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Challenging the UN drug control conventions: problems and possibilities

David R. Bewley-Taylor *

Department of American Studies, University of Wales Swansea, Singleton Park, Swansea SA 2 8PP, UK

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Abstract

Increasing numbers of sovereign states are beginning to review their stance on the prohibition based UN drug control conventions. Recent years have seen nations implement, or seriously discuss, tolerant drug policies that exploit the latitude existing within the legal framework of the global drug control regime. With efforts to implement pragmatic approaches to drug use at the national level, however, comes the growing recognition that the flexibility of the conventions is not unlimited. It seems that the time is not too distant when further movement within states away from the prohibitive paradigm will only be possible through some sort of change in or defection from the regime. This article suggests that efforts to implement treaty revision are fraught with difficulties. It will be shown how the UN procedures permitting revision of the conventions allow nations supporting the current prohibition based system, particularly the United States of America, to easily block change. The article argues that such systemic obstacles may lead parties wishing to appreciably expand policy space at a national level to consider a form of treaty withdrawal. It is suggested that such action by a group of like-minded revision oriented states may be sufficient to trigger a weakening of the regime. The article contends, however, that total withdrawal would be a problematic option, not least because it would have serious consequences for the entire international treaty system.

Keywords: Global drug control; Drug control conventions; US hegemony; Treaty revision; Modification; Amendment; Denunciation

Introduction

As dissatisfaction with the prohibition oriented UN drug control system builds, increasing numbers of states are reviewing their stance on the international treaties. Recent years have seen nations implement, or seriously discuss, tolerant drug policies that exploit the latitude existing within the legal framework of the global drug control regime. With such a trend, however, comes the realisation that the United Nations conventions still stand as a major obstacle to the introduction of pragmatic approaches to drug use at a national level.

Liberal policies adopted in some countries have undoubtedly weakened the current international regime. Yet, it seems that the time is not too distant when further progress within sovereign states will only be possible through some sort of change in, or defection from, the regime. That said, changing the regime is problematic. The provisions concerning treaty revision in all the Conventions permit those nations supporting the current prohibition based system to easily block change. Within the UN drug control system procedures and politics are inextricably entwined. Such systemic obstacles may as a result lead parties wishing to appreciably expand policy space at a national level to consider a form of treaty withdrawal.

This paper begins with a brief overview of the UN drug control conventions including the flexibility that exists within them. It then examines the procedures and politics of treaty revision. Having highlighted some of the difficulties facing nations wishing to create more room for manoeuvre within the current regime, the paper explores a number of issues to be considered when discussing possible withdrawal from one or all of the UN drug control conventions. The discussion includes frequent reference to the UN Commentaries on the conventions because, while not legally binding, they are

* Fax: +44-1792-295-719.
E-mail address: d.r.taylor@swansea.ac.uk (D.R. Bewley-Taylor).

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valuable in interpreting the treaties in the terms intended by their framers.

The UN conventions

The present system of worldwide drug control is regulated by three international conventions. These are the 1961 Single Convention on Narcotic Drugs (United Nations, 1961), as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances (United Nations, 1971) and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. As of November 2002 179 states are parties to the Single Convention, or are parties to the Convention as amended by the 1972 Protocol. The number of nations signatory to the 1971 and 1988 Conventions is 172 and 166, respectively (http://www.odccp.org/odccp/treaty_adherence.html).

The bedrock of the global drug control regime is the Single Convention, so called because it largely replaced the previous international agreements that had been developing piecemeal since the early years of the twentieth century (McAllister, 2000; Bewley-Taylor, 2001). The prohibitionist character of the Convention is beyond doubt. As a general obligation, Article 4(c) obliges signatory nations, subject to the provisions of the Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs. The Convention pays particular attention to plant based drugs such as opium, heroin, coca, cocaine and cannabis. It places more than 100 illicit substances in four schedules, that is to say lists of drugs or preparations that are under the Control of the Convention, with drugs being grouped according to their perceived dependence creating properties.

