Global drug policy

A hamster in a wheel or two dogs fighting for a bone?

Lily Schim van der Loeff
International Studies 2016-2017
S1639811
lilysvdl@gmail.com
Supervisor: Dr. O’Malley
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Introduction</td>
<td>3</td>
</tr>
<tr>
<td>2. Theoretical framework</td>
<td>5</td>
</tr>
<tr>
<td>3. Methodology</td>
<td>8</td>
</tr>
<tr>
<td>4. Historical context</td>
<td>9</td>
</tr>
<tr>
<td>5. An era of polarisation</td>
<td>11</td>
</tr>
<tr>
<td>6. The trade-off</td>
<td>14</td>
</tr>
<tr>
<td>7. The crack in the consensus</td>
<td>17</td>
</tr>
<tr>
<td>8. A wide-ranging debate</td>
<td>20</td>
</tr>
<tr>
<td>9. An open debate</td>
<td>22</td>
</tr>
<tr>
<td>10. Conclusion</td>
<td>24</td>
</tr>
<tr>
<td>12. Bibliography</td>
<td>27</td>
</tr>
</tbody>
</table>
1. Introduction

Global drug policy is in crisis. Despite UN conventions mandating strict international prohibition, more and more states have begun to stray from the prohibition path and making national drug policies more lenient (Bewley-Taylor 2003: 1). The first country to legalise the production and sale of marijuana was Uruguay, disregarding the existing UN drug treaty framework. Even within the US, the once ‘uncontested champion of a hard line punitive global counternarcotic regime’, federal prohibitive drug laws find themselves at odds with individual state drug policies. Alaska, Colorado, Oregon, and Washington\(^1\) have legalised both recreational and medical marijuana even though under the federal Controlled Substances Act of 1970 marijuana is illegal (Felbab-Brown & Trinkunas 2015: 10). The latest public assault on the current drug control system was made in March 2016 by former heads of state, academics and business people; publishing a collection of essays titled: ‘Ending the war on drugs’ (The Economist, March 24\(^{th}\) 2016). The authors claim that the current framework of global drug policy is a ‘political, economic and public-health failure’. They conclude that with an estimated cost of $100 billion per year, the war against drugs has not driven down consumption. Instead it has stimulated a $300 billion a year industry. Any hope, however, of changing UN conventions has been impeded by a number of nations that remain ‘firmly against even tentative reform’ (The Economist, March 24\(^{th}\) 2016). Opposition to the punitive global drug policy is rising and demands for reform are coming at the UN from multiple fronts.

Global drug policy has reached a crossroads. By legalising marijuana and making drug laws more lenient, some countries have blatantly disregarded the UN drug treaty system. Others have instead chosen to strictly enforce prohibition, using methods not approved by all\(^2\). As the UN pursues a unified approach, polarisation between those in favour and those against the current UN drug treaty system increases. Important benchmarks in the drug policy debate are

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\(^1\) When writing this thesis, California, Massachusetts and Nevada passed measures legalizing recreational marijuana (nov 2016), which will soon take effect. Twenty-six other states have laws legalizing marijuana in a different form than recreational. Retrieved 5 December: [http://www.governing.com/gov-data/state-marijuana-laws-map-medical-recreational.html](http://www.governing.com/gov-data/state-marijuana-laws-map-medical-recreational.html)

\(^2\) More than 2,500 people have been killed in 2016 between the 1\(^{st}\) of July 1 and September 5\(^{th}\) during President Duterte's bloody war on drugs in the Philippines. Retrieved 5 December: [http://www.aljazeera.com/indepth/features/2016/09/philippines-duterte-killer-drug-war-160905094258461.html](http://www.aljazeera.com/indepth/features/2016/09/philippines-duterte-killer-drug-war-160905094258461.html)
the United Nations Special Sessions (UNGASS) on drugs, when the General Assembly (GA) reviews the performance of the UN drug control system. Two of the special sessions took place in 1990 and 1998. The next UNGASS took place almost eighteen years later in 2016 and the GA will continue the discussion in 2019. This renewed attention, after almost two decades of oblivion, highlights the need of the international community to revisit the debate on global drug policy in a time of mounting polarisation.

In 2013, on the International Day against Drug Abuse and illicit Trafficking, former UN Secretary-General Ban Ki-moon urged member states to pursue a ‘wide-ranging and open debate’ on drug policy (Ban-Kimoon, New York: 26 June 2013). For the purpose of this thesis, I will define ‘open’ as: ‘not restricted to a particular group or category of participants’ and ‘wide-ranging’ as: ‘including many different ideas, actions or things’ (Merriam Webster). I will focus on which actors and what ideas influence UN drug policy-making. Discussing these two aspects of drug policy, allows us to better understand the development of drug policy in the prelude to UNGASS 2019.

This brings me to the research question of this thesis; to what extent has the global drug policy debate become more wide-ranging and open throughout the United Nations special sessions of 1990, 1998 and 2016?

The first part of the thesis briefly reviews the academic literature on the multilateral context global drug policy was formulated in. The second part addresses the methodology used and discusses the historical context of global drug policy. The third part of the thesis, the core, is an examination of the proceedings at the three special sessions on drugs and will be followed by an analysis of the recurring themes. In the conclusion I will discuss the extent to which the UN drug policy debate has become more wide-ranging and open throughout the three special sessions. This will allow me to suggest policy recommendations for UNGASS 2019.
2. Theoretical framework

To begin with, it is important to situate global drug policy-making in the multilateral context in which it was initiated, negotiated and drafted. A key element of this thesis is therefore a review of broader scholarly efforts to conceptualize multilateralism. Traditionally, international relations specialists have focused on states as protagonists in multilateral policy-making (Weiss e.a. 2009: 124). Since the 1970s, however, the United Nations has organised many global summits on an array of different topics, which have ‘spawned complex multilateral diplomacy’ since (Karns & Mingst 2004: 13). The presence of well-organised NGO’s, scientific experts, corporations and other interested individuals with a strong lobbying power, has forced IR scholars to recognize the presence of actors besides states (Weiss e.a. 2009: 124). This has led to an academic debate on who participates in multilateral policy-making and in what way (Karns & Mingst 2004: 13). Looking, respectively, at which actors and what ideas influence multilateral policy-making, creates a better understanding of how global drug policy has been shaped throughout the years.

