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Beyond UNGASS 2016: Drug Control Multilateralism and the end to the ‘war on drugs’

By John Collins¹

Introduction

The failure of the so-called ‘war on drugs’ has become a truism of international policy discourses. The pursuit of a symmetrical, unconstrained and ultimately highly repressive and militarised ‘war’ strategy has not produced the desired results. Demand and supply have shifted but not diminished over the past few decades. Price has been largely falling and purity rising on an aggregate global level. Meanwhile the militarised ‘war’ has fuelled incarceration, disease epidemics, human rights abuses and a contagion of violence, criminality and repressive policing and military policies across entire regions. The recognition of this reality has fuelled a tidal shift in global discourses, ultimately leading the most affected countries, including Colombia, Guatemala and Mexico to call a UN General Assembly Special Session on Drugs (UNGASS) to discuss the current strategy in April 2016.

UNGASS was never likely to lead to a radical shift in the global legal architecture, and has been perceived by many as a failure, however it highlighted two key points. The first is that a new control system or ‘regime’ is emerging. Driving the change are local policy reforms, normative shifts, international legal reinterpretation and a more nuanced implementation of the international drug control system. The second is that reformist perceptions of the international ‘regime’ greatly misunderstand its ‘core’ character and legal purpose, mistakenly conflating the emergence of a militarised ‘war on drugs’ strategy as an inevitable outgrowth of the international legal architecture.

Consequently, the perception that rewriting current UN conventions is a necessary prerequisite for rolling back from this global strategy is incorrect. To help understand the changing international system or ‘regime’ this chapter examines the evolving relationship between national and international drug policies, and the evolution of the international control system up to and beyond UNGASS in April 2016.

As I have written elsewhere, UNGASS 2016 ‘represents the end point of the ‘war on drugs’ era’ – an era which can be dated from roughly 1970 through to the late 2000s. Although the UNGASS ‘outcome document’ is not (nor was it ever likely to be) a reformist wish list, it represents a compromise framework for member states to wade through an incremental systemic reform process. This reform process is, and will continue, playing out in an organic and ad-hoc manner – representative of the legion determinants of international drug control. This chapter will offer a discussion of the interests, trajectories and schools of

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thought determining the past, present and probable future for drug multilateralism beyond UNGASS 2016.

Towards an Interest Based Understanding of Drug Diplomacy

As political scientist Ethan Nadelmann wrote in 1991, the norms of the international control 'regime', 'evolved and exist not only in the conventions and treaties of international law and the criminal laws of nation-states but also in the implicit rules and patterns that govern the behaviour of state and non state actors as well as in the moral principles embraced by individuals.'⁽¹⁾ Nadelmann correctly highlights that international cooperation on the drugs regime emerged from the intersection of many overlapping and shifting factors, each of which could alter the shape of cooperation.

Further, as international scholar Robert Keohane writes, 'institutions can be accounted for by examining the incentives facing the actors who created and maintain them. Institutions exist because they could have reasonably been expected to increase the welfare of their creators'.⁽²⁾ An understanding of the successes and failures of reformist and status quo actors must be read through this prism.

The lead up to UNGASS 2016 was dominated by a reformist discourse highlighting the failures of the 'war on drugs'. However, UNGASS ultimately failed to live up to the hopeful predictions of many reformers. Some reformers tried to leverage areas of divergence (legal or political) as a wedge to force member states to reopen the international treaty system. In so doing they ignored that the system is both sustained by, and reflects, overlapping national and international interests, and cannot be perceived merely as an exogenous determinant of them. The 'regime', many incorrectly argued, was the cause of bad national policies. Changing the 'regime' was therefore a precursor to moving beyond the 'war on drugs'. This flawed policy causality drove a rejection of legalistic compromises which could enable short term pragmatic national reforms where political will existed.⁽³⁾

Status-quo and prohibitionist actors, however, will feel equally unsettled by the rapidity of normative and political change. The system had previously avoided the intrusion of cross-thematic issues such as human rights and public health. As the prominence of these themes grow, and are overtly recognised by the outcome document ⁽⁴⁾, the singular focus on prohibitionist market reduction that characterised the 'war on drugs' era will further its long slow fade into the background. A notable and vocal anti-reform bloc of member states can continue to punch above its diplomatic weight due to consensus-based rules which privilege intransigence over reform. But the tide appears in favour of liberal reforms.

