



## **CONTRIBUTIONS TO THINKING ABOUT DRUG-RELATED ISSUES**

### ***Discussing the drug issue: Articles and monographs***

We hope that this series of articles, essays, and monographs will be of interest and will contribute to thoughtful debate on drug policy. The views expressed in these documents do not necessarily reflect the opinions or positions of the Executive Secretariat of CICAD or of the OAS.

Executive Secretariat CICAD/OAS

# **MODELS OF CANNABIS REGULATION IN THE AMERICAS**

# Analytical report

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## Models of Cannabis Regulation in the Americas

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**June 2017**

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# CHAPTER I

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**Debate new *'paths'***  
**Analyze *'together'***  
**Systematize *'resiliencies'***  
***'Shift'* paradigms**

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# Analytical report

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## Models of Cannabis Regulation in the Americas

*“Globally, the war on drugs has not succeeded. Some estimate that enforcing global prohibition costs at least \$100 billion (€90.7 billion) a year, but as many as 300 million people now use drugs worldwide, contributing to a global illicit market turnover of \$330 billion a year, one of the largest commodity markets in the world.*

*Prohibition has had little impact on the supply of or demand for drugs. When law enforcement succeeds in one area, drug production simply moves to another region or country, drug trafficking moves to another route, and drug users switch to a different drug. Nor has prohibition significantly reduced use. Studies have consistently failed to establish the existence of a link between the harshness of a country’s drug laws and its levels of drug use. The widespread criminalization and punishment of people who use drugs, the over-crowded prisons, mean that the war on drugs is, to a significant degree, a war on drug users—a war on people.”*

*Kofi Annan, former UN Secretary-General, 2016.<sup>2</sup>*

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<sup>2</sup> <http://www.spiegel.de/international/world/kofi-annan-on-why-drug-bans-are-ineffective-a-1078402.html>

## **Introduction**

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Engaging in dialogue on new drug policy approaches and models is one of the responsibilities of the Inter-American Drug Abuse Control Commission (CICAD-OAS). But doing so is now also a pragmatic act, as these approaches and models have become an obvious reality that the Organization cannot ignore.

In all cases, various analysis and monitoring tools must be used to follow up on these experiences; the new practices must be shared; and academia, experts, and policymakers must be convened for a multidimensional cost/benefit analysis.

The new models are being implemented at a speed that far surpasses the slow progress of political and diplomatic reflection. As has been insinuated, the pressing need for change, in view of the shortcomings, flaws, and negative effects of current models, drives dynamism and urgent calls for a new chapter of debate, follow-up, monitoring, and evaluation. The idea is not just to launch yet another program, but rather to bring about a radical change in the control and oversight of psychoactive substances: as is oft-repeated, even to the point of excess, a paradigm shift.

We began designing this report in January of 2017. From then until it was written in June of that same year, laws on the medical use of cannabis were passed in Argentina, Colombia, Mexico, and Puerto Rico, joining the ones already in force elsewhere.

Naturally, some voices rightfully argue about the political and health-related suitability, legitimacy, legality, expediency, and effectiveness of these new models. Some spheres even emphatically reject the use of the expression “new models and/or approaches,” in an effort to, through rather magical thinking, pretend they do not exist.

Another example of efforts to block dialogue is that despite the evidence available, it has been impossible to incorporate the terminology “harm reduction,” let alone the approach and practices entailed.

The right to have one’s own point of view on the advisability, advantages, and disadvantages of these endeavors is just that: a right. But in multilateral forums and organizations, we do not always have the opportunity to calmly analyze, without ideological baggage, sterile fundamentalist views or dogmas, the pros and cons of these models.

We must therefore be responsible for and committed to protecting the right and obligation to discuss and sincerely debate all positions. It is of fundamental importance that we set down the foundations for a dialogue with all of the interested parties from all the scientific and policy perspectives.

In terms of harm reduction, rather than refusing to mention “new approaches,” we should include them in the dialogue, monitor action thereon, and cooperate with serious evaluations.

This report obviously has its own bias. That is inevitable. But in terms of intellectual and professional honesty, it is in our interest to bring together all the viewpoints and the evidence that has been gathered to date, and to promote continuing debate and the most objective and impartial evaluation of experiences possible.

# CHAPTER I

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**Debate new “paths”  
Analyze “together”  
Systematize “resiliencies”  
“Shift” paradigms**

In the context of the paradigm shift on the global drug problem that is taking shape in the Americas, the Organization of American States (OAS) has been playing a prominent role as a guide and catalyst for the new challenges facing the member states. Among these challenges are reviewing the relevant scientific research, maintaining unified standards amidst the region’s diversity, and including a human rights, public-health, and development perspective in the new approaches.

## **OAS leadership role**

*“We, the region’s leaders, held an invaluable discussion on the global drug problem. We agreed on the need to analyze the results of the current policy in the Americas and to explore new approaches to strengthen this struggle and to become more effective. We have issued the OAS a mandate to that end.”*

*Juan Manuel Santos Calderón, President of Colombia.  
President of the Sixth Summit of the Americas  
Cartagena de Indias. April 2012*

CICAD-OAS’s responsibility with regard to new models for drug policy and cannabis regulation is not restricted to hosting a broad, inclusive, taboo-free discussion. Rather, the Commission is also committed to **monitoring and evaluating** the new models that are already starting to yield results. To that end, it must review, work on, and produce new evaluation tools.

New forms of control and oversight, like those found in the cannabis regulation models, challenge us to seek out new measurement and evaluation instruments and open up new arenas for study. Accordingly, they give rise to conclusions about drug policies that will be edifying for all.

CICAD-OAS has experts who can tackle this issue based on prior institutional political analysis, as well as mechanisms that may be useful in this task, such as the Multilateral Evaluation Mechanism, the Inter-American Observatory on Drugs, and the Group of Experts on Comprehensive and Sustainable Alternative Development.

After all, the various facets of regulated markets (social, medicinal, and hemp industry) are of great interest from a development perspective. The most recent Special Session of the General Assembly of the United Nations (UNGASS) 2016 was characterized by the inclusive contributions of other United Nations agencies, the United Nations Development Program among them, contained in the document *Addressing the Development Dimensions of Drug Policy, UNDP 2015*.<sup>3</sup>

### **The trend towards new approaches**

The Colombian and Peruvian experiences, and above all the consensual eradication of coca leaf plantations in Bolivia, together with the coca leaf revaluation policy, are very important precedents for analyzing market regulation. Essentially, they involved different types of regulatory mechanisms aimed at the same objective: mitigating the local and global drug problem through means other than and/or complementary to interdiction.

In the United States, eight states have legalized marijuana, due to the will of the people: first Washington and Colorado, then Alaska and Oregon. More recently, the District of Columbia followed suit, and in the November 2016 elections, Nevada, Massachusetts, Maine, and California joined in. California's announcement is critically important due to the economic potential entailed, given the state's proximity to Mexico and the impact it will have on reducing demand for marijuana from that country.

Uruguay, in turn, has been putting its regulation law into practice for three years now and is already entering the third stage of implementation through its authorities on the matter: the Institute for the Regulation and Control of Cannabis (IRCCA) and the National Drug Board (JND).<sup>4</sup>

Canada, meanwhile, is preparing to launch its cannabis regulation model, which incorporates the intelligent and sensible recommendations of the Task Force<sup>5</sup> created to that end: "***A Framework for the Legalization and Regulation of Cannabis in Canada. The Final Report of the Task Force on Cannabis Legalization and Regulation***," from 2016.

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<sup>3</sup> <http://archive.ipu.org/splz-e/unga16/drug-policy-e.pdf>

<sup>4</sup> [www.infodrogas.gub.uy/](http://www.infodrogas.gub.uy/) [www.ircca.gub.uy](http://www.ircca.gub.uy)

<sup>5</sup> <http://healthycanadians.gc.ca/task-force-marijuana-groupe-etude/framework-cadre/index-eng.php>.

