REPORT
Informal Drug Policy Dialogue
Prague 26-28 January 2012

Drug Policy Dialogue in South East Europe

The ninth meeting of the TNI/ Diogenis Informal Drug Policy Dialogue series took place in Prague on 27th and 28th January 2012. The aim of the dialogues is to provide a platform for professionals to discuss drug policy issues. The initiative started in Crete in 2004. Subsequent meetings were held in Budapest (2005), Bern (2006), Rome (2007), Berlin (2008), Crete (2009), Amsterdam (2010) and Lisbon (2011). Thanks are due to the National Drug Commission Office of the Government of the Czech Republic and the City of Prague for co-hosting this Dialogue.

As per the tradition of the drug policy dialogue series, the meeting was held under Chatham House rule to ensure confidentiality and allow participants a free exchange of ideas. Over 40 participants attended the meeting, including policy makers, practitioners, academics, and representatives from non-governmental and inter-governmental organisations and agencies. Four themes were discussed: the European Union (EU) drug policy agenda, cannabis policy reform, the future of the UN drug control conventions and the upcoming 55th Session of the Commission on Narcotic Drugs. Each theme was prefaced by introductory remarks from key experts, in order to stimulate discussion. This report highlights the main issues covered during each of the sessions. The ideas expressed in the report are those of the participants in their capacity as experts in the drug policy field, and should not be interpreted as reflecting consensus among the group, or endorsement by the organisers.

SESSION I - Drug policy of the Czech Republic

- Introduction to the National Drug Policy Strategy (2010-2018)[1] of the Czech Republic, including its four cornerstones (primary prevention, treatment & social rehabilitation, harm reduction, and a reduction of the availability of drugs), status of implementation and future challenges, as well as its relationship with the new EU drugs strategy 2013-2020.

Since the 1990s, most of those who occupied the position of National Drugs Coordinator of the Government of the Czech Republic were members of the Christian Democratic party—a conservative party. There is subsequently a history of taking a balanced, evidence-based approach to drug policy, with an emphasis on compassion towards people who use drugs, in the Czech Republic. Although such an approach seems contradictory to a conservative party, this has been the case in the Czech Republic. The Czech Government's national strategy is premised on a balanced approach with a balanced budget. By looking at statistics, it is evident that the Czech Republic has been very successful in preventing a HIV epidemic: rates of HIV are at 1% amongst people who inject drugs, and the corresponding rate of Hepatitis C infections has fallen to 30%. The previous National Drugs Coordinator implemented harm reduction programmes in all regions and since then harm reduction services have been made available throughout the country.

Under Czech drug laws, the possession of minor quantities of drugs has been decriminalised. From 2010 it was no longer a criminal offence to be in possession of up

[1] Czech Republic Government Council for Drug Policy Coordination, *National Drug Policy Strategy for the period 2010 – 2018*, at: http://www.vlada.cz/assets/ppov/protidrogova-politika/National-Drug-Policy-Strategy-for-the-Period-2010---2018.pdf

to 5 cannabis plants, though an administrative penalty is still imposed.

Legislative proposal to legalize the medical use of cannabis

A parliamentary commission was recently formed to develop new legislative proposals on cannabis which will be considered by the parliament from March 2012.[2] The proposals allow the medical use of cannabis and licensed cultivation of cannabis. If adopted by the Parliament, the proposed measures should be in place in the second half of this year.[3] The current government is conservative, and there is another conservative party in opposition, so a consensus approval on these proposals is likely. Although conservative, the current government holds progressive views on drug policy. For example, the Prime Minister has welcomed the report of the Global Commission on Drug Policy.[4]

Under the new legislative proposals, a maximum of ten companies will be given licenses to produce cannabis for medical purposes. Government agencies will then buy the cannabis plants produced, and arrange for their processing and distribution to pharmacies. The Czech authority for pharmaceutical drugs control will set the conditions under which companies can grow and sell the cannabis. The cannabis products will be available by prescription, each allowing up to one week's supply, which can be obtained by phone and the internet, making it more convenient for patients.

The police department and ministry of interior need to work together to decide on how to distinguish between purchases of cannabis for recreational use and cannabis for medical use, in order to help ensure that the medical cannabis is not used for recreational purposes. Nevertheless, the public are relatively sympathetic towards the use and cultivation of cannabis for both recreational and medical purposes. In addition, statistics show that the Czech Republic has amongst the highest prevalence rates for cannabis in Europe.[5] However one view is that the debate on cannabis use for recreational purposes should be separated from the debate on cannabis use for medical purposes. While the Czech public are generally supportive of the liberalization of drug policy, policy reform is nevertheless limited by having a conservative government in power.

It was commented that while the Netherlands has experienced problems with drug tourism, Prague has not faced the same type of challenges. There are no 'coffee shops' in Prague, though there is an open drug scene similar to that in other countries. There is also a relatively liberal policy on cannabis: individuals growing up to 5 plants are only subject to an administrative fine if reported to the police (the maximum administrative penalty is 15,000Czkroner/600euros). The problems arising from drug tourism in Prague are more focused around alcohol.

The case of Australia was discussed, where the implementation of decriminalization reduced the workload for police but people imposed with an administrative penalty nevertheless entered the criminal justice system when they were unable to pay the penalty fee. However in the Czech Republic--a small country with a small budget--the police are simply concerned with more pressing issues than the use or possession of cannabis. It is not efficient for police to randomly stop and check individuals in order to issue fines for cannabis offences. Although a law introduced in 2011 authorised police to issue on-the-spot fines, there has not been an increase in the number of finesissued

[2] For more information see: http://www.radio.cz/en/section/curraffrs/mps-complete-legislation-aimed-at-legalizing-cannabis-for-medical-purposes

[3] At the time of this report's publication, it was understood that these proposals were still subject to consideration by Parliament.

[4] Report of the Global Commission on Drug Policy, June 2011 link: http://www.globalcommissionondrugs.org/reports/

[5] European Monitoring Centre for Drugs and Drug Addiction, *Annual Report 2011: the state of the drugs problem in Europe*, 2011, at http://www.emcdda.europa.eu/online/annual-report/2011 .

since 2011. The media are quite sympathetic to small cannabis growers so there is a lot of pressure on the police not to impose tough enforcement measures on cannabis. The more pressing issues for police are methamphetamine production and selling, and the smuggling of precursors for methamphetamine production.

Treatment for people who use drugs

It was a conservative politician who first established a psycho-social approach to developing treatment services in the Czech Republic. Since 1995, harm reduction services have been set up in every county to provide all people who use drugs with access to treatment. Czech drug policy officials support harm reduction measures and they are part of drug services throughout the country. The experts involved with setting up the harm reduction services were often from the Netherlands, England, and Wales. There is now discussion on providing additional services to address emerging needs associated with the growing use of methampethamine (known locally as "pervitin"), for example, the possibility of prescribing substitutions for methamphetamine such as diomorphine.[6] Substitution maintenance programmes acoss the country are offered by drug services led by a few large NGOs. The delivery of services are well-integrated, where the same NGO runs harm reduction, therapeutic communities and substitution programmes. The NGOs work well together but the problem they now face is a decline in funding. In the 1990s funding for treatment programmes and services were cheap but the liberal government began to withdraw funding. When the conservative party came back into power, it put a stop to the funding cuts.

The fact that NGOs began establishing harm reduction programmes during the communist era, including the provision of clean needles, and their representatives subsequently entered politics and government, has translated into the adoption of harm reduction as the basis of the Czech government's drug strategies. It also explains the very low rates of new HIV infections amongst injecting drug users (0.6%), whereas it is much higher in nearby countries such as Moldova.

There is currently no substitution therapy for methamphetamine implemented though it has been the subject of debate since the 1990s. Drug policy officials are concerned with the ability of stimulants to induce psychosis. Across Europe there is increasing evidence on effective treatment options for methamphetamine use, and the Government of the Czech Republic has established a working group to study the available options. It is hoped that before the end of the current government's term, a good treatment method for people who use ATS can be identified. Methamphetamine-use induced behaviour such as depression and suicide, are a central concern in Czech drug policy. The Czech Republic has not experienced an epidemic of psychotic illnesses caused by cannabis use; hence cannabis is not a major concern.

SESSION II - The EU drugs strategy 2013-2020

- The EU drugs strategy 2005-2012 and the EU Drugs Action Plan 2009-2012 are coming to their end. What are the conclusions of the evaluation of the past period? What is the procedure that will be followed for the elaboration of the new EU strategy on drugs? Are there in terms of procedure differences between the previous EU strategy on drugs? What is the influence of the Lisbon Treaty on the shaping of the new strategy? Is the input of the European Commission of a different character than in the past? Is the EU moving towards more harmonisation of national drug policies? Is the EU able to speak with one voice in its external relations with regard to drug control,

[6] For more information on drug prevalence trends in the Czech Republic, see *Annual Report – The Czech Republic 2010 Drug Situation* (2011) Office of the Government of the Czech Republic, available at: http://www.drogy-info.cz/index.php/english/annual_reports_and_other_main_resources/annual_report_the_czech_republic_2010_drug_situation

in the dialogues with other regions and in taking common positions at the UN level?