In line with Article 2 of the Single Convention, the supply or dispensing of any substance listed in the schedules is only possible under legal authority, namely under license. Schedule I contains substances that are subject to all of the control measures under the Convention, including heroin, cocaine and cannabis, while Schedule II is comprised of substances used for medical purposes that are deemed to require less stringent control in view of a lesser risk of abuse. Schedule II includes codeine and norcodeine for example. Schedule III is effectively the schedule of exemptions and as such excludes a series of pharmaceutical preparations made from substances perceived not to lead to abuse or ill effects, such as powders and liquids with very low dosages of opium or cocaine. Substances under Schedule IV are permitted for amounts that may be necessary for medical and scientific research. This includes some substances from Schedule I when they are considered to have particularly dangerous properties which are not offset by therapeutic value that cannot be afforded by some other drug; cannabis, cannabis resin and heroin for example. (De Ruyver, Vermeulen, Vander Beken, Vander Laenen & Geenens, 2002, p. 9; Chatterjee, 1981, p. 351).

The Single Convention also instituted a simplification of the international drug control machinery with the creation of the International Narcotics Control Board (INCB or the Board). This organ is responsible for overseeing the implementation of the three UN drug control conventions (see Fazey, 2003). The powers of the INCB were enhanced in the 1972 Protocol Amending the Single Convention as it moved to strengthen the entire control system instituted by the 1961 legislation (Sinha, 2001).

Constructed as a companion instrument to the Single Convention on Narcotic Drugs, the 1971 Convention came about as a result of a growing global concern for the harmful effects of psychotropic substances, including synthetic drugs such as amphetamines, barbiturates and LSD. In a similar fashion to that of the 1961 Convention, psychotropic substances are also categorised in four schedules. Classification is determined according to dependence creating properties, the potential level of abuse and the therapeutic value of the substances. Any substances included in the four schedules must be licensed by the governments for manufacture, trade and distribution with supply or dispensing only being possible under legal authority. Substances in Schedule I must be strictly limited to medical and scientific purposes. Parties, however, may permit the use and possession of those drugs listed in Schedules II, III and IV in specific cases, such as for industrial purposes, providing they apply the measures of control required by the Convention (De Ruyver et al., 2002, pp. 10–11).

An important purpose of both the 1961 and 1971 Conventions was to codify internationally appropriate control measures to ensure the availability of narcotic drugs and psychotropics for medical and scientific purposes, while preventing leakage into illicit channels. It is in this connection that the World Health Organisation (WHO) is responsible for the medical and scientific assessment of all psychoactive substances and to advise the Commission on Narcotic Drugs (CND or Commission) about the classification of drugs into one of the schedules of the 1961 and 1971 treaties.

The 1988 Convention was designed to deal with the growth of international trafficking in illegal substances in the 1970s and 1980s, since the earlier international instruments only dealt with the issue in a limited fashion. It provides comprehensive measures against drug trafficking, including provisions on money laundering, asset seizure, agreements on mutual legal assistance and the diversion of precursor chemicals. In a similar manner to its sister treaties, annexed to the 1988

Convention are two lists, in this case termed tables rather than schedules. In line with the provisions within Article 12, these tables list substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances. The Convention also tightened the control regime considerably by moving it to incorporate drug demand. Both the 1961 as amended by the 1972 Protocol and the 1971 Conventions required application of criminal policy measures only on the supply side of the drug problem (Krajewski, 1999, p. 331). While the 1988 Convention was mainly concerned with the illicit supply of drugs, one paragraph, paragraph 2 of Article 3, concerned itself with the individual drug user. This Article 3(2) requires each party to make the possession of drugs for personal consumption a criminal offence under their domestic law, and as the Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) suggests, this "amounts in fact also to a penalisation of personal consumption" (United Nations, 1998, p. 80).