This model joins the new laws that are opening the doors to regulation of medical and religious uses in Argentina, Chile, Colombia, Jamaica, Mexico, and 23 states of the United States. The discussion has just begun in Peru and Paraguay.

### **A paradigm shift**

These initiatives demonstrate that a paradigm shift is occurring throughout the Americas and the world with regard to the multidimensional drug problem. Because of this, broad debate is taking place on politics, legality, health, geopolitics, and international control and oversight mechanisms.

True to the nature of this multidimensional, transnational, complex social problem, this debate involves the entire world, and is tense despite the agreements reached in all of the specialized multilateral organizations and forums, such as the Commission on Narcotic Drugs (CND) of the United Nations Economic and Social Council (ECOSOC).

The starting point for this debate was a call from several states, and fundamentally from the civil society, that has been heard in various arenas, like the United Nations Development Program, the United Nations Commission on Human Rights and High Commissioner for Human Rights, UN Women, UNAIDS, and the World Health Organization (WHO).

It has also been heard at all the hemispheric and regional multilateral organizations. In this context, CICAD and the OAS have played a central, leadership role.

### **Debate and research. Debatable issues**

The aforementioned debate, which has been energetically acted upon, disseminated, and promoted, is the manifestation of a multifaceted civil society, bringing together highly prestigious international organizations that have expanded their significant, detailed monitoring of all aspects of the drug issue.

In addition, in the past few years, groups acting to promote cannabis culture have been formed around the world. Public demonstrations calling for marijuana legalization reflect, from year to year, a state of opinion, perhaps partial, but significant in terms of freedom of expression and of the defense of the rights and opinions of cannabis users who do not consider themselves criminals or patients.

At the same time, discussion of the drug issue has reached all the political parties of several countries and states through debates, legal deliberation in the political and

parliamentary systems, and plebiscites in which the electorate has spoken on various initiatives.

One aspect that deserves special attention is the increased amount of scientific research on cannabis being conducted in institutions in several countries.

Although studies on cannabis have been performed for more than 20 years now, in recent years their number and scope have increased, and they focus on cannabis' benefits as well as on its risks and the real harm that can be sustained from misuse.

This contribution from academia is fundamental, since the cannabis issue has been held hostage to prejudices, myths, and legends that have not only confused the media and the public about the plant's benefits and dangers, but have also served as the foundation for implementing prevention programs and public policies, and even for deciding the approach to be used in certain treatments.

Along those lines, the Daya Foundation reports:

*“A new report<sup>6</sup> from the National Academies of Sciences, Engineering, and Medicine offers a rigorous review of scientific research published since 1999 about what is known about the health impacts of cannabis and cannabis-derived products—such as marijuana and active chemical compounds known as cannabinoids—ranging from their therapeutic effects to their risks for causing certain cancers, diseases, mental health disorders, and injuries. The committee that carried out the study and wrote the report considered more than 10,000 scientific abstracts to reach its nearly 100 conclusions. The committee also proposed ways to expand and improve the quality of cannabis research efforts, enhance data collection efforts to support the advancement of research, and address the current barriers to cannabis research.”<sup>78</sup>*

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<sup>6</sup> The Health Effects of Cannabis and Cannabinoids. The current state of evidence and recommendations for research. <https://www.nap.edu/read/24625/>

<sup>7</sup> <http://www.fundaciondaya.org/academias-de-ciencias-encuentra-evidencia-cannabis-medicina-eficaz/>

<sup>8</sup> The study was sponsored by the Alaska Mental Health Trust Authority, Arizona Department of Health Services, California Department of Public Health, Centers for Disease Control and Prevention (CDC), CDC Foundation, U.S. Food and Drug Administration, Mat-Su Health Foundation, National Highway Traffic Safety Administration, National Institutes of Health National Cancer Institute, National Institutes of Health National Institute on Drug Abuse, Oregon Health Authority, Robert W. Woodruff Foundation, The Colorado Health Foundation, Truth Initiative, and Washington State Department of Health. The National Academies of Sciences, Engineering, and Medicine are private non-profit institutions that provide independent, objective analyses and recommendations to the country to solve complex problems and to inform public-policy decisions related to science, technology, and medicine. The National Academies were established in 1863 by an Act of Congress, signed by President Lincoln. For more information, visit <http://national-academies.org>

The report includes recommendations for addressing the major difficulties that currently hamper efforts to obtain data for evidence. Research is clearly limited by restrictive legislation, institutional cultures that obstruct the possibilities for useful experimentation and access to controlled substances, and a lack of sincere willingness to investigate.

The repercussions on decision-making, and the need for greater transparency to make it truly possible to obtain evidence, clearly emerge from these limitations.

### **Challenges and barriers to cannabis research**

The aforementioned report is clear on the barriers to research.

*In addition to recommending more research on the beneficial and harmful effects of cannabis and cannabinoid use, the committee stresses the multiple “challenges and barriers in conducting cannabis and cannabinoid research, including...specific regulatory barriers, including the classification of cannabis as a Schedule I substance, that impede the advancement of cannabis and cannabinoid research. It is often difficult for researchers to gain access to the quantity, quality, and type of cannabis product necessary to address specific research questions...A diverse network of funders is needed to support cannabis and cannabinoid research...”<sup>9</sup>*

The debate thus represents a critical eye on the entire international drug control system—that is to say, on the coherence of the international conventions.

The central controversial issue has been criticism of the system’s key pillars: the absolute prohibition of the entire chain of production, distribution, and use of drugs; the unbalanced bias towards reducing supply; and the abusive and disproportionate enforcement of the law, all of which have made addressing this complex social problem into an absurd and inefficient war.

Absurd, because warlike deployment against natural or artificial substances is impracticable. Inefficient, because rather than solving the problem it has made it worse.

Strictly speaking, all of this is within the bounds of the metaphor of combat launched by the former President of the United States Richard Nixon (1969-1974) as a political approach to handle “Public Enemy No. 1” in the United States.

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<sup>9</sup> Idem.

The strategy in fact meant going beyond the country's borders to disproportionately attack the human beings who form the long drug chain, from the *campesinos* who sow and harvest poppy or coca leaves to the "drug dealers" and users.

The ineffectiveness of the warlike model, meanwhile, was revealed with the United States' military intervention in Afghanistan: after the measures adopted by the Taliban government in 2001, by 2012 the country had once again become responsible for 74 percent of world opium production, and today continues to be the principal route for heroin.<sup>10</sup>

One of the conclusions reached from the debate at UNGASS 2016 that provides new perspective on the issue was that **human beings and not substances are at the heart of the problem.**

This focus crosscuts the strategy for public policies and the therapeutic perspective for drug-related health problems. It is a challenge that represents a sea change from the traditional approaches applied to date.

## **Global control system called into question**

### **Looking through a human-rights lens**

The analysis of the market-regulation experiences cannot refrain from strongly criticizing a system that has been prohibitionist, rigid, and radical.

Neither can it evade the debates on the so-called "war against drugs." This angle, taken by most drug policies, gave rise to most of the violence and clashes that have occurred, as well as to the unjust enforcement of the law which led to prison overcrowding, among other effects.

The validity of international law, and appropriate compliance with all its instruments, also enters into the debate, as do the fundamental principles of coexistence, quite apart from the conventions that are an essential reference on the matter.

This debate has addressed the drug control system's due integration with human rights instruments and organizations, to which it must strictly adhere, as well as the public-health approach, the harm-reduction perspective, risk management, and a view of economic and social development linked to the issue.

