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Citation for published version

Chatwin, Caroline (2015) UNGASS 2016: Insights from Europe on the development of global cannabis policy and the need for reform of the global drug policy regime. *The International Journal of Drug Policy*, 49 . pp. 80-85. ISSN 0955-3959.

DOI

<https://doi.org/10.1016/j.drugpo.2015.12.017>

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Document Version

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Title: UNGASS 2016: insights from Europe on the development of global cannabis policy and the need for reform of the global drug policy regime.

Short title: UNGASS 2016: insights from Europe

Abstract:

Background and objectives: This article is framed by the forthcoming United Nations General Assembly Special Session on drugs (UNGASS) debates on global drug policy. It explores European drug policy experiences to draw out important lessons and insights that could be applied to wider global drug policy regimes. Methodology: European experiences with (i) diverse cannabis policies and (ii) longstanding attempts to harmonise or coordinate diverse national drug policies in general are examined and the results are extrapolated to global drug policy debates. Results: (i) the diversity of drug policy seen within EU borders should be viewed as a strength, (ii) flexibility under the international conventions is possible, but has limitations, (iii) changes to the global drug policy regime should seek to increase flexibility, and (iv) the importance of international institutions in providing a framework and an evaluatory role should not be under emphasised. Conclusions: Collectively, the evidence suggests the need for the loosening of controls restricting the development of diverse drug policy innovations, and the development of international drug policy frameworks and international standards of drug-related data collection.

Key words: drug policy reform, UNGASS 2016, European drug policy, cannabis policy reform, reform of the UN conventions

Introduction: Tensions within the global drug policy regime

Drug policy is predominantly decided at the national level as is evidenced by the wide variety of approaches taken by different global regions. Most countries in the world, however, have signed up to international conventions committing them to prohibition oriented stances. The United Nations (UN) 1961 single convention on narcotic drugs, for example, designates drug addiction as “a serious evil for the individual...fraught with social and economic danger” (United Nations, 1961). This ideology was further expounded in the 1971 convention on psychotropic substances and the 1988 convention against illicit traffic in narcotics and psychotropic substances. The conventions themselves are the products of “political compromise” (Bewley-Taylor, Jelsma & Blickman, 2014 :44) and are thus relatively ambiguous, leaving individual countries plenty of leeway, in particular around the criminalisation of drug consumption, and possession for personal consumption (Bewley-Taylor, 2012a). Since the 1980s, however, the UN drug-control machinery has adhered to the ‘Vienna Consensus’ preaching that all must adopt a united front in the battle against the danger presented by illicit drugs. The International Narcotics Control Board (INCB), charged in 1968 with a watchdog role analysing compliance with the international conventions, has, since the 1980s, evolved its role to more of a guardian of their strictly prohibitive interpretation (Bewley-Taylor & Trace, 2006). These developments have made the relaxation of drug policy controls generally more difficult.

Despite the international conventions, there have always been countries (e.g. Uruguay) which never criminalised drug use or possession, and other countries (e.g. the Netherlands) which have practised decriminalisation since the 1970s (Rosmarin & Eastwood, 2012). Bewley-Taylor et al (2014:6) describe a “second wave” of decriminalisation in the last decade affecting Latin American countries, European countries, and various Australian states and territories. These changes have been termed ‘soft defections’ as states implementing them have “exploited plasticity within the treaties, while technically, remaining within their legal boundaries” (Bewley Taylor, 2012b: 51). They have mainly, but by no means exclusively, centred around cannabis which, in terms of the Vienna consensus and a more hardline interpretation of international prohibition commitments, has been described as the faultline in the system (Bewley-Taylor, 2012a). A third wave of reform, focused on cannabis, has recently been observed in the creation of regulated markets in Uruguay and some American States (e.g. Washington and Colorado). Jelsma (2015:15) designates these as “systemic breaches” signalling the failure of the Vienna consensus and the need for modernisation of the international drug conventions.

