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**Polarisation & Paralysis
in UN Drug Control**

**Breaking the
Impasse**



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In April 2003, there is to be a mid-term review of the outcomes of the United Nations General Assembly Special Session (UNGASS) on Drugs in 1998. The 1998 UNGASS was originally called to evaluate the effectiveness of the current repressive drug control regime. During the preparatory phase at the Commission on Narcotic Drugs (CND), however, the effort at evaluation backfired and the UNGASS was reoriented towards an affirmation of prohibitionism, despite the obvious failure of current drug control policies. The General Assembly in their political declaration gave the UN International Drug Control Programme (UNDCP) the mandate "...to develop strategies with a view to eliminating or significantly reducing the illicit cultivation of the coca bush, the cannabis plant and the opium poppy by the year 2008".

Four years on, one can only conclude that the unrealistic deadlines set at the 1998 UNGASS have – once again – failed. This issue of *Drugs & Conflict* analyses the possibilities and obstacles for change of international drug control as a contribution towards ensuring that the 2003 mid-term review of UNGASS does not constitute another lost opportunity for evaluation.

In *Time for Breakthrough – Polarisation and Paralysis in Global Drug Policy*, TNI fellow Martin Jelsma describes the increasingly divergent trends in global drug policies. On the one hand, there is an escalation in the US-driven War on Drugs, creating a drug gulag domestically, increasing and militarising forced eradication abroad. On the other hand, in Europe and several like-minded countries a more flexible and pragmatic approach has gained ground in domestic drug policy-making, taking distance from indiscriminate repression and the zero-tolerance approach. In these countries, the trend towards greater leniency has become irreversible and rational thinking is gradually replacing the dogmas of the past. The stark polarisation of these two main trends, however, has led to paralysis at the UN level. The key question now is how to achieve a breakthrough.

In *Habits of a Hegemon – The United States and the Future of the Global Drug Prohibition Regime*, David Bewley-Taylor analyses the growing dissatisfaction with the UN drug control system. Nations from around the world have implemented, or seriously discussed, harm reduction measures that attempt to work within the legal confines of global drug prohibition. As the limits of these efforts are reached, there is a realisation that the UN Drug Conventions pose a major obstacle to the introduction of pragmatic policies at a national level. Further progress will only be possible either through some sort of change in or defection from the regime. Any such move would certainly encounter considerable hostility. As its staunchest defender, it is the United States that maintains the disciplinary framework. Nations wishing to expand national policy space by operating beyond the confines of the conventions are faced with several possible paths. These all have their own problems and none can be realistically considered without reference to the US.

The wisdom of the UN Drug Conventions is increasingly being questioned. In May, the House of Commons Home Affairs Select Committee in the United Kingdom released its report *The Government's Drugs Policy: Is It Working?*. In this report, the Committee concluded "...we believe the time has come for the international treaties to be reconsidered" and recommended that "...the Government initiates a discussion within the Commission on Narcotic Drugs of alternative ways – including the possibility of legalisation and regulation – to tackle the global drugs dilemma." Chris Mullin, the chairman of the Committee, said "attempts to combat illegal drugs by means of law enforcement have proved so manifestly unsuccessful that it is difficult to argue for the status quo." One can only hope that the international community and the UN will follow the lead of the UK Committee and initiate a serious evaluation with a view to the development of more humane, just and effective drug policies.



The big trends in drug policy over the past decade reveal two opposing tendencies: one tends towards tolerance and pragmatism and has its centre of gravity in Europe, while the other under US guidance tries to reinvigorate a zero-tolerance mentality using more repressive means. The polarisation has led to paralysis on the UN level. A more assertive European role, combined with the UNDCP reform process and the evaluation in April 2003 could provide an opportunity for a breakthrough.

These diverging trends start from a shared recognition that all combined efforts thus far – eradication, crop substitution, drug seizures, demand reduction – have failed in terms of global impact. There may be a wealth of good practices on the local level, but there is barely any reduction in either supply of or demand for illicit drugs. In the consumption markets, wholesale and retail prices show a downward trend while purity is rising, which means there is no shortage on the market. Consumption patterns and youth culture fashions are continuously changing but there is no indication that overall levels of consumption of illicit substances are diminishing.

Some conclude that this recognition should lead to a global evaluation: re-assessment of the applied principles, opening of the debate, more space for experimentation with other approaches and a focus on more realistic aims in terms of reducing drug-related harms. Others, however, maintain that the reason the ‘medicine’ has not worked is that not enough has been applied and that the logical response should be to apply a stronger dose: re-affirm political commitment, oppose any tolerance, close ranks behind a ‘get-serious’ approach, set deadlines and don’t be afraid to dirty your hands to achieve concrete results, “A drug free world – We can do it!”

