Swiss Drug Policy in International Context – Fought, Ignored, Admired

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Geographically situated in the centre of Europe, Switzerland is known for its many languages in the smallest of spaces; chocolate, watches and mountains – many of its products are export hits. In the 1980s, a less praiseworthy addition attracted attention: the image of open drug scenes. The resulting federal drug policy with its four pillars is well-known – but how did the international environment react to the Swiss Government's policies and how did the country in turn deal with these reactions? The following article addresses these issues and seeks to portray how much perseverance and resistance was displayed on both sides, and perhaps to answer the question 'does persistence beat resistance?'

THE DEVELOPMENT OF INTERNATIONAL DRUG POLICY UNDER THE AEGIS OF THE UN

Nine international agreements on drug control were concluded between 1912 and 1953. In 1961, these instruments were combined into the *Single Convention on Narcotic Drugs*. In the early1970s, a1972 Protocol amending the *Single Convention* and the 1971 *Convention on Psychotropic Substances* were concluded. The former instrument primarily served to strengthen control mechanisms and set out the strategy for the destruction of illegal plantations; the latter instrument expanded the list of illegal substances.

Throughout the1970s, the policy focus remained predominantly on the supply side, but the growing demand for drugs increasingly alarmed the authorities in developed countries. Several of these countries gained their first experiences with opiate replacement therapies as pragmatic, medical, alternatives. Nevertheless, the international community generally responded to these developments with a renewed strengthening of prohibitionist instruments. Thus *the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* adopted the criminalisation of the possession and consumption of drugs for personal use as a fundamental principle of control.

The corpus of these treaties formed the basis for both the regulation of the legal use of these controlled substances and the fight against their illegal production, traffic and consumption. Taken together, the conventions formed a body of international law, applied by individual member states.

The system is overseen by three UN bodies:

- The Commission on Narcotic Drugs (CND)
  Founded in 1946, CND is the central UN drug policy-making body. It determines in particular the strategic goals of the UNODC and monitors their implementation.

- The International Narcotics Control Board (INCB)
  Established by the 1961 Convention, the INCB monitors the cultivation, traffic and use of narcotic substances worldwide to ensure that these activities are confined to legal purposes. The INCB publishes an annual report of its work and the worldwide situation on drugs. In order to assess this and facilitate dialogue on national drug policy, it regularly sends delegations to individual member states.

- The United Nations Office on Drugs and Crime (UNODC)
  UNODC is an institution of the UN Secretariat and coordinates all drug-related activities of the UN.

SWITZERLAND'S INTEGRATION INTO THE INTERNATIONAL DRUG CONTROL SYSTEM

Switzerland ratified the 1961 Single Convention in 1968with little public debate and quickly revised its own controlled substances legislation to meet its new obligations. The message of the Swiss Federal Council to Parliament concluded with the observation that the Swiss pharmaceutical industry would gain the advantage of being able to buy opiates in virtually all countries. This was a big improvement on the 'closed list' of producers pushed by the United States and its allies in the 1953 Opium Protocol.

The Swiss acceded more reluctantly and in a more gradual manner to the Convention of 1971 and the Protocol of 1972. It wasn't until 1994 that the two Instruments were submitted to the Swiss Parliament for ratification. Pressure on Switzerland had been steadily increasing as it had turned into a hub for drug trafficking as well as abase for money laundering by criminal organisations. However, opposition from the pharmaceutical industry had to be overcome. This opposition was largely in response to the proposed regulation and control of psychotropic substances and precursor chemicals, like traditional narcotic drugs, by the federal state. The industry's main interest was in obtaining the necessary substances for research and production of medicaments. They feared that the proposed controls created impediments to this. Furthermore, there was an increasing national awareness of the medical, social and security implications of drug consumption. Switzerland became torn between two undesirable alternatives: the loss of sovereignty over its national drug policy or the exploitation of legal grey areas for crime. Only after the foundation for a strong four-pillar policy had been laid did Switzerland join these two international agreements in 1996.

