



INFORMAL DIALOGUE ON DRUG POLICIES

An initiative of the Washington Office on Latin America
(WOLA) and the Transnational Institute (TNI)



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The fifth meeting of the Informal Drug Policy Dialogues in Latin America took place at the Scorial Rio Hotel, Rio de Janeiro, Brazil, and was organized by the *Washington Office on Latin America* (WOLA) and the *Transnational Institute* (TNI), in cooperation with the Department of Mental Health of the Ministry of Health and the Ministry of Justice of Brazil.

Thirty-five people from various countries in Latin America, Europe and the United States who are directly and indirectly involved in the drug policy debate participated in this meeting. The discussion focused on the UNGASS review process and the Political Declaration to be adopted at the high-level segment of the 52nd session of the Commission on Narcotic Drugs, held in Vienna on March 11 and 12, 2009.¹ The dialogue in Rio de Janeiro focused on three key issues: (1) Latin American Perspectives on the Political Declaration; (2) The Effectiveness of the Conventions: The Case of Latin America; and (3) Human Rights and Policies Related to Drug Law Enforcement.

This dialogue – as in all previous ones – was governed by the *Chatham House* rules to encourage a free exchange of ideas and ensure confidentiality. Therefore, this report presents a general overview of the opinions expressed during the meeting, an analysis of each topic, and the main points of discussion or future action, while preserving the anonymity of the opinions expressed and leaving out some tactical discussion items. As a whole, this report does not draw any conclusions, but serves as input for further analysis and debate on the current situation of these issues.²

Introduction

In their capacity as hosts, representatives of the Brazilian government opened the dialogue and reiterated the importance of the UNGASS review process. In theory, the review process not only provides a new scenario for coordinating views on drug policies at an international level, but also provides an opportunity to develop a new focus, specifically in Latin American countries. It creates a space to think about drug policies from the perspective of public health, human rights and other areas, in order to review the failures to date and further integrate the programs that have been implemented over the past ten years. It also provides an opportunity to set more realistic targets and indicators and to think about a more unified position that better reflects the context of Latin America.

1. Fifty-second Session Commission on Narcotic Drugs; <http://www.unodc.org/unodc/en/commissions/CND/session/52.html>

2. Reports of the previous dialogues that have taken place in Latin America and Europe are available at http://www.tni.org/detail_page.phtml?&act_id=17655

First session: Latin American Perspectives on the Political Declaration

The Political Declaration (PD) is in the final stages of development and will be submitted for approval at the high-level meeting in Vienna. To date, the main contradictions and disagreements among the blocks of countries center on the inclusion of the term harm reduction, which refers to intervention practices in the field of treatment for drug users. These are implemented by many governments, but encounter ideological opposition from some countries. Another important issue of debate is alternative development and conditioning the provision of development aid on progress in crop eradication (the issue of sequencing). For countries such as Colombia this is fundamental in the implementation of its current policy and, with the support of the U.S. government, it will not accept any changes to this strategy.

At the time of the meeting, the negotiations to develop the PD were very demanding for the country representatives. Right from the start not every country was in support of carrying out a period of reflection from March 2008 until March 2009. The outcome of the review and discussion of the action plan³ items by the five working groups compiled by the chair of the Commission on Narcotic Drugs into a document titled the Annex or Action Plan that will be attached to the PD. The endeavor to consolidate the Annex was somewhat ambitious. Even though the conclusions reflect a consensus among the countries, this consensus represents only the minimum common denominator that could be agreed upon and a very limited incorporation of key points such as harm reduction.

During the review process, some Latin American countries expressed very strong positions, but on some occasions were also quite absent. Ecuador, Bolivia and Colombia have been very actively involved (although supporting opposing positions) in the discussion about alternative development. Argentina focused on facilitating the dialogue and trying to reach a consensus. Brazil was relatively absent from discussions on harm reduction, and Mexico focused primarily on the issue of drugs and weapons trafficking.

