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What Comes After the War on Drugs – Flexibility, Fragmentation or Principled Pluralism?

Strengthening global drug policy at the 2016 United Nations General Assembly Special Session on the World Drug Problem

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Executive Summary

In April 2016, diplomats, experts and civil society actors from around the world will gather for three days at a rare Special Session of the United Nations General Assembly in New York, called to address the world drug problem (UNGASS 2016). In some quarters, particularly in the Western Hemisphere, UNGASS 2016 is seen as a moment to rethink global drug control strategies. In other regions, UNGASS 2016 is viewed somewhat differently, as a time to build upon and strengthen the current approach to drug policy, as set out in a current Plan of Action adopted in 2009.

Throughout 2015, United Nations University (UNU) – a global think tank established by the UN General Assembly, and charged with contributing, through collaborative research, to collective efforts to resolve pressing global challenges – has been gathering stakeholders in a series of meetings at United Nations (UN) headquarters in New York, aimed at "Identifying Common Ground" ahead of UNGASS 2016. These meetings have addressed the relationship between contemporary global drug policy and public health, human rights, development and criminal justice. These meetings have been attended by delegates from more than 50 UN Member States, as well as representatives of 16 UN entities and 55 civil society and academic organizations.

Drawing on these consultations, this Policy Report outlines how the global drug control system works, including recent trends; describes three major perspectives going into UNGASS 2016: Orthodoxy, Scepticism and Swing Voting; explores the likely outcome of UNGASS 2016; and makes recommendations for strengthening that outcome.

The trend heading into UNGASS 2016 is becoming clear: Member States will largely coalesce around an affirmation of the existing regime, coupled with a call for *flexibility* in implementation of that regime. The United States and some Latin American countries have called for flexibility as a way to experiment with new approaches to implementing the existing drug control regime. Other states will, however, likely treat an agreement on flexibility as an acceptable response to their calls for respect for state sovereignty in setting domestic drug policy, including the use of strong punitive approaches.

There is consequently a danger that flexibility will lead, in time and after UNGASS 2016 is complete, to policy *fragmentation*: in practice, flexibility will mean very different things in different parts of the world, including being seen in some countries as lending support to existing, repressive drug control policies. We argue that the key to avoiding this outcome – fragmentation – is to ensure that flexibility is not treated as a code-word for unprincipled laissez faire, but instead is embedded in a process of collective drug policy development at the UN, based on a more detailed and holistic analysis by Member States and other stakeholders of 'what

works' in drug policy interventions. UNGASS 2016, we argue, should be seen not as the *end* of a conversation about drug policy, but as an opportunity to set up a structured and inclusive conversation between 2016 and 2019, when the current *Political Declaration and Plan of Action* comes to an end, and a new one will likely be adopted. We argue that UNGASS 2016 should initiate a conversation that, though leaving room for states to exercise flexibility and discretion, ensures that their policy choices are guided by three principles: 1) protection of human rights; 2) promotion of human development; and 3) guidance by the best available scientific evidence. We describe this as an approach based not simply on flexibility but on *principled pluralism*.

The Policy Report explores how four key issues will likely play out at UNGASS 2016 – penal policy, public health, development, and human rights – and identifies five areas of potential common ground that could set the stage for a discussion based on principled pluralism. On penal policy, we argue that while criminal justice and law enforcement-based approaches have been at the centre of global drugs policy for many decades, questions relating to penal policy – the role of capital, custodial and other forms of punishment – are central to drug policy debates in many parts of the world, going into UNGASS 2016. We show that many states are rethinking the role of domestic penal policy in drug control, experimenting with non-criminal penalties for minor drug offences, or diverting drug users into non-custodial intervention programmes encompassing medical, psychological, social services, employment and training, and other types of support and rehabilitation. Yet some states believe that questions of penal policy – including the use of the death penalty – are internal matters, not appropriately discussed in international forums. While we can expect the UNGASS 2016 Outcome Document to emphasize the importance of respect for proportionality, human rights and the rule of law, this will in part be due to the creative ambiguity these broad terms offer. Recognizing these constraints, our recommendation encourages accelerated action to develop a shared evidence base for global policy discussions in this area:

Recommendation 1 – **Penal Policy**

- ### Accelerate evidence sharing on drug control penal policy outcomes

UNGASS 2016 should create a forum to encourage states, international organizations, academics and civil society to share robust scientific evidence about a wide range of drug control penal policy interventions and their outcomes. This forum could provide a platform for South-South and triangular cooperation, and encourage the development of a stronger evidence base on penal policy ahead of the adoption of a new Political Declaration and Plan of Action in 2019.

On public health, we note that the promotion of the "health and welfare of mankind" is the central policy objective of the entire international drug control

regime. We also note that there is also broad consensus among Member States around the importance of a focus on public health in drug policy. Two major public health areas will likely be debated at UNGASS 2016: access to controlled medicines and treatment for people with substance abuse problems, including harm reduction measures. We canvas the positions of a variety of Member States, international organizations, and key external stakeholders. Since the adoption of the 2009 *Political Declaration*, states have routinely reiterated the need for a "balanced and integrated" approach to drug policy – i.e. balancing law enforcement with public health. However, significant tensions have emerged in recent years not only over what that "balance" means in practice, but also over the weight that states should afford to different forms and sources of medical and public health expertise in deciding how to control specific substances. Given these tensions, our recommendations in this area suggest UNGASS 2016 initiate processes to provide objective, evidence-based analysis of – and opportunities for – global access to controlled medicines and greater system-wide coherence across the UN in drug disorder treatment:

Recommendation 2 – **Access to Controlled Medicines**

- **Establish a High-Level Independent Commission on access to controlled medicines**

UNGASS 2016 should establish an high-level, independent, expert commission, supported by WHO, to analyse global access to controlled medicines and report back to the General Assembly or the UN Economic and Social Council, via the UN Secretary-General, on measures to improve it.

Recommendation 3 – **Drug Dependence Treatment**

- **Develop UN-wide guidance on treatment of drug use disorders**

UNGASS 2016 should request the Secretary-General to develop coherent, UN-system-wide guidance on drug treatment programming, for application across UN programming contexts.

On development, we highlight how drug control policy choices will impact several aspects of the 2030 Agenda for Sustainable Development, not only Sustainable Development Goal (SDG) 3.5 (substance abuse treatment), but also SDG 1 (End Poverty), SDG 11 (Sustainable Cities and Settlements), and SDG 16 (Peace and Justice, Strong Institutions). In adopting this agenda, UN Member States have already signalled their acceptance of sustainable development as a *universal* policy agenda, suggesting a willingness to move past rigid *developed v. developing country* thinking – including in dealing with substance abuse and drug control concerns. We demonstrate that some countries are ready to revisit global drug

control policy, precisely because they recognize that new approaches might unlock new development resources. However, global drug policy discussions continue to treat development as a marginal, not integral, aspect of effective drug control policy. *Alternative development* projects aim to provide alternative livelihoods and other forms of development support to communities displaced from illicit drug crop production by supply reduction measures. But programmes often reflect out-dated thinking about the economic geography of drug markets, focusing more on rural, agricultural producer communities than on urban producer and trafficking communities. If alternative development programming is to move from being a tool of charitable giving to a strategic tool driving pro-development community transformation, this will have to change. And in order for development considerations to be more fully integrated into global drug policy choices, we argue, states will need to reflect on their development impacts at the human, household, national and global levels. We offer an operational recommendation for moving this discussion forward:

Recommendation 4 – **Human Development and Drug Control Metrics**

- **Build new pro-development metrics to help prepare the next Political Declaration**

Building on current discussions on drug control indicators for SDG 3.5 in the Inter-Agency and Expert Group on SDG Indicators and the UN Statistical Commission, UNGASS 2016 should call on the UN Statistical Commission to initiate a formal workstream to develop new metrics measuring the human development impacts of drugs and drug control policies. If possible, such data should begin to be collected by national statistical agencies ahead of 2019, to inform the preparation of a new Political Declaration and Plan of Action.

On human rights, we note that while the three existing drug control Conventions do not specifically reference human rights, it is clear that states are obliged to read the Conventions in light of the Universal Declaration of Human Rights, and to implement their Convention obligations in ways that respect human rights. This is recognized in the 2009 *Political Declaration and Plan of Action*, and in other products of the UN Commission on Narcotic Drugs (CND) and the UN Office on Drugs and Crime (UNODC). The UN Office of the High Commissioner for Human Rights has detailed how some drug policy choices negatively impact human rights in the areas of penal policy, protection of children, indigenous people's rights, and non-discrimination. We explain, however, that the elevation of human rights considerations within global drug policy will not go unopposed. As with matters of penal policy, some states see discussion of human rights as beyond the purview of the global drug control institutions. Given these political realities, we suggest that UNGASS 2016 focuses its efforts in this area on encouraging system-wide coherence within the UN system:

Recommendation 5 – **Human Rights**

Develop UN-wide guidance on protection of human rights in drug programming

UNGASS 2016 should request the Secretary-General to task the UN System Task Force on Transnational Organized Crime and Drug Trafficking to develop a system-wide policy on protection of human rights in drug-related programming. This should operationalize, and build upon, the existing UN Human Rights Due Diligence Policy.

The Report closes with a sixth, procedural recommendation aimed at creating a space for further discussion of global drug policy between 2016 and 2019, based on principled pluralism, with four characteristics: it should be 1) inclusive; 2) driven by science; 3) pro-development; and 4) human rights protecting:

Recommendation 6 – **Towards 2019**

Create an Open Working Group on Drug Policy to prepare Global Drug Policy Goals for adoption in 2019

UNGASS 2016 should establish an Open Working Group on Drug Policy (OWGDP). The OWGDP should sit in New York between UNGASS 2016 and 2019, and present a proposal to the UN General Assembly for a new Political Declaration and Plan of Action, including measurable Global Drug Policy Goals. The OWGDP should draw its inspiration from the Open Working Group that produced the Sustainable Development Goals, including its troika system for state representation, and its extensive consultations with the UN system, civil society and interested stakeholders. The OWGDP should include an expert Scientific Advisory Committee, supported by World Health Organization, modelled on the Intergovernmental Panel on Climate Change process (and thus including not only Member State officials but also independent scientific experts), tasked with reviewing and summarizing the state of global scientific knowledge in specific issues areas, such as penal policy, drugs and development, and drugs and public health. The OWGDP should also include a Human Rights Advisory Committee, tasked with ensuring that the OWGDP's proposal respects human rights. ■

Introduction

In April 2016, diplomats, experts and civil society actors from around the world will gather for three days at a rare Special Session of the United Nations General Assembly in New York, called to address the world drug problem (UNGASS 2016). This gathering reflects a growing sense in some quarters, particularly in the Western Hemisphere, that the so-called 'War on Drugs' has failed, and that global drug policy needs rethinking.

