

UNGASS 2016

*Background memo on the proposal to
establish an expert advisory group*

A joint declaration of Mexico, Colombia and Guatemala in October 2012 triggered the decision to convene a General Assembly Special Session (UNGASS) in April 2016 to assess “the achievements and challenges in countering the world drug problem”.¹ According to the three countries, “revising the approach on drugs maintained so far by the international community can no longer be postponed”, and the UN needed to exercise leadership to “conduct an in depth review analyzing all available options, including regulatory or market measures, in order to establish a new paradigm that would impede the flow of resources to organized crime groups”. An international meeting had to be convened “capable of taking the decisions necessary to increase the effectiveness of the strategies and instruments with which the global community addresses the challenges of drugs and their consequences”.² Secretary General Ban Ki-moon subsequently urged member states to use the 2016 UNGASS “to conduct a wide-ranging and open debate that considers all options.”³

The two previous UNGASS's on drugs, in 1990 and 1998, both made use of advisory groups to help maximize the impact of the special sessions. Ad-hoc committees were mandated to review the functioning of the UN drug control system and to recommend on how to improve its performance in light of the outcomes of the UNGASS in the years thereafter. Both groups had an exclusively governmental composition, though in 1990 members were more selected on the basis of their expertise while the second group ended up having a completely political-diplomatic nature. The first advisory group in 1990 played a transformative role in the development of the UN drug control architecture, emphasizing the importance of a UN system-wide approach and leading to the establishment of today's UN Office on Drugs and Crime (UNODC). The establishment of the second advisory group at the 1998 UNGASS became the subject of much political controversy, but in spite of its more restricted mandate and composition, it still came up with a number of useful recommendations.

Several countries have recently expressed support for the idea to use the mechanism of an expert advisory group again for the UNGASS in 2016, now with a more inclusive composition and broader mandate. At the General Assembly thematic debate about the UNGASS on May 7, 2015, the Jamaican Minister of Justice Mark Golding said: “Jamaica is in favour of the establishment of an expert advisory group to review the UN drug-policy control architecture, its system-wide coherence, treaty inconsistencies and the legal tension of cannabis regulation.”⁴ Milton Romani, the Uruguayan drug coordinator, said at the same event: “We are facing a structural phenomenon that deserves an Expert Group composed of several agencies and participation of civil society to examine in depth these issues and other mechanisms in order to give coherence to our Conventions and bring them up to date”.⁵

1. A/RES/67/193, *International cooperation against the world drug problem*, resolution approved by the General Assembly on 20 December 2012.

2. *Declaración Conjunta*, New York, 1 October 2012. http://mision.sre.gob.mx/onu/images/dec_con_drogas_esp.pdf

3. Ban Ki-moon, *Statement: Secretary-General's Remarks at Special Event on the International Day Against Drug Abuse and Illicit Trafficking*, New York, 26 June 26, 2013. <http://www.un.org/sg/statements/index.asp?nid=6935>.

4. Mark Golding, Minister of Justice, Jamaica, General Assembly high-level thematic debate, New York, 7 May 2015.

5. Intervention by Milton Romani Gerner, Secretary General of the National Drugs Council of Uruguay, General Assembly high-

Ecuador's drug coordinator Rodrigo Vélez has proposed on different occasions to establish an "international multidisciplinary commission" to recommend improvements in the UN drug control architecture. And Colombian officials have underscored the importance to "recover the ultimate goal of the Conventions which is to preserve the health and welfare of humankind" and have suggested a "mechanism to modernize the UN control system and adapt it to the challenges of today".⁶

UNGASS 1990

The first UNGASS on drugs took place in February 1990 in response to a dramatic call to action by Colombian President Virgilio Barco Vargas in the General Assembly a month after the assassination of Luis Carlos Galán in August 1989, the leading candidate in the presidential elections.⁷ In December, two months before the special session, a General Assembly resolution requested "the Secretary General to select a limited number of experts from developed and developing countries to advise and assist him for a maximum period of one year, in full co-operation with United Nations officials, in order to enhance the efficiency of the United Nations structure for drug abuse control, taking into account the ability of the United Nations to perform its increasing tasks in the light of existing mandates and of decisions adopted by the General Assembly at its special session".⁸

After the UNGASS, in April 1990, Secretary-General Javier Pérez de Cuéllar selected fifteen governmental experts from Hungary, India, Italy, Jamaica, Malaysia, Mexico, Morocco, Nigeria, Peru, Sweden, Thailand, Turkey, the USSR, the UK and the US. "The Group of Experts, representing all regions of the world, was chosen for personal expertise in respective disciplines, and not as spokesmen for Governments."⁹ The group met between May and July 1990 chaired by Ambassador Jorge Montaña, at the time Mexico's Permanent Representative to the UN in New York; Ambassador Montaña recently returned to the same post and currently plays a key role in the preparations for UNGASS 2016. The 1990 expert advisory group's conclusions greatly influenced the restructuring of the UN drug control machinery the years thereafter, including the establishment of UNDCP (the predecessor of UNODC), and called for elaborating a UN system-wide action plan.¹⁰

level thematic debate, New York, 7 May 2015. <http://statements.unmeetings.org/media2/4658472/uruguay.pdf>

