

Are there options beyond the UN Conventions?

Robin Room

Centre for Alcohol Policy Research, Turning Point Alcohol & Drug Centre,
Fitzroy, Victoria, Australia;
Melbourne School of Population & Global Health, University of Melbourne;
Centre for Social Research on Alcohol & Drugs, Stockholm University
robinr@turningpoint.org.au

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The last half century: enormous ambitions

- The Single Convention on Narcotic Drugs, **1961**
 - Codifies earlier conventions, declares cannabis has no medical use
 - New attention to **suppressing use and punishing/detering the user** – requiring prohibition in all national and local legislation
 - Amendments in **1972** further strengthen
- The Sixties and societal reactions
 - rise of drug countercultures in US, Western Europe, Australasia,... ~1964 onward
 - strong societal responses by the 1970s: the “War on Drugs” →
- **1971** Convention on Psychotropic Substances
 - Covers amphetamines, benzodiazepines, etc. (manufactured synthetics), as well as LSD and psychotropics
 - Less stringent controls on manufacture and trade of synthetics than by the 1961 treaty on opiates, cocaine, cannabis

The shift to a focus on suppressing the illicit trade

1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

- Provisions to control and suppress use of drug precursors
- New dominance of law enforcement emphasis
- Strengthened requirement to criminalize use and possession of drugs

Characterizing the international control system

- International crime control (the location within the UN system)
 - Suppression of illicit trade
- Trade treaties (but unusual ones):
 - Controlled drugs are de-facto put out of reach of the World Trade Agreement
 - Global management of legal trade to assure medical supply, particularly for opiates
 - Centralized and highly bureaucratized control
- Intrusive requirements for domestic controls:
 - Level of control exceeds that of central governments over states/provinces in federal systems, EU over member states

Results of a half century of effort: 1



Near-universal accession

- unusual; a point of pride



De facto (not de jure), kept free-trade away

- no WTO trade disputes about scheduled drugs



Assuring supply of needed medications:

- Except in wartime, medical opiate market in high-income countries has been adequately served
- In low-income countries, limited availability of effective pain medications
 - WHO reports that 80% of the world's population have no or inadequate access to treatment for moderate or severe pain

Results of a half century of effort: 2



Controlling legal markets

- Some successes when professions or established industries can be enlisted: barbiturates, some precursors
- But strong growth of psychoactive medication markets in high-income countries



Suppressing illegal markets: very little success

- Ten-year effort after UN General Assembly resolution to “eliminate or significantly reduce the illicit cultivation of coca bush, the cannabis plant and the opium poppy by the year 2008” clearly failed

