Informal Drug Policy Dialogue in Santo Domingo
October 3-4, 2016

Executive Summary of the Dialogue Sessions

In 2004 Transnational Institute (TNI) began hosting Informal Drug Policy Dialogues and in 2007, the Washington Office on Latin America joined TNI to host Latin American specific dialogues. The meetings are guided by the ‘Chatham House Rule’ to encourage the free exchange of ideas confidentially. Topics at the dialogues have included many drug policy issues and dilemmas, such as models for regulating cannabis and coca, the 2016 UN Special Session (UNGASS) on drugs, tensions within the UN drug control treaties, and regional trends in drug markets. Governments rely on the dialogues as a means of having sincere conversations about complex negotiations, as well as using the informal space to construct consensus and build trust, which are imperative in the long-term policy debates. In addition, government officials participate in the dialogues in order to learn about the international drug policy regime and to exchange knowledge with civil society partners. This was the second time the dialogue was held in the Caribbean.

The first session of the Santo Domingo dialogue focused on national cannabis policy developments taking place in the Americas and posed varying questions to the participants, including: what is being done to ensure that diverse actors have equal access to the market, including traditional growers, and to limit the influence of foreign companies and other major players competing for the created market space?

The central question driving the Uruguay model was whether to regulate cannabis or not. Personal consumption had been decriminalized in the country since 1976; however, the decision to regulate was consolidated in 2013, with activists and politicians having promoted the possibility of regulating since 2001. While the issue continued to be unpopular among society more generally, there was a clear political purpose to rethink policies to move away from a repressive approach and towards greater rights regarding the use and production for personal use.

Presented as a response to increased violence and influence of drug trafficking organizations, President Mujica decided to put forward the idea of cannabis regulation. The purpose was to create a controlled market for a specific substance. The government weighed the risks of the possibility of increased cannabis use as compared
to increased use of “hard drugs.” Strong institutions, political parties and a progressive agenda in Uruguay helped move the issue forward until it was approved in 2013. Since then the cultivation for personal use and cannabis clubs started to function, and pharmacies are expected to begin selling by the end of the year.

As the Jamaica model moves forward with its implementation, it was noted that “a lot has happened and a lot has not happened.” Decriminalization has moved steadily forward, with up to two ounces (56 grams) allowed for personal use and no restrictions on the amount allowed for religious/sacramental use within the Rastafari community. The incipient medical/therapeutic regulation has created a growing concern about the inclusion of the traditional farmers in the new system. Large companies are entering the market and attempting to woo growers to enter the market for medicinal cannabis. Subsistence farmers (who are the majority) do not have the resources to enter the current legal framework. For many, there has been little change in reality, despite the changes in the law, nor the political impetus of the UNGASS.

Dialogue and debates are taking place all over the country; however several issues continue to arise as possible obstacles to moving forward, including the UN drug conventions and the obligation to fight money laundering. Challenges faced are the need to include traditional growers, even those that have a criminal record; how to use this emerging market as a means to foster development. Although doctors still do not fully understand medical cannabis, herbal doctors are beginning to organize in order to prescribe and be a conduit. Jamaica is an exporting country. Jamaica and St. Vincent & the Grenadines are the countries with the highest levels of production in the Caribbean. As Jamaica moves forward with a regulatory model for medical cannabis, it is important to note that the internal, domestic market will not consume all that is produced and will therefore require exportation to other countries. Jamaica is also planning on honoring the medical cards/prescriptions from other jurisdictions, thus allowing for medical cannabis tourism.

Although Canada is moving forward, there are still concrete steps that must be taken to fully approve and implement a regulated cannabis market for adult use. The Ministry of Justice, along with the Ministries of Health and Public Safety, are beginning to employ new staff to take on this important initiative that comes directly from the Prime Minister. The political will to move forward with legalizing, regulating and restricting access to cannabis is strong. The primary goals of this initiative are to protect young Canadians by reducing access to cannabis; reduce profits of the illegal market; reduce the burden on police officers; prevent Canadians from entering the criminal justice system for cannabis; protect public health and safety; inform the public through sustained and appropriate campaigns; establish a strict production, distribution and sales system; continue providing access for medicinal purposes; and protect ongoing-data collection for monitoring and evaluation.