The developments in cannabis policy and decriminalisation of drugs for personal use outlined above have combined with other important factors – dramatic changes in our understandings of drug markets and the policies aiming to control them, an appreciation of the negative unintended consequences caused by stringently prohibitive drug policies, the rise of increasingly innovative harm reduction measures such as drug consumption rooms, Bolivia’s recent denunciation of the UN conventions and reaccession with a reservation to allow the traditional consumption of coca leaf - to provide what some view as a potential

‘window of opportunity’ (Lenton, 2004) for reform of the global drug policy regime. Some UN bodies have been broadly supportive of such reforms: the United Nations Office on Drugs and Crime (UNODC) and the World Health Authority (WHO), for example, have expressed support for the decriminalisation of drugs for personal consumption (UNDP, 2015). The INCB, however, has proved an “inflexible defender of the status quo” (Bewley-Taylor et al, 2014:6), gradually toughening its stance against drug policy reform/relaxation since 1980. Over this period, it has avoided the term ‘harm reduction’, tried to prevent reform generally and consistently, and singled out countries with relaxed cannabis policies for criticism (Bewley-Taylor, 2012). It operates in secret with no mechanisms for accountability (Csete & Wolfe, 2007) and has been accused of “stifling the evolution of the drug control treaties” (Bewley-Taylor & Trace, 2006:12).

Although there are no built in review mechanisms for the international drug conventions (Jelsma, 2015), since the 1990s, United Nations General Assembly Special Sessions (UNGASS) on drugs have been held as a forum to discuss the future of the global drug policy regime. UNGASS 1998 agreed to pursue the goal of the eradication of illicit drugs by 2008; in 2009 this goal was revised to achieving the eradication of, or significant reduction in, illicit drugs in the next 10 years. The next UNGASS was due to be held in 2019, but was recently brought forward to April 2016 at the behest of the presidents of Colombia, Guatemala and Mexico, who called for an open and honest debate on the issues outlined above in light of significant recent changes in global drug policy.

The special session will be used to debate many general issues – human rights, harm reduction, prohibition – but some have suggested that it could also be used as a platform to consider reform of the global drug policy regime: “The global treaty regime should somehow show more flexibility in order to allow this irreversible dynamic of reform to influence, adapt and modernise the system. That will be the main challenge for the 2016 UNGASS” (Vasconi, 2013, p. 23). This aspirational viewpoint is lent some support by the UN secretary general, Ban Ki-moon’s recent call for a “wide-ranging and open debate that considers all options” (Ban Ki-moon, 2013). Jelsma (2015: 17), however, suggests that, to the contrary, “a concerted effort is being made to keep the contentious treaty revision issue off the UNGASS 2016 agenda and to preserve the facade of global consensus”. While it seems unlikely at this stage that either cannabis policy or revision of the international drug conventions will be major features of the UNGASS 2016 debates, Lemahieu (2015:13) conceptualises the meeting as an important way stage to any rebalancing of the global drug policy regime and councils that it offers “an ideal platform to take stock of lessons learned and new insights alike”. In this spirit, it is the intention of this article to explore experience with issues of drug policy reform in general, and cannabis policy reform in particular, within the European Union (EU). The overall aim is not to explore in detail what official contributions the EU will make to UNGASS 2016, but rather to examine European drug policy experiences more generally, and to draw out important lessons and insights that could be applied to wider global drug policy regimes.

A background to European drug policy

European drug policy is organised in accordance with the principle of subsidiarity, meaning that individual member states retain ultimate control of policy interventions, with European agencies only interfering where it can be demonstrated that their interventions bring “clear added value” (Council of the European Union, 2004a: 7) to national efforts. The European Union thus provides a framework within which national drug policies must operate, ensuring, for example, that all member states have a national drug strategy and action plan, provide a minimum level of harm reduction services (substitution treatment and needle exchange), and collect data on the nature of their drug problem. National drug policy, however, varies widely.

In Sweden, a ‘drug free society’ is the ultimate goal of a ‘zero-tolerance’ national policy which does not designate cannabis as less harmful than other drugs, favours abstinence based treatment over harm reduction, actively targets the users as well as the suppliers of drugs, and criminalises the consumption as well as possession of illegal substances. In the Netherlands, meanwhile, some use of drugs in society is accepted as inevitable, and pragmatic national policies are implemented with a view to reducing the harm done by both drugs and drug policies, as well as limiting the supply and consumption of substances themselves. Notably, cannabis is viewed as less harmful than other substances, and a semi-regulated market based around coffeeshops has been developed in an effort to ‘separate the market’ for cannabis from that of other drugs. These two paradigmatically different approaches to the drug problem mean that it can be very difficult to present a ‘European perspective’ on matters of international control.