Developing a new EU drugs strategy

The overall coordinating instrument for EU drug policy is the EU Drugs Strategy (2005-2012) and its action plans.[7] In January 2011, an independent contractor began to conduct an external evaluation to report on the progress of EU member states in achieving the 60 objectives and actions. The evaluation is focussing on a number of questions and cross-cutting objectives; to identify results and assess to what extent the EU strategy has added value, relevance and influence to member states' policies. It will include consideration of EMCDDA reports on the impacts of EU and national drug strategies, trends and responses in 2005-2010; as well as reports on crime from Europol. The evaluation will be finalised at the end of January 2012[8] and hopefully provide some guidance to the development of the new EU drug strategy. The Member States holding the EU presidency in 2012, Denmark then Cyprus, will lead the drafting process.

The evaluation has so far indicated that the EU drug strategy has been successful in achieving some of its goals, and has helped to converge policies amongst member states. For example, the strategy has helped to ensure the use of common language in texts and discussions on drug policy issues, and to promote a common EU drug policy approach to external countries.[9] The strategy has clearly had results, and while progress in achieving other objectives regarding treatment, supply reduction, international interaction and the development of a knowledge base on drug trends appear to be positive, their progress needs to be evaluated in greater detail. By May 2012, the European Council will have adopted conclusions and objectives as a framework for the next strategy. A new strategy is expected to be in place by the end of 2012, covering the next 4 years.

The Lisbon Treaty has created new problems and opportunities in EU drug policy. The disappearance of the pillars (drug policy used to fall within the 3rd pillar of Justice and Home Affairs) has posed difficulties for integrating health and law enforcement issues in drug policy, for example in the passage of legislation and policy implementation. Under article 69b of the Lisbon treaty drug trafficking is considered "particularly serious crime with a cross-border dimension".[10] It therefore gives the EU Council and the EU Parliament competency to act on drug trafficking, and creates more grounds for member state cooperation on criminal justice matters. On the health side, though it seems little has changed, there are now more opportunities for collaboration at the EU level. For example additional guidelines have now been developed on cross-border threats and preventing drug-related harms. The Lisbon treaty also contains explicit reference to the role of the EU in external relations, including in upholding the rule of law. The EU Member States now need to work on problems regarding the interpretation of new provisions in the Lisbon Treaty.

The European Commission will not have primary responsibility for the drafting process of the new strategy but will nevertheless contribute. Two key principles for the new strategy have been defined by the Commission, more focus on legislation and more

[7] For further details, see the relevant pages of the European Commission's website: http://ec.europa.eu/justice/anti-drugs/european-response/strategy/index_en.htm .

[8] Assessment of the implementation of the EU Drugs Strategy 2005—2012 and its Action Plans, Rand, 2012. Link: http://www.drugsandalcohol.ie/17312/

[9] See also: Council of the European Union, *Outcome of Proceedings of the Meeting of the Horizontal Working Party on Drugs on 5 March 2012*, 8778/12, 16 April 2012, available online at: http://www.parlament.gv.at/PAKT/EU/XXIV/EU/07/86/EU_78663/imfname_10025770.pdf

[10] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 see http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML

focus on supply side measures. The two principles are inherent to the nature of the new Lisbon treaty, but also a result of Commissioner Reding's emphasis on enforcement. Consequently, funding is also likely to shift towards criminal justice issues. Since the establishment of the External Action Service (EAS), the Commission has had less to do on foreign policy but it still controls the money that funds the EAS and therefore retains some influence in determining strategic directions for EU foreign policy.

It is highly unlikely that the new drug strategy will assist with harmonising member countries' national policies. The process of policy convergence across the EU is slowing as countries are generally becoming more divergent in their policies—a trend that is driven by greater focus on national politics rather than foreign relations. It is yet to be seen whether the EU will speak with one voice on foreign policy—though it is no longer the member state-in-presidency that will take the lead on UN drug policy debates in Vienna, but the EU delegation in Vienna supported by the Commission. It is becoming more difficult to formulate the EU's external positions on drug policy because of conflicts on whether the EU should speak on behalf of member states, or only the EU.

Member states are yet to debate on the development of the new strategy. It is important for civil society representatives to re-emphasise important evidence based principles agreed amongst member states in prioir strategies, and to encourage the member states to hold on to the consensus on these principles (including harm reduction), rather than returning to old debates about prohibtion. The drug situation in the EU is not the same as it was 10 years ago--drug use patterns have changed, and policies need to be updated accordingly. Evidence-based approaches need to remain at the center of policy development to avoid new ideological divides and to base the new drug strategy on facts, not assumptions.

It was commented that elements of the new EU drugs strategy could include segments on the aspects that could be strengthened, for example, coverage of treatment and harm reduction services (almost 50% of all users have no access), decriminalisation, medicalisation, evaluation of effectiveness of measures including in the field of drug supply reduction. There appears to be a need to address unity and the willingness to participate and reach agreement on a new strategy amongst member states. The financial crisis has led to funding cuts in drug policy. In the Horizontal Drugs Group (HDG) delegates are replaced frequently and there is a lack of institutional memory, risking the possibility that failed solutions from the past will be revived. For example, setting as a strategic objective a 25% reduction in drug use by 2015 does not work but new members may seek to raise the proposal again. The EU needs new ideas and suggestions from different sides of drug policy debates to develop the new strategy, and ensure that it is relevant to addressing emerging priorities on responding to legal highs and drug trafficking.

The changing of the guard in Brussels institutions, and the changes brought by the Lisbon treaty have resulted in a completely different set of people and departments working on drugs policy. The Justice and Home Affairs portfolio has been divided, and the new Justice Commissioner with responsibility for drug policy has been very direct and clear about her views. She does not wish to engage in health issues as they do not form part of the Commissioner's brief. While it is true that health issues are not included in her mandate, it is possible to take complementary action in the field of health. Drug policy experts are seeing their role reduced, and many are leaving the Commission. At the same time, it is critical for the Commission to find ways of influencing the process as the Presidency Member States, Denmark then Cyprus, lead the process.

For the 55th session of the Commission on Narcotic Drugs in March 2012, it is uncertain

whether there will be a significant difference in the engagement of the EU delegation compared with previous years. The new head of the EU delegation is a former Hungarian ambassador – but it is difficult to predict how he will approach his role. The power balance in Brussels between the key EU institutions, such as the parliament and Commission, are shifting. As the parliament exploits its new powers under the Lisbon treaty, civil society representatives must remain proactive in cultivating their relationship with the Commission and apply for grants to fund their work. It is also useful for them to seek to influence the EU parliament. The mandate of the current Commission runs until 2014 and there is hope that the Lisbon treaty will reduce the number of Commissioners, thereby enhancing efficiency in policymaking processes. But given the personalities currently occupying key positions, civil society representatives should protect their achievements in engaging EU institutions and develop new contacts in other key institutions.

It was suggested that a drafting committee should be established to work alongside the HDG to ensure that appropriate experts, and not only member states, are involved in developing the new EU drugs strategy. Expert knowledge on issues such as trends in drug use and precursor trafficking is needed to inform the development of the new strategy. It is concerning that EU member states are not speaking with one voice, and find it difficult to reach consensus on important issues such as those relating to HIV. Looking at the rhetoric of member states, there appears to be agreement on the need to include harm reduction as a priority but problems arise if the EU tries to establish a common position on it.

The latest communication from the Commission to the European Parliament and the Council “Towards a stronger European response to drugs”[11] was disappointing because most of the content was devoted to supply reduction, and only 2-3 pages discussed health issues related to drugs. The Commission issued its communication ahead of the new strategy because the Commissioner wanted to demonstrate some actions and results before finishing her term in 2014. Concerns were raised about the timeframes for the completion of the evaluation and its submission to the HDG, and whether there would be sufficient time for it to be properly considered in the development of the new EU drugs strategy. There was also pessimism expressed on whether Denmark and Cyprus would be willing to work on drafting the strategy and whether important aspects of the current strategy would be downgraded. In response, it was commented that linking the evaluation process and development of a new strategy has always been challenging. In previous strategy reviews, the Commission and member states have done well in trying to bring in external expertise, hence previous strategies have been of a good standard. If the current process of drafting a new strategy will operate only within EU institutions, and without bringing in external expertise, the strategy will not achieve an equally good standard. Consequently the idea of civil society representatives establishing a drafting committee may be the best way forward, especially when presidency-member states will likely struggle with steering the drafting process. The committee should also include experts, such as those from the Trimbos Institute, RAND, and European Commission Civil Society Forum on Drugs. It should be noted that evaluations of demand and harm reduction activities in the EU have been positive, while those on supply reduction have been generally poor.