In their preparations for March 2009, the delegations should focus on presenting a clear country position in Vienna. Brazil's position will center around five key points: 1) include the concept of harm reduction in every international document about drugs; 2) ensure that the issue of drugs is foremost addressed from a public health perspective; 3) recognize the human rights of drug users and their right to be treated inclusively, both by society and the state; 4) allow, in some circumstances, a non-criminal approach to drug-related activities by granting a pardon to those imprisoned for low-level drug trafficking offenses; and 5) respect for Latin American cultures and traditions when developing and implementing drug policies.

As a member of the Commission on Narcotic Drugs, Uruguay had hoped that their country could help visibilize a Latin-American perspective; however, there clearly have been difficulties for officials' in-country in following the process in Vienna via their diplomatic missions and no regional perspective has been achieved. Uruguay's position is aligned with the position as outlined in "Beyond 2008,"⁴ acknowledging that the PD has reached an impasse, but that it is important to maintain a clear position on the importance of the

3. Working groups: 1) Money laundering and greater legal cooperation, 2) Decrease of supply (production and trafficking), 3) International cooperation to eradicate illegal crops and promote alternative development, 4) Reduce of the demand for drugs; 5) Control of Precursors and Amphetamine-Type Stimulants.

4. Beyond 2008 - A Global Forum on the 1998-2008 Review of the United Nations General Assembly Special Session on Illicit Drugs; http://www.vngoc.org/details.php?id_cat=8&id_cnt=27

following: 1) to incorporate human rights and harm reduction in drug policies; 2) to refute the argument that the conventions and their evaluations cannot be changed; 3) to improve the lack of cohesion and integration between drug issues and socioeconomic issues; 4) to develop a holistic and sustainable concept of alternative development that goes further than a balance between supply and demand; and 5) to insist on a theme that has not been discussed as of yet but is key, which is the growing penitentiary crisis in Latin America and the need to include options for substitute penalties and other alternatives in the debate on drug policies. Summarizing, Uruguay wants to address the issue of drugs in the context of "fundamental and equitable human development," with a rights focus.

Bolivian government's position focuses on three areas: 1) the political-diplomatic area; acknowledging that the PD doesn't meet their expectations for this process, as negotiations have been hermetic and even dogmatic, and nothing significant has been added to the international discussions on drug policies; 2) the media; the UNGASS review process has lacked visibility and has tended to focus on events such as the release of the annual International Narcotic Control Board (INCB) reports; 3) civil society or social movements; civil society is skeptical of the UNGASS review process, recognizing how difficult it is to change the positions in Vienna and the need to destigmatize national cultural practices.

The official country delegations for Vienna have not been confirmed as of yet. In most cases these will include only government representatives, as only a few countries are considering including civil society representatives on their official delegations.

The Latin American governments' reaction to the PD in the high-level segment should be clearly stated in the five-minute interventions made by each country. This will be the most unrestricted opportunity for countries to express succinctly their position on the political tone and limitations of the final PD and Annex.

With regards to Latin America, there was an expectation that the delegations would find some common ground with respect to harm reduction and alternative development. However, it is not feasible (at this point) to even consider a common policy that could be presented at the high-level segment, as there are still very diverse and opposing positions among the countries in this region. Nevertheless, it would be important to express the lack of consensus in the UNGASS review process, state the different positions encountered and point out the limitations of the PD and Annex, as these contain only the "bare minimum content that was deemed acceptable to all," and do not reflect the entire discussion around the process and will not provide any solution to the problems.

After Vienna, the momentum should be maintained for conducting an honest assessment of the real possibilities of developing a common Latin American policy, both nationally as well as for the region as a whole. Perhaps the search for a consensus is the wrong approach, as we clearly find ourselves in a period of looking for alternatives, whether these are joint or different. Nevertheless, there has been a consolidation of autonomous or sovereign drug policies in Latin American countries and there will possibly be new U.S. policies under the current administration.

An evaluation of the international conventions, as occurred with the UNGASS review process, is not necessarily the paradigm that will define the decision-making processes on drug policies in Latin America. The paradigm of security and development is still much stronger than any other framing issue and including new paradigms requires significant

changes in the internal decision-making process of each country. The weakness in the negotiations is not always due to the lack of preparation by the delegates, but the fact that governments choose issues that will not be addressed. It is important to realize that several countries in the region support drug policies that not only address issues of domestic security, public health or human rights, but also answer to economic or geopolitical agendas that involve specific relationships with other countries.

