



INFORMAL DRUG POLICY DIALOGUE

An initiative by the

Andreas G. Papandreou Foundation (APF)

and the Transnational Institute (TNI)

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REPORT

Introduction

The fifth meeting of the drug policy dialogue, an initiative of the Andreas G Papandreou Foundation and the Transnational Institute, took place in the NH Hotel Alexanderplatz in Berlin from 9-11 October 2008. Previous meetings had been held in Crete in June 2004, in Budapest in October 2005, in Bern in November 2006 and in Rome in November 2007.

Particular thanks were due to the hosts of the Berlin meeting, The German Federal Health ministry, in particular to the National Drug Commissioner of the German Federal Government, Ms Sabine Bätzing, and also to Ministerial Counsellor Dr Werner Sipp. Appreciation for the preparatory work of the meeting was expressed to Ms Ernestien Jensema of TNI.

As on previous occasions, the meeting was of an informal nature, and was guided by Chatham House rules to encourage a free exchange of thoughts and confidentiality. Individual contributors are therefore not quoted, nor are their identity or affiliation revealed without their express permission. Individuals were invited to provide inputs but set speeches were avoided, and most of each session was devoted to an open discussion between all participants. The meeting was intended as a forum for dialogue, not for decision-making. Within each session, devoted to a specific theme, individual contributions were provided on the situation in a particular country or region, and on how these experiences could be reflected in policy-making at a broader level.

The principal focus of the meeting was the UNGASS review process, the Political Declaration to be adopted at the next CND meeting in March 2009 and future goals in international drug policy. Discussion also took place on the outcomes of the five Working Groups held between June and September as part of the period of “global reflection” and the preparations for the high level segment to be held on the first two days of the 52nd CND session from 11-20 March 2009. This will be an important occasion, as it will provide an opportunity for Member States to create a more effective drug policy for the coming years.

Session I

Harm reduction and demand reduction

On 15-17 September the Working Group on Demand Reduction was held in Vienna, one of the five WGs convened over the past months to provide input to the drafting of the Political Declaration, a process that will take place during several intersessional CND meetings. What are the main conclusions that came out of the deliberations on demand reduction? Is there consensus about giving more priority to prevention, treatment and harm reduction including shifting resources away from law enforcement as advocated in 'Fit for Purpose' and the EU position on demand reduction? Has an agreement been reached that allows inclusion of harm reduction language in the Political Declaration or possible other documents or annexes to be adopted in March 2009? UNODC and the INCB both seem willing to normalise harm reduction terminology and to overcome the politicised controversy of the past decade, as WHO and UNAIDS have done before. Is the UN close to achieve system-wide coherence on harm reduction or will political objections prevent an agreement at the high-level meeting next year?

Background to the 2009 review process, the Working Groups and the Chairperson's Draft Annex to the new Political Declaration.

The procedures to be observed in preparing for the March 2009 review process are contained in Resolution 51/4 of the 2008 Commission on Narcotic Drugs. Paragraph 2 states that the intergovernmental Working Groups should meet “to assess the achievements of the goals and targets set by the General Assembly at its twentieth special session, as well as areas requiring further action, and to draw conclusions for further intersessional discussions, taking into account.....[inter alia] relevant information from international and regional organizations..... [and] other relevant information, in particular from civil society”.

Paragraph 8 of the Resolution resolves “ that a Political Declaration and, as appropriate, other declarations and measures to enhance international cooperation should be considered and adopted at the high-level segment, identifying, on the basis of the results of the review process, future priorities and areas requiring further action, as well as goals and targets to be set in countering the world drug problem beyond 2009...”

The Chairperson's Draft, which appeared on October 6, is intended only as an annex although many conclusions from the Working Groups will appear, making it essentially a compilation. Not many decisions have yet been taken in terms of future action. Other documents for consideration at UNGASS will include “Making drug control “fit for purpose”: Building on the UNGASS decade”, which was presented as a conference room paper at the 2008 CND (E/CN.7/2007/CRP.17), and the INCB paper presented to the 2008 CND (E/CN.7/2008/CRP.16).

Overall, it was felt that there had been lack of collective preparation for the Working Groups, especially between delegations. The EU has prepared common positions for all five areas and on a sixth - data collection -, which is a transversal issue. This may make a difference but there has been very little strategic thinking among delegations at regional level, and little coordination across regions.