6. Quotes taken from statements by Minister of Justice Yesid Reyes at the General Assembly high-level thematic debate, New York, 7 May 2015, <http://statements.unmeetings.org/media2/4658476/colombia.pdf>; and by former vice-Minister of Justice Miguel Samper at UNASUR headquarters, Quito, 29 July 2015.

7. A/44/PV.13, *Address by Virgilio Barco Vargas, President of the Republic of Colombia*, General Assembly Forty-Fourth session, Provisional verbatim record of the thirteenth meeting, Held at Headquarters, New York, on Friday, 29 September 1989, at 3.15 p.m. http://www.un.org/en/ga/search/view_doc.asp?symbol=A/44/PV.13

8. A/RES/44/141, *Global programme of action against illicit narcotic drugs*, General Assembly, resolution 44/141, 15 December 1989, paragraph 4. www.undocs.org/A/RES/44/141

9. A/45/652/Add.1, *Enhancement of the Efficiency of the United Nations Structure for Drug Abuse Control: Report of the Secretary-General: Addendum*, 24 October 1990, p. 4. www.undocs.org/A/45/652/ADD.1

10. Martin Jelsma, *UNGASS 2016: Prospects for Treaty Reform and UN System-Wide Coherence on Drug Policy*, Brookings Institution, April 2015. <http://www.brookings.edu/~media/Research/Files/Papers/2015/04/global-drug-policy/Jelsma--United-Nations->

UNGASS 1998

Preparations for the second UNGASS on drugs in 1998 were delegated to the Commission on Narcotic Drugs (CND) in Vienna, similar to the procedure now chosen for the UNGASS in 2016. Difficult negotiations at the 1997 CND resulted in a resolution entitled “Review of the United Nations International Drug Control Programme: strengthening the United Nations machinery for international drug control within the scope of the existing international drug control treaties and in accordance with the basic principles of the Charter of the United Nations,” subsequently adopted by ECOSOC in July 1997.¹¹ The resolution did call for another advisory group to assist the UNGASS process, but contentious issues that had come up in the aftermath of UNGASS 1990, such as the need for “appropriate adjustments” of the UN drug control system, reassessing treaty inconsistencies and reviewing results of harm reduction and decriminalization practices, were deliberately kept outside the group’s remit under political pressure. The adjective “independent” did not survive the political negotiations over the draft resolution that had originally called on the Secretary-General to “convene a small group of independent experts to undertake a comprehensive review of how the efforts against illicit drugs have evolved within the United Nations system.”¹² In fact, the group of thirteen experts appointed in March 1998 by then Secretary-General Kofi Annan, ended up comprising the entire extended bureau of the CND that was acting as the formal preparatory committee for UNGASS 1998.¹³

Still, in its final report released after the UNGASS, this “High-level Expert Group” (the adjective “high-level” marked the shift from “independent experts” to government officials) concluded that “while assessing the adequacy of the treaties fell outside the scope of [their] mandate, there were several critical issues affecting the international drug control regime that needed to be dealt with as a matter of priority.”¹⁴ The group also specifically noted the shortcomings of the CND itself: “In recent years, the trend had been for the Commission to move from a technical entity towards a more political one. ... Critical and emerging drug control issues were also not being adequately dealt with. ... The situation was undermining the role of the Commission as the principal United Nations policy-making body on drug control”.¹⁵ The group drew attention to a number of weaknesses in the UN drug control system that needed to be addressed, including the lack of UN system-wide coherence and the need to

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11. E/RES/1997/37, *Review of the United Nations International Drug Control Programme: strengthening the United Nations machinery for international drug control within the scope of the existing international drug control treaties and in accordance with the basic principles of the Charter of the United Nations*, ECOSOC, 21 July 1997. <http://www.un.org/documents/ecosoc/res/1997/eres1997-37.htm>

12. E/CN.7/1997/L.6/Rev.1, *Review of the United Nations International Drug Control Programme*, Commission on Narcotic Drugs, draft resolution.