Meanwhile, as Natasha Horsfield's contribution to this volume highlights, those advocating new models grounded in public health and human rights are increasingly faced with issues of implementation. Effectively, now that the war on drugs is ending, 'what comes next?' To answer that question requires a flexible overarching policy which encourages local experimentation to build an

evidence base which can feed back up to international dissemination forums. Underpinning this policy 'flexibility' must be strict adherence to human rights, best practice public health and market impact reduction policies. This chapter progresses by examining the historical and legal precedents and basis for this new era of experimentation.

Understanding the History of Drug Multilateralism:

Three schools of historical interpretation dominate policy discourses. The first is United Nations (UN) generated which seeks to justify the system and derive a clear linear trajectory from problem towards a rational and ever improving member state cooperation. Such cooperation is inevitably portrayed as 'a positive balance sheet'.⁽⁵⁾ A second diametrically opposed stream paints the system as sheer international irrationality, driven by racism, moralism and malignant US leadership towards a 'prohibition regime' that is self-evidently flawed.⁽⁶⁾ A third school perceives the system as a complex, rarely concrete and unfinished endeavour in international cooperation, one that lives as much in its implementation and interpretation as it does in its legal texts.⁽⁷⁻⁹⁾

The first and second schools dominate current policy discourses. What is seen in the dark is determined by where the light is shone. Policy analysts looked for the origins of current policy and read current debates backwards into discussions and decisions of the past. The result is that the regulatory underpinnings (i.e. 'the core') of the international control system, are virtually ignored, while discussions fixate on the 'prohibitionist' aspects and their extreme implementation via the 'war on drugs'. Legal and regulatory ambiguities are analytically bridged through assumptions that 'these treaties are fundamentally about prohibition'.²

The international control system must be understood first and foremost as a system of international regulation which determines in a very broad manner how substances are produced, traded and consumed internationally. Like all regulatory systems it has prohibited aspects, or at least attempts to define practices which should be prevented. The regulatory core has been the constant of international control since its inception in 1912 and institutionalisation in the 1925, 1931 and subsequent conventions and protocols. The prohibitionist aspects represented a shifting parameter determined by national politics, geopolitics, reigning cultural norms, perceptions of 'addiction' and 'treatment' and various other determinants.⁽¹⁰⁾

The distinction between the 'core' and 'peripheral' aspects of the conventions is of major significance for current policy discourses. Two core tenets of US policy, outlined in the so-called 'Brownfield Doctrine', named after Assistant Secretary of State for the Bureau of International Narcotics and Law Enforcement Affairs, is to defend the 'core' of the drug conventions while allowing flexible interpretation of peripheral aspects. As he said: 'Things have changed since 1961. We must have enough flexibility to allow us to incorporate those changes into our policies ... to tolerate different national drug policies, to accept the fact

² Expressed by a number of policy actors in public and private discussions.

that some countries will have very strict drug approaches; other countries will legalize entire categories of drugs.'

Regulations and Prohibitions: The Key Strands of International Control(7)

International control efforts began in earnest around the turn of the twentieth century. The opium trade of the nineteenth century developed a reputation as exploitative and immoral, drawing fire from across the political spectrum, but particularly from missionaries and progressives. Both sought national and international regulations to lessen the trade and proliferate national prohibitions on certain types of use.

Opposing these drives were national and colonial interests, including concerns regarding the growth of illicit markets and the lack of regulatory structures or capacity in areas of weak governance; genuine concern for the wellbeing of 'addicted' populations; and economic interest, extending (decreasingly) to colonial revenue and (increasingly) to concerns for shares of the global drug manufacturing market.