Flexibility in the conventions

It is important to appreciate that all of the Conventions are not self-executing. This so-called "executory" nature means that while the Conventions impose obligations on states to apply international law, such law is not directly or immediately enforceable. Indeed, while often vocal in its criticism of national policy, the INCB, as the body responsible for overseeing the operation of the treaties, has no formal power to enforce the implementation of the Convention provisions. Nor has the Board the formal power to punish parties for non-compliance. As students of the international system note, the autonomy of domestic law is stressed within all the conventions (Krajewski, 1999, p. 331). That said, states are required to remain true to the UN Conventions in line with the Vienna Convention on the Law of Treaties (1969). Article 31 of the Convention obliges states to interpret treaties in good faith, respect the "object and purpose" of the Conventions (http://www.un.org/law/ilc/texts/treaties.htm) and thus, within the context of this discussion, adhere to the standards and norms of the global drug control regime.

This situation certainly leaves some room for interpretation at the national level and consequently presents signatory nations with a degree of freedom when formulating domestic policies. Such a situation explains the variations that exist within Europe today, including the de facto legalisation of personal cannabis possession in a number of countries (Krajewski, 1999; Dorn & Jamieson, 2000; De Ruyver et al., 2002; Fazey, 2003). While it may be argued that such moves go against the spirit of the Conventions, especially the stricter provisions of the 1988 Convention, nations have a strong legal position when contending that they are still operating inside the parameters of the international legislation. This is a point of contention for the INCB. The Board clearly regards the liberalisation of cannabis laws in Europe in particular to be at odds with the objectives of the international drug control treaties (International Narcotics Control Board, 2001, pp. 33–37).

Additional latitude is also provided by the fact that the Single Convention does not define medical and scientific purposes. The framers of the 1961 Convention left signatory nations a significant amount of leeway since, as Chatterjee notes, the expression will have different meanings at different times (Chatterjee, 1981, pp. 356–357) and indeed within different nations. Consequently, countries wishing to pursue risk reduction strategies such as the exchange and distribution of needles and syringes, the prescription of heroin, injecting rooms and even on the spot testing of drugs like ecstasy can convincingly argue that they are working within the confines of the international control framework (De Ruyver et al., 2002, pp. 30–33). Again, the INCB disagrees. The Board argues, among other things, that injecting rooms facilitate illicit drug trafficking and that it is the obligation of governments to "combat illicit drug trafficking in all its forms" (International Narcotics Control Board, 1999, p. 26).

Despite such grey areas latitude is by no means unlimited. Indeed, there should be no doubt that the purpose of the UN conventions is to introduce some sort of global drug prohibition. The centrality of the principle of limiting narcotic and psychotropic drugs for medical and scientific purposes leaves no room for the legal possibility of recreational use. To be sure, Article 2 paragraph 5(b) as well as Article 4(c) of the Single Convention obliges Parties to limit the use and possession of drugs, including cannabis, exclusively to medical and scientific purposes (De Ruyver et al., 2002, p. 23) Article 2.5(b) states "A Party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of drugs" in Schedules I and IV "except for amounts which may be necessary for medical and scientific research only, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party" (emphasis added). As a reading of the *Commentary of the Single Convention on Narcotic Drugs, 1961* (United Nations, 1961), makes clear the article is intended to allow parties to strengthen their domestic systems, not weaken them (United Nations, 1973, pp. 64–69). Nations may currently be pushing the boundaries of the international system, but the pursuit of any action to formally legalise non-medical and scientific

drug use would require either treaty revision or a complete or partial withdrawal from the current regime.

The problems of treaty revision

Two possible routes exist when considering revision of the Conventions; modification and amendment. Modification refers to a possible alteration in the regime through the re-scheduling of a drug, that is to say moving it from one to another of the 1961 and 1971 Convention schedules or the 1988 Convention tables, or through the deletion of a drug from a schedule/schedules or table/tables altogether. Amendment refers to the formal alteration of treaty provisions, namely a convention article, which affects all the Parties. As we shall see, both options present their own difficulties.

Modification

Article 3 of the Single Convention regulates the possible changes in the scope of international control offered through the modification of the list of classified substances and the system accompanying them. The WHO or any contracting Party can initiate the modification process at any time. This is a legitimate course of action. At the practical level, however, it is far from straightforward, particularly in relation to cannabis; the drug most usually discussed in relation to modification.