While medical associations continue to oppose the use of cannabis, a cadre of doctors is prescribing it, so the system is working. There is little acknowledgement that regulation is simply the reorganization of a robust system with an industry estimated at seven billion dollars a year in British Columbia alone. The provinces already host a massive infrastructure that has been producing medicinal cannabis for domestic use and export for the past fifty years. Although police would prefer that there was only mail order access, dispensaries are popping up around the country and zoning
ordinances are changing to allow this to happen. A public task force on cannabis regulation was created in August 2016 in the process of generating a set of policy recommendations regarding the draft legislation that is expected to be presented in spring 2017. The current debate includes a key question of whether existing dispensaries, the liquor control board or a new entity will be charged with the implementation of the regulated cannabis market.

The discussion centered on how to regulate the cannabis market while maintaining a space for small growers and businesses. Growers who were represented at the meeting were clear in their demand to be recognized and not confused with drug traffickers, noting that cultivators tend to not receive the greatest market profits. Great concern was expressed that the only companies that can enter these new markets are those with a large quantity of financial resources. The so-called “unholy alliance” between large companies and the government was questioned since it would imply that traditional growers are pushed out of the regulated markets. Questions included: How will regulatory structures continue to mutate and change? Is it possible to create regional networks that guarantee clear regulatory guidelines and, how to better include local law enforcement in these processes? Another issue discussed was the importance of developing indicators such as the positive or negative impacts of a regulated market in consumption patterns, levels of violence and criminality, and access to treatment, among others. The conventions should not be an impediment to reform and that there is a need for greater scientific evidence on the production, transit, consumption and impact of the regulation of psychoactive substances from Latin America universities and think tanks. The need to use the regulated cannabis market as a promoter of community development was highlighted by several participants.

The second session focused on international and regional cannabis developments, particularly regarding what is possible within the realm of international law. There are clear tensions within the UN drug conventions, as states in the United States move decisively forward with cannabis regulation and localities in Europe begin exploring possible regulation models, particularly in cities such as Bremen, Hamburg and Copenhagen. Spain now has over 1000 cannabis clubs, and the Basque Country has developed administrative regulations for such clubs; however, this is only possible due to ambiguities within the law. At a national level in Spain, strong political will to undertake national regulation does not appear to exist, therefore clubs are simply moving forward on their own. Countries such as the United States continue speaking out about the need to promote and accept “flexibility” within the drug control conventions, although experts recognize that this only a short-term “solution” to a much longer-term tension. Taking this into account, it might be possible to have intermediary options, whereby member states can move forward with regulation, while maintaining an adherence to international law. Some of these scenarios include all states moving towards rescheduling cannabis to a different category, or to take it out of the 1961 convention, a procedure that would need to be initiated by the WHO or by a or a group of member states requesting an amendment to the treaty. Individual states can denounce the treaty and re-access with a reservation, as Bolivia successfully did, or an individual member state can completely withdraw from the conventions. Like-minded governments could enter into an “inter se agreement,” creating bilateral or trilateral agreements between specific member states. If member states seek to strengthen international law, rather than weaken it, then the tensions within
the drug conventions must be resolved with more than the “flexibility” argument. A recent study from the Netherlands noted that positive human rights obligations prevail within the UN system and hence could overrule UN drug conventions.

In July 2014, the heads of Government of the Caribbean Community (CARICOM), mandated the Secretary General to establish a Marijuana Commission which would “examine the social, economic, health and legal issues surrounding marijuana use in the Caribbean and its implications and make recommendations to the Conference.” The Commission is composed of regional experts and academics from diverse disciplines and will undertake region-wide consultations. Since its formation, the CARICOM Marijuana Commission has been moving forward slowly, primarily handicapped due to funding issues. The initial objectives are focused on protecting human rights and increasing social development opportunities. There are differences of opinion concerning cannabis, with some states seeking decriminalization or possible legalization, and others staunchly against any reforms. Although medical cannabis has been gaining acceptance, along with decriminalizing small amounts of cannabis, there continues to be a lack of clarity regarding uses, varieties of the plant, and dosage.