The broad contours of global drug policy were set in three global drug control conventions adopted in 1961, 1971 and 1988 (discussed further in Part 1). Member States periodically adopts a *Political Declaration and Plan of Action* to set out how these Conventions will be implemented.[1] Progress is more or less continuously

monitored by the 53-country, Vienna-based UN Commission on Narcotic Drugs (CND). The current *Political Declaration and Plan of Action*, adopted in 2009, will expire in 2019. There is, however, growing concern that the current approach to drug control is not only failing to achieve its stated goal – the elimination of the use and trade of illicit narcotics – but also causing a wide range of negative, unintended consequences. In 2012, Mexico, Guatemala and Colombia convinced the rest of the United Nations (UN) General Assembly – some 190 other countries – to hold an extraordinary Special Session to discuss the world drug problem, three years ahead of the next expected review in 2019.

Throughout 2015, United Nations University (UNU) – a global think tank established by the UN General Assembly, and charged with contributing, through collaborative research to collective efforts to resolve the pressing global challenges – has been

gathering stakeholders in a series of meetings aimed at "Identifying Common Ground" ahead of UNGASS 2016. These meetings have been attended by representatives of over 50 countries, 16 UN entities, and 55 civil society and academic organizations. Drawing on these consultations, this Policy Report explains the major perspectives ahead of UNGASS 2016, explores its likely outcomes and makes recommendations for strengthening them.

In Part 1, we explain how the global drug control system is working. Part 2 describes three major perspectives going into UNGASS 2016: Orthodoxy, Scepticism and Swing Voting. We argue that these will likely interact to create a consensus at UNGASS 2016 around the idea of national *flexibility* in the implementation of the existing drug control Conventions. We highlight the risk of this flexibility morphing into *fragmentation*, and suggest steps to encourage, instead, *principled pluralism* in global drug policy: allowing states room for scientifically-based, pro-development policy experimentation while protecting human rights. Part 3 examines how four key issues will likely play out at UNGASS 2016 – penal policy, public health, development, and human rights – and identifies five areas of potential common ground. Finally, in Part 4, we argue that states should use UNGASS 2016 to set up a global conversation on drug policy, running through 2019, with four characteristics: it should be 1) inclusive; 2) driven by science; 3) pro-development; and 4) human rights protecting. After reviewing recent UN practice in similar global policy discussions, we recommend that UNGASS 2016 establishes a new multi-stakeholder Open Working Group on Drug Policy, modelled on the one that designed the new 2030 Agenda for Sustainable Development, to develop a new global drug policy incorporating Global Drug Control Goals, for adoption in 2019. ■

Rethinking international drug control

THE REGIME

The international drug control system is established by three major conventions adopted over the last half century, which must also be read in the light of the Universal Declaration on Human Rights. The *Single Convention on Narcotic Drugs*, adopted in 1961 and amended by a 1972 Protocol, is the cornerstone of the regime. It establishes a global drug control system, placing manufacturing, possession, trade and use restrictions on specific psycho-active substances such as cannabis, heroin, cocaine and methamphetamine, with the object of promoting the "health and welfare of mankind". The 1971 *Convention on Psychotropic Substances* expanded the scope of this global control regime to include psychotropic substances.[2] The 1988 *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* additionally requires countries to work individually and together to criminalize and combat the illicit drug trade.[3] While characterizing "addiction to narcotics drugs" as "a serious evil for the individual and … fraught with social and economic danger to mankind", this regime pledges access to controlled medicines for the relief of pain and suffering.[4] There is consequently a tension built into global drug policy from the outset, recognizing narcotics as a source of both social harms and social goods. That tension, and how to manage it, remains at the heart of the global drug policy debate to this day.

The official venue for that debate is the United Nations Commission on Narcotic Drugs (CND), an intergovernmental body created in 1946 that sits in Vienna and reports to the UN Economic and Social Council (ECOSOC). CND reviews and amends the global schedules of prohibited and controlled narcotics, after receiving recommendations from the Expert Committee on Drug

Dependence (ECDD) of the World Health Organization (WHO), which evaluates the medical properties and abuse potential of specific substances. CND also makes non-binding recommendations about the broader implementation of the Conventions. While the UN General Assembly and ECOSOC, in New York, include 193 Member States, the CND comprises just 53 of these states. Since many countries do not have diplomatic representation in Vienna, they rarely sit on CND, giving them limited and infrequent participation. CND decisions are, like many in the UN, made by consensus, meaning that each Member State can block any decision it does not like. CND guides the UN's programmatic efforts to assist Member States in discharging their Convention obligations, mainly carried out by the UN Office on Drugs and Crime (UNODC), also based in Vienna. CND leads the preparations for UNGASS 2016.

While CND provides a forum for global drug policy discussions, the task of officially interpreting those Conventions falls to the International Narcotics Control Board (INCB), an independent, quasi-judicial expert body comprised of 13 individual members, notionally serving in their individual capacity. INCB monitors the control system, including through country visits to assess state compliance, and supports states' efforts to comply.[5] All members are elected by ECOSOC; 10 from a list provided by states, three from a list provided by the WHO.[6]

The control regime is primarily implemented by Member States themselves, through a range of regulatory, law enforcement, and medical mechanisms. They receive some support from UN entities, notably UNODC. Headquartered in Vienna, UNODC has a field presence in all regions, providing technical support to Member States in their efforts to discharge their Convention obligations. It also provides important analysis and research to the global community, such as the annual *World Drug Report*, which provides a global overview of the trends in production, trafficking and consumption of major illicit substances.[7] UNODC also serves as the Secretariat for the key Conventions and governance bodies in this field. Ninety per cent of UNODC's budget comes from voluntary state contributions, rather than the regular UN budget approved by the General Assembly,[8] making UNODC particularly responsive to those states that finance it.

Beyond UNODC, and the ECDD, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Development Programme (UNDP) also contribute to efforts to support states' drug control-related programming. For example, one goal guiding the current strategic plan of UNAIDS is to prevent all new HIV infections among people who use drugs,[9] and the 2011 *Political Declaration on HIV and AIDS* calls on states to "Reduce transmission of HIV among people who inject drugs by 50% by 2015".[10] UNDP assists states in many areas that intersect with drug policy, including livelihoods, poverty eradication, health and HIV/AIDS, and governance and rule of law.[11] As we explore further in Part 3, the UN Office of the High Commissioner for Human Rights (OHCHR) has also recently begun to identify the impacts of drug control policies on human rights as an area of concern.[12] And the UN Department of Political Affairs (DPA) has drawn attention

to the impact of drug trafficking on political stability.[13] Since 2011, these different UN entities have attempted to coordinate their work in this field through a UN System Task Force on Transnational Organized Crime and Drug Trafficking.

IS IT WORKING?

Although this regime has been operating for over fifty years, progress towards achieving its objective, as most recently articulated in the 2009 *Political Declaration and Plan of Action* – to "minimize and eventually eliminate the availability and use of illicit drugs and psychotropic substances" – has not been convincing. UNODC itself estimates that global illicit drug use is stable at around five per cent of the global population.[14] UNODC estimates 246 million people used at least one illicit substance in 2013, with 10 per cent of this population suffering from drug use disorders or drug dependence.[15] (WHO, with slightly different definitions and data, puts the dependence figure at around 60% of the UNODC number.[16]) While coca bush cultivation appears, uncertainly, to have declined in recent years, in 2014 global opium production was recorded at its highest level since the late 1930s. New cannabis production techniques are producing higher yields with higher potency products, and seizure data indicates a rapid expansion of the global market for amphetamine-type stimulants (ATS), as noted by UNODC.[17]

Rapid commercial innovation in new psychoactive substances (NPS) poses particular challenges for effective control. Some NPS appear to have similar effects to scheduled substances, yet remain unscheduled by CND and therefore freely available.[18] The scientific evidence on the toxicology and overdose risk of these substances is limited, challenging the international drug control system to keep up.[19] But the market does not wait: in Europe, 101 new NPS were identified in 2014, bringing the number of NPS monitored to more than 450. This is double the entire number of all substances currently controlled under the global drug control system. Over half of these were first reported after 2011.[20] Some governments also express alarm about innovation in sales methods. The sale of illicit narcotics via encrypted sites on the internet – the so-called 'Dark Net' – also poses challenges for governments and the global drug control system. The best-known example is the now-defunct *Silk Road* website: it reportedly had annual sales revenues of USD 22 million before it was shut down.[21] Law enforcement responses have included traditional surveillance, interdiction and prosecution, but this approach is constrained in countries with limited technological capacity, and has also on occasion raised privacy and human rights concerns.[22]

The illicit global drug market, beyond the reach of effective state regulation, causes major social harm. As UN Secretary-General Ban Ki-moon has identified, drug trafficking and drug abuse can wreak immense damage on communities and individuals, and pose a major obstacle to sustainable development and poverty eradication.[23] Opiates are the major source of overdose deaths worldwide.[24] This is not a problem isolated to poorly resourced states: in the United States, nearly

7,000 people are seen in emergency rooms *each day* as a result of abuse of prescription opioids, and on average 44 people die from prescription painkiller overdose daily.[25] Heroin addiction is growing rapidly in the United States, with three-quarters of heroin addicts having previously been users of prescription opioids.[26] Moreover, intravenous injection of opiates spreads HIV/AIDS and hepatitis C; outside sub-Saharan Africa, people who inject drugs account for 30 per cent of all new HIV infections.[27]

