

Background

The global drug control system, as it exists today, is in conflict with the goals of public health. Drug use criminalization can impede the implementation of harm reduction interventions, as some strategies (aimed at preventing the spread of disease & accidental drug overdose) may be banned or restricted under national or international law. Additionally, fear of prosecution socially marginalizes & stigmatizes drug users, driving them away from accessing much needed health & social services. Community & social health is also compromised, as millions of users are incarcerated & face severe punishment for drug possession charges, resulting in a loss of family livelihoods & a breaking apart of communities.

Recognizing the social & public health harms resulting from the current punitive system, countries around the world have made efforts to liberalize drug policy through various types of reform. However,

nations do not enjoy unlimited latitude in reforming domestic drug policy because international laws (as set forth through a series of three United Nations Conventions) strictly prohibit the legalization of non-medical & non-scientific drug use. This fact sheet provides background on the UN Conventions & presents four options for reform movements:

- Opportunities for countries to work within the current legal framework
- Prospects for treaty revision
- Withdrawal from the international treaties
- Enacting a new treaty system based more closely on principles of science, public health & social welfare

International Law Facts

The international drug control system is governed by three international treaties:

1961 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol)

The “bedrock” of the global drug control system, this Convention limits the “production, manufacture, export, import, distribution of, trade in, use & possessions of” opiates, cannabis & cocaine to “medicinal & scientific purposes.” It also establishes the scheduling system, in which Schedules I (heroin, cannabis & cocaine) and IV are the most restricted. Finally, it established the International Narcotics Control Board (INCB) as watchdog to monitor compliance.

1971 Convention on Psychotropic Substances

Enacted in response to emerging drugs in the 1960s, this Convention acts as an addition to the 1961 Convention, adding certain synthetic, prescription, & hallucinogens (LSD) to the list of scheduled substances.

1988 Convention against Illicit Traffic in Narcotic Drugs & Psychotropic Substances

This Convention was adopted in response to the increase in drug trafficking. It required member countries, for the first time, to criminalize possession for personal consumption, but it does not specify enforcement or punishment measures. The 1988 Convention specifically states that its implementation should be accompanied by prudence & is subject to each party’s “constitutional principles & basic concepts of its legal system.”

How powerful are the treaties? The Conventions are “self-executing” in that their implementation is left to each individual country, & the INCB has no real power to enforce them. But the Conventions are legally binding pursuant to the 1969 Vienna Convention on the Law of Treaties, which requires all parties to interpret treaties in good faith and respect their “object and purpose.”

Why do member states abide by the treaties? Until now, member states (184 countries) have become Parties & thus adhere to the treaties, in part due to pressure (predominantly from the US, but also from other countries such as Sweden, Japan, China, Muslim countries, the Russian Federation, & most Eastern European countries) & out of a general spirit of international cooperation. As the Conventions are legally binding, countries wishing to defect from the treaties face serious repercussions in the form of economic sanctions, aid cut-offs, & damage to their international reputation & moral standing.

What is the trend for compliance with the treaties in the future? A growing number of member countries, while still careful to appear to be in technical compliance, have been moving away from the spirit of the treaties. This is becoming more possible in the current political climate as countries become less dependent on US aid, & the EU gains autonomy in the international community. Also, many Western European countries no longer hold the US drug policy, with its high incarceration & crime rates, as a respectable model.

There is some latitude for drug policy reform. Four options, and the benefits & consequences of each, are discussed below.

OPTION 1: Work within the UN Conventions

The treaties were written with intentionally vague language to allow for the implementation of laws pursuant to the diverse legal & political systems of member nations. This vague language, and the deference given to the constitutional principles of each country, leaves room for a broad interpretation of the treaties that can be used to the advantage of reformists. While the Conventions do not allow legalization of drugs, they have been interpreted to leave a “grey area” in the areas of depenalization (non-enforcement), decriminalization, and medicalization:

- **Depenalization:** Members are only required to have laws on their books that make possession for personal consumption illegal, but the Conventions do not specify how the laws should be enforced; some countries have enacted a policy of non-enforcement. (Netherlands)
- **Decriminalization:** Specifies that possession for personal consumption is illegal, but punishable by fines or other administrative penalties. (Portugal, Mexico)
- **Medicalization:** The Conventions allow for the use of certain drugs for medical purposes (and do not define “medical use”); this gives latitude for governments to medically treat problematic drug use (e.g., methadone, buprenorphine, or heroin substitution therapy). Another example of medicalization is allowing limited availability of marijuana for medical purposes. (US, Canada).

OPTION 2: Revision of UN Conventions

The UN Conventions can legally be revised either through modification or through amendment.

- **Modification** refers to the modification of the drug scheduling system (e.g., reclassifying cannabis).
- **Amendment** refers to the formal alteration of the Conventions (e.g., revising a particular Article).

Revision of the treaties is not likely at the present time because of the power structure of the UN Commission on Narcotic Drugs; the “prohibitionist block” can and has easily blocked both routes. Policies often conform to US standards, even in the absence of direct US pressure.

OPTION 3: Withdrawal from all or part of UN Conventions

Withdrawal from the treaties can be done by denouncing or disregarding all or portions of the treaties, or through a combination of the two.

- **Denunciation** of the treaties is a legal avenue written into all three conventions. Through denunciation, individual or groups of countries can withdraw support for the treaties. A sufficient number of member countries denouncing the treaties as to reduce the number of member countries to below 40 would result in termination of the 1961 Convention.
- **Disregarding** the treaties is to simply ignore all or part of the Conventions, such that they eventually fall into disuse. There is a growing acceptance of this option, but it would likely incur economic consequences discussed above.
- **Denunciation** and reaccession with reservation to a portion of the treaties is a viable path for member countries that have objections to specific provisions of the treaties (e.g., the Bolivian coca leaf reservation). Upon reaccession, a reservation can be blocked by objection from one-third of the parties to the treaties. Selective denunciation of a specific article (which would have the same effect) has also been argued as an alternative, but there are currently no provisions in the treaties that would facilitate this option.

OPTION 4: Adoption of a new treaty system

Two or more countries could, theoretically, adopt a new international treaty about a specific aspect of drug control, or a spectrum of topics under the drug control umbrella. This area of international law is somewhat unsettled, & the enforceability of obligations of a party to a new treaty under an old treaty to which it remains signatory is unclear. However, efforts in this direction may well be forming (e.g., the Vienna Declaration, the Angel Declaration, & the forming of the Global Commission on Drug Policy). According to UN protocol, it is also possible for reform-minded states to call for a plenipotentiary conference for the purpose of reconsidering the conventions. However, both the scope for countries preferring the status quo to block the procedure and the financial cost of such a process make this a problematic route. Yet another possibility might be to form a smaller UN policy group not associated with any particular group or movement (specifically, the US), to review these issues.

All of the above are options for reform under the international drug control system, although some are more likely to be successful than others. A single nation failing to comply with international law would face serious economic & diplomatic consequences. However, nations banding together (particularly developed nations less in need of international aid) are in a position to better withstand pressure from the US & UN, & could, eventually, successfully effect significant change to the international drug treaty system.