

➤ The Contemporary International Drug Control System: A History of the UNGASS Decade

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In March 2009, representatives from more than 130 countries met in Vienna, the home of the UN bodies dealing with the 'world drug problem.' Delegates were concluding a year-long review of the progress made by the international drug control system against the goals set by the UN General Assembly Special Session (UNGASS) more than a decade earlier. At that 1998 session in New York member states had agreed on a Political Declaration, under the quixotic slogan 'A Drug Free World. We Can Do It!' This committed them to eliminating, or at least massively reducing the illicit production of coca, cannabis and opium, as well as achieving large scale demand reduction by 2008.

In 2009, after six gruelling months of negotiation, the meeting also announced a new Political Declaration and Action Plan. These soft law instruments, like their predecessors eleven years earlier, would heavily influence the direction of international control efforts for the next decade or so. During the general debate, a number of states pointed out that the UNGASS goals had not been met and lamented shortcomings within the draft Declaration. However, the approval of the final documents, which closely resembled those from the UNGASS, signalled an ostensible acceptance of the structure and ethos of the UN multilateral drug control system; a system built upon the doctrine of prohibition.

As dramatic events at the meeting were to emphasise, however, not all states were equally enthusiastic in their support for punitive prohibition. Indeed, in the years between 1998 and 2009 (the UNGASS decade), the UN drug control system experienced an increase in internal tensions, as well as a subtle form of transformation.

THE INTERNATIONAL DRUG CONTROL SYSTEM: STRUCTURES AND DYNAMICS

The contemporary system – or global drug prohibition regime – is constructed upon a suite of UN treaties.¹ Dating back to 1912, these treaties aimed to eliminate the non-scientific and non-medical production, supply, and use of narcotic and psychotropic drugs. The treaty-based system developed on the basis of two interconnected tenets: the belief that the best way to reduce problems caused by illicit drug use is to minimise the scale of the illicit drug market; and that this can be achieved through a reliance on prohibition-oriented supply-side measures.

Like most UN treaty-based regimes, a number of organisational actors oversee its various aspects. Key among these is the Commission on Narcotic Drugs (CND), which is the central policy-making body. The CND consists of 53 member states, and is assisted by the World Health Organization (WHO) and the International Narcotics Control Board (INCB or the Board). The Board is the self-described 'independent

¹ Ethan A. Nadelmann, 'Global Prohibition Regimes: The Evolution of Norms in International Society,' *International Organization* 44 (1990): 479–526.

and quasi-judicial' control organ for the implementation of the treaties. It assesses worldwide scientific and medical requirements for scheduled substances and monitors compliance with the relevant conventions. Both the CND and the INCB rely on the United Nations Office on Drugs and Crime (UNODC) – the UN agency responsible for coordinating drug control activities – for administrative and technical support.

Within this framework, textual ambiguity and subjective legal interpretation allow certain leeway in formulating national policies. Yet flexibility is limited. Consequently, while there has long been variation in national policies – a spectrum ranging from quasi-legal coffee shops in the Netherlands to zero-tolerance policing elsewhere – the regime greatly restricts national freedom of action. For example, no member state can create a regulated cannabis market for recreational use and still remain within treaty boundaries. Moreover, the conventions generate a powerful 'background prohibitionist expectancy' on nations regarding personal drug use.²

Although it is ultimately a multilateral construct, the shape and operation of the current treaty system is very much a result of American endeavour. The prohibitionist norm at the heart of the regime owes much to the successful internationalisation of the United States' domestic approach – namely, that the recreational use of certain substances is morally wrong. Furthermore, the near universal levels adherence to the regime cannot be divorced from Washington's support. States obviously perceive benefits from regime membership. Yet a combination of the UN's benevolent image and US suasion, both at the annual sessions of the CND and through unilateral mechanisms such as certification, have helped ensure nations become Parties to the conventions and not deviate from their prohibitive ethos thereafter. Costs, both in terms of national reputation and good relations, particularly with respect to economic ties with Washington, are important considerations. As one study noted in 1975,

*[w]hen a 'superpower' exhibits [a high degree of involvement] there is unlikely to be much resistance or unresponsiveness on the part of countries appealed to for support, unless such support is contrary to national interests. Generally speaking, co-operation with the US in drug control matters does not conflict in any significant way with the interests of other... countries and is therefore readily provided.*³

