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# Negotiating Flexibility at UNGASS 2016: Solving the 'World Drug Problem'?

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## About the author



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## Introduction

Since the 1960s, the global drug control regime has been geared towards eliminating illicit substances. The so-called ‘War on Drugs’, led by the US, has sought to achieve this through prohibition. Yet in recent years a number of significant shifts have taken place that have begun to undermine the foundations of the regime and stimulate calls for its reform.

In April 2016, the United Nations General Assembly held a Special Session (UNGASS) on the ‘World Drug Problem’. This meeting was due to take place in 2019, but was brought forward following calls by a number of Latin American and Caribbean countries for a softening of certain aspects of the global treaties governing narcotics. The space for both their vocal demand for alternatives and the subsequent discussion was opened up by two broader processes of change. First, voters in four trailblazing US states have audaciously used electoral ballot initiatives to force the legalisation of cannabis for recreational – and not simply medical – use. This placed the states in conflict with federal law, and the US government in breach of international drug treaties. Second, public opinion in many places, particularly in the Western Hemisphere and Europe, is turning against prohibition. The devastation wrought by the ‘War on Drugs’ in Latin America and the Caribbean, especially, is increasingly perceived as too high a price to pay for achieving an objective of ‘a drug-free world’; an objective that is almost certainly impossible to achieve, probably undesirable, and arguably spurious. Many governments in Europe and the Americas have either begun to decriminalise or legalise certain drugs, or are exploring options for reform.

UNGASS 2016 did not secure the radical reforms that many wished to see. Six months on from the special session, this SPERI Global Political Economy Brief assesses the consequences of UNGASS 2016: it explores why the special session was called; assesses what actually happened at UNGASS, both before and after; and analyses the implications for a creaking global drug regime. It concludes by reflecting on how the ‘world drug problem’ is as far from being ‘solved’ as ever, but argues that this may be no bad thing: there actually exist many different drug problems with many different potential solutions, and the gradual unravelling of prohibitionism is ultimately something to be celebrated, even if this undermines current forms of global narcotics governance.

## Part One: The War on Drugs and its international conventions

- Illicit drugs are governed internationally by a series of different treaties: the 1961 Single Convention on Narcotic Drugs; the 1971 Convention on Psychotropic Substances; and the 1998 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
- The treaties are tightly woven around a prohibitionist logic: that is, they envision reductions in supply through eradication and disruption of drug distribution and reductions in demand by the criminalisation of drug use.

- Options for reform are limited by the fact that any substantial attempt to alter those foundational assumptions – including the fact that policy is geared towards achieving a ‘drug-free world’ – could destabilise the entire regime and would meet fierce resistance. It would essentially be akin to trying to fundamentally alter the WTO’s founding mission of engendering ongoing trade liberalisation.
- Reform is also hampered by the fact that the treaties govern the production of licit pharmaceuticals too. These are often derived from the same plants – e.g. opium and coca – and could be diverted to illicit markets; the treaties therefore regulate and protect the complex webs of corporate and public power involved. Australia, for example, legally produces half the world’s opium.
- The treaties are enforced by powerful international institutions that perpetuate a strong prohibitionist logic. These include the International Narcotics Control Board, which monitors compliance with the treaties, and the UN Office on Drugs and Crime, which engages in policy work, reporting and diplomacy.
- Prohibitionism is also well entrenched at the federal level in the United States: the Bureau of International Narcotics and Law Enforcement Affairs (INL), which is situated in the State Department, and the Drug Enforcement Administration (DEA), which is based in the Department of Justice (DoJ), represent the external and internal arms of US narcotics policing. US hegemony was central to the establishment of the global drug regime and the prosecution of the War on Drugs.
- The impact of the War on Drugs has been devastating. Hundreds of billions of dollars have been spent and the ‘war’ has become increasingly militarised, provoking ever more violent responses from organised criminal networks, with little appreciable impact on reducing either supply or demand. Moreover, the effects are distributed highly unevenly: certain countries, such as Mexico, Colombia, Jamaica, El Salvador and Guatemala, have borne a greater brunt of both violence and negative developmental consequences, such as for farming communities that have lost their livelihoods and experienced health complications after vicious chemical eradication efforts.