Worldwide, total retail sales for the black market in drugs are valued at USD 320 billion annually,[28] and both the commodities on offer and the routes by which they are traded continue to evolve. Despite several decades of the US-led 'War on Drugs' – a term that government now, as we discuss further below, officially shuns[29] – Latin America remains the major global source of cocaine, and Afghanistan and Myanmar remain the major sources of heroin – though it, too, is making a return in Latin America. The routes through which these precious illegal commodities are trafficked to market are persistently tainted by corruption, political instability and violence.[30] A growing body of evidence suggests that when new drug trafficking routes are carved out – for example over the last decade from Latin America through West Africa to Europe – the advent of the drug trade intersects with underlying political and conflict dynamics in ways that may significantly complicate conflict prevention and resolution.[31] In contrast to heroin and cocaine, however, ATS and new psychoactive substances (NPS) are increasingly manufactured, and consumed, worldwide. Cannabis – a weed – is increasingly easily grown just about anywhere.[32]

Governments have however not only expressed concern about the ability of the global drug control regime to keep up with market developments; some have also expressed concern about the unintended consequences of a half-century's efforts to repress that market. The law-enforcement first, sometimes militarized approach known by the shorthand 'War on Drugs' is now seen in Latin America, in particular, as contributing to the violence and crime associated with the global drug trade.[33] As UNODC has stated the "strongest case against drug control is the violence and corruption associated with the black market." In "attempting to [eliminate drug use]", UNODC has concluded, heavy-handed approaches to implementing prohibitionist policies "have indirectly enriched dangerous criminals, who kill and bribe their way from the countries where drugs are produced to the countries where drugs are consumed".[34] State institutions and political processes can be threatened by "drug cartels [who] have the means to buy protection, political support or votes at every level of government and society".[35] As UNDP recently drew attention to, some drug trafficking organizations are in control of significant territories and populations, often perpetrating significant human rights abuses in the process, and fomenting insecurity for citizens.[36] At the same time, military and police interventions into such spaces risk significant human, economic, physical and social collateral damage, as entire neighbourhoods are destabilized and people are forcibly displaced. UNODC itself has identified a number of negative "unintended consequences" arising from current international drug control policies, summarized in Figure 1.

According to UNODC, the unintended consequences of current drug policies include:

Black market: the creation of a lucrative and violent criminal black market for drugs of macroeconomic proportions.

Policy displacement from health to law enforcement, drawing public resources and political attention away from public health considerations towards law enforcement and security.

Geographical displacement as crackdowns on drug production and trade push them, and with them, crime, violence, and destabilization, to new geographic areas.

Substance displacement: the unwitting creation of incentives for users to switch from heavily policed drugs to a drug with similar effects with less stringent controls, creating new patterns of drug use and markets.

Criminalization and marginalization of people who use drugs, often amplified through the use of the criminal justice system to address drug use and minor possession. Drug-related incarceration rates are, in many countries, highest amongst young, poor, marginalized populations, often having lifelong – or even, in some cases, multi-generational – consequences on human and social development.[37]

Figure 1

Growing evidence of these unintended negative consequences has also raised serious questions about the opportunity costs incurred. With global drug enforcement apparently costing around USD 100 billion annually,[38] there is a real question as to whether these funds could be more productively spent in other ways with a more positive development pay-off. To date, however, the resources allocated to social programming and demand reduction efforts in the implementation of the global drug control regime are dwarfed by law enforcement spending. One estimate suggests that 70 per cent of drug control expenditures go towards supply reduction measures.[39]

Concern about the social impacts of law-enforcement focused approaches has been growing in some quarters for several decades. Beginning in the late 1970s, a few countries in Europe began to supplement criminal justice-based methods for dealing

with drug users with public health-based approaches, combining supply and demand reduction with what came to be known as *harm reduction* (a concept we explore further in Part 3). In the late 1970s, The Netherlands relaxed enforcement of criminal penalties for limited possession and supply of cannabis and certain hallucinogens.[40] In the early 1990s, Switzerland adopted a four-pillar drug policy combining efforts to prevent drug use, therapy for drug dependence, harm reduction, and law enforcement. This controversially included the use of opioid-assisted treatment and rehabilitation.[41] And in 2000, Portugal instated a new drug policy decriminalizing the use of all drugs and creating a system focused on harm reduction and health services for people who use drugs.[42]

A CROSSROADS?

These European experiments have, in the last five years, been followed by new drug policy initiatives in the Western Hemisphere, likewise aiming to minimize the social harms caused not only by drugs, but also by drug control measures. Together, these initiatives have created a growing sense that global drug policy is approaching a crossroads.[43]

Frustrated in its efforts to have traditional uses of coca leaf excluded from the global control regime, in January 2012 the Bolivian government became the first to leave the 1961 Single Convention, rejoining in February 2013 after adopting a legal reservation that gave it room to create a regulated domestic market for coca leaves.[44] Uruguay is now rolling out a regulated, national market for recreational consumption of cannabis, forthrightly arguing that such personal use is a protected private matter, notwithstanding Convention language indicating that the availability

of scheduled drugs should be limited to medical and scientific purposes.[45] The Caribbean Community (CARICOM) has established a regional commission to conduct research on the health and legal implications of cannabis decriminalization.[46] In Vancouver, Canada, the city council has approved plans to regulate its existing illegal medical cannabis shop market, including by setting zoning rules and licensing fees.[47] In the US, the Obama administration acquiesces in experiments with cannabis law liberalization at the state level that go even further, allowing for the development of commercial suppliers and distributors. Currently, medical marijuana is legal in 23 US states, recreational possession and use of marijuana has been decriminalized in 18 states, and recreational use is legal in four states and Washington D.C.[48] (Decriminalization generally involves the removal or suspension of application of *criminal* penalties for legal infractions associated with personal drug use (but may leave other penalties in place), whereas legalization removes *all* penalties associated with personal use, and may allow for personal cultivation and/or a legal, regulated market as well.) Expectations are high that California – the fifth largest economy in the world – will vote on similar reforms in November 2016. And while US federal officials describe the moves at the state level to create a legal, regulated cannabis market as illegal under federal law, they are not only refraining from enforcing that law, but also removing obstacles to suppliers accessing the financial system.[49]

The US Office of National Drug Control Policy and the Department of Justice have also promoted reforms of the federal criminal justice system's handling of drug offenders.[50] Under the 2013 *Smart on Crime Initiative*, the Obama administration has initiated sentencing reforms for low-level, non-violent drug convictions, and is also advocating for changes to federal mandatory minimum sentences.[51] Recognizing racial disparities in some drug-offence sentencing guidelines, the United States Congress passed the *Fair Sentencing Act*, reducing sentencing discrepancies for cocaine and crack-cocaine that had placed an undue burden on minorities.[52] The US Department of Justice is coordinating the early release of a large numbers of prisoners based on revised sentencing guidelines, and President Obama has gone so far as to use federal clemency powers to reduce some existing drug related sentences.[53]

These sub-national and national initiatives have been reinforced by a regional process providing political top-cover for innovation throughout the Americas. The Organization of American States now openly countenances scenarios in which governments move away from prohibitionist policies. A major May 2013 OAS *Report on the Drug Problem in Americas* identified possible ways forward, including decriminalization and legalization.[54] In June 2013, the Organization of American States adopted a new declaration on drugs entitled *For a Comprehensive Policy Against the World Drug Problem in the Americas*, which suggests that new experiences and approaches taken by governments may usefully inform global policy and encourage broad and open debate on the world drug problem.[55]

These calls for a rethink of global drug control orthodoxy have not, however, gone unremarked. For instance, when Switzerland moved to support heroin-assisted

drug treatment, INCB called on the WHO to review the program.[56] INCB showed similar dissatisfaction with Portugal's decriminalization law, and of reform initiatives in Uruguay and Bolivia.[57] Most recently, it has indicated that the permissive approach to cannabis being taken in several states has put the US in breach of its international treaty obligations.[58] The US' response has been to call for flexibility in the interpretation of the global prohibition framework.[59]

This is the context in which Mexico, Guatemala and Colombia successfully pushed for the next major discussion of global drug policy scheduled at the UN for 2019 – when the UN's 10-year *Political Declaration and Plan of Action* on drug control will expire – to be brought forward to 2016. To generate a broader discussion about drug policy than the CND allows, these Latin American countries secured agreement that the meeting would be held by the General Assembly in New York.[60] The result is a rare UN General Assembly Special Session (UNGASS) on the world drug problem, scheduled for 19-21 April 2016 – UNGASS 2016. In the next section, we explain the three broad strands of opinion that are likely to be present in UNGASS 2016, and consider how they interact. ■

Perspectives going into UNGASS 2016

The scheduling of UNGASS 2016 has been interpreted – particularly in those parts of global civil society that advocate for drug policy reform – as a sign that UN drug policy may be at a turning-point. Expectations have been raised in some quarters that UNGASS may consider reforming the legal framework for global drug control, encourage states to move away from a heavy focus on criminal justice towards more public health-oriented policies, and perhaps even consider rescheduling or legalizing some currently prohibited substances, notably cannabis.[61]

As preparations for UNGASS 2016 have unfurled, however, it has become clear that at least two of these three expectations are set to be comprehensively dashed: the appetite amongst Member States to raise the thorny issue of legalization is extremely limited,[62] and treaty reform is decisively *off* the UNGASS 2016 agenda. The formal debate will start from the presumption that all states will continue to operate within the confines of the existing Conventions. As we explore further below, while there will be support from many states for considering the public health impacts of current drug control measures, it increasingly appears that UNGASS 2016 will leave states significant discretion in interpreting the Conventions. If anything, the US push for flexibility will have the effect of enlarging state discretion, whether it tends towards public health-based approaches or the more traditional law-enforcement led approach. The reality is that the orthodox, law enforcement first, approach to drug control continues to be widely used: UNODC assesses that while criminal convictions related to drug *trafficking* have remained relatively stable over time, drug *possession* offences showed a 13 per cent *increase* worldwide since 2003.[63] The push for flexibility reflects the fact that, six months out from UNGASS 2016, there is no single, coherent view amongst the UN's 193 Member States about what UNGASS 2016 should aim to achieve, or even what will come *after* UNGASS 2016.

Instead, as we explain in this section, there are three broad approaches: Scepticism, Orthodoxy, and Swing Voting.

