The present AAPM President’s Message reinforces and extends the three published to date during the current President’s term—all under the broad theme of pain as a public health issue. A key tenet of contemporary public health is its concern for social justice and human rights. In recent decades, the concept of pain management as a fundamental human right has emerged as a source of advocacy and obligation. In the American scene, this concept has recently been challenged as part of a broad reaction to societal crises of opioid misuse and abuse, often diverted from prescription pain medications. However, on a global basis recent initiatives likewise voice concerns about substance use but emphasize the importance of access to pain assessment and treatment. In 2007, the authors published a review article (Pain Management: a Fundamental Human Right. Anesth Analg 2007;105:205–21) that outlined the legal rights to pain management. The intervening nine years have seen rapidly unfolding developments in advocacy for this concept by pain and palliative care groups, the World Health Organization, the United Nations, and other international organizations. In light of its ongoing relevance to current conversations about pain control and public policy, Dr. Carr invited Drs. Brennan and Cousins to join him to briefly survey a few of the many interim global developments and comment upon the future of human rights discourse in pain medicine.

Advocacy by International Pain Organizations

In 2004, the International Association for the Study of Pain (IASP), the World Health Organization, and the European Federation of IASP Chapters (EFIC) cosponsored the Inaugural Global Pain Day. The theme of that day was “Pain Relief Should be a Human Right.” Consolidating other declarations of palliative care as a human right, the International Association of Hospice and Palliative Care (IAHPC) and the Worldwide Palliative Care Alliance (WPCA) cosponsored a Joint Declaration and Statement of Commitment on Pain Relief Palliative Care as Human Rights in 2008. The promulgation of that declaration coincided with World Hospice Day in that year.

This was a historic moment. Taken together, the theme of the 2004 Inaugural Global Pain Day and the 2008 Declaration and Statement of Commitment provided a central foundation of advocacy based on a human rights perspective for all major international bodies representing pain management and palliative care.

Arguments for better services, more enlightened laws and policies, greater access to medications, and improved education had, at least in part, a foundation in human rights.

The content of the 2008 Declaration was in four parts. The first was an enumeration of the multiple sources within international human rights law of rights to pain management and palliative care. Second was recognition of the obligations that flow from these sources to governments, especially the obligations to provide appropriate services and essential medicines and to adopt and implement national pain and palliative care policies. Third was an acknowledgment of critical deficits in this area. Fourth was an agreement by all sponsors and signatories to work and collaborate toward the “recognition of pain relief and palliative care as fundamental human rights,” to work with governments, policy makers, and regulators to eliminate any barriers to services and medicines, and to advocate broadly for the provision of adequate resources to sustain this work.

In May 2008, the Latin America Societies of the International Association for the Study of Pain and the Foundation for Treatment of Pain as a Human Right promulgated the Panama Proclamation—A Proclamation of Pain Treatment and the Application of Palliative Care as Human Rights. The foundation of the proclamation was two-fold: recognition of the inadequacies of pain management around the world and ratification of international human rights law based on “the sacrosanct principles of human dignity.” The proclamation called upon the United Nations at the 60th anniversary of the Universal Declaration of Human Rights in December of that year to proclaim pain treatment and palliative care as human rights.

In 2010, the IASP appointed a steering committee to develop materials for an inaugural International Pain Summit (IPS). The IPS Steering Committee included representatives from 12 countries comprising pain and palliative care organizations, human rights bodies, ethicists, and other experts. The Steering Committee produced a draft Declaration of Montreal that was approved by the IASP Council. The Summit was held in September 2010 in Montreal in conjunction with the IASP World Congress on Pain. At the summit, over 250 representatives from 84 countries and professional and human rights organizations suggested further revisions.
The final document was approved by the IASP Council and published in Pain 2011;152:2673-74.

The Declaration of Montreal is in three parts. The first part outlines the significant global deficits in the management of pain, access to analgesic medications, the education of health professionals about pain, and national pain policies. The second part enumerates three constituent elements to the right to pain management:

• The right of all people to have access to pain management without discrimination.
• The right of people in pain to acknowledgment of their pain and to be informed about how it can be assessed and managed.
• The right of all people with pain to have access to appropriate assessment and treatment of the pain by adequately trained health care professionals.