The modification of cannabis is problematic because fundamental problems exist with regard to the legal status of the cultivation of "natural drugs". As the *Commentary on the Convention on Psychotropic Substances* notes cannabis and cannabis resin "...could be deleted by the Commission [on Narcotic Drugs] from the Schedules of the Single Convention and consequently be freed from that treaty's controls concerning drugs, *with the exception of the measures of control mentioned in article 26 and article 28 paragraph 1* (Italics added) (United Nations, 1976, p. 39). These articles are concerned with the provisions and prohibitions regarding the cultivation of coca and cannabis. As such the retention of these unaltered articles means that any changes resulting from the reclassification of cannabis would not include provisions concerning production, that is to say separation from the cannabis plant, and cultivation. The CND, therefore, would be unable to abolish the prohibition of cultivation since it is entrenched in specific articles of the 1961 legislation. Only an amendment to the Single Convention could achieve any revision. Such a situation clearly limits the utility of the modification route. While other drugs could theoretically be re-scheduled or deleted from the schedules according to procedures laid out in Article 3 of the Single Convention, changes relating to cannabis (as well as the coca leaf) would be greatly limited. Cultivation would remain prohibited (International Antiprohibitionist League, 1994, p. 16).

Concerns surrounding the issue of cultivation may be purely academic considering the substantial systemic obstacles that stand in the way of modification. As noted above, the Convention's provisions concerning treaty revision permit those nations supporting the current prohibition based system to easily block change. It is certain that such states would ensure that any move towards modification would encounter considerable opposition. Nations opposed to any weakening of the conventions comprise a curious alliance including Sweden, Japan, many ex-Soviet States, most Arab nations and the United States. Members of this prohibition-oriented camp have, all for their own reasons, a strong desire to maintain or strengthen the current regime. As we shall see, the mechanisms for change within all three conventions provide the group with ample opportunity to stifle any revisionist action. Within this significant power block the US unsurprisingly plays a crucial role. As its staunchest defender, it is the US that provides the INCB with the muscle to police the regime's disciplinary framework. Pressure from Washington has long supplemented the moral legitimacy bestowed upon the doctrine of prohibition by the UN. Such a US–UN alliance represents a formidable source of inertia. Through the strategy of linking drug policy to other, usually economic issues, a practice known as issue linkage, the US has exploited its hegemonic status to defend the global drug prohibition regime it worked so hard to construct (Bewley-Taylor, 2001).

While the WHO plays a central role in the modification process the body can only make non-binding recommendations. The power to actually make any changes in classification initially belongs to the 53-member CND. The current state of the Commission, particularly the stance of the prohibition-oriented camp, makes it unlikely that sufficient support for re-scheduling would be forthcoming. While perhaps not as dominant as in earlier years, it is also vital to appreciate that the US still plays an important role in influencing the direction taken by the Commission. As a diplomat at the UN in Vienna observed only a few years ago "Wherever a nation seems about to break ranks [with Washington's views on prohibition] the US will be there, cajoling or threatening" (Webster, 1998). Under such circumstances even the necessary majority, rather than a consensus, decision required to approve modification may be unobtainable.

And yet, even if the WHO or a Party were to make a recommendation concerning reclassification and the CND were to accept it, Article 3 still offers a number of blocking possibilities. In accordance with paragraph 8(a) only one Party has to make a request for the Commission's decision to be taken to the Economic and Social Council (ECOSOC or Council) for review (see

Fazey, 2003). The Council then has the authority to confirm, alter or reject the decision of the CND. The ECOSOC's decision is final. This clause could easily be invoked by the US or another member of the prohibition oriented camp to shift the decision making process to the 54-member Council. Again, although the judgement is dependent upon a majority rather than a consensus decision, the forum of the ECOSOC would prove no easier a venue for agreement than the CND. There is no reason to believe that the prohibition-oriented camp would behave any differently in the ECOSOC than it did in the Commission. In fact, it would likely offer the United States further opportunities exploit its superpower status.