SCEPTICISM

As explained above, UNGASS 2016 is the result of an initiative led by some Latin American states, reflecting a view that the current, orthodox approach, is not working as desired. Other stakeholders that have voiced similar scepticism include some Caribbean and European states, as well as some UN bodies (notably UNAIDS, UNDP and OHCHR). Activist civil society groups, such as the Global Commission on Drug Policy, Drug Policy Alliance and International Drug Policy Consortium, have also helped to stoke this scepticism, as have a number of high-profile international media outlets who have questioned the War on Drugs and called for its end.[64]

The aspirations for UNGASS 2016 of each of these sceptical voices differ, however, quite significantly. Some civil society groups, notably the high-profile, private, 24 member Global Commission on Drug Policy, have actively advocated for treaty review and reform, and even consideration of legalization of some currently prohibited drugs.[65] Few states now openly advocate this agenda – though Jamaica and Uruguay have both pushed for its consideration.[66] Other Latin American countries have, more tentatively, requested that UNGASS initiate a review of scheduling arrangements and the mandates of the drug control regime's organs,[67] and more broadly advocate a change to the tone and tenor of global drug policy debates to prioritize a focus on societies and individuals. This has included calls for addressing social harms and root causes of the drug trade, community violence reduction, reform of incarceration policy, balancing law enforcement with public health priorities, and development-based approaches to drug policy.[68] We return to these specific issues in Part 3 of this paper. Reform-minded European states such as The Netherlands and Portugal arguably have an even narrower agenda for UNGASS 2016, encouraging a greater focus on public health tools in drug treatment and, as a recent European Union (EU) position paper calls for, an affirmation that the "guiding principle of drug policies should be scientific evidence and best practices."[69] Most African and Asian states support the current supply-reduction paradigm, although there are some signs that Senegal may be becoming more sceptical,[70] perhaps a sign of the influence of the 2014 findings of the West Africa Commission on Drugs, a high-level independent expert group similar to the Global Commission on Drug Policy.

Scepticism is also forcefully expressed by some UN entities, increasingly vocal about the need to de-conflict the UN's role in promoting global drug control with its role in promoting public health, development and human rights. As we discuss further below, UNDP is calling attention to drug policy impacts on human development,[71] while UNAIDS floated the idea that any new political declaration on drug policy should contain a fourth pillar focused on public health.[72] The Human Rights Council (HRC) recently debated a study prepared at its request by OHCHR on the effects of

the world drug problem on human rights,[73] and the Deputy High Commissioner of Human Rights expressed "hope" that the UNGASS outcome document addresses human rights "so that… protection of human rights can be better integrated into State law and practice".[74] And even the WHO, normally cautious in this area, has suggested that the many interpretations of the meaning of "public health" point to a need to clarify that concept's place in the global approach to drug policy.[75]

Scepticism alone does not, however, offer a coherent agenda for reform. This is the critique that many state representatives privately offer in New York: having called a high-profile UN General Assembly Special Session to query the orthodox approach to global drug control, they grumble, the sceptics have failed to articulate a clear alternative policy agenda. This risks weakening the current system without mending it. Instead, they suggest, these issues would be better left for the drug control specialists at the CND in Vienna, who follow these issues routinely and are better informed about the complex medical, legal, social and political issues in play. The sceptics respond with a variation on the French statesman George Clemenceau's quip: "War is too important to be left to the generals". It is now clear, they suggest, that the social impact and significance of drug control make it too important a matter to leave to the path-dependent experts sent to CND from law enforcement agencies and diplomatic corps, reproducing the drug control discourse without accounting for its impacts on public health, development and human rights. A Special Session of the General Assembly was needed, they argue, precisely to allow a step-back examination of global drug policy, and to ensure 'system-wide' coherence.

ORTHODOXY

The absence of a coherent reform agenda heading into UNGASS 2016 and the reality of consensus decision-making at the UN inevitably mean that the Outcome Document will not deviate very far from the current orthodoxy. Indeed, many states see talk of legalization as reckless. As a previous chair of INCB has pointed out, liberalization of access to some currently prohibited narcotics would likely have some negative impacts on public health, citing alcohol and tobacco markets as "cautionary tales".[76] UNODC has also historically championed a law enforcement-led approach, arguing, controversially, that supply reduction efforts have led to long-term decline in supply in some markets.[77] Both the current Executive Director of UNODC, Yuri Fedotov, and his predecessor, Antonio Maria Costa, have however emphasized the need for the international drug control conventions to be implemented in a manner that respects human rights, protects public health and encourages access to licit livelihoods.[78] Yet on the occasions that UNODC, as the Secretariat for the global drug control Conventions, has taken issue with elements of the orthodox approach to drug policy, this has had little visible effect within CND.

The powerful group of states that are clearly supportive of the orthodox approach includes Russia, China, India, Japan, and many Middle Eastern and Asian states.

For some Asian states this support for strong supply reduction efforts is rooted in the historical experience of armed Western invasion intended to force Asian consumers to accept Western-controlled drug supply, as well as their own subsequent experiences attempting to stamp out drug production, sometimes with apparent – if brutal – success.[79] It is also important to recognize that, unlike their Latin America counterparts, some Asian states today witness large drug flows and consumption *without* suffering high levels of overt, widespread violence (although some, such as Afghanistan and Myanmar, do). From this perspective, drug trafficking, if properly controlled by the state, does not necessarily lead to the social violence witnessed in the Western Hemisphere.[80] The rise of the middle class across Asia has nonetheless stoked concern about rising drug consumption and abuse, leading some governments, such as China, to crack down in an effort at deterrence, despite international expressions of concern.[81] Iran is believed to be executing five times the number of drug smugglers it did a few years ago, and Russia is reportedly exploring agreements with neighbouring countries to ban methadone.[82]

SWING VOTING

Most states are not deeply ideologically committed to a law enforcement-based approach to drug policy. They are, at least in theory, *Swing Voters*, open to persuasion. It is conceivable that these states' positions on drug policy could change, but it would require the clear articulation of a new policy agenda, with clear pay-offs that could at least offset their losses from defecting from the orthodoxy. Almost fifty years of the 'War on Drugs' has created strong policy inertia. A powerful network of vested institutional interests at the national level supports continuing the current approach to drug policy. In some fragile states, foreign financial, technical and political support, framed in terms of drug control objectives, plays an important part in controlling militaries, organizing patronage, and regime security strategies.[83]

Still, the evolution of the position of the United States may change the equation as other states begin to query whether defection from the 'War on Drugs' orthodoxy still carries the same costs, namely the withholding of US military or financial support. Some commentators suggest that other states, notably Russia and China, may yet step into the role of 'Drug Warriors', enforcing the orthodoxy, and stepping up financial support to international drug control programming.[84] Domestically, cracking down on drug use – and especially drug smuggling – remains good politics in many countries; stigmatization of drug traffickers and users is an important part of the narrative that many governments use to persuade their citizens that they are protectors of the community.

Hardly any Swing Voters seem likely to dramatically change their position in the next six months, however, because there is no serious pressure from their publics, nor from key bilateral partners, for change. It is conceivable, however, that they could change their position over the next few years – for example ahead of the renewal of

the *Political Declaration and Plan of Action* in 2019. For example, there are arguably significant development pay-offs (including public health benefits) to be gained from a more balanced approach to drug control. But for this pro-development drug policy agenda to emerge and persuade the Swing Voters, they will have to be *involved* in the global drug control discussion. 140 UN Member States – many of them Swing Voters – are *not* routinely involved in that debate, because it takes place at the 53-Member CND in Vienna. Moreover, sceptics will have to explain in much more concrete – i.e. dollar – terms what the pay-offs from drug policy reform will be. As more concrete evidence emerges from Western Hemisphere, European, and perhaps some African experiments about the costs or benefits of different policy reforms – which might include changes in areas as diverse and complex as tax revenue, public health burdens and expenditure, criminal justice expenditure and rates of violence – the case for reform may become more convincing, and the positions of Swing Voters more salient to determining global drug policy. For now, however – and at UNGASS 2016 – they will remain a silent majority.

WHAT WILL THE OUTCOME BE?

The trend heading into UNGASS 2016 is clear: in the absence of a clearly articulated reform agenda with obvious pay-offs for states who muster the courage to defect from the orthodoxy, Member States will largely coalesce around an affirmation of the existing regime, coupled with a call for flexibility in implementation of that regime. Some small rhetorical adjustments in favour of states giving greater attention to public health and human rights in their own implementation efforts will be thrown in for good measure. So much is apparent from the negotiations to date.[85]

This outcome will not be without risks. There is a danger that flexibility will lead to policy fragmentation, because in practice flexibility will mean very different things in different parts of the world, pulling a notionally global regulatory system in almost opposite directions in different regions. In the Americas and parts of Europe (and Australasia), flexibility will give a green light to states, provinces and municipalities trying out more permissive, if regulated, approaches to cannabis, as well as experimentation with public health based treatment of users and offenders. In Asia and parts of Africa, by contrast, flexibility will be seen as a validation of deterrence-oriented approaches based on law enforcement crackdowns, draconian sentences and a reliance on coercive rehabilitation methodologies. As INCB has pointed out, the challenge is to ensure that experimentation does not "undermine the principle of common and shared responsibility".[86] If flexibility slides into fragmentation, both policy and operational coordination will suffer – and the costs of coordination will rise. Drug reformers such as the Transnational Institute also point to the broader harms that might be caused by normalizing breaches of the drug control conventions: acquiescing in breaches of one convention may undermine the legitimacy of global governance more generally.[87]

The key to avoiding this outcome – fragmentation – is to ensure that flexibility is not treated as a code-word for unprincipled laissez faire, but instead is embedded in a process of collective policy development, based on a more detailed and holistic analysis of what works. The result of such an approach could be a more pluralistic system than the War on Drugs has allowed, giving states greater flexibility in their choices about the mixture of policy tools that will best suit their national circumstances. But if it is to be globally legitimate and effective, it must also be a system that ensures that national policy choices are guided by three common central principles: 1) respect for human rights; 2) promotion of human development; and 3) guidance by the best available scientific evidence. In Part 3, we explore four specific issue areas that UNGASS 2016 will consider, and identify common ground in each area that we believe will allow the emergence of such a discussion and, in time, this kind of *principled pluralism.* In Part 4, we offer a suggestion for an organizational framework for that discussion between UNGASS 2016 and 2019. ■

Is there any common ground?

PENAL POLICY

Criminal justice and law enforcement-based approaches have been at the centre of global drugs policy for many decades, particularly since the 1988 Convention criminalized the illicit drug trade. The 2009 *Political Declaration and Plan of Action* incorporates an entire pillar focused on criminal justice efforts, including encouraging judicial cooperation and promoting anti-money-laundering.[88] In recent years, however, there has been a growing push to rethink policing strategies[89] and penal policy: how criminal justice systems handle drug offences, particularly the heavy reliance in some jurisdictions on incarceration of drug users and the use of the death penalty to deal with traffickers. While policing issues will certainly be discussed at UNGASS 2016, we see particular prospects for common ground on penal policy.