On the one hand, Europe can be viewed as “a concentrated zone of pragmatism” (Bewley-Taylor, 2012:324), with a diversity of innovative drug policies that already operate at the very boundaries of the UN conventions. Good examples of this, in relation specifically to cannabis, include the coffeeshop system in the Netherlands where use and small scale sale of cannabis has long been tolerated, and much newer ‘cannabis clubs’ emerging across Europe (Decorte, 2014) that exploit national legislative loopholes tolerating the growth of one or two cannabis plants for personal consumption, to allow the collective production of much larger amounts of cannabis. Another example is decriminalisation (the removal or partial removal of criminal penalties in relation to certain drug offences), which was popularised by Portugal in 2001 and has swept across Europe. Belgium, for example, decriminalised cannabis in 2003, while Estonia decriminalised the personal possession of all drugs in 2002, followed by Poland and the Czech Republic more recently (Rosmarin & Eastwood, 2012).

On the other hand, in Sweden, drug policy remains a cross-party political issue with no legitimised discussion on either the relaxation of cannabis laws or the need for reform of the global drug policy regime – rather balanced policies *under* the three UN conventions are strongly supported (Office of National Drug Control Policy, 2014). Other countries are increasing their penalties for drug-related crimes: Hungary increased penalties in 2013 and invested in a commitment to eradicate drugs by 2020; Bulgaria has proposed the replacement of fines for the possession of small amounts of drugs for personal consumption with imprisonment; and Italy remains outspoken against increasing harm reduction measures.

Vasconi (2013:2) has urged Europe “as the region with the most diverse experience, expertise and evidence around drug policy reform” to become a “champion of change” (Sampaio, cited in Vasconi, 2013:10). The problem with taking up this role, however, remains that while EU member states are generally able to get behind broad principles such as the importance of human rights or the value of public health and harm reduction as part of a balanced drug policy, they are much less able to agree on specifics such as what cannabis policy should look like or whether or not the UN conventions should be reformed. The EU drug strategy outlines the desire for Europe to “speak with one strong voice” (European Council, 2013, p. 21) on matters of international drug policy, and it has partially fulfilled this promise: a recent EU joint statement prepared in anticipation of UNGASS 2016 calls for a global and balanced evidence based policy of which harm reduction forms an essential element, the abolition of the death penalty, the meaningful participation of civil society, and the promotion of alternative development strategies (Martin Zanathy, 2015).

But Europe cannot become a true ‘champion of change’, because there is no agreement within its borders on either the need for change or the nature that change should take. Furthermore, being a signatory to the international conventions is a condition of membership, and the EU is therefore committed to promoting the aims outlined above *within* the existing conventions, while “keeping the lid on politically inconvenient discussions about treaty reform” (Jelsma, 2015:18). It can therefore be concluded that, while able to play a valuable role in key debates on harm reduction and human rights, the EU is not in a position to present a united front on the issues of cannabis regulation and the

need for reform of the global drug policy regime. Nevertheless, an exploration of European drug policy, focusing particularly on its experience of drug policy innovation and its long history of trying to engender convergence within highly divergent national policies, may shed pertinent light on the issues that are currently being struggled with at the global level. In the spirit of Lemahieu's call for reflection on lessons learned, there are important insights that can be gained from an in-depth examination of European drug policy, even if they will not be aired at UNGASS itself.

First message: Drug policy diversity should be viewed positively:

The discussion above has established that within the EU there exists a diversity of national policies aimed at controlling illegal substances. In 1993 a European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) was established, with the remit of collecting and freely disseminating data on the illicit drug situation in each Member State. The work of the EMCDDA is now recognised as representing a gold standard in terms of information on the global drug situation, and it could therefore be anticipated that Europe might be in a position to pass judgement on what the evidence suggests is the most effective strategy for the control of illegal substances. This, however, is not the case. In part, this is because there are inherent problems in research that depends on the collation of data from many different countries (Hakim, 2000; Galtung, 1990). More pertinently, perhaps, an examination of the EMCDDA data suggests that there is no relationship between style of

drug policy and nature of the drug problem (Chatwin, 2011) – a point which has also been made in relation to drug policy research more generally (Reinerman, Cohen & Kaal, 2004).