From another perspective, it should be clarified that the current EU drug strategy was drafted by the Commission, under the guidance of three different presidencies. Therefore it should not be feared that presidencies are not able to steer the drafting process. Though there were different priorities for different regions, some important elements such as harm reduction were ultimately incorporated. There may not need to be pessimism about the upcoming drafting process, as even if the Danish presidency is not so engaged with it, the Cypriots are already preparing for it. The Commission will

[11] To access the document online, visit: http://ec.europa.eu/justice/anti-drugs/files/com2011-6892_en.pdf

contribute to the first draft, in its technical supporting role. It is seeking to develop key performance indicators and new issues for consideration to be incorporated into the new strategy. The Danish presidency has already said that it wants to incorporate the evaluation report into the drafting process, and is optimistic about the development of the new strategy, which can be completed in six months. Whether the new strategy will be a purely institutional draft, or a document that involves more ambitious consultation processes, is uncertain. There will be a lot of pressure to focus on supply reduction issues, eg trafficking routes, in the new strategy. But it is also up to member states and the HDG to ensure that a balanced approach to drug policy is retained in the new strategy.

It is not envisaged that the drafting committee proposed in this forum will be part of the institutional process for developing the new strategy. But it would be a credible advisory body because of the reputation of the people on it. The committee could be promoted in a way that would provoke a debate that the institutions cannot ignore. It can then quickly prepare a draft and circulate it amongst influential groups. However another view is that if the inputs of the committee are to be incorporated into the final strategy, then it has to be grounded within one of the EU institutions involved in the drafting process. If it functions as a shadow drafting committee, then it may also manage to have its input incorporated in the final strategy. In any case such a drafting committee would have to be put together by the HDG, not the Commission as it is not drafting the strategy.

In terms of incorporating other inputs into the drafting process, there is no problem with incorporating research as it is often included as part of European Commission processes.
But there are several projects funded by the Commission where member states are not aware of the outcomes. However member states and researchers should be able to access, at the minimum, summaries of progress reports and outcomes of the projects.

The EU parliament is not involved in the adoption of the new EU drugs strategy, but it can issue an opinion on it. The EC civil society forum has already submitted their paper on the strategy. The inclusion of EU data is important and will help Member States to decide how their resources should be spent. For example, it is not an efficient use of resources for police to pursue possession and use offences.

It was noted that trafficking is not sufficiently distinguished from dealing, for example in sentencing frameworks in the EU, which may be an indication of the EU shifting away from the balanced approach of the past. The Lisbon treaty and other new institutional developments such as occurring in the Commission has led the EU to move away from a coordinated and balanced approach to drug policy. However the most effective drug policies are those which achieve a balance in the international relations, health and law enforcement aspects—an approach that is also encouraged in the UN conventions. The EU is clearly struggling with coordinating the development of drug policy amongst member states, and maintaining a balanced approach. But better coordination within the EU is also required to ensure adequate access to controlled medicines—currently a problem with at least half of the WHO member states.

On EU coordination, it is becoming slightly easier to get the right people involved, though here are few resources and work areas do not operate cohesively. A framework of communications was established to conduct the strategy evaluation and can continue to be used in drafting the new strategy. The focus on supply reduction will include asset recovery and perhaps remove possession and use from the definition of crimes. As Health is a complementary area, the Commission’s drugs unit is limited in the extent that it can incorporate health priorities and cannot directly advocate that

states must provide services, but only comment on how those services should be delivered. At best, the drugs unit can recommend to member states minimum standards for sentencing and health services.

In terms of the EU's external relations, it is evident that the focus of activity is limited to supply reduction issues. 95% of member states only focus on issues relevant to supply reduction and alternative development, but the EAS will likely try to maintain a balanced approach amongst member states. When looking at the expenditure of the EAS in the past 6 years, it can be seen that a significant portion has been allocated to development. Human rights issues are not discussed, but some European Commission funding seems to be going indirectly to countries that retain the death penalty for drug offences, eg Iran. The EC should issue new guidelines to ensure that EC funding does not contradict the EU's stance on human rights.

SESSION III - Important items on the EU drug policy agenda

- What issues are likely to dominate the policy discussion at the EU level during the elaboration of the new strategy? A communication from the Commission "Towards a stronger European Response to Drugs" was released in October listing a number of priorities. For this session everyone is invited to raise other relevant issues on the EU agenda, but two issues will be highlighted as a start of the discussion: new synthetic drugs and harm reduction as a pillar of the EU drugs strategy.

New synthetic drugs and or 'legal highs'

- What are the proposals to tackle this issue? Is the instrument of criminal law the most appropriate one to respond to the challenges of the new synthetic drugs appearing on the market or are other control mechanisms preferable and potentially more effective? A revised Council Decision on the control of new psychoactive substances is being prepared by the Commission, how does that relate to the new EU strategy about this issue?

The EU barometer survey on youth attitude towards drugs in 2011 targeted youths under the age of 24 in all member states. About 95% said they had never used drugs and only 5% admitted to ever using. But in some countries, including Ireland, Poland, UK, a much higher percentage of youth admitted to using. The use of novel psychoactive substances (or 'legal highs') was not considered a problem at the EU level for quite a long time. The situation has changed and the EU is now developing a stronger response to the use of legal highs, as reflected in discussion papers such as the European Commission's Paper 'Towards a stronger EU response to drugs'. The response options that are currently being considered by the EU include: stronger legislation, enhance monitoring of emerging substances (including forensic analysis and epidemiological studies), more rapid responses while taking into account scientific assessments of new substances, and better alignment of laws in the fields of drug control with medicines and food safety regulations.

In Poland, more than 1000 shops that sold legal highs have been closed. Since 2005, 15 new psychoactive substances have been reported, and in 2010 a record number of 41 were reported—some of these substances became subject to legal controls. An evaluation of the legal instruments in place has shown they are ineffective for responding to the new substances that quickly appear on the market.

On a different note it was commented that although harm reduction is an important element of the current EU drug strategy, the results of the evaluation will determine whether harm reduction will continue to have a significant role in the new strategy. There is a need to evaluate the quality of treatment facilities in the EU, as there are

more than 5 countries where there is no treatment services provided in prison.

Greece
More than one third of the prison population in Greece has been sentenced with drug-related offences, and many of them use drugs. While many of them have easy access to drugs, they do not have such easy access to clean syringes and condoms. Sexual activity occurs in prisons, and also between drug users and non drug users, leading to a high risk of HIV and Hep C transmission. In most European countries, the rate of HIV infections is low but not in Greece nor in some other countries. In the past decade, there were no more than 20 new HIV cases, but last year Greece had more than 200 so there was an over 1000% increase in new cases. Previously, transmission mainly occurred due to a lack of clean syringes but now transmission also occurs through sexual activity. These new trends need to be taken into account in developing the new strategy. In the many supervised injection rooms across the EU, the emergence of new drugs can be observed. In Greece, the uses of two new types of heroin-like drugs have emerged: 'seesa' and 'tye' – they are highly dangerous and contain toxic ingredients such as battery acid, these drugs are smoked or injected, and much cheaper than heroin. Most users are migrants, and this trend may increase given the deepening economic crisis. There is a concern that governments do not know how to react to new challenges such as legal highs. The time it takes to develop new measures is too long in Greece, and the EU's early warning system is not fast enough. Greece's reaction to legal highs is excessively delayed, though perhaps it is the same in other EU countries.

With new substances, the risk assessments performed on them often only show us acute health risks but not long term risks. The result is usually that once an assessment reveals acute risks, the substance is then put under control. Perhaps authorities should consider other ways of responding to new substances besides putting it under control.

Poland
In Poland, one side of the debate was against a solution focussed on supply but supportive of demand reduction measures. Each month there are more than 200 toxicology reports of youths experiencing health problems as a result of consuming legal highs. In response, prevention programmes were launched online, delivering information about new legal high substances to youths and their parents, accompanied by a media campaign. Of course it is useless to endlessly add substances onto different schedules but it is a political decision hence difficult to change. The new law introduced in 2010 is very strict, stipulating that possession of any drug is a crime. However parliament subsequently amended the law to impose only administrative fines to possession offences. In EU forums, Poland has proposed new ways of thinking about drug control. It is aware of the need to find alternative strategies, and recognises that supply tactics are not always applicable. Polish authorities are considering different approaches to legal highs, such as:
1. treating it as a food safety issue
2. imposing a temporary ban on products that pose a risk to public health, and
3. more generic approaches to managing new substances.
The Polish Government decided against treating new substances as a food safety issue, which would require issuing food safety certificates – such an option is not appealing enough to politicians and the media which like to report on tough responses by the government.

