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On fixing the international drug control regime:

bridging the gap between evidence and politics

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Abstract

The war on drugs has failed. The 'world drug problem' is bigger than ever. The repressive law-enforcement policies are counterproductive. What now? A new approach is needed, one that accepts the fact that drugs cannot be eliminated from society, but focuses on the harm that it causes, so says science. But is the world ready to adopt this new approach? It does not seem to be the case. This thesis uncovers the political dynamics of the international drug control regime. The main focus is on assessing what is standing in the way of moving towards an evidence-based global drug policy. It does so by applying different theories on regimes and regime-change to the issue of drug policy. Although it is established that the pressures needed for regime change are clearly present, there are certain factors that cause the current 'war on drugs' regime to stick. This thesis combines a rationalist approach with more constructivist criticism and ideas. By way of merging wisdom from both paradigms, four categories of challenges to regime change are identified: institutional challenges, power and interests challenges, domestic challenges and framing challenges. Additionally, ways to overcome these challenges are addressed with an outlook on fixing the international drug control regime.

Key words: international drug control, regime change, rationalism, constructivism, negotiations

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Abbreviations

CND	Commission on Narcotic Drugs
EU	European Union
GCDP	Global Commission on Drug Policy
INCB	International Narcotics Control Board
NGO	Non-Governmental Organization
UN	United Nations
UNDCP	United Nations International Drug Control Programme
UNGASS	United Nations General Assembly Special Session
UNGASS 2016	United Nations General Assembly Special Session on the World Drug Problem 2016
UNODC	United Nations Office on Drugs and Crime
US	United States

Introduction

*"The international drug control regime is broken."*¹

This is the opening sentence of the advisory report "Taking Control: Pathways to Drug Policies that Work", by the Global Commission on Drug Policy (GCDP). It might sound like a bold thing to say, but many would agree with the statement, among them former Secretary-General of the United Nations Kofi Annan, and former High Representative of for Common Foreign and Security Policy of the European Union (EU) Javier Solana, two of the 21 high-level members of the GCDP.²

When something is broken, you usually get it fixed. Or you throw it in the garbage bin. Either way, the situation asks for a response. Your reaction mostly depends on how broken it is, how much you need it, and your options to fix it.

When you find your bike having a flat tire, while you need it to get somewhere, you'll have to get it fixed. Maybe some air slipped away, and a simple pump will get you going again. When you're less fortunate, there is a hole in the tire. When it's small, you can fix it with a patch. However, when it's big, you might have to replace the tire. Also, you might wonder why it has broken: bad luck, or maybe it's a structural thing since you recently started biking on rough ground. This might call for a special new sort of tire that can resist these circumstances.

If fixing the international drug control regime were this simple, and the options were this logical, this thesis would be done by the end of this page. Obviously though unfortunately, this is not the case: complexity is the name of the game.³

Why? For starters, there is not one person deciding on what to do, as the case in the flat tire situation. Instead an enormous number of sovereign countries have to agree on this. Moreover, a regime is not a 'thing' as a tire where everyone has the same understanding of all its properties. A "regime" is a much more encompassing and vague phenomenon: a concept.

¹ Global Commission on Drug Policy, *Taking Control: Pathways to Drug Policies that Work* (2014) <https://static1.squarespace.com/static/53ecb452e4b02047c0779e59/t/540da6ebe4b068678cd46df9/1410180843424/global_commission_EN.pdf>, 4, accessed 29 Mar. 2016.

² Ibid. 2.

³ David R. Bewley-Taylor, 'Emerging policy contradictions between the United Nations drug control system and the core values of the United Nations', *International Journal of Drug Policy*, 16/6 (2005), 423.

Stephan Krasner created the most commonly accepted definition of this concept, being: "*principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area*".⁴

The issue-area in this thesis is international drug policy. As the first sentence reflects, this specific regime is in crisis. The current version of the regime has been created in the 1950s, firstly encoded in the 1961 Single Convention on Narcotic Drugs. After this another two international conventions followed, and the three of them together form the cornerstone of the current 'international drug control regime'.⁵ Specific to that regime is the word 'control', which reflects the current norm: 'drugs are evil and therefore their existence should be controlled by means of a repressive regime, with the ultimate goal of a illicit drug free society'. Today, 55 years after the creation of the regime, one can easily conclude: it has failed to deliver that foreseen result. For example: in 2013 a total of 246 million people used illicit drugs, global opium poppy cultivation reached in 2014 its highest level since the 1930s, and in 2013 about 187.100 people died a drug-related death.⁶

So, back to the statement, the current international drug control regime is broken - this gives rise to the questions: how broken is it really, do we need it fixed, what options do we have for fixing it, and how do we get there?⁷ These questions I hope to answer in this thesis, gathered in the research question: **what are the challenges in fixing the international drug control regime and how could the challenges potentially be overcome?**

I believe this is a relevant and timely question to ask. Not only could one logically expect better results from a strong regime under which countries work closely together with the same policy; but also this year is an especially important year for the international drug control regime. As more and more countries acknowledge that the current regime is not getting results, Mexico, Guatemala, Colombia and Costa Rica called for an early meeting of the United Nations General Assembly Special Session (UNGASS) on the World Drug Problem (UNGASS 2016). This meeting aims to review the UN drug control system and provide

⁴ Stephan D. Krasner, 'Structural causes and regime consequences: regimes as intervening variables', *International Organization*, 36/2 (1982), 185.

⁵ Martin Jelsma, 'Drugs in the UN system: the unwritten history of the 1998 United Nations General Assembly Special Session on drugs', *International Journal of Drug Policy*, 14 (2003), 182-183.

⁶ UNODC, *World Drug Report 2015* (2015)

<https://www.unodc.org/documents/wdr2015/World_Drug_Report_2015.pdf>, III-IX, accessed 29 Mar. 2016.

⁷ From regime theory perspective, a failure to deliver foreseen results does not per se mean the regime itself is broken, see for more details Part I of this thesis.

opportunities for improving the UN's normative guidance and its legal and institutional framework, or in other words: to fix the regime.⁸

The above named four countries agree with the members of the GCDP that drug policy can be fixed by reforming the regime, which is according to them both necessary and achievable. However, the question whether it is achievable is an interesting one. It seems that another large number of countries is attached to the current restrictive drug policy and is not keen to reform, but prefer to renew their commitment to the current repressive regime. Logically, the question that arises is: what policy does provide the best results?⁹ This is a question this thesis will not address, as from a scientific perspective the answer to that question is quite well established: a reformed regime that accepts the fact that drugs will always be part of society and focuses efforts on reducing the harm that drugs cause.¹⁰

However, when reading and listening to discussions on drug policy, I was struck by the large gap between scientific evidence on the best policies on the one hand and the negotiations among the diplomats on the other hand. For example, "harm reduction", being: "*policies, programs and practices that aim to mitigate the negative health, social and economic consequences of using legal and illegal psychoactive drugs, without necessarily reducing drug use*"¹¹ - is almost a 'forbidden concept' within the UN system, something not to be spoken of, even though widely recommended by science from all disciplines.¹² Moreover, how can anyone be against the reduction of harm? Harm is per definition 'bad', so reducing it should be something everyone could agree on, right? This puzzle kept me thinking: why this gap between evidence and politics, and more important: can it be bridged?

The goal of this thesis is to understand the political dynamics of the international drug control regime and more specifically, to identify challenges in, and possible solutions for, fixing the regime, whether that would be patching up the current version of the regime, or changing the regime into a new regime under new norms. In order to get there, I will be using a diverse and large amount of academic theory and thereby combine different aspects such as the political,

⁸ Martin Jelsma, 'UNGASS 2016: Prospects for Treaty Reform and UN System-Wide Coherence on Drug Policy', *Brookings Institution*, (2015), <<http://www.brookings.edu/~media/Research/Files/Papers/2015/04/global-drug-policy/Jelsma--Unit-editions-nal.pdf?la=en>>, 1-3, accessed 30 Mar. 2016.

⁹ in terms of health, human rights and development.

¹⁰ When interested in this question, the GCDP refers in their reports to a large number of studies, and also the Brookings Institute has done a comprehensive amount of research on this within the project '*Improving Global Drug Policy*'.

¹¹ Global Commission on Drug Policy, *Taking Control: Pathways to Drug Policies that Work*, 43.

¹² Mauricio Lopez Bonilla, Mark Kleiman, Kasia Malinowska-Sempruch and Danny Quah, 'After the Drug Wars: report of the LSE Expert Group on the Economics of Drug Policy', *LSE Ideas* [podcast], (London School of Economics and Political Science, 7 May 2014)

<<http://www.lse.ac.uk/newsAndMedia/videoAndAudio/channels/publicLecturesAndEvents/player.aspx?id=2431>>, accessed 30 Mar. 2016.

sociological, economical, historical, judicial and the philosophical. The issue is a complex one; I believe theory can provide a way to understand the issue and to find keys to political solutions, which in turn could be relevant for the UNGASS process. This would be the societal goal of the thesis.

This thesis takes in the rich literature on international regimes and international regime change, beginning with the special issue on regimes of the journal *International Organization* of 1982. In addition also more recent literature on regimes, and articles specifically on prohibition regimes, will be consulted. I will furthermore look at the research that has been done on international drug policy and its history. Some researchers have studied in great detail the situation in specific countries, or compared different countries' policies. The empirical data used will mostly be taken from government and UN statements and publications.

Next to the above named societal goal, this thesis provides a critical review of the regime theories. The issue of drugs is rather under-represented in international relations and security studies, even though it is an important vector in global security.¹³ When studied, it is often done so from classical theories that take a rationalist approach, thereby largely ignoring the fact that the international drug control regime is, as every other regime, a socially constructed phenomenon.¹⁴ This thesis will try to fill that gap.

Research Design

In order to answer the overall research question, this thesis is constructed in the following way. In part I of this thesis I will first research the international drug control regime and its history: what norms and principles does it prescribe, how did it come into existence, and what is its current status? I will back the statement about the broken nature of the regime with academic theory using empirical material. Secondly I will investigate whether there is a need for an international regime in the drug policy issue area, alternatively the need for a regime in this field might have disappeared.

Then, assuming a 'yes' on the previous question, I will proceed to the central part of the thesis. I will first look into how the regime can be fixed, what the options are. Based on previous findings I assume that the only way to fix the international drug control regime is to change the regime. Therefore, I will pose the questions: what conditions are needed for a

¹³ Eva Herschinger, 'The drug dispositif: Ambivalent materiality and the addiction of the global drug prohibition regime', *Security Dialogue*, 46/2 (2015), 185.

¹⁴ Ibid.

regime to be able to change? Are those present in this case? Having identified the presence of those conditions I will look at factors that might block regimes from changing, even though the pressures are present. Hereby I identify four different kinds of challenges that have to be faced in order to change the regime. These include challenges identified by international regime theorists that assume rational actors, but also challenges that deal with history and the social construction of the issue; challenges that are ignored by theorists from the rationalist paradigm. In order to understand the challenges, I also cross the borders of regime theory, and include among others: negotiation theory, institutionalism theory and theory on framing and 'securitization'.

Having identified the obstacles for regime change, I will proceed to look into ways to overcome these obstacles and identify 'ways out'. This forms Part III of the thesis. Finally, I will conclude by answering the main research question in a short and concise way, summing up the main discoveries, and providing a wider outlook on the issue.

Theoretical Approach

Many discussions in the field of international relations boil down to a (structural) realist/rationalist versus constructivist debate. That is not what this thesis is about. Although the paradigms provide different theories about, among others, regime change, this thesis will be more about distilling and blending the wisdom of both into a more comprehensive understanding of the issue. Therefore the overall theoretical approach will be more of a middle way between the realist/rationalist and the constructivist paradigm. Generally the study of regimes has more in common with the realist perspective, the concept has attracted a number of scholars who foremost identify themselves with the structural realist approach.¹⁵ The special issue on regimes of the elitist journal 'International Organization' reflects this.¹⁶ Even though I acknowledge that in many situations states act rationally by maximizing self-interests, I do not believe this is always the best way or even the only way to explain regime change, and definitely not the inertia in the transforming the international drug control regime. Instead I also recognize the validity of more constructivist arguments whereas history and social constructions such as narratives and morals can also play a role. One of the main thinkers on regimes I refer to a lot is Stephan Krasner, although he is grounded in (structural)

¹⁵ Stephen D. Krasner, 'Regimes and the limits of realism: regimes as autonomous variables', *International Organization*, 36/2, (1982), 497.

¹⁶ Ibid. 509.

realism, he also accepts and elaborates on constructivist and institutionalist arguments, and claims that the paradigms are not 'mutually exclusive' in understanding world politics.¹⁷

Assumptions

Some say that the study of regimes is more "obfuscating and confusing than clarifying and illuminating"¹⁸; I however disagree, and many do so with me.¹⁹ Therefore I take as a starting point the assumption that regimes matter, and agree with Robert Keohane that the concept of regimes helps in understanding international cooperation.²⁰ Arthur Stein adds: "Regimes represent more than international organizations and less than all international relations".²¹ My attached importance to the concept of regimes does not mean that I believe all theory on regimes is equally capable of providing us with worthy generalizations. After all, looking at the definition and description of regimes given so far, one could probably fit a million 'regimes'. Saying something about the general functioning of all of those is logically speaking very difficult. Nonetheless, qualifying a regime as a certain kind, looking at overall trends in the creation of them, identifying conditions for their change can help us understanding this phenomenon. There is a lot of discussion on when something qualifies as fitting within the scope of a regime.²² This thesis won't go into that discussion, and assume the 'international drug control regime' is a regime. A Google search of the term gives over 10.000 results, therefore I reason: when people recognize it as a regime, it is a regime. After all, it's a concept fabricated by humans.²³

¹⁷ Robert O. Keohane, 'Stephen Krasner: Subversive Realist', *Princeton* (2 Oct. 2010),

<https://www.princeton.edu/~pcglobal/.../keohane_paper.docx>, 28, accessed on 15 May 2016.