At the UN level, the polarisation has caused paralysis. The United Nations International Drug Control Programme (UNDCP) has actively promoted the re-affirm discourse, suffocating

attempts to open up the debate, censoring critical remarks in its own publications, trumpeting doubtful success stories, and punishing dissenting views among its staff.¹ The International Narcotics Control Board (INCB) has maintained a very strict interpretation of the UN conventions and regularly appears to overstep its limited mandate by passing judgement on sovereign states whose policies take a slightly different direction and exercising pressure on them to get back in line. As for the UN Commission on Narcotic Drugs (CND), it is clear the more liberal-minded countries are taking a low profile. Careful not to fuel tensions that might endanger carefully conquered ground for experimentation, they opt to keep the debate as general and diplomatic as possible, avoiding open controversy in the CND over their policy directions.

The 1998 UNGASS on Drugs

The polarisation between the divergent trends became visible at the United Nations General Assembly Special Session (UNGASS) on Drugs, which took place in June 1998. The UNGASS motto ‘A Drug Free World – We can do it!’ recycled the illusion that with sufficient commitment and a bold strategy it was possible to eliminate illicit drugs from the planet completely. To reach that goal, during the months before UNGASS, UNDCP elaborated an ambitious plan called SCOPE, the *Strategy for Coca and Opium Poppy Elimination by 2008*.²

UNDCP expected UNGASS to approve SCOPE, which called for a mix of alternative development projects and eradication operations wiping out illicit crops in Colombia, Bolivia, Peru, Burma, Laos, Vietnam, Afghanistan and Pakistan, the eight countries where coca and opium production is concentrated: “After three decades of experience, the international community is now equipped with tested methodologies and the know-how to tackle the problem in the producing areas. The strengthening of the drug control mechanisms in the regions concerned has paved the way for full-scale interventions and most producing countries

¹ Letter of Resignation to Mr Pino Arlacchi, by Michael vd. Schulenberg, Director Division for Operations and Analysis – UNDCP, December 4, 2000.

² For a detailed critique of SCOPE, see: Tom Blickman, *Caught in the Cross-fire: Developing Countries, the UNDCP and the War on Drugs*, TNI/CIIR, London, June 1998.

have adopted well-defined national strategies and action plans that are ready for implementation.”³

The SCOPE plan, however, was not endorsed by the General Assembly. At the Vienna preparatory meetings, the proposal was criticised harshly by several member states, which prevented the plan even getting onto the UNGASS agenda. SCOPE disappeared from UNDCP documents and no longer exists today. The Political Declaration from UNGASS still reflected some of its principles, by welcoming “the global approach by the United Nations International Drug Control Programme to the elimination of illicit crops” and stating that all countries should commit “to working closely with the Programme to develop strategies with a view to eliminating or reducing significantly the illicit cultivation of the coca bush, the cannabis plant and the opium poppy by the year 2008.”⁴

After having lost the opportunity to use UNGASS to re-assess current anti-drug policies, several countries tried to safeguard the concept of ‘shared responsibility’ between the North and South, developed in the eighties. They pressed for the elaboration of an Action Plan for demand reduction, which should achieve measurable results by 2003, acknowledging the basic fact that if the world is not able to reduce demand for illicit drugs, it is an illusion to think that supply can be eliminated.

A New Escalation in the US

Around this same period (1997/98), a ‘re-affirmation’ push was taking place in the United States. Pressure increased to intensify the chemical War on Drugs worldwide, while the US Congress allocated resources for the promotion of a biological front. The SCOPE vision and the target date of the year 2008 set by UNGASS blended with the aggressive nature of the Western Hemisphere Drug Elimination Act (approved by US Congress in October 1998) into grand master plans for the Andean region. The offensive

focused on Bolivia - the *With Dignity!* plan - and on Colombia, with massive aerial spraying operations under the aegis of *Plan Colombia*, the *Andean Regional Initiative* and recently the inclusion of Colombia in the global war on terrorism.

On the consumption side of the drug chain, an escalation also became visible. During the nineties, a record number of people were arrested in the US for consumption (something already decriminalised in many countries around the world) or for possession of small quantities. Human Rights Watch calls for “the need to move beyond the war on drugs and to begin to dismantle the racially unjust ‘drug gulag’ it has spawned.”⁵ “Human Rights Watch does not challenge the public’s decision to use criminal sanctions in its effort to curtail drug abuse and drug trafficking. But the use of the criminal sentences is subject to important human rights constraints. To be consistent with internationally recognized human rights standards, criminal sanctions must be both humane and proportional to the gravity of the offense.”⁶ The dramatic prison situation, the rapid spread of HIV in the absence of a clean needle policy, and the effects of the extremely repressive policy approach especially on black communities is contested by broad social sectors.

Europe Takes Distance

In Europe, meanwhile, another approach gained ground. Expected to contribute the alternative development components to accompany the escalation in the Andes, Europe instead took distance from the US-led War on Drugs. The blurring of lines between development and eradication, environmental concerns over chemical spraying, and the over-emphasised military force in the ‘carrot and stick’ balance, made European donors reluctant. US officials expressed their disappointment: “Everyone was looking for the rest of the world, particularly the Europeans, to do the soft side. We have done the military side. You can’t do one without the other.”⁷ Apart from verbal disagreements and donor reluctance, Europe has



³ CND, *An International Strategy to Eliminate the Illicit Cultivation of Coca Bush and Opium Poppy: Progress Report*, E/CN.7/1998/PC/CRP.4, Vienna, March 3, 1998.