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<sup>10</sup> <http://www.un.org/spanish/News/story.asp?NewsID=28008#.WiQUMEpKuUI>

The models and initiatives for regulating the cannabis market, and legal access to the substance, have been criticized, judged, and disputed. And on occasion, vilified and stigmatized as an irresponsible liberalization aimed at the legalization of all drugs.

While some well-founded criticisms have been made in a spirit of dialogue, contributing to and serving constructive debate and providing a critical view that offers input for follow-up, monitoring, and evaluation of the experiences, others, based on myths and legends, merely disparage, and contribute little to fruitful dialogue.

One of the most widespread criticisms sets forth as an unshakeable premise the idea that “drugs are not dangerous because they are illegal, rather they are illegal because they are dangerous,” an affirmation made in March 2008 by the then Executive Director of the United Nations Office on Drugs and Crime, Dr. Antonio Maria Costa, in his opening speech at the 51<sup>st</sup> session of the Commission on Narcotics Drugs of the United Nations Economic and Social Council, held in Vienna.

Costa’s statement has been one of many justifications for the prohibition of drugs, but many arguments against it have also emerged, such as the incisive conclusion reached by the psychologist and doctor of psychiatric epidemiology Thomas Babor and 12 collaborators in their outstanding work “Drug Policy and the Public Good,” published in 2010 and sponsored by the Pan American Health Organization (PAHO) and the Society for the Study of Addiction.

They noted that once drugs are made illegal, there is a point beyond which increases in enforcement and incarceration yield little added benefit. Many policymakers and most of the public see drug prohibition as essential; it increases drug prices, stigmatizes drug use, and on a large scale prevents corporate entities from promoting the sale of drugs through modern marketing techniques. But once these structural consequences of illegality are acquired and maintained through routine levels of law enforcement, increased coercion against drug traffickers yields small returns. This means that incarcerating large numbers of people does not result in drug price increases or decreased availability beyond what would occur with routine enforcement of antidrug laws. Further, there can be perverse impacts if law-enforcement resources are diverted to arresting and incarcerating drug traffickers, neglecting other crimes that require police attention.<sup>11</sup>

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<sup>11</sup> Drug Policy and the Public Good. Thomas Babor et al. Pan American Health Organization and the Society for the Study of Addiction. <http://onlinelibrary.wiley.com/doi/10.1111/j.1360-0443.2010.03049.x/full>

The international drug control system has already been in operation for over one hundred years. The political, intellectual, and scientific foundations that gave rise to it were inflexible, contained inconsistencies that continue to hold weight, and should be critically analyzed.

The system came out of the Shanghai Opium Commission, held in 1909; was furthered at the First International Opium Conference at The Hague in 1912; and would later be converted into the international treaties in force today: the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances and its 1972 Protocol, and the 1988 Vienna Convention.

Since its launch, the international drug control system has contained a regulatory model that faces a paradox: while maintaining control of and prohibiting the production, sale, and in some cases, use of certain drugs, at the same time it endeavors to guarantee access to other drugs that are beneficial to health.

The ultimate aim of the international conventions on drugs is set forth in the preamble to the Single Convention of 1961:

***“Concerned with the health and welfare of mankind,***

*Recognizing that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes...”<sup>12</sup>*

Note that the Spanish version of this same preamble slightly differs in meaning, instead reading *“Preocupados por la salud física y moral de la humanidad*

Psychoanalysts might argue that there was a Freudian slip between the two versions. Indeed, there is a considerable distance between the “physical and moral health” referred to in the Spanish version, and the “health and welfare of mankind” alluded to in the English one.

Perhaps paradoxically, the influence of a Puritan-style morality slipped into the version in Spanish, while the English version incorporates a broader idea; the concept of *welfare* is closer to the WHO’s definition of health as “a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.”

The Colombian drug expert Francisco Thoumi maintains:

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<sup>12</sup> [https://www.unodc.org/pdf/convention\\_1961\\_en.pdf](https://www.unodc.org/pdf/convention_1961_en.pdf)

<sup>13</sup> [https://www.unodc.org/pdf/convention\\_1961\\_es.pdf](https://www.unodc.org/pdf/convention_1961_es.pdf)

*“The international drug control system emerged in response to two important political events in the second half of the 19th century: increased opium addiction, mainly in China after the opium wars, and the need to regulate the international trade of that substance. The first attempt to address these issues internationally was made at the 1909 Opium Commission in Shanghai. There, Charles H. Brent, Episcopal Missionary Bishop in the Philippines and head of the United States delegation, proposed restricting the use of psychoactive drugs to medical and scientific purposes. China supported the United States position, but European countries with important pharmaceutical industries and the opium producers and exporters argued that the “quasi-medical” uses of opium were legitimate and that it would be better to regulate the markets rather than prohibit uses other than medical and scientific ones. The Commission produced a number of nonbinding recommendations and did not accept the Chinese and American proposal.”<sup>14</sup>*

It should be emphasized that all international control systems have been and are regulatory models and that advocates for the new cannabis regulation models are, in fact, proposing another system. They are not pushing for an end to control or oversight. Rather, they are proposing a change in how the market in which these substances circulate is controlled, still in line with international obligations.

It is true that these obligations, which arise from the text of the conventions, may lead to questioning of these experiences. In this regard, the textual interpretation of the conventions is being discussed, and demands have been made to the effect that they be interpreted in the context of other significant international instruments, fundamentally the ones on human rights.

There is also an ongoing political debate and dialogue on the potential for each state to resolve the challenges posed by the new circumstances according to its own cultures, religions, and institutional and legal traditions.

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<sup>14</sup> Medicina, Ciencia y la Interpretacion de las Convenciones Internacionales de drogas: Será que el Emperador esta Desnudo?[Medicine, Science, and the Interpretation of International Drug Conventions: Could it be that the Emperor has No Clothes?], Francisco E. Thoumi, UN International Narcotics Control Board.

## **Human rights in play**

The due integration of human rights instruments into the international control system has been a difficult, polemical issue. As Juan Carlos Garzón and Luciana Pol affirm in their work “The Elephant in the Room: Drugs and Human Rights in Latin America,”<sup>15</sup> the region and world’s current drug policy must be revised in order to address systematic human rights violations.

At the 51<sup>st</sup> Session of the CND, held in Vienna in 2008, Declaration 51/12<sup>16</sup> was passed after a vote that followed an intense discussion that threatened to break the “Vienna Consensus.”

As Garzón and Pol (op. cit.) indicate:

*It was only in 2008 that the UN Commission on Narcotic Drugs (CND) even adopted a resolution on human rights (...) And approval for this resolution only became possible once references to the death penalty, the rights of indigenous peoples and specific UN human rights mechanisms had been removed. (...) Since that date though, human rights protections have appeared more frequently in resolutions and declarations.*

This declaration was presented by Uruguay and cosponsored by Argentina, Bolivia, the European Union, and Switzerland.

This presence of international human rights law has been incorporated as a fundamental reference in CICAD’s Hemispheric Drug Strategy 2010-2015 and in all declarations on this matter that have been processed through the OAS.

The public hearing held on April 23, 2014, with the Inter-American Commission on Human Rights (IACHR) as part of its 150<sup>th</sup> Session, at the request of 23 human rights organizations, was highly important.

