



IRCP

Institute for International Research on Criminal Policy
Ghent University

Freya Vander Laenen – Rome 17.09.2009

The policy-legislation nexus Prof. dr. F. Vander Laenen

Illicit Drug Market and its possible
regulatory body
Rome – 17.09.09



IRCP

Institute for International Research on Criminal Policy
Ghent University

Freya Vander Laenen – Rome 17.09.2009

Background: traditional debate

- > Traditional: Debate on the room to manoeuvre within the UN Drug Conventions

- > Is there room to manoeuvre?
- > YES – On all but one level of the criminal justice system
- > 1. Criminalisation
 - > 1988: Decriminalisation [of possession, purchase and cultivation] NO
- > 2. Reactions: depenalisation is possible
 - > Administrative sanctions - alternative measures
- > 3. Prosecution: expediency principle
- > 4. Sentencing: discretionary power
- > 5. Execution of sanctions: no limitations on differentiated policy



IRCP

Institute for International Research on Criminal Policy
Ghent University

Freya Vander Laenen – Rome 17.09.2009

-
- > UN Conventions – Room for reform
 - > Amendment: Not enough support
 - > Modification: admission, deletion, transfer – not enough support
 - > Reservations: limited to the time of S/R/A
 - > Denunciation: numerically insufficient support
 - > (re)new(ed) UN Drug Convention = Box of Pandora
 - > Strategy could be: renewed UN Drug **Policy**
 - > Gradual – on all levels
 - > Content and process – related
 - > CONTENT
 - > (Interpretation of) the UN Drug Conventions
 - > Harm reduction – HIV/AIDS
 - > Producer countries
 - > PROCESS
 - > Network development
 - > Evidence based drug policies – debate



IRCP

Institute for International Research on Criminal Policy
Ghent University

Freya Vander Laenen – Rome 17.09.2009

-
- > EU: distinction between possession for personal use - trafficking
 - > Mostly penal sanctions towards possession – some administrative
 - > Increase in conditional direction of drugs users into treatment
 - > ⇒ referral to treatment – stimulate alternatives to punishment
 - > Increased focus on using criminal law 'to protect the public' (public nuisance, drugs and driving)



IRCP

Institute for International Research on Criminal Policy
Ghent University

Freya Vander Laenen – Rome 17.09.2009

Away from *drug* laws

- > In sum: traditional debate about (inter)national drugs laws + reform = not productive: not contributing to a reduction of the negative impact on individuals and on economy
 - > Why?
 - > UN drug conventions aimed at prohibition and punishment
 - > National drug laws mainly penal laws - how to introduce psychological and social elements into a penal framework?
 - > ⇨ Do not focus on *penal* laws for good practices
- > Good practices can be developed, even within the boundaries of the UN drug conventions. Better still, think outside the box (i.e. *drug* laws)
 - > Make a distinction
 - > the reaction towards drug users and offences related to personal consumption
 - > the reaction towards traffickers



IRCP

Institute for International Research on Criminal Policy
Ghent University

Freya Vander Laenen – Rome 17.09.2009

-
- > Drug users and offences related to personal consumption
 - > If the criminal reaction is to be the last resort for drugs users and drug use is a health and social issue ⇒ a penal law (as well as an administrative law) is not the appropriate tool to regulate the reaction towards drug users
 - > Solution: regulation in social or health laws
 - > ⇒ reaction towards drug users is integrated part of a social and health policy (cf. alcohol and tobacco)
 - > And the UN drug conventions?
 - > Limit the provisions for drug users and offences related to personal consumption in the penal law to a minimal referral to behaviours the UN drug conventions require



IRCP

Institute for International Research on Criminal Policy
Ghent University

Freya Vander Laenen – Rome 17.09.2009

> Traffickers

- > money laundering opportunities constitute a key facilitator in the international drugs trade
- > the EU and the US have moved away from the initial exclusive drug focus in anti-laundering policy -> an all-crime (including tax crime) and transnational organised crime focus
- > ⇒ Solution: Target the proceeds of crime, whether or not drug-related
- > ⇒ Solution: International money laundering laws and regulation



IRCP

Institute for International Research on Criminal Policy
Ghent University

Freya Vander Laenen – Rome 17.09.2009

The **policy**-legislation nexus

- > Fundamentally: too much focus on (penal) laws and regulations - laws can shape the social reality of drug use and trafficking?
- > Policy and practice have shaped and *preceded* laws and regulations
- > Success of any law ~ application (means, people, willingness)
- > ⇒ Essential changes in the reduction of negative impacts on individuals and economy through policy and day to day practice
- > But:
 - > Traffickers: the amount of extra resources devoted to financial policing has been modest in most countries (cf. resources for media-supported crime and public disorder)
 - > Drug users and offences related to personal consumption: public expenditure studies on drug policy have shown public expenditure on prevention and treatment is limited + the expenditure on law enforcement is largely devoted to possession and retailers
- > ⇒ Priorities for the reduction of negative impacts of the drug phenomenon for the future