⁴ UNGASS, *Political Declaration*, 9th Plenary Meeting, A/RES/S-20/2, June 10, 1998.

⁵ HRW, *Punishment and Prejudice: Racial Disparities in the War on Drugs*, Human Rights Watch US, May 2000.

⁶ HRW, *Reforming the Rockefeller Drug laws*, Website editorial at: www.hrw.org/campaigns/drugs/

⁷ “Europe’s Aid Plan for Colombia Falls Short of Drug War’s Goals,” *New York Times*, October 25, 2000.

been also reluctant to directly challenge the US and has had great difficulty defining an alternative policy framework for the drugs production side.

Domestically, however, the Harm Reduction concept has spread very fast in recent years and has now become the basis for a rational and pragmatic drug policy in almost every European Union country and several others like Australia, New Zealand, Canada and Brazil. Practices like decriminalisation of consumption, leniency in law enforcement towards cannabis and towards possession of other drugs for personal use, and needle exchange programmes are commonplace nowadays. The more controversial steps further along the path of leniency, like the 'coffee shops', heroin maintenance programmes, XTC testing, etc, have received acceptance beyond the pioneer countries, Switzerland and the Netherlands, and are under consideration or in preparation in several other countries. Compared with the tense situation at the time of the 1992 Maastricht Treaty, Europe has advanced rapidly on these issues. In several countries, debates are now taking place that openly question the wisdom of prohibition of cannabis products and open up the discussion to look at legal models for the regulation of that illicit market.

The trend towards more leniency has become irreversible and rational thinking is gradually replacing the dogmas of the past.

expanding tolerance practices and strict adherence.⁹ If the countries committed to the search for pragmatic solutions want to advance any further, it is becoming urgent that they begin to question openly the straitjacket of the conventions. The obstacle to considering any changes in that direction is the consensus-driven functioning of the CND. With the current polarisation, it is difficult to imagine that any agreement could be reached. Among the fervent defenders of the prohibitionist regime, too, considerable differences exist as to the cultural and political roots of

their zero-tolerance position. In Sweden, for example, it is primarily rooted in a social democratic tradition where the state is supposed to protect its citizenry against any threat perceived to undermine the fabric of society. In predominantly Moslem countries, the rise of Islamic fundamentalism and the accompanying strong religious laws against any drugs, including alcohol, has resulted in stronger opposition from those states to any deviation from zero-tolerance within the CND. Several African cannabis-producing countries are taking strong positions because they aspire to be included in special preferential trade mechanisms and developmental aid schemes tied to drug control objectives already in place for several Latin American and Asian countries. Then there is the United States, the principle force promoting a global prohibitionist regime, which has a zero-tolerance position rooted in Christian fundamentalism and an aspiration to world leadership, leading it to blur the drugs issue with other foreign policy and security agendas.

With this blend of motives dominating the re-affirm camp, there is little possibility of negotiating a new consensus on the basis of rationality and pragmatism. There may still be possibilities, however, to break the impasse at the UN level and expand space for policy diversity while

Room for Manoeuvre

There is no question that sooner or later the tolerance trend guided by the Harm Reduction philosophy will run into the limitations of the UN conventions. It already touches the very edges of the letter and spirit of some articles. All steps taken thus far are defensible in that they adhere to the 1961 Single Convention as well as most of the stricter obligations agreed to in the 1988 Vienna Convention.⁸ Still, the INCB warns in its 2001 report of an increasing tension between

⁸ Nicholas Dorn and Alison Jamieson, *Room for Manoeuvre – Overview Report*, DrugScope, London, March 2000; and B. De Ruyver, G. Vermeulen, T. Vander Beken, F. Vander Laenen and K. Geenens, *Multidisciplinary Drug Policies and the UN Drug Treaties*, IRCP, Maklu, Antwerpen/Apeldoorn, 2002.

⁹ INCB, *Report 2001*, E/INCB/2001/1, UN, New York, 2002.

avoiding the necessity to reach a new consensus. The CND practice of proceeding strictly on the basis of consensus was adopted only when the US lost its voting power for not having paid their UN dues. CND resolutions do not necessarily require consensus and can be helpful to clarify the interpretation of provisions of the conventions and to stretch the latitude countries have to develop a different national drug policy.

With regard to formal amendments to the conventions themselves, all parties do have to agree. Ultimately, the only formal escape route out of the consensus stalemate here would be for countries to denounce the conventions. Informally, groups of countries can choose to test the boundaries of UN conventions by taking the leniency approach beyond the point where this could be justified under the internationally agreed drug control principles, and then 'just take the heat'. Clearly, only some countries can afford politically to play with those margins. The INCB may not have the mandate or power to impose any sanctions, but the US still maintains its disciplinary system of certification and has several instruments of pressure. These obstacles are further explored in the other article in this edition.