European Union
Discussion again turned to recent statements made by the European Council and Commission, and what they reveal about the EU's political direction and position on various legislative proposals. IDPC has been broadly supportive of the EU model of

drug policy in the past few years, especially their emphasis on harm reduction, and published an advocacy note earlier this year on the direction of drug policy in the EU. Regardless of the outcome of the new EU drug strategy, it will state at the outset that it is based on evidence-based policies. But one area where the EU is definitely not following the evidence is in law enforcement and supply reduction. Instead the paradigm currently adopted by the European Commission (as reflected in several recent statements) emphasizes the need to cooperate better as judicial and police authorities, and to implement stronger laws, tougher penalties and law enforcement operations—in the belief that by doing so, public health objectives will be protected. Such an approach to new synthetic drugs may have some effect but it will not protect public health objectives. The insistence on such an approach is a fundamental problem running through debates on drug policy throughout the EU, and suggests that EU countries are turning away from the evidence base in their drug policy development. It was urged that NGOs have to find ways of responding faster to new substances, and to respond to health threats. The reduction of health and social harms in the context of the market for new psychoactive drugs will only be achieved through quality control measures, health measures, and social measures. It will not be possible to impose supply reduction barriers that will prove effective for preventing the health problems associated with new psychoactive substances. One cannot make a problem go away by legislating against it. Although an effective option for responding to psychoactive substances has not yet been identified, it is evident after years of experience that only social and health responses will work. Pressure needs to be applied to encourage the EU, and the member states, to turn back to evidence-based approaches, and to rely on social and health measures as effective responses.

At the EU level, discussion on possible responses is based mainly on whether to develop a generic response or to respond to each new substance that emerges, the need for faster response mechanisms, and the feasibility of a temporary ban while conducting more comprehensive assessments on the substance. Other issues of discussion include whether to criminalise activities around these substances, and if so to what degree, and whether to target only about 4 substances each year. In determining a response, the EU needs to be wary of encroaching upon the sovereignty of member states, and to consider the political and legal implications of certain response options.

It was suggested that instead of only adding substances onto a controlled list, governments could also consider the option of taking certain substances off controlled lists, for example coca leaf, and permitting some substances on the market of which no ill effects are known that may redirect demand away from other, harmful substances It was also acknowledged that temporary ban orders are essentially a gateway to permanent controls on a substance. For example, the UK’s Advisory Council on the Misuse of Drugs is often asked to advise on an appropriate response six weeks after a new drug is discovered, and almost always takes a risk-averse approach, recommending a temporary ban. Inevitably the temporary ban leads to the scheduling of the substance and possession of it becomes an offence. To enable a different approach, the public, politicians and EU Commissioners need to be persuaded that their ability to address the problem is reduced with prohibition-based approaches, and enhanced with consumer protection and health measures.

In the Netherlands, the use of synthetic cannabinoids has not become a problem because cannabis is allowed in coffee shops. People will always want to experiment with new drugs so banning any new substance is not an effective means of curbing their use. If we allow youths access to some form of drug such as cannabis, then it may be possible to eliminate the use of new more dangerous new psychoactive substances. In past years, Dutch experts have been gathering information from emergency departments and on use preferences, which can inform the development

of an appropriate response to legal highs by the government. After 1 - 2 years of collecting such data, it will be possible to develop an effective and permanent response to new psychoactive substances.

One view was that it is counterproductive to limit the control options to internet sale or an outright ban. The logic is to explore options for regulation which sit between those two extremes, which can also lead to options for regulating substances that are found to be less harmful. In New Zealand, the use of benzodiazepines (BZP) was made available for a few years, but it led to the misperception that BZP was safer than other substances which are controlled. These are problems that are a symptom of prohibitionist control frameworks, and which cannot be resolved within a prohibitionist framework. Therefore supply control measures alone will certainly not work within such frameworks.

It should be noted that many substances can qualify as a legal high, even solvents and licorice, and most of these substances are not used for long because consumers inevitably discover that they are not much 'fun'. The only drug that generates long term use and interest is ecstasy, and prior to ecstasy it was LSD. Authorities need to accept that they cannot control the fact that people will use any substance they desire, but it is necessary to react to substances that lead to actual harm. Where the health consequences of a new substance are unknown due to a lack of scientific analysis and studies, it may be best to address the potential harms of the new substance under a food protection framework.

Like the EU, Canada is experiencing problems with the use of legal highs and having a similar debate. It is considering adopting a model similar to that of the EU. There is interest in treating the emergence of legal highs as a food safety issue because it is often not the substance itself that is leading to harmful health consequences, but when it is consumed in addition to another drug.

It was commented that a problem with prohibiting a substance, whether under food protection laws or otherwise, is that market operators will simply find other ways of supplying the substance—the inevitable consequence of prohibition.

<u>Harm reduction as a pillar of the EU drugs strategy</u>

- The inclusion of harm reduction was an important agreement of the EU at the time of adopting the previous strategy. What are the findings and recommendations of the evaluation of the EU strategy 2005-2012 on the issue of harm reduction? What are the underlying motives of the controversy in the EU on this issue? What are the expectations for harm reduction in the new strategy?

Harm reduction measures have come under attack in debates in the UK, which have become quite ideological. There is also an unresolved issue that the coverage of harm reduction services has not reached an adequate level across Europe, and concern that the conflation of complacency and ideological arguments is leading to reversals on harm reduction. In the UK, however this trend has not yet led to cutbacks in funding or other practical impacts on harm reduction services.

The mechanisms and operational tasks for achieving reduced risks around drug use have been incorporated in European Commission documents in the past few years. The EU strategy incorporates quality guidelines. And while harm reduction may not appear as visibly as before, support for it as a principle is not necessarily dropping in the EU.

It was suggested that rather than complain about harm reduction and demand

reduction not getting due attention by policy makers, civil society groups could instead target their efforts at the issue that is getting more attention: supply reduction. Perhaps civil society could focus more on supply reduction measures and promote evidence-based approaches to supply reduction. Another suggestion was that within the EU, civil society groups should be very careful with disseminating messages on harm reduction, and decriminalizing use and possession. These messages could be interpreted as allowing youths to use new substances, and therefore difficult to propose as an option to policy makers.

SESSION IV - New developments in cannabis policy reform

- Local governments and the cannabis issue: attempts to introduce local experiments and legislative initiatives in the direction of a decriminalization of cultivation for personal use, 'social clubs' or a legal regulation of the cannabis market.

The proposed experiment in Utrecht, the Netherlands[12]

Aside from the implementation of the national government strategy the council of Utrecht is working on a local experiment introducing "cannabis clubs" for recreational adult users.

The Utrecht city council aims to address the problems arising around the backdoor (cannabis production and supply) of the coffeeshops with a scientific experiment. The experiment consisted of setting up a closed club model for adult recreational cannabis users who would grow their own cannabis in a cooperative (see for instance the model of cannabis social clubs in Spain). This closed circuit experiment will comply with UN and EU regulations, but the Dutch Minister of Justice is opposing. The city council however is not abandoning its proposal and is still working launch the project.

The introduction of the Utrecht pilot project stresses that the development of policies based on local experiences and knowledge can result in more apt policies: working at local level enables policy makers to respond to community needs.

Although coffee shops are subject to a revised policy[13] in the Netherlands, they remain in operation. The Dutch government wants to change the coffeeshops into closed cannabis clubs, where only Dutch residents can buy cannabis after being registered as a client. In the Government's proposal, the production and sale of cannabis remain an illegal activity.

The Utrecht city council has asked a research institute to study the health effects of the use of coffee shops, in order to avoid negative health outcomes resulting from participating in a cannabis club. Cannabis clubs are different from coffee shops in that they are smaller in scale and less open. The difference between the government's proposal and the city council's proposal is that the latter will introduce a legalized system of production and availability. The city council's analysis will also monitor the level of THC, and 'footprinting' as people do not know what they can buy and whether it fits into how they want to use. Such a club model should only develop at the initiative of the club members.

Cannabis regulation to counter crime in Sevran, France

France has about 9 million cannabis users, and the French drugs agency manages a

[12] For detailed information on Utrecht's proposed experiment, see the paper for the meeting *Cannabis: Usos, seguridad jurídica y políticas*, San Sebastian, October 26 2011: Reinking, D. "The Dutch Cannabis Policy: an effective policy under threat", at http://www.ararteko.net/RecursosWeb/DOCUMENTOS/1/0_2564_1.pdf

[13] See blog: Dutch government to ban tourists from cannabis shops? Tom Blickman, Tuesday, June 28, 2011 http://www.druglawreform.info/en/weblog/item/2584-dutch-government-to-ban-tourists-from-cannabis-shops and Dutch 'cannabis card' rollout in disarray, By Nicolas Delaunay, Agence France-Presse May 8, 2012 http://www.canada.com/life/Dutch+cannabis+card+rollout+disarray/6584963/story.html

range of public health problems, including those resulting from cannabis use.[14] For example, 20% of accidents at work have been assessed to be related to cannabis use. Other problems resulting from the cannabis market are security, for example public order issues, damaging impacts on local governance and economic disruptions resulting from the black market.

