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[The European Union in Panglossian Stagnation]

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ABSTRACT:

This chapter provides a critical exploration of the European Union's impact on the UNGASS 2016 proceedings and Outcome document. It demonstrates that the ability to produce a European 'common position' ahead of the UNGASS debates represents a significant step forward in the ability to 'speak with one voice' in the global illicit drug policy arena, and has played an important role in ensuring key issues such as human rights and public health remain on the agenda. In highlights, however, a European failure to engage with issues such as the continuing suitability of the international drug conventions to preside over the current climate of drug policy innovation and experimentation, and the unintended consequences of a 'war on drugs' approach. Ultimately, therefore, it argues that these failures will hamper the development of a more progressive and effective global drug policy.

KEYWORDS:

(Please supply up to 6 keywords for your Chapter)

1. European union
2. Drug policy reform
3. UNGASS 2016
4. Global drug policy
5. United Nations

Main Body:

Introduction

The European Union (EU) regards the UNGASS 2016 Outcome document as a significant success, as evidenced by this extract from a recent speech made at the sixtieth session of the Commission on Narcotic Drugs (CND) held in Vienna from 13-17 March, 2017: “The EU and its Member States would like to emphasise that the outcome of the General Assembly on the world drug problem held in 2016 is a major step forward in our ability to tackle together the world drug problem” (European Union, 2017a:1). Furthermore, it is keen to emphasise the role that it played in the development of that Outcome document: “We appreciate the inclusion of several of our proposals in the Outcome document” (European Union, 2016:1). Finally, recent internal (European Commission, 2017a; European Parliament, 2016) and external (RAND, 2017) evaluations of European drug policy, undertaken since the UNGASS 2016 meeting, have been quick to emphasise the significant internal success for the EU represented by the ability to reach a ‘common position’ (European Union, 2015) on UNGASS 2016; no mean feat in the contentious area of illegal drug policy on which the EU has often been described as divided (Boekhaut van Solinge, 1999; Tops, 2001; Chatwin, 2003).

This chapter critically explores the common position put forward by the EU in preparation for UNGASS 2016. It acknowledges the significance of the EU’s ability to speak “with one strong voice” (Council of the European Union, 2012:7) in this area and suggests that the call for drug policies that are “built upon a sound public health approach, based on scientific evidence and supported by reliable and objective monitoring systems and evaluation, in compliance with human rights” (European Union, 2015:2) represents an important step forward in terms of what Member States have previously been able to agree on. An engagement with recent EU contributions to ongoing drug policy debates and preparations for the next UN High Level Ministerial drugs meeting in 2019 further suggests that the EU remains firmly committed to championing change in drug policy in line with the principles outlined above.

While undeniably playing a role in ensuring key issues have made it onto the global drug policy agenda, the EU has, however, also played a significant role in defending the status quo by confirming their ongoing and unwavering support of the current system of international drug control encapsulated by the international drug and psychotropic substance conventions: “Finally, I would like to underline the position of the EU and its Member States that the three UN Drug Control Conventions and the

Universal Declaration on Human Rights are the framework of the global response to the world drug problem” (European Union, 2016:1). This chapter, therefore, also explores the limitations of an approach that refuses to acknowledge the failures of existing drug policy or the lack of progress towards global targets to eradicate or significantly reduce drug use. It concludes that the EU is beginning to take the stage as an important global voice on drug policy related matters, but that its capacity to advocate for change is somewhat hampered by its lack of engagement with the continuing suitability of existing systems of international drug control.

The drive to ‘speak with one voice’

Drug policy is, inherently, an international issue and the EU has been active in this area since the late 1980s. Seeking to build on the United Nations’ success in gaining near global agreement to the prohibition of drugs, illicit drug policy was quickly earmarked as an area for ‘ever closer union’ within Europe. In the late 1980s and early 1990s when European social policy was in its infancy, the European Parliament organised two commissions charged with investigating the possibility of determining the most effective existing strands of European drug policy, with a view to engendering their implementation across Europe (Blom & van Maastricht, 1994). When both commissions failed to reach consensus on the most effective style of drug policy and, furthermore, noted that drug policy was an area entrenched in national culture, the principle of subsidiarity (Duff, 1993) was applied and policies designed to control illicit drugs were left in the hands of national governments.

European level involvement in the control of illicit drugs, however, has remained strong. This is partly evidenced by the significant number of groups and bodies created within the EU in this area including, for example, the Horizontal Drugs Group (HDG) which monitors and discusses all cross-pillar activities in the fields of drugs and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) which collates and disseminates information on all aspects of the European drug situation. In addition, the EU has at regular intervals since 1990, published clear guiding principles in the development of drug policy within Europe via its European Drug Strategy and Action Plans. Finally, more significant inroads into harmonisation of European drug policy have been made in several areas. Framework Decisions have been ratified in two areas of drug policy making – the creation of minimum maximum penalties in serious drug trafficking offences (Council of the European Union, 2004a) and the sharing of information and control of New Psychoactive Substances (NPS) (Council of the European Union, 2005). The other observable trend within European drug policy has been towards the principle of

harm reduction with every European Member State now offering a minimum level of needle exchange and substitution treatment programmes (Rhodes & Hedrich, 2010).