¹⁸ Susan Strange, 'Cave! his dragons: a critique of regime analysis', *International Organization*, 36/2, (1982), 479.

¹⁹ Raymond F. Hopkins and Donald J. Puchala, 'International regimes: lessons from inductive analysis', *International Organization*, 36/2, (1982), 245.

²⁰ Robert O. Keohane, 'The Analysis of International Regimes: Towards a European-American Research Programme' in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Clarendon Press, 1995), 23.

²¹ Arthur A. Stein, 'Coordination and collaboration: regimes in an anarchic world', *International Organization*, 36/2, (1982), 299-300.

²² Robert O. Keohane, 'The Analysis of International Regimes', 26-29

²³ Oran R. Young, 'Regime dynamics: the rise and fall of international regimes', *International Organization*, 36/2, (1982), 278.

PART I: a broken regime, past and present

Chinese emperor Shen-Nung was in 2700 BC the first to describe cannabis. In 1378, Soudan Sheikhoumi the emir of Joneima in Egypt was the first to prohibit the use of cannabis: anyone caught eating cannabis would have his or her teeth pulled out.²⁴ The Sumarians in Mesopotamia (modern day Iraq) first described the 'joy plant' over 5000 year ago, nowadays known as poppy - the plant of which opiates derive.²⁵

Ergo, neither drug use nor drug bans are new phenomena. Quite consistently throughout history people have had the desire to change their state of consciousness through alcohol, tobacco, coffee or: 'drugs', be it opium, coca, cannabis or other drugs.²⁶ These substances have been perceived from time to time and from place to place as both a great evil and a great good.²⁷ In short, before the 20th century there were no global patterns of norms and policies on the drugs issue, no regime.²⁸ That however changed.

This chapter will start off with the basic question: "what is the international drug control regime?" and thereby will form a definition of the issue area. Then it will proceed with a short investigation in how the current drug regime came into existence; it will provide a historical overview of the developments of and within the regime. Although that might be somewhat unexpected when the present and future is the subject of this thesis, many argue that the historical development is important for explaining current events. Among them is Arthur Stein stating that regimes are maintained as long as the patterns of interest that gave rise to them remain.²⁹ Subsequently this chapter will address the current brokenness of the regime and ask whether this is a problem/whether the world needs a strong international regime in this issue area.

1.1 Defining the issue area: the international drug control regime

This regime covers the issue of 'drugs'. However, one can name many different types of drugs. Drugs fit multiple purposes. People can be drug consumers, drug producers, drug

²⁴ David Bewley-Taylor, Martin Jelsma and Tom Blickman, 'The rise and decline of cannabis prohibition', *The Transnational Institute* [website], (7 Mar. 2014) <<http://cannabishistory.tni.org/index.htm>> accessed 3 Apr. 2016.

²⁵ John P. Hoffman, 'The historical shift in the perception of opiates: from medicine to social menace', *J Psychoactive Drugs*, 22/1, (1990), 54.

²⁶ Ethan A. Nadelmann, 'Global prohibition regimes: the evolution of norms in international society', *International Organization*, 44/4 (1990), 502.

²⁷ Eva Herschinger, 188.

²⁸ Ethan Nadelmann, 502-503.

²⁹ Arthur Stein, 321.

manufacturers, drug possessors and drug traders. Drug consumers can use drugs for medical purposes, scientific purposes or for recreational purposes. Some of the drug consumers are addicts, others are not. Drugs are sometimes referred to as 'narcotics'; while other drugs are named 'psychotropic substances'; these are medical terms. Narcotic drugs are understood to induce sleepiness, whereas psychotropic drugs can have different effects.³⁰ For the purpose of this thesis, the general term 'drugs' is used, which include both psychotropic and narcotic drugs.

The current regime covers many of the above aspects and divides drugs between the 'licit' and the 'illicit', the legal and the illegal. This is however not black and white; some drugs are only legal for certain medical purposes and but illegal for all others. When referring to drugs in this thesis, the illicit kind is meant, unless otherwise stipulated.

According to the earlier given definition, a regime covers principles, norms, rules and decision-making procedures. The order of these reflects the durability; principles and norms of regimes are rather enduring and hard to adjust, whereas rules and decision-making procedures are more concrete and more easily adjusted.³¹ The overall principle/norm that the current regime prescribes could be formulated as: "drugs are evil and therefore their existence should be controlled by means of a repressive regime, with the ultimate goal of a illicit drug free society". Interestingly, the word 'evil', a morally and religiously loaded term, actually appears in law. It is the only UN legislative document that contains the word 'evil'; not even the Convention on Genocide employs this term.³² The Convention states: "...addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind."³³

The rules and decision-making procedures that follow this norm are institutionalized and encoded in 'the three drug conventions'. Although exact laws on drugs vary from country to country, most of the laws follow the international structural frameworks set out in these three conventions: the 1961 Single Convention on Narcotic Drugs, the 1971 Psychotropic Convention and the 1988 UN Drug Trafficking Convention.³⁴ Together they are often referred to as the 'cornerstone' of the international drug regime. The key provision in these conventions

³⁰ Christopher Hallam, Dave Bewley-Taylor and Martin Jelsma, 'Scheduling in the international drug control system', *Transnational Institute*, (Jun. 2014) <https://www.tni.org/files/download/dlr25_0.pdf>, 6, accessed 5 Apr. 2016.

³¹ Stephan Krasner, 'Regimes and the limits of realism', 499.

³² Christopher Hobson, 'Challenging 'evil': Continuity and change in the drug prohibition regime', *International Politics*, 51/4 (2014), 525-526.

³³ *Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs*, opened for signature 13 Mar. 1961, (entry into force 8 Aug. 1975), preamble.

³⁴ Neil Boister, 'Drugs, International Regulation, and Criminal Liability', *International Law* [website], (24 July 2013), <<http://oxfordbibliographiesonline.com/view/document/obo-9780199796953/obo-9780199796953-0104.xml>>, para. 2, accessed on 4 Apr. 2016.

lies in article 4(c) of the 1961 Convention, by way of which states agree "...to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs."³⁵ Other important provisions are contained in article 36 of the 1961 Single Convention, article 22 of the 1971 Psychotropic Substances Convention, and article 3 of the 1988 UN Drug Trafficking Convention.³⁶ Specific to these articles is the 'criminalization' aspect.³⁷ The articles describe the way that states are supposed to respond to the illicit supply and demand of drugs.³⁸ The articles are understood as leading to the penalization of individuals engaging in drug-related activities, although their exact interpretation is debated. These articles form the basis of the regime.³⁹

The regime has evolved over the years and became further institutionalized during the end of the 20th century into what is today an UN agency: the United Nations Office on Drugs and Crime (UNODC), an institution based in Vienna. Underneath this umbrella, the secretariats of the Committee on Narcotic Drugs (CND) and the International Narcotics Control Board (INCB) were merged.⁴⁰ The CND is the decision-making organ, in which 53 states are seated. Membership of the CND rotates among the members of the 1961 Single Convention, and reflects all parts of the world.⁴¹ The INCB forms a quasi-judicial, independent body that monitors the states compliance to the three drug conventions.⁴²

The other part of the definition, referring to an issue-area, also forms a key component of the definition of a 'regime'. An issue-area is understood to be wider than the issue itself: it is the area in which a certain issue is situated and therefore it includes linked issues. Few examples of the linked issues are: health, human rights, development, (organized) crime, the death penalty, prison-over crowdedness, social exclusion, HIV-spreading, access to essential medicines, corruption and drug related violence.⁴³

³⁵ *Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs*, art. 4(c).

³⁶ Neil Boister.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Martin Jelsma, 'UNGASS 2016: Prospects for Treaty Reform and UN System-Wide Coherence on Drug Policy', 4.

⁴¹ UNODC, 'CND, Commission on Narcotic Drugs Vienna: Mandate and Functions', *UNODC* [website], (2016), <https://www.unodc.org/unodc/commissions/CND/Mandate_Functions/Mandate-and-Functions_index.html>, accessed 5 Apr. 2016.

⁴² International Narcotics Control Board, 'The International Narcotics Control Board', *INCB* [website], (2016), <<https://www.incb.org/incb/en/about.html>>, accessed 5 Apr. 2016.

⁴³ Christopher Hobson, 536, and: J. Michael Blackwell, 'The costs and consequences of US drug prohibition for the peoples of developing nations', *Indiana International Law & Comparative Law Review*, 24/3 (2014).

1.2 Past: the creation and evolution of the global drug control regime

Why has this international drug control regime been created? Or a more general question: why are regimes created? This question is one that kept quite a few international relations scholars busy during the 80's, resulting in a pile of theories on why regimes emerge. Many of those scholars emphasize rational behaviour focused on power and interests as main drivers.⁴⁴ A few others criticise this narrow view and add other factors.

1.2.1 Regime theory: the structural realist explanation

Regimes are a result of rational behaviour by states. That would sum up the prevailing structural realist argument, assuming egoistic self-interest of states.⁴⁵ Whereas conventional realists deny the relevance of regimes, the structural realists argue that when individual behaviour leads to suboptimal outcomes, countries are inclined to cooperate and as a result increase the overall profits.⁴⁶ Regimes are the product of this cooperation and facilitate the making of agreements by providing information and reducing transaction costs in world politics. Especially when issues are complex and countries are interdependent, the demand for regimes will increase.⁴⁷ Due to globalization, the world is more and more interconnected, which leads to increased complexity, and regimes form a solution in dealing with this.⁴⁸ However regimes only arise under restrictive conditions: when individual decision-making fails to secure the desired outcomes. The variables that lead to regime creation are: power and interest. The principle actors are the states. What regimes exactly look like is mostly decided by the most powerful states that design them.⁴⁹

This all sounds like a very logical explanation for regimes to many, its simplicity is appealing. And when looking at the history of the international drug control regime, one could certainly see these reasons as valid explanations for the regime appearance.

Julia Buxton has done detailed research on the emergence of the international drug control regime, and found that the United States played a crucial role in the creation of the regime. The US was, especially back then, a very powerful country. The United States had a strong interest in a global drug control regime, and had been lobbying for global criminalization of drugs since the beginning of the 20th century. In 1909 the US convened the

⁴⁴ Volker Rittberger, 'Research on Regimes in Germany' in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Clarendon Press, 1995), 13.

⁴⁵ Stephen Krasner, 'Structural causes and regime consequences', 191, 195.

⁴⁶ Ibid. 195, 205.

⁴⁷ Ibid. 196, and: Stephan Krasner, 'Regimes and the limits of realism', 504.

⁴⁸ Robert O. Keohane, 'The Analysis of International Regimes', 35-38.

⁴⁹ Stephen Krasner, 'Structural causes and regime consequences', 200.

Shanghai Opium Convention and thereby laid the foundations for the international quest to eliminate the global drugs market.⁵⁰ Following this, in 1912 the International Opium Convention was signed in The Hague, this turned a, at first, solely moral commitment into binding international law. In the interwar period a number of conventions and agreements followed, but with the emergence of the United Nations, the drug control regime finally became fully institutionalized.⁵¹

Over these years of intense US activity in the field, the US managed to design an international regime that reflected the core values of the its own ideas on drugs prohibition: a model that was focused on the supply side of drugs (Latin-America, the East) and that emphasized punishment and suppression over the consideration why people cultivated, produced and used drugs.⁵² It furthermore institutionalized the influence of the police, military, politicians and diplomats while largely ignoring the opinion of stakeholders such as doctors, users and drug farmers.⁵³ These developments seem to fit in the explanations provided by structural realists - the powerful US forced this regime upon other countries. Also the restrictive condition of 'individual decision-making fails to deliver desired outcomes' is present: when certain countries do not prohibit drugs they will still be available and illegally traded to the countries where there is drug prohibition.

Oran Young⁵⁴ researched the rise and fall of international regimes and argued that regimes are spontaneous, imposed or negotiated.⁵⁵ Although it is easy to conclude that here we speak of a by the US imposed regime, the drug control regime has actually been negotiated by sovereign states in several international meetings and would therefore qualify as a negotiated regime. Although the three conventions therefore should reflect a 'negotiated order', also in negotiated orders the bargain that was struck can often be heavily influenced by the distribution of power - in this case: large US power.⁵⁶ Additionally, there are indications that at the beginning of the 19th century there were instances where the US imposed their ideas on drugs upon certain countries.⁵⁷ Young added: regimes that exhibit superficial

⁵⁰ Julia Buxton, *Policy Research Working Paper: The Historical Foundations of the Narcotic Drug Control Regime* (The World Bank, Development Research Group, Macroeconomics and Growth Team, Mar. 2008), 18.

⁵¹ Eva Herschinger, 188.

⁵² Julia Buxton, 18.

⁵³ Ibid.

⁵⁴ Although Young's approach goes beyond the standard structural realist approach, these points are in line with this paradigm.

⁵⁵ Oran Young, 283-290.

⁵⁶ Oran Young, 288.

