



UNGASS 2016:

Background memo on the proposal to establish an expert advisory group

[August 2015]

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 UNGASSs on drugs, in 1990 and 1998, both made use of expert advisory groups to help maximize the impact of the special sessions. Ad-hoc commissions 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. 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 second advisory group at the 1998 UNGASS became the subject of much political controversy, but in spite of its restricted mandate and exclusively governmental 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 May 7th General Assembly thematic debate about the UNGASS, 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 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*

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

*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

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

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-final.pdf>

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>

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 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

UNGASS 2016

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, Vienna obtained a virtual monopoly to deal with the drugs issue and inter-agency collaboration deteriorated rather than improved. Significant changes in the global drug policy landscape are shaping up in the UNGASS 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

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.

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>

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 conventions and other relevant United Nations instruments” for adoption at the UNGASS.¹⁸ The drafting of this outcome document starts in September and could include as one of its operational recommendations to establish an expert advisory group again, following the precedents of the previous two special sessions on drugs. The group could follow up on key issues such as the UN institutional drug-control architecture and inter-agency collaboration; UN system-wide coherence and harmonisation of drug control with human rights and development principles; inconsistencies of the treaty regime regarding scheduling criteria and procedures; obstacles to the availability of controlled drugs for medical purposes; improved indicators/metrics to evaluate the impacts of drug policies, prioritising problematic drug use, drug-related violence and underlying social problems; and the legal tensions with regard to traditional uses of coca leaf and the evolving policy practices of cannabis regulation. The group’s main task would be to recommend how to deal with these 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.

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.¹⁹ 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.

Accelerating policy changes towards cannabis regulation and increasing calls for a more human rights, development and harm reduction based approach will require structural changes in the UN drug control system sooner or later.²⁰ 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. Based on the experience of the previous special sessions, an expert advisory group could be very helpful – now more than ever – to think through different scenarios for the future evolution of the system and to recommend how to deal in the years to come with the structural challenges that are staring the international community in the face right now and with the likely more difficult ones that are already appearing on the horizon.

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 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.

²⁰ 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>