Recent drug policy documents produced by the EU have increasingly emphasised the benefits of international cooperation and coordination. The 2009-2012 European Drug Action Plan (Council of the European Union, 2008) included specific aims in this area: to adopt EU common positions on drugs in international fora; and to promote an EU approach to the illegal drug problem. Further, the 2005-2012 European Drug Strategy declared coordination “key to the establishment and conduct of a successful strategy against drugs (Council of the European Union, 2004b:8). Continuing in this trend, the last European Drug Strategy (Council of the European Union, 2012:7) aims to “ensure that the EU speaks with one strong voice in international forums”.

This ability to ‘speak with a single voice’ has proven difficult to achieve in practice. “Drugs are a sensitive and highly political issue. The debate is often polarized between a more enforcement-oriented approach focusing on measures to combat trafficking and a more tolerant approach that focuses on prevention and reduction of drugs-induced health disorders. The dichotomy is visible both within all the Member States and also between them” (Commission of the European Communities, 2003:4). Within Europe there are a variety of approaches to drugs – consider for example the contrast between the Netherlands where separation of the markets, normalisation of drug users and the application of harm reduction are highly evident policy strategies, and Sweden which operates a zero tolerance approach based on the aim of a drug-free society and which employs criminal sanctions against drug use and coercive treatment (Chatwin, 2011). In attempting to speak for Europe on this issue, the EU must navigate a delicate line which takes care to be inclusive of all the national policies that fall within its borders.

The creation of a European ‘common position’ on UNGASS 2016 thus represents somewhat of a success for the development of European drug policy. Its contribution to global debates on the future of drug policy control prove that Europe can ‘speak with one voice’ and, within the EU, it has been lauded as a major step forward towards increased coordination in this area. A recent mid-term evaluation of the current Drug Strategy and Action Plan (European Commission, 2017a:10) reported that “one key area in which the Strategy and Action Plan add value is enabling the EU to speak with one voice in international fora, as demonstrated in the run up to UNGASS 2016”. An adjunct document further emphasises the success of the ‘common position’ as “the 2016 outcome document was largely coherent with the EU UNGASS position and the EU Strategy and Action Plan” (European Commission,

2017b:1). The preparation and presentation of a 'common position' on the future of global drug policy, thus represents an internal success for the EU in this area. This chapter will now go on to explore the 'added value' that the 'common position' has had on the UNGASS 2016 procedures and, by extension, on global drug policy debates in general.

The common position: champions of change?

On the 11th November, 2015, the EU's common position (European Union, 2015) on UNGASS 2016 was agreed as a summary of their contribution to discussions. Broadly speaking, its central arguments surround the support of balanced and evidence-based drug policies, the importance of a public health and harm reduction approach, and the importance of respect for human rights and shared responsibility. It also emphasised the need to involve civil society in drug policy debates, the importance of a commitment to alternative development, the value of the international drug control system in governing the scientific and medical use of drugs, the need to work towards sustainable development targets, and the need to address new facets of the illicit drug problem, such as clear/darknet markets and New Psychoactive Substances (NPS) (European Union, 2015). In many ways, based on the content outlined above, this can be viewed as a progressive (or at least "politically correct" (Bewley-Taylor & Jelsma, 2016:5)) document attesting to a balanced European approach and an appreciation of the major issues facing drug policy makers active on the global stage. It also represents a significant step forward in terms of what European Member States have been able to agree on previously.

As a first detailed example of internal progress, Europe has long been seen as an advocate of the principle of harm reduction within drug policy: the desire to reduce the harm that results from both drugs *and drug policy* rather than solely to focus on reducing the overall number of drug users (Lenton & Single, 1998). The provision of substitution treatment to people who are dependent on heroin and services which offer clean needles to people who inject drugs are the most established and enduring harm reduction initiatives and several European countries were early adopters of these measures. The Netherlands, for example, adopted methadone maintenance in Amsterdam and a needle exchange programme in Rotterdam in the early 1980s (Marlatt, 1996). Similar measures were adopted in the UK under Margaret Thatcher in an effort to reduce the sharing of needles, attract new people into service provision and increase the overall health of dependent drug users (O'Hare, 2007). Spurred on by the AIDS/HIV crisis of the 1980s, these measures were quickly adopted throughout much of Europe and beyond. Today, every European Member State has some level of needle

exchange and substitution treatment provision within its borders (Rhodes & Hedrich, 2010). To place this in a global context, 90 countries and territories (out of 158 reporting injecting drug use) now offer some form of needle exchange programme and 80 offer some form of opioid substitution treatment (Harm Reduction International, 2016).