While the end of the Cold War significantly altered the international landscape, the dynamic described above remained clearly identifiable into the late 1990s and first decade of the twenty-first century. However, the change of geopolitical terrain in the late 1980s and early 1990s triggered a widespread reconsideration of national interest. In the US, the immediate post-Cold War era saw a complex debate about the 'very point and purpose of American internationalism.'⁴ Elsewhere, the loss of the dominating meta-narrative of one concept war (i.e. the war against communism), allowed for an increasingly widespread reconsideration of an alternative – the 'war on drugs.' Ironically, the end of the Cold War also included revised cost-benefit calculations in many (particularly European) states, where for various reasons the issue of illicit drug use gained traction on the domestic policy agendas.

With the growth, complexity, and multi-faceted nature of illicit drug issues, it became evident to an increasing number of countries that the benefits of a flexible interpretation of the conventions outweighed the costs of deviating from the regime's normative expectancy. In this respect, support for the zero-tolerance US federal approach, and by association for the punitive international prohibition approach, was increasingly regarded as contrary to national interest. As pragmatic domestic concerns came to the fore, fewer governments were

2 Charles D. Kaplan, 'The Uneasy Consensus: Prohibitionist and Experimentalist Expectancies behind the International Narcotics Control System,' *Tijdschrift Voor Criminologie* 26 (1984): 105.

3 Kettil Bruun, Lynn Pan and Ingemar Rexed, *The Gentlemen's Club: International Control of Drugs and Alcohol* (Chicago and London: University of Chicago Press, 1975), 142.

4 John Dumbrell, 'America in the 1990s: Searching for a Purpose,' in *US Foreign Policy*, ed. Michael Cox and Doug Stokes (Oxford University Press, 2008), 89.

content to formulate policy through an American, morally inspired, conceptual lens. This shift in focus took place in relation to both a more efficient use of finite law enforcement resources, as well as a public health context surrounding injecting drug use and the spread of HIV/AIDS. This coincided with a realignment of the international environment after the collapse of the Berlin Wall.

It was these concerns that became important drivers for the behaviour of some states and the growing systemic tensions that were to characterise the UNGASS decade. Increasingly dissatisfied with the punitive approach promoted by the conventions, a significant number of regime members engaged in a process of 'soft defection.'⁵ Rather than quitting the regime, these states deviated from its prohibitive norm, and exploited plasticity within the treaties, while technically remaining within their legal boundaries. Since norms are crucial to the essential character of a regime, such a process of normative attrition represented a form of regime transformation. Crucially, however, in this case transformation involved regime weakening and changes from *within*, rather than a more substantive change of the regime.

REGIME WEAKENING: HARM REDUCTION

A key part of this weakening process during the UNGASS decade took place over the issues of 'harm reduction.' These are 'programmes and practices that aim primarily to reduce the adverse health, social and economic consequences of the use of legal and illegal psychoactive drugs without necessarily reducing drug consumption.'⁶ The term here is used to refer to specific health-oriented interventions designed to reduce harms associated with injecting drug use.

Increasing engagement with harm reduction at the national and EU levels produced a significant and often heated debate within the conference rooms in Vienna. Indeed, while gaining approval from increasing numbers of states, its acceptance of continued illicit drug use provoked hostile reactions from other regime members (particularly the US), as well as from parts of the drug control apparatus – both of which favoured a more rigid and prohibitionist interpretation of the conventions. The increasing tensions were visible during both country and regional statements and debates around CND resolutions.

In the years following 1998, the issue of harm reduction oscillated on and off the Commission's agenda, according to its place within national policy debates. Nonetheless, statements from individual states favouring the approach became bolder, and eventually so did the position of the EU in the later years of the decade. This was particularly evident in 2005, during a thematic debate on HIV/AIDS. Countering such emboldened behaviour, statements from the US and other prohibitionist-oriented states, including Japan, the Russian Federation, and (somewhat incongruously) Sweden, also became more pronounced.

For example, at the 2003 mid-point review of UNGASS goals, the head of the US delegation stated that 'we must resist calls for lenient drug consumption policies... [we] know that these policies fail to sustain our important efforts as represented by the international narcotics conventions.'⁷ This was soon echoed by the INCB, and at times also by the UNODC's Executive Director, Antonio Maria Costa. The Board was particularly hostile to drug consumption rooms. This was despite legal advice from the UNODC's predecessor (the UNDCP) that they could operate comfortably within the regime's legal boundaries.⁸ It was, however, the debates around CND policy positions relating to HIV/AIDS that revealed the true intensity of disagreement on harm reduction.

