

**Drug Treatment Courts,
(finally) getting the attention
they deserve***

Introduction

Whereas drug treatment is at the core of the international drug control treaties, **drug treatment courts** (DTCs) have – until now - only received cursory attention from the United Nations (UN) system.

**International Drug Control Treaties
and Drug Treatment:**

- Article 38 (Treatment of Drug Addicts) of the 1961 Single Convention on Narcotic Drugs, as amended by Article 15 (Measures against the Abuse of Drugs) of the 1972 Protocol.
- Article 20 (Measures against the Abuse of Psychotropic Substances) of the 1972 Convention on Psychotropic Substances.
- Article 14 (Measures to... eliminate illicit demand for narcotic drugs and psychotropic substances) of the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

That is surprising for both medical and legal reasons:

- Medically speaking because it is generally recognized that treatment is meant to address specific needs, including those of people in the criminal justice system. DTCs cater to precisely that target group.
- Legally speaking because the 1988 Convention (article 3, paragraph 4, subparagraphs b, c and d) – reinforcing the guidelines of the 1961 Convention – clarifies that drug abusing offenders in certain cases can be treated, rehabilitated and socially integrated instead of being convicted and imprisoned.

The situation is partly explained by the fact that DTCs did not emerge until 1989. Still, even recently DTCs have not caught much attention among the global drug control organs.

International Drug Control Organs:

- General Assembly
- Economic and Social Council
- Commission on Narcotic Drugs
- International Narcotics Control Board
- United Nations Office on Drugs and Crime

That was then...

There are many examples of that:

- In its 1996 Report (“Challenges to Criminal Justice Systems”) the International Narcotics Control Board (INCB) only sketchily described DTCs in the context of national treatment regimes, generally concluding that:

“While still retaining criminal sanctions against drug abuse and trafficking, greater use of treatment and non-custodial sentences, as well as shorter terms of imprisonment, should be made for minor offenders in accordance with the provisions of the 1988 Convention, thereby reinforcing cooperation between the criminal justice, health and social systems”

- During the 20th Special Session on the World Drug Problem in 1998, the General Assembly made only indirect reference to the DTCs in the Declaration on the Guiding Principles of Drug Demand Reduction:

“In order to promote the social reintegration of drug-abusing offenders, ... , Governments should consider providing, either as an alternative to conviction or punishment or in addition to punishment, that abusers of drugs should undergo treatment, education, aftercare, rehabilitation and social reintegration. Member States should develop within the criminal justice system, where appropriate, capacities for assisting drug abusers with education, treatment and rehabilitation services. In this overall context, close cooperation between criminal justice, health and social systems is a necessity and should be encouraged”.

- Although mentioned in the United Nations Office on Drugs and Crime (UNODC) “Drug Abuse Treatment Toolkit” (“Drug Abuse Treatment and Rehabilitation – A Practical Planning and Implementation Guide”) from 2003, the criminal justice system was considered a “special setting for treatment”.

These examples do at best give some recognition to the DTC approach, but offer little or no guidance as how to actually go about it in practice.

The closest that DTCs have come to being recognized was in 2005 when they were highlighted at the Commission on Narcotic Drugs (CND), but even that event was surrounded by controversy for reasons beyond this article.

The only time UNODC has devoted real attention to DTCs was in 1999, but that only at an “informal” meeting (Informal Expert Working Group on Drug Treatment Courts).

The result of that meeting - a summary of international best practice contained in 12 Success Factors and 12 Key Principles (all commented) – must, nevertheless, be regarded as a significant moment for the international DTC movement and has been used ever since by UNODC’s legal advisory services to assist the growing number of countries interested in developing treatment interventions in criminal justice settings. The most recent countries to receive assistance have been Chile (from 2003 to 2007) which is well under way with its DTC programmes and Colombia (ongoing).

UNODC’s 12 Key Principles for Successful Drug Treatment Courts:

1. Integrate substance dependency into justice system case processing.
2. Non-adversarial approach by prosecution and defence.
3. Early identification of eligible offenders.
4. Access to continuum of treatment services.
5. Objective monitoring of compliance by frequent substance abuse testing.
6. Coordinated strategy governs responses to compliance/non-compliance.
7. Ongoing judicial interaction with each participant.
8. Monitoring and evaluation
9. Continuing interdisciplinary education.
10. Partnerships with public agencies and community-based organizations.
11. Ongoing case-management, including social support to achieve ultimate social reintegration.

12. Flexibility in adjusting programme content to achieve better results with particular groups, e.g. women.

Another important contribution on the international scene was the Inter-American Drug Abuse Control Commission (CICAD) report “Drug Courts and their Potential for the South American and Caribbean Community – A Common Sense Approach to the Drug-Using Offender” from 2000, written by the then President of the International Association of Drug Treatments Courts (IADTC) Judge Jeffrey Tauber.

This is now...

Now there have been a major development which finally gives DTC the attention that they deserve.