Many European countries have experimented with further, less well established, harm reduction measures: for example, the provision of heroin on prescription has been implemented in Germany, the Netherlands and Switzerland; drug-checking services are present in the Netherlands, Portugal and Austria; and drug consumption rooms are operating in the Netherlands, Germany, Denmark, Spain, France, Luxembourg and Switzerland. Yet, despite this long history of the early adoption of harm reduction measures and the fact that many European countries continue to be at the forefront of latest harm reduction developments, the European Union has faced an uphill struggle to advocate for harm reduction, even within its own borders. This is partly because some European countries have been slow to fully adopt harm reduction practices into their national strategies. Sweden, for example, only tolerated substitution treatment and needle exchange on a very minimal experimental basis for many years and Eastern European countries continue to offer very limited versions of these baseline harm reduction initiatives: in 2010 the 12 countries which joined the EU since 2004 only accounted for 2% of the substitution treatment available within Europe (EMCDDA, 2010)

The EU's relative impotence in this area can be demonstrated by referencing the 2004 Catania Report (ENCOD, 2004) which proposed a radical change in European drug policy based on a comprehensive failure to meet its principal aims (developed, of course, in line with UN aims and objectives) of eradicating or significantly reducing the use of drugs and attendant problems within its borders. Instead, a drug policy based around harm reduction, the application of scientific evidence, and a balanced approach encompassing public health as well as law enforcement and criminalisation was advocated (ENCOD, 2007). The report was ostensibly approved by the European Parliament in 2004, but was immediately followed by a new European Drug Strategy and Action Plan in 2005 that made only minimal references to harm reduction due to a lack of consensus in this area and adhered to the familiar aims of eradicating or significantly reducing drug use.

In more recent EU drug policy related documents, the principle of harm reduction has gained a stronger foothold. There is still minimal reference to this principle in the overall Drug Strategy, but it achieves an increased presence in the detailed objectives of the Action Plans (Rhodes & Hedrich,

2010). Given some member states' (e.g. Sweden and, more recently, the UK) resistance to encouraging and supporting harm reduction measures, the strong promotion of harm reduction initiatives on the global stage, via the agreed European common position document, therefore represents a considerable step forward in EU positioning on drugs. Within this document, harm reduction is mentioned both generally, as a guiding principle of global drug policy, and specifically in the call to increase the provision of substitution treatment throughout the world "as such measures have proved effective in reducing the number of direct and indirect drug related deaths and notably blood borne infectious diseases associated with drug use" (European Union, 2015:5). Given the generally accepted effectiveness of substitution treatment, this can be viewed as providing a potentially positive impact on the global stage.

The promotion of a human rights agenda in relation to drug policy provides another example of an area where the EU can provide a positive global influence in the control of illicit substances. This is an issue which has received increased global attention, particularly surrounding the unfairness of a global drug policy which concentrates all its efforts on reducing supply while neglecting to address demand, thus disadvantaging producer countries (Youngers & Roisin, 2005). Pryce (2012:93) summarises the argument: "The unintended consequence of the belief that drugs are evil has been a less than scrupulous global attitude to human rights and liberties, an erosion of the values of the societies which prohibition is designed to protect". In this area, the application of the death penalty and the occurrence of extra-judicial killings have become focal points for global debate.

Amnesty international (2011) has reported on the routine shooting of child cannabis farmers in Iran, Hope (2015) documents the 682 civilians who have been killed as a result of counter narcotics operations in Mexico since December 2012, and according to an investigation by the Philippines Daily Inquirer (2016) there were 1278 drug-related killings in the first 100 days of President Duterte's government of the Philippines. A report on the use of the death penalty for drug related offences found that there are at least 33 countries that prescribe the death penalty for drug-related offences, and at least 10 of these have the death penalty as a mandatory sanction (Gallahue & Lines, 2015). The strongest message in the EU common position document thus, perhaps unsurprisingly, addresses this issue on which European agreement is not unexpected and designates the abolition of the death penalty, for all crimes including drug-related offences, as "an absolute priority" (European Union, 2015:3).

It is important to remember that many argue, however, that human rights abuses are also prevalent within the control of illicit substances in consumer countries. For example, a report produced for the Beckley Foundation Drug Policy Programme (Barrett et al, 2008) highlights: the arrest and ill treatment of drug users to meet drug reduction targets in Russia, Kazakhstan and the UK; detention and coercive treatment, sometimes including forced labour and moral education as in China; the denial of services to those who are imprisoned or to other vulnerable populations as in the UK and Europe; and the discriminatory application of drug control as seen in the US where African-American men are sent to prison at 13.4 times the rate of white men. The EU common position document also makes an attempt to address some of these areas.

For example, the common position document recommends “proportionality” (European Union, 2015:4) in the punishment of those found guilty of drug offences, recognises that drug interventions and treatment in prisons need to be “substantially improved” (European Union, 2015:5), and draws attention to the “right of the drug user to give an informed consent to treatment” (European Union, 2015:3). The language used here, however, is less strong with the introduction of phrases such as ‘as appropriate’ and ‘except in exceptional circumstances’ attesting to the fact that agreement here, even among European Member States, is harder to secure. In Sweden, for example, it has been possible to detain by force both youth and adult drug users who were not willing to take part in drug treatment voluntarily since the 1980s (Tops, 2001). It could also be argued that Sweden’s practice of not separating, for example, cannabis from other drugs in terms of range and severity of punishments, and pursuing the users of drugs as well as the suppliers, as lacking in proportionality. Again, significant progress can be seen in this area – the ability to agree a ‘common position’ has provided the EU with a strong vehicle for pushing human rights issues, like the death penalty, which are agreed upon throughout Europe. An interesting contrast is provided by the weaker positioning on human rights abuses more likely to affect European countries.

