond*. World Development Report 2011 Background Papers, WORLD BANK, <https://openknowledge.worldbank.org/handle/10986/27333> License: CC BY 3.0 IGO.”

drugs is rampant, and implicated states have failed to uphold the right to life by protecting lives against killings by third-parties. Although one report by the White House found that the legal regulation of drugs would not eliminate organized crime,⁴¹ it is not necessary to achieve such an idealistic goal in order to promote human rights. Advocates for drug policy reform have argued that “a transition towards regulation can progressively reduce the scale of illegal drug markets, organized crime activities and the harm they cause, and organized crime’s overall power and influence.”⁴² An approach to drug policy that shifts focus away from prohibition is consistent with a state’s obligation to defend the right to life.

B. *Right to Health*

The right to health⁴³ guarantees all humans the right to enjoy the highest attainable standard of health conducive to living a life in dignity.⁴⁴ The scope of the right to health is not uncontested,⁴⁵ but academics have identified certain characteristics inherent to the right, namely equality and non-discrimination in healthcare and the right to the use of maximum available resources.⁴⁶ The criminalization of drugs violates the right to health because it can deter or prevent people who use drugs from accessing health services for fear of criminal punishment.⁴⁷ For example, criminalization of

41.Reducing Drug Demand in the U.S. THE WHITE HOUSE. <https://obamawhitehouse.archives.gov/ondcp/ondcp-fact-sheets/reducing-drug-demand-in-the-us>.

42.Regulation: The Responsible Control of Drugs, GLOBAL COMMISSION ON DRUGS, 30 (2018), https://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf.

43.International Covenant on Economic and Social Cultural Rights art. 12; 1985 International Convention on the Elimination of All Forms of Racial Discrimination art. 5; 1989 Convention on the Rights of the Child art. 24.

44.OHCHR and the right to health, UNITED NATIONS HUM. RTS. OFFICE OF THE HIGH COMM’R. <https://www.ohchr.org/EN/Issues/ESCR/Pages/Health.aspx> (last visited May 23, 2022).

45.Michael Da Silva, *The International Right to Health Care: A Legal and Moral Defense*, 39 MICH. J. INT’L L. 343 (2018).

46.Alicia Ely Yamin, *The Right to Health Under International Law and its Relevance to the United States*, 95 AM. J. PUB. HEALTH 1156 (2005).

47.*How is Harm Reduction a Human Rights Issue*, HEALTH & HUM. RTS. RES. GUIDE (Mar. 12, 2014),

drug use and the accompanying police violence are major deterrents for women who use drugs in Eastern Europe and Central Asia to access healthcare services.⁴⁸ The fear of accessing healthcare services violates the inherent aspects of equality and non-discrimination in the right to health because non-drug users do not fear criminal punishment in the same way. People who use drugs are further deprived of their right to health by not having access to the maximum resources that are available to them. Such resources often include harm reduction services, which focus on preventing harm, rather than on preventing drug use.⁴⁹ Harm reduction services include opioid agonist therapy, the distribution of naloxone, needle and syringe programs, and controlled medicines used in dependency treatment.⁵⁰ With strong prohibitions on drug use, people who use drugs may never access these resources for fear of punishment. Decriminalization or legal regulation of drugs may be essential for states to fulfill their obligations to respect the right to health for all their citizens, regardless of their drug use habits.⁵¹

C. *Right to non-discrimination*

The right to non-discrimination includes both direct and indirect discrimination.⁵² Indirect discrimination occurs when an otherwise facially neutral law or practice disproportionately affects a particular group.⁵³

<https://www.hhrguide.org/2014/03/12/how-is-harm-reduction-a-human-rights-issue/>; *Principles of Harm Reduction*, NAT'L HARM REDUCTION COAL., <https://harmreduction.org/about-us/principles-of-harm-reduction/> (last visited May 23, 2022).