Sevran is one of the three youngest cities in France. For historical reasons, Sevran has a large urban population with many migrants from countries such as Morocco. In the past ten years, there has been growing social fragmentation, and drug use and trafficking have led to increasing levels of violence, which has also resulted in the increasing criminalization of economic activities. There are between 8 – 15 dealing sites in housing estates in Sevran. Previously, the doorsteps and entrances to buildings were relatively crime-free, but now they are being sold between gangs as sites for selling drugs. These negotiations on the trading of sites have now turned into violence and shootouts between gangs.

The growing fragmentation of French society in the past 5-6 years has lead to increasing violence and use of arms by gangs on a daily basis. In Sevran there are about 150 people engaged in drug-dealing who carry arms. Another change is that people who used to be paid to go on lookout at sites are now being replaced by people brought from outside communities who employ rougher tactics. People living in estates which have drug dealing sites are now forced to show evidence that they live in the estate before they are allowed in the entrance of their own building. In 2009-2010, 8 people were killed as a result of the drug violence, which has become a daily occurrence.

It was commented that France sends people around the world to keep peace and to stop wars, and local communities such as Sevran are wondering why the national government does not take similar measures in their towns. France's political system is losing its grip on cities and social policy, which has led to the formation of ghettoes of long-term unemployed people, comprising mostly people from ethnic minority groups. A book written with input from a policeman with extensive experience at street-level and a sophisticated academic background, has called for the depenalisation of cannabis consumption.[15] It also proposes the legalisation of cannabis to ensure the quality of the product, and to disrupt the flow of 'black money' circulating through French cities while keeping drug traffickers at arms length.

Drug trafficking and money laundering are becoming increasingly organised, which destabilises local populations. They pose an increasing risk to the functioning of local governments, democracy, and the tendering of public works— processes which are becoming infiltrated by criminals. There is significant concern about the way that the proceeds of drug trafficking is disrupting the economic sector and finding its way into mainstream society, including into flows of money sent abroad. Since June 2011, the mayor of Sevran has introduced a stronger police presence, incurring greater costs for the local government. As credit normally extended by financial institutions is being withdrawn as a result of the financial crisis it is feared that organised crime will step in to become a credit provider and cause greater disruptions to French society.

Cannabis social clubs in Spain

The cannabis social clubs in Spain are based on the fact that personal consumption is not a crime in the country. After signing up to the 1961 UN drug convention, Spain's laws were changed in 1974 so that it was no longer a crime to possess, use and grow cannabis for personal purposes. However quantity thresholds were not defined so it is

[14] See the country overview for France prepared by the European Monitoring Centre for Drugs and Drug Addiction, at http://www.emcdda.europa.eu/publications/country-overviews/fr/barometer

[15] *Pour en finir avec les dealers*, Gatignon, S. and Supersac, S. , 2011

uncertain how many plants may be grown or held in possession before penalties will be imposed. The clubs started in the early 1990s when activitists began lobbying against the irrationality and harmful effects of prohibition, and to create a favourable social climate to start implementing concrete activities. For example, the activists established plantations, in the belief that they had the right to do so, before establishing the Cannabis Social Club and Cannabis Users Association. There are different ways in which the clubs can work but the Federation of Cannabis Associations has tried to define a model, starting with the legal registration of an organisation as an NGO. Members of the club must be a recreational or medical user, and must sign a cultivation agreement which includes evaluating and declaring their own consumption levels. The clubs rent land and buildings for cultivation, and plant the amount that is needed for the following year. Cultivation is the responsibility of staff or farmers depending on the system adopted. Then a system for consumption applies, where individuals can take a weekly supply with monthly limits applied on the total amount taken: 60g/month and 2g/day, with exceptions for medical users. The clubs recommend to medical users never to smoke the cannabis, and help to supply them with vaporisers to facilitate use. Membership is by invitation only, or by submitting a letter to prove one's medical need. The clubs pay salaries to legally contracted staff, social security fees and corporate income taxes. They also run other activities, such as organising conferences and providing legal and health advice.[16]

The Federation has proposed concrete mechanisms for cannabis social clubs and presented them to the Spanish Government and European parliaments. It has also developed a protocol for growing and distribution, and carries out inspections during growing and harvesting times. The Federation believes that it is proposing a realistic option for cannabis consumption, away from a black market. It is also concerned about consumption by minors, and is working to prevent use by minors.

The clubs are a community where everyone knows each other— a model different from one that supplies tourists. Members must attend conferences and understand the risks of consumption, and consumption patterns are monitored for the purpose of detecting problematic use. Another feature of this model is that people can move from one club to another around Spain, for example if a letter for medical need is shown, so there is some accommodation for tourists. The clubs are a non-profit organisation, and apply stringent management and quality controls. There is direct contact between growers and users, and no mechanisms for increasing the cost of cannabis. The Federation does not favour the idea of applying the tobacco model to cannabis, seeing it as risky because of its commercial promotion– instead, it prefers to be able to control production and consumption.

At the moment there is debate in the regional Basque parliament on the clubs, because of the Federation's advocacy efforts and local police actions against cannabis social clubs.[17] An advocate for the Federation was arrested after explaining to public institutions about the need for controls.[18] Basque will probably accept the experiment, as will Catalonia and further abroad, in Belgium. The growing acceptance of the clubs is a chance for Europe to be a leader in advocating for change to prohibitionist policies.

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[16] Cannabis social clubs in Spain, A normalizing alternative underway, Martín Barriuso Alonso, TNI January 2011 see: http://www.druglawreform.info/en/publications/legislative-reform-series-/item/1095-cannabis-social-clubs-in-spain

[17] The Basque parliament decided to initiate a legislative proposal to regulate the cultivation, sale and consumption of cannabis in 2012. See article in El Pais, "Motion signed by Basque parliament to study regulation of cannabis", translated into English at: https://www.dinafem.org/announcements/motion-signed-by-basque-parliament-to-study-regulation-of-cannabis?locale=en

[18] Blickman, T. "Cannabis social club activists in Spain liberated" (November, 2011), Transnational Institute, at: http://www.tni.org/article/cannabis-social-club-activists-spain-liberated

Legislative initiative in Copenhagen, Denmark

In November 2011, the Copenhagen City Council voted to proceed with developing a proposal for about 40 cannabis shops in Copenhagen. Having seen the Netherlands' experience with coffee shops, the Council also wished to regulate the backdoor of the coffee shops and the production of cannabis. Denmark previously adopted a similar model to the Netherlands, where cannabis shops were tolerated in one area in particular: Christiania. In 2003 and 2004, the then liberal conservative government decided to return to penalising possession of cannabis imposing a fine of 70 Euros that was later increased to 300 Euros. It closed down cannabis dealing sites in Christiania because gangs were fighting over cannabis selling points. This however did not result in an improvement: in fact the problems increased and spread elsewhere in the city. Consequently, the council decided to proceed with the current proposal, which needs to pass through parliament before it can be implemented.[19] To ensure that this proposal complies with the UN drug conventions, Denmark may consider withdrawing from the 1961 convention and re-acceding with reservations, or proposing the re-scheduling of cannabis in the conventions.

Medical use of cannabis in Canada

In Canada, there are about 20,000 cannabis medical users. Under the current system, medical users can apply to Health Canada to buy cannabis produced by a contracted supplier, grow their own marijuana, or ask a third person to produce it for them. The regulations have now changed, mainly around personal production. Previously, advice had not been given to people who wanted to grow their own cannabis— leading to cultivation that ranged from tiny plants or plants the size of a Christmas tree. There have also been many reports of violence, where members of organised crime have invaded homes and stolen crops. Consequently, prior rules regarding cultivation of up to 200 plants became a problem, especially with the development of hydroponic cultivation.

On the other hand the health authorities found it a challenge to persuade the doctor community to cooperate with the medical cannabis system because of the lack of scientific evidence on therapeutic need. Patients subsequently obtained more information than doctors, leading to confusion on information about cannabis use.

There is now a proposal, at a consultation stage where considerable feedback was received from the public, to create a commercial market for the production of marijuana for medical purposes. The proposal is not about decriminalization. Canadian courts have declared that access to marijuana for medical purposes is a human right, despite it not being a recognised therapeutic product. In the proposal, licensed producers will produce indoors, can produce any strain of cannabis, and will set their own price. They will receive documentation as part of an order from a physician, and then mail the ordered product to the individual. The benefit of this proposed measure is that Health Canada will no longer receive health information about individuals and avoid distribution through pharmacies, which are not willing and prepared to dispense marijuana.

Proposals for changes to cannabis policy in Switzerland

Switzerland has had increasing numbers of traffic accidents and incidents of children found to have used cannabis in schools. These problems levelled off after 2000, though it has been difficult to explain why, and the regulations were changed so that smoking was banned in most places--not just tobacco but also cannabis. There were enforcement crackdowns on sites where cannabis could be purchased and on many production sites. Farming in the mountains has become economically unrewarding, and subsequently cannabis farming is increasing in the hillsides. However repressive measures will not change the rates of cannabis use. Other existing measures in

[19] Legal cannabis rejected by government, The Copenhagen Post (Denmark), May 14, 2012, http://www.druglawreform.info/en/newsroom/latest-news/item/3443-legal-cannabis-rejected-by-government

Switzerland include making cannabis available for medical use— administratively a problem because each doctor must apply to the Ministry of Public Health to be able to prescribe cannabis and it is a lengthy process, and; imposing zero tolerance for driving under the influence of cannabis.