The WG on Demand Reduction was an important opportunity for diplomats, who work according to formal procedures, to receive vital input from those who work in the field. The WG received a surprisingly broad spectrum of conclusions from a wide number of experts. Many were incorporated into the document, only a few were completely excluded.

Achievements of the Working Group on Demand Reduction

- The idea that “containment” has been achieved was quashed, and this takes the debate in a whole new direction.
- Human rights were properly recognized.
- All delegates in the WG were in favour of strengthening demand reduction and almost all agreed on the importance of stressing harm reduction. All the presentations – including excellent ones by the Secretariat, WHO, and NGOs - talked about harm reduction, although several member states of CND are not willing to use the term. Because there is no single definition there are different views about its aims. In the end the term was not included, but the substance was.

Issues not covered by the Demand Reduction Working Group:

- Should harm reduction constitute a 3rd pillar along with demand reduction and supply reduction?
- What are the principles of harm reduction? How can these be applied both for demand and supply reduction?
- How can access to drugs for therapy and for pain relief be improved?.

Some WG members felt that harm reduction should not be a separate pillar, but an integral part of demand reduction along a continuum of prevention, treatment, and rehabilitation. Others felt that the references by UNODC Executive Director to the “unintended consequences” of drug control in the “Fit for Purpose” paper could be interpreted as referring to harm reduction. This would imply that harm reduction should be included in both pillars.

Harm Reduction in Brazil

The main public health concerns in Brazil are the increasing use of cocaine powder and of amphetamine- like anorexigens, especially among women, and increasing alcohol use. (So far Brazil has had no serious problems with heroin.) There is also considerable “social panic” about crack cocaine use among street youth and adolescents, and about the real harms caused by violence, sexual exploitation and the increase in the inmate population of closed juvenile institutions. Because violence is so widespread in Brazil, the general public is particularly affected by the social impact of drugs and trafficking.

Brazil has made some positive changes in the last two years. First, the drugs law was modified with the aim of distinguishing use from traffic, in order to prevent people from being arrested only for drug use. Although the law change was supported by public opinion, it has not been as effective as was intended and is now being re-evaluated. The conclusion is that one can change legislation to protect the user but that legislators have their hands tied by the requirements of the international drug conventions. It is necessary to discuss the consequences of criminalising each act, especially in terms of children and adolescents who cannot be arrested and put in a common prison but go to closed juvenile establishments. There has been much concern over the need to shut down such institutions, the largest of which, in São Paulo, was closed and smaller ones opened.

Second, there has been a subtle but significant change at government level concerning the high level authority dealing with drugs law. It used to be called the National Secretariat against Drugs, but the name has been changed by presidential decree to the National Secretariat on Drug Policy.

The chief of the Brazilian delegation to the March 2009 UNGASS comes from supply control but there is a move to include representatives from the Health and from the Human Rights ministry (which is especially concerned with adolescents). The Brazilian public healthcare system supports harm reduction, with strong backing from the public. There will be a side event on health and drug policy at the March CND, and this could contribute to the Political Declaration. From a Brazilian perspective, harm reduction should be specifically included in this.

The discussion in Session I focused on the Working Group reports, conclusions and the CND Chairperson's Draft, which had just been released. Three main themes emerged – the balance and structure of the document; perceived errors and omissions, and the position of harm reduction.

Criticisms on demand side - balance and structure

The newly released Draft retains the five pillar structure from the 1998 Declaration, of which four are devoted to supply reduction, one to demand. It is stated that there has been “ a lack of balanced and comprehensive approach” in UN drug policy, yet the five-pillar structure will remain unless some dynamic can be created for an alternative. Policy makers tend to look at the strategic approach of a document rather than at individual proposals, thus, even if there is some demand reduction within ATS and precursor control, governments will proceed with a supply-side emphasis. Before 1998 there was a two-pillar structure at UN level: demand reduction and supply reduction, and this could become the basis once again.

According to the Draft, everything should receive more resources. National governments and ministries always have to fight for resources, usually to the advantage of supply-side authorities. Moreover supply reduction proposals are usually imposed without reference to their impact on demand reduction. There is no mention in the Draft

of the adverse consequences of drug policy, and this should also be considered. Because demand reduction experts and officials did not attend the supply reduction WG and vice versa, there was very little crossover between the two. The crucial issue is how to ensure that a balanced approach is included in both supply and demand in terms of policy priorities and resources.

Perceived omissions and errors concerning demand reduction

The Chair's Draft makes almost no mention of HIV/AIDS. This could be incorporated into the existing structure but more input is needed. The Single Convention starts with concerns about the health and welfare of mankind, and these should be emphasised with particular reference to HIV/AIDS.

