idpc
International Drug Policy Consortium

IDPC RESPONSE TO THE INCB ANNUAL REPORT FOR 2014

Executive summary

The advent of regulated cannabis markets in Uruguay and some US states over the past few years has constituted a profound shock to the international drug control regime, with the differing views representing a fragmentation of the drug control regime. This has been largely met with a collective denial, not only in relation to cannabis but to Novel Psychoactive Substances (NPS), the internet, access to essential medicines, the centrality of health and human rights in drug control, and the fast-approaching 2016 United Nations General Assembly Special Session (UNGASS) on drugs. The latter appears increasingly likely to provide a platform for confirming the existing system, and the opportunity for change it represents to be blocked by a bland, consensual validation of business as usual. This position is largely reflected in the Annual Report of the International Narcotics Control Board (INCB or Board) for 2014.

As always, the Report contains an impressive feat of data collection, synthesis and presentation, and is certainly to be commended on its new stance of opposition to the death penalty. The Report's Foreword is authored Dr. Lochan Naidoo, who was at the time of its publication the newly elected President of the INCB, having replaced the antagonistic Mr. Raymond Yans. Dr. Naidoo's tone was a great improvement on that of his immediate predecessor, and his presidency will most likely be remembered for the passionate support he demonstrated for improved access to essential medicines. Like all incumbents to the INCB's leading post, however, Dr. Naidoo remains strongly opposed to change, and is a staunch defender of the international drug control conventions in their current form. His Foreword provides a narrow conception of human rights, at a time when what is needed is a wide-ranging analysis of the impact of the drug control regime on the human rights of all those coming into contact with it.

The Foreword is followed by a thematic chapter on the principle of 'a comprehensive, integrated and balanced approach to addressing the world drug problem'. While acknowledging the complexity of this problem, the chapter essentially reiterates the familiar defence of the present drug control arrangements. The chapter falls back on repeating the phrase 'a comprehensive, integrated and balanced approach to addressing the world drug problem' until it resembles more of an incantation than a process of analysis.

Next, the Report approaches the issue of human rights and drug control. Despite its protestations to the contrary, the INCB has long been silent on the core of human rights; in this context, its position on the death penalty is thoroughly commendable. However, it fails to examine the systemic tensions between the operation of the drug control system and human rights norms. There is, for example, no reference to aerial fumigation in Colombia and the militarised policing of the drugs market in Latin America in general. Similarly, the conflict between the Mexican state and the trafficking organisations is not explored, nor its implications for the human rights of the country's citizens.

The INCB's handling of drug treatment is also problematic. It does not support and reiterate the broader UN criticism of compulsory detention centres for drug users and the endemic infringement of human rights carried on in these institutions. The Board's support for improved access to essential medicines is likewise conflicted; it mentions the CND resolution and the support it was given by Asian states alarmed about 'abuse', but neglects to note the parallel imperative of ensuring availability of drugs for medical and scientific uses.

The INCB has always had a hostile, or at best uneasy, relationship with harm reduction, which remains tense in this Report. There is a glaring absence of any mention of needle and syringe programmes (NSPs). Opioid Substitution Therapy (OST) is referenced, but once again the Report fails to draw attention to the Russian Federation's ban on OST.

The Board also expresses its unease at the existence of medical cannabis facilities. This unease is ratcheted up still further by the regulated markets in Uruguay and the USA. Both are accused of being in breach of the conventions by the INCB; it is possible to argue that Uruguay's health-driven policies represented a more sound legal justification than the USA's own 'flexibility' narrative. Nonetheless, the Board continued to address its criticisms more forcefully toward Uruguay. For IDPC, the regulation of cannabis has already undermined the integrity of the international drug control system, and renders still more urgent the calls for nuanced discussions regarding substantial reform and modification of the present drug control arrangements.

