



REWRITING THE UN DRUG CONVENTIONS

The three international drug treaties (1961, 1971 and 1988) lock into place a rigid, prohibitionist system of control of psychoactive substances. These not only control international trade in the substances, but also impose requirements concerning the drug laws that countries must apply domestically. In particular, countries that have acceded to the conventions (as nearly all have) must forbid any domestic market in these illegal substances, and make possession or use of the substances a criminal offense. The only exceptions to this are the commerce, use or possession for authorized medical or scientific purposes. The provisions forbidding a domestic market – where production and sale are regulated within a legal structure - have meant that no nation has a fully-formed system of regulatory control of these substances other than for medical use.¹ There is considerable debate concerning what is legally permissible under the current criminalising approach. The conventions' legislation has substantially constrained reform efforts to decriminalize use and possession. Instead it has resulted in compromise provisions which lower penalties but often end up being more widely applied (“net-widening”, as this is termed by criminologists).

The present international drug conventions thus restrict efforts to reform national drug control laws within two main areas: first, the conventions do not clearly allow the decriminalisation of use and possession of covered psychoactive substances and second, they do not permit the creation of a regulatory regime for the production and sales of the substances within a domestic market.

Scholars working with the Beckley Foundation have drafted a series of documents which offer precise and positive alternatives to the present situation.

- a) “Option 1”: A series of amendments to the three treaties which would preserve both the present treaties’ controls on international trade and prohibition of domestic markets, but unambiguously provide that the decision whether or not to criminalise non-commercial possession or use was for individual nations to determine.
- b) “Option 2”: A series of amendments, incorporating those in Option 1, but additionally making it a matter for national determination whether or not to establish a regulated domestic market for non-medical use.
- c) The Draft Framework Convention on Cannabis Control²: this treaty, drafted specifically for cannabis, predominantly maintains the present controls on international trade specified within the 1961 Convention, but has provisions modelled on the Framework Convention

¹ The Dutch system of “coffee shops” for cannabis has de-facto legalized a market for small retail transactions. However, there is no provision for legal supply of the coffee shops. The licensed cannabis shops in several Indian states rely for their legality on a distinction in the international treaties concerning which parts of the cannabis plant are under international control.

² Drafted for the Beckley Foundation’s Global Cannabis Commission Report, co-published with Oxford University Press as ‘Cannabis Policy: Moving Beyond Stalemate’.

on Tobacco Control, (which was adopted in 2003 and came into force in 2005) concerning both domestic controls and markets.

PATHS FORWARD FOR NATIONS INTERESTED IN DRUG REFORM

The following section discusses the potential ways in which the draft treaties could be implemented.

The path which seems most likely for a country acting alone is denunciation followed by re-accession with reservations.

1. Denunciation and re-accession with reservations: Withdrawing from a treaty and then immediately rejoining with specified reservations is a strategy with a number of modern precedents from other treaties. The 1961 Single Convention specifies that a reservation is not accepted if one-third or more of the signatories reject it. But if this happened, the reserving State would simply be a non-party to the convention. This would presumably be an unpalatable result for the international drug control system.

The main disincentive to a country taking this path arises less from a threat of exclusion than from pressures and countermeasures outside the drug control system (e.g. economic sanctions) that could be threatened by the U.S. and other main supporters of the system. There would be more safety in numbers against these pressures and threatened countermeasures, which makes a coordinated series of denunciations and reaccessions a path worth considering for like-minded countries wishing to implement either of the Options outlined above.

There are also other options for a group of countries acting collectively. These paths involve use of one or more of the draft alternative treaties drawn up in the Beckley Foundation work. Either path has basically the same aim: to get to a position where the countries joining in the strategy have taken back their sovereignty with respect to their domestic arrangements of the internal markets in the substances, or at least concerning the criminalization of use and possession.

2. Denunciation of the treaties and replacement with alternatives. The countries would each denounce (announce they are withdrawing from) the treaties, but sign new treaties based on Options 1 or 2. The new treaties could be negotiated and signed under a body in the UN system, another international body, or by the call of a single State. Of course, the treaties in their present form would continue to be in force for those parties who had not joined in the group of countries. There would thus be a need for negotiation after the adoption of the new treaties concerning the coordination of action under the two sets of treaties.
3. Adoption of new, alternative treaties. The countries could simply adopt new treaties (without denouncing the existing treaties). Either of Options 1 or 2 could be adopted, or the Framework Cannabis treaty, or a combination of the Framework Cannabis treaty and either of Options 1 or 2. This path would be less directly confrontational to the international system than alternative 2. The countries ratifying the new treaty would remain obliged to follow the provisions of the current treaties, to which they would still be parties, with respect to countries which were not parties to the new treaty. This would apply, for instance, to the provisions on international trade and cooperation, which in any case would remain much the same in the new treaty. With respect to the changed provisions, on

domestic laws on possession and use, and also potentially on a regulated domestic market, the “last in time” rule would be expected to apply, both in their domestic affairs, and in the relations between countries ratifying the new treaty.

It should be noted that, while “last in time” is the strongest and most general rule covering conflicts between treaties, other rules might also be argued to apply.³ A strategy of adding a new convention on top of the existing ones is likely to attract some controversy.

There are precedents in a number of countries for decriminalising personal use and possession, but many of the precedents are compromised by an effort to stay within the present conventions. The compromises often involve retaining some lesser penalties or giving wide discretion to police, and often the result has been “net-widening” rather than a clear decriminalization. Operating under a changed set of international conventions would eliminate these problems. There are no precedents in the last half-century for a fully regulated non-medical market for the controlled substances. To reach this aim, it is clear that the conventions must either be changed or ignored. The draft revisions and new convention put forward by the Beckley Foundation offer concrete language for changing the conventions, either by deletion, amendment or by supersession by a new convention. They offer guideposts for the most likely paths of change in the current international system of drug control.

-- Robin Room, 3 April, 2011

³ See pp. 136-138 in: Room, R., Fischer, B., Hall, W., Lenton, S., Reuter, P. *Cannabis Policy: Moving beyond Stalemate*. Oxford, etc.: Beckley Foundation Press and Oxford University Press, 2010.