From these competing concerns and interests emerged the key strands of international drug control: regulation and prohibition. The regulatory strand focused on an international 'management' approach to the drug issue. It recognised that although drugs could not be eradicated, their spill overs could be mitigated through regulatory strengthening and international dialogue and cooperation. The prohibitionist strand focused on moralistic or progressivist views that sought to cleanse society of drug production and use, including (eventually) all opium consumption. This understood the causality of social harm as beginning with drugs. Prohibiting ever more types of production and consumption was therefore viewed as the key to reducing their impact on society.

Both strands converged initially on the goal of lessening cross-border spill overs. In 1912 this meant ending the supply of drug commodities to areas which had legally ceased their demand. Over time this evolved into the impulse to create an 'ethical' licit market, thereby shrinking available supplies for the illicit market and channelling supplies to 'legitimate medical and scientific' use.(11) As this principle became internalised across the globe, efforts were made to regulate production and centralise it at the UN level during the 1940s, 50s and 60s.

Divergent member state interests posed an insurmountable obstacle to the codification of production limitation efforts. However, a closely monitored international market in 'licit' substances emerged. Many believed this would dry up the available supplies for the illicit market, leaving a minimal role for enforcement. This belief proved misguided. An illicit market accompanied growing international demand for various forms of consumption through the 1960s and beyond. Meanwhile, hubs of global insecurity emerged as key supply hubs, feeding emerging markets and ensuring the maturation of consumption patterns in many consumer countries.

The response was a renewed international push towards shrinking and repressing the illicit market, or at least creating a perception of doing so. This led to the unilateral US declaration of the 'war on drugs' in the 1970s. Thereafter the international regime was shaped by a desire to shrink production and consumption, largely through repressive policing and enforcement measures the costs and broad ineffectiveness of which have been extensively discussed elsewhere.

The international regulatory system was a tool in the growth of the global 'war on drugs', but hardly the only one. While a plurality of domestic responses to consumption emerged, producer and transit countries adopted uniform police responses, and implemented frameworks driven by consumer country agendas. It was only in the late 2000s that a number of producer and transit countries, particularly in Latin America, began to challenge the policy prescriptions. Meanwhile, consumer countries, witnessing maturation and decline of certain drug markets – opiates (Europe) and cocaine (the US) – have shifted further towards health and harm reduction models, while simultaneously seeking to extend prohibitions to New Psychoactive Substances (NPS).

The Emergence of the New Progressive Reform Era, 2008-2015:

2008 can be seen as a global inflection point. US domestic politics drove away from the 'war on drugs,' while cascading state fiscal crises challenged the prison epidemic. Political leaders, no longer fearing the 'soft on crime' label, increasingly classed the 'war on drugs' as ineffective and racist. Reform advocates spoke, for the first time, of having 'the wind at [their] backs'. At the international level US leadership seemed uncertain as the Obama administration, who had previously described the 'war on drugs' as 'an utter failure', sought to repair regional relationships through a renewed emphasis on multilateral institutionalism.

Simultaneously Latin America became vocal. In 2009 former leaders released the Latin American Commission report on Drugs and Democracy criticising the failures of past policies. In 2011 the first report of the Global Commission on Drug Policy called for 'not just alternatives to incarceration and greater emphasis on public health approaches to drug use, but also decriminalisation and experiments in legal regulation'.⁽¹²⁾ Both reflected the tidal shift in elite opinion beyond the 'war on drugs' mentality.

Meanwhile, Mexico was descending into violence as a result of President Calderón's escalation of the drug war. Colombia was ascending from the violence of its darker days and willing, particularly under President Juan Manuel Santos, to challenge the key assumptions underpinning the supply-centric approach – likening it to cycling a stationary bike. As the cocaine commodity chain shifted further into Central America, states there, most notably Guatemala, called for a strategic re-evaluation. This disquiet soon emerged within regional forums. US Vice-President Joseph Biden broke with policy orthodoxy and referred to it as a 'totally legitimate debate', although initially stressing no change in the US position.⁽¹³⁾ Biden's response and President Obama's subsequent support helped pave the way for an official regional dialogue.

