

UNGASS 2016: A Broken or B-r-o-a-d Consensus?

UN summit cannot hide growing divergence in the global drug policy landscape

David Bewley-Taylor and Martin Jelsma¹

KEY POINTS

- Struggling to present an image of unity, the UNGASS on drugs in April 2016 failed to hide the increasing diversity among Member States. This undeniable reality, earlier described by the Executive Director of UNODC as ‘a very b-r-o-a-d consensus’, was reflected in a weak outcome document.
- Although the timing of the UNGASS was prompted by ongoing and disproportionate suffering and violence from the ‘war on drugs’ in Latin America, as on previous occasions, the event did little to address underlying structural problems, including arms trafficking and money laundering.
- Despite constructive inputs from a range of UN bodies, Member States and civil society organisations, the Vienna-dominated UNGASS preparatory process suppressed discussion that questioned the existing architecture of the UN drug control system.
- While containing some positive attributes in relation to access to controlled medicines, health-oriented interventions and proportional sentencing, the outcome document in the main supports the status quo and fails to refer explicitly to harm reduction, decriminalization or the abolition of the death penalty for drug offences.
- An increasing point of tension within the drug control treaty framework, the issue of regulated cannabis markets, remained very much the ‘elephant in the room’ with efforts within the outcome document to dissipate pressure resulting in denial and confusion.
- In spite of a growing need to address the fragmentary UN approach and the recent adoption of the 2030 Agenda for Sustainable Development, the outcome document did much to sustain a siloed approach to the drug issue.
- The UNGASS process as a whole has set the stage for more substantial changes at the next high-level meeting in 2019, in relation to human rights, the Sustainable Development Goals, regulated cannabis markets and the creation of an expert advisory group to improve the functioning and coherence of the global drug control system.

The 30th Special Session of the General Assembly (UNGASS) took place in New York from 19 to 21 April. It was the third special session in UN history devoted to the drugs issue. During the previous drugs UNGASS in 1998, Mr Udovenko, the Ukrainian President of the General Assembly at the time, addressed in his closing remarks a “growing convergence of views” and a “spirit of togetherness”. The tough negotiations over the UNGASS outcome document this year, on the other hand, were characterised by growing divergence and head-on collision on some issues.² A fragile consensus was reached on a final draft at the Commission on Narcotics Drugs (CND or Commission) in March in Vienna. Fears were so prevalent that it could still break apart in the course of the three-day meeting that the adoption of the outcome document, scheduled to take place at the closing session, was moved forward on the agenda immediately after the opening ceremony on the first day. When a journalist asked Mr Fedotov, the Executive Director of the United Nations Office on Drugs and Crime (UNODC), how the UN could pretend there is consensus on how to tackle what has become known simply as the ‘world drug problem’ when some countries are legalising cannabis while in others people are executed for trafficking it, he answered with a wry smile: “it’s a very b-r-o-a-d consensus”.³

Back in 1998, Udovenko had warned that “the drug problem cannot be wished away by good intentions and the international community must be prepared for a long and gruelling fight”. A long and gruelling war on drugs indeed has been fought since, with many thousands of drug traffickers executed, many millions of drug users, small traders and farmers incarcerated, and millions of hectares of coca, opium poppy and cannabis fields sprayed with chemicals or otherwise forcibly eradicated. But it has not brought the world closer to the promised land “free of drug abuse” as the 2016 UNGASS outcome document reconfirms as the global target for 2019, when the next high level UN meeting on drugs will take place. The current Danish President of the General Assembly (GA), Mogens Lykkesøft, concluded in the closing session: “More than ever before, the global consensus recognizes that the solution to this problem lies in a more humane, public-health oriented, human rights compliant, evidence-based approach that addresses this issue in all its complexity.” Affected people and communities, he said, “need interventions that have proven to work and perhaps as importantly: they need honesty about those that have failed.”⁴

