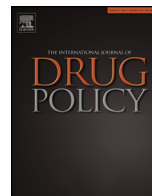




Contents lists available at ScienceDirect

International Journal of Drug Policy

journal homepage: www.elsevier.com/locate/drugpo



Research paper

Transnational social movement theory and the waning war on drugs: Case studies from UNGASS 2016

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ARTICLE INFO

Article history:

Received 25 February 2017

Received in revised form 26 October 2017

Accepted 1 November 2017

Available online xxx

Keywords:

UN conventions

Drug law reform

Pre-trial punishment

Human rights

Criminalisation

ABSTRACT

Background: The United Nations Convention against Illicit Traffic in Narcotic Drugs 1988 (“1988 Convention”) expresses a strong normative preference for criminalising drug possession. Historically, the United Nations offices responsible for overseeing the treaties have held that decriminalisation of drug possession is contrary to the treaties. Leading up to and during UNGASS 2016, however, rather than emphasise criminalisation, the high-ranking officials from the drug control offices emphasised the treaties’ allowance of alternatives to punishment for drug possession offences.

Methods: This paper applies transnational social movement theory to analyse the political opportunity structure for drug law reform at the UN. Data was collected from documents created by important United Nations agencies in the lead up to UNGASS 2016. By analysing the statements of prominent UN officials within a social movement theory framework, we can assess whether those responsible for administering global drug policy are offering concession to drug law reform social movement and whether a political opportunity structure is opening up for drug law reformers to pursue further reforms.

Results: from the United Nations documents demonstrated significant reference to local drug law reforms and the benefits of non-punitive treatment of drug users. However, given the strong normative preference and mandatory language (“shall”) in the 1988 Convention, policy leaders at the UN can only offer very moderate concessions to drug law reformers – primarily the advocacy of alternatives to incarceration. Such policies still suffer many problems caused by using the criminal justice system to funnel people into treatment. Indeed, many other offices at the UN explicitly drew attention to the problem of pre-trial punishment in their contributions to UNGASS 2016.

Conclusion: A schism is developing at the UN as other UN offices are pointing out that advocating for alternatives to punishment is inadequate due to the many problems of “pre-trial punishment”. Social movement theory suggests that this schism represents an opening of the political opportunity structure as advocates for drug law reform can now more forcefully criticise, and even breach, the treaties and will have high-level support at the UN.

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Introduction

This paper will look at the ‘political opportunity structure’ as it currently exists for international drug law reform efforts with a focus on the United Nations General Assembly Special Session on the world drug problem (UNGASS 2016). The paper assesses whether recent documents and comments from high-level United Nations drug policy officials represent political opportunities for transnational drug law reforms.

The nation state still presents a formidable boundary to transnational social movements. Successes in one country are not easily converted to successes in other countries. To test whether there is a political opportunity structure opening at a global level this paper will review comments made by prominent UN officials within the primary UN drug control offices. It will do this by looking at comments regarding decriminalisation and drug law reform made in the lead up to UNGASS 2016 and the eventual Outcome Document. It will also look at contributions to UNGASS 2016 from other UN offices to assess whether there is a schism developing at the UN, in particular around the criminalisation of drug possession and so-called ‘alternatives to punishment’.

UNGASS 2016 was the first special session of the United Nations to discuss drug policy since 1998. However, over 30 member states to the UN have now “decriminalised” various drug offences

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(Eastwood, Fox, & Rosmarin, 2016) and may be in breach of the UN drug conventions thus opening the political opportunity structure at the UN. This article will review previous research into the shifting attitudes of prominent UN officials, and compare prior statements of high-level UN officials with the statements made at UNGASS 2016 to demonstrate there has been a change in response to drug law reforms. Prominent UN officials from some drug control offices are now calling administrative penalty schemes “best practice” which is a significant shift from previous years where any talk of decriminalisation was heavily criticised.

Using the tenets of social movement theory, it will be argued that this change in rhetoric might wedge the social movement for drug law reform as it could entice moderate drug law reformers away from more radical drug law reformers. However, the evidence seems to indicate that there is a schism in the UN offices regarding criminalisation of drug possession and pre-trial detention. It will be argued that the concessions being offered by the UN drug offices will do little to solve the problems of criminalisation and that a political opportunity structure has opened up for more strident challenges to the UN Conventions.

Social movement theory and transnational social movements

Social movement theory provides a very helpful framework to analyse the waning war on drugs. Social movement theory is the study of contentious collective action between groups seeking political change and political bodies resisting change. Contentious politics occurs when ordinary people join forces in confrontations with authorities and elites. Implicit in this definition is that the confrontation is with a local or national government. Historically, social movements have clashed with the nation state apparatus.