It is difficult to evaluate the precise nature of the impact that the EU common position on UNGASS 2016 played in developing the final UNGASS Outcome document. Fordham & Jelsma (2016:1) suggest the Outcome document has been “critical in shifting drug policy narrative towards public health, harm reduction and human rights”, and Nougier & Fernandez Ochoa (2017:1) similarly propose that it represents an unprecedented shift “towards ensuring public health, development and human rights concerns are not peripheral, but central to drug policy”. The UNGASS positioning papers of many other global regions/bodies also mentioned these factors, but the ability of Europe to ‘speak with one

strong voice' and champion these issues has undoubtedly played a part in ensuring their prominence in future global debates.

The common position: defenders of the status quo?

Thus far, the evidence suggests significant gains for Europe in the field of international drug policy influence, in terms of being able to speak with one voice and use that position to push forward some of the more liberal global drug policy ideas, in particular around public health, harm reduction and human rights. This, however, is far from the whole story. In the run up to UNGASS 2016, many commentators and experts imagined an "open and honest" (Ban Ki Moon, 2013:1) debate emerging on the failures of drug policy to date. Furthermore, one area of particular focus promised to be the continuing suitability of existing international drug control conventions in light of recent systems of cannabis regulation in Uruguay and American States such as Colorado and Washington, which can be viewed as being in direct contravention of the terms of these treaties.

The EU common position document is unequivocal in its support for the international conventions in their current form and entirely dismissive of any need for change in this central area of global drug control: "The three UN Drug Control Conventions, which provide the international legal framework for addressing the drugs phenomenon, and the Universal Declaration on Human Rights are the cornerstones of the global response to the world drug problem ... the EU and its Member States reiterate that the drug control treaties must be acknowledged and respected in developing and implementing national drug policies and laws" (European Union, 2015:2). To further clarify the position, the common position goes on to say: "There is sufficient scope and flexibility within the provisions of the UN Conventions to accommodate a wide range of approaches to drug policy in accordance with national and regional specificities" (European Union, 2015:2). This section will critically explore the consequences of maintaining this line.

It is perhaps unsurprising that this is the European view of the international conventions. After all, this is a continent which has arguably long exploited the flexibility of the conventions. Take, for example: the coffeeshop system facilitating the small-scale sale of cannabis in the Netherlands; the trend towards the decriminalisation of cannabis or all drugs for personal consumption epitomised by Portugal's change in policy in 2001; the cannabis growing cooperatives that exploited a legal loophole in Spanish drug laws and have since spread throughout Europe. As these examples attest, Europe has

indeed found considerable “room for manoeuvre” (Dorn & Jamieson, 2000) within the international conventions. To be clear, the European position, correctly (Bewley-Taylor & Jelsma, 2016), maintains that while these practices may push the boundaries of the treaties, they do not break them.

There are two main problems with this approach. Firstly, while the European ‘soft defections’ (Bewley-Taylor, 2012) may fall within the possible flexibility of the international conventions, the regulated markets practiced in Uruguay and some American States clearly do not. In particular, the fully commercialised markets of, for example, Colorado or Washington State, fly in the face of international demands to treat illicit drugs as “a serious evil for the individual ... fraught with social and economic danger” (United Nations, 1961:1). By ignoring this problem, Europe (and indeed the UNGASS 2016 Outcome document) sidesteps this issue and allows a situation to continue whereby the international conventions are clearly being contravened. Jelsma (2015) cautions that international agreements in other areas (for example, human rights) will ultimately be weakened if there are no consequences to contravening the international drug conventions. In this vein, it is interesting to note that countries such as the Russian Federation and China which practise strict national drug policies and which have faced accusations of drug-related human rights abuses, are also staunch supporters of the ability to interpret the existing conventions flexibly (Bewley-Taylor & Jelsma, 2016), as this allows them to retain practices such as forced treatment or the death penalty.

Furthermore, the issue may become significantly more pertinent to Europe in the near future. Public opinion surveys in the Netherlands have cited increasing levels of support for the full legalization of cannabis. In 2013, 65 percent of those surveyed reported that they would be in favour of introducing to the Netherlands the Uruguayan system whereby the production, sale, and consumption of cannabis were all legalized (Rolles, 2014). Forty-one municipalities within the Netherlands have endorsed a manifesto proposing the regulation of cannabis production, and 25 of the 38 largest municipalities have applied to the Ministry of Justice for permission to experiment with various forms of authorised cannabis production and wholesale supply (Rolles, 2014). Similarly, city officials in Copenhagen have made four applications to national government to implement a trial system of regulated cannabis sales administrated by the public authorities (Mortimer, 2016).

In fact, the EU provides a good example of the limitations of drug-policy developments that take place within a flexible interpretation of the international conventions. 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 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, 2013:12). The current coffeeshop 'backdoor' problem has been created largely because the Dutch tried to effect their relaxation of cannabis policy in accordance with the terms of the international conventions: Room & Mackay (2012:7) therefore recognise that the international treaties have "blocked experimentation with regulated domestic drug markets".