The divergent global policy trends are starting to lead to serious inconsistencies. At the CND in March this year, Morocco, for example, raised questions about the possible implications of the lenient cannabis consumption policy trend in Europe for Morocco's policy with regards to its own vast cannabis cultivation. According to the INCB Report 2001: *"It is disturbing that, while many developing countries have been devoting resources to the eradication of cannabis and to fighting illicit trafficking in the drug, certain developed countries have, at the same time, decided to tolerate the cultivation of, trade in and abuse of cannabis."* Indeed, there is a contradiction between liberalisation on the consumption side while maintaining or even increasing international pressure to eradicate drugs crops in traditional production regions of the South. These Southern countries are allowed much less political space to re-assess their own national poli-

cy and enter a path towards pragmatic solutions. Moreover, the international conventions allow less flexibility for the production side as compared to the consumption side.

UNDCP Reform

Being the leading multilateral agency for drugs issues, the functioning of UNDCP in all these matters is crucial. The agency not only implements UN programmes and advises many countries on drug policy matters, it also functions as the secretariat for both the INCB and the CND. The agency went through a deep crisis these past years. The UN Office of Internal Oversight Services (OIOS) was called in to investigate mismanagement, donors lost confidence and Executive Director Pino Arlacchi had to step down in December 2001. The combination of the strong zero-tolerance position with bad management has meant that UNDCP has not been able to play a moderating role amidst the growing polarisation. The recommendations of the OIOS triggered a reform process in mid-2001 at UNDCP's Vienna headquarters and several organisational improvements are now well underway. But the question remains as to whether the UNDCP will also be able to grow away from its politicised re-affirm position towards becoming more of a centre of expertise better able to reflect the different views on drug policy and its application nowadays.

One of the OIOS reports concluded: *"The role of ODCCP as a centre of expertise cannot be fulfilled without a free exchange of views, discussions and the involvement of staff in decision-making. However, at the time of the inspection, corporate mechanisms of collective advice and guidance and of programme and policy coordination were not functioning. Also lacking was a consistent system for programme oversight in the form of monitoring implementation and assessing results. (...) Thematic evaluations were few and had not led to much-needed substantive discussions or changes in practice. There was no mechanism to formulate lessons learned and to feed them back into programme formulation and delivery."*¹⁰

¹⁰ OIOS, *Report on the Inspection of Programme Management and Administrative Practices in the Office for Drug Control and Crime Prevention*, General Assembly, A/56/83, June 1, 2001 (www.un.org/Depts/oios/reports/a56_83.htm)

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This goes beyond the mere organisational reform needs that tend to become the focus of attention in addressing the agency's crisis. Mr Arlacchi not only ran the office in a "highly centralized and arbitrary manner," but claimed successes on the drugs front "beyond the limits of credibility" – concluded the OIOS.¹¹ He also dragged the agency into highly questionable projects like the aborted SCOPE programme, the Tajik Drug Control Agency, the mycoherbicide projects for Colombia and Afghanistan, and the 'boat project' to which OIOS devoted a special investigation.¹² Those projects have caused considerable damage to the political credibility of the organisation. It was not only his managerial style or the lack of transparency around projects that was problematic, but also the policy content direction in which he took the agency. The much-criticised World Drug Report 2000 was a case in point, demonstrating how out of touch the agency was with shifting opinions on international drug control. All this contributed to the process of erosion of confidence that has taken place among donors, and even more strongly within the NGO and academic communities working on drugs issues.

In May 2002, Antonio Maria Costa arrived in Vienna as the new Executive Director of the UN Office for Drug Control and Crime Prevention (ODCCP) and Director General of the UN Office at Vienna (UNOV). In his very first speech to the staff upon arrival in Vienna in May, Mr Costa mentioned the need to be "tough in imposing upon ourselves the sort of efficient monitoring and evaluation of our work needed to restore Member States' confidence." He promised to make the values of "fairness, transparency and accountability (...) a fundamental part of our culture."¹³ These statements combined with Mr Costa's vast experience in the management of international organisations – his latest position was secretary general of the European Bank for Reconstruction and Development – indicate his commitment to ensure the following through of the OIOS recommendations for organisational restructuring, transparency in decision-making about projects,

and the strengthening of the functioning of the CND as UNDCP's governing body.

