

US Role in International Policy

The US has been the “driver” behind the formation and development of the global drug control system since its formation.

The UN was formed in the wake of World War II at a time when the US had economic, military, and overall political power to impose its policy intentions on the rest of the world. Through the present day, member nations who are economically dependent on UN aid have little option but to follow the mandates of the international treaties.

The US played a major role in creating the complicated structure of UN drug control organizations and further, supported the appointment of like-minded people to run them. Today, the “prohibitionist block” consists of an uncommon union among the US, Sweden, Japan, China, Muslim countries, the Russian Federation, and most Eastern European countries. Each of these nations has its own differing reasons for opposing drug liberalization, but the strength of their opposition and conformity to US policy poses a formidable threat to nations wishing to abandon the treaties.

Although the federal government has traditionally taken an enforcement-oriented approach to drug policy, the Obama Administration has announced its intention to make a shift in drug policy towards treatment and prevention, and has in the past allowed certain leeway with respect to state laws that conflict with federal law (ex. medical marijuana).

Conflicts between state and international law

The Supremacy Clause of the US Constitution (Art. VI, clause 2) places treaties to which the US is party on the same legal footing as federal law. Additionally, while the International Narcotics Control Board (INCB) has no legal power to directly enforce the treaties at the US state level, it does have political power via the US federal government, which (through the DEA) is charged with directly enforcing federal drug law. Since the CSA mirrors the treaties, the INCB and the US federal government share a common mandate with respect to enforcement measures. Thus as a legal, political, and practical matter, the treaties preempt any conflicting state law.

Examples:

- *Sixteen states and DC have enacted medical marijuana laws that conflict with both federal and international law. The Obama Administration has flip-flopped on whether it would enforce federal laws against medical marijuana dispensaries, first declaring a policy of non-enforcement with respect to dispensaries operating in compliance with state law, and then announcing its intention to enforce the law against everyone but the “seriously ill” and their caregivers. Either way, the DEA is within its legal rights to raid these dispensaries under federal law.*
- *If any state were to pass a law legalizing possession of marijuana for recreational use, the DEA would still be able to legally arrest anyone possessing marijuana. Since the Obama Administration has declared in its Policy Strategy Statement that it opposes legalization, this would be the likely outcome if the measure were to pass.*

State movements toward decriminalization/ allowance for harm reduction measures

In the past, individual US states have enacted laws decriminalizing certain drug-related offenses. Additionally, various harm reduction measures, such as overdose prevention and syringe exchange, have become legal in many states. Given the Obama Administration’s current stated policy, the federal government is more likely to allow leeway in these areas as opposed to, for example, legalization of any drug for recreational use.

Effect of International Law on US State and Federal Laws

Though it may be difficult for most Americans to imagine the effect of international drug law treaties on state law, one of the most striking characteristics of the international drug control system is its overriding concern with the domestic affairs of member countries, including the United States.

US state and federal law

The federal Controlled Substances Act of 1970 (CSA) is designed to meet the US’s obligations with respect to the scheduling system established in the 1961 Convention; there is a complex mechanism in place to ensure that the scheduling systems correspond.

Each state has its own controlled substances act (many of which mirror the CSA); however, federal law preempts, or overrides, state law covering the same subject matter. In addition, although the majority of drug enforcement takes place at the state or municipality level, the federal government uses various strategies to maintain considerable influence over local enforcement efforts: funding (including “equitable sharing” of forfeited property), leveraged cooperation, and direct enforcement against conduct otherwise permissible under state law.

OPPORTUNITIES FOR US DRUG POLICY REFORM

Why US drug reform must go hand-in-hand with global reform:

There are many supporters of drug reform within the US, but surprisingly little awareness of the limitations on domestic reform given the international reality. Calls for domestic reform in isolation from the international community can only go so far – both because of the US’s role in the international drug control system and the Administration’s stated intention to adhere to the system. US advocates would benefit from taking advantage of the growing community of member states and international organizations calling for international reform. US reform will be more effective using a combination of efforts in the US as well as collaboration with reform-minded member states in the international community.

Options under the current state/federal/international system (short-term):

- **Decriminalization** may be the best option for now, since it is arguably allowable under the treaties, many member countries are already enacting formal decriminalization laws, the US Administration has announced a shift towards treatment/prevention, and there is precedent for decriminalization and/or allowance of harm reduction measures at the state level.
- **Depenalization/non-enforcement** is a viable option that is allowable under the treaties; however, it leaves significant control in the hands of local law enforcement.
- **Legalization** is not currently a viable option in light of the treaties and the stated intention of the Obama Administration, as it would require either 1) modification or amendment to the treaties (neither of which is currently likely) or 2) disregard of, or withdrawal from, the treaties by the US Federal Government.

Options to reform the international system (long-term):

- The US could either formally denounce the treaties, or simply disregard them and pass new federal laws in contravention of the treaties (the new federal law would supersede the treaty within the US, but would leave the US in breach of its treaty obligations).
- Groups within the US could begin to work with other member states to eventually promote the formation of a new treaty system.

OPPORTUNITIES FOR ACTION AND RECOMMENDED NEXT STEPS

What US drug reform organizations can do internationally and at home:

International

- Join international reform organizations to strengthen their influence in the international community and the UN.
- Attend annual sessions of the Commission on Narcotic Drugs in Vienna in order to develop a presence for reform-minded US organizations and learn about the UN drug control system.
- Locate the “inner circle” of UN drug policy influences to push for expanded interpretation of the Conventions.
- Call for member countries to actively expand interpretation of the treaties, denounce/disregard the treaties, and/or begin to form a new treaty system.

Domestic

- Educate the US public on the structure of international drug policy politics and decision-making, options for reform given the state, federal and international context, and the role of the US in international policy.
- Work to influence state and federal legislators to enact decriminalization laws, ease up on harsh sentencing laws and allow harm reduction measures.
- Organize and lobby the US government to withdraw its support of the international treaties and/or to expand its interpretation of the treaties with respect to decriminalization and harm reduction measures.