The declaration indicated the third element has both a legal foundation and a clear medical content. The legal foundation rests on two sources. First, the UN Single Convention on Narcotic Drugs (1961) declared that the medical use of opioid medication was indispensable for the relief of pain and mandated adequate provision of opioids for medical purposes. Second, the UN Declaration of Human Rights prohibited “cruel, inhuman, or degrading treatment.” Furthermore, the declaration described obligations that flowed from those rights as falling upon two groups: national governments and clinicians. The obligations on governments were expressed broadly to establish laws, policies, and systems that would “promote” and “certainly not prohibit” access of people to adequate pain management. The obligation on health care professionals was to offer pain management that “would be offered by a reasonably careful and competent health care professional in that field of practice,” “taking into account the treatment resources reasonably available” and “within the scope of the legal limits of their professional practice.”

The reference to clinicians was novel. Recognizing pain management to be a universal human right, the declaration expanded the obligation to include clinicians, not simply because they may be liable under the law of negligence or professional misconduct in their own country but because, as the declaration states, “Failure to offer such management is a breach of the patient’s human rights.”

At the European Association of Palliative Care (EAPC) Congress in Lisbon in 2011, the EAPC, in collaboration with the IAHPC and Human Rights Watch, launched the Lisbon Challenge. The joint initiative challenged national governments to comply with four main imperatives for governments to:

• Ensure access to essential medicines, including opioid medications, to all who need them.
• Develop health policies that address the needs of patients with life-limiting or terminal illnesses.
• Ensure that health care workers receive adequate training on palliative care and pain management at the undergraduate level.
• Ensure, through the development of structures and processes, the implementation of palliative care.

In addition to the direct challenges to national governments, another objective was to obtain support from international organizations for the concept of palliative care as human right, leading to a resolution at the next EAPC Congress.

In 2012, on the occasion of World Cancer Day, Pallium India, the IAHPC, the Pain and Policy Studies Group, University of Wisconsin (PPSG), and 60 other organizations promulgated The Morphin Manifesto. It was motivated, at least in part, by the growing use of long-acting opioids in developing nations rather than immediate release preparations. The signatories to the Manifesto expressed concerns that “the exclusive availability of sustained release morphine and other expensive or injectable opioid formulations hinders access to an essential health service, leading to poor clinical and public health practice.” Declaring that the denial of adequate pain treatment to significant numbers of patients violates the right of health care, the manifesto called on governments to ensure affordable access to oral morphine. The manifesto chose oral morphine deliberately as it is the only strong opioid on the World Health Organization (WHO) List of Essential Medicines.

In 2013, the EAPC and other international bodies promulgated The Prague Charter. The charter drew upon statements articulated by international pain and palliative care bodies and the United Nations to call upon all nations to take steps to ensure the realization of a right to pain management and palliative care. The Charter reiterated the importance of nations recognizing the pain management needs of their population, reporting to the International Narcotics Control Board, eliminating any barriers to the distribution of analgesics, and ensuring adequate education of health professionals in both pain management and palliative care.

**Statements by World Medical Bodies**

In May 2012, as part of the World Health Assembly, a side event was held—“Reducing the Burden of Pain and Suffering.” Participants included representatives from multiple national Ministries of Health, national and international palliative care bodies, the Union for International Cancer Control, and the World Medical Association (WMA). The WMA represents national medical associations around the world. The meeting discussed the global disparities in the provision of pain management and palliative care. Addressing the meeting, the President-Elect of the WMA expressly framed access to pain management in terms of human rights. In 2011, the Council of the WMA resolved that “people facing pain have a right to appropriate pain management.”
The United Nations

The argument that the provision of pain management constitutes a human right could only truly gain hold if the United Nations itself acknowledged its merit. The initial and vital steps in that acknowledgment came in statements made by two United Nations Special Rapporteurs on human rights. Special Rapporteurs are experts in human rights law whose responsibility is to oversee specific human rights and report to the United Nations.

In a statement made to the UN Human Rights Council in 2008, the Special Rapporteur on the Right to Health placed palliative care firmly within the obligations that derive from the international right to health. Similarly, the UN Special Rapporteur on Torture in his report to the Human Rights Council in 2009 stated, “The de facto denial of access to pain relief, if it causes pain and suffering, constitutes cruel, inhuman or degrading treatment or punishment” and “all measures should be taken to ensure full access [to pain treatment and opioid analgesics] and to overcome current regulatory, educational and attitudinal obstacles to ensure full access to palliative care.” In addition, the two Rapporteurs made a joint statement to the Chairperson of the Commission on Narcotic Drugs in late 2008. After reviewing the inadequacies of pain management and palliative care around the world, they stated that “lack of access to essential medicines, including for pain relief, is a global human rights issue and must be addressed forcefully.” That statement then proceeded to make clear, practical recommendations for all member nations.