Drugs in the UN System

In his address to the staff, Mr Costa emphasised the connections between "drugs, crime and terrorism, the evils of our time." The 1998 step to merge under one umbrella – ODCCP – the UNDCP and the Centre for International Crime Prevention (CICP) has over-emphasised the drugs-crime connection, however intimate and important that relationship is. As the current discourse adopted by most donors indicates, drugs is a 'cross-cutting issue' covering many policy areas. The drugs issue is as closely interrelated with health or development as it is with crime. Within the UN community, the particular relationship established between UNDCP and the crime department – as compared with the loose collaborative relationships with WHO, UNDP or UNAIDS – runs the risk of leading to an ODCCP drugs policy focus which leans more towards a law enforcement approach than a health or developmental approach. While most countries have established drug policy co-ordinating structures that carefully balance responsibilities between the health, justice, internal and foreign affairs departments, co-ordination on drug-related issues within the UN system is, in this sense, out of kilter.

This has led to conflicting views and policies on the drugs issue within the UN community, and between UNDCP and major donors. The WHO's rational approach from a purely health perspective, which treats licit and illicit substances alike, regularly conflicts with the vision emanating from the UNDCP offices. While UNAIDS is actively promoting needle exchange programmes to prevent the spread of HIV, UNDCP – though a cosponsor of UNAIDS since 1999 – twists and turns to avoid direct involvement with such programmes. While 70% of UNDCP funding comes from European sources, where Harm Reduction has become an

¹¹ OIOS, Report on the Triennial Review of the Implementation of the Recommendations Made by the Committee for Programme and Coordination at its Thirty-Eighth Session on the In-depth Evaluation of the United Nations International Drug Control Programme, ECOSOC, E/AC.51/2001/4, May 4, 2001 (www.un.org/Depts/oios/reports/eac51_2001_4.pdf)

¹² OIOS, Report on the Investigation into Allegation of Misconduct and Mismanagement of the "Boat Project" at the United Nations Office for Drug Control and Crime Prevention, General Assembly, A/56/689, December 7, 2001 (www.un.org/Depts/oios/reports/a56_689.pdf)

¹³ Address to All ODCCP and UNOV Staff by Antonio Maria Costa Director-General and Executive Director, Vienna, May 7, 2002.

accepted pillar of drugs policies (except in Sweden), this is still forbidden territory for UNDCP, which even bans discussion of the concept. An evaluation process is required which addresses such contradictions while also re-examining the organisational embedding of the drugs issue in the UN system.

The UNGASS Mid-term Review

The mid-term UNGASS review could provide a new opportunity to achieve a breakthrough. A two-day ministerial segment will be included in next year's CND session, scheduled for 8-16 April 2003 in Vienna, to evaluate progress made with regard to the goals and targets set out in the Political Declaration of the 1998 UNGASS. The review provides the first global opportunity since the UNGASS to re-assess and adjust the current international drugs policy framework. UNDCP will play a crucial role in preparing for the review. The Executive Director presents biennial reports to the CND on progress of the UNGASS outcomes,¹⁴ which will form the basis for the evaluation in April 2003. The UNGASS mid-term review will present Mr Costa with a high-level political opportunity to convince the world of his commitment to take UNDCP in a more rational direction, to say farewell to the years of crisis, to restore donor confidence and to open up the debate.

A necessary pre-condition for a breakthrough, however, will be political will and a concerted effort from those countries interested to pursue the path of pragmatism and conscious of the need to conquer more space on the UN level for national policy differentiation. This includes European countries like the Netherlands, Switzerland, Portugal, Germany, Belgium and the UK alongside like-minded countries like Canada and Australia, possibly with support from members of the GRULAC block of Latin American and Caribbean countries like Mexico, Brazil, Jamaica, Uruguay and Peru. Differences aside, policy developments in these countries demon-

strate a common interest in lifting international drug control out of its present stalemate towards policies which offer more room for manoeuvre in the implementation of realistic and pragmatic policies. The time has come for the European countries leading this way to become more assertive about their achievements, to bring this refreshing tone to the UN level and to support – in the spirit of co-responsibility – those Southern countries that are eager to take steps in a similar direction also for the production side.

Mexico has been elected to preside over that mid-term UNGASS review and its preparations. Mexico is the country that originally called for the 1998 UNGASS, aspiring to convene a forum for in-depth evaluation of global drug control policy. In the opening statement for the 46th CND session, Mexico recalled some of its original spirit in saying, in reference to the 2003 and 2008 deadlines, *"in this period of sessions we will be very critical about these ambitious goals. [...] Above all, we must be honest and not self-indulgent. To report about achievements where there have been none neutralize those that we have genuinely reached."*¹⁵

A rational guiding principle for the mid-term review can be found, perhaps, in the conclusions reached by the New York County Lawyers' Association: *"The appropriate goal of any drug policy must be to decrease the prevalence and spread of harmful drug use and substance abuse, and to minimize the harms associated with such problems where they are found to exist. Additionally, any policy which creates more harmful results than the societal problems it proposes to solve, must be re-evaluated in terms of the advisability of further pursuit of such policy. Further, to justify continuation of any public policy, the costs incurred must always be weighed against the benefits derived. It is within this context, and with these criteria in mind, that present approaches to drug policy must be objectively assessed and, where appropriate, alternative models for future policy evaluated and considered."*¹⁶



¹⁴ CND, Consolidated First Biennial Report of the Executive Director on the Implementation of the Outcome of the Twentieth Special Session of the General Assembly, Devoted to Countering the World Drug Problem Together, E/CN.7/2001/16, October 4, 2001.