The 2009 *Political Declaration and Plan of Action* itself notes that there are "alternatives to prosecution and imprisonment for drug-using offenders" such as drug dependence treatment, and calls attention to the need to address corruption and over-crowding in prisons, commit to programming for re-entry and social reintegration, and provide adequate training to staff.[90] The Chair of the INCB recently made clear that the Conventions do not require incarceration for drug use, and emphasized the importance of proportionality between an offense and the sentence it attracts. INCB has likewise emphasized the importance of a "balanced approach in which prevention, treatment and rehabilitation", and not only deterrence and punishment, "take a leading role".[91] In 2011, a UNODC Justice Section paper stated that it is "internationally recognised that where possible drug users should receive treatment *rather than* imprisonment".[92] In 2015 UNODC's HIV/AIDS team appears to have prepared a draft briefing paper – never formally approved or released by

UNODC – stating that decriminalization of drug use and possession is permissible under the Conventions and "may be required to meet obligations under international human rights law".[93] Even more clearly, WHO has stated that "countries should work toward developing policies and laws that decriminalize injection and other use of drugs and, thereby, reduce incarceration," and ban compulsory treatment for people who use drugs.[94]

Questions relating to penal policy – the role of capital, custodial and other forms of punishment – are central to this debate. The expansion of the debate has accelerated as scepticism about the current approach to penal policy has become mainstreamed in American politics, with both Democrat and Republican leaders now calling for reform. The drivers for this public policy shift include fiscal, public health and broader social considerations. In 2014, nearly 14 per cent of all arrests in the US were drug-related, with 83 per cent of those arrests being for possession.[95] And with 48 per cent of the United States federal prison population incarcerated on drug-related offences[96] in 2013, one-third of the Justice Department's budget went to the Bureau of Prisons.[97] Resulting prison-overcrowding can reduce inmates' access to services, and may increase opportunities for violence and abuse.[98] WHO has argued that excessive reliance on penal tools can reduce even un-imprisoned user populations' access to healthcare services.[99] This may increase the public health burdens countries face, with particularly negative developmental consequences.

The shift in the US position has opened up space at the international level for a rethink of the role of penal policy in global drug policy. For instance, the Obama Administration's acknowledgment of "demographic disparities" in the application of drug control laws[100] reflects a trend to acknowledge similar disparities elsewhere. (States in West Africa, for example, have arguably felt the effects of a penal policy focused on small-scale dealers, users and couriers rather than high-level, or politically connected, participants in the drug trade.[101]) The resulting American evolution from the lead 'Drug Warrior' pushing punishment and deterrence-based approaches, through both bilateral and multilateral channels, to a position advocating a more balanced or flexible approach, has created the space for policy reflection in other states that American pressure previously denied them.[102] Nor is the US stance merely passive: earlier this year, CND adopted a resolution originally submitted by the United States, which calls for states to consider alternatives to incarceration for drug-related offences of a minor nature, promote collaboration between health and justice departments, and promote rehabilitation and reintegration efforts.[103]

Parts of the US are beginning to more closely resemble European jurisdictions that have rethought the role of domestic penal policy in drug control, experimenting with decriminalization of minor drug possession offences and drug use. Some states are diverting drug users into non-custodial intervention programmes encompassing medical, psychological, social service, employment and training, and other types of support and rehabilitation. In many cases, for example in Finland and Switzerland's programming, custodial and non-custodial interventions are treated not as mutually exclusive alternatives, but as different – and complementary – regulatory tools to

be carefully combined and balanced.[104] Support for reforming penal policy seems strongest around questions of sentencing proportionality for non-violent, minor drug offences.[105] Countries as diverse as Ecuador, England and Wales, and Singapore have all recently reduced the penalties imposed on low-level drug couriers and traffickers.[106] The African Union 2013 *Plan of Action* calls on its Member States to institutionalize diversion programmes for people who use drugs, especially alternatives to incarceration for minor offenses, as does a draft Common African Position on UNGASS.[107] The EU's *2013-2016 Action Plan on Drugs* goes further, incorporating a goal of having all Member States providing alternatives to coercive sanctions for drug use offences by 2015.[108] Italy is debating legislation that would legalize cultivation, distribution, and consumption of cannabis,[109] and local and county police forces in parts of the United Kingdom have declared they will stop arresting people for personal consumption and/or small-scale cultivation of cannabis.[110] Some Latin American and Caribbean states are adopting limited decriminalization policies,[111] and the OAS is encouraging its members to promote alternatives to incarceration.[112] A number of Western, Latin American and Caribbean states, including Australia, Chile, Trinidad and Tobago, and the US, have also been experimenting with so-called 'drug courts': specialized judicial bodies that mandate court-supervised treatment programmes.[113] (These are not without critique, however, in particular relating to whether judicial or medical expertise drive the courts' treatment decisions.)[114] And the US is pushing for the UNGASS 2016 Outcome Document to support "alternatives to incarceration and other criminal justice reform for drug-related offenses".[115]

Yet some states believe that questions of penal policy – including the use of the death penalty – are internal matters, not appropriately discussed in international forums. China stands out in this regard, explicitly arguing that any discussion of weakening a state's ability to "freely determine appropriate punishment" for drug offenses during UNGASS 2016 would not be appropriate.[116] The polarization is strongest around the question of whether capital punishment is ever appropriate in non-violent drug-related offences. EU states have described the abolition of the death penalty in drug-related cases as an absolute priority.[117]But as of 2012, 33 countries retained capital punishment laws for drug offences, though such sentences seem more often to be applied to foreign nationals than to a country's own nationals.[118] Iran claims 80 per cent of its death-row prisoners are there on drug-related charges, and many of them are foreign nationals – especially Afghans.[119] Indonesia and Malaysia, as well as China, have recently executed foreign nationals for drug-related offenses.[120] The UN, including UNODC, officially stands against the application and implementation of the death penalty in drug related offences.[121] OHCHR, the UN Human Rights Committee (that interprets the International Covenant on Civil and Political Rights) and several UN human rights special procedure mandate-holders have indicated that it is never valid to apply the death penalty in drug-related offenses.[122] Former INCB President Lochan Naidoo has stated that Member States retaining the death penalty for drug-related offences should consider abolishing it.[123] Yet this international opposition has not deterred some states: for example, UN Secretary General Ban Ki-moon's recent appeals to Indonesia to commute the death sentences of nine individuals convicted of drug trafficking were not successful.[124]

While a wide array of states – including China – recognize the relevance of the principle of proportionality in determining the sentences of drug offences,[125] the lack of consensus about the social, developmental and other impacts of drugs – and the policies that aim to control them – undermines the development of a consensus interpretation of what *proportionality* means in practice. How can the proportionality of the harm imposed on an offender by a particular punishment be assessed, if it is not agreed what social harms or benefits it is being compared to – because there is little agreement about the broader social, economic and developmental harms caused by different drugs or drug control policies in the first place? While we can expect the UNGASS 2016 Outcome Document to emphasize the importance of respect for proportionality, human rights and the rule of law, this will in large part be because of the creative ambiguity these broad terms offer. The consensus language will mask disagreement over implementation. Agreement on specific approaches to pursuing these broad objectives – such as decriminalization, alternatives to incarceration, or non-application of the death penalty – will be much harder to achieve.

It is not however impossible. The key is to see UNGASS 2016 not as a do-or-die moment when such agreements must be finalized, but as an opportunity to start a more robust, structured discussion about what science tells us the costs and benefits of different drug control polices are – a discussion of what works. States can use UNGASS 2016 to initiate a conversation that allows them, on the basis of the latest and best available scientific evidence, to understand what kinds of penal policy outcomes are feasible and likely under different circumstances, reflect on how good practice can help contribute to stronger development outcomes, and dynamically update international guidance as this learning evolves and strengthens. A US contribution to UNGASS 2016 has suggested, along these lines, that UNGASS should "encourage" states "launching pilot programs, research initiatives, and exchange of information on best practices in order to accelerate criminal justice reforms under the framework of the drug conventions".[126]

We argue that a more centralized, but temporary, forum is required to accelerate the development and sharing of learning, and its incorporation into common policy positions, ahead of the renewal of the *Political Declaration and Plan of Action* in 2019. This should involve states, relevant UN agencies and independent experts sharing evidence about the outcomes of different penal policy interventions.[127] This conversation needs to take place outside the confines of CND, which too many states see as unrepresentative and beholden to a drug control discourse that fails to generate coherence with the UN's other public policy objectives, such as the promotion of peace and security, development and human rights.[128] In Part 4, we argue for the creation of a new, temporary forum – an Open Working Group on Drug Policy – to allow a broader discussion of a more coherent global drug policy between 2016 and 2019, and work towards a set of Global Drug Control Goals.

Regardless of whether it occurs in this forum or elsewhere, states should encourage and accelerate the sharing of evidence about penal policy impacts and outcomes.

This will stimulate and help to mobilize resources for South-South and triangular collaboration,[129] and could even lead to pilot programmes to explore promising new penal policy interventions. Collaboration to strengthen the evidence base around the impacts of such interventions might allow states – and other stakeholders – to work towards a common understanding of the benefits and harms of different penal policies, and perhaps even to begin to coalesce around common goals. Traditional drug control metrics such as arrest quotas and conviction rates have tended to incentivize incarceration, and may encourage law enforcement actors to go after the easiest targets, such as street-level dealers, mules, or people who use drugs.[130] As we explore further in Part 4, new metrics that provide a more holistic understanding of the impacts of these policies may need to be developed.

Recommendation 1 – **Penal Policy**

Accelerate evidence sharing on drug control penal policy outcomes

UNGASS 2016 should create a forum to encourage states, international organizations, academics and civil society to share robust scientific evidence about a wide range of drug control penal policy interventions and their outcomes. This forum could provide a platform for South-South and triangular cooperation, and encourage the development of a stronger evidence base on penal policy ahead of the adoption of a new Political Declaration and Plan of Action in 2019.