The United Nations is a multilateral institution: an institution that facilitates the ‘relations among three or more states in accordance with certain principles’ (Ruggie 1992: 568). The adherence to a collective set of agreed upon principles is what distinguishes multilateral cooperation from regular cooperation between states. These principles are created to ‘prescribe behavioural roles, constrain activity’, but most importantly shape expectations between member states (Keohane 1990: 732). The largest multilateral platform is the United Nations and the 193 member states have agreed on common principles of conduct as described in the United Nations Charter. The Charter stipulates that the UN strives to be a ‘centre for harmonizing the actions of nations in the attainment of these common ends’ (UN Charter 1945: Chapter I, Article 1). Moreover, the UN Charter contains the formal procedures for member states to work towards those commons ends through a ‘single negotiating text and goal’; i.e. multilateral policy (Lodge & Carpenter 2013: 41). This means that within the largest existing multilateral platform, the member states are the protagonists for deciding on global policy (Karns & Mingst 2004: 15).

Even though states are the formal actors at the UN, academics have extensively addressed how non-state actors influence ‘UN thinking, policies, priorities, and actions’ (Jolly e.a. 2009: 33). Instead of focussing on the UN as a product of its ‘rigid formal structures’, the
time has come to look at it ‘in terms of free-flowing networks’ (Weiss e.a. 2009: 124). Multilateral decisions are no longer the direct result of multilateral cooperation between multiple states as dictated by the code of conduct set by the United Nations Charter. Rather, the increasing importance of non-state actors has ‘gradually forced many main-stream IR theorists to pry open the lid on the black box of state-centric theories of international organization’ (Weiss e.a. 2009: 124). Weiss e.a. argue therefore that when considering participation at the UN, an additional UN should be considered consisting of ‘certain nongovernmental organizations (NGOs), external experts, scholars, consultants, and committed citizens who work closely with the UN’s intergovernmental machinery and secretariats’ (Weiss e.a. 2009: 123). The UN is therefore no longer a merely state-centric platform, as outside of the UN, there is a part of the UN that exerts influence on its policy-making process.

Even though non-state actors receive increasing attention at the multilateral level, the UN structure and rules were shaped in a post-war era. A system was put in place where states were considered the relevant, if not only, actors in a multilateral setting. State sovereignty lies at the heart of the UN Charter (UN Charter 1945: Chapter I, Article 2). Therefore, member states of the UN have authority ‘not only over their own territory and people, but also over powers delegated to international institutions’ (Karns & Mingst 2004: 15). The US emerged as a victor of World War II, but more importantly as one of two victors with a military and economy largely intact. This made the country self-sufficient in a time where other countries where interdependent and could not heedlessly pave their own political path. As the Cold War ended in 1991, the bipolar world order changed to unipolar. The US was ‘the only country with the military, diplomatic, political and economic assets to be a decisive player in any conflict in whatever part of the world it chooses to involve itself’ (Krauthammer 1990: 24). The centre of world power became the ‘unchallenged superpower, the United States, attended by its Western allies’ and this had a profound effect on the direction global policy took (Krauthammer 1990: 23). The US ‘used its dominant position [...] to shape much of the structure and rules of the post-war international system’ (Karns & Mingst 2004: 15). This dominant position is most obvious when looking at the Security Council, but can also be noted in the earliest treaties and resolutions that still hold true to this day. Moreover, some scholars argue that even though US power has been substantially declining and challenged by other economic heavyweights such as Brazil and China, ‘no great-power rival or set of rivals has emerged to challenge the United States’ (Haass 2008: 48). The United States still is and
‘will remain the largest single aggregation of power’ (Haass 2008: 46). As a result, to this day ‘US interests (and often European as well) are accommodated in many regimes’ through the UN policy-making system (Karns & Mingst 2004: 30).

It is safe to say that ‘multilateralism in the 21st century is, like the century itself, likely to be more fluid and, at times, messy than what we are used to’ (Haass 2010). Even though the initial set-up of the UN was based on a post-war balance of power, increasing globalisation has made the international pecking order more diffuse. The global interconnectedness of nations has created challenges of transnational scale that can no longer be addressed by member states alone (Weiss e.a. 2009: 139). Therefore, it is paramount that governments look outside of the box and allow non-state actors to influence policy-making; moving ‘beyond what passes for received wisdom in governments and secretariats’ (Weiss e.a. 2009: 133). Ideas presented by non-state actors are not dependent on re-election or limited by a specific mandate as the primary loyalty goes to the idea not to an electorate. By considering ideas of non-state actors in conjunction with those of member states, out-of-the-box thinking is combined with ‘knowledge with political punch and access to decision-makers’ (Weiss e.a. 2009: 133). So even though these parties take no formal part in voting procedures and diplomatic discussion, non-state actors can influence the process of ‘advocacy, research, policy analysis’ but most importantly; that of idea-mongering (Weiss e.a. 2009: 123). The importance of non-state actors lies in presenting independent thought and therefore coming up with ‘new ideas and information, and mobilize public opinion around UN deliberations and operations’ (Weiss e.a. 2009: 123). It is no longer sufficient to address issues of a global scale by member states, let alone one superpower.