The section on availability and accessibility should be expanded. Countries are required to make estimates to INCB for their medical and scientific needs but around 70 do not do this. Improving access to controlled drugs is vital, but the Draft does nothing to encourage this. Around five billion people are without access to controlled medicines and as a result, around four million cancer patients suffer moderate or severe pain annually without being treated for their pain, as do 0.8 million end-stage HIV/AIDS patients.

The position of harm reduction

The introduction and expansion of harm reduction policies in many countries and regions since the 1998 UNGASS are not reflected in the document. There are signs that UNODC is also beginning to accept the term, as indicated in "Fit for Purpose" and in the UNODC Discussion paper "Reducing the adverse health and social consequences of drug abuse".

Concern was expressed over the risk of losing ground already gained by insisting on its inclusion. The strength of anti-harm reduction feelings in some countries should not be underestimated, and for this reason it might be preferable to use the language of the 1998 Guiding Principles. Some governments that oppose harm reduction do not understand the term properly and are trying to delegitimise efforts in their countries. In many cases the argument is a moral and ideological one in which data are simply not relevant.

It was suggested that harm reduction could include demand reduction, not the other way round, and that it would be risky to insist on a separate pillar, which might be struck out completely. The inclusion of the term should be insisted upon. Although the Expert Group had not succeeded, it was worth continuing to negotiate with the objectors rather than concede. Progress simply had to be made on this issue after ten years. It had been a long and difficult process to have harm reduction accepted by the EU but it had happened eventually. Some argued that there was a serious risk involved in *not* including the term. Even the most intransigent delegation had said it could accept harm reduction under certain conditions. This could become a negotiable issue, over which everyone should be prepared to sacrifice something.

It was suggested that, during the intersessional process beginning on 3 November, all countries that use harm reduction should have their definitions prepared and should keep pushing for inclusion, using scientific evidence for success where possible. It was argued that the term should be defined not in terms of goals but with regard to specific procedures

It was suggested that inclusion of the term harm reduction was important for the following reasons:

1. The common EU strategy includes the term. This is the one thing that has worked, so it could be presented as the “red line” issue on which to stand firm.
2. Some 80 countries have harm reduction language in their drug policy documents. This marks a major change over the 10-year period. Most NGOs use it and it would give protection for some of their work in the most difficult areas. UNAIDS and WHO also use the term in their documents, and this should create pressure at UNGASS to achieve system-wide coherence.
3. The Global NGO committee reached global consensus on harm reduction language in its common document.

Conclusions/Recommendations, Session I

Most participants felt the Draft was a disappointing document, but that it offers ways of moving on. Politicians will have to admit the lack of progress over 10 years, but will still want to claim some successes. In particular, the EU position paper points to real progress in applying certain harm reduction policies.

Another opportunity might come in the aftermath of the US elections. Although those responsible for drug policy in the State Department will probably still be those negotiating in Vienna in March, there could be openings and it may be possible to improve, if not transform, the situation. This could be presented as an offer to help the new administration rather than an expectation to receive something.

An important next step is to propose a CND session on revitalising the system as a whole. The transnational organized crime and corruption conventions should be reviewed at same time as the three drug conventions. The funding and functioning of UNODC should also be reviewed, as well as the functioning of INCB.

Session II

The session began with an intervention by the National Drug Commissioner for Germany, Ms Sabine Bätzing. Ms Bätzing welcomed all participants to Berlin and praised the drug dialogue initiative, saying it was extremely valuable to have a forum for the free exchange of views. The unrestricted discussions allowed a wide variety of opinions to be expressed, and gave each participant a chance to question his or her own position. She noted that the UNGASS review was reaching a crucial stage.

The Commissioner noted that the reports of the Working Groups have produced useful raw material, which will be part of the political process for consensus between member states when formulating future policy. Clearly these will also be influenced by political, cultural and ideological elements. There is still room for negotiation on the five pillars, but the main conclusion from the 10 year process will be that there has been insufficient implementation of the goals. The question is whether the points in the Draft are the key issues. She looked forward to reading the conclusions of the drug policy dialogue, and would take them seriously.

