

HUMAN RIGHTS ARE FIRST

Campaign for Global Drug Policy Reform

StoptheDrugWar.org/global



October 2015

Dear organizational leader:

Thank you for your interest in the statement of the Ad Hoc US Coalition for Global Drug Policy Reform, which calls for broad and fundamental changes to drug policy at the April 2016 UN General Assembly Special Session on the World Drug Problem (UNGASS) next April. Though we are primarily a US coalition, the statement also includes supporting NGOs outside the US, as well as businesses. Our endorsers include human and civil rights groups, public organizations concerned with HIV, social justice, criminal justice and drug policy reform groups and many others.

Drug policy is complex, and so we've prepared this backgrounder to assist you in considering whether your organization can endorse our statement. It starts with an overview of our objectives, followed by a discussion of our stance on the UN drug treaties, and the Obama administration's stances. It then provides brief explanations with links for reading on the wide range of issues touched on.

Please note that for formal reasons, the coalition's only approved text is the statement itself. This backgrounder is published by StoptheDrugWar.org, the statement's coordinating organization.

If your organization can endorse our statement, please email me at borden@drcnet.org. If you'd like to discuss the statement or other types of involvement, please email or call me at +1 202-236-8620.

Visit <http://stothedrugwar.org/files/coalition.pdf> for the text of the statement and regularly updated signatory list. Additional resources including our press coverage are at <http://stopthedrugwar.org/global/>.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Borden'.

David Borden
Executive Director



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U.S. & U.N. DRUG POLICY REFORM
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Topics Discussed or Referenced Below:

1. Coalition Objectives
2. Flexible Drug Policy and Treaty Reform
3. References for Issues Addressed in the Statement
 - Drug Prohibition Fueling Crime and Corruption
 - Racial Disparities in Drug Enforcement
 - Drug Offenses and the Death Penalty
 - Extrajudicial Executions in the Drug War
 - The Drug War and HIV
 - Unavailability of Pain Medication
 - Marijuana Legalization in Uruguay and the US
 - State Department Stance on Legalization
 - Department of Justice Stance on State Marijuana Legalization
 - Drug Treaty Limitations on Lawful Uses for Drugs
 - Supremacy of Human Rights Under the UN Charter
 - Suppression of Medical Research
 - Research Evidence on Medical Marijuana
 - Harm Reduction

Coalition Objectives

In April 2016, the UN General Assembly will hold a "Special Session on the World Drug Problem" (UNGASS), its first drug policy session at this level since 1998. NGOs worldwide are promoting a reform agenda seeking respect for human rights; for people-centered approaches; and for flexibility to accommodate regulatory systems of drug control. By "people-centered" we mean concerns like human rights, public health, development, security, and access to medicines, to be central when designing and evaluating drug policies and allocating resources for them.

Flexibility and Treaty Reform

Marijuana legalization has generated tensions in the international drug control system. The three UN drug conventions have language that proscribe drug legalization, though allowing reforms stopping short of it such as decriminalization or clinical supply of drugs to addicts. Our coalition calls for eliminating that language.

We also call for policies that respect the right of countries to move toward legalization now, even in advance of treaty reform, as some US states have done for marijuana and Uruguay nationally, and as some world leaders have called for a consideration of for drugs more generally. However, the statement technically stops short of calling for legalization, asking only for experimentation with new drug policies and the right for countries to opt for legalization. Our argument is similar to that made by Uruguay, which is that it is a mistake to view the drug treaties in isolation from the rest of international law; when human rights and sections of the drug control treaties are in irreconcilable conflict, countries should fulfill their human rights obligations. This view in turn is founded on the supremacy of human rights according to the UN Charter, which is itself supreme among treaties.

The statement also remarks on relevant stances taken since last year by the Obama administration – stances which we support, but only guardedly. First, the State Dept. has asserted (in a major reversal from its past stances) that countries have the right to choose their own drug policies, even to the point of legalizing drugs. We believe that such flexibility should exist, but constrained by human rights requirements.