Prominent theorists, such as Sidney Tarrow, theorize that social movements often begin with small specific groups and are then joined by groups not normally known for insurgent tendencies. This interaction leads to contentious collective action between the social movement and the state. The state then offers concessions to woo away moderates and frustrate the radicals. Often radicals participate in extreme actions and the state suppresses them. Tarrow's central argument is that social movements are more likely to arise when political structures open up – cleavages within the elites which encourage social movements to push for social change and encourage wider community support (Tarrow, 1998).

Tarrow theorizes that social movements don't simply arise due to deprivation, because deprivation is far more widespread than social movements. Rather, it depends on a political opportunity structure – the dimensions of the political environment which either encourage or discourage people from using collective action. Social movements respond to changes in opportunity such as the opening up of access to power, a shift in ruling alignments, the availability of influential allies and from cleavages within and among elites.

In 1965 Mancur Olson applied a utilitarian rationalist approach to collective action and concluded that collective politics is unlikely due to individuals narrow self-interest and the problem of free-riders. Olson concluded that people would not participate in social movements as the cost (risk) was higher than the perceived benefits and that they would receive the benefits of a social movement regardless of their individual participation (Olson, 1965). In 1979, Fireman and Gamson (Fireman & Gamson, 1979) argued that self-interest can be overcome if social movement organisers encourage solidarity, align the goals of the social movement with the constituency, stress that the social movement is necessary and emphasise that the movement will be successful.

An essential element of Fireman and Gamson's solution to the free-rider problem is *insurgent consciousness*. Insurgent

consciousness is the recognition by aggrieved populations, moral/political entrepreneurs, or other interested parties that a conducive political environment exists. It is necessary for the success of a social movement that it is widely known that it exists, that it is achieving tangible results, and that progress is expected to continue.

The problems for transnational social movements are readily apparent. Opening up political opportunity structures on a transnational level are more difficult than the (already) very difficult task of opening up opportunity structure at the state level. The free-rider problem is more acute as people may be less motivated to agitate for social change in foreign countries which will have no benefit to themselves, and developing insurgent consciousness is far more difficult internationally than within a local community.²

It is also important to recognise that social movements are different from NGOs. Tarrow (2001) explains that international NGOs are made up of organisations which engage in “routine transactions . . . made up of dedicated, cosmopolitan, well-educated people” (p12). Such organisations generally pay people and therefore are far less reliant on political opportunity structures to encourage free-riders to contribute, as social movements are.

In summary, for the purposes of this paper, social movement theory explains the necessity of political opportunity structures and insurgent consciousness to the success of social movements for law reform. However, these essentials are very difficult to achieve in transnational social movements. As drug policy is an inherently international endeavour, significantly dictated by the United Nations conventions, these are extremely important issues for drug law reform advocates to consider. An essential question when assessing the prospects of dismantling the war on drugs is whether a political opportunity structure has been created amongst the policy leaders of global drug policy.

Background: historical attitude of prominent UN officials to decriminalisation

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (“1988 Convention”) states:

Subject to its constitutional principles and the basic concepts of its legal system, each Party shall³ adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention. (Article 3, paragraph 2).

The commentary on the 1988 Convention explains that some States had interpreted the 1961 Convention as not mandating the criminalisation of possession for personal possession (paragraph 3.86). Therefore this paragraph was added to the 1988 Convention, to expressly refer to possession for personal consumption (paragraph 3.92), and “the view that the Convention should not

² For further discussion of the difficulties faced by state-based social movement theories' application to globalization and transnationalism see, inter alia: Tarrow, Sidney (1998). *Power in Movement: Social Movements and Contentious Politics* Cambridge: Cambridge University Press, p 189; Tarrow, Sidney (2001). ‘Transnational Politics: Contention and Institutions in International Politics.’ *Annual Review of Political Science*, 2001. Palo Alto: Annual Reviews, p 11; Tarrow, Sidney (2002). ‘From Lumping to Splitting: Specifying Globalization.’ In Jackie Smith and Hank Johnston (Eds), *Globalization and Resistance: Transnational dimensions of social movements*. Latham, MD: Rowman and Littlefield Publishers Inc.

³ In Australian jurisprudence, “shall” generally means “must”: s 9 *Interpretation Act 1987* (NSW); s 45 *Interpretation of Legislation Act 1984* (VIC).

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