Law Enforcement and Supply Reduction

Four out of five Working Groups were devoted to several supply-side issues: supply reduction, money laundering and judicial cooperation, eradication and alternative development, and precursor control. What are the main conclusions that came out of the deliberations and which elements are likely to appear in the Political Declaration? What has been learned about the effectiveness of the combined supply reduction efforts over the past decade? UNODC characterises the impact of drug control efforts in 'Fit for Purpose' and the World Drug Report in terms of '100 years of success' and 'a decade of containment'. Is that a fair assessment? How can the methodology and data gathering be improved in order to properly evaluate the impact of supply-side interventions?

General criticisms concerning supply side

Supply reduction issues are given undue weight in the text compared to demand reduction, and it is more difficult to find evidence of thematic progress. The excessively political component of supply reduction means that the bulk of resources go to law enforcement. Transit countries are hardly mentioned, and the conclusions do not reflect their concerns.

Achievements

There are some encouraging references within the supply section of the Draft. These include the need to establish clear and measurable indicators for the future, especially if human rights can be incorporated. The need to make a link between alternative development, human development and demand reduction is also useful, while the reference to the Millennium Goals should be emphasised and developed further. There should be much more emphasis on the principle of a balanced approach between supply and demand reduction. There was approval that, for the first time, there was recognition of the need to reduce the violence associated with the drugs trade, and this could be seen as a harm reduction measure.

Perceived inconsistencies, omissions and errors concerning supply:

The following points could be made regarding balance:

1. On the supply side there is no reference at all to whether the original UNGASS targets have been achieved, whereas there is mention of this on the demand side. The only conclusion is that “a lack of coordinated law enforcement operations continues to impede efforts to reduce supply”. All the recommended actions indicate that governments should simply coordinate better and do more of the same. There is not a hint as to the

effects of supply side policies or of possible flaws in policy. The document simply states that there has been impressive progress in some areas but no overall improvement and no reduction.

2. The calls for evidence-based measures that appear on the demand side are conspicuously absent in the areas of supply and judicial cooperation. There is a fear of impact evaluation because it is difficult to point to significant reductions. It is recommended that evidence base is equally taken into account on the supply side.

3. There are calls for more resources to be made available both for demand and supply, but someone has to set the priorities and shift resources.

4. There is a conspicuous absence in the Draft of “unintended consequences”. Most of them are caused by the supply/law enforcement side of the picture, fewer on the demand side. This impacts particularly on human rights, which are mentioned on the supply side but only in connection with alternative development projects, and not for eradication or other aspects of supply.

5. No distinction is made between different markets. The language refers only to “drugs” in general and does not distinguish between substances or patterns of use. Demand reduction should take account of different levels of harm, while on the supply side there should be a differentiated approach to different substances and markets. It seems that the taboo that not all drug use is “harmful” cannot be broken.

General discussion

It is assumed that the commitments made in the 1998 Political Declaration will be maintained. Yet it should be pointed out pragmatically that there is no evidence base for the supply side. Although the supply side problem is allegedly caused by a lack of law enforcement coordination, no justification is given for this conclusion. Arguably, putting more resources into law enforcement using the same policies would have aggravated the problem.

The same lack of evaluation capability of supply-side interventions could also apply to the EU action plan. The problem is that health experts evaluate data in the field of demand reduction whereas on the supply side, the experts are police officers.

Sometimes data exists but is not always used for analysis. For example there has been a doubling of arrests for drug possession in the EU, which appears strange given that many countries have effectively decriminalised possession for personal consumption. Sweden has a low cannabis prevalence but no explanation has been provided for this. The data should be analysed to find the reasons for these trends.

The concept of “containment” is referred to in the context of demand but it could be extended to supply. As was shown, containment did not happen with demand reduction. In order to make a proper evaluation of law enforcement there needs to be much more cooperation between law enforcement officials, scientists in the fields of drugs, criminology and crime analysis. It could be argued, ironically, that law enforcement

“achievements” have resulted in more sophisticated and powerful criminal organisations, more killings between criminals and more manpower and resources for enforcement institutions. Law enforcement is also symbolic and intended to show that “society is against crime”. To protect citizens from the adverse consequences of law enforcement, the quality of legal administration must be high.

Human rights and drug control

The issue of human rights was discussed in terms of the broader UN mandate and Chapter 1 charter obligations. This, together with other concepts or principles should be mainstreamed through all pillars. The UN has human rights compliance agencies, but they seem not to influence UN drug policies. It was suggested that the definition of “recklessness” as understood in UK law could apply to the consequences of drug policies which were unintended but should not have been unexpected. Governments cannot ignore the unintended consequences of drug policies, but should take responsibility for them.