The administration has also argued that state marijuana legalization does not violate the treaties, because federal prohibition continues to be in force in those jurisdictions, and that federal accommodation of the new state laws constitutes a mere prioritization of the limited federal enforcement resources. We see this argument as having only short term usefulness. It will cease to apply at all, if Congress takes action to legalize marijuana nationally or to formally permit it in states that have enacted legalization. And even short of Congressional action, the credibility of the argument is likely to shrink over time, if legalization succeeds and spreads to more states.

Finally, the administration has opposed taking up the treaty revision process, despite these conflicts. We believe that is a shortsighted approach, and that the US instead should support reforming the treaties. Because treaty reform is a complex and a long-term process, we have also suggested a simpler first step that has already been supported by several governments, namely that the UN establish an "Expert Advisory Committee" to study the tensions in the international drug control regime. Our hope is that such a committee would set the stage for action toward treaty reform at subsequent meetings, including a ten-year review of UN drug policy scheduled for 2019.

References for Issues Discussed in the Statement

The following references document and explain the list of key harms of current drug policies in paragraph #3:

- For an introduction to the issue of drug prohibition fueling crime and corruption, we recommend *The War on Drugs: Creating Crime, Enriching Criminals*, in *Transform Drug Policy Foundation, Count the Costs: 50 Years of the War on Drugs*, <http://www.countthecosts.org/sites/default/files/Crime-briefing.pdf>. The impact of illicit profits on the process of democratization is the central topic of the book *Dangerous Liaisons: Organized Crime and Political Finance in Latin America and Beyond*, edited by Kevin Casas-Zamora, overviewed on pages 1-2.
- The NAACP endorsed a bill to allow state marijuana legalization: *NAACP Passes Resolution on H.R. 1523* (2013) ("A resolution passed by the NAACP Board of Directors states that "[a]nually, more than 700,000 people are arrested in the United States for possession of marijuana. Although studies show that whites and African Americans use and sell marijuana at relatively the same rates, African Americans are almost four times more likely to be arrested for marijuana possession -- 30 times more likely in some jurisdictions."), <http://www.naacp.org/press/entry/naacp-passes-resolution-on-hr.-1523>.
- The most recent report on the death penalty for drug offenses can be found at <http://www.ihra.net/the-death-penalty-doesnt-stop-drug-crimes>. At least 33 countries and territories have the death penalty for some drug offenses on their books, with at least ten having it as a mandatory sanction in some cases. In 2013, nearly 550 known executions for drug offenses took place, with at least seven countries applying the death penalty for drugs since 2010. There are believed to be almost 900 people on death row for drugs in Malaysia, Indonesia, Thailand and Pakistan, and hundreds more in China, Iran and Vietnam.
- A 2003 New York Times article documents a wave of extrajudicial drug war killings carried out by Thai police: <http://www.nytimes.com/2003/04/08/world/a-wave-of-drug-killings-is-linked-to-thai-police.html>.
- A 2012 report by the Global Commission on Drug Policy, *The War on Drugs and HIV/AIDS: How the Criminalization of Drug Use Fuels the Global Pandemic*, lays out how current drug policies fuel this major public health problem: <http://www.opensocietyfoundations.org/sites/default/files/war-drugs-hiv-aids-20120626.pdf>. A range of UN agencies have similarly called for an end to the criminalization of users, on public health grounds: <http://www.tdpf.org.uk/blog/truth-behind-unodcs-leaked-decriminalisation-paper>
- The International Narcotics Control Board has repeatedly noted that opioid pain medications are largely unavailable to patients in most of the world. "[M]ore than 90 percent of the global consumption of... opioid analgesics occurred in Australia, Canada, New Zealand, the United States of America and several European countries. This means that their availability was very limited in many countries and in entire regions": http://www.incb.org/documents/Publications/AnnualReports/AR2010/Supplement-AR10_availability_English.pdf. A recent report by the Global Commission on Drug Policy laid blame on the drug control regime: <http://www.globalcommissiondrugs.org/?wpdmdl=1194>, as did a 2014 report by the Transnational Institute: <http://www.tni.org/report/international-drug-control-regime-and-access-controlled-medicines>. One of the two primary stated purposes of the drug treaties is to make these medications available.