Resolution AG/RES. 2868, unanimously passed at the forty-fourth regular session of the OAS General Assembly held in June 2014 in Asunción, Paraguay, is also clearly relevant: *AG/RES. 2868 (XLIV-O/14) – Promotion and Protection of Human Rights in the Search for New Approaches and Effective solutions in the Development and*

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<sup>15</sup> <http://sur.conectas.org/en/elephant-room-drugs-human-rights-latin-america/>

<sup>16</sup> Strengthening cooperation between the United Nations Office on Drugs and Crime and other United Nations entities for the promotion of human rights in the implementation of the international drug control treaties [https://www.unodc.org/documents/commissions/CND/Drug\\_Resolutions/2000-2009/2008/CND\\_Res-2008-12e.pdf](https://www.unodc.org/documents/commissions/CND/Drug_Resolutions/2000-2009/2008/CND_Res-2008-12e.pdf)

*Implementation of Policies for Addressing the World Drug Problem in the Americas.*<sup>17</sup>

Lastly, but equally important, was the inclusion of the document “Contribution of the Human Rights Council to the special session of the General Assembly on the world drug problem of 2016” in the UNGASS 2016 deliberations.<sup>18</sup>

**Pioneering human rights precedent: Freedom of religion (USA 1st Amendment)**

The United States Supreme Court of Justice’s 2006 ruling on the case involving the União do Vegetal (UDV), a religious organization that uses ayahuasca tea (hoasca) in its services, is very significant.

Federal agencies had seized shipments of the tea received by the UDV, invoking the Controlled Substances Act (CSA) and the international commitments derived from the international conventions that listed DTM (one of the components of ayahuasca) as a Schedule 1 controlled substance.

The UDV in turn invoked the first amendment and the Religious Freedom Restoration Act (RFRA), a 1993 law that had been amended to allow indigenous tribes and peoples to use peyote for religious purposes.

The United States Supreme Court of Justice decision on “Gonzales v. O Centro Espirita Beneficente União do Vegetal (UDV)”<sup>19</sup> unanimously confirmed the validity and applicability of the RFRA, rejected the federal government’s appeal, and upheld the rulings of the courts that had established preliminary injunctions to protect the UDV’s sacramental use of ayahuasca. The Supreme Court stated: “The Government did not submit any evidence addressing the international consequences of granting the UDV an exemption,” thus arriving at the conclusion that “Applying that [compelling interest] test, we conclude that the courts below did not err in determining that the Government failed to demonstrate, at the preliminary injunction stage, a compelling interest in barring the UDV’s sacramental use of hoasca.”

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<sup>17</sup> <http://graduateinstitute.ch/files/live/sites/iheid/files/sites/globalhealth/ghp-new/Events%202014/17%20June/17%20November/OEA-Resolution-HR-Jun2014.pdf>

<sup>18</sup> [http://ap.ohchr.org/documents/E/HRC/d\\_res\\_dec/A\\_HRC\\_28\\_L22.doc](http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_28_L22.doc)

<sup>19</sup> <http://caselaw.findlaw.com/us-supreme-court/546/418.html>

Commentary in the bulletin of the American Bar Association:

[http://www.americanbar.org/publications/preview\\_home/publiced\\_preview\\_summary\\_2005\\_2006\\_r.html](http://www.americanbar.org/publications/preview_home/publiced_preview_summary_2005_2006_r.html)

This decision meant that a human right, such as freedom of religion, could prevail over a control system.

### **Prior, not so prior**

Discussion of regulated cannabis markets must draw from some of the scientific premises drawn up at several academic research centers. These premises constitute an essential point of reference, although other scientific debates are also taking place.

Moreover, while some assertions that demonize the plant and others that deify it claim to be scientific knowledge, they are not in fact backed by research or even by the pretense thereof, which is much worse.

A serious debate must bring together and put into play all of the possible scientific viewpoints, including perspectives from the social sciences, economics, anthropology, sociology, psychology, and all human practices that can and do provide analysis and guidance.

The following are some of the major publications and research institutions:

1. **“Marijuana and Medicine Assessing the Science Base,”** edited by Joy, J.E.; Watson, S.; and Benson, J.A. The 1999 publication of this article in the USA enabled the debate on cannabis to be upheld by serious foundations that have not been demonized.<sup>20</sup>
2. **“Marijuana as Medicine, the Science Beyond the Controversy,”** by Alison Mack and Janet Joy (19). This work is also from the National Academies of the Sciences, Engineering, and Medicine; it was published in 2001 and is considered a leading reference on the issue.<sup>21</sup>
3. **“The Health effects of cannabis and cannabinoids. The current state of evidence and recommendations for research.”** This is the most recent work on the subject, published in February 2017.<sup>22</sup>

Professor Raphael Mechoulam and his teams at the Hebrew University of Jerusalem have been pioneers in this field of research. It was he who isolated and determined the structure and synthesis of the molecule delta-9-tetrahydrocannabinol (THC), the principal active ingredient of marijuana (*cannabis sativa*).

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<sup>20</sup> <https://www.nap.edu/catalog/6376/marijuana-and-medicine-assessing-the-science-base>

<sup>21</sup> <https://www.nap.edu/read/9586/chapter/1>

<sup>22</sup> <https://www.nap.edu/read/24625/>

Mechaoulam, whose works on the endocannabinoid system<sup>23</sup> were also pioneering, has published more than 300 articles. In collaboration with the Hebrew University of Jerusalem, he has a long track record of research focusing on the medicinal uses of cannabis, with highly significant findings on all aspects of the plant. Moreover, the aforementioned university recently launched the Multidisciplinary Center on Cannabinoid Research.

In April 2014, an **international forum to review the medical and therapeutic uses of cannabis** was held in Montevideo, Uruguay. It was organized by the Washington Office on Latin America; the Drug Policy Alliance; the Transnational Institute; the Friedrich-Ebert-Stiftung Foundation in Uruguay; and Uruguay's Ministry of Public Health, National Drug Board, and University of the Republic.

The forum's final report gives an account of the current level and state of research.<sup>24</sup>

## **Pivotal issues under discussion**

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### **The new regulatory approaches**

#### **Discussion I**

#### **Experiences, scientific knowledge, evaluations**

The debate and its terms must be logical, based on scientific knowledge, and geared towards dialogue on diverse schools of thought, approaches, and disciplines.

But if we are to discuss “medical and scientific uses” and “scientific evidence,” we must first engage in a prior intellectual exercise. According to researcher Francisco E. Thoumi (who today is a member of the International Narcotics Control Board, INCB), when we talk about science, we must include the social sciences. When we talk about medicine, we must analyze what type of medical approach we are discussing.

At any rate, the scientific aims of the research and the analysis of good practices will lead us to scientific evidence as the expression of broad and inclusive knowledge.

At CICAD's 61<sup>st</sup> regular session, held in April 2017 in Washington D.C., the Observer from the Russian Federation stated the following:

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<sup>23</sup> [https://en.wikipedia.org/wiki/Raphael\\_Mechoulam](https://en.wikipedia.org/wiki/Raphael_Mechoulam)

<sup>24</sup> [https://www.wola.org/sites/default/files/Drug%20Policy/informe\\_Final.pdf](https://www.wola.org/sites/default/files/Drug%20Policy/informe_Final.pdf) See list of participants at the end of this chapter.

*“We are concerned about the experiments with legalization being conducted in some countries and regions. We feel that the health, well-being, and dignity of human beings should not be subject to experimentation. The facts based on a scientific approach clearly confirm that “drug liberalization” does not solve social problems, but rather dangerously worsens them. At the same time, we must remember our obligations under the antidrug conventions (of 1961, 1971, and 1988), which, according to the decisions made by UNGASS 2016, are jointly with other legal documents, the cornerstone of the international control system.”<sup>25</sup>*

It is the spirit of freedom of opinion that made it possible for even an Observer from outside the Hemisphere to make such statements, and that is healthy—provided, of course, that the issue can now be freely debated, with the assumed scientific foundations set out.

We are lucky to have the opportunity to analyze his statements in this report. At the very least, the Russian Observer had the virtue of openly asserting what others have not dared to express.