⁵⁷ Julia Buxton, 13.

appearance of a negotiated order might sometimes be better understood as imposed orders.⁵⁸

1.2.2 Regime theory: additional factors

Together with Gail Osherenko, Oran Young also tested regime formation, and found three additional factors that also play an important role in the creation of regimes.⁵⁹ They identified knowledge, context and leadership as important or even crucial factors for a regime to come into existence.⁶⁰

Firstly, they found (individual) 'leadership' to be crucial. Although this is closely related to the power and interests factors, Young and Osherenko argue that regimes especially come into existence when there are strong and consistent leading individuals present. Solely rational state behaviour might not yet lead to the creation of a regime. Here Young and Osherenko move away from structural realist explanations by pointing at individual actors rather than state actors. Julia Buxton identified several of those individuals, people who played a leading role in the creation of the drug control regime.⁶¹ Among these were two American Christian missionaries in the Philippines: Protestant Episcopal Bishop of Manila, Charles H. Brent and Reverend Wilbur Crafts.⁶² They pushed for a ban on drug consumption in the Philippines when they observed negative affects there, back then a colony of the US. After this was in place, they pushed for international legislations, as they saw that domestic law was not sufficient.⁶³ This reflected the start of the so-called narco-diplomacy by the US, then headed by US Opium Commissioner and head of the US delegation Dr Hamilton Wright. He was the first out of a long list of US Drug 'tsar's'.⁶⁴ Although these individuals that lived at the beginning of the 20th century are hard to directly connect to the current drug control regime, Buxton argues they played a large role in how the US its firm position came into existence. After them, Henry Anslinger, played a crucial and leading role between 1930 and 1962 as Director of the Federal Bureau of Narcotics in the US.⁶⁵

Secondly, 'knowledge', which can be understood as a shared understanding of causal mechanisms, is identified as important.⁶⁶ When looking at the debates held when creating the 1961 Single Convention, it appears that there was a shared understanding on the fact that a

⁵⁸ Oran Young, 288.

⁵⁹ Gail Osherenko and Oran R. Young, 223-248.

⁶⁰ Ibid.

⁶¹ Julia Buxton, 10, and Ethan Nadelmann, 507.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Gail Osherenko and Oran R. Young, 235-237, 250.

repressive approach would actually lead to the elimination of drugs from society.⁶⁷ There was furthermore a limited medical and scientific understanding of the issue of drugs, which may have been decisive for the ultimate shape of the regime.⁶⁸

Thirdly, 'context' has been identified as important.⁶⁹ Young and Osherenko thereby point at circumstances and events that seem unrelated, but can play a role in whether or not a regime comes into existence.⁷⁰ Growing cross-border trade, the ending of World War II, and the establishment of the UN created momentum for the US to push for UN legislation on drug policy.⁷¹ But even before that time, certain ideas on drugs prohibition were created during an era of colonial enterprise, social tension, and racism, as Ethan Nadelmann argues.⁷² These societal circumstances also influenced the creation of the regime.⁷³

1.2.3 Regime theory: moral and emotional factors

*"It is true that international regimes tend to reflect the economic and political interests of the dominant members of international society. But it is also true, despite inattentions of most international relations scholars, that moral and emotional factors related to neither political nor economic advantage but instead involving religious beliefs, humanitarian sentiments, faith in universalism, compassion, conscience, paternalism, fear, prejudice and the compulsion to proselytize can and do play important roles in the creation and evolution of international regimes."*⁷⁴

This is a quote by Ethan Nadelmann, who has done research on prohibition regimes specifically. He sums up a large number of factors that can also independently play a role, factors that are ignored by structural realists.

Nadelmann argues that also the drug control regime creation, especially domestically in the US, cannot only be explained by legitimate concerns over the harmful potential of drugs.⁷⁵ He furthermore criticizes the structural realist claim that international regimes only appear when individual state behaviour leads to suboptimal results, in this case: the desire to

⁶⁷ Christopher Hobson, 532.

⁶⁸ Julia Buxton, 28.

⁶⁹ Gail Osherenko and Oran R. Young, 'Testing theories of Regime Formation' in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Clarendon Press, 1995), 237-239.

⁷⁰ Ibid. 237-239, 250.

⁷¹ Julia Buxton, 20.

⁷² Ethan Nadelmann, 505-506.

⁷³ Julia Buxton, 28.

⁷⁴ Ethan Nadelmann, 480.

⁷⁵ Ibid. 505.

better restrict the export of drugs to the US.⁷⁶ He claims instead that there were certain 'moral entrepreneurs', among them the Christian missionaries mentioned before, that played a central role.⁷⁷ They had a moral conviction that drugs should be banned. In their efforts they appealed to the American elite who had paternalistic concerns about the vulnerability of the lower classes to alcohol and drug abuse, they feared economic productivity might suffer.⁷⁸ And although opiates were at the beginning of the 19th century widely used by native-born white women, the first anti-opium laws were associated with smoking by Chinese immigrants. Additionally, in the South, the white population feared that the black minority's use of cocaine would make them forget their assigned status in the social order.⁷⁹

Next to that, alcohol and tobacco, two kinds of drugs that are more subject to abuse and addiction, were not prohibited by an international regime, whereas for example the use of cannabis, which is less harmful, was placed on the most restricted list of illegal drugs. This contradiction does not reflect an objective calculation of potential harms, but a selective view by Western states that created the regime.⁸⁰ Nadelmann even dares to state that he believes, that if Muslim or Asian states had created the regime, alcohol might have been prohibited, and cannabis or opium could be legal.⁸¹ Hereby he underlines the role of religion and morals in the creation of the international drug control regime.

All in all, one can see that all of these named factors, power, interest, leadership, knowledge, context, morals and emotions, are likely to have been important for the way the international drug control regime looks like today.

1.3 Today: a broken regime

Today, the acceptance of the international drug control regime is high worldwide: currently, 184 states are parties to the 1961 Convention, 183 to the 1971 Convention, and 189 to the 1988 convention.⁸² However, many argue that the regime has reached its high point a while ago; that it is under unprecedented pressure and the consensus underpinning it is fracturing.⁸³

⁷⁶ Ibid.

⁷⁷ Ibid. 505-507.

⁷⁸ Ibid. 506.

⁷⁹ Ibid.

⁸⁰ Ibid. 509-511.

⁸¹ Ibid. 511.

⁸² Eva Herschinger, 188.

⁸³ Julia Buxton, 28, and Martin Jelsma, 3, and Vanda Felbab-Brown and Harold Trinkunas, 'UNGASS 2016 in Comparative Perspective: Improving the Prospects for Success', *Brookings Institution* (2015), <<http://www.brookings.edu/~media/research/files/papers/2015/04/global-drug-policy/felbabbrown-trinkunasungass-2016-final-2.pdf>>, 1, accessed 7 Apr. 2016.

This sub-chapter focuses on the question whether or not this is the case: is the regime really broken, and if so: how broken is it?

When is a regime broken according to the theories? Structural realist Stephan Krasner writes: "If the principles, norms, rules, and decision-making procedures of a regime become less coherent, or if actual practice is increasingly inconsistent with principles, norms, rules and procedures, then a regime has weakened".⁸⁴ Additionally, Andrew Kydd and Duncan Snidal, while criticizing structural realists, argue: "failure to develop and sustain appropriate beliefs may lead to the demise of a regime".⁸⁵ Although these writers might not agree on some issues, they seem to agree that when the support for a regime declines, states start showing deviant behaviour, it means that a regime is breaking down.

"From cracks to breaches and beyond", is the way Martin Jelsma describes the weakening of the international drug control regime.⁸⁶ The report by the GCDP maps out all the national measures that are not on par with the three conventions.⁸⁷ An increase is clearly visible.

Already in the 70s the first cracks became visible when first in 1973 the US state of Oregon decriminalized possession of cannabis for non-medical use.⁸⁸ In 1976 the Netherlands passed a law, creating a *de facto* legal system of cannabis sales by the establishment of the well-known 'coffee shops'.⁸⁹ From the 80s on, Switzerland, Germany, Denmark and the Netherlands developed approaches that would reduce harm, such as facilities where people could use drugs in a supervised manner.⁹⁰ These developments were noted and duly criticized by the INCB.⁹¹ Even though these developments could be called 'cracks', they were still seen as incidents, as most international regimes show a certain level of non-compliance.⁹²

From the 1990s/2000s on the non-compliance levels increased, and took more serious forms. In the 90s among others Moldova, Iran, Portugal, Ukraine and Canada started with harm-reduction programmes that included provision of clean needles to addicts.⁹³ Since 2005 Spain and Belgium permit small-scale cultivation of cannabis for personal use.⁹⁴ Ecuador,

⁸⁴ Stephan Krasner, 'Structural causes and regime consequences', 189.

⁸⁵ Andrew Kydd and Duncan Snidal, 'Progress in Game-Theoretical Analysis of International Regimes' in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Clarendon Press, 1995), 117.

⁸⁶ David Bewley-Taylor, Martin Jelsma and Tom Blickman, 11.

⁸⁷ Global Commission on Drug Policy, 14-15.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ International Narcotics Control Board, *Report 2013* (2014),

<https://www.incb.org/documents/Publications/AnnualReports/AR2013/English/AR_2013_E.pdf>, 8, accessed 10 Apr. 2016.

⁹² Puchala and Hopkins, 247, 274-275.

⁹³ Global Commission on Drug Policy, 14-15.

⁹⁴ Ibid.

Czechia and Portugal decriminalized personal possession of drugs.⁹⁵ In 2012 Bolivia was the first country to withdraw from the Single Convention, only to enter a year later with a reservation on coca, a drug that is traditionally cultivated and used there.⁹⁶ In that same year Colorado and Washington created a legal market for non-medical cannabis.⁹⁷ In 2013 New Zealand passed legislation that regulates sale of lower-risk novel psychoactive substances, and in that year Uruguay was the first country to establish a legally regulated market for cannabis.⁹⁸

These factual breaches show a clear increase in deviant behaviour by states, behaviour that acknowledges that drugs are part of society, and focus instead on reducing its harm. Next to that, when looking other developments and policy statements one can notice the breaking down of the regime. In 2005 the proponents of a regime reform gained attention, with articles in among others the New York Times, referring to the current regime and its support by the US as "a triumph of ideology over science, logic and compassion".⁹⁹ That year the CND also openly spoke out against the US' "zero-tolerance "war on drugs"-ideology".¹⁰⁰ In 2008 a group of 26 states fought against the deletion of the term 'harm-reduction' from a political statement, stating that they wanted to register their support for this concept on the record.¹⁰¹

Although above examples show that the regime is breaking down, there might be a clear cause for this: the final realisation that the regime will always keep failing to deliver the right results.¹⁰² Although UNODC published a surprisingly positive report about 100 years of drug prohibition in 2009, when looking at reality today one can come to only this conclusion: the war on drugs has failed. Global drug trade forms the third biggest trade market worldwide, after oil and weapons. Yearly turnover in the drug trade is estimated at 300.000.000.000 euros.¹⁰³ Moreover the regime has countless unintended negative consequences: overcrowded prisons because of all the drug offenders, HIV spreading, stigmatization and social exclusion of users, human rights violations, and a large amount of drug related deaths.¹⁰⁴ Some even

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Martin Jelsma, 'UNGASS 2016: Prospects for Treaty Reform and UN System-Wide Coherence on Drug Policy', 12.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Julia Buxton, 27.

¹⁰³ NOS op 3, *De keiharde oorlog tegen drugs heeft gefaald, wat nu?* [video], (NOS, 18 Apr. 2016)

<<http://nos.nl/op3/artikel/2099999-de-keiharde-oorlog-tegen-drugs-heeft-gefaald-wat-nu.html>>, accessed 20 Apr. 2016.

¹⁰⁴ Ernestien Jensema, 'Human Rights and Drug Policy, *Transnational Institute* [website] (22 May 2015),

<<https://www.tni.org/en/briefing/human-rights-and-drug-policy>>, accessed 15 Apr. 2016.

argue that there are good reasons to believe that current international drug control regime is counter-productive.¹⁰⁵ The medicine might be worse than the sickness.

1.4 Garbage bin, an option?

When the regime is counter-productive, why not let it simply disappear? Does the international society really need an international regime in the issue-area of drugs? Although a no-regime situation is hard to imagine in the current age, it could be an option.

Even though this might sound like a plausible option, the patterns that gave rise to the regime remain: drugs still cause harm and drugs are still and increasingly being traded across borders. We still live in a globalized world, and are highly interconnected. Simple game theory, as often used by rationalists, would predict that the quest for a regime remains. To illustrate this, I have loosely described, based on logical thinking and what has been concluded so far, possible situations in figure 1 on the next page.

Additionally, when looking at country statements, it seems that all countries are committed to cooperation in the field of drugs; therefore the garbage bin option seems to be highly unlikely.¹⁰⁶

¹⁰⁵ Eric Blumenson and Eva Nilsen, 'Liberty Lost: the Moral Case for Marijuana Law Reform', *Indiana Law Journal*, 85/1 (2010), 280, and: Julia Buxton, 28.

¹⁰⁶ United Nations, 'Special session on the World Drug Problem: Statements', *United Nations Paper Smart* [website], <<https://papersmart.unmeetings.org/ga/70th-session/thirtieth-special-session-of-the-general-assembly-%281%29/special-session-on-the-world-drug-problem/statements/>>.