An article on Uruguay's marijuana legalization is at <http://edition.cnn.com/2014/05/06/world/americas/uruguay-marijuana-rules/>. An article forecasting where legalization in the US is going is a *Time* article from January 2015, *Report Suggests 18 States Will Legalize Pot By 2020*, <http://time.com/3682969/pot-legalization-2020/>.

On the administration's stances toward state marijuana legalization and the treaties:

- The administration's stance on legalization vs. the drug treaties, and nations' right to set their own drug policy, was laid out by Ambassador William Brownfield, Assistant Secretary of State for International Narcotics and Law Enforcement, in a 2014 speech: <http://fpc.state.gov/232813.htm>

- A 2014 report by the Brookings Institution and the Washington Office on Latin America makes a case for treating the administration's approach as a useful one in the short term, while taking steps to modernize the treaties themselves: *Marijuana Legalization is an Opportunity to Modernize International Drug Treaties*, <http://www.brookings.edu/research/reports/2014/10/15-marijuana-legalization-modernize-drug-treaties-bennett-walsh>
- The administration's policy toward state marijuana legalization was announced by then Deputy Attorney General James M. Cole in 2013, and specified eight conditions under which it would be a "low priority" for federal law enforcers to target state-authorized marijuana operations: *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement*, <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.
- Cole laid out DOJ's rationale for accommodating state legalization for the Senate Judiciary Committee: http://stopthedrugwar.org/chronicle/2013/sep/10/senate_marijuana_legalization_hearing. "It would be very challenging to preempt decriminalization. We might have an easier time preempting the regulatory scheme, but then what do you have? Legal marijuana and no enforcement mechanism, which is probably not a good situation. You would also have money going to organized criminal enterprises instead of state coffers."
- A number of the priorities listed in the Cole Memo, such as preventing violence and preventing revenue from the sale of marijuana from going to criminal organizations, are also objectives of UN treaties such as the Convention on Transnational Organized Crime and the Convention Against Corruption.

On the issue of UN drug control obligations vs. UN human rights obligations:

- The 1961 Single Convention on Narcotic Drugs has language which conflicts with national moves toward drug legalization: United Nations, Single Convention on Narcotic Drugs, 1961, As Amended By the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961 at 1 (desiring to... [limit controlled] drugs to medical and scientific uses...), http://www.unodc.org/pdf/convention_1961_en.pdf. The Convention also specifies time frames under which nations agree to carry out the provision.
- However, Article I of the United Charter includes "promoting and encouraging respect for human rights and for fundamental freedoms for all" among the fundamental purposes of the UN system, and Article 103 specifies that "[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." <http://treaties.un.org/doc/publication/ctc/uncharter.pdf>
- The Office of the High Commissioner on Human Rights noted in Sept. 2015, "The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has argued that when the international drug control regime and international human rights law conflict, human rights obligations should prevail." *Study on the Impact of the World Drug Problem on the Enjoyment of Human Rights*, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_65_E.docx

Additional issues that are cited in the statement:

- An example of the suppression of medical research is discussed in a 2014 Scientific American editorial: "It's time to let scientists study whether LSD, marijuana and ecstasy can ease psychiatric disorders[.]", <http://www.scientificamerican.com/article/end-the-ban-on-psychoactive-drug-research/>.
- Studies documenting medical efficacy for marijuana can be found at *60 Peer-Reviewed Studies on Medical Marijuana: Medical Studies Involving Cannabis and Cannabis Extracts (1990 – 2014)*, <http://medicalmarijuana.procon.org/view.resource.php?resourceID=000884>.
- See *What Is Harm Reduction?*, <http://www.opensocietyfoundations.org/explainers/what-harm-reduction>, for a general discussion of the area. For background on harm reduction's status at the UN, see *The Contemporary International Drug Control System: A History of the UNGASS Decade*, <http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR014/SR-014-FULL-Lo-Res.pdf>.