Laying aside these considerable issues, there is a further problem, that only becomes more relevant at the global level: there are no universally accepted indicators of success for judging individual drug strategies (Flynn, 2001). In Sweden, for example, the generally low levels of prevalence of drug use (EMCDDA, 2015) have been attributed to the uniformity and totality of their zero-tolerance approach to illicit drugs, and have been deemed to be a strong indication of the ‘success’ of their policy in global terms (UNODC, 2007). In the Netherlands meanwhile, where levels of prevalence are generally higher, the decreasing number of dependent drug users and the health and longevity of dependent users (EMCDDA, 2015), have been similarly drawn upon to indicate the ‘success’ of the Dutch approach (Grund & Breeksema, 2013).

Given that every country experiences the problems associated with illicit drugs, from use to drug-related death and disease, but that different geographical locations may have somewhat different expressions of the problem, it does not seem a particularly sensible strategy to seek to limit the overall number of policy options. The variety of drug policy innovations in operation within the EU should therefore be viewed as a positive, especially underpinned as they are by the evaluatory role played by the EMCDDA. Theoretically, at least, once innovative drug strategies have been implemented, they can be evaluated, shared widely, and adopted by other countries, regions or cities that have similar needs.

This is a point that has also been made in relation to the developing global situation around the regulation of cannabis: “experimentation alongside credible documentation and evaluation of effects not only improves the chances for evidence-based decisions, but also the chances for public acceptance” (Uchtenhagen, 2014, p. 357). The first message from Europe is therefore that drug policy diversity should be viewed positively.

Second message: Drug policy diversity is possible under the UN conventions...but has significant limitations

The varied range of cannabis policy in operation in Europe – the zero tolerance approach in Sweden, the cannabis clubs emerging in Spain and elsewhere, the coffeeshop policy long operated in the Netherlands, and the decriminalisation of possession for personal use seen most notably in Portugal, but also in many other countries – could be interpreted as a sign that considerable drug policy innovation is possible under the existing international conventions. In a review of 50 years of drug policy under the Single Convention, Bewley-Taylor & Jelsma (2011, p. 9) conclude that there is “considerable room for manoeuvre”, particularly in nations’ response to the use and possession of illegal substances. As noted in the introduction, however, the INCB have played a consistent role in defending the status quo and blocking attempts to reform or relax any aspect of drug policy. It is the aim of this section to establish that, while this remains the case, there are significant limitations to the degree of flexibility achievable.

One example of these limitations is provided by the coffeeshop system in the Netherlands which represents a pragmatic attempt to separate the markets for cannabis and other drugs, while working within the the UN conventions. To this end, the use, purchase and small scale sale of cannabis is generally tolerated, and is primarily facilitated through the coffeeshop system. A significant grey area inherent in this policy, however, is what Korf (2008) has termed the ‘back door’ issue. While use, purchase and small scale sale of cannabis may be tolerated, there exists no legal way for coffeeshops themselves to attain larger amounts of cannabis, because the production and commercial supply of cannabis is not tolerated. This places coffeeshops in a precarious semi-legal position whereby the front door sales of cannabis are regulated, but the backdoor supply of coffeeshops remains in the hands of criminals. A recent review of the Netherlands’ separation of the markets policy concludes that: “If there is one lesson to take away from the Dutch experiences, it is that when taking steps towards regulating cannabis...these should include the entire chain of supply, from production to consumption” (Grund & Breeksema, 2013, p. 12). The current coffeeshop ‘backdoor’ problem has been largely created because the Dutch tried to effect their relaxation of cannabis policy in accordance with the terms of the international conventions: Room & Mackay (2012, p. 7) therefore recognise that the international treaties have “blocked experimentation with regulated domestic drug markets, and have constrained efforts by governments to decriminalise possession of controlled drugs for personal use”.

Further limitations can be observed by a more general examination of decriminalisation. Many countries in Europe now operate some form of decriminalisation (removal of or

reduction in criminal penalties) of the possession of drugs for personal use. However, in an effort to stay within the parameters of the UN conventions, they often retain some form of civil or minor criminal penalties against those behaviours (Room, 2012). Room & Reuter (2012) report that, despite widespread decriminalisation efforts towards cannabis, the number of cannabis users coming into contact with the criminal justice system has actually increased, and attributes that finding to the fact that civil or more minor criminal penalties are actually easier to enforce. As penalties are reduced they become more likely to be operationalised and, counter-intuitively, the result is a widening of the net (Room, Fischer, Hall, Lenton & Reuter, 2010) of those caught up in efforts to control the use of drugs – crucially, because countries are trying to work within UN conventions (Room, 2014; Room & Reuter, 2012). Bewley-Taylor (2013, p. 61) therefore suggests that “working inside the confines of the UN treaty system and generating changes in rather than changes of regime actually sustains larger structures of harm”. The examples provided above demonstrate that a strict interpretation of international treaties are impacting on the valuable ability to experiment with drug policy reform

Third message: Any reform of the global drug policy regime should aim to open up the possibilities for drug policy innovation, rather than closing them down.