Second Session: The Effectiveness of the Conventions: The Case of Latin America

The international conventions on drugs have had limitations in reflecting the reality of the issues faced by Latin American societies. Different national initiatives have emerged, resulting in legal reforms and cultural or national practices that cause tensions at an international level (such as the use of coca leaves, proportionality of sentences, decriminalization of users for possession, etc.).

For example, the current reality in Bolivia fully acknowledges "the indigenous issue," so while the country adheres to international conventions, it also encourages a greater appreciation for the national identity, represented – among other things – by the coca leaf. The new Bolivian constitution states that the coca leaf in its natural state is not a narcotic, creating an impasse within the international framework. This situation provides an opportunity to highlight the contradictions faced by some states in ratifying international commitments to fight the illegal drug trade while at the same time asserting the country's cultural values and ancestral traditions.

This has undeniably "resulted in an impasse between international law and national law" (2008 INCB Report, chapter 1, paragraph 30⁵). International treaties create jurisdictions that subjugate states and have caused significant inconsistencies. The disparity between the offence and the imposed penalties is an ongoing example of these inconsistencies; the international human rights framework mandates countries to revise government policies, but when it comes to applying proportionality to drug-related penalties, the room to maneuver is very limited.

The government of Ecuador has undertaken significant efforts to remedy this situation by adopting a policy on pardons and following the international guidelines of the Inter-American Court of Human Rights.⁶ Three measures have been considered: 1) implementing a pardon for people who are imprisoned and convicted of trafficking up to two kilos of drugs, provided they meet certain prerequisites; 2) establishing the beginning of proportionality under the law, by defining some sort of maximum limit for the weight or amount that would not be penalized; and 3) clearly defining the difference between drug trafficking and social or health-related drugs issues. The implementation of these measures is an attempt to reduce the number of people subject to penalization.

Argentina's experience includes a regulatory framework that call for the inclusion of harm reduction, but so far it has had little success in implementing this. Government officials are also studying the decriminalization of possession. Society has undergone a paradigmatic

5 Report of the International Narcotics Control Board for 2008; <http://www.incb.org/incb/annual-report-2008.html>

6. Corte Interamericana de Derechos Humanos; <http://www.corteidh.or.cr/>

change in its younger generations and how they relate to drugs. Drugs have once again been incorporated into society and are now a part of the country's endogenous dynamic. At the same time, drug policies have created a new category of criminals that currently accounts for 75% of all criminal cases in federal courts.

In Brazil, the national proposal for a pardon policy has resulted in two significant innovations: 1) respect for people with mental disabilities, by establishing a proportional maximum penalty for people with such a disability; and 2) a clear definition of drug trafficking, stating that a person is eligible for a pardon if the possession of drugs is not directly associated with any commercial activities.

Although progress is still limited, Mexico is working on three legislative proposals regarding the proportionality of penalties and the possession of marijuana, as well as a proposal to implement educational penalties for those convicted of possession. These legal reforms are intended to distinguish the criminal drug trafficker from the consumer and should reduce the excessive amount of police extortion experienced by vulnerable groups.

The possibilities to broaden the discussion and work towards an international legal frame of reference that better reflects the local reality are still limited. In terms of legislation, the internal parameters of development and the constitutional position of countries have undoubtedly outpaced the international framework. Therefore, it is necessary to analyze how to address international law, in keeping with the ethical values of national law in the Latin American countries.

In most Latin American drug policy legislation, the lack of specific legal definitions to protect small users is still an impediment because the law is subject to the interpretation of the judge who hears the case. Also, penalties still do not offer people any social solutions and legal guidelines often fail to address the issue of drug use and health altogether.

In general, the illegal drug trade in Latin America is not only seen as an issue of organized crime, but also of social and political disorder with devastating impact on countries' development. In many cases, the disorder is the result of states (wrongfully) tolerating behaviors that attack democracy. Here and elsewhere, the lack of common regional policies is evident, limiting the country's capacity to articulate national priorities in a larger forum.

Although it is quite ambitious to envision Latin America as a place to develop an integrated approach, it is important to begin this kind of discussion, based on the principles of selectiveness, proportionality and transparency.