¹⁵ CND, Statement by Deputy Minister of Foreign Affairs of Mexico Patricia Olamendi, Chairperson of the 46th Session of the Commission on Narcotic Drugs, Vienna, March 15, 2002.

¹⁶ New York County Lawyers' Association, Report and Recommendations of the Drug Policy Task Force, October, 1996.

As dissatisfaction with the prohibition oriented UN drug control system builds, increasing numbers of states are reviewing their stance on the international treaties. The Netherlands is no longer isolated in testing the boundaries of the Conventions. Recent years have seen nations from around the world implement, or seriously discuss, harm reduction measures that work 'within' the legal confines of the global drug prohibition regime. With such a trend, however, comes the realisation that the Conventions still stand as a major obstacle to the introduction of pragmatic policies at a national level. While the tolerant approaches adopted by a number of nations have undoubtedly weakened the current regime, it seems that further progress will only be possible either through some sort of change in or defection from the regime.

The Conventions stand as a major obstacle to the introduction of pragmatic policies at a national level.

Any such move would certainly encounter considerable hostility. As noted in the previous article, a major obstacle to considering any changes in that direction is the consensus-driven functioning of the CND. An important force sustaining such consensus is the United States. As its staunchest defender, it is the US that maintains the regime's disciplinary framework. Pressure from Washington has long supplemented the moral legitimacy bestowed upon the doctrine of prohibition by the UN.¹ This has produced a formidable source of inertia. Through the strategy of issue linkage, the US has certainly exploited its hegemonic status for the defence of the global drug prohibition regime it has worked so hard to construct.² This UN-US alliance has made it difficult for nations to deviate significantly, or even to discuss deviation, from

the doctrine of prohibition. Since the 1980s, the US has used certification as an important vehicle for economic persuasion. The annual process has also been strengthened in recent years by Washington's efforts to conflate its war on drugs with the transnational fight against organised crime.³ Such a move increases 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 potentially damaging for a nation's international image.

Clearly, when considering any change at the UN level, it would be unwise for nations to ignore the US's habitual use of hegemonic

power to protect global drug prohibition. Beyond proselytization, maintenance of the regime is important because it helps Washington to legitimise both domestic policies and many overseas activities. The aim of this

article then is to explore, within the context of possible US reaction, some of the options available to nations wishing to create more policy space at a national level. As I hope to show, moves to initiate regime change within the confines of international law are problematic. A consequence of this may see nations withdrawing, whether legitimately or otherwise in terms of international law, from one or all of the drug control conventions. Like other moves to deviate from prohibition, this would undoubtedly provoke a hostile response from the US. Nonetheless, the recent 'America First' policies of the Bush II administration may offer increased scope for manoeuvre. Washington's abandonment of multilateralism in a number of key international areas has highlighted what Bruce Cronin

¹ Inis L. Claude, Jr., "Collective Legitimization as a Political Function of the United Nations," in Frederick Kratochwil and Edward D. Mansfield, *International Organization: A Reader*, HarperCollins, 1994, p. 196. (First published in *International Organization*, 20 (1966), pp. 267-279 and David R. Bewley-Taylor, *The United States and International Drug Control, 1909-1997*, Continuum, London, 2001, p. 7 & pp. 185-186

² David R. Bewley-Taylor, *The United States...* op. cit.

³ Michael Woodiwiss, *Organized Crime and American Power: A History*, University of Toronto Press, 2001. pp. 385-6.

has called the Paradox of Hegemony: the tension that exists between a hegemon's multi-lateral responsibilities and a desire and material capability to act unilaterally.⁴ As will be argued, while bringing difficulties of its own, such a paradox greatly undermines Washington's capacity to act as the enforcer for the UN drug control apparatus.

Modification of the Treaties

The re-scheduling of substances is one possible method parties could use to create more space for movement within the current regime. This is an option often discussed in relation to cannabis. This is especially the case since the WHO recently announced that it would be "very pleased to consider scientific data" on the drug. As the WHO noted, the Single Convention outlines conditions for the changes in the scope of international control. Article 3 allows for amendments to 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.

It can be taken as a given that any move towards modification would provoke US displeasure and attempts to discredit and 'persuade' parties to refrain from such action. Nonetheless, fundamental problems do exist with regard to the legal status of the cultivation of 'natural drugs.' As the International Anti-Prohibition League noted in 1994, according to the text of the commentary to the 1971 Convention on Psychotropic Substances, cannabis and cannabis resin "...could be deleted by the Commission [on Narcotic Drugs] from the Schedules of the Single Convention and indeed be withdrawn from the control instituted by this Convention **with respect to drugs, with the**

exception of the measures of control mentioned in article 26 and article 28 paragraph 1" (emphasis added).⁵ To be sure, the retention of these unaltered articles means that any changes resulting from the reclassification of cannabis would not include provisions concerning 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 revision. Such a situation clearly limits the utility of the rescheduling route. While other drugs could theoretically be re-scheduled according to procedures laid out in Article 3 of the Single Convention, changes relating to cannabis (as well as the coca leaf and opium) would be greatly limited.