Current EU thinking prioritises coordination of national strategies as “key to the establishment and conduct of a successful strategy” (Council of the European Union, 2004a, p. 8) suggesting that the closer national policies become in their legislative details the better

(Chatwin, 2013). To date, Framework Decisions represent the highest level of drug policy coordination within the EU, and commit member states to minimum standards in specific areas: drug trafficking penalties and the control of New Psychoactive substances (NPS). An exploration of the effectiveness of these Framework Decisions, however, does not suggest that coordination of national policies is a goal worth pursuing – a finding which has important implications for drug policy development at the global level.

A Framework Decision (Council of the European Union, 2004b) was adopted in 2004 outlining certain minimum rules for drug trafficking offences and has been heralded by the EU themselves as a “major step” towards the goal of drug policy coordination. Official evaluations, however, have criticised its failure to result in an increased alignment of national measures seeking to control drug trafficking (Commission of the European Communities, 2009). For example, national penalties are usually much higher than those demanded by European legislation and, in the case of 12 member states, their national penalties are more than twice the range of those dictated at the EU level (Commission of the European Communities, 2009). This piece of legislation, therefore, does no more than seek to represent the average of the 27 EU Member States, while failing to stand up to probing questions surrounding which drugs will be prioritised, which amounts will be considered as serious or what will be deemed aggravating or mitigating circumstances (Chatwin, 2013).

NPS have increasingly been conceptualised as the most significant recent challenge to national and European drug policy making. In 2005, further development of drug policy legislation was made at the European level via a Framework Decision (Council of the European Union, 2005) in this area. The Decision established a mechanism for the exchange of information on NPS, but also provided an opportunity for those substances judged to be of unacceptable risk to be banned across the whole of Europe. This Decision has also been evaluated with certain failures being prominently highlighted (Commission of the European Communities, 2011): namely that very few substances were being banned at the European level and that the bans were only implemented at the European level once most member states had already issued bans themselves. Again, the results here suggest an approximation or average of EU legislation in the area of NPS, ultimately representing the bare minimum of policy practised across Europe (Chatwin, 2013).

With these experiences in mind, a further message from Europe is that any reform of the international drug conventions should seek to “open up the possibility of policy experimentation at the national level or...at subnational levels” (Room & Mackay, 2012, p. 8). The considerable efforts that have been required to produce agreements across EU member states in the field of drug policy have not been fruitful in terms of increasing effectiveness or coherence of international drug policy. The efforts required to engender agreement will only increase at the global level and there is no indication that they will be any more successful in terms of effectiveness. Attempts to reform the UN international conventions should not then focus on trying to engender agreement across all signatories, but rather should be centred around trying to loosen the terms of the treaties, or the

controlling grip of the INCB, so they do not prohibit or provide an obstacle to drug policy innovation and drug policy diversity.

Fourth message: the importance of the international framework

The final message from Europe contends that there is an important role to be played by international institutions in the framing and evaluation of global drug policy. In terms of a framing role, rather than trying to force consensus and policy coordination, the UN could more usefully concentrate its efforts on ensuring that individual countries develop and adhere to minimum standards. For example, as already practiced in the EU, it could mandate signatories to its international drug conventions to develop minimum harm reduction measures, to adhere to minimum human rights standards, and to develop national drug policy documents such as strategies and action plans.

In terms of evaluation, the EMCDDA has the mandate within the EU to collect and disseminate data on the drug situation in each individual Member State. As discussed above, many problems still remain with the cross-national comparability of data and the means by which success should be judged, making it impossible for the EMCDDA to draw definite conclusions about the effectiveness of one drug strategy over another.