Procedures, and thus the difficulties, for re-scheduling as laid out in Article 2 of the 1971 Convention are comparable to those for the Single Convention. The conditions for re-scheduling in the 1971 Convention do, however, differ slightly from its forerunner. According to the 1971 Treaty the CND does not have to follow recommendations made by the WHO and can in fact take action not in accord with such recommendations. The Commission has, therefore, wider discretion than under the Single Convention (United Nations, 1976, pp. 30 and 70–71). Nonetheless, while any Party or the WHO may initiate proceedings again the path to modification is easily blocked. As with the 1961 Convention it only takes one Party to request an ECOSOC review of the CND's decision, although the likelihood of reaching a decision in the first place is made slimmer because the 1971 Convention requires a two-thirds rather than a simple majority in the Commission.

Similar issues surround modification of the 1988 Convention with Article 12, paragraphs 2–7 outlining the relevant procedures. A notable difference between this and the earlier treaties is that the INCB replaces the WHO in being permitted to propose modification of the treaty tables. Accordingly, any Party or the Board can notify the Secretary-General of the UN of a proposal for modification of the scope of control of the substances in the tables of 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 request for a review of the CND's decision by the Council. As with all the Conventions the ECOSOC may confirm, alter or reverse the decision of the Commission. Any proposed modification of the 1988 Convention, therefore, faces the same formidable obstacles as those faced by its sister treaties: gaining a majority of some sort in the Commission and if, as is very likely, the proposal is moved for consideration to the Council, gaining a majority decision in that body as well. Its current alignment with the prohibition-oriented camp also means that the Board is unlikely to propose a modification to the 1988 Convention. As such, any deviation from the dominant prohibitive paradigm made by the WHO in recent years would thus not have the opportunity to impact the 1988 treaty.

Amendment

In light of both the cultivation issue and the obstacle-strewn path to re-scheduling, Parties may consider the modification option worthless. It would seem at first glance that the amendment procedure offered by articles in all the treaties is more likely to produce the desired result i.e. treaty revision. As with modification, however, the amending route provides plenty of scope for blocking action by nations opposed to revision of the regime. The central role played by the ECOSOC in the process, especially in the cases of the 1961 and 1971 Conventions, would again permit the US in particular to take advantage of issue linkage.

To recap, amendment refers to the formal alteration of treaty provisions. The possibility to amend is provided 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 notify the Secretary-General of a proposal for an amendment, including the reasoning behind the move**.** The Secretary-General then communicates the proposed amendment and the reasons for it to the Parties and to the Council. It is then the ECOSOC's decision to either call a conference to consider the amendment, or ask the Parties if they accept the amendment. If no Party rejects the amendment within 18 months after circulation by the Council, the amendment will come into force. This outcome would appear to be most unlikely considering the trenchant support that currently exists for the maintenance of the extant regime.

If, as is more probable, one or more Parties reject the amendment and submit to the ECOSOC their comments within 18 months, the Council can decide whether or not to convene a conference to consider the amendment. While such a conference, if it were to be held, may be of use in raising the profile of the revision issue, it would still be far from certain that meaningful revisions would be made. Additionally, prohibition-oriented nations could ultimately exploit the occasion to strengthen the current system. This occurred after behind the scenes activity in the run up to the 1998 United Nations General Assembly Special Session on Drugs (UNGASS). Then initial efforts to reassess the effectiveness of the drug control regime were reduced to a reaffirmation of the current system and its strategies.

The amendment procedure of the 1988 Convention differs subtly to its antecedents. In the first instance the Council is bypassed and the Secretary-General proceeds on his own authority to circulate the proposed amendment. The Secretary-General communicates the proposed amendment and the reasoning behind it to the

Parties to the Convention and asks them whether they accept the amendment. If no Party rejects the amendment within 24 months, it is deemed to be accepted and will enter into force 90 days after a Party deposits an instrument expressing its consent. If, as is more likely, one or more Parties reject the amendment and submits comments within 24 months, the Secretary-General consults with the Parties. Then if, in accordance with paragraph 2 of Article 31, a majority of the Parties requests Council intervention, the Secretary-General must bring the matter before ECOSOC. The Council may then call a conference to discuss the comments from the Parties. Thus, while the process for amending the 1988 Convention may be different, the problems of gaining a majority and the practical worth of a conference remain the same as with the earlier treaties. It is worth noting that some observers believe that there would be little to be gained in attempting to amend the 1988 Convention. From this standpoint its strict prohibitive nature renders the Convention irremediable (International Antiprohibitionist League, 1994, p. 5). Nonetheless, as will be shown, options for the termination of the Convention within the confines of international law are also greatly limited.