When regarding the past and the future of global drug policy, it is important to see it in the light of the academic debate on who and what influences UN policy-making. By looking which actors and ideas influence the policy-making at the UN, we gain better understanding of how global drug policy has developed and in what direction it might further develop.
3. Methodology

This research will combine process tracing and discourse analysis to provide a well-argued answer to the research question, allowing for different perspectives and approaches to sustain my argument. I have chosen the research method of process tracing to analyse how global drug policy has unfolded over time. I have selected the United Nations Special Sessions (UNGASS) as a series to analyse. An UNGASS is a key UN mechanism that can review global drug policy specifically with the entire GA present. The United Nations Special Sessions held three on the world drug problem. The Special Session on drugs of 1990, 1998 and 2016 are the temporal sequences used in order to conduct the process tracing. In order to recognise recurring discursive patterns that form part of the drug policy debate, I will also analyse some of the discourse in the relevant literature inasmuch as it explains recurring themes in the international drug policy discussion.

The first three chapters will focus on accurately describing the special sessions as a specific series. In order to trace the process of the special sessions, it is important to take a snapshot of each of the special sessions and compare them to each other in different points in time (Collier 2011: 824). These are the key moments that allow me to conduct a proper analysis of change and sequence over time. It will permit me to assess if certain conditions during these meetings have led to a more wide-ranging and open debate throughout UNGASS 1990, 1998 and 2016. Based on the diagnostic evidence provided by the UNGASS 1990, 1998 and 2016, the proceeding two chapters will look at the causal relation of the three special sessions (Collier 2011: 824).

The fourth and the fifth chapter of this thesis will look at the recurring discussion on the influence of specific actors and ideas that have emerged during the three special sessions. In order to limit the scope of this thesis, I will focus on recurring themes that specifically influence the wide-ranging or open character of the UN drug policy mechanism, focusing specifically on the influence of ideas and non-state actors.

The data for this thesis will be acquired through a literature study. I will rely on qualitative data ranging from UN treaties and resolutions, reports, academic literature, policy briefs, national and international policy documents and newspaper articles.
4. Historical context

The current global drug strategy based on prohibition can be led back to a US led initiative of the early twentieth century. In an attempt to recreate the alcohol prohibition scheme, the US pursued an international judicial framework to control psychoactive substances (Jelsma and Armenta 2015: 1). Despite significant US effort, other colonial powers objected to a punitive and prohibition oriented approach as their territories overseas profited greatly from the opium trade. When the US emerged as a victor of World War II, it was in a position to create a prohibitionist global drug regime and pressure governments suffering the post-war consequences to acquiescence (Jelsma & Armenta 2015: 2). This was facilitated by the fact that drug control was no priority for most states, allowing considerable monopolisation of the prohibition-oriented coalition (Bewley-Taylor e.a. 2016: 4).

Ultimately US political power and will led to the three major UN drug conventions. The first treaty, the Single Convention on Narcotic Drugs of 1961, was negotiated in the 1940s and 1950s, consolidating previous efforts for drug regulation into a single treaty (Thoumi 2016: 19). The treaty focuses largely on coca, cocaine, opium, heroin and cannabis, i.e. plant-based drugs (Jelsma 2003: 182). This type of control was introduced based on the idea that ‘narcotic drugs should be considered hazardous unless and until proven not to be’ (Sinha 2001: 26). The US ended up rejecting the Single Convention, accusing it of being ‘too permissive’ (Collins 2016: 12). The subsequent US administrations side-lined drug prohibition efforts until the cocaine-boom and crack-epidemic hit the Western Hemisphere in the second half of the twentieth century.

Due to the increase in drug-related deaths, the attention of the US State Department returned to the world drug problem. The US congress ratified the Single Convention on Narcotic Drugs in 1967 and in 1971 President Richard Nixon declared a war on drugs. The Nixon administration vowed to take ‘additional steps to strike at the supply side of the drug equation [...] beyond our borders’ (Nixon, Washington: 17 June 1971). This was the start of aggressive US diplomacy and a process in which extensive resources were allocated to drug prohibition

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3 Martin Jelsma is a political scientist, specialised in Latin America and international drugs policy who coordinates TNI's Drugs & Democracy Programme. TNI was part of the Civil Society Task Force on Drugs for UNGASS, which has allowed them to closely monitor the UN drug policy making process. This means that even though these are not first-hand sources, the knowledge obtained is often first hand.

abroad (Collins 2016: 12). The US exerted considerable pressure on states and responsible UN bodies to follow suit (Collins 2016: 12). As the drug industry grew exponentially, the 1971 Convention of Psychotropic Substances followed the 1961 Convention (Collins 2016: 12). The 1971 drug treaty was principally concerned with synthetic drugs from the pharmaceutical industry (Jelsma 2003: 182). The third drug treaty, the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, features comprehensive measures on the criminal aspect of the drug trade such as money laundering and agreements on the extradition of drug traffickers (1988 Convention). The three drug treaties enjoy a high level of adherence; 183 out of 193 UN member states are signatories to the 1961 and 1971 drug treaties and 182 to the 1988 Convention Illicit Traffic in Narcotic Drugs and Psychotropic Substances (IDPC 2007: 2). By the end of the eighties a global treaty framework had developed, reflected in the UN treaties of 1961, 1971 and 1988, and initially set in motion by the US (Collins 2016: 12). The UN sits at the control panel of global drug policy through a treaty framework the US put in place.
5. An era of polarisation