Strictly speaking, it is difficult to agree with the assertion that “The facts based on a scientific approach clearly confirm that ‘drug liberalization’ does not solve social problems,” given that the ‘drug liberalization’ experiences have yet to be evaluated. It follows that his statement is not backed by a single social, healthcare, or political practice.

Furthermore, there are other international documents in place besides the three conventions cited, namely, the human rights instruments, which have been fodder for intense debate, among other reasons because they are systematically violated in the name of the antidrug crusade. These violations include practices like the death penalty, the use of forced labor camps for the alleged recovery of addicts, the disproportionate enforcement of criminal laws, the omission of healthcare, and restrictions on access to opioids and other drugs for medicinal use and palliative care.

It seems outlandish to imagine that the “experiments” would be performed in the various jurisdictions without prior analysis of their costs and benefits and pros and cons, or assessment of diverse variables before and after implementation. Such an

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<sup>25</sup> <http://www.cicad.oas.org/apps/Document.aspx?Id=4219>

implementation would not only be reckless but also ill-advised for the very ends sought by the new regulations.

In fact, vitally important assessments and recommendations are being drawn up based on the experiences of the states of Washington, Colorado, Alaska, and Oregon, and they will be discussed in later chapters.

To cite just one of these analyses, in September 2016 the CATO institute published the report “Dose of Reality: The Effect of State Marijuana Legalizations.”<sup>26</sup>

*“Supporters and opponents of such initiatives make numerous claims about state-level marijuana legalization. Advocates think legalization reduces crime, raises tax revenue, lowers criminal justice expenditures, improves public health, bolsters traffic safety, and stimulates the economy. Critics argue that legalization spurs marijuana and other drug or alcohol use, increases crime, diminishes traffic safety, harms public health, and lowers teen educational achievement. Systematic evaluation of these claims, however, has been largely absent. This paper assesses recent marijuana legalizations and related policies in Colorado, Washington, Oregon, and Alaska. Our conclusion is that state marijuana legalizations have had minimal effect on marijuana use and related outcomes.”*

In turn, Technical Report No. 1 of Uruguay’s Scientific Advisory Committee, created to monitor and evaluate Law 19,172 on the Regulation and Control of Cannabis, addresses the adoption of lines of analysis for continuous evaluation of the experience.

Especially highlighted among the “*challenges identified*” in the Committee’s design were the needs to:

- *improve the relationships of coexistence altered by illegal marijuana trafficking;*
- *reallocate economic resources used unsuccessfully to repress the traffic and use of this drug;*
- *decrease the percentage of individuals deprived of liberty or prosecuted for the illegal possession and trafficking of cannabis;*

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<sup>26</sup> Angela Dills, Sietse Goffard, and Jeffrey Miron. Dose of Reality: the Effect of State Marijuana Legalizations <https://www.cato.org/publications/policy-analysis/dose-reality-effect-state-marijuana-legalizations>

- *fairly enforce the applicable legal regulations; and*
- *have the State take on the governance of drug policy.*

The entire report, found at this link, is worth examining with regard to assessment:

[http://www.infodrogas.gub.uy/images/stories/pdf/cca\\_informe\\_20150515.pdf](http://www.infodrogas.gub.uy/images/stories/pdf/cca_informe_20150515.pdf)

Some aspects of the new regulation models have been addressed in works comparing them with the operation of cannabis social or membership clubs, a model that is already in place in several regions of Spain, other European countries, and Uruguay.

One recent and recommended publication on this matter is “Regulating Cannabis Social Clubs: a comparative analysis of legal and self-regulatory practices in Spain, Belgium, and Uruguay,” by Tom Decorte, Mafalda Pardal, Rosario Queirolo, Maria Fernanda Boidi, Constanza, Sánchez Avilés, and Óscar Parés Franquero.<sup>27</sup>

The Dialogue with Civil Society at CICAD’s 61<sup>st</sup> regular session on new indicators presented another aspect of this new challenge.<sup>28</sup>

## **Discussion II**

### **Market regulation, law enforcement, war**

Market regulation is frequently thought to be opposed to law enforcement. It is often alleged that advocates for “drug legalization” have accepted defeat by organized crime and, at the height of naiveté, believe that the issue will magically resolve.

Those who make such allegations emphasize, quite rightly, the scale of organized crime and its penetration into several tiers of society and the states, handling of multimillion-dollar amounts of money, and almost absolute control of large regions.

These critics feel that advocating for market regulation weakens the lawful repression and prosecution of transnational organized crime.

However, many action plans are in place and commitments have been made to those ends, at the hemispheric and international levels.

It is not due to a lack of international instruments, political will, or budgets that are disproportionately geared towards reducing supply that actions against organized crime will be weakened.

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<sup>27</sup> [http://www.ijdp.org/article/S0955-3959\(17\)30001-4/fulltext](http://www.ijdp.org/article/S0955-3959(17)30001-4/fulltext)

<sup>28</sup> <http://www.cicad.oas.org/apps/Document.aspx?Id=4236>

The OAS **Declaration on Security in the Americas**,<sup>29</sup> adopted in October 2003 in Mexico, and the hierarchy and action plans advanced by the OAS Secretariat for Multidimensional Security at the international-cooperation level, wax eloquent on the vital importance of addressing these threats.

According to Kofi Annan, the **UN Convention against Transnational Organized Crime**, from the year 2000, is a tool at the service of humanity:

*“The same technological means that foster globalization and the transnational expansion of civil society also provide the infrastructure for expanding global networks of ‘uncivil society’—organized crime, drug traffickers, money launderers and terrorists.”*<sup>30</sup>

Equally important are the international and inter-American commitments against corruption, which is closely associated with the drug problem, not because its consequences exacerbate the drug problem but rather because it promotes cultural and institutional environments that serve as prior conditions, germinators for drug issues.

The **UN Convention against Corruption**<sup>31</sup> and the **Inter-American Convention against Corruption**<sup>32</sup> form the multilateral political and legal framework that sets the agenda on corruption.

There have been some issues in getting all states to ratify and deposit international and inter-American tools on the manufacturing of and trafficking in firearms, despite having already signed them.

This is occurring, for example, with the **Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials**.

Certain laws and constitutional amendments sometimes hinder the full applicability of these instruments. This is one more chapter in the conflict between different constitutional rights; for example, the Second Amendment to the Constitution of the United States grants the right to own and bear arms.

This constitutional right, originated with most radical legacies of the Revolution, suggests that the population have arms to potentially rise up against the established

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<sup>29</sup> [http://www.oas.org/en/topics/multidimensional\\_security.asp](http://www.oas.org/en/topics/multidimensional_security.asp)

<sup>30</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N97/227/42/PDF/N9722742.pdf?OpenElement>

<sup>31</sup> [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

<sup>32</sup> [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_B-58\\_against\\_Corruption.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp)

powers, and has clearly caused significant damage to the population of the United States. But beyond the historical national controversy over the problems with it and the mechanisms for regulating it, its persistence holds weight when it comes to compliance with highly important international obligations.

**“The war is over.”<sup>33</sup>**

*“There is always an easy solution  
to every human problem—  
neat, simple, and wrong.”  
H. L. Mencken*

Drug policies’ unbalanced approach has been defined as a “war.” And on that basis, agencies, international cooperation, strategy, intelligence, and actions have been deployed as if it were an all-out conflict.

Attempts to add balance to established plans have been unsuccessful. This has become a subject for debate due to the budgets and core political focus, and the social unrest resulting from the escalation of violence in which the states have participated.

It is a false dilemma, a new fallacy, to suggest that the regulatory or legalization models oppose fair law enforcement and the need for proportionate legal regulation that respects rights and guarantees. On the contrary: a fundamental economy of the strength of the state means moderating the severity with which the law is applied, to ensure it does not become an ineffective instrument.

