

## Response

## Geo-political and cultural constraints on international drug control treaties

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‘The old is dying and the new cannot be born; in this interregnum a great variety of morbid symptoms appear.’—Antonio Gramsci.

No army of proverbial small boys pointing to the naked emperor of prohibition can shake drug control functionaries from their faith in his sartorial splendour. Their interests immunise them against all evidence. The articles by Professors Fazey (Fazey, 2003) and Bewley-Taylor (Bewley-Taylor 2003) in this issue insightfully analyse the many bureaucratic and political constraints that keep the existing international drug control regime in place.

Fazey lifts the veil to let us peek at the bureaucrats who so carefully choreograph reports and pronouncements. Her detailed description of the organisational structure and culture of international drug control agencies shows how the ‘cocoon’ the functionaries have woven around the conventions will insulate them from challenge. Any change, she concludes, will have to come from Member States—some ‘quietly going their own way’ already—forging informal alliances with other reform-minded states.

Bewley-Taylor provides a helpful review of crucial treaty provisions. His astute analysis of the many difficulties likely to arise in any attempt to revise, amend, or withdraw from the conventions provides a veritable blueprint of the limited possibilities for reform that remain. He makes the intriguing point that Member States were not required to criminalise individual drug users until the 1988 Convention (Article 3), 27 years after the Single Convention. This suggests that criminalisation was more contentious and less taken-for-granted than the drug control complex would have us believe. Even now, Bewley-Taylor notes, the ‘conventions are not self-executing’; they only oblige signatories to apply domestic laws, which the treaties acknowledge

as autonomous. Surely this is an important, under-utilised source of latitude for national drug policies. Similarly, he shows that because the Single Convention never rigidly defined ‘medical and scientific purposes,’ some states have been able to establish needle exchanges, heroin prescription systems, hygienic injection rooms, and even ecstasy spot testing. But like Fazey, Bewley-Taylor concludes that this latitude is limited. The conventions clearly aim to rule out recreational use. Reform-oriented nations are pushing the boundaries, but any formal decriminalisation of non-medical use would require changing or withdrawing from the treaties, both deeply problematic options.

Considering the power of the US and the obstacles to change the treaties create, the drug policy reforms of the past 20 years are remarkable. Bewley-Taylor and Fazey offer intelligent ideas on how a coalition of reform-minded states might mount a long-run challenge to current conventions so that more reforms will be possible. But at times both come close to implying that the treaties *must* be changed in order for Member States to enact drug policy reform. However, more than international treaties tether Member States to prohibition. The US has long pushed prohibition (e.g., Bruun, Pan, & Rexed, 1975; Musto, 1973; Nadelmann, 1988, 1993; Taylor, 1969; Walker, 1992), but there is more to the adoption of drug control treaties than US pressure.

As Levine suggests in this issue (Levine, 2003), demonised ‘drugs’ have been very ‘useful enemies’ (Kettil Bruun’s phrase). They have helped create mechanisms of state control that have been useful to the powers that be in all manner of states—communist and capitalist, democracies and dictatorships, Islamic and Christian, West and East, industrialised and developing. Understanding how richly functional international drug prohibition has been for Member States helps explain

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their consistent indifference to its failures, costs, and consequences as well as their otherwise puzzling interest in its preservation.

An informal working group of reform-oriented states is a sensible first step toward challenging the conventions, but this presupposes that there are several states that favor such a challenge. Public opinion in several states does support needle exchange, heroin prescription, and particularly cannabis decriminalisation. It seems unlikely, however, that public opinion alone will prompt national governments to challenge international drug controls. The Netherlands and Switzerland have defended their reform policies against diplomatic assault, but their foreign ministers contend with many issues on which they need support from other states, so they have not promoted their drug policies very hard in international arenas.

Without significant change within member states, significant change in international drug control seems unlikely. It will take social movements capable of pressing political parties to shift national policy off the axis of social control and onto the axis of social welfare, away from the erosion of civil liberties in the name of fighting ‘drugs’ or ‘terror’ and toward an expansion of human rights. Without major electoral shifts along these lines, what states will push for reform of international drug control treaties?

In one sense, Fazey and Bewley-Taylor have done their jobs only too well, for their careful scholarship leads one to conclude that the constellation of constraints facing those who would change the international drug control regime is formidable indeed. It may be useful, therefore, to ask what constraints the US–UN prohibition bloc faces as it attempts to preserve and expand its drug control regime.

### **Globalisation and its discontents**

Globalisation rests on the ideology that unfettered capitalism offers the best hope for better lives for everyone. But in many parts of the world, globalisation has increased inequality and poverty, sparking demands for social justice. Politics pushing for more social justice are more likely to be critical of drug prohibition. While globalisation does not always bring better living standards, it does tend to bring greater awareness of liberty. This does not bode well for an international drug control regime committed to criminalising personal use. And even if social justice and liberty were not obstacles, the more ‘free’ trade becomes, the less control governments have over it, which also tends to make drug control more difficult.