The UN General Assembly can convene outside of the annual meeting schedule, if the security council or a majority of member states requests it (UN Charter 1945: Chapter IV, Article 20). Special sessions are meant to build on ‘political momentum’ to obtain changes in the way the ‘international community addresses a global problem’ (Jelsma 2015: 3). Thirty such special sessions have taken place since the UN was founded, and three were dedicated to the world drug problem. The first of these three, took place in 1990, against the backdrop of an increasingly militarised and cross-border war on drugs but also a newly institutionalised global drug policy. The war on drugs as well as global drug policy framework centred on prohibition and persecution. The system was initiated, strongly embraced and promoted by the United States (Felbab-Brown & Trinkunas 2015: 4). In spite of wide adherence to the treaties, during the last decade of the twentieth century, it became clear that the interests of producing and consuming countries were diverging (Caulkins 2013: 4). Consuming countries blamed ‘source and transhipment countries for supplying the drugs’. Producing countries in turn countered by noting that the United States and Europe accounted for the bulk of the demand (Caulkins 2013: 3). The treaty framework, however, was ‘largely compatible with pre-existing legal systems in North America and Western Europe’ (Jojarth 2009: 102). This meant that production countries were persuaded to alter their narcotics policies to stricter standards, ‘prevailing in such states as the US’ (Bewley-Taylor 1990). As a result, producing states ‘feared international anti-drug efforts not only for their harmful impact on their country’s economy but also for negative repercussion on their fragile political stability’ (Jojarth 2009: 104). In short, the producing countries were worried by the economic and political costs of prohibitionist policy whereas as consuming nations had relatively little to adjust (Jojarth 2009: 102).

The Colombian president kicked off an era of finger-pointing at the annual meeting of the general assembly in 1989 (Barco Vargas, New York: 5 October 1989). He called upon all member states of the UN to take their responsibility in the drug trade, stating how: ‘every tactic and every weapon in the war against narcotics pales into insignificance compared with the need to reduce demand’ (Barco Vargas, New York: 5 October 1989). The president received a standing ovation when he declared that: ‘those who consume cocaine are contributing to the assassination of my people by the criminal drug cartels’ (ibid.) By publicly assigning blame to consumer countries, president Barco Vargas demonstrated the
widespread feeling that the existing drug policy framework reflected the interests of consuming nations (ibid.). In this spirit, president Barco Vargas put forward a motion to organise a UNGASS to discuss international cooperation on reducing demand. To ensure a certain level of impartiality, Barco Vargas also suggested the establishment of an expert working group at ministerial level to re-evaluate and coordinate anti-narcotic initiatives (Barco Vargas, New York: 5 October 1989).

In February 1990 the first UNGASS on Drug Abuse took place and the official objective was to encourage the global implementation of the 1988 UN Convention (Jelsma 2015: 2). The GA adopted a political declaration, agreeing to ‘protect mankind from the scourge of drug abuse and illicit trafficking’ (A/RES/S-17/2). The choice of the word ‘scourge’ highlighted the manner in which drugs were regarded at that moment in time; as ‘something that causes a great amount of trouble or suffering’ (Merriam Webster). Use of such words allowed governments to publically ‘crusade against drugs’ and blame them for any unfortunate political circumstances (Levine 2003: 147). Words such as ‘scourge’ would be used to ‘popularise images of drugs as highly contagious invading evils’ (Levine 2003: 147). At the UNGASS the period from 1991 to 2000 was declared the UN Decade Against Drug Abuse, marking the pursuit of drug free world (A/RES/S-17/2). This objective united former Cold War adversaries and powerhouses, such as the US, Russia and China, creating a prohibitionist coalition consisting of political superpowers (Jelsma 2015: 4). This strengthened the global expansion of the US-led militarisation of the world drug problem at UN level.

The UN Decade Against Drug Abuse drugs created a sense of optimism in the aftermath UNGASS 1990. Despite this early optimism, it was during that same UN Decade Against Drug Abuse that again ‘profound differences of opinion emerged, complicating the preparations for the second UNGASS on drugs in 1998 (Jelsma 2015: 2). The divide between producing and consuming countries widened as well as the animosity between countries straying from the treaty path and those staying on it. In the meantime, the physical war against drugs was mainly waged in Latin America. The continent suffered from high levels of drug production, drug violence and partly due to the military escalation of the drug conflict in Latin America, countries such as Colombia and Mexico ‘suffered catastrophic levels of drug-related violence’ (Caulkins 2013: 3).
The first steps towards including actors other than states, occurred when the first advisory group was created right after UNGASS 1990. As the Colombian president Barco Vargas had suggested, an expert advisory group was created to maximise the effects of the special session and assist the Secretary-General. Fifteen international experts had the task to address the world’s drug problem, their selection being based on expertise and not as representatives of their national governments (A/45/652/Add.1). Notably, this group was established after the first UNGASS, effectively limiting their influence on global policy at a special session (Jelsma 2015: 2).

Nevertheless, based on the input of this group, a new idea was brought to the doorstep of the UN. The Executive Director Giorgio Giacomelli of the UNDCP (later UNODC) proposed in 1995 that harm reduction be further researched (Jelsma 2015: 6). Harm reduction referred to those policies that prioritise the reduction of harm associated with drugs over prohibition (IHRA Briefing 2010: 1). Harm reduction initiatives started gaining widespread attention due to the rapid spread of AIDS in the middle of the eighties (Riley & O’Hare 1999: 2). As drug use is one of the risk factors for getting infected with the HIV-virus, initiatives such as needle exchange programmes, proved effective in many European cities. By focusing on the health of HIV patients, rather than their drug abuse, the way was paved for a more pragmatic approach to drug policy with regard to combating production as well as consumption of drugs. Small-scale harm reduction initiatives started receiving global coverage towards the end of the twentieth century, but failed to make it onto the UN agenda (A/RES/S-20/2). As these initiatives developed, opposition to harm reduction increased simultaneously. The prohibition oriented coalition at the UN considered harm reduction as an approach that encouraged drug use and provided support for decriminalisation or legalisation of drugs (Beirness e.a. 2008: 3). Focusing on health in drug policy, was a slippery slope to all out permissiveness towards drugs.
6. The trade-off