At the federal level, the committee on drugs recommended a severe change in policy consisting of 3 key elements: tolerating outlets where one can buy cannabis of a good quality with the maximum content of THC (Switzerland has the highest THC content in Europe), regulating production sites to control “backdoor” problems, and decriminalising personal possession, use and cultivation (for example on balconies). The federal government submitted these recommendations to parliament, but parliament has refused to discuss it. In 2010 a referendum on decriminalising cannabis for personal consumption in the Constitution resulted in 2/3 of votes against. There is now a new parliament and the prevailing politics has moved more from the right towards the centre.

On the cantonal level, one very conservative canton has introduced measures where people are fined on the spot, and if they cannot pay they have to go to the police station. It is reportedly a successful measure from the perspective of the police and prosecutors, but there are indicators that the number of police notifications has increased – in a country that already has the highest rates in Europe.

There are a number of research projects on cannabis use in Switzerland, including an international project on people attending treatment providers where their primary problem is cannabis use, most of whom are adolescents. The cannabis monitor collects information from focal groups at the local level, and continues to produce good data statistically. This research is continued by the national addiction monitor.

Perspectives on various developments in the EU

The exchange on various types of experimentation with cannabis policy attracted a range of comments and questions. There is a lot of debate occurring on cannabis, not only in Europe and Canada, but also in some countries in latin America, such as Argentina and Uruguay and the US – but it is happening at the local not national levels. This is a symptom of the issue, illustrated by 1400s Bohemia where Jan Huus was not satisfied with a large institution governing Europe that was stuck in a stalemate: the Catholic Church. The dynamic experimentation at local levels shows that reform is coming from the bottom up and eventually the institutions at national level will have to reform themselves, but it can take a long time. With Huus, it took 200 years and it might not be that different with the drug control system suggested one participant. The international treaties have an enormous effect on the model of drug policy that countries have adopted, and at the national level, politicians are afraid to address drug policy reform regardless of their position on the political spectrum. Reform is happening at the local levels, and sometimes at great cost to individuals, for example imprisonment as in the case of the Spanish Federation of Cannabis Associations. We are living in a world with a system established 100 years ago that is standing in the way of experimentation at local level. What is a political solution to this barrier? And how can local experimenters across different countries join up to influence reforms?

There was some discussion on the various pieces of research on the effects of cannabis use. There have been studies done by cannabis social clubs in Spain and thousands of samples have been analysed to show that there are low harms associated with cannabis use. Some people need more THC, others need more CBD, and still others need to experiment with different types of marijuana to see what best suits their need.

It was predicted that an overly commercialized model for cannabis may emerge in a post-prohibition scenario, and the lessons from alcohol and tobacco are not likely to be learned in developing the regulations for cannabis. There is also a risk that the ballot initiatives in the US, a flawed legalization model, will be adopted by some national systems which may set back the reform movement by a generation.[20]

All of the initiatives discussed above are legally situated in a grey area, and are depending on the interpretation of the law. Perhaps what is needed is a completely new regulation framework for cannabis, without the need to conduct such experiments and risk imprisonment. A genuine reform movement might come from the US state jurisdictions that may influence reforms elsewhere. While the UN conventions are static, societies are not, as evidenced by these various movements in different countries. Another comment was that if cannabis is not regulated, or not regulated well, then the whole drug control system could collapse. Lessons may be learned from the alcohol controls implemented by different countries, and the framework that was put in place after the alcohol prohibitions ended. It was reminded that at the time, John D. Rockefeller invested money into research on post-prohibition models for regulating alcohol, and concluded that a capitalistic model would not work well.

SESSION V - The future of the UN drug control conventions

- In 2012 it is a hundred years ago since the International Opium Convention – the first international drug control treaty- was signed in The Hague on January 23, 1912. Halfway through the century the focus of drug control efforts shifted to a more prohibitionist approach under the 1961 UN Single Convention, a history reconstructed in a recent TNI paper, that considers this trend was confirmed and strengthened with the 1971 and 1988 conventions. What is the relevance today of the three UN drug control conventions and could a modernization of the treaty regime be considered? A TNI/IDPC expert seminar was held on 26 January, the day before the dialogue, and the outcomes were presented and discussed during this session.

In reflecting on discussions at the TNI/IDPC expert seminar on January 26, 2012, the TNI paper 'The Limits of Latitude: the UN Drug Control Conventions[21] was discussed. The paper considers possible reinterpretations of the UN conventions in terms of two elements: sub optimality and political calculations. Sub optimality is where countries join conventions, and inevitably accept some degree of sub optimality. There is subsequently considerable flexibility within the regime where countries can seek to ameliorate sub optimality through the two options of soft defection or navigating wriggle room. This has worked very well with drug control conventions, with many countries implementing depenalisation and decriminalisation of possession. However soft defection is only possible to a limited extent within the treaty framework, before hard defection is required. Bolivia is a specific exception— otherwise there is extreme reluctance amongst member states to change the system as political calculations often conclude that the geopolitical costs outweigh the benefits. There is also the problem of 'net-widening' (expansion in the range of people arrested and charged)[22], for example in

[20] For further details, see Johnson, K. "Marijuana push in Colorado likens it to alcohol", *The New York Times*, 26 January 2012, at: http://www.nytimes.com/2012/01/27/us/a-ballot-push-to-legalize-marijuana-with-alcohol-as-the-role-model.html?_r=1

[21]The Limits of Latitude, the UN Drug Control Conventions, Bewley-Taylor, D. and Jelsma, M. *TNI*, March 2012 http://druglawreform.info/en/publications/legislative-reform-series-/item/3252-the-limits-of-latitude

[22] Gross, J. "The effects of net-widening on minority and indigent drug offenders: a critique of drug courts" (2010) in *University of Maryland Law Journal Race, Religion, Gender & Class*, vol. 10:161-178, at: http://www.law.umaryland.edu/academics/journals/rrgc/issues/RRGC_10_161_Gross.pdf

relation to supply offences, and the argument that soft defection actions are not enough to address the harmful impacts of the treaty.

While there is some willingness amongst policymakers to listen to different debates, there is still a lot more space at the international level for debate on drug policy reform. For example, if Bolivia wants to expand the policy space for debating drug policy reforms at the national level after calculating that the benefit outweighs the costs, there is a nexus of procedure and politics that makes it very difficult for Bolivia to subsequently change the treaty framework. This raises two questions: what is the procedural path for seeking change in the treaty framework, and is there a group of like-minded member states that might be willing to support that change?[23]

Robin Room's research for the Beckley Foundation on possible avenues for treaty reform was also discussed.[24] It is increasingly clear that there are significant stresses in the system and that the Vienna structures are starting to break down. National policy measures such as decriminalisation are challenging the international system even though they are not technically violations of the treaties. These issues represent fractures that are pushing the reform debate forward. The wriggle room allowed for in the UN conventions are now being pushing to its boundaries, and some would argue beyond those boundaries. The Dutch may argue that the backdoor operation of coffeeshops illustrate the untenability of the system. The options for reforming the treaty framework include formal mechanisms which are written into the treaties, such as amendment and termination of the treaties, allowing them to fall into disuse, and removing certain substances from the treaty schedules. These options are essentially impossible because any country can veto any such attempt to change the treaty. Post-ratification reservations are technically possible but more unusual. Other possible reform options include denunciation of the treaty and not re-acceding, passing national legislation that conflicts with elements of the treaty and allowing national laws to take priority. However these latter options incur geopolitical costs.
A possible, perhaps more feasible, longer-term reform strategy is establishing a new convention which would supersede the existing conventions, assuming that all countries sign up to it. The possible content of a new convention includes allowing for more extensive decriminalisation, removing entirely possession as a criminal offense, and allowing domestic markets for certain drugs. Another option is a new convention within or similar to the tobacco treaty framework, for example a cannabis convention. The tobacco framework is specifically for the control of a non-medical, psychoactive drug associated with serious social and health harms, and may be useful as a model for cannabis. Yet another possibility is a new convention that overrides all three existing conventions, which cover all the psychoactive drugs.

More short term options for reform include denunciation and re-accession with reservation (as with Bolivia). There are many precedents for making reservations to the conventions. These approaches were described in some ways as a substractive reform process, which involves taking something away in order to allow something else to happen, instead of establishing a new convention. The substractive reservation option may result in more damaging political impact, and can set a dangerous precedent for countries in regard to other treaties, for example the nuclear non-proliferation treaties.