In its 2007 report (released on 5 March 2008) INCB dedicates the last section of chapter 1: “Principle of Proportionality and Drug-related Offences” to DTCs, using language like:

“In the Board’s view, the work and impact of drug treatment courts, ..., confirm the value of the integrated approach with certain types of offences and offenders that justice and health-care systems agree are appropriate for diversion to treatment”

That is strong language for a body like INCB. DTCs are even mentioned directly by name in the closing recommendations.

INCB Recommendation:

“Governments should consider widening the range of custodial and non-custodial options for drug-related offences by illicit drug users so that authorities can respond proportionately to the circumstances of each case. In some cases drug courts focusing on persons who frequently relapse into high-risk lifestyles and mandatory treatment programmes can offer drug-abusing offenders effective alternatives to imprisonment”.

Article 3 (paragraph 4, subparagraphs b, c and d) of the 1988 Convention is obviously the legal foundation on which the Board places its recommendation.

The INCB report coincides time-wise with the release of the joint UNODC-WHO “Discussion Paper: Principles of Drug Dependence Treatment”.

One of the nine principles – “Addiction Treatment and the Criminal Justice System” – fully recognizes the DTC approach.

UNODC & WHO Principles of Drug Dependence Treatment (DDT):
1. Availability and Accessibility of DDT
2. Screening, Assessment, Diagnosis and Treatment Planning
3. Evidence-informed DDT
4. DDT, Human Rights and Patient Dignity
5. Targeting Special Subgroups and Conditions
6. Addiction Treatment and the Criminal Justice System
7. Community Involvement, Participation and Patient Orientation
8. Clinical Governance and DDT Services
9. Treatment Systems: Policy Development, Strategic Planning and Coordination of Services

However, even more encouraging is it that DTCs - without a doubt – have been champions of the other eight principles and that for years now. There is, in other words, no reason why not to include DTCs in the overall treatment offer. Quite the opposite in fact when you look at costs and effectiveness.

The Organization of American States (OAS) – through CICAD – has followed close suit which will hopefully create a multiplier effect. At CICAD’s Forty-Third Regular Session, from 30 April to 2 May 2008, DTCs were high on the agenda with several formal presentations. CICAD’s President, Mr. Guillermo Reyes, highlighted DTCs in his closing speech. One of the OAS countries set on exploring the approach is Colombia.

CICAD is also running a large European Commission-funded programme – “Improving Drug Treatment and Rehabilitation: European, Latin American and Caribbean Cities in Partnership” – which is placing focus on custodial and

non-custodial options for drug-related offences, including the DTC approach.

Conclusion

Why did it take the international drug control bodies so long to turn their attention to DTCs? There are in fact good reasons that at least partly explain the situation.

In the mentioned 2007 report, INCB actually offers the most understandable:

“However, there is no universal moral instinct about what is right or wrong when it comes to punishment in less serious cases. The conventions expressly permit but do not oblige each party to punish an offender if its domestic authorities consider the offence an appropriate case of a minor nature or, in the case of a drug-abusing offender, if the offence is the possession, purchase or cultivation of illicit drugs for personal use”.

There are more specific reasons too. Beside the time factor, DTCs are still relatively limited in geographical (i.e. North America) and legal tradition (i.e. common law) terms. That is of course changing, Chile being the perfect example.

Like criminal justice systems around the world, the UN system has not always been so forward-looking and problem-solving oriented as it is today. Now it is fully recognizing that to be effective the response to offences by drug-abusers must address both the offences and the abuse of the drugs, that is, the underlying cause in an integrated and individualized way.

Time has also taught that DTCs are neither “soft” on crime nor a “boutique” option for rich countries, just to name some of the earlier criticism.

That does by no means make DTCs a “one size fits all” option, but all in all the evidence shows that DTCs are better at retaining drug-abusing offenders in treatment and reducing re-offending (recidivism) while being more cost-effective than other alternatives, and the wider UN system has come around to that.

Needless to say, there is still a long way to go before DTCs become mainstream around the globe, but the current momentum should not be lost.

Drug Treatment Court Jurisdictions around the World: (ongoing or projected)
- Australia
- Australasia
- Barbados
- Bermuda
- Brazil
- Canada
- Chile
- England
- Grand Cayman Islands
- Ireland
- Israel
- Italy
- Jamaica
- Lithuania
- Norway
- New Zealand
- Saint Lucia
- Scotland
- Trinidad and Tobago
- United States of America (approx. 2,150)

With the help of the United Nations, IADTC, OAS/CICAD, the European Union and others, the next step is for countries to make DTCs form part of the strategic framework for treatment (as it is now the case in Chile and Norway) within national drug control policies.

***Kristian Hölge** works at the United Nations Office on Drugs and Crime (UNODC) and sits on the board of the International Association of Drug Treatments Courts (IADTC). For comments on this article please e-mail: kristian.hoelge@unodc.org

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