13. UNIS/NAR/627, *Secretary-General Kofi Annan Appoints High-Level Experts to Review Progress of United Nations Efforts against Illicit Drugs*, press release, March 9, 1998. http://www.unodc.org/unodc/en/press/releases/press_release_1998-03-09_2.html

14. E/CN.7/1999/5, *Strengthening the United Nations Machinery for Drug Control: Report on the Meeting of the High-Level Expert Group to Review the United Nations International Drug Control Programme and to Strengthen the United Nations Machinery for Drug Control, Held at Vienna from 22 to 24 April and from 29 June to 3 July and in New York from 26 to 30 October 1998*, (December 7, 1998), p. 12. www.undocs.org/E/CN.7/1999/5

15. *Ibid.*, p. 16.

strengthen inter-agency collaboration, concluding for example that “a significant increase in cooperation between UNDCP and UNDP is indispensable for the success of drug control.”¹⁶

Developments unfortunately went in the opposite direction, and many of the structural flaws and inconsistencies in the UN drug control system identified by the two advisory groups (as well as by the INCB, the WHO and UNODC) remain unresolved today. Since 1998, the mantra “within the framework of the three international drug control conventions” has become obligatory wording for all UN drug control resolutions, including the paragraphs of the GA and CND resolutions on the UNGASS 2016. The efforts to develop a system-wide action plan failed dramatically, Vienna obtained a near monopoly to deal with the drugs issue within the UN system and inter-agency collaboration deteriorated rather than improved since the UNGASS 1998.

UNGASS 2016

Significant changes in the global drug policy landscape are shaping up in the UNGASS 2016 preparations, in the direction of more humane and proportional responses based on health, human rights and development principles. But few countries are willing to openly acknowledge the existence of structural deficiencies with regard to UN system-wide coherence, the institutional architecture and the legal treaty framework. In spite of more and more cracks in the Vienna consensus and treaty breaches in the area of cannabis policies, questioning the basic principles of the international drug control system is still largely a political taboo. Only some countries are willing to openly challenge them, for example Argentina in its statement at the General Assembly in May: “Let’s not be afraid to debate, to discuss, to change, to project, even about the conventions that apparently need to be untouchable. The conventions are not the Bible, they are just that, conventions, agreements, which should evolve as people and policies evolve”.¹⁷

The GA in its resolution 69/200 invited all UN entities, relevant international and regional organizations as well as civil society organizations to contribute fully to the preparations, in particular by submitting to the CND specific recommendations to be addressed at the UNGASS. The draft resolution on modalities for the UNGASS, negotiated at the CND in March 2015 and adopted in July by ECOSOC (still to be approved by the General Assembly), requests the CND “to produce a short, substantive, concise and action-orientated outcome document comprising a set of operational recommendations, based upon a review of the implementation of the Political Declaration and Plan of Action, including an assessment of the achievements as well as ways to address long-standing and emerging challenges in countering the world drug problem, within the framework of the three international drug control

16. 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, no. 2 (2003), p. 191.

17. *Discurso del Secretario del Estado Juan Carlos Molina*, SEDRONAR Argentina, General Assembly high-level thematic debate, New York, 7 May 2015. <http://statements.unmeetings.org/media2/4658463/argentina.pdf>

conventions and other relevant United Nations instruments” to be recommended for adoption at the UNGASS 2016.¹⁸ The ‘UNGASS Board’ tasked by the CND to organize its UNGASS preparations, invited regional groups to submit operational recommendations to be included in the outcome document, and many countries submitted their national inputs as well. Uruguay’s submission for the UNGASS outcome document includes this specific recommendation to establish an expert group:

*Requesting from the UN Secretary General the creation of a Consultative Group of Experts with the task of developing operational recommendations to improve the functioning and harmony of the drug control system in the UN, according to the review of achievements and challenges in 2019, covering key issues such as: drug control architecture of the UN and collaboration among different agencies; harmonization of drug control and Human Rights and development principles; inconsistencies in treaties identified by WHO, UNODC and INCB regarding criteria and procedures for classification of substances and obstacles to the availability of controlled substances for medical use; and flexibility of the conventions and legal questions that have arisen with respect to traditional uses of coca leaf and cannabis regulation, exploring possible options to resolve them in accordance with International Law. The group membership should represent a balanced selection of experts from Member States and regional organizations, relevant UN agencies, civil society and academia.*¹⁹

The submission of the International Drug Policy Consortium (IDPC), a global civil society network of more than 140 NGOs and networks, included a similar call to create an expert advisory group, to address challenges such as regulated cannabis markets, tensions with human rights obligations (including indigenous rights), the traditional use of coca leaf chewing and, quoting from the EU position for the UNGASS, “the urgent need for improving access to and availability of controlled medicines” while also “looking at possible obstacles within the framework of the Conventions”.²⁰

Elements of the outcome document have been discussed at CND intersessional meeting between September-November and the actual drafting process and political negotiations will start in December and could include as one of its operational recommendations to establish an expert advisory group, following the precedents of the previous two special sessions on drugs. The group’s main task would be to recommend how to deal with a number of complex issues, which are unlikely to result in a satisfactory consensus at the special session itself, in the years following the 2016 UNGASS, preparing for the next UN high-level review in 2019.