Concerns surrounding the issue of cultivation may be purely academic considering the considerable systemic obstacles that stand in the way of reclassification. While the WHO plays a central role in the rescheduling process the body can only make non-binding recommendations. The power to make any changes in classification initially belongs to the CND. The current state of the Commission makes it unlikely that sufficient support for re-scheduling would be forthcoming. The complex dynamics of the 53-member body creates considerable inertia resisting any significant change within the regime. Additionally, while perhaps not as dominant as in earlier years, 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."⁶ Under such circumstances even the necessary majority, rather than a consensus, decision required to approve re-scheduling may prove unobtainable.

⁴ Bruce Cronin, "The Paradox of Hegemony: America's Ambiguous Relationship with the United Nations," *European Journal of International Relations*, Vol. 7(1), 2001, pp. 103-130.

⁵ Commentary on the Convention on psychotropic substances, UN 1978, p.43 cited in *For a Revision of the International Policy on Drugs; Report on the Possibilities for Amending and/or Repealing the United Nations Conventions*, International Antiprohibitionist League, 1994, p. 15.

⁶ Peter Webster, "Rethinking Drug Prohibition: Don't Look for US Government Leadership," *International Journal of Drug Policy*, 9 (5) 1998, pp. 297-303.

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 has other means for 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 ECOSOC for review. 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 a proxy nation to shift the decision-making process to the 54-member Council. Again, although the judgment is dependent upon a majority rather than a consensus decision, the forum of the ECOSOC would offer the United States further opportunities to create and exploit issue linkage.

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In light of both the cultivation issue and the obstacle-strewn route to re-scheduling, parties may feel that the modification game isn't worth the candle. It would seem at first glance that the amendment procedure offered by Article 47 of the Single Convention is a more cost-effective route. As with modification, however, the amending route provides plenty of scope for blocking action by a nation opposed to revision of the regime. The central role played by the ECOSOC in the process would again permit the US to take advantage of issue linkage.

Amending the Single Convention involves parties notifying 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 comes into force. This outcome would appear to be most

unlikely with the US stance on the maintenance of the regime beyond doubt. 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. It is also worth noting that, by virtue of the powers it holds from the Charter of the United Nations, the Council may simply refuse to make a decision on the proposal.⁷ There is consequently no guarantee that an amendment would ever even make it to the conference phase.

Clearly then, difficulties beset the options available to create more room for manoeuvre *within* the current regime. It is fitting that much like the US legislative process, the UN system is also vulnerable to blocking and often characterised by gridlock. In order to circumvent such stasis, and yet remain within the rules of international law, parties may consider two other options: denunciation of the treaties and the invocation of the principle of primacy of national constitutions with specific regard to human rights. Both would provide nations with legally valid opportunities to withdraw from the treaties altogether.

Withdrawal from the Treaties

Articles within all the treaties allow parties to withdraw consent by depositing in writing a denunciation with the Secretary-General.⁸ Although perhaps regarded as an extreme move, action of this type, as the Canadian LeDain Commission noted thirty-years ago, "...would not, of course, be in violation of international obligations" since it is written into the treaties.⁹ It would undoubtedly, however,

⁷ *For a Revision of the International Policy on Drugs; Report on the possibilities for amending and/or repealing the United Nations Conventions*, International Antiprohibitionist League, 1994, p. 18

⁸ Article 46 of the Single Convention, Article 29 of the 1971 Convention and Article 30 of the 1988 Convention.

⁹ Diane Riley, *Drugs and Drug Policy in Canada: A Brief Review and Commentary*, Canadian Foundation for Drug Policy, November 1998.

draw extreme criticism from the UN and the US. As noted above, 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 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.”¹⁰ 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.

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Denunciation, nonetheless, opens up some interesting possibilities. If a credible group of parties from Europe, Australasia and Latin America, 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. Paradoxically, by moving to leave the confines of the regime such a group might 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 US might be more open to treaty modification or amendment if it was felt that such a concession would prevent the destruction of the existing treaty system. This would differ from the procedures to modify the treaties discussed above since such a group 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 pressure itself.

Alternatively, in view of the fact that members of the group would have already broken free from the regime, nations may feel sufficiently confident to simply walk away from the treaties. While theoretically possible it would be highly unlikely that the denunciation route could be employed to formally terminate the

treaties. For example, as of January 2002 it would require 138 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. Nonetheless, depending upon

its composition, a group denunciation would greatly weaken the regime without actually requiring the ‘de-ratification’ of any of the conventions.