As Babor stated, there is a point at which increasing state coercion no longer yields results.

Furthermore, the rationale that interdiction and the current prohibition of the market make drugs harder to access and decrease supply as a result of increased prices, does not appear to be based in reality.

Far from it, in fact—rather, this strategy appears to not only make the situation more challenging but has also become another variable exacerbating the violence implicit in attempts to obtain drugs.

*“The bellicose language deployed in the drug problem is ambiguous and paradoxical. In principle, because we cannot address complex social problems and illegal markets that operate with their own formal and informal laws with the*

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<sup>33</sup> Title of a film by Alain Resnais from the book and script by Jorge Semprun.

*laws of war. In second place, because in war terms, it is an ill-conceived conflict and choice of specific model: all-out war.*

*Let us recall that under other approaches, the supreme art of war, as Sun-Tzu affirmed, is to subdue the enemy without fighting. But under this current approach it seems like we have engaged in thousands of battles, with hundreds of thousands of casualties; we have corrupt and dispirited armies, rearguards that have not been deployed and are hardly ready for a drawn-out battle; and we have poured economic and financial resources into the front lines with no evident gain.*

*The battlefield has grown larger and larger as the enemies have multiplied. The conflict is with a long chain: large-, medium-, and small-scale producers; large-, medium-, and small-scale illegal traffickers; and as if that were not enough, users.*

*No timely alliances have been formed to isolate the most powerful enemy. The focus is not placed on the recovery of those considered 'enemies' nor on the rearguard of use, where drug trafficking takes place. Insufficient funds are allocated to prevention and treatment.*

*The crowded jails are in fact training grounds for future combatants who will rise in rank. The violation of the laws of war, the lack of respect for the dignity of the 'vanquished,' the offenses carried out against 'the enemies' multiply and feed hate and a thirst for revenge. Hardly any development-related actions are carried out with the civilian population, to win it over for the 'holy' cause. Rather, due to spraying and forced eradications the civilian population is pushed to ally itself with the enemies. As a military technique, this is a disaster.<sup>34</sup>*

In the prologue to his work “**Reprimir o regular: el falso dilema de las políticas de drogas**” [Repress or regulate: the false dilemma of drug policies],<sup>35</sup> published by the **Friedrich Ebert Stiftung Foundation** in September of 2015, the Colombian political scientist and researcher Juan Carlos Garzón Vergara states:

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<sup>34</sup> Milton Romani Gerner. Geopolítica desde el problema de drogas: cambio de paradigma y descentramiento positivo. [Geopolitics from the drug problem: paradigm shift and positive decentralization]. Geopolítica das Drogas [Geopolitics of Drugs]. Academic text. Geopolitics of Drugs seminar, Palacio Itamaraty. Rio de Janeiro. September 17, 2010.

<sup>35</sup> <http://library.fes.de/pdf-files/bueros/kolumbien/12266.pdf>

*“There is not only one connection among drugs, violence, and crime. Where this relationship is strongly manifested, there is typically a weak institutional presence and juxtaposition with other criminal activities.*

*Moreover, State interventions, with the aggressive and deliberate enforcement of drug laws, can become a disruptive factor that creates conditions for increased violence and crime.*

*Antidrug strategies have had an impact on the makeup and operation of criminal organizations. However, this has not led to substantial changes in the size of drug markets. Further, the interventions have had modest impacts on reducing the vulnerabilities of areas where various criminal economies are still emerging.*

*Interventions in illegal drug markets must move from a model focused on reducing the size of the illicit market to one that prioritizes managing it, thus minimizing the harm produced. Based on this premise, this document proposes the adoption of temporary impact-mitigation measures.*

*The choice between prohibiting and regulating is a false dilemma. There are several options for dealing with the illegal drug market, and in evaluating them, we must take into account their expected positive effects as well as undesired consequences. At least three nonexclusive scenarios have been identified: 1. the domestication of the criminal market; 2. the weakening of the criminal economy through legal economic alternatives; 3. state regulation of the market.*

*Regulation should be considered in its just measure, without overestimating its potential effects on reducing violence and crime, especially if it is not accompanied by strengthened state capacities.*

### **Discussion III**

#### **Unity in diversity. A little epistemology**

All perspectives, all works with scientific aims, are inevitably biased. In the sciences, the observer’s point of view must be clearly specified, and his or her involvement in the subject, duly noted. There is no neutral science. It is well known that the consensus held in a scientific era introduces an element of prior judgment, an inevitable direction of inquiry.

The American physicist and philosopher Thomas Khun introduced the (oft misused) concept of paradigm, defining it as the basic assumptions held by all scientists that at a

certain point are revolutionized and changed, not because they are added to or accumulate, but due to a paradigm shift.

We must, therefore, intend to be objective in our work, while remaining aware that we have an asymptotical<sup>36</sup> approach to certain evidence. Even the concept of evidence is polemical. And therefore in science, more so than in politics, the confrontation of ideas, the healthy competition of schools of thought, and the performance of all types of serious research, are advisable and desirable if we are to discover new horizons.

If in the so-called hard sciences, the uncertainty principle was a milestone for quantum physics, there is all the more reason for us to accept in the social sciences that we are immersed in the field or object of study and are marked by multiple unavoidable preexisting desires, interests, and ideas. It is not out of good will that we propose to be more “objective,” nor is it because we use supposedly unobjectionable tools that we do not suspect of malicious intent.

Rather, the issue is that it is impossible to determine the direction of an electron, because in measuring or observing it, we modify its path. In quantum physics, this issue goes much deeper. In psychotherapy, as in other health disciplines, the intention to remain objective and keep an ideal distance, under the pretext of not contaminating the field, is already outdated. We will not delve deeper into these concepts here, but have set them out in order to drive home that the debate on markets and the drug problem is political, that it is inevitably supported by scientific data, and that when we speak of science we are referring to all the sciences, including the social sciences.

This does not mean confounding ideology and science—and not because we have rid ourselves of our ideologies to put on the white tunic of science. Rather, because research and scientific conclusions should be rigorous, should be differentiated from ideology, and should shine with logic and forcefulness. But even so: ideological debate, especially over the design of public policies, is not only necessary but also inevitable and even desirable. After all, in the drug-problem field, there are several ideological components associated with the world we aspire to and the type of coexistence that we offer each other.

Let us recall what Thoumi wrote about the debate that gave rise to the international control system, quoted above.<sup>37</sup> This debate emerged out of a clear political intention

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<sup>36</sup> Asymptotic: Adj. Geom. Said of a curve. Continuously approaching a straight line or another curve without ever reaching it (translated from the RAE).

<sup>37</sup> *Medicina, Ciencia y la Interpretacion de las Convenciones Internacional de drogas. ¿Será que el Emperador está desnudo? [Medicine, Science, and the Interpretation of International Drug Control Conventions: Could it be that the Emperor has No Clothes?]*, Francisco E. Thoumi.

with strong religious underpinnings, after a moral and medical humiliation inflicted on China by the powers of the time.

Biases must be clearly specified, and a hemispheric discussion involving very different approaches, experiences, cultures, histories, and institutional frameworks must be based on respect. To be precise, unity in diversity is the principle that guides this report.

## **Discussion IV**

### **Premises of the debate. Formal logic or fallacies**

This report is based on the premise that some basic assumptions have already been incorporated into the debate on drugs being held by the OAS and other multilateral organizations. These assumptions also encompass the states, civil society, and political parties.

Firstly, the most obvious: there are other very strong initiatives in addition to the ongoing debate.

These initiatives not only involve forms of regulation and legalization but also relevant medical uses and intense research thereof.

At the same time, the debate addresses the existing economic and social development options for several regions and states and the opportunity to substitute the illicit economy of the production, marketing, and purchase of cannabis for a different, legal, profitable one favorable to development.