The stage for the second UNGASS was set after the Permanent Representative of Mexico to the UN sent a letter to the Secretary-General in 1993. The Mexican letter highlighted the continued strained relationship of the US with its Southern neighbours. Like Colombian president Barco Vargas did just four years earlier, the Mexican representative re-allocated responsibility from producing to consuming countries, stating that the ‘most effective means of reducing drug production and trafficking is the gradual reduction in current and future drug consumption’ (A/C.3/48/2). More importantly, the letter condemned US counternarcotic operations in Mexico, accusing the US of ‘attempts to impose hegemony’ through drug policy (A/C.3/48/2). Eventually this letter led to the 1998 UNGASS (Jelsma 2003: 184).

There was a growing discord among the ranks of the UN member states, where reform oriented proposals started clashing with the drug prohibition ideology of the dominant powers. Hope for a policy debate beyond the existing framework was shattered in 1996 at the meeting of the Commission on Narcotic Drugs (CND), the formal preparatory committee of the 1998 UNGASS. The CND is the governing body of the United Nations Office on Drugs and Crime, with members elected from among the United Nations member states, and was responsible for producing the draft for the outcome document. At one of the preparatory meetings only a handful of vocal nations expressed active support for reformative alternatives i.e. opening up the debate beyond the current UN treaty framework (Jelsma 2015: 7). Due to the consensus driven mechanism of the CND, reform oriented suggestions were not hard to overrule and controversial issues were erased from the 1998 UNGASS agenda. New ideas such as harm reduction, the decriminalisation of coca leaves and cannabis and treaty changes would not reach the negotiating table at the GA (Jelsma 2015: 7).

The UNGASS 1998 on the World Drug Problem took place in October, with member states reiterating concern about the world drug problem. In 1998 the word ‘scourge’ was replaced by a ‘grave threat’, changing from a morally tainted evil to a danger to society (A/RES/S-20/2). The GA came together to ‘consider enhanced action to tackle it in a spirit of trust and cooperation’ (1998 Political Declaration and Plan of Action). Even though the UN Decade Against Drug Abuse had intended to establish wider support for the international drug control framework, also among the Latin American nations, the intended spirit of trust and

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cooperation did not materialize (Jelsma 2015: 9). Instead, the outcome document of UNGASS 1998 represented a trade-off between opposing positions, including prohibition-oriented ideas as well as harm reduction initiatives. The document contained the rather quixotic goal of a drug-free world as well as emphasis on shared responsibility (A/RES/S-20/2). It committed member states to eliminate, or at least make all possible effort to ‘massively reducing the illicit production of coca, cannabis and opium, as well as achieving large scale demand reduction by 2008’ (Bewley-Taylor 2012: 49). The diplomatic compromise was that the term ‘harm reduction’ was avoided throughout the document, but the UNGASS 1998 did agree to ‘reduce the negative consequences of drug use’ (Jelsma 2015: 5). This opened up the way for future diplomatic efforts oriented towards harm reduction, an idea that reached beyond the existing prohibitionist framework. By avoiding the actual word though, the UN sent a clear message that prohibition was still a priority over health oriented reform.

The discussion on including actors other than states had not been put to bed between 1990 and 1998. In March 1998 SG Kofi Annan appointed an expert advisory group of thirteen people from different countries. The key purpose of the expert advisory group was to: ‘recommend how to strengthen future international cooperation against illicit drugs, and to identify measures aimed at reinforcing UNDCP’s activities in the field of drug control, including increased financial resources’. The group convened twice before UNGASS and once afterwards (Jelsma 2015: 9). Due to further polarisation within the drug debate and because of political pressure from countries with considerable diplomatic clout, reassessment of treaty inconsistencies, a review of the results of harm reduction and decriminalisation were left out of the mandate of the advisory group (TNI 2015: 4). This withheld the group from issuing possibly critical statement that could influence the fragile consensus at the General Assembly. The expert group acknowledged that any discussion on revising the treaty framework was beyond their mandate, however, ‘there were several critical issues affecting the international drug control regime that needed to be dealt with as a matter of priority’ (E/CN.7/1999/5). The advisory group noted that the CND was moving from a technical UN body towards a more politically oriented organisation, compromising the ‘Commission’s ability to deal with substantive measures’ (E/CN.7/1999/5). This commission concluded that the current situation ‘was undermining the role of the

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Commission as the principal United Nations policy-making body on drug control’ (E/CN.7/1999/5). The CND had become limited by the political mandate of its member states and therefore compromised its capacity to operate as governing body of the UNODC.

In the meantime, this new idea of harm reduction started to win ground at the UN. Successful harm reduction efforts directed at combating HIV/AIDS did not go unnoticed during the aftermath of the special session of 1998. In 2001 the GA made its first major statement on harm reduction in the Declaration of Commitment on HIV/AIDS. The resolution contained a commitment to make sure that by 2005 a wide range of prevention programs would be in place, ‘including harm reduction efforts related to drug use (A/RES/S-26/2: 7). This paved the way for several advocacy briefs and position papers, emphasising the ‘importance of harm reduction in national and global HIV responses’ (Wolfe & Csete 2014: 3). In spite of the 2001 resolution and subsequent efforts, the UN drug control agencies were less willing to discuss harm reduction at the UNGA, let alone adopt a unilateral stance on harm reduction for fear it would undermine consumption and supply reduction efforts (A/RES/S-20/2). Nevertheless, several UN advocacy reports and positions papers published by the Joint United Nations Programme on HIV/AIDS have since restated support on harm reduction measures (Wolfe & Csete 2014: 3). The next major multilateral breakthrough on the harm reduction front occurred in 2014, when UNAIDS published an advocacy brief: Harm Reduction Works. The brief stated that: ‘countries should not wait, but should start immediately to scale up harm reduction responses that are public health-based and human rights informed’ (UNAIDS 2014: 2). Efforts continued by civil society and UNAIDS alike to move global drug policy towards a similar stance.
7. The crack in the consensus