## Part Two: The road to UNGASS – drug policy shifts across the Western hemisphere

It is perhaps unsurprising, then, that the impetus for UNGASS came from Mexico, Colombia and Guatemala, which began to demand a new approach to drug policy. But practical changes are increasingly occurring around the world too, predominantly in the Western hemisphere.

- Bolivia sought to unschedule the coca leaf – that is, have the chewing of the leaf removed from its status as a Schedule I drug, the highest classification, in the 1961 Single Convention alongside cocaine which is also derived from the same plant. Bolivia sought this change on the basis of coca’s nutritional, palliative and cultural use, particularly by its indigenous people. This failed, so the country left the Convention in 2012 and re-acceded in 2013 with a ‘reservation’ on coca leaf (a novel diplomatic manoeuvre).

- Uruguay legalised cannabis in 2012, effectively placing itself in breach of the conventions. Jamaica very carefully decriminalised cannabis so that it did not breach its commitments and thereby encourage the opprobrium of Washington, allowing possession of small amounts and recognising the sacramental importance of the plant for its large Rastafarian population. Canada is planning legalisation of cannabis; Portugal has decriminalised certain drugs; and many other countries in the Western hemisphere are assessing reform options.
- The most striking shift has undeniably been in the US where roughly half of the 50 states have legalised cannabis for medical use, and Colorado, Washington, Oregon and Alaska have done so for recreational use, thereby creating regulated markets for everyday adult consumption. This process will gather pace beyond the November 2016 elections as four more states – California, Maine, Massachusetts and Nevada – voted to legalise recreational cannabis.
- This has been made possible by a confluence of factors. Cannabis has only been legalised recreationally in some US states because of constitutional amendments led by public activism. This is both cause and effect of changes in public opinion: as the cannabis industry has proliferated, Americans have become increasingly in favour of legalisation and this has also chimed with moves by the Obama administration regarding criminal justice reform, disgust at structural inequalities experienced by racial minorities at the hands of the police and judiciary and the increasing belief that cannabis is a plant with poorly understood – yet apparently compelling – therapeutic benefits.
- The Obama administration has also given a qualified green light to cannabis legalisation. Deputy Attorney General James Cole issued a memo in 2013 that effectively suspended federal law and the enforcement of cannabis in those states that had legalised. A year later, William Brownfield, Assistant Secretary at the Bureau of Narcotics, called for greater ‘flexibility’ within the UN conventions. These two initiatives represent a softening of policy domestically and internationally.
- However, neither initiative is institutionalised and both exist purely on the basis of executive indulgence. Once President Trump accedes to office in 2017, the entire industry in legalising states could, in theory, be subject to DEA enforcement and the US foreign policy apparatus could conceivably be ratcheted up to enforce cannabis prohibition overseas. Further, many key agencies (such as INL and DEA) remain suspicious of the direction of travel and committed to both the international treaties and federal prohibition despite the reality of domestic legalisation.
- These recent changes appear rather problematic for the US. As a result of individual states’ legalisation of cannabis, the country is currently violating the very conventions that American prohibitionists created and imposed on the world in the 1960s and which its drug enforcement agencies continue to police aggressively domestically – outside of cannabis in legalising states, that is – and internationally.
- On the one hand, this has frustrated those countries, like Jamaica, that have not moved towards full cannabis legalisation – despite the fact that creating a legal market could hugely benefit its poor farming communities – because of

a fear of US retribution. Many countries in Latin America and the Caribbean view Washington’s continued adherence to the War on Drugs as profoundly hypocritical and even a way of erecting trade barriers to protect the first-mover benefits in an emergent industry. On the other hand, it has crucially opened up space for a new discussion and allowed the very processes that led to UNGASS – and which will continue beyond it – to begin.