Although soft on tangible suggestions, the 2013 report by Organization of American States (OAS), *Scenarios for the Drug Problem in the Americas, 2013-2025*, represented the first open discussion of the problems with current policies and potential alternatives. Uruguay contributed to this debate by announcing its intention to legalise cannabis as a crime reduction measure. The 2012 legalisation of cannabis in Colorado and Washington State caught US national elites off guard. The US federal government faced a choice of allowing state experiments or expending federal resources to enforce unpopular federal laws in sovereign states that had legalised substances in contravention to the Controlled Substances Act – also raising questions about US compliance with the drug control treaties.

What followed shocked observers. In March 2014 Ambassador William Brownfield announced a new US diplomatic approach to drug policy, based on increased respect for national and local autonomy. Status quo advocates were blindsided by the lead nation publicly stepping back from enforcing the ‘war on drugs’ model. Reformist actors were initially cautiously welcoming. Some however rejected the framework, claiming it would undermine the case for treaty reform, paper over ‘tensions’ in the international system and undermine respect for international law.(14)

Others, myself included, argued strongly in favour of this ‘Brownfield Doctrine’ as ‘a rational approach to a difficult question’.(15) To those favouring ‘flexibilities’ as an interim solution while an evidence base emerged, the US was showing leadership by providing an international strategic framework beyond marijuana legalisation. This framework accepted that ‘some countries will have very strict drug approaches; other countries will legalize entire categories of drugs.’(16) As I argued elsewhere the ‘Brownfield Doctrine’:

derived from US constitutional principles around ‘purposive’ interpretations of legal texts...is based on four points:

1. *Defend the integrity of the core of the conventions.*
2. *Allow flexible interpretation of treaties.*
3. *Allow different national/regional strategies.*
4. *Tackle organised crime.(15)*

The Decline of the Reform Era, 2015-6

Reformist rejection of the ‘Brownfield Doctrine’ was in part based on the belief that it would obviate the need for member states to reopen the conventions. This, however, was never a realistic political option. Even vanguard member states rejected treaty revisionism, privately highlighting that ‘we examined the treaties and concluded that nothing in them requires a ‘war on drugs’’.³ Reformists rejected a de facto victory which enabled broad national level reforms in the hope of initiating a long-term process of legal codification of these same goals. Political bets were placed on a chaotic UNGASS producing

³ Private Discussions.

spontaneously positive outcomes based on the inescapable logic of reform necessity.

In the meantime the initiative was lost. Status quo actors regained control and reformist lobbying never reached the scale needed to become effective. Instead reformist civil society fixated on an 'expert commission', hoping to highlight the 'tensions' within the treaties and thereby push for treaty revisions. Consequently, member states and civil society struggled to progress beyond the anti-'war on drugs' narrative to a clear pragmatic vision.

Meanwhile it became apparent that Asian nations sought continuity, and were not seriously considering or in some cases even aware of UNGASS. China's push to schedule Ketamine against WHO advice forced many into defensive action to ensure an essential anaesthetic was not unduly restricted for millions of people. Russia viscerally defended the status quo, while Europe sought to keep drug policy off its packed political agenda. The US, having stepped ahead of the curve and been burned by both status-quo and reformist interests stepped back partially, asserting drugs as a sovereign issue in moments of bluntness.(17)

The US solidified a national discourse focussed on treatment and 'recovery', transmitting that narrative internationally. Marijuana legalisation had become a sovereign issue and generally remained far from official UN discourse. A new consensus around public health, access to medicines and the need for human rights pervaded diplomatic language, but it was clear the international system had moved as far as was likely in a relatively short period. Stasis was certain to follow UNGASS.