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, et al, 2010) of those caught up in efforts to control the use of drugs – crucially, *because* countries are trying to work within UN conventions (Room & Reuter, 2012). Bewley-Taylor (2013:61) 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".

These examples demonstrate that a flexible interpretation of international treaties does not address more radical instances of drug policy reform and limits the impact of softer drug-policy relaxation. It is disappointing that the EU has not been able to push forward the debate on international treaty reform in this area, instead defending the status quo, despite the fact that drug policy innovation will continue to be restricted and some global national policies will continue to operate outside the terms

of the conventions. One way in which the EU could have engendered improvement in this area would have been to support calls for an expert group to examine the options for reform of the global drug policy regime (Jelsma, 2015). Such a move would have been in line with broad EU support for the development of evidence-based policy and would have provided a first step towards bringing the conventions in line with global practice. Neither the EU 'common position' document nor the UNGASS 2016 Outcome document, however, contain any reference to the creation of an 'expert group' charged with the further exploration of this issue.

Another area on which the EU has been conspicuously silent is the failure of the war on drugs. In some ways, the pressure for UNGASS 2016 can be seen as an indirect consequence of a rising global appreciation of the failure of 'war on drugs' strategies of drug control. In the US, Obama's administration moved away from war on drugs' terminology and the Global Commission on Drug Policy, comprised of influential representatives from around the globe, was created in 2011 to call for a paradigm shift in drug policy towards drug policies that are both more effective and less harmful (Global Commission on Drug Policy, 2011). Pryce (2012) documents the many failures of the war on drugs to end or significantly reduce the production, consumption and trade of illegal drugs, while at the same time noting the considerable negative 'unintended consequences' such policies have had on both producer and consumer countries. A public recognition of these unintended consequences and their particular impact on drug producer countries by three Latin-American leaders (Fordham & Jelsma, 2016) contributed to the impetus for UNGASS 2016. It is therefore a significant and important omission that the EU 'common position' does not make any mention of the failure of war on drugs and the need to move away from policies associated with it in favour of more progressive forms of prevention that focus on public health and human rights.

Of course, even if the EU had acknowledged the failure of the war on drugs, it is unlikely this would have been adopted in the final UNGASS Outcome document as there are still plenty of global supporters of war on drugs style policies: Russia for example has promised to renew the commitment to fighting the war on drugs as part of UNGASS 2016 discussion (Fordham, 2016). This omission, however, together with continuing support for unrealistic and over-zealous aims of 'a world free of drug abuse' and the adoption of cautious language such as 'as appropriate' and 'in accordance with national legislation' around more progressive points, has considerably weakened the EU's position as advocates for the development of a more effective global drug policy. In combination with unwavering support for the treaties as they stand, it provides evidence that the EU is unable to think

outside the existing drug policy control toolbox (Seddon, 2014) and advocate for meaningful change at a global level.

Conclusion: an evaluation of EU contributions to global drug policy debates

The UNGASS 2016 Outcome document has met with mixed approval with some lauding it as a progressive move towards public health, harm reduction and development (Fernandez Ochoa & Nougier, 2017), while others feel it has proved a missed opportunity to overhaul and modernise the global drug control system (Global Commission on Drug Policy, 2016). From an EU viewpoint, the result of UNGASS 2016 has been largely positive. EU contributions to Commission for Narcotic Drugs (CND) meetings since UNGASS 2016 confirm strong support for the outcome document which they describe as “the greatest milestone in the international drugs policy development” (European Union, 2017a:1) and which, as previously mentioned, they feel is a good reflection of European drug policy in general (European Commission, 2017b:27). External evaluations of EU drug policy have also suggested that the EU should now seek to “build on the momentum from the successful negotiation at UNGASS ... in order to exert greater European influence on shared concerns in the area of the drug phenomenon” (RAND, 2017:16).

To some extent this has been the case. As preparations get underway for the next High Level Ministerial meeting on international drug control in 2019 there have been several opportunities. At the 60th Session of the CND in March 2017, the EU continued to push for the abolition of the death penalty and the greater contribution of civil society to ongoing debates (European Union, 2017a); at the intercessional meeting in November 2017 it sought to “further strengthen the link between the UNGASS recommendations and drug related Sustainable Development Goals” (European Union, 2017b:2); and in October 2016 it committed to considerable funding to aid the Community of Latin America and Caribbean States (CELAC) achieve sustainability development targets (European Commission, 2016). The European Commission (2017a) evaluation of EU drug policy also attests to the intention to make internal changes to EU drug policy based on the UNGASS 2016 Outcome document. For example, it recommends that the three pillars underlying the EU drug strategy, based around demand reduction, supply reduction and international cooperation, should be aligned instead

to the seven-pillar approach raised at UNGASS which, for example, divides demand reduction into prevention and treatment, and availability and access for medical and scientific purposes.