<p>country A → country B ↓</p>	<p>repressive policy, criminal approach</p>	<p>liberal policy, harm reduction approach</p>
<p>repressive policy, criminal approach</p>	<p>COOPERATION The way the current regime is designed. This perfect case is unlikely, seen the number of breaches. And even when, the policy will fail to deliver good results. Demand for drugs will remain, therefore supply will remain, and trade and all other negative side effects will remain. Elimination is impossible.</p>	<p>NON-COOPERATION Close to current situation. Country A could improve the situation in its own country. Country B is unhappy because the acceptance of the presence of drugs and the limited criminal approach will make sure that drugs will never be eliminated from country B either. Country A is unhappy with the drug tourism as a consequence of their more regulated market. Drug traffic remains.</p>
<p>liberal policy, harm reduction approach</p>	<p>NON-COOPERATION Close to current situation. Country B could improve the situation in its own country. Country A is unhappy because the acceptance of the presence of drugs and the limited criminal approach will make sure that drugs will never be eliminated from country A either. Country B is unhappy with the drug tourism as a consequence of their more regulated market, drug traffic remains.</p>	<p>COOPERATION Countries A and B could exchange experiences with harm reduction policies, and learn from each other. Possible regulation of cannabis could take away a large part of the illegal markets, and lower drug trade across the border between country A and B, and thereby reduce criminal activity. There would be less or no drug tourism, since more countries might have legalized certain drugs.</p>

Figure 1

PART II: fixing it - the challenges

2.1 Way(s) to fix it

Yes, the regime is broken. Yes, the regime needs to be fixed. But how to fix it? As in the flat tire situation, one can improve the old tire, or buy a new one. Similarly, in the international drug control regime, there seem to be two options that are being discussed.

Option 1: Strengthen the current "drugs are evil and should be eliminated" regime

The first option would be to fix the current repressive, law-enforcement focused regime. This could be done by renewed commitment from the countries to fight the drugs problem even harder in the hopes of eliminating it. As a 'patch', states could strengthen the enforcement mechanism, in order to make sure states comply with the rules.

Option 2: Change toward a "drugs will always be part of society, let's reduce its harm" regime

Then option 2: change the regime. Accept the fact that drugs will always be part of society, and refocus the international efforts towards reducing the harm that it causes. Bring policies in line with developmental strategies such as the Sustainable Development Goals. By doing this, follow recommendations by experts, scientists and stakeholders. This could be done by a large amount of tools that have proven to be successful. There is no one-size-fits-all policy, but trial, error, monitoring and evaluation can create evidence, and best practices can be shared.¹⁰⁷

This first option has support by a number of countries, but the trend seems to be that more and more countries move away from this.¹⁰⁸ Even the US is not advocating this tough approach any longer, even though only 18 years ago they lead the way to a statement 'a drug free world: we can do it!'.¹⁰⁹ The voices against this repressive regime have become stronger and stronger, so the option to get all the countries committed to the old regime seems unlikely. This opposing side is starting to get convinced that a restrictive and oppressive approach will

¹⁰⁷ Global Commission on Drug Policy, 7-9, and John Hudak, 'UNGASS and the consequences of international drug policy', *Brookings* [website], (7 Apr. 2016) <<http://www.brookings.edu/blogs/fixgov/posts/2016/04/07-un-drug-policy-marijuana-prohibition-hudak>> accessed 20 Apr. 2016.

¹⁰⁸ *Ibid*, 14.

¹⁰⁹ Vanda Felbab-Brown and Bradley S. Porter, 'Global consensus and dissensus on drug policy', *Brookings* [website], (4 Apr. 2016) <<http://www.brookings.edu/blogs/order-from-chaos/posts/2016/04/04-ungass-drug-policy-felbabbrown-porter>> accessed 20 Apr. 2016.

never work. As 50 years of trying this regime has failed to deliver the desired results, and scientists from all fields are convinced it will not in the future, it seems unlikely that option 1, although a number of countries prefer it, will ever give the right results and will ever regain full support. A growing number of countries seem to support option 2 instead. However, whereas the states under the regime see the above two options for regime restoration, science is convinced there is only option 2 has the potential to actually work and deliver good results. Therefore I will focus my research on identifying challenges in restoring the drug control regime by changing it towards option 2. Hence, the questions to be answered in this chapter: when do regimes change? What conditions are needed for change? Are those present in the issue-area of drugs? What are the challenges in changing the international drug control regime?

2.2 When regimes change: a condition check

"Meaningful change can only come from a revision of founding ideas..." writes Julia Buxton in her conclusion on the history of the international drug control regime.¹¹⁰ This idea is not supported by a scientific argument, but forms the wider 'outlook' in her article. However, it seems that regime theorists agree.

Oran Young stated that regimes are not to be seen as 'static constructs', but regimes instead can be subject change.¹¹¹ "Changes in principles and norms are changes of the regime itself. When norms and principles are abandoned, there is either a change to a new regime or a disappearance of regimes from a given issue-area" writes Stephan Krasner.¹¹² Puchala and Hopkins argue that there are two ways in which regime change takes place: a revolutionary way and an evolutionary way.¹¹³ Evolutionary change happens when rules and decision-making procedures change, and thereby, in an incremental way, the regime changes. Evolutionary change is understood to follow changes in information available and new knowledge.¹¹⁴ Krasner calls this 'change within a regime', and argues that only when the governing norms and principles change, real regime change can occur.¹¹⁵ According to Puchala and Hopkins, this 'revolutionary change' happens when the counter regime norms 'win', and turnover the regime.¹¹⁶

¹¹⁰ Julia Buxton, 28.

¹¹¹ Oran Young, 290-291.

¹¹² Stephan Krasner, 'Structural causes and regime consequences', 188.

¹¹³ Raymond Hopkins and Donald Puchala, 250.

¹¹⁴ Stephan Krasner, 'Structural causes and regime consequences', 204.

¹¹⁵ Ibid. 188.

¹¹⁶ Raymond Hopkins and Donald Puchala, 250.

In the drug issue terms, when the criminal references slowly disappear, and health and harm reduction references appear, one could speak of evolutionary change. This is unlikely since harm reduction references go against the overall norm of the repressive regime. Revolutionary change on the other hand, is when the overall norms and principles change. This latter, revolutionary change, appears in line with Julia Buxton's conclusion. Looking at the drug issue, revolutionary change seems to be needed, as the two norms described above, are contradictory. The first underlines the goal of total eradication of drugs, whereas the second option acknowledges that eradication is not possible at all, and accepts the presence of drugs in society. The question appears: when do counter-norms win? When does a regime change?

Oran Young tries to answer this question in his article "Regime dynamics: the rise and fall of international regime", and points to three types of pressure that make regimes change: (1) internal contradictions, (2) exogenous forces, and (3) shifts in underlying power structures.¹¹⁷ When taking a closer look at the current status of the international drug control regime, all three of the pressures seem present to some extent.

Although still a controversial stand, when some say that the medicine is worse than the cure, there seem to be internal contradictions present in the regime. I will give a few out of numerous examples that support this statement. Firstly, the law-enforcement aspect of the regime seems counterproductive. As mentioned before, drug prohibition created a criminal market worth of about 300.000.000.000 euros annually, which mostly profits criminals.¹¹⁸ This contradiction was even recognized by the chief of one of Colombia's drugs cartels: he expressed his gratitude for the 'war on drugs' and said that it was actually "good for business".¹¹⁹ Secondly, there are inconsistencies between the UN drugs policies, and the wider UN policies. The drug conventions are increasingly being seen as at odds with the UN's position on human rights.¹²⁰ While the INCB argues that its goal is to protect the wellbeing of the individual and society, only the 1998 convention mentions 'human rights', and the human rights issue-link is largely ignored.¹²¹ For example, problematic drug users are often subject to a wide variety of human rights violations; e.g. they are forced into treatment, marginalized and considered unworthy of respect.¹²² Also, whereas the Millennium Development Goals aimed to reverse the HIV spreading trend by 2015, the INCB is against injecting rooms, even

¹¹⁷ Oran Young, 291-295.

¹¹⁸ NOS op 3.

¹¹⁹ David R. Bewley-Taylor, 426.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Damon Barrett, 'Reflections on Human Rights and International Drug Control', *LSE Ideas, London School of Economics*, <http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR014/Barrett_Damon.pdf>, 58, 59, accessed on 15 Apr. 2016.

though those rooms are very effective in preventing HIV spreading, by for example supply of clean needles.¹²³ Thirdly, the measure of 'crop eradication' as a way to reduce the supply of drugs, has devastating consequences for certain groups of people. For instance, the Colombian government sprayed poisonous liquids from planes onto the coca crops of farmers. However, thereby they also killed other food crops and even some farm animals. Moreover some people had to be taken to the hospital as a result. Some, mostly indigenous, families were consequently forced to flee their farms.¹²⁴ How do these developments rhyme with the 'protection of the wellbeing of the individual and society'? All in all, one can see the internal contradictions, and the international recognition thereof, as a pressure on the repressive international drug control regime to change.

The second type of pressure, 'exogenous forces' is understood to mean societal developments that happen outside a regime. As that sounds like a very broad term, it can indeed come in many shapes.¹²⁵ Oran Young makes this pressure a bit more concrete by claiming that changes in the nature and distribution of technology is one of the most dramatic examples of this.¹²⁶ A logical claim, as since the 60's a lot has changed in the world in terms of that. The international drug control regime is being pressured into change by a number of societal developments. A few examples to demonstrate this: drugs trading back in the 60s looked like this: person A would bring a large bag of drugs to person B, person B would give a large bag of money to person A in exchange. This crime leaves physical evidence. The bag can be connected to the person carrying it, the money as well. So law enforcement has a fair chance of catching the criminals. Nowadays drugs are often being sold on the 'dark market', a hidden place on the Internet, IP-addresses and thereby persons cannot be traced. In many cases criminals pay by Bitcoin, so the money trail is incredibly hard to trace. Due to globalization the supply-chain has become global. These technological developments benefit the criminals but hinder law enforcement. Another example: when the regime was created, it was assumed that the availability of drugs would lead to addiction. However, by now, scientists have not been able to prove this causality, or even: experiments have proven that there is no relationship between the two at all.¹²⁷ This growing knowledge about the human brain, and other societal developments put the drug control regime under pressure.

¹²³ David R. Bewley-Taylor, 426.

¹²⁴ Damon Barrett, 'Reflections on Human Rights and International Drug Control', 57-60.

¹²⁵ Oran Young, 294.

¹²⁶ Ibid.

¹²⁷ Bruce K. Alexander, Department of Psychology, Simon Fraser University, 'The Myth of Drug-Induced Addiction', *Parliament of Canada* [website], <<http://www.parl.gc.ca/content/sen/committee/371/ille/presentation/alexander-e.htm>>, accessed 3 May 2016.

The third type of pressure, 'shifts in underlying power structure' in the international system might be a little less clearly present. Especially since the analysis of this pressure is difficult, as power is hard to measure.¹²⁸ However, there are a few things to note.

"The strong make the rules" has been argued in favour of from a realist perspective. But what if, once the rules are there, the strong aren't happy with them? Keohane and Nye argue that regime change can occur because of a difference between the influence and benefits under an existing regime, and the expectations of dissatisfied states about the effect of new rules.¹²⁹ In other words, when a regime does not provide results that the most powerful states desire, and they expect better results under a new regime, there is a pressure for regime change. Realists underline the importance of a 'hegemon' and 'leadership', as pushers for change under this interests and power argument. Especially in a situation where one powerful state is willing to take the lead, change would be more likely.¹³⁰

Keohane and Nye differentiate two types of power structure explanations for regime change: overall power structure and issue-specific power structure.¹³¹ Whereas the overall power structure describes power relations among states in the entire world politics, the issue-specific one limits itself to the power structure within a certain issue, in this case drug policy. Hence, states can be powerful in overall politics, or/and on the specific drug issue. The overall power structure argument can be checked a bit easier than the issue-specific one, as there is a large amount of theory available on what the most powerful states are from time to time. The issue-specific power structure on the other hand is harder to establish since one would need a lot of specific information that is in most cases not available.¹³² To get grip of the current issue-specific power structure of drugs, one would for example need to have access to the negotiation rooms, documents and negotiating diplomats. Even then a result would be largely subjective. Furthermore, the argument does not always hold up, regimes in many cases do not conform the preferences of the most powerful states as Krasner argues.¹³³ He claims that power dynamics shift at a high speed, and regimes cannot keep up with that.¹³⁴ But, as the disparity grows, the pressure to regime change increases.¹³⁵

Even though hard to examine, as mentioned above, there are a few interesting points to make under this pressure type, even in the specific drug policy regime. As established in

¹²⁸ Oran Young, 293.

¹²⁹ Robert O. Keohane and Joseph S. Nye, *Power and Interdependence*, (Glenview: Pearson Longman, 2012), 44.

¹³⁰ *Ibid.* 35-41.

¹³¹ *Ibid.* 37.

¹³² *Ibid.* 43.

¹³³ Stephan Krasner, 'Regimes and the limits of realism', 488.

¹³⁴ *Ibid.* 499.

¹³⁵ *Ibid.*

earlier chapters, the US played a leading role in the establishment of the regime. Also once the regime was in place, the US spoke out in a loud way for a strong repressive approach, which peaked when President Nixon announced the 'war on drugs' in 1971.¹³⁶ However, part of the hegemon argument, is that when a hegemony is erodes, the regime they kept up might also erode or change.¹³⁷ This could be argued in favour of with the case of the US. Many agree that the US power in the world has decreased since the beginning of the 2000s; at the same time more and more states began deviating from the regime.¹³⁸ On the issue-specific power structure, the US also might have lost their strong position due to legalization trends in their states, by way of which they are themselves challenging regime norms. Their voice would therefore be taken less seriously, when speaking in favour of the repressive regime; since that would be hypocritical.¹³⁹

More interesting though, is the question how powerful the states are that are dissatisfied with the results of the current regime and are pushing for change. Is there a state able and willing to take the lead? I expect the answer to be 'no', and to this I will get back when analysing the 'power and interests' later this chapter.