48. Daria Matyushina-Ocheret. *Access Barriers to Health Services for Women Who Use Drugs in Eastern Europe and Central Asia*, in *THE IMPACT OF GLOBAL DRUG POLICY ON WOMEN: SHIFTING THE NEEDLE* 75-83 (2021).

49. *Principles of Harm Reduction*, *supra* note 46.

50. *Id.*

51. See Miguel Antonio Núñez Valadez, *Drug use and the right to health: An analysis of international law and the Mexican case*. 6 *Mex. L. Rev.* 201 (2014) (noting that the criminalization of drug use or drug possession is a violation of the right to health); UNAIDS, HEALTH, RIGHTS, AND DRUGS (2019), https://www.unaids.org/sites/default/files/media_asset/JC2954_UNAIDS_drugs_report_2019_en.pdf (noting that decriminalization of drug use and possession for personal use reduces the stigma and discrimination that hampers access to health care).

52. UDHR, *supra* note 33 at art. 7; ICCPR, *supra* note 33, at arts. 2, 26; International Covenant on Economic, Social and Cultural Rights art. 2., 16 Dec. 1966, 993 U.N.T.S. 3.

53. NON-DISCRIMINATION IN INTERNATIONAL LAW, INTERRIGHTS, 70 (2011), <http://old.adapt.it/adapt-indice-a-z/wp->

Although not binding, the authoritative General Recommendation of the Committee on the Elimination of Racial Discrimination declares that states have a legal obligation to “nullify any law or practice which has the effect of creating or perpetuating racial discrimination.”⁵⁴ The United States is a prime example of a country whose drug laws have disparate impact that perpetuates racial discrimination. While both White and Black U.S. citizens consume drugs at the same rates, Black U.S. citizens are incarcerated at a rate 13.4 times that of white U.S. citizens, largely due to the racial targeting of drug law enforcement.⁵⁵ In some states, Black men are incarcerated for drug offenses at rates between 20 to 57 times greater than white men. As such, the war on drugs has become “the main method of perpetuating [the United States’] long history of racial oppression.”⁵⁶ Similarly, in the United Kingdom, Black citizens are nine times more likely to be searched for drugs than white citizens, despite using drugs at a lower rate.⁵⁷ Not only have prohibitive drug laws had the consequence of disparate impact, but they have also been used purposefully to target certain racial groups, in clear violation of the right to non-discrimination. Therefore, new legislation, in the form of decriminalization and legal regulation of drugs, that reverses laws previously used to target certain racial groups, is consistent with states’ obligation to respect and uphold the right to non-discrimination.

V. CONCLUSION

Human rights ought to play a crucial role in the development of domestic drugs policies. Although international treaties establish how countries should legislate their respective drug policies, this annotation offers a new avenue to legally deviate from the prohibitive policy mandated by these treaties. Article 103 provides for the supremacy of the U.N. Charter and its values (including human rights) over other international treaties when a harmonious interpretation is not possible. When a states’ obligations to observe an international treaty go against its obligations to uphold human rights, respect for human rights must prevail. The international drug

content/uploads/2014/08/interight_non-discrimination_in_international_law_2011.pdf.

54. ICCPR, *supra* note 33, at art 2.

55. Graham Boyd, *The War on Drugs is the New Jim Crow*, ACLU (2001), <https://www.aclu.org/other/drug-war-new-jim-crow>.

56. Deborah Small, *The War on Drugs is a War on Racial Justice*, 68 SOC. RSCH. 896, 897 (2001).

57. *Why We Need Drug Policy Reform*, OPEN SOC’Y FOUNDS., <https://www.opensocietyfoundations.org/explainers/why-we-need-drug-policy-reform> (June 2021).

treaties, by mandating a prohibitive drug policy, jeopardize states' abilities to respect the rights to life, to health, and to non-discrimination. Derogating from an international treaty to decriminalize or legally regulate drugs, then, should be recognized as a legal path for states to uphold their human rights obligations. This exploration of Article 103 serves as an alternative remedy for countries who are moving against the war on drugs in the name of human rights.