Long-standing unresolved issues

Drug war-related violence spiralling out of control led Mexico, Colombia and Guatemala to call for this 2016 UNGASS to “conduct an in-depth review analyzing all available options, including regulatory or market measures, in order to establish a new paradigm that would impede the flow of resources to organized crime groups”.⁵ The original call for the first UNGASS on drugs which took place in 1990 also came from Colombia, shortly after the

assassination in August 1989 of leading Presidential candidate Luis Carlos Galán, ordered by Pablo Escobar. A month later Colombian President Virgilio Barco travelled to the United Nations to give a “J'accuse” speech about the double standards of the rich countries of the North. “Every tactic and every weapon in the war on drugs pales into insignificance when compared to the need to reduce demand”, he told the General Assembly, because “the only law that the drug traffickers do not break is the law of supply and demand”.⁶ He also complained about the lack of political will to introduce international arms controls: “Last year Colombia presented a draft resolution calling for restrictions on arms sales, but unfortunately consensus could not be found at the United Nations ... I call on all the nations of the world to stop this madness and stop it now.” And referring to money laundering, he said: “Somehow our sense of justice is warped when a poor farmer who feeds his family by growing coca is seen as a greater villain than the wealthy international banker who illegally transfers millions of dollars of drug money”. While Colombia needed alternative development assistance, he underscored the importance of establishing fair prices in international trade. Referring to that year’s collapse of the international coffee market: “We cannot afford to talk idealistically of crop substitution in the case of the coca leaf while sabotaging Colombian farmers’ main cash crop and the country’s largest export”.⁷

A quarter of a century later those long-standing Latin American demands have still not been addressed adequately. In fact, Mexican President Calderón, at the GA in September 2012, in very similar terms, demanded that the developed nations assume more responsibility: “If they cannot or are not willing to reduce drug consumption, at least they should stop the exorbitant flow of resources funding criminals. And if that is not possible, perhaps it’s time to recognize the need to explore other alternatives, including market alternatives, to resolve this problem that has turned Latin America into the most violent region of the world.”⁸ While a globally administered and enforced system of export certification and import authorization for drugs for medical and scientific purposes has been in place since 1925, the first arms trade treaty aimed at establishing a similar system to prevent the diversion of arms to the illicit market, only came into effect in December 2014.⁹ And it is still waiting ratification by the US and the signature of some other major players like China and the Russian Federation. The HSBC scandal in 2012 about hundreds of millions of dollars laundered for Mexican drug ‘cartels’ led to not one single criminal conviction of a bank official, convincingly showcasing that anti-money-laundering measures, in terms of loopholes, look like a Swiss cheese. Families of victims murdered in Mexico filed a lawsuit in February 2016 charging that the bank had operated in a “culture of recklessness and corruption”.¹⁰ The Panama Papers also provide ample evidence that without transparency regarding the individuals or companies hiding behind and profiting from anonymous shell companies, control measures simply cannot be effective, an issue the 2016 UNGASS was again not willing to address.¹¹

The Vienna chokehold

After long negotiations in the CND on the modalities for the UNGASS, in December 2014 the decision was made that the Commission “as the central policymaking body within the United Nations system dealing with drug-related matters” should “lead the process” while the President of the General Assembly was invited “to support, guide and stay involved in the process”.¹² In order to “ensure an adequate, inclusive and effective preparatory process” that same month the CND put an “UNGASS Board”, chaired by the Egyptian Ambassador in Vienna, in charge of all preparations, including drafting the UNGASS outcome document.¹³ From that moment on, the drafting and negotiation procedure became a rather obscure process in Vienna tightly controlled by the UNGASS Board and drawing much criticism from reform-oriented countries and civil society.¹⁴ Secretary-General Ban Ki-moon’s suggestion that the UNGASS opportunity could be used to “conduct a wide-ranging and open debate that considers all options”¹⁵ was effectively strangled in the Vienna chokehold.

Many countries, especially from the Caribbean and Africa, have no permanent mission in Vienna, and even though all countries—not only the 53 CND Member States—could participate in the preparations in theory, in practice many were excluded from the process. As most negotiations were done in ‘informal’ meetings, civil society groups were not even allowed to observe, let alone to meaningfully participate. Many efforts were made to still try to escape from the Vienna headlock and to break the monopolistic grip that the status-quo-oriented UNGASS Board, with support from the CND Secretariat, held over the preparatory process. Other parts of the UN system were asked to submit position papers, UNGASS-related events were organized in New York and Geneva, and a special Civil Society Task Force was established jointly by the Vienna and New York NGO committees. A plethora of position papers from Member States, regional blocks, relevant UN agencies and NGOs was collected, and many frank debates took place around the world between governments, UN agencies and civil society, evidencing that significant shifts are under way in the global drug policy landscape.¹⁶ Nevertheless, those efforts failed to change the political dynamics of the consensus-based negotiations about the UNGASS outcome document in Vienna.¹⁷