Although not outlined in the relevant articles of the conventions there are additional routes by which amendments may be put forward. For example, according to the *Commentary on the Single Convention* ECOSOC may submit proposed amendments to the General Assembly for consideration in accordance with Article 62 paragraph 3 of the UN Charter. The General Assembly may itself also take the initiative in amending the Convention, either by adopting revisions, or by calling a Plenipotentiary Conference for this purpose (United Nations, 1973, pp. 462–463.). The same goes for the 1971 and 1988 Conventions (United Nations, 1998, pp. 414–415). Nonetheless, considering the complex political dynamics of the General Assembly there is no reason to suggest that such alternative amendment procedures would circumvent the obstacles encountered when following the rules laid out in the specific articles.

A final factor to be considered when discussing any plenipotentiary conference is the simple issue of cost. Beyond the obstacles put in place by a nexus of politics and procedures, it would be simple enough for the main contributors to the UN to simply refuse to fund it (see Fazey, 2003).

Clearly then, difficulties beset the options available to create more room for manoeuvre within the current regime. Any attempts to modify or amend any of the Conventions would certainly run up against opposition from the prohibition-oriented group who could easily work the provisions of the treaties to block any progress. In order to circumvent such stasis, Parties may wish to consider withdrawing from the treaties.

Withdrawal from the treaties

Two main options exist for nations to withdraw from the treaties whilst remaining within the confines of international law.

The possibilities of denunciation

Articles within all the treaties allow any Party to opt out by depositing in writing, including reference to the legal grounds for the move, a denunciation with the Secretary-General. With regard to the 1961 and 1971 Conventions, if the Secretary-General receives this instrument on or before the first of July, the denunciation comes into effect for that Party at the beginning of the following year. Denunciation of the 1988 Convention comes into effect for the denouncing Party 1 year after the receipt of the notification by the Secretary-General. Although perhaps regarded as an extreme move, action of this type, as the Canadian LeDain Commission of Inquiry into the Non-Medical Use of Drugs noted over 30-years ago, "...would not, of course, be in violation of international obligations" since it is written into the treaties (Commission of Inquiry into the Non-Medical Use of Drugs, 1972, p. 248).

It is crucial to appreciate, however, that while theoretically possible it would be highly improbable that the denunciation route could be employed to formally terminate the treaties. For example, as of November 2002 it would require 140 nations to denounce the 1961 Convention and reduce the number of ratifications below the 40 required, in accordance with Article 41, to bring it into force. Indeed, it is also important to note that the 1988 Convention will never be terminated because, unlike the other treaties, it has no termination clause. Consequently, in accordance with Article 55 of the Vienna Convention on the Law of Treaties (1969), it will remain in force even if it has only one signatory (http://www.un.org/law/ilc/texts/treaties.htm). Nonetheless, even without formal "de-ratification" of any of the treaties, moves to opt out of the Conventions could, as we shall see, go some way to weaken the current regime.

Denunciation by a state would undoubtedly draw extreme criticism from the prohibition-oriented camp, especially the US, and the UN, particularly the INCB. A Party who chooses to denounce the treaties would have to be prepared to face not only US–UN condemnation but also the threat or application of some form of US sanctions. As the American scholar Peter Andreas notes, "Open defection from the drug prohibition regime would...have severe consequences: it would place the defecting country in the category of a pariah 'narcostate', generate material repercussions in the form of economic sanctions and aid cut offs, and damage the

country's moral standing in the international community'' (Andreas, 1999, pp. 127–128. Also see Bewley-Taylor, 2001, pp. 171–174). This would create different problems for different states. For economic reasons so-called developed nations are better placed to resist US–UN pressure than those from the so-called developing world.