As the 'outcome document' materialised and the likely contours of UNGASS became clear, some sought to unilaterally veto the process, but the dye was cast. Member states had expended significant diplomatic resources. Those at the vanguard initially sought to distance themselves from the outcome, but soon began to highlight the document as a major step forward, enabling an expansion of national experimentation through new treaty flexibilities. Others cast it as a human rights win.(4) Meanwhile, the process itself had driven a large normative shift within the international system.

A Revolution in Interpretive Scope for the Drug Treaties:

Questions of where to draw the line between licit and illicit remain one of the unresolved tensions within the system since its genesis, one resolved by political consensus rather than legal codification. As Francisco Thoumi writes, 'despite the strong support to the limitation of drug uses to 'medical and scientific purposes,' they are not defined in the conventions and exclude any contribution of the social sciences.' Further, he writes:

conventions generally define their most important terms carefully and in this respect the drug conventions are flawed because they fail to define their two most important concepts: 'medical and scientific purposes.' In legal parlance, they have a 'legal void' or 'legal gap.'(18)

In the midst of this emerging legal debate on the boundaries of the conventions, a number of flexibility frameworks have emerged among member states.

Interim Frameworks for Flexibility on Regulated Markets:

1) Resource/Capacity Limitations: Selective Enforcement Model:

This framework derives from legal complications surrounding the enforcement of the treaties within a federal political system. The US remains the test case. The federal government, not individual states, is the signatory to the UN drug control treaties. The federal government has no constitutional authority to force states to implement the treaties, and can directly enforce the treaties in states only via federal resources.

The U.S. State Department has argued this would place an excessive burden on federal resources and therefore cannot be consonant with a realistic interpretation of the drug control treaties.

Other federalist jurisdictions have faced similar issues. In Spain, a 2013 report by RAND highlights the 'legal uncertainties' created by federal Supreme Court rulings, here that 'the possession and consumption of cannabis' no longer constitutes a criminal offence, in the absence of supportive state action.

2) Supremacy of Human Rights Treaties over Drug Control Treaties:

Human rights obligations are a part of the UN Charter. Obligations derived from the drug control treaties are subordinate to human rights obligations. As the UN Charter explicitly states, 'in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.' (21 Ch. XVI, Art 103)

In Uruguay a systematic elaboration of this argument has shaped laws seeking to '*combat drug trafficking*' while also 'defend[ing] the constitutionally protected right to freedom of our fellow citizens'.

Contemplating Shifts in Cost Displacement of Global Goods and Bads:

As functionalist international relations theory would predict, the current international system constitutes a mechanism of cost displacement, interstate bargaining facilitation and cross border contract enforcement. In the past it drove member states towards a singular and prohibitionist implementation. This was perceived to benefit consumer countries through reduced access and consumption, but these benefits derived from major displaced costs, particularly those displaced on producer and transit countries.

As Jonathan Caulkins writes, '[p]rohibition is extraordinarily expensive on multiple dimensions, including budgetary costs, enrichment of criminal gangs and deprivation of liberty.' While Caulkins recognises possible benefits from prohibition spending in consumer states up to a certain level (\$112 billion per

year in the US), , he acknowledges these potential benefits do not apply to producer or transit countries.(23)

Those advocating prohibition's continuation judge the benefits of (probable) decreased consumption to outweigh the costs, especially if it can be implemented in a more 'rational' manner. As Jonathan Caulkins writes: 'The goal of prohibition is not and should not be to eradicate the corresponding markets completely; that is not realistic. Rather, the goal should be to drive the activity underground, making it less efficient or, equivalently, driving up the cost of providing the good or service.'(23) The result is a more minimalist form of prohibition. Caulkins and Reuter suggested in 2006 that 'the United States could cut sanctioning by 50 percent across the board and suffer only a very modest increase in use and dependence, even though eliminating prohibition altogether would lead to a doubling or tripling of dependence'.(23,24)