Problems like this debate can be solved with good strategizing, based on the rules of formal logic. According to these rules, when certain premises have been validated, certain conclusions are inevitably deduced. The validity and relevance of the premises can be discussed, and the debate will be worthwhile as long as it respects formal logic as such. Of course, it is possible to slide towards paradoxical logic. But we will not address that option in this report, as in order to do so we would have to make another epistemological turn that would be out of place here.

Arguing over the obvious premise that cannabis is a harmful substance would not be a serious debate; it is precisely because of this fact that we are discussing the best way to control it.

In terms of formal logic, we do not need to list all of the types of harm possibly caused by this plant, although they are often exaggerated without any serious, valid scientific basis.

We are not disputing cannabis' psychoactive capacity, although its classification as a Schedule 1 substance controlled by the conventions alongside other, more toxic substances, is not only debatable but should immediately be revised.

It should be noted that due to dogmatic rigidity, the virtues of the many components of cannabis and its different varieties have never been fully explored. Many years ago, serious scientists demonstrated aspects of THC's effects and the benefits of cannabinoids for diverse medical uses. As occurs with opioids and other pain-relieving substances, universal access to these medical and scientific uses has not been duly guaranteed.

This prohibition, which represents the denial of a fundamental human right, is another failure of the prohibitionist system that paradoxically is never among the premises put forth by those who oppose the new market regulation. It always bears recalling that *pharmakon*, the Greek term that precedes the Celtic word drug, expresses paradoxical ambivalence: it simultaneously means both medication and poison.

Market-regulation initiatives are not based on the premise that cannabis is an innocuous, risk-free substance with no demonstrated harmful effects. But it must also be noted that the debate opens the doors to medical uses that up until now have been blocked.

Furthermore, these initiatives do address the need to issue or create potential regulations, like the ones placed, without clear direction, on alcohol and tobacco. Neither of these legal substances is regulated under the international control system—which shows that the idea that the system is health-based is totally incoherent.

Along these lines, it should be noted that tobacco and alcohol accounted for 4.1 and 4.0 percent of the burden of disease in 2000, according to a 2004 WHO report.<sup>38</sup>

More recent data from the entity's sources summarize this panorama, noting that tobacco kills almost six million people every year. **Unless urgent measures are taken, annual tobacco-related deaths could reach more than eight million in 2030.**

The following are the WHO's figures and data on alcohol:

- *Worldwide, 3.3 million deaths every year result from the harmful use of alcohol; this represents 5.9% of all deaths.*

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<sup>38</sup> [http://www.who.int/substance\\_abuse/publications/en/Neuroscience\\_E.pdf](http://www.who.int/substance_abuse/publications/en/Neuroscience_E.pdf)

- *The harmful use of alcohol is a causal factor in more than 200 disease and injury conditions.*
- *Overall, 5.1% of the global burden of disease and injury is attributable to alcohol, as measured in disability-adjusted life years (DALYs).*
- *Alcohol consumption causes death and disability relatively early in life. In the age group 20-30 years, approximately 25% of the total deaths are alcohol-attributable.*
- *There is a causal relationship between harmful use of alcohol and a range of mental and behavioral disorders, other noncommunicable conditions, as well as injuries.*
- *The latest causal relationships have been established between harmful drinking and incidence of infectious diseases such as tuberculosis as well as the course of HIV/AIDS.*
- *Beyond health consequences, the harmful use of alcohol brings significant social and economic losses to individuals and society at large.<sup>39</sup>*

The Inter-American Observatory on Drugs has verified these hypotheses on the levels of consumption and potential harm of licitly circulated substances, including over-the-counter and prescription psychopharmaceuticals and antidepressants, which are in third place overall for prevalence of use.

### **Paralogism of false opposition**

In logic, a fallacy is an argument that appears to be valid but is not. According to Wikipedia, some fallacies are committed intentionally, to persuade or manipulate, while others are committed unintentionally out of ignorance.

The statements “*drugs are controlled because they are dangerous and they are not dangerous because they are controlled,*” and “*marijuana is harmful, therefore, it should be prohibited*” are paralogisms of false opposition, or false dilemma fallacies.<sup>40</sup>

They are also recidivist paralogisms, because it is not necessarily deduced from the potential seriousness of a substance that it must be controlled by criminal law, which is the dominant form of control in our current system. Nor is it deduced that possession should be criminalized.

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<sup>39</sup> <http://www.who.int/mediacentre/factsheets/fs349/en/>

<sup>40</sup> [https://en.wikipedia.org/wiki/False\\_dilemma](https://en.wikipedia.org/wiki/False_dilemma)

The compelling fact is that other substances that are not subject to international control and are harmful to human beings are controlled and regulated in other ways.

In some cases, like with tobacco, the regulatory models applied have been successful, not as a result of total prohibition or criminalization of use, but due to intelligent plans that regulated zones, advertising, price, and a network of smoking cessation clinics.

These plans were successful while respecting the rights of third parties and not encroaching on the rights of individuals.

Regulation of alcoholic beverages is more difficult and complex, given that there are a variety of more or less successful models. It continues to be a challenge, but nobody would dream of returning to total prohibition, which clearly did not prevent consumption and, furthermore, fostered the emergence of well-known criminal groups that manufactured and trafficked alcohol.

It is also necessary to incorporate the idea that risks can be managed with selective and suitable prevention, using tools that mitigate damages and offer life skills with other horizons beyond simple universal information and moralistic prohibition.

If the text of the international conventions is taken at face value, the new regulatory models may be questioned, and in fact, they are. This questioning not only takes into account how these models are balanced with sovereign state decisions, but also considers their necessary adherence to other significant international instruments, principally on international human rights law.

Continuing to insist on the harm caused by cannabis is a fallacy in bad faith.

Whether the circulation of special commodities (commercial merchandise and substances with psychoactive effects) with potential risks for individual and group health is licit or illicit, is a policy issue: an issue of criminal policy, healthcare policy, and control methods.

All the same, these options were historically agreed upon, despite their many inconsistencies (tobacco and alcohol are merchandise/substances that are used more and do more damage than cannabis) and criteria that were consolidated in the conventions on drug control and the organizations created for control.

The conventions must be adhered to. They should also be sufficiently clear and consistent so that they can be applied with balanced, comprehensive criteria in all their facets: human, medical, rights and guarantees, proportionality between the harm done

and the punishment, effective law enforcement, scientific and medical uses guaranteed with a public-health perspective (that insists on the role of the social sciences).

Some states have interpreted the conventions, for example, to allow them to apply the death penalty for minor drug offenses. Others have interpreted them in line with human rights, public health, development, and the conventions themselves, to promote new approaches, including market regulation.

The UNGASS 2016 document intends to generate a new diversity-based consensus, affirming that the conventions are flexible enough to address the new challenges.

Neither the public-health approach nor organizations specialized in the global drug problem have ever tried to seriously substantiate why psychoactive, powerfully addictive substances like tobacco and alcohol are not subject to the same level of control, why they are not included on the conventions' Schedule I, II, III, or IV lists, why they do not merit INCB warnings, nor why they are not included in drug use statistics and testing.

CICAD, which has included these substances in its prevalence samples for some time now, represents an exception to this latter point.

Given the foregoing, the argument of the real, potential, or imagined damage caused by cannabis or other drugs as a premise for substantiating the current control system is doubly fallacious.