Latin American debate on drug policy issues could be included in forums such as UNASUR, starting with topics that promise the greatest common interest and that could generate financial resources to fund different kinds of drug programs in each country (addressing issues such as organized crime, corruption, asset forfeiture and confiscations). If the goal is to "Latin Americanize" drug policies, it no longer seems relevant to talk about joint responsibility. Instead, alternative policy frameworks need to be developed in support of a new paradigm based on the critical problems affecting societies.

The development of national and regional knowledge and information systems could provide a space for developing approaches to cross-cutting issues at a regional level. Countries have made some progress with the implementation of the Observatories on Drugs, the standard

CICAD questionnaires and other instruments, but these efforts are limited to presenting statistics. Little progress has been made in creating and sharing information to build knowledge or develop effective evaluation measures.

Third session: Human Rights and Policies Related to Drug Law Enforcement

One of the arguments used to support changes in current policies on controlling the production, trade and use of controlled substances is promoting respect for the human rights of the people involved. Within Latin American, the Colombian experience is instructive. In 1995, the court decriminalized the possession of drugs for personal use; however, the national government has maintained the position that it is unacceptable to promote a practice that it claims encourages confrontation and is inconsistent with the zero-tolerance approach. As this was a court initiative and not based on any political agenda, the relationship between this measure and how it relates to the protection of human rights did not permeate Colombian society and had no impact on the development of public policies.

With respect to crop cultivation, the fundamental problem from the government's point of view is that guerrilla movements use the crops as a source of funding. Hence, government efforts are not oriented towards restricting the supply, but on preventing guerrilla movements from gaining strength and maintaining their geographical presence. As a result, crop eradication and fumigation are still the primary strategy, despite the impact on the human rights of farmers. Growers are still considered to be supporters of the insurgents and are viewed as potential participants in the guerrilla strategy of maintaining and gaining territorial control. In addition, another consequence of growing coca is that farmers are subject to losing control their land. This has resulted in an increased occupation of state land and natural forests, causing a significant environmental impact.

The great paradox of Plan Colombia continues to be that it lacks a strategic component to address the issue of drug trafficking. With a continued focus on the guerrillas, it will be very difficult to implement any measures to control drug trafficking, because the guerrilla movement has consolidated its power with mafia-like methods, using threats, selective murder and repressive information mechanisms.

In many regions of Mexico, the implementation of the public security agenda has become primarily the army's responsibility. In this context, the common discourse is that in the fight against drugs, human rights may take a backseat. The general discussion about drugs and the respect for human rights is still in its early stages and is mostly limited to the issue of drug trafficking. This is clearly demonstrated by the fact that 95% of resources are earmarked for repressive activities and only 5% of resources are allocated to promoting education and awareness on prevention. There have been 8,000 deaths in two years and 98% of offences go unreported because people do not trust the legal system.

Although some progress has been made in proposing bills to legalize the use of marihuana, there has been very little success in achieving a new legal framework. The rights of drug users are not only vulnerable in terms of access to information and health care, but also in terms of legal ambiguity (the non-existent difference between the drug dealer and user). As in the previously mentioned cases, those charged with drug offenses are at the discretion of the judge who determines the classification of offences and penalties, resulting in corruption and extortion that is very harmful to society.

An evaluation of Peru's ten years of experience in coca growing regions such as the VRAE (the Apurímac and Ene River Valleys) shows that poverty is still on the rise and the rights of the most vulnerable are still being violated. The Peruvian government launched the VRAE Plan in 2006 to reestablish the presence of the state and develop a proposal for the region's social economic development. So far, this plan has once again relied more on repression and militarization than on socioeconomic development.

Military operations to capture any remaining terrorists have demonstrated - in practice - the ongoing violation of people's human rights. The vulnerable populations that live in the coca growing regions are all still regarded as narco-terrorists and subjected to excesses of military control that have resulted in the killing of civilians, torture, unlawful interrogations, rape and other atrocities. Another consequence of these policies is the displacement of the local population to make room for military installations.