The successful negotiation of a common European position which pursues a public health, sustainable development, evidence based and human rights oriented approach, under a flexible interpretation of the current treaties, is a significant achievement for the membership of the European Union. It aligns with their goals to increase coordination and cooperation between Member States and to 'speak with one voice' on the global stage. A flexible interpretation of existing conventions allows them to justify the varied innovative policy strategies within their borders without becoming embroiled in contentious debates about the need for treaty reform (Bewley-Taylor, 2013). It fits with their experience of the 'added value' of multi-levels of governance in which international, national and local governing bodies all have an important part to play in the implementation of effective policy. The Outcome document generally aligns with the EU position (although not in some key areas such as the elimination of the death penalty) reflecting the potential impact of its contribution. Its adoption will require little change within the borders of the EU other than some minor tweaks to the structure of drugs policy.

The exact purpose of the UN High Level Ministerial meeting in 2019, following so close on the heels of UNGASS 2016, remains to be precisely determined. Another international drug control meeting is needed because the current Political Declaration and Plan of Action were not reviewed at UNGASS 2016 and are due to expire. Part of the mandate of recent CND meetings has been to decide the aims of this meeting – should it, for example, be an honest evaluation of the effectiveness of global drug control in general and the 2016 Outcome document in particular, a lively debate after a period of reflection on the outcomes of 2016, an opportunity to negotiate a new outcome document, or a chance to focus on providing a practical roadmap to implementing the Outcome document (International Drug Policy Consortium, 2016)? At the most recent CND meeting, the EU has been clear on its own position on this matter: "Efforts should be focused on implementing commitments made during the UNGASS in 2016. We should not negotiate a new political document" (European Union, 2017b:3). It seems clear that the result of UNGASS 2016 was a resounding success in terms of European drug policy. While the EU can continue to push single issues, such as the death penalty, at international fora, they are ultimately happy with the status quo of an international drug policy that continues to strive for a drug free world, that views the last 40 years of international drug policy as a tangible success and which continues to be framed by existing international drug conventions.

For many, Europe is a continent already associated with drug policy experimentation and innovation giving rise to interventions such as Dutch coffeeshops, Spanish cannabis clubs and Portuguese decriminalisation. We should not, however, be surprised at this failure to 'champion change' in international drug policy discussions. For a start, "European countries have not experienced to the same extent, the high human cost in terms of violence, insecurity and mass incarceration experienced in Latin America" (Fordham & Jelsma, 2016:1). Furthermore, illegal drugs can be viewed as a complex policy problem existing in a state of flux (Mulgan, 2004), bound up with moral values and susceptible to emotional responses (Ritter, 2009). Available evidence thus remains open to interpretation, particularly given that there are no commonly agreed upon indicators of success in drug policy. Pryce (2012) lists many disincentives to advocating for significant policy change in a complex field such as that of drugs – ideological beliefs that drugs are morally reprehensible, fear of the unknowns of alternative systems, the political difficulties of challenging the global status quo, bureaucratic inertia inspired by the enormity of changing international agreements, and the vested interests of whole industries that have sprung up around drug treatment and enforcement agencies.

For the EU, perhaps the greatest of these obstacles relates to the political difficulties of challenging the status quo. In an exploration of the continuation of a 'war on drugs' approach under the Obama regime, despite official indications that it was to be abandoned as a term, Youngers (2011:341), concludes that a 'tough on drugs' approach is popular with constituents and encourages leaders to play "on public fears, turning a public health issue into an all-out war on addictive substances and those who supply them". Telling people what really needs to be done in terms of the alleviation of poverty, the treatment of addicts, and the nurturing of global regions that are susceptible to drug trade related corruption, is a strategy much less likely to win support and would require courageous leadership indeed (Isacson, 2005). Furthermore, given the fear associated with the unknown outcomes of any relaxation of the global drug policy regime, to take even the first step towards such a position could be politically problematic (Reuter, 2011). Finally, with 30 years of international drug policy making under its belt, the EU is well placed to understand the difficulties in engendering international agreement in this area.

While we continue to cling to the illusion that we are making progress towards an ultimate aim of a drug free world, without acknowledging the manifold and significant unintended consequences of the existing system of global drug control, which often impact disproportionately on vulnerable regions of the world, we cannot see real progress in global drug policy, and we will continue to suffer from its unintended effects. If the EU really wants to see a more progressive global drug policy, first steps

must be to acknowledge existing failures and associated harms, and to lobby to ensure that existing legislation does not stand in the way of the development of innovative and experimental policies, such as cannabis regulation. It is difficult to imagine how we could move forward in terms of drug policy, towards more effective context appropriate strategies, if we do not or cannot innovate. Ultimately, the EU's performance on the global stage of drug policy thus remains hampered by its failure to engage with the continuing suitability of the existing systems of international drug control.