Nevertheless, the remit of the EMCDDA extends far beyond the gathering of statistics and also includes sharing incidences of best practice in drug policy making, bringing together networks of experts in the field, and encouraging evaluations of all aspects of national drug

policy making. This information is presented, not in an attempt to prove the validity of one approach to drug control over another, but to allow individual countries, regions and cities to pick and choose from innovations that have been tried and tested in locations experiencing similar drug problems, thus allowing them to choose the most suitable drug policy for their particular situation.

Of course, the UNODC does already collect and disseminate information on the global drug problem, but the president of the INCB in 1996 stated that they were “not really interested if it works or not” (cited in Bewley-Taylor et al, 2014: 37), only whether it was in line with the conventions. The global drug policy machinery could usefully, therefore, move away from the isolated collation of statistics and the pronouncement of judgement about individual strategies based on their adherence to the existing conventions, and move instead towards the collation of evaluations of individual strategies for effectiveness, bearing in mind that different strategies are likely to work within different geographical and cultural locations (Chatwin, 2011). Rather than seeking to decide which strategies are successful itself, any international evaluatory system should build evaluation into the development of any new drug policy, and make the resulting data available to all so individual governments or local authorities can make their own judgements about effectiveness based on local needs. As noted earlier, problems remain at the EU level in trying to standardise international data so it is comparable: one of the main roles for the UN here could be the development of international standards around data collection, methodologies and the interpretation of key concepts such as drug-related death and drug-related crime. Working towards this goal would allow existing European data, or planned

Russian research, to feed in to UN systems more easily. Therefore, a major part of any discussions about reform of the global drug policy regime should be that an important - perhaps the most important - role of international institutions involved in responding to illicit drugs should be concerned with the evaluation of different strategies and the disseminating of that information.

Conclusion

An in-depth exploration of European drug policy therefore suggests that Europe does have important contributions to make on global debates about cannabis policy and the need for reform of the global drug policy regime. Collectively, the evidence suggests the need for the loosening of controls restricting the development of diverse drug policy innovations, and the development of international drug policy frameworks and international standards of drug-related data collection. It is frustrating then that it is unlikely that these issues will be directly addressed at UNGASS 2016, with the EU committed to developing drug policy within the existing international framework and finding it difficult to 'speak with one voice' in these contentious areas. If, however, UNGASS 2016 is viewed as a time for reflection and the starting point of an opening up of the discussion around global drug policy issues, there is some hope that evidence from Europe could play an important role in emerging debates. While the EU may not be able to come down on one side or the other in terms of cannabis policy reform, it can demonstrably speak up in favour of the encouragement of drug policy diversity, whatever form that may take, and by whatever means it is achieved. Furthermore, while the EU may not be able to directly speak out in favour of the need for reform of the global regime, it can apply pressure in related areas such as the increased

need for evidence based policy supported at the international level, and the need for the implementation of minimum standards in terms of harm reduction and human rights, for example.

It is clear that some form of modernisation of the existing global drug policy regime is needed to bring international commitments in line with increasingly divergent national practices. There are many ways that this could be achieved. In the US, proposals for a more flexible interpretation of the international conventions have been made to avoid the difficulties associated with gaining global consensus on changing them (Barratt, Jelsma & Bewley-Taylor, 2014). Bewley-Taylor et al (2014) suggest that this would suit the EU because they would be able to justify the varied innovative policy strategies within their borders without becoming embroiled in contentious debates about the need for treaty reform. Jelsma (2015), however, cautions that, ultimately, the UN drug control system will be weakened by a general relaxation of the rules, as important international standards around, for example, human rights, will also be eroded.

Following this line of argument, there are still options for more radical reform: the rescheduling of cannabis via a WHO review, amendments to the international conventions, individual denunciation of the single convention followed by reaccession with reservation, the modification inter se of the treaty between certain likeminded parties (e.g. a group of EU countries) (Bewley-Taylor, 2012), or the drawing up of a new Single Convention. What seems clear is that this is likely to be a gradual process akin to the ending of alcohol

prohibition in the US (Bewley-Taylor et al, 2014). Jelsma (2015) suggests that a useful outcome of UNGASS 2016 discussions would be the creation of an expert group to examine the options for reform of the global drug policy regime to bring it in line with recent drug policy developments. While the EU will not directly speak out on these issues at UNGASS 2016, it may be more possible to feed into general reviews of the existing system as part of the evidence gathering process.

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