PUBLIC HEALTH

The promotion of the "health and welfare of mankind" is the central policy objective of the entire international drug control regime, as the three major drug control conventions make clear, and as the INCB has repeatedly reiterated.[131] There is broad consensus among Member States around the importance of a focus on public health in drug policy.[132] UN Secretary-General Ban Ki-moon has said that the UN "must" consider alternatives to incarceration for people who use drugs and "increase the focus on public health, prevention, treatment and care, as well as on economic, social and cultural strategies".[133] UNAIDS officials have even floated the idea that the international community recognize public health as a pillar of global drug policy, alongside supply and demand reduction, and international criminal cooperation.[134] And since the adoption of the 2009 Political Declaration, states have routinely reiterated the need for a "balanced and integrated" approach to drug policy – i.e., balancing law enforcement with public health.

Yet significant tensions have emerged in recent years not only over what that "balance" means in practice, but also over the weight that states should afford to medical and public health expertise in deciding how to control specific substances. When earlier this year China moved to have ketamine globally prohibited, the WHO's ECDD recommended against it, partly because of the use of ketamine in maternal

and palliative care. The Secretariat of CND then sought advice from the UN Office of Legal Affairs (OLA) on CND's scope for scheduling a substance despite the ECDD recommending against it. OLA's advice argued that CND is not bound by ECDD recommendations. While China decided not to pursue the issue for now, the EU has subsequently proposed that UNGASS 2016 direct CND to give priority to ECDD scheduling recommendations.[135] Cannabis may be the next battleground, with the ECDD expected to review its scheduling, paying special attention to toxicity and adverse reactions, abuse and dependence potential, medical use and controls and their impact, in a review commencing in November 2015.[136]

This also connects to a larger discussion concerning whether the current system is ensuring adequate supply of controlled medicines.[137] In 2014, the INCB noted that some 5.5 *billion* people are without adequate access to "medicines containing narcotic drugs",[138] suggesting a potentially enormous gap in Convention implementation, with significant public health and development implications, as reflected in Sustainable Development Goal (SDG) 3 of the new 2030 Agenda for Sustainable Development.[139] WHO runs an Access to Controlled Medications Programme (ACMP) in consultation with INCB, offering states normative guidance, policy analysis, training and practical assistance.[140] But with a proposed budget of around USD 55.5 million over 6 years, this effort is dwarfed by the problem.[141] Uruguay has asked that UNGASS ensure adequate funding for WHO and UNODC programming in this area, while the US has proposed that INCB take a bigger role.[142] In March 2015 then-INCB President Dr. Naidoo proposed that governments perform national level diagnostics regarding access to medicine.[143] But the scale and complexity of the problem suggest a much deeper review of the situation is needed to overcome this collective action problem. Our recommendation suggests UNGASS 2016 initiate a process to provide an objective, evidence-based analysis of the situation – and opportunities – in this area:

Recommendation 2 – **Access to Controlled Medicines**

■ Establish a High-Level Independent Commission on access to controlled medicines

UNGASS 2016 should establish a high-level, independent expert commission, supported by WHO, to analyse global access to controlled medicines and report back to the General Assembly or ECOSOC, via the UN Secretary-General, on measures to improve it.

It is not only access to controlled medicines, however, but also access for those with drug use disorders to effective *treatment* that will be raised at UNGASS 2016. UNODC's 2014 *World Drug Report* finds that while one in five "problem drug users" receives treatment in Western Europe, only approximately one in 18 receives treatment in Africa.[144] In West Africa, the West Africa Commission on Drugs found that inadequate funding of treatment facilities and lack of skilled personnel derives from

a "glaring absence of drug treatment policies, standards and monitoring systems" and a lack of public expenditure due to the stigmatization of drug dependence.[145] In other countries where treatment for drug dependence *is* available, often as the result of tireless action by private actors, there are widely differing views of what that treatment should involve. Some 90 states ranging from Iran to Switzerland, and from Morocco to Malaysia, now implement some range of harm reduction measures for drug users,[146] and this approach is spreading steadily, including to Africa. Tanzania's Ambassador to the UN recently remarked that its methadone program needed to be "scale[d] up in a gradual, sustainable way."[147] Still, obstacles persist. In many countries, the focus is on abstinence-based treatment rather than best practice harm reduction measures in treating drug use disorders.[148] What is more, some states are increasingly pushing back against some of these measures, such as the use of methadone. Russia may challenge opioid substitution therapy at UNGASS 2016,[149] and it has recently questioned WHO's classification of methadone as an essential medicine.[150] (WHO's position receives support, inter alia, from INCB.[151]) Russian delegates have even argued that the term 'harm reduction' has no place in international debates, since it has yet to be approved by an intergovernmental body in this context.[152] Other states feel very differently: at the adoption of the 2009 *Political Declaration*, 26 countries delivered an interpretive statement saying they would interpret it to permit harm reduction, despite the removal of that term during the drafting process.[153] The General Assembly itself used the term in the 2011 *Political Declaration on HIV and AIDS*, encouraging states to consider implementing and expanding harm-reduction programmes.[154] UN Agencies, including WHO, UNODC and UNAIDS all explicitly reference harm reduction services.[155]

The debate is not purely semantic, but goes to the central question of what forms of treatment work in treating drug use and dependence, and thus how national discretion in implementing the Conventions should be exercised. Some current treatments for drug use disorders raise serious human rights concerns relating to involuntary detention, lack of due process, forced labour and corporal punishment, sexual abuse and abuse of medical ethics.[156] UNODC and several Member States are currently developing standards and guidance on drug dependence treatment, and some of these ideas seem likely to find their way to CND, perhaps even ahead of UNGASS 2016.[157] WHO is also active in the area, and various UN programming guidance documents aim to help Member States deliver public health programming

to deal with drug use and dependence.[158] Yet these documents and standards are not binding on states, and are unlikely to become so, given the large differences between different groups of states (and other stakeholders) over drug treatment and rehabilitation methodologies. Nor do they reflect a consistent approach across the UN system.

An alternative approach would be to create more space for innovation with different forms of treatment, based on respect for two fundamental principles: 1) they are driven by science, and 2) they respect human rights. It may take some time for this debate to find common ground among Member States; in Part 4 we make a recommendation for how such a discussion could be promoted. In the short term, however, a first step in this direction *is* within reach, in the context of the push by several UN entities for greater 'system-wide coherence'. A pathway within the UN is needed to advance this discussion as a way of strengthening the uptake of existing UN guidance on drug disorder treatment, and to encourage convergence by states towards best practice treatment practices. UNGASS 2016 could request the UN Secretary-General to develop a common approach to drug treatment, to guide all UN system activities in this area. Importantly, the development of such guidance should not be limited to entities such as UNODC, UNAIDS and WHO, but should also encompass input from UNDP, OHCHR and DPA (as co-chairs of the UN System Task Force on Transnational Organized Crime and Drug Trafficking). The aim should be to generate system-wide coherence, integrating UN support to Member States' drug treatment efforts with broader development, human rights and peace and stability objectives.

Recommendation 3 – **Drug Dependence Treatment**

- ## Develop UN-wide guidance on treatment of drug use disorders

UNGASS 2016 should request the Secretary-General to develop coherent, UN-system-wide guidance on treatment of drug use disorders, for application across UN programming contexts.

DEVELOPMENT

The War on Drugs was predicated on the idea that drugs are produced in and supplied by developing countries, then trafficked to developed countries, where they are consumed. Accordingly, strong – even militarized – interdiction and supply reduction efforts in developing countries were thought to be capable of preventing drugs reaching consumers.[159] Such thinking is arguably out-dated in three ways.

First, it arguably fails to reflect what is now understood about the impacts on development not only of illicit drug markets, but also repressive policies to control them. That recognition is reflected in SDG 3.5 of the 2030 Agenda for Sustainable Development, in which the UN General Assembly recognized the relevance to

development outcomes of narcotic drug abuse policies.[160] The illicit drug trade can distort local economies, skewing investment away from the legitimate economy towards illicit economic activity, creating a 'crime trap' similar to the 'conflict trap' identified by the World Bank fifteen years ago.[161] But militarized and law enforcement-led responses to such markets can also have a number of negative effects on development, both through direct physical harm and resulting loss of productivity, and through the creation of externalities such as lost tax revenue, high public health burdens, high criminal justice system costs and, perhaps most significant, corruption.[162] Illicit crop cultivation is often linked to conditions of poverty, and growers can face violence and repression from the state as well as from actors in the drug trade.[163] Criminalization and stigmatization of communities affected by drug trafficking tends to reinforce structural barriers to economic development.[164] Budgetary allocations for punitive drug policies divert funds from other goals.[165] And heavy-handed approaches to drug control can generate significant unexpected environmental externalities.[166]

Second, the description of the world as neatly split between developing country drug producers and developed country drug consumers is simply no longer accurate. The lines between supplier, transit and consumer states are now seriously blurred.[167] Cannabis, ATS and NPS are increasingly grown and produced worldwide.[168] Canada, for example, is now one of the top exporters of both ecstasy and methamphetamine.[169] And traditional producer and transit countries are hosts to increasingly high levels of consumption.[170]

Third, the understanding of the connections between drug policy and development demonstrated by global drug control policymakers has not kept up with evolutions in development thinking. Drug control policy choices will impact several aspects of the 2030 Agenda for Sustainable Development, not only SDG 3.5 (substance abuse treatment), but also SDG 1 (End Poverty), SDG 11 (Sustainable Cities and Settlements), SDG 16 (Peace and Justice, Strong Institutions).[171] In adopting this agenda, UN Member States have already signalled their acceptance of sustainable development as a universal policy agenda, suggesting a willingness to move past rigid developed v. developing country thinking. Some countries are ready to revisit global drug control policy, precisely because they recognize that new approaches might unlock new development resources. The President of the 69th General Assembly, H.E. Mr Samuel Kutesa, previously Foreign Minister of Uganda, has argued that "resources directed at [the world drug] problem could have been more effectively utilised for development."[172] Egypt has stated that UNGASS 2016 should discuss the root causes of the drug problem, "with special attention to Africa in achieving sustainable development and social inclusion".[173] And the Moroccan government has held legislative hearings to discuss possible medical and industrial uses of its expansive marijuana crop, apparently with a view to unlocking tax revenues and export income.[174]

Rather than recognizing the potential development gains to be garnered from more effective drug policies, however, global drug policy continues to treat development

as window-dressing, an afterthought tacked on to coercive supply reduction programming in the form of alternative development projects. Such programming aims to provide replacement livelihoods and other forms of development support to communities displaced from illicit drug crop production by supply reduction measures. Alternative development is championed by states such as Germany, Thailand, and Peru, among others, and has widespread appeal among UN Member States, including the Group of 77 and China.[175] But major obstacles exist to effective, well-monitored implementation.[176] In 2013, the General Assembly adopted new *UN Guiding Principles on Alternative Development*. Yet current alternative development thinking continues to reflect the out-dated thinking about the economic geography of drug markets. It treats alternative development as a question for rural, agricultural communities, when evidence shows that the communities affected by contemporary drug markets also include urban producer and trafficking communities.[177] If alternative development programming is to move from being a tool of charitable giving to a strategic tool driving pro-development community transformation, this conceptual and contextual expansion will need rapid acceleration.