In conclusion, it appears that the Board views the next UNGASS as an opportunity to reaffirm the current system. At the UNGASS, we therefore recommend the formation of a special advisory group to examine the tension pervading the system, not only around cannabis regulation, but between the drug control regime and the UN system more broadly, especially in relation to human rights.

Introduction

The past few years have seen the UN drug control regime experience what can be legitimately regarded as a series of unprecedented seismic shocks around the issue of cannabis. Ballot initiatives in 2012 establishing regulated markets for the recreational use of cannabis in the US states of Colorado and Washington were followed in 2013 by moves to develop the appropriate legal frameworks, with January and July 2014 respectively seeing these states implement legislation and open their first recreational 'marijuana stores'. Meanwhile, at the national level, late 2013 saw the Uruguayan government enact a law making it the first country in the world to make provision for the establishment of a legally regulated market for the production and use of cannabis for non-medical purposes. Since that time, authorities in Montevideo have been developing the appropriate structures to enact Law 19.172. That said, far from being merely a period for monitoring the implementation of these laws and the resultant alteration of markets in cannabis and other drugs, both illicit and licit, 2014 was also a period of further change. Following on from Colorado and Washington, successful ballot initiatives in Alaska, Oregon and Washington DC expanded the number of US states engaging with cannabis legalisation, and with it intensified the Federal government's headache concerning both state-Federal power and its relationship with the UN drug control treaties and international law more broadly.

At the same time, amidst a strange kind of collective denial regarding this substantive challenge to the integrity of the drug control regime in its current form,[1] at the international level in Vienna-the home of the UN machinery for drug control – discussions and debates focused on a range of issues. These included how to deal with the explosion of Novel Psychoactive Substances (NPS), the role of the internet, access to essential medicines, the centrality of health and human rights in drug control and of course the fast approaching UNGASS on the world drug problem, an event that looks increasingly likely to be a confirmation of the existing, if slightly nuanced drug control paradigm, rather than an opportunity to discuss much needed structural change.

As such, the content and focus of the *Report of the International Narcotics Control Board for 2014*, heralds few real surprises. It is, however, instructive in terms of what it reveals about the perspectives of the INCB (see Box 1) on a range of issues. This is particularly so in a period when not only is the regime in a state of flux and challenge, but also when the Board is itself undergoing a change in composition. In the case of the *Report for 2014* this includes a significant change in Presidency, and perhaps a resultant adjustment in outlook on some issues, as well as stasis in others. As IDPC is always keen to point out, in terms of scope, the publication represents an impressive feat of data collection, synthesis and presentation. It once again contains much useful information on the state and functioning of the international drug control system, a system constructed with the aim of managing the global licit market for narcotics and psychotropic substances for medical and scientific purposes while simultaneously suppressing the illicit market in those drugs. The *Report for 2014* is informative in relation to a wide range of issue areas, including not only the markets for what we might call traditional drugs – opiates, cannabis, cocaine and Amphetamine-Type Stimulants (ATS) – but also NPS and prescription drugs, including methylphenidate. In line with discussions

Box 1 The INCB: Role and composition

The INCB is the 'independent and quasi-judicial' control organ for the implementation of the 1961 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), the 1971 Convention on Psychotropic Substances and the precursor control regime under the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Board was created under the Single Convention and became operational in 1968. It is theoretically independent of governments, as well as of the UN, with its 13 individual members serving in their personal capacities. The World Health Organisation (WHO) nominates a list of candidates from which three members of the INCB are chosen, with the remaining 10 selected from a list proposed by member states. They are elected by the Economic and Social Council (ECOSOC) and can call upon the expert advice of the WHO. In addition to producing a stream of correspondence and detailed technical assessments arising from its country visits (all of which, like the minutes of INCB meetings, are never made publicly available), the INCB produces an annual report summarising its activities and views.

within the Commission on Narcotic Drugs (CND) in Vienna – discussions that are to a certain extent driven by the Board – it also comments upon the increasingly widespread phenomenon of internet pharmacies, while overlooking once again the rise in transactions on the 'Dark Web', an aspect of the retail market whose significance is growing rapidly. Further, the *Report* is useful as a record of the progress of parties to the drug control conventions relative to resolutions made within the CND and progress relating to country engagement with systems to monitor precursors. And it must be commended for its progressive position in opposing the death penalty for drug-related offences and urging states to improve access to essential medicines.