*“It is undoubtedly possible to formulate other hypotheses different from the ones already set forth to explain the insistence on restricting drug policies in this way, excluding any type of social-science-based alternative policy. In fact, for decades, the individuals who participated in interpreting and implementing the Conventions have assumed that there are some ‘basic’ or ‘hard’ sciences that are true sciences, while the social sciences are ‘soft’ and as mere speculations, should not be taken seriously. It follows from this that drug policies have tended to be developed by doctors and ‘hard’ scientists. The logic of this position is simple: medicine makes it possible to establish how psychoactive drugs negatively affect the brain and central nervous system, and that knowledge gives toxicologists and other doctors, backed by other ‘hard’ sciences, the power to formulate drug policies applicable to all humanity in any circumstances.”* Thoumi, op. cit.

### **Other sources for an old debate**

The insertion of the prohibitionist model into the international drug control system is nothing new. Neither is discussion of the drug regulation model.

In fact, in the United States, well-known figures in economic thought and the liberal school were already outlining other options a long time ago. They are joined by many authors and academics from Colombia, Mexico, and other countries, who, vexed by the problem or driven by a healthy vision of human phenomena, have been contributing reflections on this issue for some time.

The liberal economists and professors Milton Friedman and Gary Becker, both Nobel Prize winners for economics, burst onto the international scene from the United States in 1972, with points of view favoring legalization of all drugs. Milton Friedman's open letter to William Bennett, then-director of the Office of National Drug Control Policy, published in the Wall Street Journal in 1989, is persuasive:

*“Dear Bill:*

*In Oliver Cromwell’s eloquent words, ‘I beseech you, in the bowels of Christ, think it possible you may be mistaken’ about the course you and President Bush urge us to adopt to fight drugs. The path you propose of more police, more jails, use of the military in foreign countries, harsh penalties for drug users, and a whole panoply of repressive measures can only make a bad situation worse. The drug war cannot be won by those tactics without undermining the human liberty and individual freedom that you and I cherish. You are not mistaken in believing that drugs are a scourge that is devastating our society. You are not mistaken in believing that drugs are tearing asunder our social fabric, ruining the lives of many young people, and imposing heavy costs on some of the most disadvantaged among us. You are not mistaken in believing that the majority of the public share your concerns. In short, you are not mistaken in the end you seek to achieve.*

*Your mistake is failing to recognize that the very measures you favor are a major source of the evils you deplore.”<sup>41</sup>*

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<sup>41</sup> [https://miltonfriedman.hoover.org/friedman\\_images/Collections/2016c21/WSJ\\_09\\_07\\_1989.pdf](https://miltonfriedman.hoover.org/friedman_images/Collections/2016c21/WSJ_09_07_1989.pdf)

In “The Economic Theory of Illegal Goods,” Gary Becker and Kevin Murphy, one of Becker’s most distinguished disciples, flesh out an analysis of the economy of illicit markets and reach conclusions similar to their colleague Friedman’s.

A bibliography on this issue from diverse disciplines—economics, politics, anthropology, sociology, law, etc.—would be never-ending.

In Colombia and Mexico, to cite countries where the drug problem has been and continues to be pressing, there is also profuse academic output questioning the current hegemonic drug control system.

## **In summary**

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Headlines are increasingly occupied by events related to the regulation and legalization of cannabis. Such events are taking place in the Americas and throughout the world faster than agreements can be reached (and often they are not) in multilateral organizations.

Despite the criticism and controversies over conventionality, these changes are occurring at a dizzying rate. It surprised the world that the first few jurisdictions to implement legal access for recreational use of marijuana have emerged from the very heart of the United States, and with the popular vote. From the United States itself, long-time leader and champion of the most rigid prohibitionist model; the country that brought the war outside its borders and is noted to be one of the most responsible for the demand for drugs; the country where, furthermore, the prison crisis due to the criminal prosecution of users is facing new challenges and obstacles that have given rise to the discussion of new approaches.

The initiatives to legalize recreational use of marijuana emerged there, it bears recalling, after widespread but hushed medicinal use of the plant in several other states of the Union.

Even more striking is how the new state laws contradict federal law and how the central government has taken no action (for several reasons that have a long history in the country) against the already implemented initiatives.

Some voices have well-founded grounds for speculating that the direction taken by the eight states and Washington, D.C., which have already implemented cannabis legalization policies, is irreversible.

It seems improbable that the central government will directly oppose the ongoing initiatives. Doing so would, moreover, go against the traditions of vast sectors of the American political system, always wary of the power of the central government and defensive of the states' independence.

The letter sent to President Donald Trump from the governors of Washington, Colorado, Alaska, and Oregon is telling.<sup>42</sup>

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<sup>42</sup> <http://thecannabisindustry.org/wp-content/uploads/2017/04/AK-CO-OR-WA-marijuana-letter-4-3-17.pdf>

The initiative in Uruguay (Law 19,172 of December 2013) followed the experiences in the United States, and the medical use of marijuana has been approved in Argentina, Chile, Colombia, Jamaica, Mexico, and Puerto Rico. These countries thus join the 23 states of the Union, plus Washington, D.C., where medical use has already been legalized.

Canada also has an ongoing initiative to be implemented in 2018.

The Special Session of the United Nations General Assembly held in April 2016 in New York represented a significant turning point in the international consensus and has a lot to do with the attitude of the global community towards these experiences.

The issue was not addressed as such; it was not directly debated, defended, or condemned.

Rather, the issues addressed in the session and in all of the preparatory stages involved a number of related questions that were vitally important for a new international consensus.

However, the session's final document reflects a unity of action against the drug problem and urges the flexible admission of the diversity of national and subnational paths and options that are already being implemented or planned:

*“We reaffirm our unwavering commitment to ensuring that all aspects of demand reduction and related measures, supply reduction and related measures, and international cooperation are addressed in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights, with full respect for the sovereignty and territorial integrity of the States, the principle of non-intervention in the internal affairs of States, all human rights, fundamental freedoms, the inherent dignity of all individuals and the principals of equal rights and mutual respect among States; (...)*

***We recognize that there are persistent, new and evolving challenges that should be addressed in conformity with the three international drug control conventions, which allow for sufficient flexibility for States parties to design and implement national drug policies according to***

***their priorities and needs, consistent with the principle of common and shared responsibility and applicable international law.***<sup>43</sup>

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<sup>43</sup> Outcome document of the 2016 Special Session of the United Nations General Assembly on the World Drug Problem (New York, April 2016): OUR JOINT COMMITMENT TO EFFECTIVELY ADDRESSING AND COUNTERING THE WORLD DRUG PROBLEM - UNGASS 2016 <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

## **Documentary Annex**

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Participants in the international forum to review the medical and therapeutic uses of cannabis, held in Montevideo, Uruguay, in April 2014.

Michael Dor Asesor, Ministry of Health of Israel; Rudolph Brenneisen, University of Berne, Switzerland, Department of Clinical Research; Alan Shackelford, Medical Marijuana Scientific Advisory Counsel, USA; Zachary Walsh, Co-Director of the Centre for the Advancement of Psychology Science and Law (CAPSL), Canada; Philippe Lucas, Research Affiliate with the Center for Addictions Research, British Columbia University, Canada and VP of Patient Advocacy, Tilray; Amanda Reiman, Prof. at the School of Social Welfare, University of California, Berkeley, USA and California Policy Manager for the Drug Policy Alliance; Edward Maa, University of Colorado, Chief of the Comprehensive Epilepsy Program at Denver Health, USA and Associate Professor of Neurobiology at the University of Colorado; Manuel Guzman, Prof. of Biochemistry and Molecular Biology, Universidad Complutense de Madrid, Spain; William Notcutt, Consultant on Pain Medicine, James Paget University Hospital, Great Yarmouth, United Kingdom and Senior Lecturer at the University of East Anglia; Lester Grinspoon, Harvard Medical School, Boston, USA; Jose Alexandre S. Crippa, Associate Professor at the Department of Neuroscience and Behavior, Ribeirao Preto Medical School, University of São Paulo, Brazil.