The CARICOM Commission hosted a regional consultation in St. Vincent in June 2016 and found great interest in the issue on the part of civil society organizations and the general public; however, there continues to be great diversity amongst member states regarding the best possible path forward related to cannabis. The lack of research and evidence produced from within the region on the cannabis market, including production, transit and consumption, has hindered local advances. The University of the West Indies would like to have more possibilities to engage in this research. The implications of regulating cannabis for small scale farmers currently involved in cannabis production have been a serious concern, along with whether the economic gains are sufficient to justify possible risks. The governments are working on harmonizing positions. The Commission needs to take a regional approach, rather than only focusing on national positions. A final report from the Commission was expected in the summer of 2016, but now is expected to come out somewhere in 2017.

The discussion focused on the possible economic benefits of developing the cannabis industry in specific Caribbean countries as a means to improve the health and well-being of communities. The momentum around cannabis regulation only seems to be growing and it will be triggered further by the elections in the United States and the planned cannabis regulation in Canada. There is a clear need for more information and studies regarding the import/export capacities of Caribbean countries to gauge what kind of regulation would be most beneficial. It was noted that decriminalization is important not only for those charged with possession, but also for small-scale dealing. The United States previously supported crop eradication in the Caribbean, but since 2001, no chemicals have been used. US armed forces are still present in the region for interdiction purposes. According to participants, ganja contributes to about 20% of the domestic product in the north of St. Vincent and the Grenadines, demonstrating its importance to the local economy and the need to ensure that traditional growers can maintain a large share of the market.
The third session highlighted the UNGASS outcomes, including what was gained or lost during the prolonged negotiations, what can be learned from the process, and how to move forward. The tensions among the distinct UN headquarters in Vienna, Geneva and New York were also discussed. Although significant progress was made at the UNGASS, it was a missed opportunity because of the difficulty of changing the paradigm within a strong prohibitionist framework. Some of the clear gains included the paragraph on harm reduction services and the explicit language on non-discrimination when accessing health services in the outcome document. The sections on human rights and on a gender perspective are an advance within the international debate and provide a clear mandate to member states. For a country such as Uruguay, the inclusion of language around flexibility in national implementation of the drug control conventions provides a path towards affirming the regulation of the cannabis market, while recognizing that it also allows prohibitionist countries to maintain their firm stance.

Unfortunately, the document is ambiguous at best and at worst contradictory, without a clear mention of the right to health, access to health care, or that all treatment should be voluntary and with informed consent. Criminalizing drug use results in risky and unsafe use methods to avoid detection. While the AIDS epidemic is mentioned, the document ignores the fact that criminalization is a major obstacle to reaching the 2050 goal. The document also fails to make reference to the need to investigate human rights violations under the umbrella of drug control and does not address the death penalty for drug crimes.

The political climate within the LAC region has significantly shifted since the call for UNGASS. Important regional declarations and documents helped construct a solid platform; however, it was not enough to allow for a unified regional stance at the UNGASS. The inputs from the UN agencies were both relevant and necessary, though including them via the CND process proved almost impossible. Since most of the negotiations happened in Vienna, many member states were unable to participate due to limited mission capacity and resources, or the absence of it. The meetings which occurred in New York felt more open to debate and discussion. The lack of inclusion of civil society in the majority of the negotiations (since they happened in “informals”) meant that often expertise was missing in the sessions.

There was a clear feeling of marginalization among “like-minded” countries that were being excluded by the ultra-prohibitionists, primarily China and Russia. While the US sought to play more of a mediator role, it continued to be schizophrenic in its discourse. The human rights language included in the outcome document may provide an opportunity for opening up the debate in lead up to the 2019 review. Incorporating a harm reduction perspective for both drug use and drug policy in national policies is important for the Latin America and the Caribbean, although that has been a difficult even at regional meetings.