2.3 Why regimes do not change (or only slowly): the international drug control regime

Having established that there are at least two out of the three pressures types present in the push towards regime change in the international drug control regime, the regime theorists also put forward some factors that might cause regime change to slow down or even block it from happening. Among them are Arthur Stein and Stephan Krasner; they put forward ideas from a foremost structural realist perspective. However on the basis of the previous findings, that established also other than rational factors causing the creation of the regime, I will divert a little from the sole structural realist arguments, and identify four kinds of obstacles I expect to stand in the way of regime change. Partly, those take in the arguments by Krasner and Stein, but at the same time they include also other arguments that attach importance to the social constructions surrounding the regime. I do believe together they give a more complete reflection of what stands in the way of regime change. The four categories of challenges: (1) institutional challenges, (2) power and interests challenges, (3) the domestic challenge, (4) the framing challenges. The four sub-chapters below address those challenges from a theoretical

¹³⁶ Damon Barrett, 'Introduction: Counting the Costs of the Children's Drug War' in Damon Barrett (ed.), *Children of the Drug War: Perspectives on the Impact of Drug Policies on Young People* (New York: The International Debate Education Association, 2011), 1.

¹³⁷ Stephan Krasner, 'Regimes and the limits of realism', 500.

¹³⁸ Michael Kox, 'Power Shifts, Economic Change and the Decline of the West?', *International Relations*, 26/4 (2012), 369.

¹³⁹ Martin Jelsma, 'UNGASS 2016: Prospects for Treaty Reform and UN System-Wide Coherence on Drug Policy', 21, 22,

point, and provide examples from previous research on the drug control regime, as well as official documents.

2.3.1 Institutional challenges: on tradition, institutions and negotiating change

*"Even if experience has shown the unexpectedly undesirable consequences of a commitment, the past may continue to rule the present."*¹⁴⁰

Tradition

The above quote by Kenneth Arrow seems to capture the situation where evidence favours a certain new policy, but old and ineffective policies seem to stick. This stickiness of old policies or regimes is caught in the concept of 'path dependence', as developed by Paul Pierson, among others.¹⁴¹ Once having decided on a certain path, it is hard to switch roads. That would mean that first of all that history matters.¹⁴² "Steps in a particular direction, induce further movement in that same direction".¹⁴³ Costs of reversing previous policy choices are high, and therefore less likely.¹⁴⁴ Krasner named this as one of the reasons for regime persistence too: custom and usage.¹⁴⁵ It explains why support by participants for a regime can persist, even though it is not in the interests of those same participants: people adhere simply because they have done so in the past.¹⁴⁶ Stein provides us with a possible (rational) explanation for this, stating that countries do not continually recalculate their interests and power under a certain regime, but only do so periodically. Therefore they might not yet be aware of negative results.¹⁴⁷

However when looking at the drug control regime, it is hard to argue that states are not aware of the negative results of the decennia old regime, as its negative consequences are widely acknowledged at the UN. Also, reversing policy choices by changing the regime would probably cost a little, however the long-term profits could be big. Official records of what governments spend on fighting drugs are hardly available. However it is estimated that

¹⁴⁰ Kenneth Arrow in Stephan Krasner, 'Regimes and the limits of realism', 504.

¹⁴¹ Paul Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics', *The American Political Science Review*, 94/2 (2000), 252.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Stephan Krasner, 'Regimes and the limits of realism', 502.

¹⁴⁶ Ibid.

¹⁴⁷ Arthur Stein, 322.

annually 100 billion US dollar is spend on law-enforcement.¹⁴⁸ Harm Reduction International, a non-governmental organization (NGO), used mathematical models to estimate what a shift in money spending would do.¹⁴⁹ One of their conclusions was that if governments would move 7.5% of their spending on the drug law-enforcement by 2020 towards harm reduction, they would achieve a 94% cut in new HIV infections among people who use drugs by 2030, and a 93% drop in HIV-related deaths.¹⁵⁰ Even so, the far-going and very controversial harm-reduction measure of legalization of for example marijuana could potentially bring enormous tax-revenues. Jeffrey A. Miron and Katherine Waldock investigated the case for the US and counted that tax revenues on marijuana, when they would be at the same rates as alcohol and tobacco, would yield 8.7 billion US dollar each year. That even excludes all the savings on the law-enforcement on fighting marijuana.¹⁵¹ All in all, it is clearly not in the economic interests of states to stick to the repressive regime.

Arthur Stein however also points to the fact that it may neither be delays in recalculation of interests, nor costs of reversing it, that are responsible for regime persistence. He adds 'tradition' to the list of reasons, and refers to a point made by Max Weber: "tradition provides legitimacy and is one maintenance for political order". Caroline Chatwin recognizes this phenomenon, and states on the drug issue that "...persuading national governments to abandon policies that have been in place for some 50 years or more and adopt instead policies that are fundamentally different is therefore a very difficult task."¹⁵² In terms of interests, states may continue to adhere to a certain regime because they care about their image in the international arena; they prefer to be seen in compliance than to be stamped as defectors - as a reputation.¹⁵³ Davis Bewley-Taylor recognizes this argument in the drug context, and states that in the 2000s open confrontation to the repressive regime could have had negative consequences for a states' international image.¹⁵⁴ Furthermore, it is customary international law that when having signed up to a Treaty, one is not to defer from it, as agreed under the

¹⁴⁸ Catherine Cook, Maria Phelan, Gen Sander, Katie Stone, Fionnuala Murphy, 'The Case for a Harm Reduction Decade: Progress, potential and paradigm shifts', *Harm Reduction International*, (Mar 2016) <http://www.ihra.net/files/2016/03/10/Report_The_Case_for_a_Harm_Reduction_Decade.pdf>, 5, accessed on 10 Apr. 2016.

¹⁴⁹ Ibid. 2.

¹⁵⁰ Ibid. 17-19.

¹⁵¹ Jeffrey A. Miron and Katherine Waldock, 'The budgetary impact of ending drug prohibition', *The Cato Institute*, (2010) <<http://object.cato.org/sites/cato.org/files/pubs/pdf/DrugProhibitionWP.pdf>>, 1, accessed 10 Apr. 2016.

¹⁵² Caroline Chatwin, 'Mixed Messages from Europe on Drug Policy Reform: e Cases of Sweden and the Netherlands', *Brookings*, (2015) < <http://www.brookings.edu/~media/Research/Files/Papers/2015/04/global-drug-policy/ChatwinSwedenNetherlands-final.pdf?la=en>>, 7, accessed on 10 Apr. 2016.

¹⁵³ Arthur Stein, 323.

¹⁵⁴ David R. Bewley-Taylor, 'Challenging the UN drug control conventions: problems and possibilities', *International Journal of Drug Policy*, 14/2 (2003),178.

'*pacta sunt servanda*' principle of the Vienna Convention on the Law of Treaties.¹⁵⁵ It is hard to prove the reasons why states adhere to certain regimes, especially when they do not deliver, however the case for the above reasons is rather convincing.

Institutions

Besides the states, it can be argued that there are more actors influencing the regime, among them the institutions governing a regime. Stephan Krasner underlines that: once created; regimes assume a life on their own.¹⁵⁶ The international drug control regime is relatively institutionalized, as set out earlier. Its institutions, the UNODC and the INCB, could have in an interest in self-preservation.¹⁵⁷ A regime change would make the INCB and certain aspects of the UNODC somewhat redundant, therefore those institutions could be seen to have an interest in keeping the repressive regime. A way of influencing for them is to prove their usefulness. What is the stance of the drug regime institutions on regime reform? A check:

Just before 1998, the United Nations International Drug Control Programme (UNDCP, former UNODC) published a surprisingly progressive chapter on the legalization-regulation debate, even stating that laws are not written in stone and can be changed by the states that are party. However no real political attention was really given to it back then.¹⁵⁸ After that, the institutions were mostly advocating the conservative voice, and one can clearly recognize the wish of the institutions for countries to adhere to the repressive regime and stay away of change. That goes so far as that the 'war on drugs' has been framed as almost successful. When UNODC 'celebrated' 100 years of drug control in 2009, it published a report on the developments.¹⁵⁹ They framed the preface title as: "Drug Control 1909-2009: A Positive Balance Sheet". Its writers must have spent a lot of time searching for some figures that they could present as positive developments. Because only a year earlier, 2008, was the deadline for the targets that were set 10 years in 1998; the result: none of the targets were met.¹⁶⁰ As a response to this fact, the UNODC published a report titled: "Encouraging Progress Towards Still Distant Goals", and claimed significant progress over the past 10 years. Though they did recognize that "in a number of areas and regions, Member States have not yet fully attained

¹⁵⁵ Christina Binder, 'Stability and Change in Times of Fragmentation: The Limits of *Pacta Sunt Servanda* Revisited', *Leiden Journal of International Law*, 25/4 (2012), 909-910.

¹⁵⁶ Stephan Krasner, 'Regimes and the limits of realism', 500.

¹⁵⁷ Bart Zantvoort, 'On Inertia: Resistance to Change in individuals, institutions and the development of knowledge', *Cosmos and History: The Journal of Natural and Social Philosophy*, 11/1 (2015), 358-359.

¹⁵⁸ Martin Jelsma, 'UNGASS 2016: Prospects for Treaty Reform and UN System-Wide Coherence on Drug Policy', 10.

¹⁵⁹ UNODC, *A Century of International Drug Control* (2009), <https://www.unodc.org/documents/data-and-analysis/Studies/100_Years_of_Drug_Control.pdf>, accessed 11 Apr. 2016.

¹⁶⁰ Martin Jelsma, 'UNGASS 2016: Prospects for Treaty Reform and UN System-Wide Coherence on Drug Policy', 13.

the goals and targets agreed in the Political Declaration" - an understatement of monumental proportion, as Martin Jelsma puts it.¹⁶¹ A few years before that, Director-General of the UNDCP Pino Arlacchi was even accused of prohibiting free exchange of views among his staff, censoring the second World Drug Report in 2000, and claiming successes on the drugs issue "beyond the limits of credibility".¹⁶² He left his post as a result.¹⁶³ Another UNODC paper that sparked much debate was named: 'Sweden's successful drug policy: A review of the evidence'.¹⁶⁴ Sweden, having a punitive, enforcement-led approach to drugs, with a vision of a drug-free society, was praised for its low numbers of drug use.¹⁶⁵ Critics blame UNODC of a subjective report and state that there is no causation proven between the harshness of Sweden's drug policy and the low levels of use. Moreover, Sweden has alarmingly high Hepatitis C rates among injectors, and more than three times the EU-average of drug-induced deaths.¹⁶⁶ All in all, it seems that UNODC is not a fully objective factor, immune to politics. Instead it seems to have its own agenda that includes regime preservation.¹⁶⁷

Negotiating change

Laws are not written in stone, however in order to change them the states usually behave by a pre-arranged set of rules. Often these rules are encoded into the treaties, however in many cases there are also unwritten but equally important rules that would govern for example regime change. Especially in formal, negotiated regimes as the international drug control regime these rules are encoded.¹⁶⁸

Davis Bewley-Taylor argues that regulation or legalization of non-medical and non-scientific drug use, and a number of other harm reduction measures, would actually require treaty revisions to be fully legal.¹⁶⁹ Although some say that it can also be done under a 'wide' interpretation of the current conventions, thereby pushing the grey area's of the regime,

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Damon Barrett, 'On the International Day Against Drugs, Let's Look Again at Sweden's 'Successful' Drug Policies', *The Huffington Post*, 'The Blog', 25 June 2014, para. 1-2, <http://www.huffingtonpost.co.uk/damon-barett/drug-policy_b_5528644.html>, accessed 11 Apr. 2016, and Peter Cohen, 'Looking at the UN, smelling a rat: a comment on 'Sweden's successful drugs policy: a review of the evidence'', *Amsterdam Law Forum*, 2/4 (2010).

¹⁶⁵ George Murking and Steve Rolles, 'Drug Policy in Sweden: a repressive approach that increases harm', *Transform: Getting Drugs under Control* (2014), <http://www.tdpf.org.uk/sites/default/files/Sweden_0.pdf>, 1, accessed 6 Apr. 2016.

¹⁶⁶ Ibid. 3.

¹⁶⁷ Christopher Hobson, 537.

¹⁶⁸ Oran Young, 283.

¹⁶⁹ David R. Bewley-Taylor, 'Challenging the UN drug control conventions', 175.

strictly legally speaking this is not the case.¹⁷⁰ Bewley-Taylor has therefore researched how to legally change the three Drug Conventions.

The first two Conventions prescribe the same procedure for amending the Conventions, the third one deviates a little. Although Bewley-Taylor summarized the very complex procedure in almost about one page, which is impressive, the main steps are: Parties can ask for a treaty amendment and motivate this, the request will be spread, based on reactions by other countries the Economic and Social Council may decide to host a conference to discuss this. Another way is for the UN General Assembly to amend the treaties. Either way Bewley-Taylor concludes: amending the treaties towards a new 'harm reduction' norm it is incredibly difficult procedurally. Many opportunities exist for nations that favour the status quo to block any move for modification.¹⁷¹ Alternatively, countries could decide to negotiate an entirely new Convention.