A state may wish to act alone in opting out of one or more of the conventions in the hope that it may creep under the UN/prohibition-oriented camp radar. It is uncertain that this would happen, however. A lone state would more likely incur the full wrath of the defenders of the current international system. Additionally, as noted above, while a European state, for instance, may be able to take the heat for its defection from the regime, other nations may not be as well placed. As a result, a group of like-minded revision oriented states may have more success in challenging the regime. If a credible group of Parties from Europe, Australasia and the Group of Latin American and Caribbean countries at the UN (the so-called GRULAC), for example, were to combine to denounce one or all of the treaties, the US–UN axis may lose much of its potential influence. The ''denouncers'' may find safety in numbers and quite legitimately walk away from the treaties.

Paradoxically, by merely making moves to leave the confines of the regime such a group might also be able to generate a critical mass sufficient to initiate regime change and thus create some space for movement at the national level within the current system. The UN apparatus and the prohibition-oriented nations might be more open to treaty modification or amendment if it was felt that such a concession would prevent the collapse of the existing treaty system. Such a scenario is possible since it is generally agreed that denunciation of any treaty can lead to its demise. This would likely be the case with regard to any of the drug control treaties due to the nature of the issue and the convention's reliance on widespread transnational adherence. Using denunciation as a trigger for treaty revision would differ from the procedures to modify the conventions discussed above since a group of like minded states would not simply be playing the numbers game in an effort to gain majority decisions in both the Council or the Commission. A sufficiently weighty ''denouncers'' group may be able to not only withstand UN–US pressure, but also apply significant pressure itself.

The constitutional principles and basic concepts of legal systems ''loophole''

Should Parties prefer not to follow the denunciation route, they could exploit what Webster has called an ''important loophole'' in the treaties. As Webster notes, the United Nations Drug Control Programme (UNDCP) (1997) World Drug Report states:

> ''. . .[none of the] three international drug Conventions insist on the establishment of drug consumption per se as a punishable offence. Only the 1988 Convention clearly requires parties to establish as criminal offences under law the possession, purchase or cultivation of controlled drugs for the purpose of non-medical, personal consumption, *unless to do so would be contrary to the constitutional principles and basic concepts of their legal systems*'' (italics added) (Webster, 2001).

Thus, if the highest courts in signatory nations ruled that prohibition of a single drug (cannabis for example) or a selection of outlawed substances, was unconstitutional then the Parties involved would no longer be bound by the limitations of the Conventions with respect to those drugs. Such action would be perfectly legitimate according to the provisions of the treaties themselves. Debate already exists with regard to the value of challenging drug prohibition on the grounds of human rights violations (Riley, 1998; Van Ree, 1999). As with all of the options discussed here, this course of action would undoubtedly attract massive criticism and more from the UN and the US. Yet, as with the denunciation option, a group of nations would more likely be able to withstand pressure. Defection via this route would again severely weaken the treaty system and possibly act as a trigger for regime change.

Disregarding the treaties

Another strategy would be for Parties to simply ignore the treaties or certain parts of them. In this way they could institute any policies deemed to be necessary at the national level, including for example the legalisation of cannabis and the introduction of a licensing system for domestic producers. This option has been gaining support amongst many opponents of the prohibition based international system for some time. Disregarding all or selected components of the treaties, however, raises serious issues beyond the realm of drug control. The possibility of nations unilaterally ignoring drug control treaty commitments could threaten the stability of the entire treaty system. As a consequence states may be wary of opting out. Some international lawyers argue that all treaties can naturally cease to be binding when a fundamental change of circumstances has occurred since the time of signing (Starke, 1989, pp. 473–474). Bearing in mind the dramatic changes in the nature and extent of the drug problem since the 1960s, this doctrine of *rebus sic stantibus* could probably be applied to the drug treaties. Yet the selective application of such a principle would call into question the validity of many and varied conventions.