### **US unilateralism undermines US power**

As others note, the US has been the principal force behind international drug control for a century. But with its new, post-Cold War hegemonic status, the US has thumbed its nose at international treaties and conducted its foreign policy in an increasingly unilateral fashion. Against most other nations, the US withdrew from the Kyoto Protocol on global warming; abandoned the Antiballistic Missile Treaty; opposed the Comprehensive Test Ban Treaty; rejected an agreement barring land mines; and rescinded President Clinton’s signature on the treaty creating the International Criminal Court, refusing even to cooperate with it. In fact, the Bush administration has rejected all obligations under the 1969 Vienna Convention on the Law of Treaties, which requires that signatories not undermine the treaties they sign (Lewis, 2002). Such systematic disrespect for international agreements may well make other nations feel less obliged to support every provision of US-engineered drug control treaties, especially when these provisions are no longer in the interests of other nations.

### **As the EU grows, so does its capacity for drug policy autonomy**

Whatever other states think of the new American unilateralism, the US is hardly in a strong position to engage in drug policy imperialism. With the highest prevalence of drug problems despite the highest rate of imprisonment in the industrialised world, few other nations see US drug policy as a model. The Netherlands, Germany, Spain, Italy, the UK and Portugal have all interpreted the drug control conventions in ways that have met with the disapproval of both the UN International Narcotics Control Board (INCB) and the US government. These may be read as one measure of estrangement between Washington and its traditional European allies (Kupchan, 2002).

Moreover, the EU is gaining strength with each step toward integration and with each new member state, to the point where its economy will be comparable to and its population larger than the US. This seems likely to give the EU increasing political power vis-à-vis the US. And it is precisely in the leading EU states where drug policy reforms that go against the strict prohibitionist interpretations of the US–UN conventions have progressed furthest. Beyond whatever wiggle room can be found in the treaties, the political development of the EU as a pole of power suggests the possibility for national drug policies increasingly autonomous from the treaties.

## The cultural contradictions of modernity

The prohibition established by the international conventions has always been highly selective. Alcohol and tobacco, despite their more profound damage to public health, have always been regulated rather than prohibited. As for pharmaceuticals the question was never how to prevent use but how to make sure all markets were open, as might be expected when pharmaceutical industry representatives helped negotiate the conventions (Bruun et al., 1975). Even prohibition-oriented states seem quite untroubled by widespread use of psychoactive drugs to make people more manageable (Valium, Ritalin, Prozac, etc.). The public health rhetoric in which the treaties are couched cannot camouflage the fact that the essential object of global drug prohibition has always been the use of drugs to self-medicate pain or self-regulate pleasure, particularly the latter.

But in the modern, globalised age Member States are increasingly dependent upon a world market that requires and so promotes a culture in which consumption of commodities for pleasure is central (Bell, 1976; Ewen, 1976; Galbraith, 1958). And an increasing proportion of these commodities alter consciousness in one way or another. With super vitamins, smart drugs, new caffeinated beverages, and a pharmaceutical industry inventing and marketing more drugs every day, it is less and less clear where the border of acceptability might be drawn, never mind how it could ever be effectively patrolled by nation states (Reinerman & Levine, 1997:334–344). The culture of modernity itself, then, may be another obstacle in prohibition's path.

International drug control treaties are about 1 century old while human drug use is at least 100 centuries old. If history is any guide, treaties that attempt to impose prohibition will remain largely unable to prevent use or reduce harm. But the informal social controls that arise within the cultural practices of users invested in their own well being stand a better chance (Becker, 1967). Edwin Sutherland, the father of American criminology, once said 'Where customary restraints are adequate, no laws are necessary; where customs are inadequate, laws are useless.' Drug laws we may need, but if they contravene culture they are unlikely to succeed.

## Conclusions

It is a noble and worthy step to attempt to change the drug control treaties, but this is likely to take a long time and it may not be the essential starting place of reform. The amount of flexibility in the treaties is only partly a function of treaty language, for this language is always interpreted, and interpretations can vary depending upon how many states actively argue for more flex-

ibility. Fifteen countries filed 'declarations' or 'reservations' to the Single Convention in the 6 years following its passage (Bruun et al., 1975:296–98). And Japan, Belgium, Switzerland, the Netherlands, and Austria—the host country—did not ratify the 1971 Vienna Convention until nearly 20 years later (McAllister, 1992:162). These reservations and delays do not mean that signatory states are free to cherry-pick those articles in the conventions of which they approve and jettison the rest or to delay ratification indefinitely. My point is only that there are procedures whereby nation states can qualify their support for aspects of the treaties they find especially onerous or at odds with their own constitutional principles or legal cultures. In short, the treaties may afford more flexibility, and more types of flexibility, than reform-minded states have thus far used.

It seems crucial to keep asserting the principle of national autonomy. American conservatives are fond of saying that public policies should not be imposed from the national government but rather devised at that level of government closest to the problem. What progress has been made toward more effective and humane drug policies has been made in spite of the international conventions. Whether the treaties are amended or ignored, drug policies that work well are likely to be those democratically devised in each country by those most knowledgeable about its unique problems and needs, history and culture.

Under the heading of carving out new space within the treaties, there is also something to be said for the Dutch approach. Even if the treaties may be read as requiring that use of prohibited drugs remains formally a criminal offense, the Dutch have shown that treaties cannot prevent national or local governments from making enforcement a low priority.

Finally, with all due respect to bureaucratic intransigence and the political power of the prohibitionist bloc, public discourse still matters in the long run. Drug control treaties are always carefully couched in terms of the public good. But as more of the world's voters learn that existing international drug control conventions often exacerbate drug problems, create organised crime, repress powerless groups, cost a fortune, and still generally fail on their own terms, their political legitimacy will atrophy.

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