Next to these formal rules, there is an important informal rule at play in the drug control regime: the so-called 'Vienna Consensus'. It is hard to find a definition of this term, but diplomats in Vienna explained that it presents the unwritten rule that no one ever calls for a vote but instead (almost) everything is decided upon by consensus at the UN in Vienna.¹⁷² Decision-making that requires unanimous support by almost 200 states is logically speaking very hard. Different perspectives on the drug issue by those countries are therefore likely to leave the countries with either a complete blockade or with a lowest-common-denominator deal.¹⁷³

The negotiation mode in negotiated regimes is usually 'bargaining', Oran Young writes.¹⁷⁴ 'Bargaining' assumes rational actors. In a bargaining setting "self-interested actors try to hammer out agreements of give-and-take based on fixed identities and interests".¹⁷⁵ The communication is focused on exchanging information about preferences, making promises, or threatening, by which the goal is to maximize, optimize, or satisfy given preferences as much as possible.¹⁷⁶ Articles on the drug regime negotiations confirm this mode of negotiations.¹⁷⁷

¹⁷⁰ Ibid.

¹⁷¹ Ibid. 175-176.

¹⁷² International Drug Policy Consortium, 'Commission on Narcotic Drugs (CND)', *IDCP* [website], <<http://idpc.net/policy-advocacy/global-advocacy/global-drug-control-system/commission-narcotic-drugs>>, accessed on 14 Apr. 2016.

¹⁷³ Nicole Alecu de Flers, Laura Chappell and Patrick Müller, 'The EU's Foreign and Security Policy: Incremental Upgrading of Common Interests and the Effects of Institutionalized Cooperation', in Gerda Falkner (ed.), *The EU's Decision Traps: Comparing Policies*, (Oxford: Oxford University Press, 2011), 163.

¹⁷⁴ Oran Young, 284.

¹⁷⁵ Thomas Risse, 'Global Governance and Communicative Action', *Government and Opposition*, 39/2 (2004), 293.

¹⁷⁶ Thomas Risse, "'Let's Argue!': Communicative Action in World Politics', *International Organization*, 54/1 (2000), 8.

¹⁷⁷ Jamie Bridge, 'The Commission on Narcotic Drugs on the final road to UNGASS 2016: Progress made, but a long way still to go', *International Drug Policy Consortium* [website], (31 Mar. 2016), <<http://idpc.net/blog/2016/03/the-commission-on-narcotic-drugs-on-the-final-road-to-ungass-2016-progress-made-but-a-long-way-still-to-go>>, accessed 16 Apr. 2016.

Jelsma even calls it "hard-bargaining".¹⁷⁸ This way of communicating can make getting to a meaningful agreement difficult, as the sum of the above points is that: (1) everyone has to agree, (2) interests are fixed, and (3) actors are only interested in self-enrichment. That most likely leaves one with the chances of close to zero.

When looking at reflections of the negotiations at the UN, this lowest-common-denominator situation can be recognized. Ann Fordham, Executive Director of the NGO-umbrella organization 'International Drug Policy Consortium' (IDPC), stated about the recent UNGASS-meeting:

*“The UNGASS was called for by three Latin American countries who are desperate for a critical evaluation of the failings of the global war on drugs, and an open and honest exploration of the alternatives. But the Outcome Document does not do this. Instead it reflects the lowest common denominator consensus position that is almost entirely disconnected from reality”.*¹⁷⁹

The outcome document indeed reads like a weak, lowest common denominator text.¹⁸⁰ The 24-pages long document contains the word 'appropriate' 80 times. 'Appropriate' is a word used to weaken certain commitments, it usually follows words like 'if', 'when' and 'as'. Also, there are 18 references to 'national legislation'; according to interviews with diplomats those usually were requested by Russia.¹⁸¹ The concept of 'harm reduction' is completely lacking.¹⁸² It appears the proponents of the repressive criminal-focused regime stood strong. But how strong?

¹⁷⁸ Martin Jelsma, 'UNGASS 2016: Watershed event or wasted opportunity?', *Transnational Institute* [website], (12 Apr. 2016), <<https://www.tni.org/en/article/ungass-2016-watershed-event-or-wasted-opportunity>>, accessed on 16 Apr. 2016.

¹⁷⁹ International Drug Policy Consortium, 'Diplomacy or denialism? The language that the UNGASS Outcome Document overlooked', *IDPC* [website], (16 Apr. 2016), <<http://idpc.net/media/press-releases/2016/04/diplomacy-or-denialism-the-language-that-the-ungass-outcome-document-overlooked>>, accessed on 16 Apr. 2016.

¹⁸⁰ United Nations, Economic and Social Council, Commission on Narcotic Drugs, *Preparations for the special session of the General Assembly on the world drug problem to be held in 2016: Revised draft resolution submitted by the Chair*, E/CN.7/2016/L.12/Rev.1, Vienna, 22-24 Mar. 2016, <<http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.7/2016/L.12/Rev.1>>, accessed on 2 May 2016.

¹⁸¹ Samuel Oakford, 'How Russia Became the New Global Leader in the War on Drugs', *Vice News*, 18 Apr. 2016, <<https://news.vice.com/article/how-russia-became-the-new-global-leader-in-the-war-on-drugs-ungass>>, accessed on 2 May 2016.

¹⁸² United Nations, Economic and Social Council, Commission on Narcotic Drugs.

2.3.2 Power and interests challenges

One of the pressures for regime change comes from "powerful countries having an interest in change", is one of the arguments used by structural realists. So the countries that want regime change should be powerful in order for the pressure to be big enough to actually make the regime change. However knowing that the decision-making rule is 'consensus', formally speaking every state has an equal say at the issue. Even when countries would make the move to a vote, the countries would all be on equal footing. Oran Young however argues that: "... even if a negotiated order is fair in principle, there is generally considerable scope for implementing or administering in an inequitable fashion".¹⁸³ In other words: informally one country might have a more powerful voice than another, even though legally speaking they are the same. So what are the powerful countries in the international drug control regime, and what are their specific interests? This latter question is important, because when all states more or less agree to reform, a meaningful consensus might be well within the reach. Of course, having read this thesis so far, one already knows that there are countries pro regime change, and countries in favour of the current repressive regime. Who are those and how far apart are the pro-reform and the anti-reform camp?

Vanda Felbab-Brown and Harold Trinkunas looked at the discussions and the specific country positions, and came to the conclusion that there are now sharp contradictory views within the international community as to how the world's drug regime should be designed.¹⁸⁴ According to them, the major players in the regime disagree significantly, leading to a global disagreement. When reading national statements from several countries, their points are easily recognizable, on some occasions it is even hard to see that the countries are talking about the same subject.¹⁸⁵

Although for research purposes it would be nice if the actors at the UN table would concretely discuss whether or not to move to a new regime under the norm "drugs cannot be eliminated, let's reduce its harm", this is of course not the case. Instead bargaining happens on a large number of smaller questions, or even words. Countries in favour of a regime change push for a health-focused regime and reform of the failed policies, although the way they put this differs. Many stipulate the concept of 'harm reduction', and also name 'decriminalization' or 'regulation' as options for change. Most of them also underline the importance of human

¹⁸³ Oran Young, 289.

¹⁸⁴ Vanda Felbab-Brown and Harold Trinkunas, 1.

¹⁸⁵ United Nations, 'Special session on the World Drug Problem: Statements'.

rights. In addition a large number of countries pro-reform call for a flexible interpretation of the three drug conventions, and an evidence-based review of previous policies.¹⁸⁶

Contrary to that, countries that support the current regime do not name the above words and concepts in their national statements. They instead refer to importance of 'the integrity of the three drug conventions', and show their worries about other countries' deviant behaviour. Overall they give more attention to law-enforcement than to health.¹⁸⁷

Felbab-Brown and Trinkunas state that the number of countries in the pro-reform camp is growing, of which the most outspoken countries are located in Latin America and Europe. In Europe they point at Switzerland, the Netherlands, Portugal, Czechia, Spain and Italy, as most vocal towards reform.¹⁸⁸ These are though, looking from an overall power structure perspective, not world's most powerful countries. Therefore from the overall power structure point of view, not much is expected from these regions. However, Felbab-Brown and Trinkunas also name the US as a country now favouring certain reforms.¹⁸⁹ As established, the US was seen to have played a powerful and crucial role in the establishment of the regime, however today when reading their statement the US stance seems more of a middle way.¹⁹⁰

The issue that Felbab-Brown and Trinkunas point to as standing in the way of a powerful reform front, is that when looking at the actual positions of those reform-minded countries, there seems little consensus on the actual way to reform.¹⁹¹ Whereas most countries seem to agree to decriminalization of the use of drugs, further agreement on concrete harm reduction and public health measures is lacking.¹⁹² The US and Guatemala for example do not explicitly mention the controversial 'harm reduction' concept in their statement, whereas the

¹⁸⁶ Martijn van Rijn (Minister for Health, Welfare and Sports), *Special Session of the United Nations General Assembly on the World Drug Problem* [statement], 20 Apr. 2016, Kingdom of the Netherlands, <<http://statements.unmeetings.org/media2/7657399/netherlands.pdf>>, accessed 2 May 2016, Fernando Araújo (Secretary of State of Health), *Special Session of the United Nations General Assembly on the World Drug Problem* [statement], 20 Apr. 2016, Portugal, <<http://statements.unmeetings.org/media2/7657417/portugal.pdf>>, accessed 2 May 2016, Jimmy Morales Cabrera (President), *Special Session of the United Nations General Assembly on the World Drug Problem* [statement], 19 Apr. 2016, Guatemala, <<http://statements.unmeetings.org/media2/7657334/guatemala.pdf>>, accessed on 2 May 2016, and Michael Botticelli (ONDCP Director), *Remarks to the Special Session of the United Nations General Assembly on the World Drug Problem* [statement], 20 Apr. 2016, United States, <<http://statements.unmeetings.org/media2/7657455/usa.pdf>>, accessed 2 May 2016.

¹⁸⁷ Alexander Khloponin (Depute Prime Minister), *Statement* [statement], 21 Apr. 2016, the Russian Federation, <<http://statements.unmeetings.org/media2/7657583/russ-fed-eng-.pdf>>, accessed 2 May 2016, Guo Shengkun (State Councilor), *Build Partnerships of Win-Win Cooperation to Jointly Advance Drug Control Efforts* [statement], 19 Apr. 2016, <<http://statements.unmeetings.org/media2/7657324/china-eng-.pdf>>, accessed 2 May 2016, and: Paiboon Koomchaya (Minister of Justice), *Statement* [statement], 20 Apr. 2016, Thailand, <<http://statements.unmeetings.org/media2/7657420/thailand.pdf>>, accessed 2 May 2016.

¹⁸⁸ Vanda Felbab-Brown and Harold Trinkunas, 5.

¹⁸⁹ *Ibid.*

¹⁹⁰ Michael Botticelli.

¹⁹¹ Vanda Felbab-Brown and Harold Trinkunas, 1.

¹⁹² *Ibid.*, 5.

EU statement does contain a reference to this.¹⁹³ And even within the EU, there are very different views on international drug policy reform. On the one end there are Portugal and the Netherlands having legalized the consumption and sales of certain drugs, on the other end is Sweden openly and explicitly criticising these policies at the UN.¹⁹⁴ Sweden's statement: "And not to regulate or legalise yet more of what does them harm."¹⁹⁵

The anti-reform camp on the other hand seems more aligned. Vanda Felbab-Brown and Harold Trinkunas name foremost the Asian countries as proponents of the current repressive regime. China and Russia are pointed at as powerful critical players that are strongly committed to the repressive regime.¹⁹⁶ China states: "The fundamental role of the three conventions in the international drug control system needs to be solidified and brought into full play, and any form of legalization of narcotics should be resolutely opposed." The final paragraph of Russia's statement: "In the run-up to the Special Session some sceptics and pessimists argued that the world community has lost the war against drugs. We cannot accept this. We have by no means lost the war but to win we must achieve a new level of solidarity and unity." Next to these big two, Vietnam and Thailand strongly support the repressive regime.¹⁹⁷

The proponents of the status quo seem to stand stronger today, as when reading the outcome document of the latest negotiations: not much reform was reached. Theory on 'negotiations' as a process affirms this, and provides an additional explanation for it. It argues that countries that prefer that status quo stand strong because they have nothing to lose if negotiations break down, whereas the countries further from the status quo are in a weak bargaining position because they have more to lose if the negotiations break down. According to this logic, negotiation theory predicts the anti-reform camp to get what it wants.¹⁹⁸

All in all, from what has been written, it seems that the countries pushing for regime change are not overly powerful, and this certainly poses a challenge for regime change. If it is true

¹⁹³ Jimmy Morales Cabrera, Michael Botticelli and Neven Mimica (Commissioner for International Cooperation and Development), *Thirtieth Special Session of the United Nations General Assembly on the World Drug Problem* [statement], 19 Apr. 2016, European Commission, <<http://statements.unmeetings.org/media2/7657327/eu.pdf>>, accessed 2 May 2016.

¹⁹⁴ Caroline Chatwin, 7.

¹⁹⁵ Sweden, *Statement by Sweden* [statement], 19 Apr. 2016, Sweden, <<http://statements.unmeetings.org/media2/7657347/sweden.pdf>>, accessed 2 May 2016.

¹⁹⁶ Vanda Felbab-Brown and Harold Trinkunas, 1.