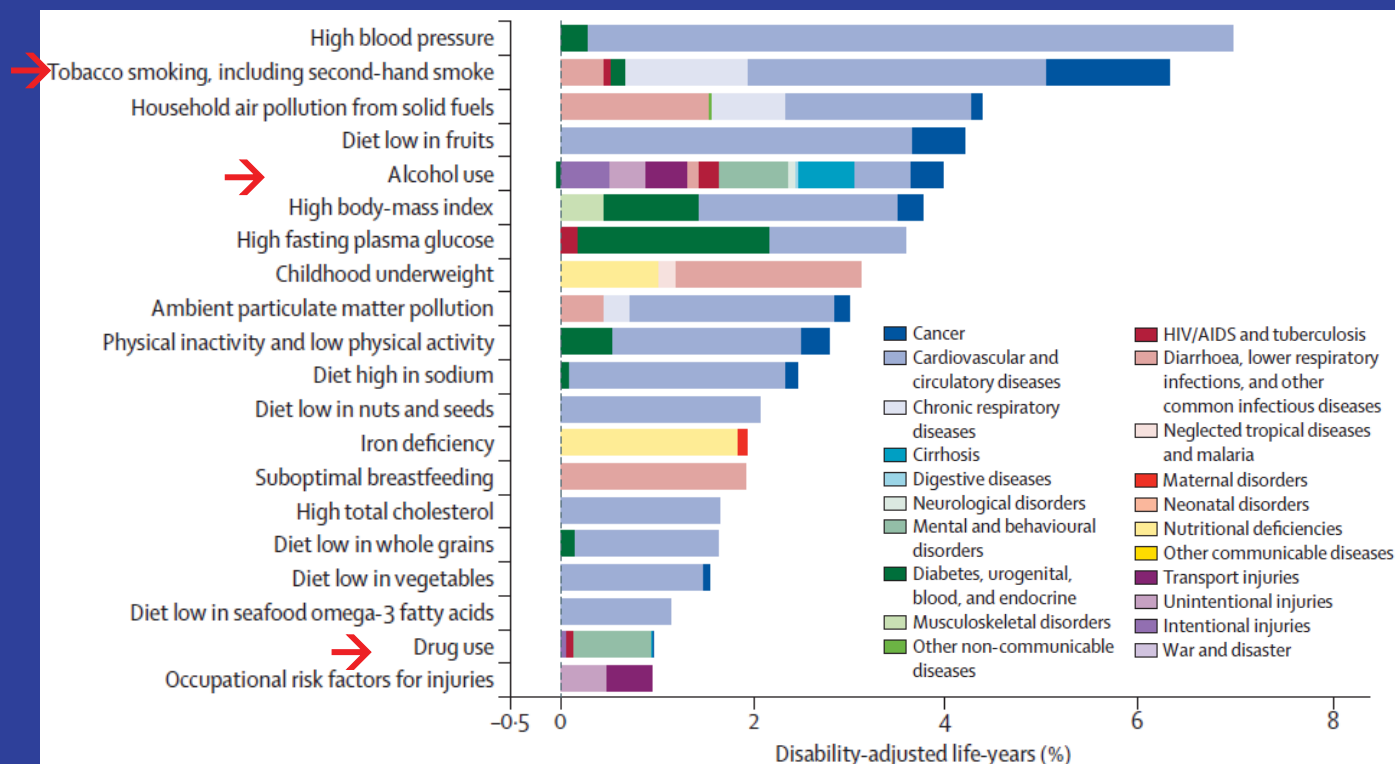


No coverage of the two most harmful drugs:

- separate Framework Convention on Tobacco Control (but no protection against trade disputes)
- but nothing for alcohol

Tobacco, alcohol, controlled drugs as risk factors in Global Burden of Disease, 2010

(Lin et al., 2012)



Results of a half century of effort: 3 How well do the international drug conventions protect public health?

“The goal of increasing health and wellbeing by eliminating drug-related harm has ... not been met.... The proposition that the international drug control system has had a positive effect on human health and wellbeing is difficult to defend....”

-- Room & Reuter (2012) How well do international drug conventions protect public health? *The Lancet* 379:84-91.

Current trends in international control:

1. The entry of “civil society”

- Increasingly critical scholarship
- Opening up the “gentlemen’s club” (Bruun et al., 1975)
- Drug reform as an insurgent movement
- Harm reduction moving towards mainstream
- Increased representation of NGOs at CND meetings
 - Many NGOs committed to change in the system
 - UNODC becoming more responsive
- But civil society a weak force internationally, compared to human rights, global warming, HIV, NCDs, tobacco ...

2. Stirrings in Latin America

- Latin American Commission on Drugs and Democracy, 2009
 - Three ex-presidents -- Brazil, Mexico, Colombia --recommend examination of decriminalization for personal use
 - Global Commission on Drugs & Democracy, 2011
- Cartagena conference : 6th Summit of the Americas, April 2012
 - Talk of legalisation, but no clear path; US & Canada opposed
 - OAS Report with alternative scenarios for the future
 - discussed at OAS General Assembly, Antigua, 4-6 June, 2013
 - resolution calls for a *“comprehensive integrated, strengthened, balanced and multidisciplinary approach with full respect for human rights and fundamental freedoms.”*
- 100,000 dead in drug wars in Mexico → arguments that Latin America should not suffer for failed US drug prohibition policies
- Decriminalization enacted or under consideration in Mexico, Argentina, Brazil, Ecuador
- Bolivia denounced 1961 Convention, re-acceded with a reservation to legalise coca leaf for chewing
- Uruguay moving toward a licensed cannabis market, 2013