The third UNGASS on drugs took place in a very different context from the previous two special sessions. In 1990 and 1998 the US was the ‘uncontested champion of hard line punitive global counter-narcotics regime’ (Felbab-Brown & Trinkunas 2015: 10). The drug policy landscape has changed dramatically since, however (ibid.). As a dominant force in international politics and frontrunner of the prohibition coalition, the US now finds itself in a ‘legally untenable position’, with cannabis legalisation occurring at state level (Jelsma 2015: 18). Therefore, the US finds itself in the ambiguous position in terms of selective compliance to a treaty framework it initiated and has promoted abroad (Felbab-Brown & Trinkunas 2015: 10).

The stalemate between prohibition-, and progressive oriented policy which dominated the second half of the twentieth century came to a head again at the sixth presidential summit of the Organization of American States (OAS) in Cartagena, Colombia in 2012. Officially the main topic of conversation was the precarious position of Cuba, but after the summit president Santos of Colombia announced that the OAS would be tasked with producing a report on current drug policy and alternative approaches (Youngers 2015: 23). A year later the OAS released a ground-breaking report, radically breaking the status quo of careful treaty criticism within the confined spaces of multilateral institutions (OAS 2013: 104). The report: ‘The Drug Problem in the America’ suggested that the ‘drug problem requires a flexible approach, with countries adopting a tailored approach that reflect individual concerns’ (Ibid.). Instead of being bogged down by the current framework, the time has come to research ‘alternative policies, including legalisation of some prohibited substances such as cannabis’ (Felbab-Brown & Trinkunas 2015: 4). The report received a mixed response from the members of the OAS. Countries such as Uruguay, Guatemala and Colombia welcomed the new paradigm while others did not want to stray from the treaty path (Youngers 2015: 25). However, the most important outcome of the report was that it provided a ‘roadmap for continued regional discussion on drug policy and possible reforms’, most importantly between Latin America and US (Ibid.).

The third UNGASS on the world drug problem was initially scheduled to take place in 2019, as that was the target date of the 2009 UN Political Declaration ‘to eliminate or reduce significantly and measurably’ illicit cultivation, production of drugs, illicit demand and drug-
related health and social risks (UN 2009: 14). At the annual GA meeting in 2012, the presidents of Colombia, Mexico and Guatemala issued an official statement declaring the dire need for revisiting the global drug control framework. The three Latin American countries called upon the UN to ‘analyse all available options, including regulatory or market measures, in order to establish a new paradigm that prevents the flow of resources to groups involved in organised crime’ (Declaración Conjunta 2012: 2). The GA decided in December 2012 to advance the date of the 2019 UNGASS and convene a special session in the first half of 2016. The aim of UNGASS 2019 would remain closing the loopholes of ‘the 1961 UN Single Convention on Narcotic Drugs and the 1971 UN Convention on Psychotropic Substances’ (Jelsma 2015: 3).

Similar to the preparation process of UNGASS of 1998, the CND was in charge of preparing the first draft of the outcome document. The drafting procedure proceeded mostly behind closed doors. Even though in theory the 53 member states of the CND were allowed to participate in the preparations, in practice countries were excluded (Bewley-Taylor and Jelsma 2016). First of all, most negotiating occurred during informal meetings between diplomats and civil servants in Vienna (Bewley-Taylor and Jelsma 2016). Secondly, most countries from the Caribbean or the continent of Africa do not have a permanent mission in Vienna, logistically complicating any participation in informal meetings, even with a seat in the CND. The political dynamics consequently did not differ much from proceedings at the previous UNGASS as the bulk of the discussion took place among like-minded nations (Bewley-Taylor and Jelsma 2016). After the CND presented the draft document to the heads of states at the UNGASS, the outcome document was adopted on the first day of the summit with few changed made to the original version. The document called ‘for greater cooperation between nations’ but maintained the existing prohibitionist framework (The Guardian, 20 April 2016). At UNGASS, the US chose to ‘sidestep a political fight, rather than to provide bold leadership’ (Dickinson 2016). Even though the Obama administration has taken steps to put drug abuse in the realm of health care, i.e. enabling Obama care to cover drug treatment, ‘the deeper infrastructure of the War on Drugs remains fundamentally unaltered under Obama’ (Dickinson 2016).

The discussion on including actors other than states resurfaced during the preparations for UNGASS 2016 (TNI 2016: 2). Uruguay for instance requested the participation of an advisory group, tasked with ‘developing operational recommendations to improve the
functioning and harmony of the drug control system in the UN’ (National Drug Board Presidency of the Republic URUGUAY 2015: 10). Different from previous special sessions on drugs, Uruguay requested that the advisory group consist of ‘a balanced selection of experts from Member States and regional organisations, relevant UN agencies, civil society and academia’ (National Drug Board Presidency of the Republic Uruguay 2015: 10). By requesting to include members from civil society and academia, Uruguay made a bold move to include non-state actors in order to ‘create better understanding of the drug problem, its challenges and new alternatives’ (ibid.). A Civil Society Task Force (CSTF) was created by the CND to ‘ensure a balanced and inclusive civil society engagement and coordination in the preparatory process of the United Nations’.