The UNGASS Outcomes

The UNGASS outcome document reaffirms “the goals and objectives of the three international drug control conventions”, the commitment to implement the provisions of the 2009 Political Declaration and the determination to “actively promote a society free of drug abuse”, and applauds—in absence of supporting evidence—that “tangible progress has been achieved”.¹⁸ On the more positive side, the issue of access to controlled medicines

received significant attention for the first time, and other more minor steps forward were taken regarding specific references to naloxone and overdose prevention, “medication-assisted therapy programmes” and “injecting equipment programmes”. The latter two represent last-minute compromise language for opioid substitution therapy and needle and syringe programmes, which at an earlier stage were already being used as the euphemism substituted for explicit mention of “harm reduction”; a term and health- and rights-oriented approach that remain contested by some Member States.¹⁹

Compared to previous declarations, progress was also achieved regarding mention of “proportional sentencing” though many Member States and civil society organisations expressed their disappointment over omission of any reference to abolishing the death penalty. Some progress can also be detected in references to the need to address the socio-economic issues behind not only illicit cultivation but also production and trafficking, and that the focus should be on “alleviating poverty and strengthening the rule of law”. Drawing specific attention to the policy objective to counter “drug-related crime and violence” in addition to the traditional target of eliminating drug markets, could even be seen as a first tentative step towards accepting a harm reduction approach to the market as a whole.²⁰ Furthermore, as discussed below, the inclusion within the outcome document of references to the recently agreed Sustainable Development Goals, including in relation to Alternative Development, reflected at least a rhetorical admission of the need for a more holistic approach to the issue.

The elephant in the room

All that said, overshadowing the meetings has been the unmistakable policy trend towards legal regulation of cannabis markets and the significant policy shifts in a number of US States and in Uruguay, shaking the very foundations of the global drug control system. “As a starting point, it is essential that Member States use the UNGASS to reaffirm support for the three UN drug-control conventions”, was the first point the US put on the table in its ‘non-paper’ for UNGASS in June 2015.²¹ The common EU position, agreed in Brussels in November 2015, subsequently also pledged to “maintain a strong and unequivocal commitment to the UN conventions” and to restrict the UNGASS mandate “to find feasible, operational and sustainable solutions for the longer term within the framework of the international treaties” (emphasis added).²² The EU politically correctly also underscored “that drug policies should be 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”. But apparently for the EU neither scientific evidence nor objective evaluation, or even human rights compliance, were significant enough reasons to allow thinking outside the confines of the drug control treaty framework. Any discussion about the

legal foundations and basic principles of the UN drug control system was thus blocked early on in the process by an explicit, and politically powerful, US-EU agreement that could rely on support from the G7, many Asian, Middle-Eastern and African countries, as well as from the UN drug control bureaucracy. The UNGASS outcome document consequently underscores that the three drug conventions “and other relevant international instruments” (a long-debated and still somewhat unclear nuance) “constitute the cornerstone of the international drug control system”, and that “persistent, new and evolving challenges ... should be addressed in conformity with the three international drug control conventions, which allow for sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs”.

The phrase “sufficient flexibility” is crucial here since it is interpreted to serve different, even contradictory, purposes. For the EU, flexibility applies to policies such as harm reduction, decriminalization of possession and cultivation of cannabis for personal use, and alternatives to incarceration, but certainly not to cannabis regulation, which the EU considers—correctly so—as falling outside the scope of policy options allowed under the treaties. For countries like Jamaica or the Netherlands, where the principle of legal regulation enjoys broad political support, the fact that regulation would contravene international treaty obligations is considered an impediment for its implementation. Hence “sufficient flexibility,” for them, amounts to taking a political stance against cannabis regulation, the reason why Jamaica strongly objected to the language during negotiations. However, in the United States, where it is politically convenient at a Federal level to deny any breach with the conventions, the argument in favour of a “flexible interpretation” covers—incorrectly so—cannabis regulation at the State level. During the negotiations, that paragraph also received support from countries at the far repressive end of the policy spectrum, including the Russian Federation and China. After all, they argued, the Single Convention says that parties are not “precluded from adopting measures of control more strict or severe than those provided by this Convention” (article 39). The treaties therefore provide in those countries’ interpretation “sufficient flexibility” to continue forced treatment or the death penalty.²³