Conclusions/Recommendations, Session II

There is a need to return to the conventions, giving more emphasis to the health and welfare of human beings and less to repression. Law enforcement focuses too much on how many tons of drugs have been seized, and takes no account of human development factors. Supply-side indicators should be expanded beyond the traditional categories of seizures, arrests and imprisonments to include income generation, health and human rights impact.

No clear direction is given about which should take priority – eradication or alternative development. The Chairperson’s Draft should give a clear message that no eradication should take place prior to viable sustainable alternative development.

There is a need to reprioritise much of law enforcement to take account of the harmful consequences of policy. In this context, the link between firearms, violence and drug trafficking is crucial – this is as important to Mexico as harm reduction is to the EU. A reduction of violence would be followed by more support for demand reduction measures, but this requires improved firearms control at Mexico’s northern border.

Certain overarching themes such as human rights should be emphasised as transcending the entire scope of drug control. A list of general principles should be drawn up to guide future drug policy.

Session III

Decriminalisation and the proportionality of sanctions

'Fit for Purpose' enlists a number of unintended consequences of current drug control approaches, including 'too many people in prison' and 'too much focus on repressive law enforcement'. It also stresses the need for full respect of human rights in drug control, which was further underlined by a CND resolution this year. The latest INCB report calls for more proportionality of sentences. Several countries have introduced decriminalisation or depenalisation of consumption and of possession for personal use. Ecuador's Constituent Assembly in July issued a pardon for small drug traffickers imprisoned with disproportional sentences. Switzerland will hold a referendum in November on decriminalisation of cannabis. What can be learned from all these examples? What is the relationship between tough drug laws and overcrowding of prisons? What proportionality principles could be promoted that allow for more legal distinctions between use, possession, cultivation, production, street dealing, micro-trade, mule smuggling and organised drug trafficking?

The situation in Latin America

The Chairperson's Draft incorporates EU concerns with the human rights of drug users and with evidence-based requirements, but on the supply side there is a conspicuous absence of Latin American concerns. In many countries, application of Article 3 of the 1988 Convention has had extremely negative effects on the administration of justice.

There have been some experiments in drug legislation in Latin America, including the non-prosecution of consumers, but overall the trend has been towards increased penalties, with more and more drug-related offences. Law enforcement has been strengthened and more prisons built. There has been a reduction of human rights' standards in criminal justice responses to drugs, and a prohibition for anyone in prison to receive sentence reductions or other benefits. The presumption of innocence has completely disappeared in some countries. The most important criterion in this regard is that law enforcement actions should be evaluated in terms of how they help or hinder due process. There is no mention of this in the Draft.

Ecuador converted Article 3 into its drugs law and applies extremely high penalties for any drug law violations, in many cases violating the principle of proportionality. Ecuador is a country of 12 million people with a prison population of 16 730, of whom 2,555 are incarcerated for drug-related offences. Officially the capacity of Ecuador's jails is 6,000. Of those in prison, 11,000 are without a definitive sentence and 1,800 are foreigners. The government has implemented a new proposal to allow pardons for offences relating to quantities of drugs of less than 2 kg, applicable to first time offenders only, who have completed 10 per cent of their prison sentence. Already 400-500 have asked for and received a pardon. In theory 1,500 people, or 8 per cent of the prison population could benefit. The Draft gives Latin American countries no opportunity to apply this type of flexibility, although most Latin American countries have enough data to show that Article 3 compliance is not necessarily the way forward.

In the whole of the supply side section there is very little about improving the quality of judicial procedures or the prison system, yet prisons in Latin America are in a critical

state. The recommendation to consider standardising sentencing guidelines is particularly dangerous, as it would remove the discretionary powers of judges. This would signify a return to the past, when the same judicial response was applied to all drugs, irrespective of type or quantity.

Prison overcrowding is one of the worst problems. In all 34 Latin American countries, drug offences are the third to fourth most frequent offence. It is a particular concern for Brazil, where the prison population is around 400,000, of whom more than 40 per cent are incarcerated directly or indirectly for drugs-related offences. More than 70 per cent of those in closed juvenile establishments are also there for drug-related problems. This is certainly one of the “unintended consequences” of applying Article 3 of the 1988 convention.

The micro trade is another big issue for Latin America. It covers the trading of drugs using specific methods and with specific socio-personal characteristics. In Peru a discussion is going on in the Justice ministry about this issue, and about people who use their bodies to carry drugs. This has arisen because the prisons are filling up with mules.