### Part Three: Analysing UNGASS 2016

Ahead of UNGASS, there were high hopes on the part of reformists. In the Americas, especially, there was significant momentum behind changes that seemed almost self-evidently necessary and desirable. However, the session did not secure meaningful change and afterwards many pro-reform observers expressed huge disappointment with the outcome. Part Three assesses what happened at UNGASS, its outcomes and why disillusion occurred.

#### *A lack of clarity and international agreement about reform*

- UNGASS got off to an inauspicious start with a pre-summit fiasco: the United Nations Office on Drugs and Crime (UNODC) produced what was – for it – a rather radical briefing paper (see Further Reading) which suggested that, contrary to dominant interpretations of the treaties, decriminalisation of drug possession for personal use was potentially reconcilable with the international conventions, if decriminalisation sought to protect other freedoms enshrined within the UN Charter. This is the basis on which Jamaica has justified its decriminalisation of cannabis (i.e. protecting the right of the Rastafari to use the plant as a sacrament).
- The UNODC paper met fierce opposition from many countries and was shelved. It only came to light because Richard Branson – an active member of the authoritative Global Commission on Drug Policy – complained vocally to the media.
- In any case, reformists going into UNGASS neither had a clear set of objectives in terms of specific – and, crucially, realisable – changes they wished to see, nor a strategy for achieving them. In particular, they were neither able to offer plausible alternatives to what Cockayne and Walker (see Further Reading) call ‘swing’ states that could have been persuaded to consider reforms, nor to ‘orthodox’ states such as China, Russia, much of Asia and the Middle East, which remain wedded to increasingly punitive forms of prohibition. As such, it was always unlikely that a radical outcome would be achieved at UNGASS.
- Many other ‘reformers’ did not even agree with holding the meeting: some felt it was the wrong time, particularly with US federal policy remaining unclear. They argued that meaningful global reform would be more likely had UNGASS been held three years later, as originally planned, and if the US had either clarified the federal position in light of more domestic states legalising, or had even moved towards full federal legalisation of cannabis.

- There was, then, significant divergence between different country positions. Within Europe, there is fragmentation: some countries, such as Portugal, the Netherlands and the Scandinavian states, are more pragmatic, but had neither the influence nor incentive to advocate radical change, particularly since many larger European countries like the UK, France and Germany have remained broadly on the fence. In Latin America, there is significant diversity: Uruguay, Mexico and some in Central America demanded a new approach in tandem with their own domestic experiments; Colombia, a country with a troubled history of the drug wars and a domestic apparatus of legal and military repression, also backed reform but, even so, there was not a clear consensus.

### *The UNGASS communiqué: a poor compromise, for now*

- The final communiqué published at UNGASS is a disappointingly bland and orthodox document. Despite paying frequent lip service to a ‘balanced approach’ and better forms of harm reduction, it still focused overwhelmingly on the enduring – and arguably impossible – objective of reducing both supply and demand. Central to this remain interdiction, eradication and the development of public programmes and other actions to stop the ‘abuse’ of drugs.
- Cannabis – astonishingly given recent developments and its centrality to the impetus for UNGASS – is only mentioned once in the entire document, and only in terms of its continued scheduling as one of the most heavily controlled Schedule I drugs. Even on the smaller question of cannabis rescheduling, as opposed to the bigger question of legalisation, there was no room for negotiation, let alone agreement. It was, as a number of media commentaries on the outcome noted, the proverbial elephant in the room. Indeed, the very fact that the communiqué reiterated the importance of cannabis prohibition while many are legalising its cultivation and processing for commercial gain is, to put it mildly, surprising.
- The enduring prohibitionist mindset that shaped the document is clear if one looks at a revealing passage from the draft communiqué that was released in February 2016: ‘[we] reaffirm our determination to prevent and combat abuse of such substances and the illicit traffic to which they give rise, while recognizing that their use is indispensable for medical and scientific purposes’.
- This passage was removed from the final communiqué and it is not difficult to see why. Firstly, drugs themselves do not produce ‘illicit traffic’; it is their very prohibition that ‘gives rise’ to mafias and the accompanying violence required to sustain their illegal trade. Secondly, if, in fact, these substances are ‘indispensable’ when in the hands of medical professionals, there is no *a priori* reason to suspect that the same is not true – and any therapeutic benefits mysteriously evaporate – when people choose to self-medicate and use them recreationally.
- At the very least, and given that actual addiction rates for many illicit drugs are relatively low when compared to tobacco or alcohol, claims of ‘abuse’ that pepper documents such as the UNGASS communiqué – and underpin the wider justification for prohibition – appear increasingly difficult to sustain. The imperial drug warrior seems, in this regard, to be rather bereft of clothes.