5 David R. Bewley-Taylor, *International Drug Control: Consensus Fractured* (Cambridge University Press, 2012), 20.

6 IHRA Briefing (2010), *What is Harm Reduction? A Position Statement from the International Harm Reduction Association*, www.ihra.net/files/2010/08/10/Briefing_What_is_HR_English.pdf.

7 Phillip S. Smith, 'Vienna: UN Reaffirms Prohibitionist Path. Cracks Appear in the Consensus as Clamour for Change Grows,' *DRCNet*, 25/4/2003, <http://stopthedrugwar.org/chronicle-old/284/vienna2003.shtml>.

8 Legal Affairs Section, UNDCP, *Flexibility of the Treaty Provisions as Regards Harm Reduction Approaches*, 30/9/2002, UN Doc No E/CN.2002/W.13/SS.5, <http://www.tni.org/sites/www.tni.org/archives/drugsreform-docs/un300902.pdf>.

The Commission fosters a consensus-based environment, resulting in resolutions and declarations that are typically bland and oftentimes disguise the intensity of negotiations. Between 1998 and 2009, the CND agreed on six resolutions concerning drug use and HIV/AIDS, and which consequently involved the issue of harm reduction. Introduced by a range of nations, including Australia, Brazil and the Netherlands, the original versions often contained the term 'harm reduction' and explicit references to needle exchange. As a result of opposition from the US and other states, however, this language was removed. The critics fear was that, while non-binding, its inclusion within resolutions would legitimise and encourage the approach.

Over the years the negotiations involved deadlocks, filibustering, heated side discussions, extended sessions and, on at least one occasion, tears before home time. On many occasions judicious use of the phrase 'reducing the adverse health and social consequences of drug abuse', as agreed in the 1998 Political Declaration, eventually secured agreement, but as the decade wore on it was becoming clearer that there were deepening cracks within the so-called Vienna consensus.⁹ Debates over harm reduction also did much to highlight the increasing tensions between the drug regime and the UN's broader position on human rights. This was particularly the case in relation to the Board, as it became increasingly out of step with other UN bodies interacting with the drug issue, for example UNAIDS and the UN Development Programme, but also with the basic human rights principles of the UN system. However, that the UNGASS decade only saw one CND resolution dealing with human rights, itself fiercely debated, underscored the fact that not all states believed human rights had a place in discussions on drug policy.

The fragile façade of consensus within the CND was finally broken at the High Level Segment (HLS) of the Commission's 2009 meeting, which intended to conclude the review of the UNGASS Decade and to agree the new Political Declaration and Action Plan. Echoing its 1998 predecessor, the document reaffirms the regime's prohibitionist goals, to 'actively promote a society free of drug abuse.'¹⁰ However, not all member states were content with the Declaration. With a delivery that brought the conference room to a standstill, the German Ambassador addressed the delegates. He slowly listed twenty-six, predominantly European states (IS 26), that wished to add an Interpretative Statement to the already agreed Declaration.¹¹ Having failed to secure the inclusion, or even a clarifying footnote referring to harm reduction within the document, the Statement declared that they

will interpret the term 'related support services' used in the Political Declaration and Action Plan as including measures which a number of states, international organisations and non-governmental organisations, call harm reduction measures.'

This unprecedented step was a public demonstration of the fact that any remaining consensus among regime members on how to approach problematic drug use had been shattered.

The introduction of the Interpretative Statement by the IS-26 was undoubtedly one of the more noteworthy events of the UNGASS decade. It also revealed much about the nature of the system in 2009. As was to be expected, it was not well received by prohibitionist states – the United States and the increasingly important Russian Federation, in particular. To this group, it further undermined the essential tenets of treaty system. However, it is important to note that despite widespread engagement with a range of harm reduction measures, only twenty-six states signed the Statement. This number represented about one third of States pursuing syringe exchange programmes. While perhaps to some extent a result of a frantic negotiating environment, this disconnect represented a pragmatic calculation of costs. Although not even challenging the normative

⁹ Martin Jelsma and Pien Metaal, *Cracks in the Vienna Consensus: The UN Drug Control Debate*, (Washington: Washington Office on Latin America, 2004).