The Mexican government is pushing for a comprehensive review of its judicial system, which is totally blocked by minor offences of possession and trafficking. One possibility to be considered is the decriminalisation of small-scale possession for personal use.

At international level it might be worth exploring the possible consensus in Uruguay, Brazil and Argentina for opening Article 3 of the 1988 convention for discussion, and whether there is a realistic chance of having it reviewed. Although the demand reduction sector recognises that prison is not necessarily a good response, this has to be studied in the light of Article 3.

Some countries have tried to improve their responses. Ecuador has introduced a temporary remedy but it is only a short term response, and there is still confusion about how to deal with drugs and the repression of drug-related crime. Brazil, Argentina and Uruguay are also looking at alternative penalties. It is necessary to defeat the notion that being “efficient” means greater repression. Moreover the need to be proportionate does not necessarily imply uniformity.

In conclusion, all the statistics show that the judicial systems of Latin American countries are on the verge of collapse, and that trying to balance treaty requirements on the one hand and domestic problems on the other has become impossible.

During the discussion, several participants expressed reservations over the proposal to open up Article 3 at the 2009 UNGASS, primarily on tactical grounds. It was suggested that the countries most hostile to harm reduction are actively hoping that this will be raised, in order to crush it completely. While it might be unwise to push for changes in this direction, one can certainly resist language that tries to strengthen enforcement aspects.

There is in fact some flexibility in applying Article 3: governments are obliged to have the criminal law in place for the offences listed but there is no obligation to apply it. There is an explicit mention of alternative penalties, and proportionality applies. The convention also states that the prosecution of criminal acts is to be implemented within the legal system of each state, thus countries can decide not to prosecute on the grounds of opportunity. In Germany for example the use of any substance is not punishable; possession is criminalised but is not prosecuted under certain amounts.

Cannabis Policy

The Netherlands provides an example of how proportionality and flexibility have been introduced into drug policy. Harm reduction was comprehensively applied in the Netherlands during the 1980s and 1990s. Although its drug policy has been much criticised, the Netherlands has a very low number of drug-related deaths and relatively few drug problems generally. In contrast, some countries prefer to prioritise strict adherence to the law to the principle of saving human lives. The Netherlands invested heavily in the exchange of knowledge on these issues at national and international level in order to demonstrate the effects of Dutch policy to the outside world, and this has been quite influential in terms of harm reduction within the EU.

The Dutch cannabis situation is problematic owing to the “front door /back door” policy that officially tolerates the cannabis consumer while the vendor has to buy supplies from an illegal source. Although illogical, and thought to be a temporary solution 30 years ago, it works in practice. Some time ago a working group was set up to revitalize the debate and a conference was held but there was no follow up in parliament and no real public debate. The new generation of Dutch politicians is ignorant about the history and achievements of their country’s drug policy - some are fed up with the criticism of coffee shops while others are still sitting on the fence, unwilling to make a commitment.

The Beckley Foundation in the UK published a comprehensive and excellently researched report on cannabis in October 2008, but its likely impact is uncertain. Cannabis was downgraded in 2004 from a Class B to a Class C drug in the UK but in 2008 the government announced its intention to reclassify it as Class B, ignoring the advice of the respected Advisory Council on the Misuse of Drugs.

Changes to cannabis laws have also been under discussion in Switzerland, where the stimulus for changes to drug policy comes not from politicians but from popular initiatives. 100,000 signatures were collected in 2008 for the “hemp initiative” which if passed, would involve the decriminalisation of the consumption of cannabis and of its preparatory acts, and of purchase and possession for personal consumption. It would require regulation for the cultivation of and trade in cannabis by the federal administration; the prohibition on advertising cannabis and would enhance youth protection. Cannabis would thus be regulated under the constitution.

The vote was scheduled to take place on 30 November, together with a vote on a revision of federal law, which was also under discussion.¹ The key elements of the proposed revision were as follows:

- the four-fold approach and harm reduction to be anchored in law;
- an explicit reference to be made to the aim of abstinence;
- particular emphasis to be given to enhancing youth protection and prevention;
- heroin-assisted treatment to be enshrined in law;
- medical use of cannabis to be permitted under strict conditions.

Participants discussed the issue of proportionality in a broader context. Proportionality is not confined to the sphere of punishment but can be promoted in a variety of ways: for example to improve the proportion of those who need essential medicines but do not have access to them. It is debatable whether the criminalisation of coca has not had a disproportionate effect on the lives and living standards of the Andean peoples. This raises the issue of disproportionality in relation to violations of human rights.