It was recognised that treaty reform is primarily a political challenge. Political will is

[23] See also: Towards revision of the UN drug control conventions: the logic and dilemma's of like-minded-groups,Bewley-Taylor, D. *TNI*, March 2012, at: http://druglawreform.info/en/publications/legislative-reform-series-/item/3251-towards-revision-of-the-un-drug-control-conventions

[24] (pending) Room, R. and Mackay, S. "Rewriting the U.N. drug conventions", *Beckley Foundation Report*, due to be published later in 2012, see update at: http://www.beckleyfoundation.org/wp-content/uploads/2012/03/BF_Rewriting-UN-Conv-summary-1.pdf

needed for any reform to happen and to secure it, the 'superpower' countries need to take the first step— a highly unlikely event. The more likely occurrence is that a group of like-minded countries will move together to push for treaty reform in various multilateral forums. Such a group could be built around support for traditional uses of drugs (such as coca leaf chewing), Latin American countries who have suffered terribly from the war on drugs, the states signing the 2011 Tuxtla declaration[25], countries within the EU or an alliance between EU and Latin American countries, cannabis regulation, technical issues associated with the treaty provisions, arguing that the treaties are causing harm and need to incorporate treaties from other parts of the UN system (for example, the need for UN system-wide coherence on issues such as human rights and HIV), the group of 26 countries in CND 2009 that promoted inclusion of the term 'harm reduction' in a resolution, or constitutional reform (for example where countries such as Bolivia reformed their own national constitution, resulting in constitutional provisions that conflict with the treaties). A possible technical issue for a group to focus on could be the inconsistencies within the treaties on scheduling— a positive move because it depoliticises the issues surrounding treaty reform and addresses constructive issues such as the scheduling of coca leaf.

Treaty reform is not impossible but it will be a difficult and lengthy process. Drawing together a group of reform-minded states was regarded by seminar participants as the best way forward, and there are opportunities for civil society to support that option. How such a movement could proceed is very unpredictable, for example unforeseen events can require a complete change of plans, such as unilateral action by a member state or local jurisdiction, as with the Ballot initiative in the US. Such an event could suddenly accelerate or set back movement towards reform. Some who oppose reform have sought to characterise reform as a negative process—which gives rise to the need to characterise reform in more positive terms, and to ensure the treaties are not disregarded. Instead, reform movements can frame the need for treaty reform as the need to ensure that the treaties are fit for purpose and can adapt to changing drug situations in future years. Reform could be framed as widening options for drug control and not to eliminate drug control. Highlighting other issues impacted by drug control policies such as security and development can also help to promote the need for reform.

Bolivia

In Bolivia, there is not only a national paradigm but a plurinational paradigm comprising a bottom-up approach. When Bolivia ratified the 1961 convention in 1967, it was led by a dictator. There was a disconnection between state and society at the time that was challenged by Evo Morales, who subsequently came into power as President in 2006. In 2008, the INCB in its 2007 Annual Report requested Bolivia to change its legislation in order to abolish coca leaf chewing and to introduce measures to prohibit coca mate (tea). In 2008, Morales sent a letter rejecting the INCB's request, stating that the position of the INCB was very neo-colonial and segregationist, and not respecting the cultural rights of its people. In 2009, a new constitution entered into force that protected indigenous rights, including the right to coca leaf chewing. The requirements of Article 49 in the 1961 convention on coca leaf was incompatible with the Bolivian constitutional provision which stated that coca leaf is not a narcotic drug when it is in the form of a plant. There were two options for Bolivia to resolve the conflict: seek a treaty rescheduling of the coca leaf –a long process of gathering

[25] In December 2011in the context of the 'Mesoamérica' integration promoted by the Tuxtla Mechanism for Dialogue and Reconciliation, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Belize, the Dominican Republic, Mexico, Colombia and Chili adopted a document on organized crime and drug trafficking in which one paragraph is calling on "consumption countries" to reduce the demand of drugs or to "explore all possible alternatives to eliminate the excessive criminal profits, including regulatory or market options aimed at that purpose". http://www.sela.org/attach/258/default/Declaracion_Conjunta_Sobre_Crimen_Organizado_y_Narcotrafico_-_XIII_Cumbre_de_Jefes_de_Estado_y_de_Gobierno_del_Mecanismo_de_Tuxtla.pdf

evidence and politically difficult as the proposed amendment had to be passed by ECOSOC. The other option was to seek to amend the relevant provisions of the 1961 Convention. Bolivia pursued the latter option in 2009 and sought to amend 1(b) and 1(c) of Article 49 in the 1961 convention. An ad-hoc coalition operating under the name of "The Friends of the Convention", led by the US and involving 17 other countries, opposed this amendment.

Bolivia's initiative is supported by many other countries in the world, including those in support of indigenous and human rights. Bolivia already made a reservation to the 1988 convention on use of the coca leaf but it was not accepted by the INCB, which every year since has stated that Bolivia is not complying with the spirit of convention. In June 2011, Bolivia presented a letter of denunciation of the 1961 Convention, then in December presented a letter seeking re-accession with reservation. The process of denunciation then re-accession with reservation was once pursued by Vietnam in 2007 after the reunification of north and south Vietnam. Bolivia now faces a 12 month period in which, if there is opposition from more than a third of all member states (62), then the re-accession with reservation will not be approved. If approved, the convention will only be changed for Bolivia in terms of the trade and consumption of coca leaf for traditional purposes. At the same time, Bolivia has promised to take all necessary measures to prevent the illicit use and supply of coca.

It was recognised that Bolivia has taken a lot of time to protect its traditional practise of coca leaf chewing and to remain in compliance of the treaties. Its constitutional reform process and efforts to seek amendment of the 1961 convention has already taken 2-3 years— this new move of re-accession with reservation will take at least another year.

<u>Reform of UN drug control framework</u>
On the broader issue of treaty reform, it was noted that since the Hague Convention in 1912, there has been a common purpose for drug control amongst the international community: to ensure the availability of drugs for medical purposes, fight diversion and trafficking, and to limit the non-medical use of narcotic drugs. Under the 1971 and 1988 Conventions, new challenges include more young people using drugs and the use of psychedelic drugs and benzodiazepines (BZP). There are now three treaty instruments on drug control with a complicated classification structure. There is increasing recreational use of drugs, at the same time as transnational organised crime are expanding their power in drug markets. As a result, there is a greater need for drug control measures to be comprehensive, covering the issues of: classification, drug control institutions at the international and national levels, control of licit drugs, penal strategies and international cooperation. It was suggested that advancing treaty reform will require proposals to be made on the following five topics:

1. Classification schemes to include alcohol and tobacco, and which introduce a process for scheduling, for example allowing provisional measures to apply to a substance while awaiting a scheduling decision.
2. Reform of CND, INCB and UNODC to improve coordination and address the often obstructive tensions between health and law enforcement authorities at national level. A model for national coordination could be incorporated in the conventions.
3. Simplify controls of licit drugs.
4. Simplify penal provisions, for example decriminalisation.
5. Strengthen international cooperation.

It was commented that reforming the conventions is the responsibility of governments, though they are afraid of opening 'Pandora's box'. The international community needs to agree on firstly the need to reform the treaties, and subsequently on the content of a new treaty. One participant proposed that it is impossible to discuss the need for

reform without an international conference as decisions made under the conventions must be made by consensus, not a majority vote. Therefore in order to try to secure consensus agreement for reform by organising an international conference, the following difficulties should be addressed:

a. How will countries become willing to organise such a conference ?
b. How should the purpose and terms of reference for the conference be defined?
c. How could preparatory work for the international conference be carried out?
d. How could member states reach a consensus or even a majority agreement?

The challenge to achieving reform is political and the process is legal. Although many members of the movement for reform are not member states, they form a powerful lobby group. However for this group to increase its credibility, it needs to be less westernized. The movement needs to include more participants from Asia, Africa, US and Russia, and to enable broader participation the movement should not focus only on prohibition but also on other issues of concern to other regions. In addition, attention should be focused on the work of the UNODC, INCB and CND, in order to create a forum where more constructive discussions can be held. Reform efforts need to be based on an understanding of the common denominator position amongst states, and to use that position as a basis for moving forward in a constructive manner – addressing all the five topics outlined above.

Another comment on reforming CND was that it maybe useful for it to be restructured so that one segment enables interactions between member states and another segment focuses on legal frameworks from a continental not national perspective. The reason is that many member states have few substantive issues to contribute but ally themselves with other member states to create majority support for positions that can be very dangerous. It may be possible to establish workshops to allow free debate on specific topics, with a group assigned to each topic, for example there could be a group discussing the need to add another chapter to one of the conventions.

It was noted that there is a need to be mindful of the role of civil society organisations (CSOs), and for them to seek to bring states along with them in seeking to reform the conventions. It is important to ensure that there are countries interested in reform, and to strategise on how civil society can foster and cultivate any such interest. It was also noted that given the drug control system is about politics, and about personalities, perhaps CSOs could consider structuring their communications with politicians more strategically to promote support for reform. Most CSOs seem to be creating a political negative for politicians seeking re-election to pursue drug control reforms, for example pointing out human rights abuses, which render it more difficult for politicians to support reform.