The CSTF would nominate one civil society representative, each taking part in one of the five discussions at the special session. The outcome document, however, had already been drafted during CND meetings beforehand and after the member states adopted it on day one, the input of these hearings was not included (Civil Society Statement, March 14th 2016). Diplomats and civil servants had received their mandate for the preparatory meetings from their governments and with that negotiated an outcome document, which was then agreed upon by the heads of states at the start of the special session. Non-state actors did not have the opportunity to discuss drug policy on equal footing with state actors.

Even though non-state actors were not included in the decision-making process, some external ideas were included at UNGASS 2016. Without employing the exact wording of harm reduction, recommendations of the 2016 outcome document include harm reduction interventions. In contrast with UNGASS 1990 and 1998, the 2016 outcome document recognised ‘drug dependence as a complex, multifactorial health disorder characterised by a chronic and relapsing nature with social causes and consequences’ (A/RES/S-30/). The UNGASS 1990 referred to drugs as a scourge and in 1998 a grave threat. Referring to drug abuse as a health disorder reflected an important change in attitude. As such, paving the way for a harm reduction oriented future for drug policy.

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8. An open debate

Considerable effort has been put into how ad-hoc advisory groups, including non-state actors, could enhance the outcome of the respective special sessions on drugs. Based on the information presented in the previous chapters, I will assess to what extent non-state actors have been included in the decision-making process of global drug policy.

The suggestion of an expert advisory group has resurfaced every UNGASS and the input of these experts have become part of the debate. However, when looking at the formal participation of non-state actors throughout UNGASS 1990 to 2016, it seems that the more ambitious the request of outsiders wishing to be involved in the policy-making process, the more fruitless the project ends up being. Instead, major conferences seem to be ‘carefully choreographed presentations’ rather than fora for open and inclusive debate (Fazey 2002: 156). The political debate takes behind closed doors, with civil servants and diplomats compromising and negotiating a draft document based on the mandate of their specific countries before any debate reaches the GA. Simultaneously using the advisory groups as poster-child for inclusion, while effectively limiting their influence. The special sessions were not a forum for open and inclusive debate, but instead an exchange of ‘statements of positions’ between states (Fazey 2002: 156). Any possible disagreements have been solved before the heads of state arrive and involvement of civil society after the outcome document is agreed upon. It is telling, though, that certain requests have resurfaced to the forefront of a debate that spans almost half a decade. This might mean there is hope for those banking on reform. For no now, however, there is a formal system in place which ensures that non-state actors have no direct influence on the outcome document of the UN General Assembly at special sessions. Instead their power lies in relentless lobbying from the outside, influencing the ‘development of international norms’ (Friedman e.a. 2006: 22). By mobilising external actors to rally behind a certain idea, non-state actors make their political mark.

When addressing the question why states are unwilling to relinquish decision-making powers to non-state actors, it is important to bear in mind that the existing drug policy framework was initially set in place by the US (Levine 2003: 147). The existing prohibition framework, gave the US and other governments ‘additional and military powers’, legitimised by a war on drugs (Caulkins 2013: 3). This created a precedent where governments would scapegoat drugs for any ‘long-standing problems, recent problems, and the worsening of almost
anything’ (ibid.). In the meantime, as the world drug problem did not dissipate, civil society became more organized and vocal on the international stage (Weiss e.a. 2013: 4). Non-state actors, including civil society, have played an invaluable role through regional, in depth expertise and active networks (Weiss e.a. 2013: 4). Only sovereign states have the autonomous power to participate in multilateral decision-making, however (ibid.). By claiming some of that autonomous power, civil society poses a threat to the legitimation of nations. As such, states have struggled to retain certain sovereign prerogatives while engaging in ever deeper dialogue with actors in global civil society (Friedman e.a. 2006: 22). Moreover, civil society is not limited by an electorate, diplomatic ties or economic interests, but functions in service of a cause. As such non-state actors are not necessarily limited by the rules of diplomatic engagement. Formal power at said multilateral debate, could alter the course of the discussion in an unpredictable way which would be unfavourable for states trying to protect their own interests (ibid.).
9. A wide-ranging debate

The first high-level political initiative to include ideas beyond the existing framework; is the campaign for harm reduction. Based on the information presented in the previous chapters, I will assess to what extent the idea of harm reduction has influenced the debate on drug policy.

So far, the UN stance has been marked by inconsistency with regards to harm reduction. As is clear from previous chapter, this inconsistency is based on a difference of opinion on what the priority should be of drug policy. At the UN there is a conflict between countries pursuing a zero tolerance policy towards drugs as mandated by the current framework and those that have prioritised harm reduction over supply and demand reduction (Jelsma 2003: 182). Those prioritising harm reduction, assert that combatting demand and supply of drugs is secondary to reducing harm and therefore supported policies not necessarily focused on combatting drugs. Those favouring continued prohibition no matter the cost, refer to harm reduction initiatives as a disguise for a more liberal view towards drugs (Jelsma 2003: 182). With EU harm reduction experiments as an example, the UN has adopted harm reduction methods for AIDS/HIV campaigns. With regard to drug policy, harm reduction remains a difficult topic at the UN. After consistent lobbying by non-state actors of civil society and member states in favour of harm reduction, the UNGASS 2016 adopted some points regarding human rights and proportional sentencing. Nevertheless, a number of powerful countries such as China and Russia maintain that ‘criminalisation should remain the cornerstone of the fight against drugs’ (New York Times, 25th April 2016).