All that said, the Report contains some – although arguably fewer than in recent years – problematic areas and tendencies. Some of these, including the missed opportunity of the thematic chapter to add much to discussions on the operation of the control system, are ongoing. It is positive to note that examples of mission creep, the propensity of the INCB to exceed its mandate, are thinner on the ground than in previous years. This trend builds upon the approach of the Report for 2013. However, another key and reoccurring weakness in the Report for 2014 pertains to the Board's unwillingness to comment on important issues that appear to be within its purview; what we have referred to in the past as selective reticence. Indeed, this has become more pronounced as, much like other parts of the UN drug control apparatus, the INCB has engaged more with the issue of human rights. This move is welcome. Yet, as is discussed here, it is not without its problems.

In an effort to address some of these issues, this response to the INCB Annual Report for 2014 is organised under four inter-related headings. The following sections thus examine the Presidents' Foreword, the Board's view on 'Implementation of a comprehensive, integrated and balanced approach to addressing the world drug problem' as discussed in the thematic chapter, issues surrounding the Board's position on human rights and its reaction to the continuing shifts in the policy landscape.

Foreword to the Report: Enter President Naidoo

It is customary for the Foreword to the Annual Report of the International Narcotics Control Board to be written by the body's President. The incumbent in March 2015, which saw the publication of the Annual Report for 2014, was Dr. Lochan Naidoo, who took over last year from his antagonistic predecessor, Mr. Raymond Yans. These two individuals adopted a radically different style in their leadership of the INCB. Perhaps the most positive contribution of Dr. Naidoo's Presidency had been his passionate and sustained commitment to improving access to essential medicines, and it is for this that he is likely to be remembered. Mr. Yans, meanwhile, will in all probability go down in history for the open hostility he regularly expressed toward those elements of civil society with which he disagreed. Despite the genuine contrast in personality and leadership style, however, these two very different men shared some important beliefs with respect to drug control. Some of Dr. Naidoo's positions resemble those of his predecessor, as we will endeavour to demonstrate in the following analysis.

Dr. Naidoo's Foreword to the 2014 Report covers a number of issues. Like his forerunners, the heads of United Nations Office on Drugs and Crime (UNODC) and the INCB in recent years, he takes considerable pains to encourage amongst Parties a unified stance with respect to drug control policy and, in particular, to shore up support for the three drug control conventions. 'In facing the world drug problem', he asserts, 'all countries find their destinies intertwined'.[2] It is a problem, the author tells us, which requires collective action in order to be resolved; the fact that nearly all countries are signatories to the three treaties indicates that the international community recognises this to be the case.

Dr. Naidoo then responds to the detractors of the conventions, who view them merely as 'instruments of prohibition and punishment'.[3] The most cursory reading of these instruments, he argues, reveals them to be defenders of the health and welfare of humankind. The conventions regulate the licit trade and are designed to ensure the availability of controlled medicines for medical and scientific uses. They also provide a legal framework for extradition, mutual legal assistance and so on, and counter the suffering with which the 'scourge' of drug trafficking is associated.

He goes on to observe that all international conventions establish binding legal norms, and the drug control treaties are no exception. While the choice of punishments is a matter for states parties, the conventions restrict the possession, distribution and production of drugs to medical and scientific applications. 'This legal obligation', he declares,

'is absolute and leaves no room for interpretation'.[4] This absolute prohibition, while inscribed clearly in the treaties, is in practice becoming questionable. The conventions make no attempt to define exactly what 'medical uses' might involve, and as a consequence there are heterogeneous views as to the legality of, for example, interventions coming under the auspices of harm reduction, including drug consumption rooms and heroin assisted therapy.[5] Beyond this, with Parties to the conventions such as Uruguay and several US states placing themselves in direct contravention through the establishment of regulated cannabis markets, the core principles of the treaties are being increasingly questioned. The INCB, as ever, seeks to place itself as a bastion of certainty in an increasingly relativised world.