Several questions were then raised: Does pursuing short–term goals create barriers to achieving long term reform? Should a member state expend all political capital on securing a reservation if it also want to see changes in the drug control system in the long term? For example, what would Bolivia do if it cannot obtain a reservation? While reservations could be pursued, there is still a need to promote the need for broader reform. CSOs should avoid debates about national laws that conflict with international law, as it is not a good precedent to set. It may be better to seek to reconcile conflicts within the treaty framework, and to root arguments in international law (for example on traditional and indigenous rights), using international law as a basis to move forward on reform.

While there appears to be two models for reform, in a way the choice has been made already by Bolivia. It took a step and opened the process for reform, taking the conventions seriously and seeking reform within the framework of the treaties. If Bolivia’s attempt at re-accession with reservation fails, it would be a serious backlash

for both the reform movement and the conventions.

On the INCB, it was commented that most of their remarks are on the spirit of the conventions but it must be asked whether the concept of 'spirit' is compatible with questions about the legality of the conventions. Doubts were raised as to whether it is relevant for the INCB to speak of the 'spirit' versus the letter of the conventions. It was proposed that progress can be made by seeking reforms to the INCB without changing the conventions. CSOs can put pressure on countries to nominate members in favour of reform, while also putting pressure on the INCB to operate in a more transparent and open manner. Member states can also be stricter when the INCB oversteps its mandate, for example in its annual report and in scheduling actions, and when its position conflicts with those in other UN treaties, such as the biodiversity convention regarding the coca leaf. Another view was that it is not useful to seek reform within the INCB because the elections are a process which involves many different stakes and is impossible to influence.

Gathering political support for reform

There was support for the idea of gathering a likeminded group of member states concerned with the technical and legal issues of the treaty framework. However it was suggested that the more important question was how such a debate could be initiated between member states in the EU, without making them feel threatened. It was suggested that perhaps a few countries within one region could agree to start discussing the issue, and then start building broader support, before or after CND. As it is not just about member states but also the functioning of the UN system, maybe other UN agencies and actors could also be involved in such debates, such as the UN Secretary-General.

It was proposed that CSOs should stop producing papers on the evidence for reform—while they are important, CSOs already know all the evidence. Perhaps efforts could be better invested in trying to find the right people and personalities to form coalitions and to lobby for reform, perhaps amongst people affected by drug policies and suffering from their unintended consequences. It may be that analysing the inconsistencies within the framework is not enough to stimulate reform, as there must exist enough political will to amend the conventions. For example, even if Bolivia succeeds in securing the reservation, it is only a limited resolution to the problem of coca leaf chewing being illegal. In order to succeed in gathering sufficient political support, the backing of Asian countries is necessary. CSOs could discuss how to secure support from Asian countries, and to identify those countries which already feel the need for change, in time for CND. A lesson learned during the UNGASS process was that it is important to look out for areas of resistance and opponents to reform.

Another view is that we are far from having any kind of movement that can challenge the UN structures on drug control, given that it is enormously difficult for CSOs to make a significant impact. However dialogue on reforms is gathering pace in Latin America, where there is real energy for reform, perhaps because they have run out of 'wriggle room'. It was suggested that perhaps TNI can explore whether it has a role in bringing together Presidents and other influential figures to promote reform, maybe along with the 12 Central American countries. Asian countries are not likely to be keen on reform for decades. A contrary view was that Latin America's willingness to lead any process for reform should not be overestimated, as they have already said that they are keen on reform but will not lead any such effort. It is also important to remember that of the G26 member states supportive of harm reduction in the 2009 CND, only one of them was from Latin America: Bolivia.

It was commented that member states should be given the opportunity to seek to reform the conventions themselves, as some already see problems with the system. To

identify the right people for driving change, CSOs can target those countries. As there is a sense of desperation amongst Latin American countries for alternative drug control strategies, opportunities for reform may be found there, but it is a volatile region partly because of their relationship with US. In addition, it was perceived that GRULAC is not going to lead reform anytime soon. CSOs should therefore prepare for a longer push for reform.

It was added that the movement for reform should move out of drug law reform into a broader space and incorporate people affected the unintended consequences of drug policies. The 'Count the Costs' initiative launched by the Transform Drug Policy Foundation in 2011 is targeted at achieving this aim, including by recognising the unintended consequences and raising awareness of the need to consider reform. Transform is now using thematic briefings from the initiative to meet with other NGOs, including development NGOs, to corral their support for reform. Their initiative is therefore a useful vehicle for stimulating reform. The International Centre on Human Rights and Drug Policy is another vehicle for reform, which works on advocacy through academic institutions as a way of trying to influence politicians in Asia. As part of these efforts, HRI recently attended the EU-China Human Rights dialogue, and has formed alliances with Atma Jaya University in Indonesia and Wuhan University in China. Reform efforts should also seek to sway public opinion, for example by appealing to the middle classes who are often a critical base of support for politicians. At CND, the US always takes the floor to speak, and the EU has a very low profile in comparison. It is a straightforward process for certain countries within the EU to try to take the floor and speak–perhaps these countries could take the chance to speak more to advocate support for reform.

Participants were asked to be aware that the participants in this seminar do not form a grouping. The seminar is simply a gathering of experts, NGOs and policymakers, but it is important to remember that important ideas have begun to be discussed in this forum.

SESSION VI – Global initiatives and the agenda of the 55th CND, 12 – 16 March 2012

- This recurring agenda item at our informal dialogue will provide the possibility for participants to be informed about the upcoming UN Commission on Narcotic Drugs and to discuss other drug policy meetings and initiatives at the global level.

<u>The agenda of the 55th session of the Commission on Narcotic Drugs</u>
It was reported to the forum that the CND this year will be business as usual: start on Monday morning and end at Friday evening, with 10 sessions interspersed between side events. There will be discussion on the UNODC strategic framework, which is technical but important because it is about budgets. It has been difficult to keep as a UNODC target HIV prevention for IDUs, because of the arguments about causality links between IDU and HIV transmission. The EU is not a strong force in the CND because there only needs to be a few countries to oppose an initiative and it will defeat the prospect of EU action—securing EU agreement on taking action in the CND is only getting harder. Another reason is that major donors to UNODC also get a strong say on new UNODC strategies. Consequently the outlook is not positive for achieving a new UNODC strategy with strong language on evidence-based policies, and links to health policies.

There are five regional groupings in the CND, and the US is not a member of any group but participates by being elected to have the right to speak, though it can only do so after the opening statements. The EU speaks before the US, but it is not likely to use

strong language because it will not be able to achieve consensus on a strong statement from all countries. The Former President of Switzerland, and member of the Global Commission, Ruth Dreifuss will speak on behalf of the Global Commission on Drug Policy at CND.

There were three roundtables last year and only two this year: on counter-narcotic efforts, and measures to prevent precursor diversion. There are limited opportunities for NGOs to participate as there are only two seats on each table. If member states don't take up their seat, NGOs can occupy them and have the right to speak. Nevertheless, NGOs ability to speak will be limited because member states are allocated the right to speak first, and NGOs last.

The Spanish Ambassador is chairing this year, with Peru and the FYR of Macedonia as vice-chairs. Both the Peruvian Ambassador and deputy Ambassador are quite approachable, and they can be contacted to exchange views on CND matters.

The European External Action Service will be working on the CND, to be coordinated by the EU delegation in Vienna who is represented by a good delegate who understands drug issues. The usual case with EU resolutions is that the first draft of resolution will be good, and include language on an evidence-base, but they will usually become watered down by member states.

Civil society contributions at the 55th session of the CND

A question was asked on how a NGO could try to raise an issue such as on the UNODC and EU funding and activities in Iran and China. It was advised that NGOs usually compete to speak in the last phase of the CND, nevertheless attempts can be made to make a statement at CND. Another option is to approach a friendly member state, such as Germany, Australia, some EU and GRULAC countries, to see if they are willing to raise certain issues in the plenary. It is up to NGOs to approach different member states and agencies such as the EU Commission.

There was discussion on the Vienna NGO Committee's (VNGOC) organisation of the informal dialogues between NGOs and the leadership of the UNODC and INCB, and the CND Chair. This year the Vienna NGO Committee will organise for the first time an Informal Civil Society Forum. For both the informal Dialogues with UNODC, INCB and CND chair and the Informal Civil Society Forum, several suggestions were put forward that would be passed on to the VNGOC. It was further commented that there should be greater support for the WHO's role at CND, which always seeks a more visible role at CND but is always rejected. It was suggested that the Czech Republic, Canada, Germany, the Netherlands, Norway, Mexico, Uruguay and UK could be approached to make favourable statements on NGO participation, and to seek member state co-sponsorship for side events. Representatives of the EU Commission and Ruth Dreifuss of the Global Commission could also be approached to speak at side events.

The Informal Dialogue closed with various inputs on the likely side events to be held at CND, including side events to be organised by Bolivia, Germany, EU, US, Canada, TNI and IDPC.

Gloria Lai, Rapporteur
April 2012