The ratification of the 1988 Convention was even more widely debated. The issue at stake had less to do with drug trafficking and money laundering offences that were already covered by domestic law. Rather, the criminalisation of both consumption and possession of illicit drugs for personal use, including cannabis, was at the core of a dispute between two equally strong camps – which launched two opposing popular initiatives. In the summer of 1993, 'Youth without Drugs' submitted an initiative demanding strict criminalisation. Towards the end of 1994, the 'Droleg' initiative followed, proposing the decriminalisation of drug use, and for it to instead be regulated by the state.

The Federal Council of Switzerland suggested a delay in any debate on ratifying the 1988 Convention until a referendum on the initiatives had been held. Ratification without proviso would have been the natural consequence of the adoption of the 'Youth without Drugs' initiative, whereas the acceptance of 'Droleg' not only would have meant no further accessions to international conventions, but in addition the exit from all

previous ones. The Federal Council and Parliament recommended that citizens reject both initiatives and therefore support the formulation of a middle ground in the form of the four-pillar policy. In 1997 and 1998, after two very animated voting campaigns which helped increase public awareness on the issue, both initiatives were rejected by a margin of 71 and 74 percent respectively.

These results paved the way for Switzerland to join the 1988 Convention. However, it did so with the caveat that drug consumption would not be a criminal offence. This caveat aimed to ensure the continuation of its established drug policy, but also leave open the potential for further development of legislation, particularly around the production, traffic and sale of cannabis products. By 2005 Switzerland had been fully integrated into the international drug control system. Its relationship with the system, however, remains ambiguous. On the one hand, it complies with its obligations in the fight against organised crime. On the other hand it continues to build on the national four-pillar policy, in which interventions such as low-threshold methadone treatment, the prescription of heroin, harm reduction measures such as syringe exchange programmes, drug injection rooms, and quality testing of illicit substances all occupy a central position. Because of this tension between Switzerland and system, the country has been scrutinised by the UN drug policy bodies for many years.

CONTROLLED HEROIN PRESCRIPTION

Switzerland was visited by the International Narcotics Control Board (INCB) in both 1994 and 1995. This quick succession of visits was justified on two grounds. First, because Switzerland had still not ratified the Agreements of 1971 and 1988. Second because of the ongoing early experiments in controlled heroin prescription. These experiments were initially evaluated very critically by the INCB.[1] In its 1994 report, the INCB called for their assessment by a panel of independent experts drawn from the WHO. Switzerland welcomed this proposal as an addition to the monitoring by its own national research teams.

The overall results of the experiments were positive and published by their research teams in 1997. These were, however, only briefly discussed in the subsequent INCB Report which read: 'It [the Swiss Government] claimed that, for a limited number of addicts who could not be reached by other means, the medical distribution of heroin, accompanied by health and social support services, led to some positive results.' Drawing its own conclusions, the INCB Report cautioned against a continuation of the experiments or their international expansion and questioned whether the 'limited positive results claimed by the Swiss Government' were not, in fact, the result of some other intervening factor.[2]

In 1998, the previous year's rejection of the 'Youth without Drugs' initiative was not commented on by the INCB, even though the initiative's demand for a strict drug prohibition policy would have ended Switzerland's controlled heroin distribution. However, the 1998 Federal Decree for the controlled distribution of heroin and its support in the 1999 Referendum were met with continued scepticism by the INCB.

In 1999, the independently researched WHO report on the Swiss heroin prescription trials between 1994 and 1996 was published. This proved much more critical than the 1997 evaluation by the Swiss researchers. Methodological concerns were raised, and it was pointed out that it was not conclusive whether the positive effects on health and social integration were due to the prescription of heroin or the overall circumstances of care. It was also noted that the discrepancies between the effects of different prescribed opiates could not be determined accurately. It was therefore not clear whether heroin treatment offered better results than other substitution therapies. Ultimately, Switzerland's 'unique social and political characteristics' were highlighted and it was concluded that the results of these trials could be generalised only to a limited extent.

1 International Narcotics Control Board, *Annual Report for 1995*, para 384.
2 International Narcotics Control Board, *Annual Report for 1997*, paras 367-368.