It is important to reiterate that the problem lies not only in policymaking, but also in the ineffective implementation of policies. In most countries, civilian agencies have not played a very effective role and have been even further diminished by the military, which has shown more readiness to implement anti-drug programs. What is disheartening about the military involvement is its self-glorifying rhetoric in which each death is misguidedly interpreted as a step forward in the effective implementation of policies to control drugs.

Although Ecuador has not yet implemented a new drug law, there are still inconsistencies as far as ensuring human rights. One possible weakness is that the law in general considers several kinds of penalties or sanctions for the same offence (a fine, a penalty, varying sentences). Moreover, under the drug law there is no possibility of conditional liberty, compromising the principle of the presumption of innocence until proven guilty and personal freedom.

One of the proposals that countries could discuss to protect individual human rights is to promote a better discussion about drugs outside the realm of drug trafficking, and create public awareness to value human rights and access to health care as highly as public security.

As part of the UNGASS review process, some countries have focused their efforts on including the theme of human rights in the debates, questioning current drug strategies. They conclude that the way international treaties have evolved has caused more harm than good and has failed to address the harmful effects of present policies. Latin American countries should continue to raise the issues of individual and collective rights, cultural rights and a state's right to sovereignty.

There is also a very clear understanding that the right to a life without fear is a fundamental human right and a principle of a democratic state. Towards that end, there needs to be a dialogue with the army and more interaction with the police to ensure that policies are appropriately implemented.

Brazil uses an interesting model that is part of the National Program for Public Security with Citizenship (*Programa Nacional de Segurança Pública com Cidadania*).⁷ Conceptually, the model creates working strategies for public security that for the first time include the active

7. O que é o Pronasci;
<http://www.mj.gov.br/data/Pages/MJE24D0EE7ITEMIDAF1131EAD238415B96108A0B8A0E7398PTBRIE.htm>

participation of civil society. It also develops police services with a greater focus on respect for human rights.

These regional experiences highlight the importance of insisting on greater non-military efforts to deal with the issue of drugs. The military mindset is very simplistic and in Latin American countries it often focuses on security (of the United States), which is hardly appropriate in a domestic context.

Therefore, the challenge is not only to reform the laws but also to ensure a judicial system that will support these laws. Studies have shown that even with the implementation of extensive policies to fight drug trafficking, the impact on prices and the structures that support the drug trade is very limited. How do we overcome this reality?

Final Discussion: Conclusions of the UNGASS Review: What Happens Next? The Post-UNGASS Period

In the light of the current international framework and the upcoming 52nd session of the Commission on Narcotic Drugs, the results of the negotiations on the PD and Annex may lead to three possible scenarios. The first scenario is that the pressure to reach a consensus will be successful and a final version of the PD and Annex will be approved. Only a few countries are still insisting on their positions and delegations have invested a year of very hard work in the UNGASS review process (formal meetings, informal meetings and informal-informal meetings), spending approximately 80 days of negotiations to agree on the texts as they are now.

The fact that harm reduction and alternative development and eradication have been ongoing topics of discussion should be seen as a positive sign. Although it may look like a simple word game, today's discussion reflects a significantly more humane approach to these key concepts. Unfortunately, those countries that insisted on defending more progressive principles have not achieved positive outcomes.

A second scenario is that an agreement is not reached. The failure to reach a consensus would have serious impact at the diplomatic level. Finally, a third scenario is the remote possibility that the paragraphs that cannot be agreed on are deleted from the PD and Annex. This would reduce the entire review process to a confirmation that the world cannot even agree on the most basic underlying principles of drug policies.

It is absolutely essential that for the high-level segment of the 52nd session of the Commission on Narcotic Drugs, each country prepares a speech that goes beyond the well-known viewpoint that the last ten years have been a failure for drug policies. Instead, countries should state their position on the process of developing the PD and – in brief, well-considered and proactive terms - state their own views on what direction to take in the coming years.

A possibility that is being studied, but (at this point) unlikely is for Latin American governments to develop an alternative political declaration with their own list of key points. Supported by civil society representatives, this declaration would provide an opportunity to express a different point of view on the topics that are not adequately addressed in the PD.