¹⁰ Commission on Narcotic Drugs, *Political Declaration and Plan of Action on International Cooperation Towards an Integrated and Balanced Strategy to Counter the World Drug Problem* (New York: United Nations, 2009), 7.

¹¹ Australia, Bolivia, Bulgaria, Croatia, Cyprus, Estonia, Finland, Georgia, Germany, Greece, Hungary, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Saint Lucia, Slovenia, Spain, Switzerland, and the UK.

fabric of the regime, only twenty-six states felt it important enough to expend political capital on. To the rest of the members, the costs – either reputational or in terms of relations with Washington – exceeded the benefits. Moreover, it is likely that a degree of free riding was at play, with some harm reduction oriented states content to allow others to move the issue forward.

REGIME WEAKENING: CANNABIS

The consideration of specific national interests is also central to understanding UNGASS Decade debates around another key area of contention – cannabis. After a period of relative policy stability during the 1990s, the UNGASS decade saw increasing numbers of states apply alternative measures to criminal prosecution for personal drug possession. Within this context cannabis unsurprisingly became a significant point of CND discussion between 1998 and 2009. There was an increasing level of soft defection among regime members with respect to the issues of ‘decriminalisation’, ‘depenalisation’, and especially with medical marijuana schemes. In quantitative terms, the number of cannabis-specific resolutions at the Commission was comparable to that relating to drug use and HIV/AIDS. However, the forceful and proactive support for harm reduction by some nations within the CND was not apparent for cannabis. On the contrary, delegates from soft-defecting states generally found themselves fighting a rearguard action. Interventions within debates and negotiations on the text of resolutions were often reactions to attacks on perceived leniency from prohibition-oriented nations. Rather than actively seeking to legitimise national level policy choices, the priority was to defend them. In many ways then, the cannabis issue created a reversal in roles to those witnessed during discussions of harm reduction and HIV/AIDS.

Moreover, attacks from certain member states were often closely related to the criticisms of soft defection emanating from the UN’s drug control apparatus. Both the INCB and UNODC, played an important role in shaping and in some instances steering, even stifling, debate on the issue within the CND.

For example, although the Dutch coffee shop system had long been the focus of the Board’s disapproval, the UNGASS decade saw it widen the scope of its ire in response to a growth in tolerant policies elsewhere. Criticism came in the form of a diligent producer versus ‘lenient’ consumer state narrative. From this perspective, traditional consumer states deviating from a punitive approach to the possession of cannabis for personal use were set against producer states that were portrayed as trying their best, within the spirit and the letter of the treaties, to suppress the illicit trade. Admittedly a view with some validity, this gained traction with countries like the US, Sweden and Japan, who opposed the liberalising trend on ideological grounds, as well as with North African and Gulf States, some of which were more functional in their outlooks and hoped to secure funding for cannabis control efforts.

Interestingly, while the CND’s consensus environment worked against soft-defecting states in relation to resolutions on HIV/AIDS, it also worked in favour of regime members favouring tolerant cannabis policies. All seven resolutions on cannabis adopted during the UNGASS decade were introduced by prohibitionist-oriented nations with the intention of tightening control. However, states including Portugal, Spain, Italy, Canada and the Netherlands were successful in ‘flattening’ the language and removing mention of the criminalisation of cannabis use for non-medical purposes. The goal of several resolutions, this would have significantly expanded the scope of the treaties and gone beyond the requirements of the 1988 convention which does not specifically oblige Parties to criminalise drug use.

BOLIVIA AND THE COCA LEAF: INCB HOSTILITY AND THE LIMITS OF SOFT DEFECTION

The INCB's position on both harm reduction and cannabis revealed an increasingly antagonistic attitude towards interpretations of the treaties that it regarded as, if not illegitimate, then at the very least in conflict with their spirit. However, it was the issue of coca that truly exposed the extent of the Board's willingness to defend the regime rather than seek to diffuse growing tensions within it. The coca issue also revealed the limitations of soft defection and that, while dissatisfied some aspects of the conventions, many states remained reluctant to support moves that would go beyond the process of regime weakening.