The only reference in the Chairperson's draft to cannabis is unclear, and concerns links between cannabis and transnational organized crime. It was introduced by some North African countries who are resentful that European countries have relaxed cannabis legislation while they are trying to eradicate. This situation shows up the weakness of the drug control system as a whole and an unwillingness to confront the issue. However a discussion on this issue could be used to stimulate a proposal for review, for example on the theme of "Cannabis and the global system." If cannabis (166 million consumers) were removed from the international drug control system (66 million consumers of other illicit drugs, according to the 2008 World Drug Report) this would reduce the size of the drug problem to a relatively small proportion of the global population. Without cannabis the extensive resources and manpower currently devoted to fighting the world drugs problem might be harder to justify.

Conclusions/Recommendations, Session III

From a Latin American perspective it is recommended that the supply reduction and judicial cooperation chapters of the Draft be redefined, and that the provisions concerning extradition and transfer of proceedings pay greater attention to civil and human rights.

The key priorities have not yet been identified at EU level, but estimates indicate there are around 70 million lifetime cannabis users and 1.3-1.5 million problematic drug users. This suggests that from a EU perspective, the principal focus should be on problem use.

¹ The hemp initiative was rejected by 63% of the electorate, the revision of the federal law was approved by 68%.

With regard to proportionality and flexibility, the conventions ought to allow governments to negotiate their own drug policies, but this flexibility does not exist for poorer countries. It is unfair that only rich countries can be relaxed about the conventions, while poor countries are excoriated over their compliance. Governments should express their discomfort with the double standards that apply. More attention should also be paid to the possibilities offered by the conventions regarding a) alternative penalties and b) the opportunity principle.

A number of other key points should be taken into account for the upcoming UNGASS review:

1. The promotion of health approach is essential. The great achievement of the EU on harm reduction is an example. Persistence will eventually be rewarded. The symbolic aspect of harm reduction must be acknowledged, and if efforts in this regard are recognized then the term itself is not so important.
2. Changes in policy are made by politicians, therefore they are the ones to be convinced. They have to be given good data - for example on drug-related deaths - and the data has to be presented in a comparable and comprehensive way.
3. Acknowledge what you do not know, and not only with regard to data: emotional and ideological factors are also important and should not be ignored or despised.
4. Know what you want from the process .
5. Set priorities, do not try to do everything.
6. Build coalitions. (This takes years to do.)
7. Do not try to take on legalisation or otherwise mix agendas.

Session IV

Expectations for the future

On 29 September the first CND intersessional was held, starting preparations for the high-level segment on 11 and 12 March 2009. How will the drafting process for the Political Declaration be organised? What are the priority issues for the Political Declaration and what can realistically be expected in terms of reaching consensus? Do the Working Group conclusions provide enough useful inputs and will the outcomes of the 'Beyond 2008' NGO forum in July be taken into account? What kind of initiatives could be taken for follow-up and continuation of the debate beyond March 2009?

The NGO forum “Beyond 2008”

Over the last two years NGOs have attempted to reach a consensus position over a range of drug policy issues for presentation to the UNGASS review. They have also sought to

create a higher profile from one of extremely low visibility in the past. Nine regional conferences took place around the world, bringing together very disparate organisations that had never shared a platform. Despite this, consensus was found on a range of key issues. The participants at the “Beyond 2008” Forum held in Vienna in July 2008 unanimously adopted a Declaration and three Resolutions which will be tabled at the high level segment of the CND in March 2009. The Resolutions have as their objectives 1) To highlight NGO achievements in the field of drug control; 2) To review best practices related to collaboration mechanisms among NGOs and to propose new and improved ways of working with UNODC and CND; and 3) To adopt a series of high-order principles drawn from the conventions and their commentaries that would be tabled with UNODC and CND for their consideration and serve as a guide for future deliberations on drug policy.

From an NGO perspective, the Chairperson’s Draft contains some useful elements but does not function as a single document. A structural and editorial review is required and transversal issues must be included. The document does not reflect the need for partnership with civil society, as recommended in the 1998 demand reduction action plan. Other omissions include the absence of an unequivocal commitment to evidence-based policies, and of any mention of negative or “unintended” consequences of drug policy. The term harm reduction should also be included, as it would validate work carried out in the field, often under difficult conditions. At the NGO Forum, harm reduction was considered only within the sphere of demand reduction activity, and defined as “efforts primarily to address and prevent the adverse health and social consequences of illicit/harmful drug use, including reducing HIV and other blood borne infections”.