- The incoherence of the communiqué arguably echoes the unique – and uniquely uncomfortable – position of the US within the politics of UNGASS. The US approached the meeting in an unusually conciliatory fashion but had an enormous set of pressures to balance: it had to tread carefully between both liberal and conservative forces domestically, and seek to maintain the integrity of the global regime while nudging forward reform while simultaneously mitigating any opprobrium from orthodox states. This the US actually did reasonably well: its diplomats focused heavily on injecting greater flexibility into the conventions, and the need for a greater focus on approaches to harm reduction that favour treatment and limit traditional forms of punishment such as incarceration.

### *Signs of hope for future reform?*

- Despite the current messiness of the politics of global drug policy, and in contrast to more punitive periods during the drug wars, there does at least – and at last – appear to be some recognition that public health programmes are required to do some of the heavy lifting in terms of the demand side.
- The UNGASS communiqué also makes multiple references to greater permissiveness regarding local regulatory experimentation, ‘as appropriate and in accordance with national legislation and the international drug control conventions’. However, it should also be noted that this tentative nod towards liberalisation is dwarfed by the number of references to trafficking, crime and abuse.

## **Part Four: What next? The challenge of moving towards a flexible regime**

It is, at present, unclear how things are likely to evolve in coming years. However, the reformist pressures that have grown in recent years will surely only intensify. There are, though, many different directions – both positive and less so – in which policy could go.

### *Much will hinge on the future evolution of US policy*

- At present, both the domestic orientation of the federal government (e.g. as encapsulated in the ‘Cole Memo’ that suspends prohibition of cannabis in legalising states) and its external approach (i.e. Brownfield’s call for greater ‘flexibility’ in interpreting the conventions, and the way this is in turn interpreted by the drug enforcement bureaucracy within the Washington foreign policy establishment) reflect a set of very messy compromises. Put crudely: the US is now caught in something of an identity crisis caused by internal and external pressures.
- The public has driven reform in legalising states, and this in turn broadly reflects a range of deep social and political economy drivers. These include: revulsion at policy brutality, particularly towards minorities; massive and unaffordable levels of incarceration of black men for nonviolent drug offences;



an emerging heroin epidemic amongst the white middle classes; an increasingly lucrative and extremely well-regulated licit cannabis industry, which is paying large amounts of difficult-to-avoid tax, engaging in concerted and well-funded lobbying and producing significant evidence of therapeutic benefits; and an Obama administration committed to criminal justice reform.

- Yet many conservative US states remain cynical and the narcotics bureaucracy is still overwhelmingly staffed with ‘drug warriors’. Moreover, externally the US is subject to pushback from those states, particularly Russia and many in Asia, that are sceptical about attempts to de-escalate the drugs war. For them, greater ‘flexibility’ is an opportunity to intensify their own domestic apparatuses of repression and violent retributive punishment that they believe, however misguidedly, have proved effective in stemming trafficking and drug consumption.
- How Washington resolves these tensions will greatly influence – if not necessarily determine – the future evolution of the global drug regime, and much could change under President Trump. It is unclear – as with much of his confused prospectus – what his policy approach will be, although he has spoken out against the War on Drugs in the past. The fact that California, especially, voted for a legalisation amendment on the night of his presidential victory will make it far more difficult now for the federal government to roll back domestic change.
- US hegemony was once central to the establishment and management of the global drug control bureaucracy. However, perhaps reflecting wider processes of US relative decline, it is unclear whether it now has either the capacity or the willingness – two critical components of hegemony – to either fundamentally change the orientation of that which exists, or, indeed, re-envision and re-establish a new regime to replace it.