It is important to note that the current drug UN control framework was created in post-war context with a powerful victor and it has remained largely unchanged until this date. Specifically producing countries at the UN, feel that the treaty framework was not negotiated on equal footing and favours consumer countries. The recurring critical call of Latin American nations throughout the three special sessions, reflects the ‘unbalanced political power relations under which the three conventions were negotiated’ (Jelsma 2003: 182). Even though, UNGASS 2016 took place with the US in a conflicting position, this did not mean that at a federal level the US diplomatic efforts would not be directed at defending the ‘integrity of the conventions and to ensure that treaty revision be kept out of the UNGASS debate’ (Jelsma 2015: 22). By ignoring accusations of inconsistency, the US reinforced the
existing framework and thus limited the influence of new ideas. As China and Russia, also remain strong supporters of the prohibitionist framework, the UN powerhouses remain opposed to treaty reform (The Guardian 20 April 2016). By refusing to institutionalise reform, the victories that have been achieved on the harm reduction front remain limited. The continued influence of former US interests on drug policy has set a system in place, which seems mostly impenetrable for outside ideas.
10. Final conclusion

UN drug policy faces structural challenges. Significant changes in the drug policy landscape have recently created a complicated platform for debate at UNGASS 2016 and will do so for UNGASS 2019. When making up the balance of the three special sessions, it becomes clear that this era of drug policy has been marked by increasing divergence on actors and ideas. The latest UNGASS document represents a trade-off between the opposing positions, with only small victories for those pursuing change. With regard to including non-state actors, it seems that over the past three special sessions on drugs, the openness of the UN drug policy mechanism has decreased rather than increased. Most recently, in the disguise of a CSTF, the CND has attempted to satisfy the demand for an export advisory group. The input, however, of the CSTF was largely left out of the outcome document. The previous expert groups experienced the same feat, and would only bring about minimal changes. As for including new ideas, in spite of strong advocates for keeping the current system in place, harm reduction initiatives have made it on to the UN agenda. However, there is still not a consistent, unilateral position of the UN on harm reduction.

Ultimately the three special sessions on drugs have become an arena of two dogs fighting over the drug policy bone. The outcome documents have merely brought about a trade-off between the opposing parties and the longstanding opposition between those advocating change and those wishing to retain the status quo, has shifted only slightly. Instead of a sustainable and popular solution, the outcome documents have tended to represent the lowest common denominator without showing any progression for fear of breaking a fragile consensus. On core themes the UN has therefore maintained a largely ambiguous position, sometimes entertaining an idea or actor beyond the existing framework, but never relenting too much influence on the decision-making process.

The existing treaty framework, dictating strict prohibition, has remained largely untouched throughout the three special sessions, despite growing criticism. Instead the goal to pursue a world free of drugs has withstood the test of time, with states seemingly losing sight of the initial purpose of drug policy. The global framework on drugs was created as the number of cocaine related deaths became impossible to ignore. This means that the initial purpose of creating a global drug policy framework was reducing the direct harm that drugs inflicted. Supply reduction and demand reduction were a means to reduce the harm that drugs caused.
However, over time, supply and demand reduction became goals in themselves, regardless of human and financial cost. When public health is considered secondary to supply and demand reduction, logic has escaped the reasoning process. The prohibition-oriented coalition has made the pursuit of a drug free world into a moral crusade. Drugs are bad and must be exorcised from communities. Harm reduction is considered a disguise for tolerating morally reproachable behaviour of consuming, trafficking or producing drugs. As the prohibition-oriented coalition consists of strong economic and military countries, countries advocating for a different approach have found it hard to oppose the existing framework. The international community has reached the phase where external input is received, however, this input has hardly any influence on the output.

When assessing the proceedings at the three special sessions in 1990, 1998 and 2016 in light of the theoretical framework, the struggle of external actors and ideas lies at the heart of the debate. The global drug policy framework was drafted when the US was a strong power and favoured a prohibitionist approach to drugs. This approach was continued throughout the strongest days of the US hegemony. Over the years, however, the US monopoly on the drug framework has started to show cracks. European harm reduction initiatives and Latin American protests against the war on drugs have started challenging the status quo and rallying more and more support for their campaign for change from politicians and civil society alike. An impartial referee such as an advisory group is therefore an even greater threat to the existing framework. As more and more countries are deviating from the current treaty framework in their national policies, the international community finds itself increasingly polarised on drug policy. With the US as the formerly strongest advocate for punitive approaches now gone rogue, UNGASS 2019 takes place under an even more polarised backdrop than the previous Special Sessions. Is the UN drug policy mechanism a hamster in a wheel incapable of change or will the advocates for the existing framework finally relinquish their bone?
11. Policy recommendations for UNGASS 2019

Conduct the debate on drug policy as wide and openly possible. Global challenges such as the drug trade have reached a magnitude, complication and interconnectedness, that UN member states can no longer sufficiently address the issue. In order to sustainably tackle the problems associated with the drug trade, it is necessary to include all sectors of society. This means having civil society hearing or the participation of a task force during the negotiating of the draft document for UNGASS 2019.

Adopt a more pragmatic instead of moral approach to drug policy. By regarding drugs as morally wrong, a system is maintained which disregards constructive approaches. By failing to look beyond supply and demand reduction, we lose sight of the original purpose of the counter-narcotic effort, namely reducing the suffering caused by drugs.

Accept global policy pluralism. UN member states face different challenges when battling the world drug problem. Issues arising from drugs can be due to the production, consumption or trafficking of drugs. Uniform policies do not take into account the national differences and can therefore not adequately counter the different aspects of the drug trade. By acknowledging the failure of a unilateral drug war and uniform policies, a more constructive approach might be formulated at UNGASS 2019.

Promote harm reduction policies among the economically powerful nations. Countries with extensive experience on harm reduction policies, such as the Netherlands, have a specific responsibility of sharing evidence-based harm reduction initiatives. Such countries should not de-prioritize drug policy out of diplomatic caution, but rather step up to the forefront of the debate.
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