Should parties prefer not to follow the denunciation route, they could exploit what Peter Webster has called an “important loophole” in the treaties.¹¹ As Webster notes, the 1997, UNDCP 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.”¹² (emphasis added)

¹⁰ Peter Andreas, “When Policies Collide: Market Reform, Market Prohibition, and the Narcotization of the Mexican Economy,” pp. 127-128, in H. Richard Friman and Peter Andreas (Eds), *The Illicit Global Economy and State Power*, Rowman and Littlefield Publishers, Inc, 1999. Also see David R. Bewley-Taylor, *The United States and International Drug Control*, op. cit., pp. 171-174.

¹¹ Peter Webster, “UN Treaties and the Legalization of Drugs,” www.druglibrary.org/

¹² The UNDCP World Drug Report (New York: Oxford University Press, 1997, p. 185) cited by Webster, “UN Treaties and the Legalization of Drugs.”

Thus, if the highest courts in signatory nations ruled that such prohibitive clauses with regard to a single drug (cannabis for example) or a selection of outlawed substances was unconstitutional, then the parties involved would no longer have to work within the limitations of the Convention 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.¹⁴ 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, as alluded to above, would be for parties to simply ignore the treaties. 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 supporters of harm reduction for some time. Disregarding 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 subject to the principle of *rebus sic stantibus* all treaties can naturally cease to be binding when a fundamental change of circumstances

has occurred. This doctrine of changed circumstances can undoubtedly be applied to the drug treaties. Yet, the selective application of such a principle could 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 cafeteria approach to international law adopted by world's only Superpower. The US withdrawal from the Kyoto Treaty and repudiation of the ABM 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. In facilitating this unprecedented move, the Bush II administration has 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 doesn't intend to ratify it.¹⁵ 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 confines of the current global drug prohibition regime are faced with several possible paths. These all have their own problems and cannot be realistically considered without reference to the US.

The possibility for parties to successfully modify the treaties is limited. Many opportunities exist for nations that favour the status quo, particularly the US, to block any move

¹⁴ Webster, "UN Treaties and the Legalization of Drugs," Diane Riley, *Drugs and Drug Policy in Canada: A Brief Review and Commentary*, Canadian Foundation for Drug Policy, November 1998 and Jay Sinha, "History and Development of the Leading International Drug Control Conventions," Law and Government Division, Canadian Parliamentary Research Branch, February 2001.

¹⁵ David Teather, "US threat to Wreck Treaty System," *Guardian*, May 6 2002 and Neil A. Lewis, "US to Renounce its Role in Pact for World Tribunal," *The New York Times*, May 5, 2002 and Ewen MacAskill and Oliver Burkemen, "New Court Makes Global Justice a Reality," *Guardian*, April 11, 2002.

for re-scheduling or amending. A re-examination of the treaties may also provide prohibition-oriented nations with the opportunity to hijack proceedings and strengthen the current regime. This may lead parties to seriously examine various options for denunciation and withdrawal. As shown, a credible alliance of nations would be better able to withstand UN-US opposition than a lone state. That said, 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 Bush II administration 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.

It is clear that international acceptance of a US-inspired and perpetuated global blueprint for drug prohibition is waning fast. Yet, while becoming increasingly isolated, the US, as hegemon, still chooses to support the global drug prohibition regime. Here, the words of Kjetil Bruun, Lynn Pan and Ingemar Rexed are as pertinent as ever. In their 1975, *The Gentlemen's Club*, they wrote, "The limits of action in the drug field are, like in many other fields, set by the lines of political relationships prevailing in the world at large."

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The past decade has seen an increasing polarisation between divergent trends in global drug policies. On the one hand, there has been an escalation in the US-driven War on Drugs, which has created a drug gulag domestically and increased and militarised forced eradication abroad. On the other hand, in Europe and several like-minded countries, a more flexible and pragmatic approach has gained ground in domestic drug policy-making, taking distance from indiscriminate repression and the zero-tolerance approach. In these countries, the trend towards greater leniency has become irreversible and rational thinking is gradually replacing the dogmas of the past. Such tolerant approaches have reached their legal limits within the framework of the current UN Drug Conventions. The result of the polarisation between the two main trends is paralysis at the UN level.

The 1998 United Nations General Assembly Special Session (UNGASS) on Drugs was originally called to evaluate the effectiveness of the current repressive drug control regime, but early in the preparatory phase the UNGASS was reoriented towards an affirmation of prohibitionism. Now, four years on, the unrealistic targets and deadlines set for 2008 at the UNGASS have proven, yet again, to be a failure. A new opportunity for evaluation could open up when the mid-term review of UNGASS takes place in April 2003.

This issue of Drugs & Conflict attempts to outline the possibilities for a breakthrough in the current impasse, which clearly lie only with some sort of change to – or defection from – the current regime. The US is anticipated to be the major obstacle but its capacity to enforce the status quo is likely to be undermined by the growing tension between its multilateral responsibilities as hegemon and the extent to which it has been demonstrating its desire and material capability to act unilaterally.

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