This "collective responsibility for global order" argument would of course be more persuasive were it not for the selective approach to international law adopted by the United States of America. Washington's withdrawal from the Kyoto Treaty and repudiation of the 1972 Anti-Ballistic Missile Treaty had already gone a long way to threaten the treaty system before its recent announcement to "unsign" itself from the convention to establish an International Criminal Court (Teather, 2002; Lewis, 2002). In facilitating this unprecedented move the administration of George W. Bush seems to have asserted that the US is also no longer bound by the Vienna Convention on the Law of Treaties. Under the 1969 Convention, a country that has signed a treaty cannot act to defeat the purpose of that treaty, even if it does not intend to ratify it. Thus, having set this precedent on the basis of national interest, Washington will surely find itself in an awkward position vis-à-vis its opposition to any defection from the drug control treaties on similar grounds.

Conclusions

Nations wishing to expand national policy space by operating beyond the present confines of the current global drug prohibition regime are faced with several possible paths. These all have their own problems and will certainly all encounter intense opposition from the prohibition-oriented camp and the powerful US–UN axis.

The possibility for Parties to successfully revise the treaties is severely limited. Many opportunities exist for nations that favour the status quo, particularly the US, to block any move for modification or amending. An official re-examination of the treaties at a conference may also provide prohibition-oriented nations with the opportunity to hijack proceedings and strengthen the current regime. This may lead Parties to seriously examine denouncing or disregarding all or part of one or more of the conventions.

As argued, a credible alliance of nations would be better able to withstand UN–US opposition than a lone state. Nonetheless, levels of resilience would certainly differ between nations depending upon their economic status and relationship with the US. The abandonment of many multilateral treaties by the current Republican administration in Washington has also re-opened debate on the efficacy of simply ignoring the drug conventions. If faced with censure for defecting from the global prohibition regime, Parties will now be able to argue that they are merely emulating the habits of a hegemon. Such action seems doubtful though considering most democratic, particularly European nations (Fukuyama, 2002), still maintain a high regard for international law. Furthermore, since the treaties fulfil an important role in the control of licit pharmaceuticals any withdrawal from the international system would certainly be problematic.

The concept of using denunciation as a trigger for a change in the terms of one or more of the conventions takes on more significance when we consider the current stance of many revision oriented states. While theoretically supportive of some kind of challenge to the extant regime, many Parties seem reluctant to go public and formally make moves to denounce any of the treaties. It appears as if many nations presently liberalising domestic policies believe that for the time being there is enough room to manoeuvre within the regime. Most Parties to the conventions still have a long way to go before they catch up with the Netherlands in pushing the boundaries of international law.

Nations are also acutely aware of the potential costs that may be incurred if they openly confront the UN and the prohibition-oriented camp, especially the United States. Washington's efforts to conflate its war on drugs with the fight against transnational organised crime (Woodiwiss, 2001, pp. 385–386) has increased the reputational implications of deviation. Similarly, US moves to fuse the drug war with the new war on terror makes movement away from the prohibitive regime more potentially damaging for a nation's international image. This is not to say, however, that nations would not be open to informal discussions on the issue.

Meetings between like-minded countries outside the formal setting of the CND may, over time, create sufficient momentum to trigger a change of outlook within the Commission itself. If the prohibition-oriented camp is aware of the existence of an informal, yet significant, group that is not only willing to consider denunciation but also construct an alternative convention, it may adopt a more conciliatory attitude in order to save the system.

It is clear that the motto "A drug free world—We can do it!" is as unrealistic a proposition today as it was when used at the 1998 UNGASS. More national administrations are acknowledging this fact and reassessing the logic of a global drug prohibition regime operated under the auspices of the UN and enforced by the US. As an increasing number of sovereign states move to develop country specific policies that reduce the individual and societal harm often accompanying drug use pressure on the international drug control system increases. Yet while the UN treaty system and associated apparatus appear more unstable today than they have at any time since their inception, it would be unrealistic to assume that it will dramatically change or disappear overnight. A regime that has been developing since the early years of the twentieth century will certainly display great resilience.

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