Bolivia and Coca leaf, 2011-2013

- June 2011: Bolivia denounced 1961 treaty, seeking to re-accede with reservation for coca leaves



Bolivian President Morales with a coca leaf

Chair of INCB: “The international community should not accept any approach whereby Governments use the mechanism of denunciation and re-accession with reservation, in order to free themselves from the obligation to implement certain treaty provisions. Such approach would undermine the integrity of the global drug control system”. INCB warns Bolivia “to consider very seriously all the implications of its actions in this regard”.

- 1/3 would have had to object for reservation to fail, would have left Bolivia outside the Convention
- Jan. 2013: only 15 parties objected (including US, Canada, UK, Italy, Sweden); Bolivia successfully rejoined with reservation

3. The crucial case: what happens in the U.S.

- The U.S. as the linchpin of the international system
 - International influence of the US International Narcotics Control Strategy Report
 - Strong investment in bilateral drug control efforts
 - Opposition to harm reduction internationally
 - Only slight softening of position with Obama administration
- But internally: Medical marijuana: now 18 states
 - >200,000 with legal access in California
 - In some cities, more cannabis dispensaries than Starbucks
- Initiative votes to legalize the cannabis market, Washington state and Colorado, November 2012
 - Legalised regimes with regulatory controls being legislated
 - Now in uncharted territory on state vs. federal powers and treaty requirements
 - Obama administration 29 Aug.: will not sue to prevent regimes, may sue later
- 2013: For the first time, a majority for legalisation in U.S. population surveys
- Countertrend in US (and elsewhere): the rise in marijuana possession arrests
 - A result of “management by performance indicators” policing?

Options for changing the conventions

- By amendment: currently looks unlikely, but ...
 - Unanimous consent, or by a Conference of the parties
- By termination: unlikely
 - Enough states denounce (withdraw) that signatories fall below a threshold (40 for 1961 Conv.)
- Removing particular drugs from coverage
 - Requires proposal by WHO Expert Committee on Drug Dependence, agreement by CND, subject to review by ECOSOC
 - Recent history unpromising (refusals to reclass dronabinol/THC)
 - Unclear whether possible for drugs named in 1961 convention (opium, coca, cannabis)

Adding a drug: Bringing alcohol in

- “There was a brief discussion as to whether ethanol (ethyl alcohol) should be considered for pre-review.... The Expert Committee referred the matter for consideration at a future Expert Committee meeting.” Report, 2012 Expert Comm. on Drug Dependence, p. 23.
- If considered, would clearly qualify. If recommended, probably under Schedule II of 1971 treaty.
- If scheduled, would require amendment of treaty on limitations to medical use, etc.
- Strong resistance from those in the international drug control system to jolting the applecart
- Alcohol industries already fighting hard against per-capita alcohol consumption as an indicator of reduced NCD risk
- Putting alcohol into the frame of controlled substances would be an important step forward in public health ...

Minimum arguments for treaty control of a drug – e.g. alcohol

- Countering coverage of alcohol under trade treaties and disputes (informally or formally)
- Establishing comity between nations – not acting to undercut another nation's controls
- A structure for international coordination – e.g., regular Conferences of Parties, international control board – coordinating action on ...
 - WHO's Global Strategy to Reduce Harmful Use of Alcohol;
 - Alcohol as a main risk factor in UN/WHO goals and targets to reduce burden of Non-Communicable Diseases

Options beyond the conventions:

A. for an individual country

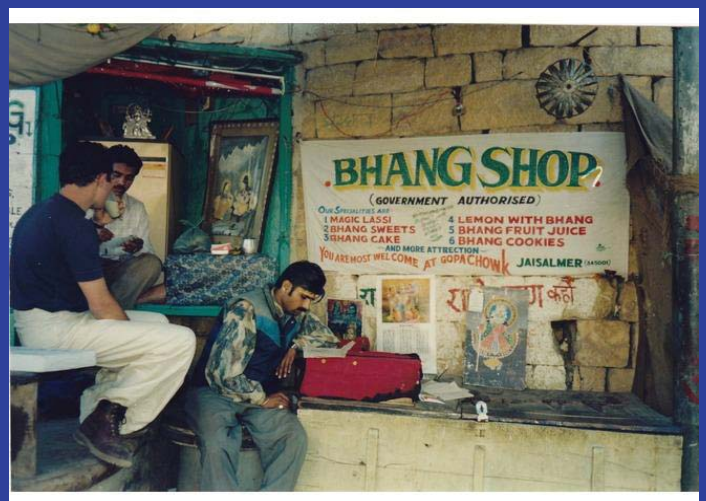
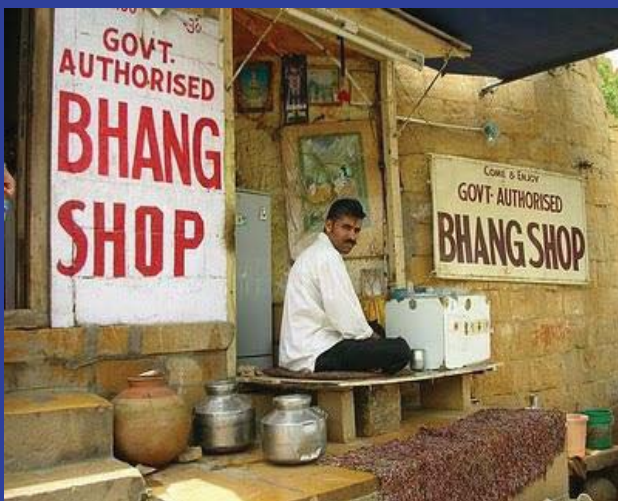
- Denunciation of a treaty/treaties, without reaccession
 - General rate in recent decades: 5% of accession to treaties
 - Has not occurred for drug treaties; would invite reprisals
- In the US and some other countries, nullifying with national legislation
- “Nullification” or letting prohibition provisions of the treaties fall into disuse
 - Washington & Colorado the beginning of this for cannabis?
- Denouncing and reaccessing with reservations (as with Bolivia; plenty of precedents in other fields)
 - Can only subtract, not add
 - Objections from >1/3 of parties may raise difficulties ...

Denouncing and reacceding with reservations: what about objections?

- Relatively rare in international law
- No effect in 1988 treaty, unless the reservation is argued to be “incompatible with the object and purpose of the treaty”.
- For 1961 and 1971:
 - Have no effect for specified articles
 - For other articles, reservation is accepted unless objection by $\frac{1}{3}$ of parties that “signed without reservation” (1961), “that have ratified or acceded” (1971).
- No reservation to drug treaties ever turned back by objections
 - Result of $\frac{1}{3}$ objection might be that reserving country had not reaccessed
 - The system has prided itself on attaining universality, and doing this would undercut that goal
 - What would actually happen is not settled in international law

B. Cannabis: a special case

- 1961 treaty covers only the “flowering and fruiting tops”
 - “ ‘Cannabis’ means the flowering and fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted”
- Limited potency (~ 2% THC?), but leaves are not controlled
- Definition reflects India’s customary use – bhang, etc.



... or widespread medical marijuana

- Medicinal use allowed by the conventions
- What constitutes “medicinal use” is not defined in the treaties
- Prescription is required, except this “need not apply” to drugs used “in connexion with their duly authorized therapeutic functions” -- Art. 30(2)(b)(i)
- Licensing of growers and a government monopoly
wholesale buyer is required
 - Obeyed in Canada:
Flin Flon mine (2001-2012)
 - Not in U.S.