¹⁹⁷ *Ibid.* 5.

¹⁹⁸ Rory Costello and Robert Thomson, 'The distribution of power among EU institutions: who wins under codecision and why?', *Journal of European Public Policy*, 20/7 (2013), 1027.

that interests are fixed and cannot change, it is logical that this deadlock is there to stay. However, as the purely rational approach did not fully explain the creation of the regime, it might not provide a complete picture of how a regime changes either. Critics of the rational approach argue that interests are not fixed, and that states are not always only interested in self-enrichment or even behave in a rational fashion.¹⁹⁹ Therefore it is interesting to look at where and how interests are formed, and assess how likely it is that those interests will change.

2.3.3 Domestic challenges

As Caroline Chatwin wrote that it is hard for a country to change course on a drug policy after 50 years, there are actually two points to uncover in her statement. While, 'tradition' is important, it should not be forgotten that 'national politics' are very important too, as especially for the democratic countries, the stance of the countries in the international arena tends to reflect the wishes of the population, at least in democratic countries. Theory on international regimes generally focuses on the interactions between states and seems to assume that states interests are more or less fixed. Thereby neglecting the domestic situation, a situation that might change because of a changed opinion within a country.²⁰⁰ It largely ignores the fact that, especially in the drug context, the interests of the state usually mirror the voices of the national population and national interest groups. Government officials might get convinced of advantages of regime change, if the domestic population however does not support this change, the government will most likely not push for it. After all, the international drug control regime affects how states and individuals treat individuals, not states.²⁰¹ So there is an important challenge there to get the national population on board for change. In many countries there are national debates on how drug policy should look like, simultaneous with the international negotiations.

The way those national debates look differs enormously from country to country. For example: Sweden and the Netherlands, although seen as having similar cultures, view the 'drug issue' completely differently.²⁰² In Sweden all the main political parties are in agreement that the ultimate vision of “a drug free society” should remain, and there is no legitimate discussion on decriminalization of the use of cannabis. In the Netherlands on the other hand,

¹⁹⁹ Thomas Risse, "'Let's argue!'", 5-7.

²⁰⁰ Richard Sinnott, 'Bringing public opinion back in' in Oskar Niedermayer and Richard Sinnott, *Public Opinion and Internationalized Governance*, (New York: Oxford University Press, 1995), 28-29.

²⁰¹ Ethan Nadelmann, 283.

²⁰² Caroline Chatwin,

in 2013 65% of the population was in favour of completely legalizing the production, sale and use of cannabis.²⁰³ Caroline Chatwin has examined the history of both policies extensively and argues that both different policies have become entwined with the respective national identities, and therefore hard to change.²⁰⁴

Robert Putnam developed the theory of the two-level game in which he managed to merge on the one hand the international level and on the other hand the domestic level; the two levels on which negotiations take place.²⁰⁵ Level I, the negotiators level, in this case at the UN. And level II: among constituents that the negotiator represents, this would be the domestic population and interest groups within a certain country. Bargaining between different interest groups on level II, so domestically, creates a certain 'win-set': a range of options that the constituents could live with.²⁰⁶ The larger the win-sets of the negotiators, the more options the negotiator has at the UN table and the larger the chances of a successful agreement on this level. This simplified version of Putnam's theory shows how domestic politics create opportunities and constrains for international negotiations. It furthermore takes in the fact that there might be a domestic conflict about what the national interest actually is, and assumes that national interests are not fixed. Whereas in the examples of Sweden and the Netherlands the population is rather united on their stance, there are also countries where opinions diverge widely. A change in government might then represent a radical change in 'national interest' on international negotiations table too. An example of this is the recent government change in Canada, when they switched from a conservative government to a liberal government. The new Prime Minister Trudeau is working towards the legalization of cannabis, as he promised during his election campaign, whereas his conservative predecessors did not even consider this.²⁰⁷

Whereas in a regime such as 'the arms race', one can imagine that national interests are more or less decided upon by government officials, in the case of negotiating the global drugs regime the opinion of the national population can be seen as highly important. They are responsible for a certain 'win-set' the negotiators at the UN sit at the table with. But what then constructs the opinion of populations on drugs and drug policy?

²⁰³ Ibid. 8-9.

²⁰⁴ Ibid. 2.

²⁰⁵ Robert D. Putnam, 'Diplomacy and Domestic Politics: The Logic of Two-Level Games', *International Organization*, 42/3 (1988), 427-460.

²⁰⁶ Ibid.

²⁰⁷ The Guardian, 'Canada's new Liberal government repeats promise to legalize marijuana', *the Guardian* [website], 4 Dec. 2015, <<http://www.theguardian.com/world/2015/dec/04/canada-new-liberal-government-legalize-marijuana>>, accessed 3 May 2016.

2.3.4 Framing challenges: on morals, evilness and world security

Taking drugs is wrong.

Drugs are evil.

Drugs form an existential threat to the world.

The above three sentences one must have heard more or less at different times of ones life, in schools, in media, in politics. They reflect the discourse that surrounds, and has surrounded, drugs and drug policy over the past 50 years. Constructivists argue that this 'meaning' that people give to an 'object' is important. Drugs are not just drugs, but connected to a framework of meaning, and people act on the basis of that framework.²⁰⁸ Social sciences have deferred a lot of attention to theorizing about this 'frame' lately.²⁰⁹ Cappella and Jamieson defined this framing as "the way the story is written or produced", "this includes the orienting headlines, the specific words choices, the rhetorical devices employed, the narrative form, and so on."²¹⁰ The three sentences reflect three different ways drug and drug policy have been framed: as a moral issue, an evil issue, and a world security issue. Because thinking about drugs in these terms favours a repressive drug policy, these frames constitute challenges for regime change.

On morals

In part I the role of morals in the creation and evolvment of the drug control regime was recognized. But also today, drugs are seen as a moral issue. Yes, drugs can cause real harms. Therefore 'fighting' drugs is an admirable thing to do. However, what happens when following this logic is that it gives those that support strict drug prohibition a clear and direct moral authority.²¹¹ At the same time it puts those who argue against drug prohibition in a box named "ethically and politically irresponsible".²¹² The writers of the report "Ending the War on Drugs: How to win the global drug policy debate" recognize the moral challenges in de debate on drug policy. They claim that the view that using illegal drugs is intrinsically immoral is so widely held, that as a result, arguments about the effectiveness of drug policy have not gained much attention, and evidence-based approaches has often been overruled by

²⁰⁸ Alexander Wendt, 'Anarchy is what states make of it: the social construction of power politics', *International Organization*, 46/2 (1992), 396-397.

²⁰⁹ James N. Druckman, 'The Implications of Framing Effects for Citizen Competence', *Political Behavior*, 23/3 (2001), 225-227.

²¹⁰ Cappella and Jamieson in James N. Druckman, 227.

²¹¹ Danny Kushlick, Steve Rolles, Lisa Sánchez, Martin Powell and George Murkin, 'Ending the War on Drugs: how to winn the global drugs policy debate', *Transform: Getting Drugs under Control* (2013), <http://www.tdpf.org.uk/sites/default/files/Global-Drug-Policy-Debate_0.pdf>, 15, accessed 4 May 2016.

²¹² Ibid.

'moral grandstanding'.²¹³ What someone believes to be morally right, will almost always overrule any other evidence or arguments presented.²¹⁴ It does not help either that the arguments against strict prohibition are complex and counterintuitive – as opposed to the simplistic arguments in favour of prohibition.²¹⁵ This puts reform arguments at a relative disadvantage.²¹⁶ However, just because a certain policy has one's moral preference, does not mean that it actually will deliver the morally preferred outcome.

On evilness

The second sentence contains the word 'evil'. As mentioned earlier, so does the Single Convention on Drugs. And although the UN has recently toned down its references to drugs as an evil, also this year, a few famous and important people used 'drugs' and 'evil' in one sentence.²¹⁷ Among them Pope Francis: “Drugs are an evil, and with evil there can be neither surrender nor compromise”²¹⁸, and Russia's President, Vladimir Putin in his national address to the UNGASS-negotiators:

*"Drug-business, which has become one of the most aggressive forms of transnational crime, poses a real threat to the state and society, claiming the lives and ruining the health of millions of people. Moreover, the proceeds of drug cartels serve as a source for financing terrorists and extremist groups. Clearly, it is only by consolidated and concerted efforts, fully exploiting the potential of the three UN drug control conventions, that this evil can be effectively resisted."*²¹⁹

As established before, the reference to 'evil' is an exceptional one in international law, and unique to the drugs issue. But what does the word 'evil' really mean? Christopher Hobson argues that 'evil' is used to describe a unique and exceptional form of bad-ness. It is not simply 'bad' or 'wrong', but absolute in character. It is an extreme. There is no scale of 'evil'. It is something you want to stay far away from, and that includes the people that deal with this

²¹³ Ibid. 26.

²¹⁴ Ibid. 35.

²¹⁵ Ibid. 26.

²¹⁶ Ibid.

²¹⁷ David R. Bewley-Taylor, 'Emerging policy contradictions between the United Nations drug control system and the core values of the United Nations', 423.

²¹⁸ Bernardito Auzo (Archbishop and Permanent Observer to the UN), *United Nations General Assembly Special Session on the World Drug Problem* [statement], 21 Apr. 2016, Holy See, <<http://statements.unmeetings.org/media2/7657598/holy-see.pdf>>, accessed 5 May 2016.

²¹⁹ Alexander Khloponin.

evil.²²⁰ He continues by saying: "when something or someone is described as 'evil' it is not necessarily because it is evil in a really existing sense, but that it has been successfully framed in this manner".²²¹

Ken Booth addresses the narrative of 'evil' in international politics too, in his final chapter of the book "Theory of World Security". He refers to Catherine Lu, who has asked the following interesting questions:

"Can the rhetoric of evil capture the moral reality and complexity of human relations, especially in world politics? Does it help or hinder rational and moral decision-making?"²²²

Booth then refers to Philip Cole, who replies to the above questions by claiming that: "... there are moral, political and psychological reasons for rejecting the very idea of evil, it is a highly dangerous and inhumane discourse and we are better off without it". He explains: "The myth of 'evil' obstructs our understanding of an issue; we do not look beyond the narrative of evil".²²³ To translate this to the drug issue: as long as one keeps looking at drugs as 'evil', one cannot address this issue in a pragmatic way, as an 'evil' has to be fought at all times, it is hard to accept the presence of 'evil'. Or as the Pope says: no surrender.

On world security

Besides being framed as evil and morally wrong, drugs are also framed as 'an existential threat to states' (see the above excerpt of Russia's statement).²²⁴ But that raises the question: is Putin really afraid that the presence of drugs will make the Russian state disappear? If this were indeed to be true, it is understandable that countries are in 'war' with drugs. However, drugs have always been in society, at least since 5000 years ago, and as far as I know, it never caused a country to stop existing. Then, where does this narrative come from?

Emily Crick has done research on this security narrative and argues that the issue has been 'securitized'. Hereby she refers to the theory as established by Buzan, Waever and De Wilde who define this 'securitization' as: "a specific grammatical process that involves a 'speech act' whereby an issue is presented as an 'existential threat' to a designated 'referent

²²⁰ Christopher Hobson, 528.

²²¹ Ibid.

²²² Catherine Lu in Ken Booth, *Theory of World Security* (New York: Cambridge University Press, 2007), 445.

²²³ Ken Booth, 446.

²²⁴ Emily Crick, 'Drugs as an existential threat: An analysis of the international securitization of drugs', *The International Journal of Drug Policy*, 23/5 (2012), 407.

object' and finally, 'extraordinary measures' are justified in order to combat this threat".²²⁵ Crick has applied that framework to the 100 years of drug prohibition and states that since the Single Convention was ratified, the 'drugs as a threat' discourse has increased and drugs have been securitized. Speech acts first focused on dangers to 'mankind', then to the State, and later to 'global peace and security'. Moreover, the assumption that drugs are a threat is also today very powerful. She continues by saying that this securitization of drugs can be seen as one mechanism for adherence to the global drug control regime despite its overwhelming failures.²²⁶

2.4 The challenges summed up

All in all, this chapter has uncovered a number of issues that affect regime change. Moreover, difficulties in changing the regime have been identified - both seen from the rationalist perspective, and from the more constructivist point of view. These challenges are there at all levels of society. At the global level, there are the institutional challenges: institutions, its rules and procedures that make regime change difficult. At the international level wide differences in interests, and a lack of a powerful reform movement leave us with a 'global disagreement', and a very weak lowest-common-denominator outcome. At the domestic level, there is a challenge in gaining enough support for a regime change. At the individuals level, there are challenges in the frames that individuals refer to when considering the issue of drugs, people are influenced by moral, evil or security issue narratives and rhetoric's, that in turn obstructs their pragmatic thinking about the issue.

²²⁵ Ibid.

²²⁶ Ibid. 413.

PART III: fixing it - the solutions

Change of the international drug control regime is unlikely - the challenges are big. That much can be said. Even though evidence shows clear ways forward, the repressive regime remains supported by a large number of states, among them powerful China and Russia. The institutional set-up and rules make formally and legally changing the regime extremely difficult. A world consensus seems far away. All in all a very pessimistic picture: the regime can't be fixed.

However, where theory points to possible hurdles, it also provides "ways to climb those hurdles", solutions that might make future fixing possible. This last chapter will end this thesis on a hopeful note, and show ways to potentially overcome the identified challenges.