A new approach would recognize that development must be a *central*, not marginal, concern of drug policy choices at the global level, and that a pro-development perspective must be integrated across drug control programming. Some states have signalled interest exploring this possibility, highlighting in official statements that there are structural drivers of illicit crop cultivation, including poverty, weak government presence, and access to land; and calling for drug policies to consider how infrastructure improvements, expenditures on health, education, and access to markets and water might improve the prospects of communities participating in licit economies.[178] The Community of Latin American and Caribbean States (CELAC) has officially requested that UNGASS consider community-based development projects as a way to reduce involvement in illicit drug-related activity.[179]

But in order for development considerations to be more fully integrated into global drug policy choices, states will need to reflect on their development impacts at the human, household, national and global levels. UNDP has made a powerful case for just such an approach in its 2015 report, *Addressing the Development Dimensions of Drug Policy*, in which it argues that the well established concept of *human development* provides a framework for understanding – and, importantly, measuring – the impacts of drugs and drug control policies.[180] Given the high level of acceptance of the human development concept and the strong body of science around the concept, this may offer important new common ground for further state discussion.

This will also, however, require the development of new ways of measuring the human development impact of drugs and drug policy. Fortunately, a discussion of metrics has already been initiated by the adoption of SDG 3.5. An Inter-agency and Expert Group on these goals (IAEG-SDGs) is currently working on the formulation of two indicators to help Member States measure progress towards SDG 3.5. Those

indicators will be formally approved in March 2016, just prior to UNGASS 2016, by the UN Statistical Commission, a body of 28 official statistical experts from Member States. At present, the two proposed indicators under consideration are: 1) coverage of opioid substitution therapy among opioid-dependent drug users; and 2) coverage of interventions for the prevention of substance abuse among people under 25.[181] Both indicators will be helpful; neither, however, measures the impacts of drugs or drug policy on populations, but rather measure state interventions. Further metrics will, in time, be needed to help Member States understand the development impacts of drugs and drug control policies. Some of the ideas proposed to date include indicators related to access to controlled medicines; drug-related overdose deaths; infection rates for HIV, hepatitis B and C among people who use drugs; number of people held in compulsory addiction treatment centres; levels of social and economic development in communities where drug production, consumption or sale is concentrated; and number of victims of drug-related violence.[182]

A wider discussion is therefore needed, within the context of the UN Statistical Commission, to help Member States develop the data they need before 2019 to have a more informed discussion about drug policy outcomes and options, and their impacts on human development. We offer an operational recommendation for moving this discussion forward:

Recommendation 4 – **Human Development and Drug Control Metrics**

- **Build new pro-development metrics to help prepare the next Political Declaration**

Building on current discussions on drug control indicators for SDG 3.5 in the IAEG-SDGs and the UN Statistical Commission, UNGASS 2016 should call on the UN Statistical Commission to initiate a formal workstream to develop new metrics measuring the human development impacts of drugs and drug control policies. If possible, such data should begin to be collected by national statistical agencies ahead of 2019, to inform the preparation of a new Political Declaration and Plan of Action.

HUMAN RIGHTS

While the three existing drug control Conventions do not specifically reference human rights, it is clear that states are obliged to read the Conventions in light of the Universal Declaration of Human Rights, and to implement their Convention obligations in ways that respect human rights. This is recognized in the 2009 *Political Declaration and Plan of Action*,[183] and in other products of CND and UNODC.[184] Several Member States and regional groups, including the US, United Kingdom, the EU, CELAC, and Uruguay, have requested that the UNGASS 2016 Outcome Document make clear that drug policy implementation needs to be consistent with human rights.[185] But some feel that existing approaches pay

inadequate attention to human rights concerns. Human Rights Watch has queried the extent to which human rights considerations guide UN programming.[186] Uruguay has asked that a technical group be established within the UN Human Rights Council framework to draft guidelines for states and conduct country reports to "ensure compliance" with human rights standards.[187] And EU states are pushing for the UNGASS Outcome Document to recognize the Universal Declaration on Human Rights, along with the 3 Conventions, as a "cornerstone" of global drug policy.[188]

The Human Rights Council recently tasked the Office of the High Commissioner for Human Rights with preparing a report on the impacts on human rights caused by the world drug problem. That report details how some drug policy choices negatively impact human rights in the areas of penal policy, protection of children, indigenous people's rights, and non-discrimination. The report recommends consideration of decriminalizing "personal use and possession" of drugs in order to protect the right to health, and consideration of alternatives to incarceration for minor, non-violent offences, reform of laws that unduly target marginalized groups, and the cessation of the death penalty for drug-related offences.[189]

The elevation of human rights considerations within drug policy will not, however, go unopposed. As with matters of penal policy, some states see discussion of human rights as beyond the purview of the global drug control institutions. In 2008, when the CND first passed a resolution on human rights, China and Japan both objected to the idea that CND should reference human rights standards.[190] As with questions of drug treatment, it may take a sustained discussion for states to find common ground on these questions. States can help this debate mature by raising questions about the consonance of national drug control policies with a state's human rights obligations through the Human Rights Council's Universal Periodic Review process. But as with questions of drug treatment, it may be that a more feasible initial step could occur within the UN inter-agency process. Given these political realities, we suggest that UNGASS 2016 focuses its efforts in this area on encouraging system-wide coherence within the UN system:

Recommendation 5 – **Human Rights**

■ Develop UN-wide guidance on protection of human rights in drug programming

UNGASS 2016 should request the Secretary-General to task the UN System Task Force on Transnational Organized Crime and Drug Trafficking to develop a system-wide policy on protection of human rights in drug-related programming. This should operationalize, and build upon, the existing UN Human Rights Due Diligence Policy. ■

How can UNGASS 2016 strengthen international drug policy?

UNGASS 2016 will not resolve the controversies around penal policy, public health, development and human rights in global drug policy. But if used wisely, it could strengthen the global drug policy conversation, and create a process based on principled pluralism that leads to a more effective global drug policy for adoption in 2019, when the current *Political Declaration and Plan of Action* expires. In Part 3 we laid out five specific recommendations for steps that Member States could take at UNGASS 2016 to help generate such a conversation. In this Part, we reflect on how such a conversation might be organized and structured, and make a final, sixth recommendation for action by Member States at UNGASS 2016.

ORGANIZING PRINCIPLES

Such a drug policy conversation should have four characteristics.

First, it should be *inclusive*. Global public policy processes that exclude key stakeholders, such as civil society, are unlikely to be legitimate, and therefore unlikely to be effective. For that reason, the global drug policy conversation between UNGASS 2016 and the renewal of the UN *Political Declaration and Plan of Action* should not aim to create a one-size-fits-all policy discourse to replace the 'War on Drugs', but rather be based on national-level flexibility coupled with agreed global principles – or, as we put it earlier, *principled pluralism*. The discussion should not be wholly owned by CND, but accessible to a broader group of Member States and stakeholders. Whether it is justified or not, too many stakeholders see the

53-member CND as failing to represent the full array of UN Member State opinions, and reproducing a global drug policy orthodoxy that does not provide adequate flexibility. This is the very reason UNGASS 2016 was called, outside CND, in the first place. Notwithstanding the location of CND and UNODC in Vienna, consultations on global drug policy between UNGASS 2016 and 2019 should continue to take place in New York: all states that participate in CND, and UNODC, are represented in New York; but around half of all UN Member States are not represented in Vienna on a year-round basis. Civil society representation may also be strengthened by conducting these discussions in New York, given the larger presence of public health, human rights and development-oriented groups there than in Vienna. This can only make the outcome more legitimate.

Second, this discussion must be *driven by science*. A wide cross-section of states, with very different perspectives on drug policy, has recognized the centrality of science for effective policy-making in this area. The EU has called for UNGASS 2016 to recognize that the "guiding principle of drug policies should be scientific evidence and best practices supported by reliable and objective monitoring and evaluation systems".[191] The US has asked that UNGASS highlight a "need to invest in comprehensive evidence-based … initiatives… [and] scientific research".[192] And in early 2015 Russia submitted a resolution to CND signalling support for scientific research on what works in supply and demand reduction.[193] The discussion should therefore be organized in a way that affords significant space for direct participation by qualified scientific and medical experts. Below, we discuss some relevant UN precedents.

Third, this discussion should be explicitly *pro-development*. As we discussed in Part 3 of this policy report, there is now universal recognition at the UN that drug control policy and development policy are intertwined, as reflected in SDG 3.5. A central aim of this discussion must be to identify how global drug policy can unlock new resources for development, both by reducing the negative development impacts of existing policies, and by exploring potential new sources of revenue.

And fourth, for the reasons set out in Part 3, this discussion must *protect human rights*.

STRUCTURING THE DISCUSSION

So what would such a conversation look like?

There have been two other UN General Assembly Special Sessions on drug policy before the one coming up in 2016 – in 1990 and 1998. In each case, an expert panel was created to provide input to the UN Secretary-General. The first led to the creation of a streamlined UN Drug Control Programme (UNDCP).[194] The second likewise focused on the UN mechanics of the drug control system, rather than the overall policy approach.[195] Both panels were primarily focused on improving the functioning of the UN drug control system through administrative, primarily structural,

reform – merging bureaus, assessing financial structures, and streamlining committee procedures. They were not designed to allow for inclusive, science-driven debate about drug policy more broadly. Though instructive, they consequently provide no real guidance on how such a debate could be organized. Three other recent global public policy discussions may, however, provide more useful inspiration: 1) the process that led to the recently adopted Sustainable Development Goals; 2) a WHO-led process on Non-Communicable Diseases; and 3) the Inter-governmental Panel on Climate Change (IPCC).