The NGO Forum has made a number of proposals: first, that there should be a civil society hearing, as occurred at the AIDS UNGASS. This would be a meeting, chaired by the Chair of CND, where governments have an opportunity to hear from those who implement policies on the ground. Second, the NGO Forum has asked for a specific slot in the high level segment at which a statement can be made. This would recommend the inclusion in policy-making of those most affected by drug policy, namely drug users and young people. They are the targets of policies and need to be part of the process, not excluded from it. For the long term it is important to consider how to improve civil society participation in the UN drug policy agencies, which is low compared to the other functional commissions of the UN.

Law Enforcement and future drug policy

From a law enforcement perspective there are four aspects to be considered:

1. The effects of 9/11 on law enforcement. Since 9/11 police manpower has been completely refocused on terrorism monitoring, with less public and political attention to other matters such as drugs. The Chairperson’s Draft contains some references to firearms and to terrorism, and these may in the future become more interlinked with drugs.

2. The police have not been part of the consultative process for the UNGASS review, although the greatest emphasis is on law enforcement. The police have to follow their political masters and are often reluctant to engage in national debate. However at street and community level the police are often flexible and tend to look for solutions using personal initiative. Much work in harm reduction is done by police in different countries. Harm reduction should be an operational concept in policing, and interactive with other services.
3. The Draft needs to be more ambitious and should insist that supply reduction and law enforcement become more evidence based. If this happens over a 10-year period it could bring about a paradigm shift - the debate would move to a new and better level, the illusions regarding enforcement would be reduced and resources might be reallocated. For this to happen, independent scientists, criminologists and forensic scientists should be working in the field of drug, police and justice operations to analyse their effectiveness.
4. The guiding principles for the future must be human and civil rights, evidence base and harm reduction or negative/ “unintended” consequences. Human rights should be truly universal. Civil rights exist to provide guarantees about excessive state intervention in private life, thus enforcement rights should be carefully monitored. The inclusion of these principles should be inserted into the Political Declaration. There has to be a strict timetable for the operationalisation of these principles, which must be done on a gradual basis.

The 2009 CND and the high level segment

The March high level meeting of the CND will be in form of an opening and a general discussion, followed by four high level working groups on:

1. Current and emerging challenges – new trends, patterns of the world drug problem and possible improvements to the evaluation system.
2. Strengthening international cooperation in countering the world drug problem, using shared responsibility as a basis for an integrated, comprehensive, balanced and sustainable approach through domestic and international policies.
3. Demand reduction treatment and preventive policies and practices.
4. Countering illicit drug trafficking and supply and alternative development.

The high level segment will be largely symbolic, with ministers making prepared speeches. For the thematic debate at the regular CND session (16-20 March) following the High Level Segment two issues have been proposed by regional organizations: Data collection (EU) and international institutions (GRULAC). Together, they reflect the need to improve the institutional response to the drug problem. The BRQ is no longer to be used, and this gives an opportunity to think about what information is required and how it can be obtained. It might be useful to consider drafting a resolution giving UNODC the mandate to improve in this area.

Conclusions/Recommendations Session IV

There is a need to insist that supply reduction and law enforcement become more evidence based. This vital paradigm shift can only happen if independent scientists, criminologists and forensic scientists are working in the field of drug, police and justice operations to analyse their effectiveness.

It should be recognized that there will be no changes to the conventions on this occasion. There are areas that can be strengthened and where one can be assertive: for example it is necessary to challenge the assumption that governments that do not pursue punitive penal sanctions for drug use and possession are “not applying” the conventions. On the contrary, it must be asserted that governments who impose punitive, humiliating sanctions for these offences are not applying the conventions correctly.

The aim should be to create an international policy that is humane, evidence based and respectful of human dignity. Pressure should be put on UNODC, CND and INCB to acknowledge and apply these principles. It is essential to have reliable information, ask the right questions and focus on the important issues.

There must be consideration of how to take the incremental gains made in this process forward, and how to use them in bilateral and regional fora to make a practical difference. In order for UNGASS not to be merely a statement of good intentions, steps must be taken to embed operationalisation into concrete initiatives that will begin immediately. The Political Declaration needs to set new targets. The CND debate must be about improving the governability of the UN system and about the structure that is envisioned in 10 years time.

Alison Jamieson, Conference rapporteur, November 2008