In a further report to the Human Rights Council in 2013, the Special Rapporteur on Torture described “abusive practices” in the health care setting. The Rapporteur stated that a denial of pain treatment may constitute cruel, inhuman, or degrading treatment if it fulfills three criteria—the suffering of a person is severe, the state is aware or should be aware of that suffering, and the government has “failed to take all reasonable steps to protect individuals’ physical and mental integrity.” As an illustration of what constitutes “reasonable steps,” the Rapporteur stated that ensuring the availability and accessibility of WHO Essential Medications “is not just a reasonable step but a legal obligation under the Single Convention on Narcotic Drugs, 1961.” In April 2016, the UN General Assembly held a Special Session on the Drug Problem (UNGASS). In late 2015, in anticipation of that session, the Special Rapporteur on the Right to Health wrote an open letter outlining the Rapporteur’s concerns about the human rights implications of international drug control and emphasized the importance of access to controlled medicines for the management of pain as a “concurrent obligation” on nations under drug treaties and the international right to health. Immediately prior to the Special Session, a joint open letter was sent by multiple human rights bodies and experts within the United Nations, including several Special Rapporteurs, that included a restatement of the treaty and human rights obligation of nations to ensure access to essential controlled medicines for pain management.

Collectively, these statements were a major breakthrough that explicitly linked human rights with pain management and palliative care in statements by representatives of the United Nations. They also provided clinicians and advocates clear recommendations to present to health ministries of individual countries.

In 2009, the UN Commission on Narcotic Drugs convened in Vienna. This session addressed the balance between opioid availability for medical and scientific purposes and vigilance regarding drug abuse and addiction. In his opening address, Antonio Maria Costa, the Executive Director of the United Nations Office on Drugs and Crime (UNODC), said, “We must not only stop the harm caused by drugs: Let’s unleash the capacity of drugs to do good. You think this is a radical idea? Look back at the origins of drug control. The Preamble of the Single Convention recognizes that… the medical use of narcotic drugs continues to be indispensable for the relief of pain…. This is hardly the language of a prohibitionist regime. Indeed, this noble goal of UN drug policy, the freedom from physical pain, demonstrates our overriding commitment to health.”

In the spirit of these opening remarks, Resolution 53/4 was presented at the session. It called for affirmation from the delegates “that international drug control conventions seek to achieve a balance between ensuring the availability of narcotic drugs… under international control for medical and scientific purposes and preventing their diversion and abuse.” Another resolution, adopted without objection, was titled “Promoting adequate availability of internationally controlled licit drugs for medical and scientific purposes while preventing their diversion and abuse.”

In 2008, two bodies within the United Nations invited submissions on issues that have direct relevance to pain management and palliative care. The first issue was discrimination. The International Covenant on Economic, Social, and Cultural Rights, which includes the main statement of the right to health, also states that all rights under the covenant should be fulfilled without discrimination. The committee that oversees the covenant released a draft general comment on discrimination in the context of these rights and invited submissions. In response to this invitation, the WPCA, the IAHPC, and the IASP made a joint submission to the committee, stating:

1. Assuming that pain management is a component of “the right to the highest attainable standard of health” and acknowledging that the principle of nondiscrimination applies to all obligations that arise from the covenant, the principle of nondiscrimination applies...
to obligations of both pain management and palliative care under the covenant.

2. There are significant issues of discrimination in the provision of, and access to, both pain management and palliative care. That discrimination is both direct and indirect. A critical issue is the lack of availability of opioids for medical purposes. Domestic opioid laws, policies, and practices that restrict opioid availability, accessibility, and affordability constitute a significant discrimination against patients in pain and the dying. Other examples include failure to provide adequate health care services in rural and remote areas or failure to provide adequate health care services for children, patients with HIV/AIDS, indigenous persons, persons with disabilities, prisoners, women, refugees, and stateless persons.

The second issue was the human rights of people with HIV/AIDS. From the earliest days of the pandemic, there were significant and diverse human rights implications for people with the disease. The United Nations Human Rights Council invited submissions on the human rights of people living with HIV/AIDS. In response to that invitation, the WPCA, the IAHPC, and the IASP made a joint submission stating:

• HIV/AIDS is an incurable illness.
• Patients with HIV/AIDS may have, in the course of their illness, significant requirements for pain management and palliative care.
• Palliative care, generally, and pain management, in particular, for patients with HIV/AIDS, is undertreated, poorly resourced, and subject to multiple barriers.
• The Joint Programme on HIV/AIDS (UNAIDS) and the Declaration of Commitment on HIV/AIDS by the UN General Assembly both indicated the commitment of the United Nations to promoting a human rights perspective on the care and management of HIV/AIDS.
• Most nations have signed one or more United Nations human rights instruments that contain the right to health care under the International Covenant of Economic, Social and Cultural Rights enumerates “core” obligations and “obligations of a comparable priority” in the provision of health care of great relevance to HIV/AIDS.