While New York would be the procedurally correct main stage for the 2019 review, Vienna and the UN Office on Drugs and Crime continue to put up resistance. New York provides a more open forum in which all member states are represented and have the possibility of participating. The SDGs should inform how to move forward on drug control measures and may provide a framework through which to work.
Main discussion points included the inconsistency within the parallel processes that took place during UNGASS preparations, including informal dialogues, the so-called “Cartagena group” and others. Frustration was expressed that there was no clear channel through which to express the outrage, marginalization and “humiliation” that was felt amongst the reform-minded countries. A clear question was raised regarding how to avoid this during the 2019 process. Working with the UNGASS outcome document means choosing the positive paragraphs and working to implement them on a national and local level. The need to work closely with civil society was highlighted in order to create greater understanding among the political class regarding authentic reform. The seven themes identified in the UNGASS outcome document provide a path towards implementation and states will use that to push forward reforms. The question was posed whether CARICOM might be able to have a representative in Vienna for the 2019 negotiations; however, that might not be possible due to funding issues.

The fourth session explored the possibilities for UNGASS follow-up and options for 2019-2020. A general consensus from the group emerged regarding the importance of the informal dialogues as a space for reflection and strategic planning among like-minded countries. Although it is a relatively small group, the suggestion of creating thematic groups arose as a means of including more countries, which could be broken down by: development, harm reduction, the death penalty and others. Although working groups in the past were composed of those nominated by states, it might be possible to open that up to some other relevant stakeholders. These groups could be led by the relevant UN agencies, for example, the High Commissioner could lead the group on drug policy and human rights.

The CND in Vienna is hosting seven roundtables on the UNGASS recommendations contained in the outcome document, an improvement compared to the previous setup, but showing the secretariat intends to keep the initiative in Vienna. The omnibus resolution, which Mexico is leading from the mission in New York, was identified as the first opportunity to intervene in the 2019 process. The CND in March will be another opportunity to determine next steps, but governments will need to arrive with certain negotiating points already agreed upon. Since there are no clear mandates from UNGASS, it will depend on each country to implement the pieces that can be translated into programs, pilot projects or reforms and thus begin an exchange across member states. There is a political vacuum from UNGASS that is still technically filled by the 2009 Political Declaration and it will be necessary to follow certain protocol regarding the review. In the past, it was the thematic debate and assessment, a year-long reflection and then the draft document. This process could be implemented for the 2019 evaluation.

The idea of creating “cluster” groups was highlighted as a means to build and sustain the group of “like-minded” countries as the process towards 2019 is defined. The use of the seven themes could be a way to create those clusters and build capacity amongst member states, with the support of experts and civil society. The goal would be that the 2019 review be a truly open debate where all options can be considered and that there will be a series of meetings held in Geneva, Vienna and New York to engage member states in the process. Conference room papers can be a mechanism for building that support and introducing language and innovations without going through the resolution process.
Member states are discussing how to move from discourse to action, particularly regarding human rights, harm reduction, sustainable development, alternatives to incarceration and other policy reforms. It could be possible to pass a resolution at the CND in March which institutionalizes the seven working groups/clusters that could study the implementation of the UNGASS outcome document and the 2009 Political Declaration and Plan of Action. That would be a concrete way to move from discourse to action. The idea of hosting a High Level Meeting (HLM) in New York in 2019 was welcomed by those present since it has become clear that another UNGASS is neither practical nor desired by member states.

Some member states are holding dialogues around the seven themes of UNGASS in order to create an action plan at the national level. This will provide them with a critical path towards implementation and to build political will amongst government agencies that have not actively participated in the UNGASS process.

The dialogue concluded with participants critically reflecting on the mechanisms created for civil society participation at UNGASS, including the Civil Society Task Force. It was noted that the debate was much more focused on evidence, rather than ideology. Also, the mobilization of civil society was impressive, but might not be sustainable for 2019. Organizations are working to accompany national processes and implementation of both UNGASS and other reforms and must maintain a strong level of participation at the international level in order to continue having a strong group of like-minded countries.

Those at the dialogue noted the importance of having an informal space to discuss the negotiations, as well as national and regional advances. The dialogues have proven to be highly effective in consolidating relationships between member states and with civil society and experts. There was a clear consensus that the dialogues should continue throughout the run-up to the 2019 review.

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