In more recent work, Peter Reuter and Harold Pollack have highlighted an absence of evidence that additional spending on prohibition above a certain point increases drug prices at the margins. Additional marginal spending on prohibition's enforcement therefore has no impact on drug consumption.(25) This complements a vibrant public health literature which, as Natasha Horsfield's contribution highlights, demonstrates the concrete negative impact repressive prohibitionist policies have on health outcomes such as HIV transmission, access to treatment and broader human rights determinants.(26)

The case for a drastically more minimalist conception of prohibition is justified by the available evidence and therefore constitutes a rational direction for policy. Political economy approaches further highlight the desirability of a shift towards 'Focused-deterrence strategies, selective targeting and sequential interdiction efforts [which] are often more promising law enforcement alternatives than flow-suppression or zerotolerance approaches'.(27) As Mark Shaw wrote in 2016:

Evidence and experience has shown that a broader set of harms that are resulting from the growth of criminal networks, including prolific violence in certain states, are only exacerbated by hard line criminal justice and militarised approaches. If the full harms of drug trafficking and use are to be addressed, then a broader understanding of harm reduction must be introduced.(28)

Others argue this should be accompanied by greater regulatory experimentation in order to empirically determine the benefits of prohibition relative to alternatives. Further, they highlight that to shift policies at a global scale will require member states to shift policies on a local scale, which will require large investments of political capital and research and innovation.(10) As Mark Kleiman and Jeremy Ziskind wrote in 2014:

'The places that legalise cannabis first will provide – at some risk to their own populations – an external benefit to the rest of the world in the form of

knowledge, however the experiments turn out...as the pioneering jurisdictions take adequate measures to prevent 'exports'.(29)

Member states risk that deregulation in one state will increase illicit flows to their state. The great scientific experiment underway is whether that is the case. If not, then the purpose of the system – to prevent unregulated cross border flows, remains intact, albeit through a different conception of national regulations. In the case of cannabis it is demonstrably clear that marginal increases in prohibition will not bring about further reductions in consumption. Consequently regulation in the absence of alternatives (as European powers did for opium consumption in pre-World War II Asia) is permitted as a pragmatic policy response in line with the 'object and purpose' of the conventions, even if not in line with their previous implementation.

Conclusion: Leave UNGASS behind – From Symmetric to Assymetric Reforms.

Many key member states now openly reject the 'war on drugs strategy'. The head of the US Office of National Drug Control Policy Michael Botticelli described the 'war on drugs' as 'all wrong' and is at pains to highlight tactical changes producing a broader strategic shift away from the 'war' strategy.(30) This does not negate the need for broad tactical disagreements and highlighting hypocrisies, such as the US ceasing the war on drugs at home while pushing many of the same interventions overseas. Similarly voices, including the President of the United States, are right to highlight that their 'war on drugs' is being ended as perceptions of the median 'user' have shifted away from being black and poor to being white and middle class.(31)

The trends in policy nevertheless seem relatively clear in a number of areas. A greater global divergence is evident in the response to drug use and dependence. More liberal national regimes are emerging in which governments decriminalise consumption and focus resources on public health services. In other places, for example Russia and the Philippines, a repressive approach remains entrenched or is expanding. In these cases, human rights groups will find the most likely bulwark within the existing corpus of international human rights law. Any new obligations towards treating drug dependence would require universal acquiescence, including from these very same repressive states, meaning it is unlikely to materialise.

Meanwhile, legal regulatory experimentation is underway around cannabis, with the potential to apply this to other substances or parts of the commodity chain. For example, the regulation of certain uses of the coca leaf does not necessitate the legal regulation of its derivative cocaine. In this context, providing that countries experimenting with regulation take measures to prevent exports, the impact on surrounding jurisdictions will likely be mixed. It is clear that in a free movement system such as the US, unilateral legalisation of cannabis by single states will impact neighbouring ones through increased availability. However, one could as easily expect a simultaneous decrease in criminality. At the

international level the impacts are likely to be diminished through existing trading and border restrictions.