The next point raised by Dr. Naidoo is that the conventions do not operate in a vacuum, but rather in the context of international human rights law, with which states must comply as they carry out their drug control obligations. He remarks that the Board is 'heartened' by the progress that Parties have made in this respect, but acknowledges that 'much remains to be done'.[6] In this setting he cites the full compliance still to be achieved with the Convention on the Rights of the Child, the only text which specifically refers to drugs (in Article 33 of that treaty).[7] He also reiterates the Board's encouragement of states to abandon their use of the death penalty in drug-related cases.

It should nonetheless be noted that Dr. Naidoo is here offering a highly restricted conception of the discourse of human rights. What civil society is in fact seeking consists of a critical interrogation of the drug control architecture in its totality to examine the ways in which it impacts upon the human rights of all those it touches.[8] The fact that the Board, after decades of prevarication, calls upon countries to 'consider abolishing the death penalty', while obviously welcome, remains a long way short of the kind of thoroughgoing measures necessary – particularly while the selection of punishments resides with States Parties, and the 1961 and 1971 Conventions explicitly permit them to adopt control measures 'more strict or severe' than those contained in the treaty provisions.[9]

The Foreword then turns to the subject discussed in more detail in the thematic chapter of the Report, the 'implementation of a comprehensive, integrated and balanced approach to addressing the world drug problem'. Dr. Naidoo here points out that ensuring the adequate access to drugs for medical and scientific purposes is a key element of such 'balanced and proportionate' actions.[10] The Board's contention that access to controlled drugs in order to meet medical need is far from being achieved surely represents a tacit acknowledgement that the international drug control regime has failed in this, one of its two core objectives. The subsequent paragraph begins with Dr. Naidoo pleading that '(i)n addressing this problem, the Board cannot act alone'.[11] He declares the Board 'particularly appreciative' of the efforts of civil society in bringing about improved access for patients, and calls on governments to 'strive to achieve a well-functioning national and international system for managing the availability' of controlled medicines.[12]

Several other issues are raised briefly in the Foreword: the argument that a 'balanced approach' must include drug demand reduction; the social and economic contexts contributing to illicit drug problems; and the reiterated humanitarian crises that have stricken the world in recent times, including natural disasters and armed conflicts.

The next challenge to be broached is the forthcoming UNGASS of 2016. The international community must, urges the text, 'commit to carry out a constructive international dialogue which is frank, inclusive, comprehensive and forward-looking'. While this prescription sounds attractive, we should recognise that, because it is so vague, it has the potential to vary considerably with Secretary General Ban Ki Moon's own call 'to conduct a wide-ranging and open debate that considers all options'.[13]

In its closing paragraph, moving on directly from its recommendation for the UNGASS, the Foreword returns to its opening theme – that of a unified response to drug control, and specifically to the three conventions. All countries face a common challenge, repeats Dr. Naidoo, adding that: 'To this end, the international community will continue to count on the drug control treaties, international instruments that have stood the test of time and remain relevant to addressing future challenges. All that is required is the continued commitment of all States to act in concert in the effective implementation of those instruments'.