Perpetuating a siloed approach

The UNGASS provided a much-needed platform to bring above mentioned long-standing unresolved issues as well as newly surfaced ones to the negotiations table in the context of today’s political realities at the UN level; particularly the increasingly obvious fragmentary UN approach to the drug issue. Jeffrey Feltman, Under-Secretary-General for Political Affairs, referred to the philosophy underpinning the 2030 Agenda for Sustainable Development saying that “this landmark, universal agreement calls on us all to take a holistic and comprehensive approach to the most pressing

problems facing humanity. And yet, just over six months after its adoption, we seem to be perpetuating a siloed approach with one of our first test cases: the world drug problem. ... Evidence-based policy making means that we should not be afraid, as the Secretary-General said, to 'consider all options'.²⁴

Honesty about failed policies was forthcoming from several Member States, UN agencies and civil society. According to Minister Gonsalves from Saint Vincent and the Grenadines, for example, "the obscene sums spent on interdiction, enforcement and eradication have nonetheless spurred the growth of a global illicit drug trade worth hundreds of billions of dollars. ... The road out of this cul de sac of trite, ineffective rhetoric ... demands the courage of new thinking and innovative approaches. ... Ten years from now, let it not be said that the international community continued to delude itself about the efficacy of its war on drugs".²⁵

The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, expressed in his statement "suppressed excitement" but primarily "intense frustration" about the UNGASS outcomes.²⁶ One example he mentioned was that the language regarding indigenous rights in the outcome document was "ambiguous" and that "it would have been better if it would be clearly indicated that indigenous peoples should be allowed to use drugs in their traditional or religious practices where there is historical basis for this". The issue could not be openly addressed because the Single Convention explicitly obliges parties to abolish such practices and the political deal required that the UNGASS "unequivocally" reaffirmed support for the treaties. A month before, the High Commissioner had addressed the Human Rights Council in Geneva, saying he was "disturbed by a widespread practise of what could be termed 'human rights window-dressing'." Referring to "the binding laws and principles of human rights", he underscored that those obligations "should not be a 'tick-the-box' exercise".²⁷ The UNGASS outcomes in fact are a good example of that, even though they contain arguably the strongest human rights provision ever adopted in a UN drug control resolution.²⁸ Still, they lack specific recommendations for practical measures with regard to decriminalisation, abolition of death penalty, harm reduction and respect for indigenous rights, as spelled out by the relevant human rights bodies. Many countries issued formal statements after the adoption of the document during the UNGASS opening session expressing their disappointment over these issues.²⁹

It is telling that when the draft UNGASS document was agreed by the CND in Vienna, the most positive concluding remarks came from countries like Nigeria, Egypt, the Russian Federation and China, apparently feeling they had lost the least during the negotiations. Nigeria "called on Member States to embrace the document and find solace in the spirit of the Vienna consensus" and the Russian Federation "noted that agreeing on it would not have been possible without the great flexibility and the spirit of consensus that prevailed among Member States."³⁰ Colombia said in the name of a group of less-

satisfied countries that “owing to the consensus, some issues had remained unresolved that should be resolved in the future in order to have more people-focused policies ... [and that] much remained to be done and that the United Nations should make preparations to ensure a comprehensive approach for 2019 and beyond.” The group also “recalled that the adoption of the 2030 Agenda for Sustainable Development was an opportunity to align all policies, including drug policies, so that they favoured development, inclusion and peaceful societies.”³¹

The way forward to 2019

The outcome document in itself may be disappointing, but the UNGASS process as a whole has set the stage for more substantial changes in the near future:

- The UNGASS contributions from no less than fifteen different UN entities have more than ever before demonstrated the lack of system-wide coherence on the drugs issue.³² In written and oral statements, the WHO, UNAIDS and UNDP for example refer without hesitation to decriminalisation and harm reduction. The Office of the High Commissioner for Human Rights (OHCHR) and several Special Rapporteurs call attention to ongoing human rights violations in the context of drug control: “Violations to the right to life, the right to health, the prohibition of torture and other forms of ill treatment, the prohibition of arbitrary detention, the right to equality and non-discriminations, the rights of indigenous peoples and the rights of children are all sources of serious concern.”³³
- Many UN entities as well as Member States have pointed at the need to realign drug control with the new overarching 2030 Agenda and the Sustainable Development Goals (SDGs). Drug policy at the UN in Vienna cannot continue to act as if it exists in a parallel universe.³⁴ It needs to be comprehensively embedded within the UN’s three pillars: development, human rights, and peace and security. Such a process also requires the development of new metrics to measure the contribution—positive and negative—of drug control policies to the fulfilment of those broader goals the international community has agreed upon.³⁵
- The issue of cannabis regulation may have been studiously avoided in the negotiations over the outcome document, but was not absent from the country statements. Canada repeated Prime Minister Justin Trudeau’s election campaign pledge to regulate cannabis, announcing “we will introduce legislation in Spring 2017 that ensures we keep marijuana out of the hands of children and profits out of the hands of criminals. While this plan challenges the status quo in many countries, we are convinced it is the best way to protect our youth while enhancing public safety.”³⁶ Jamaica explained its recent move to decriminalise

ganja possession for personal use and to regulate medical and religious uses, while “experiencing practical difficulties ... within the limited flexibilities under the Single Convention. ... Jamaica reiterates its call for sufficient policy space to be provided within the international drug control framework, to enable us to address these issues in a matter that is suitable to our national circumstances.”³⁷ And Colombia’s president asked: “How do I explain to a humble Colombian peasant that he will go to prison for growing marijuana, when anyone in the states of Colorado and Washington, in the United States, can produce, sell and consume it freely?”³⁸ Several more US states, including crucially California, will vote on cannabis regulation in November this year; and, with varying legislative reach and levels of political support, proposals for cannabis policy reforms are already under consideration—at national or sub-national levels—in Canada, Guatemala, Mexico, Italy, Spain, Switzerland, the Netherlands and Morocco. Tensions over cannabis regulation and treaty non-compliance are thus likely to spread quickly and widely, making it more and more difficult for countries to stick their heads in the sand over the necessity of honest debate about systemic flaws and outdated elements of the UN drug control treaty system.

- Several countries (Colombia, Uruguay, Ecuador, Jamaica and Panama) and many NGOs have requested the Secretary-General to create an expert advisory group to improve the functioning and coherence of the UN drug control architecture, including addressing treaty inconsistencies and realignment with SDGs and human rights, in the lead-up to 2019; the group membership should represent a balanced selection of experts from Member States, relevant UN bodies, regional organizations, civil society and academia.³⁹

Preparations for the 2019 review will have to start quite soon. The Pavlov response from the UN bureaucracy is likely to be to mandate the CND to start drafting a new Political Declaration for 2020-2030. To prevent that this will result in another disappointing document with a veneer of Vienna consensus, a mechanism to keep all relevant UN entities actively involved in the preparations will be essential. Realigning UN drug policy with the SDGs and human rights obligations requires genuine coordination between the organisation’s structures in Vienna, Geneva and New York. The assistance of a broadly composed more independent advisory panel, a mechanism regularly used within the UN system, could be very helpful in that process. And finally, a group of like-minded countries would be wise to prioritise a well-coordinated reform strategy firmly among themselves over devoting too much energy again in painful negotiations to reach another b-r-o-a-d consensus document. An honest debate about the emerging differences in drug policy directions holds more promise for the future than trying to find solace in the spirit of an irreparably broken Vienna consensus.

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A special session of the General Assembly took place in April revealing a growing divergence in the global drug policy landscape. Difficult negotiations resulted in a disappointing outcome document, perpetuating a siloed approach to drugs at the UN level. There is a clear need to realign international drug policies with the overarching 2030 Agenda and the Sustainable Development Goals, embedding the drugs issue comprehensively within the UN's three pillars: development, human rights, and peace and security. The UNGASS process has helped to set the stage for more substantial changes in the near future, towards the next UN review in 2019.

CONTRIBUTORS

AUTHORS: David Bewley-Taylor and Martin Jelsma

EDITING SUPPORT: David Aronson

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TRANSNATIONAL INSTITUTE (TNI)

De Wittenstraat 25, 1052 AK Amsterdam, The Netherlands

Tel: +31-20-6626608, Fax: +31-20-6757176

E-mail: drugs@tni.org

www.tni.org/drugs



@DrugLawReform

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