The Ministry of Health issued a statement welcoming the report of the panel of experts and accepted its findings. However, it also made clear that the demanded scientific standards relating to methodology were not fully realisable under the circumstances. The Ministry stressed that the experiments were not designed to determine whether the improvements in health and social status of the participants resulted from the heroin prescription itself or its surrounding circumstances. The INCB responded to the findings of the expert commission with a press release and a statement in its subsequent annual report. In both publications, only the negative results were recorded, and the unchanged negative position of the INCB towards heroin prescription was emphasised.

In 2000 Switzerland was again visited by an INCB mission. The resulting comments in the INCB Report corresponded with previous trends: the positive effects of Swiss drug policy were supposedly unclear and controlled heroin prescription would have to be further tested for negative side effects. As before, it was pointed out that the Swiss results were not readily transferable to other countries. Moreover, the INCB stressed its concern that the Swiss experiment could inspire other countries, including non-European ones, to adopt similar programs.

DRUG CONSUMPTION ROOMS

To counteract the problem of increasing HIV-infections among intravenous drug users, the first syringe-exchange programmes were introduced in Bern in 1985. These were gradually expanded nationwide and into selected prisons. Although this innovation was also scrutinised by the INCB, it could not be considered a violation of the international drug conventions. The introduction of the first accredited injection room in Bern in 1986, followed by another in Zürich in 1987, was a different matter. The international reactions to these consumption rooms (which were subsequently introduced in other cities) were similar to the reactions to the heroin prescription programme. The INCB took the standpoint that the consumption rooms went against international conventions, and hyperbolically described them as 'drug injection rooms that maintain and facilitate drug abuse under supposedly hygienic conditions.'[3] Switzerland responded to this accusation with a legal opinion of its own that arrived at a different conclusion, but this was largely ignored by the INCB.

CANNABIS

Cannabis consumption has increased significantly in Switzerland since the 1970s. However, the issue was for a long time overshadowed in public discourse by concerns surrounding hard drugs. From the mid-1990s, cannabis cultivation and its trade rose significantly in Switzerland; many so-called 'hemp shops' were established. In 2000, a verdict by the federal court closed this legal loophole relating to cannabis, determining that Swiss hemp above certain THC levels would now fall under the Narcotics Act. However, this decision had little practical impact.

In the course of the 1990s Swiss policy on cannabis drew the world's attention when a decriminalisation plan began to crystallise. This plan was initially widely misunderstood by the international community. In particular, the planned decriminalisation of consumption was often mistakenly equated with the full legalisation of its cultivation, traffic and consumption. Consequently neighbouring states, in particular, worried about its effect on their own drug scenes. Therefore Switzerland made it a high priority to keep neighbouring countries informed about its drug policy and up to date with new developments. This took place in bi- and

3 International Narcotics Control Board, *Annual Report for 2000*, para 504.

tri-national meetings, as well as on a regional level following a request for discussions by Germany's federal state Baden-Wuerttemberg. During these meetings, perceptions of Swiss drug policy could be exchanged and partly revised, and the ideas behind it articulated more clearly, with many concerns being eliminated.

Unsurprisingly, the INCB was critical of this planned decriminalisation as part of the revision of the Narcotics Act. Again, the INCB claimed that such measures, among other things, violated the 1961 Single Convention. Switzerland commissioned a number of legal opinions on this issue, all of which came to the conclusion that no violation of the Convention had taken place. The INCB nevertheless stuck to its initial position without attempting to justify the rejection of the Swiss legal opinions. Nevertheless, the plan was rejected in 2004 by the Swiss Council and a crackdown on the cultivation of cannabis is now being conducted. At present, discussions about various administrative sanctions with regard to cannabis are underway in Parliament.

OTHER INTERNATIONAL RESPONSES TO SWISS DRUG POLICY

The Swiss Government's new approaches to drug policy were by no means ignored. The Federal Office of Public Health organised several dozen visitor programmes, so that delegations from around the world could get a first-hand impression. The wide publication of the scientifically monitored experiments provoked further strong interest. In general, there were often two opposing positions. One rejected the experiments on ideological grounds and advocated no assistance in any form with substance abuse as a matter of principle. The other accepted the experiments out of pragmatic concerns, including the reduction of death rates and HIV transmissions, improvements of the situation for sufferers and other general positive evaluations. Ambros Uchtenhagen summed up succinctly that 'in drug policy, a clash exists between those who approach the issue from a scientific perspective and those who stick to their ideological convictions.'[4]