The trade in certain drugs (particularly the high quality/value/price market segment) will likely gravitate to jurisdictions which have legalised, for example Mexican cannabis cultivation collapsed post-US state legalisations. This will likely undermine the illicit industry. Actors in these areas may shift into other illicit activities for example opium cultivation, extortion and other types of crime. Nevertheless, this will diminish the availability of illicit opportunities and profit making potential. In areas which have specialised in certain illicit drug production, for example rural Afghanistan or Colombia, the shift to a legalised, concentrated and potentially mechanised market would likely wipe out their competitive advantage and could have further immiserating effects on poorer populations with minimal economic alternatives.

Regardless of legal regulation, the continued decriminalisation of the illicit drug trade in the Americas now seems possible. As this chapter highlights, current evidence suggests a low risk of decriminalisation of use causing increased consumption. Further, supply-side enforcement efforts are likely drastically over prioritised relative to their marginal impact on prices, particularly in mature markets. A trend towards reducing enforcement intensity seems unlikely to fuel increased criminality or the supply of illicit drugs. While decriminalisation does not necessarily entail legal regulation, it should remove certain drug involved individuals from the criminal justice system, alleviating incarceration pressures in a region where financial constraints on public services provision are high.

The focus should be on determining where criminalisation is required to keep the market from becoming commercialised and how minimal necessary enforcement can be kept. None of the above options will remove criminality from the trade, whether more stringent enforcement or legal regulation,, particularly in areas of weak governance. The key policy goal in the immediate term should be a move towards a demilitarised approach,thereby minimising the criminal and broader impacts of drug markets.

Meanwhile, the case for symmetric reforms of the international system has become less and less potent as a new pluralistic conception emerged.

Although uneven application of international regulations can result in a 'race to the bottom', the current scope and scale of regulatory experimentation is insufficient to justify this as a mitigating concern. Jonathan Caulkins coined the predicted immediate impact on global markets of one country's legalisation of a commercial cocaine or heroin industry, as the 'grand fracture'.¹ The onset of such a 'grand fracture' would raise such concerns but is unforeseeable at present. Local jurisdictions will have to balance the desirability of unilaterally decreased penalties or increased regulation, with the possibility of prevalence of those activities increasing and centralising in their jurisdictions. For example, while unilateral non-enforcement of cocaine transit prohibitions in a Central American nation such as Guatemala will likely have minimal impacts on retail prices or consumption patterns in New York City, it will have significant political economy

impacts within Guatemala which need to be taken into account. The lessons of attempted legalisation of the cannabis trade will provide important data sets for beginning to evaluate these policy options, hence the value of an era of small scale, incremental regulatory experimentation.

The immediate years in the aftermath of the UNGASS 2016 should be characterised by a drive to innovation. Successes will likely drive implementation. What seems likely is that international drug policy in the coming years will be determined by local, national and regional actions, and the UN will carve out a new role in pursuing a global public good through drug policy. In the past this public good was viewed in terms of a singular focus on prohibition. Now political and funding constraints will force the drug policy arms of the UN to assume a reactive role, avoiding political dispute and chasing areas of consensus, evidence and funding. Meanwhile, other, previously silent, UN bodies will likely encroach on traditional UN Commission on Narcotic Drugs (CND) and UN Office on Drugs and Crime (UNODC) territory. These will likely include UN Development Programme, UN Human Rights Council, UNAIDS and UN Women.

Similarly, reformist civil society will contend not with an intransigent and singular global 'regime', but the political calculations of local actors. The outcome of the UNGASS 2016 process has been a repatriation of some policy sovereignty to regional and national levels. At the international level language continues to be watered down to enable an ever widening spectrum of policies. Within that widening political battles will continue to attempt to set the boundaries of policy, likely underpinned by a greater pull towards the public health and human rights end of the spectrum.

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ⁱ Jonathan Caulkins, “*After the Grand Fracture: Scenarios for the Collapse of the International Drug Control Regime*”, Brookings, 2016, <https://www.brookings.edu/wp-content/uploads/2016/07/Caulkinsfinal.pdf>