References:

- Amnesty International (2011) *Addicted to death: Executions for drug offenses in Iran* London.
- Ban Ki-moon, (2013) *Statement: Secretary-General's Remarks at Special Event on the International Day Against Drug Abuse and Illicit Trafficking* Retrieved from: <http://www.un.org>
- Barratt, D., Lines, R., Schleifer, R., Elliott, R. & Bewley-Taylor, D., (2008) *Recalibrating the regime. The need for a human-rights based approach to international drug policy*, The Beckley Foundation Drug Policy Programme: <https://www.internationaldrugpolicy.net>
- Bewley-Taylor, D. (2013). Towards revision of the UN drug conventions: harnessing like-mindedness, *International Journal of Drug Policy*, 24(1), 60-68. doi: 10.1016/j.drugpo.2012.09.001
- Bewley-Taylor, D. (2012) *International Drug Control: consensus fractured* Cambridge: Cambridge University Press.
- Bewley-Taylor, D. & Jelsma, M. (2016), *UNGASS 2016: A Broken or B-r-o-a-d Consensus? UN summit cannot hide growing divergence in the global drug policy landscape*. Transnational Institute (TNI): Drug Policy Briefing 45, June 2016.
- Blom, T. & van Mastricht, H. (1994), 'The future of the Dutch model in the context of the war on drugs', in E. Leuw & I. Haen Marshall (eds) *Between Prohibition and Legalisation: The Dutch Experiment*, Amsterdam and New York: Kugler Publications.
- Boekhout van Solinge, T. (1999), 'Dutch drug policy in a European context', *Journal of Drug Issues*, 29, 511-528.
- Chatwin, C. (2011) *Drug Policy Harmonization and the European Union* Palgrave Macmillan: Basingstoke.
- Chatwin, C. (2003), 'Drug policy developments within the European Union: the destabilizing effects of Dutch and Swedish drug policies', *British Journal of Criminology*, 43, 567-582.
- Commission of the European Communities, (2003) *Communication from the Commission to the European Parliament and the Council on Coordination on Drugs in the European Union* <http://www.eur-lex.europa.eu>
- Council of the European Union, (2012), *EU Drugs Strategy (2013-20)*, Official Journal of the European Union: 2012/C 402/01.
- Council of the European Union, (2008) *EU Drugs Action Plan for 2009-2012* Official Journal of the European Union: <http://www.emcdda.europa.org>
- Council of the European Union, (2005), *Framework Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk assessment and control of new psychoactive substances*, Brussels: OJ L127.

RUNNING HEADER: **The EU in Panglossian stagnation**

Council of the European Union, (2004a), *Framework Decision 2004/757/JHA of 25 October 2004, laying down minimum provision on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking*, Brussels: OJ L355.

Council of the European Union, (2004b) *EU Drugs Strategy 2005-2012* <http://www.emcdda.europa.org>

Dorn, N. & Jamieson, A. (2000) *Room for Manoeuvre: overview of comparative legal research into national drug laws of France, Germany, Italy, Spain, the Netherlands and Sweden and their relation to three international drugs conventions* A study by DrugScope for the Independent Inquiry on the Misuse of Drugs Act, 1971: London.

Duff, A. (1993) *Subsidiarity Within the European Community* London; Federal Trust for Education and Research.

EMCDDA, (2010) *Annual Report 2010: the state of the drugs problem in Europe* <http://www.emcdda.europa.eu>

ENCOD, (2007) *Common press release of Giusto Catania MP and ENCOD*, <http://www.encod.org>

ENCOD, (2004) *Catania Report: European Parliament Recommendation to the Commission and the European Council on the Drugs Strategy 2004-2012* <http://www.action.encod.org>

European Commission, (2017a), *Evaluation of the implementation of the EU Drugs Strategy 2013-2020 and of the EU Action Plan on Drugs 2013-2016: a continuous need for an EU Action Plan on Drugs*, Brussels, 15.3.2017 COM(2017) 195final.

European Commission, (2017b) *Commission Staff working Document – Evaluation of the implementation of the EU Drugs Strategy 2013-2020 and the EU Action Plan on Drugs 2013-2016*. Brussels: 15.3.2017 SWD(2017) 95 final.

European Commission, (2016), *EU support to the Community of Latin America and Caribbean States (CELAC)* Press Release, Brussels, 26 October 2016.

European Parliament, (2016), *A review and assessment of EU drug policy*, Directorate General for Internal Policies: PE 571.400.

European Union, (2017a), *Statement on the occasion of the Commission on Narcotic Drugs 60th anniversary session*, Vienna, 13th-17th March, 2017.

European Union, (2017b), *European Union statement on the occasion of the Intersessional Meeting 16-17 November 2017*, Vienna, 17 November 2017

European Union, (2016), *European Union statement on UNGASS 2016 at 59th Session of the Commission on Narcotic Drugs*, Vienna, 14th March, 2016.

European Union, (2015), *Common Position on UNGASS 2016*, <https://www.unodc.org>