California dispensary; doctor's letter for \$50; estimated 200,000 have access

... or turning a blind eye to the telescope

- The approach in US states
 - With respect to details on medical marijuana
 - Now for legalising market – Colorado & Washington
 - Also Uruguay
- Netherlands system considers itself within the conventions
 - But never solved the “back door” problem – could not legalise the growing and supply
- Need to take into consideration scolding, economic pressure, reprisal, relative power ...

Dutch “coffee shops”



Options beyond the conventions: C. for groups of countries

- Adopting a new convention
 - e.g., draft Framework Convention on Cannabis Control
 - keeps 1961 treaty’s strict controls on international market, but “soft law” preferences for internal market control modelled on Framework Convention on Tobacco Control (Room et al., *Cannabis Policy*, 2010)
- If a country does not denounce the old treaty:
 - Between states which have acceded to both, “last in time” applies,
 - With a 2nd state which has not adopted the new treaty, 1st is bound by old treaty
 - Not problematic if international control provisions are maintained, while conflicting provisions in new treaty concern domestic arrangements
 - But some fuzziness here in international law

Possible content of new conventions

- Minimum fixes:
 - Readopt 1961/1971/1988 allowing possession etc. For noncommercial purposes;
 - That plus allowing regulated domestic markets in one or more drugs
- ↳ (<http://www.beckleyfoundation.org/Roadmaps-to-Reform.pdf>)
- New conventions specific to one or more drugs
 - e.g. Framework Convention on Cannabis Control
- A new Single Convention?....

A new Single Convention, including tobacco & alcohol as well? Some principles and issues: 1

- Internal market up to each country
 - Nations encouraged to set up regulatory regimes with overriding aim of limiting health and social harms, or alternatively to prohibit
- Comity required: nations must respect other nations' regimes
 - forbidding commercial export to where prohibited
 - Requiring national advertising & promotion bans/restrictions to be respected

Principles and issues in drafting a new Single Convention: 2

- International oversight agency
 - to monitor production and trade & patterns of use
 - To coordinate international action to minimize social & health harms
 - Ensuring adequate supply of psychopharmaceuticals for medical use
 - Identifying where drug use or societal reactions to it are producing substantial problems
 - Point to aspects of international trade which are contrary to comity or amplifying drug problems

Principles & issues in drafting a new Single Convention: 3

- Discussion needed of whether international trade in raw-form psychobotanicals should be included or excluded – e.g. khat, betel, kava ...
- Public health and order considerations to take precedence over trade and free market agreements/dispute resolution
- Soft-law recommendations on regulation of domestic markets (as in Tobacco Convention)

For a regulated national market in any drug, many decisions to be made ...

- Controlling production and wholesaling
- Retail sales: state monopoly, licensing, or both?
- On-premise use, off-premise sales, pharmacies as outlets, prescription only?
- General availability limits
 - bans or licenses or rationing for specific users?
 - no. of outlets, hours & days of sale?
 - taxes and price controls?
 - bans or limits on advertising and promotion? (difficult in US)
- After economic interests exist, hard to tighten controls
 - Colo. and Wash.: med. mj. interests already at the table

Some conclusions: there are options beyond the conventions, and we need to make them real

- History has left us with an international drug control system which is not effective in minimising harm from psychoactive substances
 - For drugs it includes, in considerable part this has resulted from overreach: when demand is there, prohibition results in less control of the market (and brings its own problems)
 - Tobacco and alcohol were excluded from the international control system, and left to the increasingly free operation of the market and market promotion
 - The FCTC and its underpinnings have begun to reverse this for tobacco
- An international drug control system is still needed
- But there is an urgent need for reform, however difficult it will be
- There are options beyond the UN Conventions
 - Dealing with all psychoactive substances in a common policy frame makes the most sense in terms both of public health and public safety