The process leading to the adoption of the 2030 Agenda for Sustainable Development and its SDGs has been a model of inclusiveness. In 2012, the General Assembly created a highly innovative Open Working Group (OWG) sitting in New York, using a unique system in which three Member States from the same regional political bloc would share one chair, and involving very extensive consultation with scientists and civil society. The OWG drew input from a huge variety of sources, including thematic clusters (producing position papers on specific issues), a UN inter-agency Technical Support Team, Major [issue] Groups, academia and civil society – and of course states themselves.[196] Through a year-long process, the OWG developed the language that became the 17 SDGs and 169 targets. While some argue that the inclusiveness of this process came at the expense of precision in the resulting document, a technical scrubbing process and the formulation of precise scientific indicators for the implementation of the SDGs, carried out with the assistance of the UN Statistical Commission, are likely to mitigate this concern over time.[197]

The WHO-led process on Non-Communicable Diseases (NCDs) is also instructive. In 2011, an UNGASS on this topic generated a *Political Declaration* that called for the WHO to lead a process to develop a "comprehensive global monitoring framework, including a set of indicators, capable of application across regional and country settings, including through multisectoral approaches, to monitor trends and to assess progress made in the implementation of national strategies and plans on non-communicable diseases."[198] As with the development of the SDGs, the process of science-driven consultation that WHO managed on NCDs has produced a highly legitimate outcome,[199] the 2013 *Global Action Plan for the Prevention and Control of Non-Communicable Diseases*. This includes nine goals, eight of which are precisely quantifiable, and 25 indicators for use by Member States.[200] The Plan also provides multiple policy options for each Member State to choose from in pursuit of specific policy objectives, as well as proposing actions that can be taken by the UN Secretariat and international partners to strengthen responses in line with the plan.[201] This outcome offers a model of principled pluralism.

Lessons can also be drawn from the field of climate change. The IPCC reviews and assesses the existing "scientific, technical and socio-economic" evidence regarding climate change to advise UN Member States. It was created by the UN Environmental Programme and the World Meteorological Organisation, and subsequently endorsed by the General Assembly. Three IPCC working groups assess current research,

publications and data on three different topics and produce an assessment report roughly every five years. The Fourth Assessment Report included contributions from experts from more than 130 countries over a six-year period, over 450 lead authors, input from more than 800 contributing authors, and draft review by 2,500 experts.[202] An IPCC Bureau, comprised of independent experts, guides the work of the Panel, and an Executive Committee and Secretariat also support it.[203] Roughly 50 scientists from each Working Group summarize their report into a *Summary for Policymakers,* which is then reviewed by governments and endorsed at a plenary session of government representatives. Through this process of deep and broad scientific consultation, the IPCC has developed unique global legitimacy as a reliable source of scientific assessment and advice on climate change, feeding into the UN Framework Convention on Climate Change (UNFCCC) Conference of Parties[204] and offering an important resource for Member States when designing national policy.[205]

Each of these models holds lessons ahead of UNGASS 2016. The OWG process demonstrates the utility not only of an inclusive process, but also of framing policy discussion in terms of a search for shared, measurable goals. The WHO-led Non-Communicable Diseases process demonstrates that this approach can also be applied in the area of medicine and public health, and that goals can be usefully coupled with a global plan of action that combines clear principles with flexible approaches to implementation. And the IPCC process demonstrates the unique legitimacy and utility of coupling inter-governmental debate with deep and broad scientific review, especially in an area where – as is the case for both climate change and global drug policy – the socio-economic impacts are complex and the science is evolving. UNGASS 2016 should draw on these insights to establish a structure for a science-driven conversation to prepare the ground for the adoption of a new Political Declaration and Plan of Action in 2019.

A central focus of this mechanism should be the development of measurable goals (and associated indicators) for global drug policy. The 2009 *Political Declaration and Plan of Action* is vague in its identification of goals, aspirationally naming 2019 as a target date to "eliminate or significantly reduce" illicit cultivation, demand, drug-related health and social risks, production, manufacture, marketing and distribution

of, and trafficking in illicit substances, and money-laundering.[206] As laudable as these may be as policy *objectives*, they do not reflect the recent learning by the international community that precise, quantifiable global goals, targets and indicators are much more effective drivers of collective action, resource mobilization and policy change.[207] The current Political Declaration does not allow Member States to track and monitor progress in any realistic way. Without an effective metric system, States are necessarily poorly informed as to what is working and what is not, and must guess. The good news is that some thinking about the data available to build such goals is already beginning to emerge, both out of intergovernmental forums – for example the 2011 commitment by Member States in the *Political Declaration on HIV/AIDS* to work towards reducing transmission of HIV among people who inject drugs by 50 per cent by 2015 – and through independent research and analysis.[208]

Drawing on these insights, our final recommendation offers the outline of a model for a discussion of global drug policy between 2016 and 2019 that is 1) inclusive; 2) driven by science; 3) pro-development; and 4) human rights protecting:

Recommendation 6 – **Towards 2019**

Create an Open Working Group on Drug Policy to prepare Global Drug Policy Goals for adoption in 2019

UNGASS 2016 should establish an Open Working Group on Drug Policy (OWGDP). The OWGDP should sit in New York between UNGASS 2016 and 2019, and present a proposal to the General Assembly for a new Political Declaration and Plan of Action, including measurable Global Drug Policy Goals. The OWGDP should draw its inspiration from the Open Working Group that produced the Sustainable Development Goals, including its troika system for state representation, and its extensive consultations with the UN system, civil society and interested stakeholders. The OWGDP should include an expert Scientific Advisory Committee, supported by WHO, modelled on the IPCC process (and thus including not only Member State officials but also independent scientific experts), tasked with reviewing and summarizing the state of global scientific knowledge in specific issues areas, such as penal policy, drugs and development, and drugs and public health. The OWGDP should also include a Human Rights Advisory Committee, tasked with ensuring that the OWGDP's proposal respects human rights.

Conclusion

The cracks in the global drug policy regime are increasingly clear. Calls for flexibility in the implementation of that regime could have one of two very different effects. Flexibility could allow states to drift apart, widening those cracks, until the regime fragments. Or it could – if coupled with a set of common principles that states agree underpin the regime – breathe new life into the regime, turning it into a framework based on principled pluralism that better integrates drug control with public health, development and human rights.

Discussions at UNGASS 2016 may not be conclusive in determining which of these outcomes is ultimately realized, but they will set the direction of global drug control policy discussions for the years ahead, and have a major influence on what comes after the 'War on Drugs'. The analysis we have presented in this report suggests that, as things stand, the likely outcome of UNGASS 2016 will not differ significantly from the status quo. The Sceptics have not presented a coherent set of policy alternatives, with clear pay-offs, that will convince Swing Voters to defect from acceptance of the law-enforcement based Orthodoxy. Instead, unless Member States begin unexpectedly to debate specific additional actions, UNGASS 2016 will likely affirm the current regime while adding largely rhetorical calls for flexibility, respect for human rights and promotion of public health.

That, we suggest, risks setting the stage for what will ultimately prove to be a slow slide into regime fragmentation, as some states use the notion of flexibility as a basis for experimentation with new domestic policy approaches, while others use it as cover for punitive policy approaches. To avoid that outcome, we have argued, policy makers should use UNGASS 2016 to take a number of specific steps to advance discussions in areas of potential common ground – on penal policy, access to controlled medicines, drug use disorder treatment, human development metrics, and human rights.
We have argued that UNGASS 2016 can be used to set up an ongoing, inclusive conversation that couples flexible national implementation with a set of clearly agreed global principles: protection of human rights, promotion of human development, and guidance by the best available scientific evidence. This conversation may help Member States to arrive at a common understanding of the development and other pay-offs that could be reaped from a new approach to drug control, and help them formulate a common vision of what comes after the War on Drugs. We have offered a model for organizing such a discussion – through an Open Working Group on Drug Policy that leads to the adoption of Global Drug Policy Goals in 2019. Whether Member States adopt that format, or some other approach, one thing is clear: unless they begin, soon, to consider concrete operational steps that they can take at UNGASS 2016, a golden opportunity to adapt the global drug control regime to present-day realities risks being squandered. ■

Finding Common Ground at UNGASS 2016

Recommendation 1 – **Penal Policy**

Accelerate evidence sharing on drug control penal policy outcomes

UNGASS 2016 should create a forum to encourage states, international organizations, academics and civil society to share robust scientific evidence about a wide range of drug control penal policy interventions and their outcomes. This forum could provide a platform for South-South and triangular cooperation, and encourage the development of a stronger evidence base on penal policy ahead of the adoption of a new Political Declaration and Plan of Action in 2019.

Recommendation 2 – **Access to Controlled Medicines**

Establish a High-Level Independent Commission on access to controlled medicines

UNGASS 2016 should establish an high-level, independent, expert commission, supported by WHO, to analyse global access to controlled medicines and report back to the General Assembly or the UN Economic and Social Council, via the UN Secretary-General, on measures to improve it.

Recommendation 3 – **Drug Dependence Treatment**

Develop UN-wide guidance on treatment of drug use disorders

UNGASS 2016 should request the Secretary-General to develop coherent, UN-system-wide guidance on drug treatment programming, for application across UN programming contexts.

Recommendation 4 – **Human Development and Drug Control Metrics**

Build new pro-development metrics to help prepare the next Political Declaration

Building on current discussions on drug control indicators for SDG 3.5 in the Inter-Agency and Expert Group on SDG Indicators and the UN Statistical Commission, UNGASS 2016 should call on the UN Statistical Commission to initiate a formal workstream to develop new metrics measuring the human development impacts of

drugs and drug control policies. If possible, such data should begin to be collected by national statistical agencies ahead of 2019, to inform the preparation of a new Political Declaration and Plan of Action.

Recommendation 5 – **Human Rights**

Develop UN-wide guidance on protection of human rights in drug programming

UNGASS 2016 should request the Secretary-General to task the UN System Task Force on Transnational Organized Crime and Drug Trafficking to develop a system-wide policy on protection of human rights in drug-related programming. This should operationalize, and build upon, the existing UN Human Rights Due Diligence Policy.

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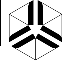

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