As far as what happens after UNGASS, frustration among some missions in Vienna is compounded by the fact that there is no other opportunity for this kind of review, either in the

short or medium term. Some important dates that could motivate countries to continue this process are:

- 2011: 50th Anniversary of the Single Convention of 1961
- 2012: 100th Anniversary of the International Opium Convention of 1912
- 2014: Possible review of the PD approved at the 52nd CND session
- 2019: Possibly new UNGASS

The next steps for building a regional vision in Latin America and the Caribbean require the development of mechanisms and analytical tools for creating a regional vision and an alternative proposal.

Therefore, it is important to capitalize on experiences such as the UNGASS on HIV/AIDS in order to learn from the negotiation process that ultimately resulted in the incorporation of harm reduction, despite some countries' very strong positions on reproductive health, homosexuality and other themes. Even if the PD on drugs is approved, it will remain important to look for mechanisms that question the PD and the very mechanisms of the Commission on Narcotic Drugs and the other international organizations involved in drug policies. We also need to think about what we would consider "impossible demands" and "unacceptable costs." When the Political Declaration on HIV/AIDS was negotiated, the standard to guarantee all vulnerable populations access to drugs seemed an impossible demand, but at the same time it was an unacceptable cost to allow entire populations to continue to be denied access to treatment. The outcome of the process was the creation of the Global Fund, which provided a solution outside the realm of the United Nations.

UNASUR provides a favorable venue to initiate a discussion on building a Latin American initiative, but we need to be aware that radically different positions coexist within Latin America. Colombia remains focused on security, Peru continues stuck in semantics that obscure the issue, Bolivia concentrates its efforts on defending the coca leaf, Ecuador is pursuing harm reduction, etc.

The Latin American Commission on Drugs and Democracy (CLDD)⁸ provides a clear example of a successful regional approach incorporating common themes (despite specific differences of opinion among those from different countries). Although so far the achievements of this initiative have been more symbolic than political, they have been very valuable in establishing a consultation process with experts on the issue and in facilitating a process to develop a common point of view on the implementation of drugs policies from a Latin American perspective.

The main common assertions that have come out of the CLDD include: 1) confirmation that the implementation of drug policies in Latin America has been a failure; 2) recognition that drugs in Latin America are not only an individual health concern, but also an institutional and regional concern; and 3) acknowledgment of the priority to implement public security policies to address organized crime as a parallel power to regional authorities. At the moment, the CLDD has concluded its task. However, at a political level it could serve as a network or

8. Latin American Commission on Drugs and Democracy; <http://drugsanddemocracy.org/blog/archives/category/highlights>

discussion forum with the media and others. It has no intention of being permanent or formally organized, but based on the outcomes it can be a way to discuss and support more opportunities for key players to interact.

It is therefore essential that every future initiative focuses on clarifying the issues, finding common topics for discussion and eliminating the semantic codes in order to allow for a regional interpretation of the concepts of harm reduction and policies to reduce violence. The idea of addressing the issue within UNASUR offers countries the opportunity to exchange experiences and to introduce a new model to address drugs and human rights at the international level. We also need to allow a reasonable amount of time to learn more about the policies and potentially new messages that will be announced by the new U.S. administration.

The Brazilian government has offered to lead the process to bring the countries in the region closer together in order to review issues around human rights, legislation, public policy administration, public health and more. These can then be addressed within UNASUR in order to continue the post-UNGASS review process. Nevertheless, it is very important that the dialogues that take place within UNASUR, MERCOSUR or in other forums include an action plan to avoid scattered discussions without a clear focus.

As far as any possible events or opportunities in the countries in 2009, there will be a meeting of all Latin American and Caribbean countries with the European Union, from May 25 to 27, in Quito, Ecuador. This could be an opportunity to hold preliminary conversations and try to bring countries closer together on the issue of drugs in 2009.

In conclusion, the discussions during the informal dialogues are starting to consolidate a conceptual and operational position that should be reflected internationally, beyond the UNGASS review. It is important to continue activities in which the search for a consensus reflects diversity and is not reduced to the smallest common denominator. Countries should hold more informal dialogues and strengthen regional events that permit a more holistic discussion about drugs.

The drug policy review process raises new challenges for the future. We have clearly made progress, but this also requires more time. We are now entering a new phase for action and developing new ways to continue the debate.