### *The rescheduling of cannabis and its possible implications*

- One increasingly plausible option – for which, again, UNGASS 2016 evidently came too soon – is an eventual rescheduling of cannabis to a lower classification. This would undoubtedly be something to celebrate, and in a sense it is already happening *de facto*, particularly in the Americas, where country after country has either decriminalised or legalised, or signalled an intention to do so. The political economy, moreover, is clear: first-mover benefits are rapidly being lost to US cannabis firms that are growing ever-more wealthy, powerful and expansionist.
- However, the danger here is that, potentially, with that battle won and the coalescence of corporate power around cannabis, the broader war against other narcotics such as opiates and coca derivatives, as well as synthetic drugs, may well re-intensify. In short: the US may trade off global agreement on changes to the way the cannabis is governed with a new front in the wider drug war. This would be a catastrophe.
- Even if a re-intensification of the ‘war on drugs’ does not come to pass, it should be remembered that resolving the cannabis issue, as important as that is, will do little for coca or opium farmers that have borne the brunt of disastrous developmental consequences of the drug war (see the paper by Schleifer, Sagredo and Avafia in Further Reading).

- Whatever happens in the coming years, an array of countries will move towards cannabis legalisation of some kind. This will be spurred in part by commercial opportunities and increasingly powerful business actors desperate to invest in a booming industry, but also by public opinion which will turn further as it becomes clearer how legalisation is a more effective regulatory approach than prohibition, and the significant therapeutic benefits of cannabis become both more widely and better understood.
- This particular genie, in other words, cannot be placed back in the bottle. The global governance regime for drugs in general – and cannabis in particular – can thus evolve in two ways. It will either continue to fragment, with countries ignoring some of its regulations and their common purpose will become yet-more diluted. Or the reformists will (have to) discover a strategy for persuading those states that are reticent to accede to what is already a well-institutionalised direction of travel and on that basis, a new and more liberal settlement may be negotiable.
- It barely needs saying that the former scenario is more likely to come to pass, given the continued intractability of much Asian opinion. If it does, the next UNGASS on the World Drug Problem that is presently scheduled for 2019 will be a rancorous affair filled with even sharper irreconcilable differences.

## Conclusion: The enduring war against the war

Fundamentally, it is still going to be difficult to unravel the prohibitionist logic at the heart of the regime; higher levels of ‘soft defection’ are likely to continue, with the existing treaties staggering along for some time to come. Decisive action to change it, particularly on the part of orthodox states – China and Russia especially – is difficult to imagine. For the US, it can continue to allow domestic legalisation of cannabis without suffering meaningful sanctions from others, though its moral authority to pronounce or act on the drug policies of others within its sphere of influence consequently remains – somewhat mercifully – diminished. Fragmentation will probably intensify for the simple reason that few now agree on what ‘the global drug problem’ – which was as much a product of American scaremongering in the mid-20th century as anything else – actually is. Increasingly fewer people, particularly within the US, Latin America and Europe, accept the alarmism of the past; they are disgusted by the disastrous fallout of the drug wars and better educated about the realities of drug use in their societies.

The broader (international) political economy point to make here is that US power was necessary to build the extant global drug control regime and perpetuate it. As events of the past few years have shown, it was also necessary to begin the tentative process of unwinding it. However, it also seems that the US’s relative hegemonic decline today renders it insufficient to establish a paradigm shift and the construction of a new transcendatory regime. This is intriguing, both for what it says about American power, but also because it illustrates how effective Washington has been over the years at institutionalising a controversial prohibitionist approach to drugs. Whilst many states initially took much convincing, many, particularly in Asia, have become even more fanatical about this approach than Washington; just as the US, along with many other states in the American hemisphere, has become

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acutely aware of its myriad failures. There is a tragic irony here: waning relative US power makes it difficult to unravel a highly problematic regime that it built and enforced so vehemently in an era when it was relatively far more powerful. How this all pans out remains very much to be seen, but one thing we can be sure about is that the objective of achieving a ‘drug-free world’ will remain as much a fantasy going forward as it has been over the past 50 years.

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