18. *Special session of the General Assembly on the world drug problem to be held in 2016, draft resolution*; E/2015/28, Commission on Narcotic Drugs, Report on the fifty-eighth session (5 December 2014 and 9-17 March 2015), pp. 1-4.

19. National Drug Board, Presidency of the Republic, *Uruguayan Position before UNGASS 2016: Strategic axes for a comprehensive approach to drug policy, Uruguayan contribution to the outcome document of UNGASS to be prepared by the Commission on Narcotic Drugs for the Special Session of the UN Assembly World Drug Problem 2016*, August 20, 2015.

20. International Drug Policy Consortium, *IDPC recommendations for the “ZERO DRAFT” of the UNGASS Outcome Document*, IDPC Advocacy Note, July 2015, p. 5.

Different arrangements can be considered with regard to the hosting and composition of such a group, based on experiences with similar advisory bodies that have operated within the UN system. Given the general reluctance of several Member States to establish any new UN mandates and bodies, perhaps the advisory group could build on the mandate already given by the UN Secretary General to the UN System Task Force on Transnational Organised Crime and Drug Trafficking to facilitate active involvement of all relevant UN agencies in the UNGASS process.²¹ The Task Force, operating under joint coordination of the Department of Political Affairs (DPA) and UNODC, could be considered to serve as the secretariat of such an advisory group, comprised of experts from Member States from different regions, relevant UN agencies, regional bodies, civil society and academia. The UN University recently suggested an even more ambitious format, namely to establish an Open Working Group on drug policy in New York inspired by the one that produced the Sustainable Development Goals, including its troika system for state representation, and its extensive consultations with the UN system, civil society and interested stakeholders.²²

Conclusions

Shifts in the global drug policy landscape, especially the accelerating policy changes towards cannabis regulation and the growing group of Member States calling for a more human rights, development and harm reduction based approach, will require structural changes in the UN drug control system sooner or later.²³ No easy solutions are available and consensus will not be easily found, but denying the reality of ongoing policy trends and the resulting tensions with the treaty system won't make them disappear and hinders the UN drug control system to evolve and adapt to the realities of today.²⁴ An expert advisory group could be very helpful – now more than ever – to think through different scenarios for the future evolution of the system.

A consultative mechanism can take different forms within the UN system, but essential characteristics for the complex task at hand would be (1) a UN system-wide organisational set-up connecting the Vienna drugs focus with the broader SDGs, human rights and health perspectives more prevalent in New York and Geneva; (2) an inclusive composition and methodology allowing meaningful participation

21. The Task Force was established in March 2011 by the UN Secretary-General to enhance a coherent and effective response to drugs and crime from the UN system, and was subsequently mandated to ensure participation of all relevant UN departments in the UNGASS process. Co-chaired by DPA and UNODC, the Task Force is comprised of UNDP, the Department for Peacekeeping Operations, the Office of the High Commissioner for Human Rights (OHCHR), UNICEF, UN Women, the World Bank, WHO and UNAIDS.

22. James Cockayne and Summer Walker, *What Comes After the War on Drugs – Flexibility, Fragmentation or Principled Pluralism?*, Strengthening global drug policy at the 2016 United Nations General Assembly Special Session on the World Drug Problem, United Nations University, November 2015, p. 33.

23. Vanda Felbab-Brown and Harold Trinkunas, *UNGASS 2016 in Comparative Perspective: Improving the Prospects for Success*, Brookings Institution, Washington, D.C., 2015.

24. Heather Haase (rapporteur), *Report of the International Law and Drug Policy Reform Expert Seminar (Washington, D.C.)*, TNI / Swansea University Global Drug Policy Observatory / International Centre on Human Rights and Drug Policy / WOLA, July 2015. <http://druglawreform.info/en/un-drug-control/conventions/item/6402-international-law-and-drug-policy-reform>

from civil society and academia; and (3) a broad substantial mandate to consider “all available options” – which was the explicit request from the countries calling for this UNGASS, supported by the UN Secretary-General – which requires the political mandate to also examine deficiencies, inconsistencies and tensions related to the existing treaty framework.

Structural challenges are staring the international community in the face and more difficult ones seem to appear on the horizon already. While the UNGASS will hopefully consolidate significant steps forward in the UN drug policy discourse in some areas, it is also clear that several controversies will not be resolved by April 2016. New mechanisms need to be created therefore, by the UNGASS or by groups of like-minded countries, to keep the current dynamic of promising drug policy trends moving forward, to explore viable scenarios for the future and to prepare for 2019.



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