- Fernandez Ochoa, J & Nougier, M. (2017) *How to capitalise on progress made in the UNGASS outcome document* International Drug Policy Consortium: Briefing paper, February 2017.
- Fordham, A. (2016) 'The drugs consensus is not pretty – it's been ripped apart at the seams.' *Huffington Post*, 3rd May 2016 <http://www.huffingtonpost.co.uk>
- Fordham, A. & Jelsma, M. (2016) *Will UNGASS 2016 be the beginning of the end for the 'war on drugs'?* Transnational Institute: <http://www.tni.org>
- Gallahue, P. & Lines, R. (2015) *The death penalty for drug offences: global overview 2015* Harm Reduction International: London
- Global Commission on Drug Policy, (2016) *Public statement by the Global Commission on Drug Policy on UNGASS 2016* Global Commission on Drug Policy, New York: April 21 2016.
- Global Commission on Drug Policy, (2011). *War on Drugs: Report of the Global Commission on Drug Policy* Retrieved from <http://www.globalcommissionondrugs.org>
- Grund, J.P. & Breeksema, J. (2013). *Coffeeshops and compromise: separated illicit drug markets in the Netherlands*. Open Society Foundations: Retrieved from: <http://www.opensocietyfoundations.org>
- Harm Reduction International, (2016) *The Global State of Harm Reduction 2016* <https://www.hri.global>
- Hope, A. (2015) *Plus Ça Change: structural continuities in Mexican counternarcotics policy* <https://www.brookings.edu>
- International Drug Policy Consortium, (2016) *What comes next? Post-UNGASS options for 2019-20* Transnational Institute: 29th November, 2016
- Isacson, A. (2005) 'The U.S. Military in the War on Drugs' in C.A. Youngers & E. Rosin's (Eds.) *Drugs and Democracy in Latin America. The impact of U.S. policy* Lynne Reinner Publishers: London.
- Jelsma, M. (2015) *UNGASS 2016: prospects for treaty reform and UN system-wide coherence on drug policy* Brookings Institute: Retrieved from: <http://www.globalinitiative.net>
- Korf, D.J. (2008). 'An open front door: the coffeeshop phenomenon in the Netherlands' in S. Rodner, B. Sznitman, B. Olsson & R. Room (Eds.) *A cannabis reader: global issues and local experiences – perspectives on cannabis controversies, treatment and regulation in Europe*. Luxembourg: Office for Official Publications of the European Communities. EMCDDA monograph no. 8.
- Lenton, S. & Single, E. (1998) 'The definition of harm reduction', *Drug and Alcohol Review*, 17, 213-220.
- Marlatt, G.A. (1996) 'Harm Reduction: Come as you are', *Addictive Behaviours*, 21(6), 779-788.
- Mortimer, C., (2016), 'Copenhagen makes fourth bid to legalise cannabis to help reduce gang warfare', *The Independent*, Monday 19 December, 2016.

RUNNING HEADER: **The EU in Panglossian stagnation**

Mulgan, G., (2004), 'Government, knowledge and the business of policy making: the potential and limits of evidence-based policy', *Evidence and Policy*, 1(2), 215-226.

Nougier, M. & Fernandez Ochoa, J. (2017) *How to capitalise on progress made in the UNGASS Outcome Document: a guide for advocacy* IDPC: <http://www.idpc.net>

O'Hare, P. (2007) 'Merseyside, the first harm reduction conferences, and the early history of harm reduction', *International Journal of Drug Policy*, 18, 141-144.

Philippines Daily Inquirer (2016) *Story in numbers war on drugs* October 16th, 2016 <https://www.newsinfo.inquirer.net>

Pryce, S. (2012) *Fixing Drugs: the politics of drug prohibition* Palgrave Macmillan: Basingstoke.

RAND, (2017), *Mid-term assessment of the EU Drug Strategy 2013-2020 and final evaluation of the Action Plan on Drugs 2013-2016*, <https://www.rand.org>

Reuter, P. (2011) *Options for regulating new psychoactive drugs: a review of recent experiences* UK Drug Policy Commission.

Rhodes, T. & Hedrich, D. (eds), (2010), *EMCDDA Monographs. Harm Reduction: Evidence, Impacts and Challenges*, <http://www.emcdda.europa.eu>

Ritter, A. (2009), 'How do drug policy makers access research evidence?', *International Journal of Drug Policy*, 20, 70-75.

Rolles, S. (2014) *Cannabis policy in the Netherlands: moving forwards not backwards* <https://www.tdpf.org.uk>

Room, R. (2012). Reform by subtraction: the path of denunciation of international drug treaties and reaccession with reservations, *International Journal of Drug Policy*, 23, 401-406. Doi: 10.1016/j.drugpo.2012.04.001

Room, R., Fischer, B., Hall, W., Lenton, S. & Reuter, P. (2010). *Cannabis Policy: moving beyond stalemate*. Oxford: Oxford University Press/The Beckley Foundation.

Room, R. & MacKay, S. (2012). *Roadmaps to reforming the UN drug conventions*. A Beckley Foundation Report: Retrieved from: <http://www.beckleyfoundation.org>

Room, R. & Reuter, P. (2012). How well do international drug conventions protect public health? *The Lancet*, 379, 84-91. Doi: 10.1016/S0140-6736(11)61423-2

Seddon, T. (2014) Drug policy and global regulatory capitalism: the case of new psychoactive substances (NPS), *International Journal of Drug Policy*, doi:10.1016/j.drugpo.2014.03.009

Tops, D. (2001), *A Society with or without drugs? Continuity and change in drug policies in Sweden and the Netherlands*, Lunds Dissertations in Social Work 5, Lund University: Lund.

United Nations, (1961) *Single Convention on Narcotic Drugs, 1961*, <http://www.druglibrary.org/schaffer/legal>

Youngers, C.A., (2011) *The Obama Administration's Drug Control Policy on Auto-pilot* IDPC briefing paper, April 2011 <http://www.idpc.net>

Youngers, C. A. & Rosin, E. (Eds.) (2005) *Drugs and democracy in Latin America* Lynne Reiner Publishers: London.