Motivated by what Uchtenhagen termed 'ideologischer Prinzipientreue,' the repressive nature of the UN drug policy paradigm has been sharply criticised by the international scientific community. In the *International Journal of Drug Policy*, several scientists spoke out against the 2000 UNDCP World Drug Report. A detailed review accused the Report of a distorted and biased reproduction of data and concluded that 'the document cannot be considered of value in terms of providing an analysis of comprehensive information in a scientifically rigorous and neutral manner. The kinds of data manipulation noted here have been noted by others regarding how drug data are distorted to support particular drug policies.'[5] In the same issue, it was recorded that fatal heroin overdoses decreased starkly thanks to Switzerland's drug policy.

The scientific community's reactions to the Swiss experiments have been broadly positive. The results of the heroin prescription programme have been used to argue for its introduction in other countries. For instance a 2005 publication of the Swiss Ministry of Health, which offered an overview of the results to date, observed that 'the Netherlands has been in admiration of the Swiss, and at the same time jealous.'[6] In addition, the cooperation of different stakeholders was praised: 'One could almost consider it a 'blueprint' for the pragmatic collaboration between science, therapy options, police, criminal prosecution as well as politics.'[7]

Within the Group Pompidou, of which Switzerland has been a member since 1985, substance abuse and illicit trade with narcotics are increasingly analysed from a multidisciplinary perspective. The Swiss experiences were initially met with doubts, but became more and more accepted as a positive contribution to the mitigation of the problem. Today, discussion is increasingly taking place within the EU where a consensus

4 'In der Suchtpolitikstreiten auf wissenschaftlicher Evidenz bauende Tendenzen mit ideologischer Prinziptreue,' AmbrosUchtenhagen, 'Suchtpolitik und Suchtarbeit im internationalen Spannungsfeld,' *Abhängigkeiten 12* (2006): 66.

5 Carla Rossi, 'A critical reading of the World Drug Report,' *International Journal of Drug Policy* 13(2002): 225–235.

6 Frederick Polak, 'Invited Comment: Shortcomings of Heroin Prescription Research,' in *Heroin-assisted Treatment. Work in Progress*, ed. Margaret Rihs-Middel et al. (Bern: Hans Huber, 2005), 91.

7 Michael Krausz, 'Heroingestützte Behandlung – Basisversorgung oder Ultima ratio im internationalen Vergleich,' *Abhängigkeiten 13*(2007): 54–65.

for the medicalisation of substance abuse is slowly forming. Similarly, voices were raised in the UN, which wanted to give priority the social dimensions and health concerns of drug related issues. In 1998, a special meeting on drugs of the UN General Assembly took place, where Switzerland publicly advocated its four pillar strategy. 10 years later UNAIDS and the WHO, as well as the Global Fund to Fight Aids, Tuberculosis and Malaria, became important actors in this field. The UN is currently seeking to develop a more coherent international policy, which takes all aspects of drug related problems into account.

CONCLUSION

The Swiss positions on harm reduction policy at a European level, for instance within the Pompidou Group, helped convince other European partners despite some initial scepticism. By the end of the 1990s they had been adopted by a majority of European countries, despite being rejected by individual states such as Italy and Sweden, which continue to pursue forceful and repressive drug policies. At the global level, however, the strategy backed by Switzerland and a majority of European countries could not persuade the UN bodies charged with the implementation of the International Conventions.

Nevertheless, the questioning of a one-sided prohibitionist drug policy and the normalisation of harm-minimisation policies and related therapeutic measures are beginning to be accepted worldwide: replacement therapies and syringe exchange programmes are commonplace; heroin is available on prescription in five countries; consumption rooms are established in seven countries and cannabis consumption is de-penalised, de-criminalised or either *de facto* or *de jure* legalised in almost thirty countries. Moreover, in a number of national and subnational jurisdictions around the world, the use of cannabis products for medical purposes is government-controlled. As noted in the forthcoming book by David Bewley-Taylor, 'soft defection' from the straitjacket of international conventions is increasing in frequency.[8] The search for a bottom-up consensus, in which health, social integration and the security of the population will be placed a priority, is underway. ■

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