3.1 On changing the frame

"The logic holds if one side succeeds in setting the agenda by defining a behaviour as "sin." Within that social construction opposition is the equivalent of joining the other side at Armageddon. The only possible option is to change the social construction of the debate from sin to some other dimension; that is, to frame the issue in such a manner that opposition becomes legitimate..."²²⁷

This statement by Kenneth Meier, poses a logical solution to the framing challenge: change the frame. Meier claims that "key is the ability to establish a credible case for opposing a policy presented as fighting a sin".²²⁸ The previously mentioned handbook on debating global drug policy offers practical recommendations for this. One of their tips is, when debating, to make a distinction between the morality of using drugs, and what constitutes a moral policy response to the reality of the existence of drugs, when speaking about the issue.²²⁹

Furthermore, the reference to 'evil' should be deleted, as was established that it obstructs ones factual understanding of the issue. In order for the regime to change, the reform-minded must

²²⁷ Kenneth J. Meier, 'Drugs, Sex, Rock, and Roll: A Theory of Morality Politics', *Policy Studies Journal*, 27/4 (1997), 685.

²²⁸ Ibid. 686.

²²⁹ Danny Kushlick et al. 35-36.

not only argue that the repressive regime has failed, but also challenge and overturn the identification of drugs as evil, so argues Hobson.²³⁰

Cole argues that people should start study the phenomena and look beyond "imaginary monsters fabricated by political leaders and media".²³¹ Secondly, people should stop being scared, he argues.²³² This because: "it is the gap between what we know and what we fear, where the real black hole exists", and "where the discourse of evil, the myth of evil, takes root and grows".²³³ Translating this to the 'evil' of drugs would mean that more attention could be given to factual evidence on drugs, which helps people understand drugs. By way of understanding it better, one can expect people to have a more informed opinion on its consequences and therefore on policy choices.

The good news is that it seems the UN institutions have recently stepped back from framing drugs as evil, as it recognizes the effects. UNODC's Director General has underlined the importance of the 'protection of health' and thereby mentioned that this feature of the Single Convention "has for a long time been overshadowed by the more powerful language of 'evil', 'war' and 'threat'".²³⁴ The Colombian President, one of the reform-minded countries, also rejected the moralistic language that is used, and stated: "if we act together with a comprehensive and modern vision – free of ideological and political biases – imagine how much harm and how much violence we could avoid".²³⁵

Despite these positive developments, Hobson states that drugs are still being framed as a threat to mankind, also at the UN.²³⁶ In other words: the issue of drugs remains securitized. Buzan et al. argue that desecuritization is a way to move forward.²³⁷ This means: "shifting of issues out of emergency mode and into the normal bargaining processes of the political sphere".²³⁸ Crick though argues, that this process, that is in normal circumstances difficult, is even more difficult in conjunction with the morality framing, as the two reinforce one another.²³⁹

²³⁰ Christopher Hobson, 526.

²³¹ Ken Booth, 446.

²³² Ibid.

²³³ Ibid. 447.

²³⁴ Christopher Hobson, 537.

²³⁵ Ibid.

²³⁶ Ibid. 539.

²³⁷ Emily Crick, 413.

²³⁸ Ibid.

²³⁹ Ibid.

Next to decreasing the above three rhetoric's, a way to change the debate could also to frame the current 'war on drugs' more in a way that people associate it with the 'harm' and 'failure' it causes.²⁴⁰

3.2 On firing up a national evidence-based debate

If the frame of reference is changed, the internal contradictories that the current repressive international drug control regime entails might get more attention. More knowledge on the disastrous consequences of the 'war on drugs' might induce national political debate and activism. The more people learn about alternatives, the more support a future regime change might gain. In order for that support cause a turn in the 'national interest', national debate on the issue is needed. Support for certain harm reduction measures by the population and interests groups in a country, might cause the 'win-set' for a negotiator to move from a strict repressive regime preference to include certain harm reduction focuses. This in turn would open up possibilities for a more meaningful consensus at the UN table. Whereas moral entrepreneurs played a role in the creation of the regime, people taking leadership positions in promoting change might be successful in reframing the issue, firing up a debate and thereby changing even national interest.

3.3 On moving towards a meaningful consensus

*"Pursuit of reason rather than reliance on tradition is the way ahead"*²⁴¹

As within countries, also the international arena could gain from an actual open, free from ideology, debate. UN Secretary-General Ban Ki-moon recognized this, as he stated when referring to UNGASS: "I urge Member States to use these opportunities to conduct a wide-ranging and open debate that considers all options."²⁴² However, easier said than done.

Rationalism expects countries to bargain only for their self-interests, and here this paradigm seems to be right at the moment: the mode of negotiation during the latest meeting

²⁴⁰ Richard J. DeGrandpre, 'The impact of socially constructed knowledge on drug policy' in Richard J. DeGrandpre and Warren K. Bickel (eds.), *Drug Policy and Human Nature: Psychological Perspectives on the Prevention, Management and Treatment of Illicit Drug Abuse*, (New York: Springer Science + Business Media, 1996), 318.

²⁴¹ Amartya Sen in Ken Booth, 444.

²⁴² Ban Ki-moon (Secretary General), *Secretary-General's remarks at special event on the International Day against Drug Abuse and illicit Trafficking* [statement], 26 June 2013, <<http://www.un.org/sg/statements/index.asp?nid=6935>>, accessed 10 May 2016.

and the outcomes confirm this. However, this lowest-common-denominator outcome, which reflects the current outcome of negotiations, might be lifted as a result of an open debate, so argues Thomas Risse.²⁴³ Hereby he refers to Jürgen Habermas constructivist theory on modes of communication. Risse agrees with Habermas that it is possible to have an actual 'reasoned consensus', where the 'better argument' wins.²⁴⁴ This would require an 'arguing mode' of negotiations: "actors try to convince each other to change their causal or principled beliefs in order to reach a reasoned consensus about validity claims".²⁴⁵ The actors must be prepared to be persuaded.²⁴⁶ Interests and identities are not fixed.²⁴⁷ However, certain conditions need to be present: (1) it requires the actors to be able to empathize, (2) actors need to share a common life world, and (3) actors need to recognize each other as equals.²⁴⁸ These conditions are utopic according to many critics, among them realists. Risse instead argues that they present an ideal-case, and underlines that they actually might be present.²⁴⁹ I assume the first prerequisite is present: people have the ability to empathize. Regarding the second, in the drugs case, heavily institutionalized, there is a common reference framework that all actors at the table refer to. Although the actors are from all over the world, and do not share a common history and culture, working within that framework could constitute a thin version of a common life world.²⁵⁰ Then the third condition: equal say. Of course this is never completely the case: the US obviously has a more powerful voice than San Marino. Or in the drugs case: the influence of Russia is considered much larger than that of for example Cameroon.²⁵¹ However, power does not define what is a 'good argument'.²⁵² As the representative of San Marino might have a better argument, relatively speaking that would raise their influence on the negotiation table.²⁵³ However critics would argue that the powerful countries set the boundaries for what is considered a legitimately made and reasoned argument.²⁵⁴ That implies that 'reasoned arguing' is only possible within boundaries of that set discourse.²⁵⁵ Risse replied to that objection:

²⁴³ Thomas Risse, "Let's Argue!", 32.

²⁴⁴ Ibid. 1-2, 9.

²⁴⁵ Ibid. 9.

²⁴⁶ Ibid.

²⁴⁷ Ibid. 10.

²⁴⁸ Habermas in Thomas Risse, "Let's Argue!", 10.

²⁴⁹ Thomas Risse, "Let's Argue!", 15-18.

²⁵⁰ Ibid. 16.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Ibid. 17.

²⁵⁴ Ibid. 18.

²⁵⁵ Ibid.

"...does it imply that human beings are forever caught within the boundaries of their discourses and cannot challenge the very legitimacy of these boundaries under any circumstances? I do not think so."²⁵⁶

A hopeful point: actual reasoning to get to the best solution is possible. By questioning ones believes, giving arguments for positions, knowledge can spread - and better solutions could be reached. Of course we still have the situation where the negotiator sits at the table with a certain 'win-set' they got from their constituents. Or even the win-set could be stretched when a negotiator believes this would actually fit the underlying goals of his/her constituents. But, as Risse says: "successful joint search for better overall solutions requires creativity, effective communication, and mutual trust".²⁵⁷

3.4 On breaking the rules

Then there are still the conventions and their stringent rules on changing the treaties. Even though the norm and principles might slowly be shifting, the rules are established - which advantages the proponents of the status quo. However, rules are always subject to interpretation, as stressed by many countries. Stretching the articles of the treaties even more might cause the regime to weaken even further. When even more reform-minded countries introduce policies that divert from the regime but turn out to be successful, this might further increase the pressure on the repressive regime and it might convince countries to join the reform-camp, which it turn can lead to a revolutionary change of the regime. This is of course speculation, and therefore not very valuable from a scientific point of view, however it could prove effective.

Also the informal consensus rule could be breached. Uruguay threatened to call for a vote in 2008 in protest against further watering down of an already weak statement, but did not do so in the end.²⁵⁸ However, it is hard to tell what might happen when countries would have to vote. Even when number-wise the reform-camp might get to a majority, it is questionable if the countries that prefer the repressive regime would even implement policies under the new won norm.

²⁵⁶ Ibid.

²⁵⁷ Ibid. 21.

²⁵⁸ Martin Jelsma, 'UNGASS 2016: Prospects for Treaty Reform and UN System-Wide Coherence on Drug Policy', 12.

Conclusion

In this thesis I used a combination of theories from a rational perspective as well as the more constructivist perspective in order to uncover the reasons for the existing and persisting gap between evidence and politics in the international drugs control regime. A regime that is broken. More and more countries deviate from the regime, and quit supporting it. Simply because it is not bring forth the desired results; instead it delivers a long list of undesired results. The evidence suggests a clear way to 'fix' the regime, to make it functioning again: throw out the old "drugs are evil and should be eliminated"-norm, and replace that by a "drugs cannot be eliminated, let's reduce its harm"-norm. However, the gap between evidence and politics prevents the diplomats from even openly discussing the advantages of this option. In this thesis I examined this gap, and uncovered the obstacles standing in the way of regime change.

Some of these obstacles can be traced back to the creation of the regime, and its subsequent developments. The regime was created by way of negotiations, in which the United States and its Western allies pushed for international legislation. Reasons for this include: the fact that drugs caused harm to people, and that drugs were internationally traded. However, these alone did not explain the regime creation: also paternalistic feelings, moral judgements and religious influences played a role. It also helped that, back then, all states were convinced the regime would eliminate drugs from society: knowledge was limited but shared by all participants. Furthermore, the right circumstances were present: e.g. the creation of the UN provided opportunity, and there were certain leadership figures that pushed hard. Over the time this regime has evolved: it became further institutionalized. Law-enforcement measures expanded. The issue of drugs became securitized. As a result the world is left with a broken and counterproductive regime. A regime that is under a lot of pressure to change, yet real change is not happening.

Change is blocked by a number of obstacles. Obstacles that form challenges to the regime change. In this thesis, for clarifying reasons, I have categorized the obstacles in four categories: (1) institutional challenges, (2) power and interest challenges, (3) domestic challenges, and (4) framing challenges. These categories include challenges named by the structural realist regime theorists, who refer to power and interests, but also include more constructivist arguments. Together they give us an informed picture of what is standing in the way of regime change.

Institutional challenges include the challenge to do away with tradition, to reverse decisions that have been made and are currently seen as legitimate. Next to that the concerned institutions prefer to stick to the current regime, and the institutional rules governing the regime make regime change very hard and unlikely. The combination of a consensus rule and bargaining mode of negotiations are the ultimate recipe for a weak, lowest-common-denominator outcome. In the second category, there is a challenge for the reform-camp to become powerful enough to make the counter-norm win. As the proponents of the current regime, such as Russia and China prefer the status quo, they stand strong as they have nothing to lose if negotiations break down. Also, those countries are united in their stance, whereas the pro-reform camp is divided over how exactly to change the regime. Moreover the pro-reform camp is still limited to mostly European and Latin-American countries. There is a challenge there to get more powerful countries on board of change. That brings us to the 'domestic challenge': how to get a national negotiator to have instructions that include regime change in his or her 'win-set'. A domestic evidence-based debate is needed, by way public opinion has to move towards support regime change. That relates to the fourth category: framing challenges. Over the years the issue of drugs has been framed in a way that people see it as morally wrong, evil and a threat to society. These frames stand in the way of pragmatic thinking about the best policies. To conclude: many challenges to embrace.

However, change is not impossible. A frame of reference can be changed. When people hear fewer references to drugs as evil, and a 'threat to society', but instead hear more about the harmful policies that have been in place - people might see the issue in a different light. Standing up against the current regime might become legitimate, and thereby support for change might grow and push for a change in national interest. More countries joining the reform-camp at the UN might make the reformers powerful enough. When countries would change their way of negotiating, and look for the best arguments, a better outcome at the UN might be within reach. Right now fixing the regime might seem impossible, but there is hope for a better future. On that future: the world has another shot at reforming the international drug control regime in three years. Then the countries will review the '2009 UN Plan of Action' that set the target for 'a drug free world' in 2019.²⁵⁹ Let's hope the named challenges can be overcome by then.

²⁵⁹ Global Commission on Drug Policy, 'Public statement by the Global Commission on Drug Policy on UNGASS 2016', *GCDP* (21 Apr. 2016), <<http://www.globalcommissionondrugs.org/wpcontent/uploads/2016/04/publicstatementforGCDP.pdf>>, accessed 15 May 2016.

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