In what is now regarded by many analysts as an historical error, the coca leaf is included in schedule I of the Single Convention, alongside drugs such as heroin and cocaine. This is despite the ancient and socially-ingrained place of coca chewing and coca tea-drinking within many Andean countries. The Convention bans coca chewing but initially allowed countries a temporary exemption under article 49 to phase out the practice within twenty-five years. With the Convention coming into force in 1964, this deadline expired in 1989. The ongoing practice of coca chewing led the Board to examine the issue and suggest that states move to resolve the discrepancy in the 1990s. This occurred in light of inconsistencies between articles in the Single Convention and the 1988 Convention, regarding traditional licit uses of drugs. With scientific studies on the health implications of coca chewing disappearing without trace within the UN system in the late 1990s, the Board's position began to alter. During the UNGASS decade it became reluctant to highlight the tensions surrounding coca or to encourage the CND and WHO to resolve the matter. Instead, the Board became increasingly critical of coca policy in a number of Andean states, escalating its condemnation of both traditional uses as well as of the industrialisation of coca products.

Within this context, the INCB expressed particular concern over Bolivia's desire to remove the confusion over the legitimacy of ongoing domestic coca chewing and adjust coca-related provisions within the Single Convention. For the officials in La Paz, an amendment

of article 49 to remove references to the transitional period was a serious but necessary step. Unlike other states that on other occasions had been able to reduce various costs associated with regime membership via soft defection, article 49 of the Convention provides no wiggle room where coca chewing is concerned. Bolivia's unprecedented move consequently differed to the soft defections over harm reduction and cannabis since it would have gone beyond regime weakening and represented a change, albeit ostensibly relatively minor, of the regime itself. Bolivian coca policies and laws had been under review since the 2005 election of President Evo Morales, a former coca farmers' leader and himself a coca chewer. Morales raised the profile of the issue, resulting in the unusual appearance of a head of state at the CND on a number of occasions. The INCB quickly adopted a combative and oppositional stance within its annual report and through statements by its President. Despite pressure from the Board, which was further bolstered by opposition from the US, Morales himself used the platform of the HLS to formally announce that Bolivia would begin the necessary legal steps to end the prohibition of traditional uses of coca. He did so despite Bolivia's inclusion on the list of states to be considered for de-certification in 2008. After many twists and turns, this was to lead to the most significant challenge to the UN drug control regime since its inception in 1961.

CONCLUSION

How then do we sum up the UNGASS decade? It was certainly a period of regime transformation. But rather than a widespread and anterior challenge to the treaty system, this took on the form of a subtle change within the regime whereby a growing number of Parties deviated from the prohibitive norm at its core. In terms of national interest, most states were reluctant to expend political capital and thus incur the various costs associated with working towards a more substantive change of the regime. The resultant process of regime weakening played out in a number of ways at the Commission. Some states were willing to work for the legitimisation of harm reduction via inclusion of the principle, if not the term, in CND resolutions and ultimately fight for addition of the phrase itself to the official record through the Interpretative Statement at the HLS. Conversely, some of the same states kept a low profile for domestic cannabis policies, but fought to ensure their policy space was defended from prohibition-oriented states and some parts of the UN drug control apparatus – particularly the increasingly belligerent INCB.

The closing years of decade, however, also demonstrated that not all states were able to pursue revised national interests through a process of soft defection. For its own very specific set of reasons, Bolivia became the first Party to move for an amendment of any of the treaties and initiate a formal change of the regime. This triggered a hostile response from a range of countries. Indeed, beyond the very public rebukes from the Board, concerted opposition in 2010-11 from a US led 'Group of Friends' of the conventions, including some from the IS-26, blocked attempts to amend the Single Convention. This left Bolivia with no other option than to withdraw from the treaty and to re-accede, with a reservation on coca – an unprecedented process that remains ongoing. It also revealed that, having achieved their aims in relation to harm reduction, many states from the IS-26 had no interest in further rocking the boat for an issue with no obvious benefit to them – a decision no doubt influenced to some extent by Washington's stance on the issue.

That said, more recent events in Latin America suggest that Bolivia may not be alone in moving beyond the practice of soft defection that characterised the UNGASS decade. Escalating levels of drug-related violence within the region has resulted in a reassessment of current policies at the highest levels. This has involved a commitment to discuss all options, including regulated markets. More specifically, in June 2012 President José Mujica of Uruguay announced his intention to establish a government monopoly to control cannabis for recreational use, a policy option that is forbidden under the current treaty framework. Perhaps, then, we are witnessing the beginnings of a more direct challenge to the regime and a point of debate that will become increasingly prominent within the CND in the years leading to the next high-level review of 2019. ■