In 2009, the UN Human Rights Council requested that the Office of the UN Commissioner of Human Rights (OHCHR) convene an expert consultation to discuss the human rights considerations of the access to essential medicines. The Special Rapporteur on health reported on that meeting in 2011 and submitted a further report to the Human Rights Council in 2013. That report recommended that nations “shift from the dominant market-oriented perspectives on access to medicines towards a right-to-health paradigm in promoting access to medicines.”

World Health Organization

The World Health Organization provides guidance to governments on health-related issues including the rational use of medicines, e.g., controlled substances. In 2000, the WHO published Achieving Balance in National Opioids Control Policy: Guidelines for Assessment. In 2011, mindful of persistent disparities in opioid availability around the world, the WHO published new policy guidelines entitled Ensuring Balance on National Policies on Controlled Substances: Guidance for Availability and Accessibility of Controlled Medicines. Its preface squarely raised the issue of balance: “The universal adoption of [the drug control treaties] and their implementation continue to be highly effective in preventing the diversion of drugs from licit to illicit markets . . . . However, equal emphasis has not been placed on the other fundamental objective of the treaties of ensuring that controlled substances are available for medical and scientific purposes.”

Adhering to the principle of balance, the document referred to the “dual obligation” on governments to prevent the abuse of controlled substances, as well as to ensure access to these substances for medical purposes. According to the document, this dual obligation rests on a “quadruple imperative”: legal, political, public health, and moral. Referring to both the international human rights conventions and the WHO Constitution, the document cites the international right to health care as the kernel of the argument that nations have an obligation to make controlled substances available for medical purposes. Once again, therefore, the pre-eminent United Nations health body returned to its foundational document—the WHO Constitution—that clearly connects health as a fundamental human right and the need for governments to take seriously their obligations to provide citizens with appropriate access to controlled substances for medical purposes.

In 2005, the World Health Assembly and the Economic and Social Council invited the WHO and the INCB to examine the feasibility of an assistance mechanism to facilitate the adequate treatment of pain using opioid analgesics. After their review, they found that such a mechanism was feasible. Subsequently, the WHO established an Access to Controlled Medications Program. The Program is implemented by the WHO and promoted by the INCB though its mission to address the subject of availability including through specific references and recommendations in its annual reports. The practical work of the program is to monitor the principal causes of impaired access to controlled medicines. That includes regulatory barriers, the functioning of the estimate system for importing and exporting by nations, and the education of health professionals. The document Ensuring Balance on National Policies on Controlled Substances: Guidance for Availability and Accessibility of Controlled Medicines is a product of this program.
Conclusion

The concept of pain management as a human right has grown from isolated statements by academics in law and medicine, through a period of sustained advocacy by national and international bodies, to the modern point of acknowledgment and endorsement by bodies within the United Nations. By focusing on the obligations of national governments, the concept reinforces the work of international bodies such as WHO, the INCB, and the UN Commission on Narcotic Drugs and continues to provide a clear foundation for advocacy by numerous professional organizations. Nongovernmental organizations such as the Open Society Institute and Human Rights Watch have further reinforced this concept. While the history and practice of pain management is far more than the history of opioids alone, the latter, nevertheless, is an essential element in global pain management. It will be fascinating to see whether the growing and consistent recognition of the human rights dimension to pain management by the United Nations and critical international bodies, including the WHO and the International Narcotics Control Board, shifts attitude and practice. Nevertheless, a structure for doing so is now in place. That structure includes a consistent message from the international pain community and within the United Nations that pain management has a clear human rights dimension, a report by the INCB to nations on the importance of balance in opioid policy and the availability of controlled substances for medical purposes, and a clear set of guidelines on the multiple steps in the process of having these substances available and accessible.

FRANK BRENNAN, MBBS, DCH, DIP OBM, FRACP, FACHPM, FACLM, LLB,* DANIEL CARR, MD, FABPM, FFPMANZCA (Hon),† MICHAEL COUSINS, MBBS, MD, DSc, FANZCA, FFPMANZCA, FACHPM(RACP)‡
*Department of Palliative Care, Calvary Hospital, Kogarah, NSW, Australia
†Program on Pain Research, Education and Policy, Department of Public Health and Community Medicine, Tufts University School of Medicine, Boston, Massachusetts, USA
‡Michael Cousins Pain Management and Research Institute, University of Sydney at Royal North Shore Hospital, NSW, Australia