So, we are once again on the familiar ground of celebrating the drug control conventions, and effectively ruling out any discussion of reform from the approaching UNGASS, despite the Secretary General's entreaty that all options should be considered. This is a curious state of affairs, when we recall the

failure of the progress against production, trafficking and consumption of drugs that the earlier UNGASS meetings called for, infamously encapsulated in the slogan 'A Drug-Free World – We Can Do it!' in the New York session in 1998.[14] To this failure we can now add the acknowledged disappointment with respect to the provision of adequate levels of essential medicines. In the face of this situation, it is difficult to see how we can judge all aspects of the drug control conventions as such an unqualified success, or continue to 'count on' them. Moreover, the appeal to unity can only result in a stale and unrealistic consensus that fails to address the real differences of conceptualisation and policy that characterise countries' positions within the international drug control regime. For all the passion and commitment of Dr. Naidoo, it is a stance that resembles that of his predecessor, and does not bode well for the next round of the UNGASS deliberations.

Analysis or Incantation? The INCB and the 'Comprehensive, integrated and balanced approach to addressing the world drug problem'

This year, the thematic focus of chapter I consists of an elaboration of the principle already mentioned in the Foreword: 'the implementation of a comprehensive, integrated and balanced approach to addressing the world drug problem'. This is a phrase whose reiteration at UN drug control meetings has given it something of the air of an incantation. What does the phrase mean?

The Board begins its answer to such a question by referencing some of the characteristics of the object that this principle sets out to address – namely, the 'world drug problem'. The problem is 'one of the most complex challenges facing the contemporary world', we are told; directly or indirectly, 'it affects everyone and poses a serious threat to health' (Para. 1). Its nature is multifaceted and dynamic, and affects the 'dignity, safety and well-being of all humanity, in particular children and youth, families and communities' (Para. 1). Numerous other facets are mentioned, which a lack of space prevents us from listing exhaustively. The nature of this problem, however, is largely taken as read, and the text gives no recognition that the drug control regime itself may contribute to it. The 'world drug problem', nonetheless, as well as being complex, is reflexive: it exists in part as a result of the measures taken to resolve it.[15] The 'collateral damage' of the regime, or at least elements of it, has been recognised by other regime 'insiders', such as the former Executive Director of the UNODC, Mr. Antonio Maria Costa and his team.[16]

Next, the text informs us that since the 1990s, all UN resolutions, action plans, and so on have identified the following as essential ingredients in successfully addressing the world drug problem: full compliance with the three drug control conventions, and the implementation of two fundamental principles – 'a common and shared responsibility for tackling the world drug problem, and a comprehensive, integrated and balanced approach' to engaging it (Para. 2). The Board is quick to distance these measures from any conception of a 'war on drugs', pure prohibition or repression of human rights. As a matter of definition, the principle of comprehensive, integrated and balanced approach to addressing the world drug problem is said to provide 'the strategic direction and vision for attaining the commonly agreed goal by taking into consideration and placing appropriate emphasis on all mutually inter-dependent aspects of the world drug problem' (Para. 2).

The chapter then raises the issue of the 2016 Special Session. The Board sees this as providing an opportunity to assess the progress made since the 2009 Political Declaration and Plan of Action and to look ahead for further priorities.[17] Furthermore, it will offer the international community an opportunity 'to discuss best practices and exchange views on models and methods to analyse various aspects of the world drug problem' (Para. 3). In other words, the INCB views the approaching UNGASS entirely in terms of previous events in the UN drug control chronology and the measurement of 'progress' achieved from markers laid down at those events. This is a remote vision indeed from the open-ended discussions from which no options are to be excluded, the hopes that many in civil society – and some nation states – had pinned upon the 2016 UNGASS.

The approach of the UNGASS is what motivates the INCB to revisit the principle of a 'comprehensive, integrated and balanced approach to addressing the world drug problem', which, it declares, is strategic in nature (Para. 5). At times, the measured elaboration of this 'principle' seems to lose all purchase on the complex, messy reality of the 21st century world. Consider, for example, the following lengthy quotation:

> **'It [i.e. the principle of comprehensive, integrated and balanced approach to addressing the world drug problem]**

requires Member States to ensure that controlled substances are available for medical and scientific purposes. Member States should place equal emphasis on supply and demand reduction strategies, as well as on issues related to formulating a joint response to the world drug problem through international cooperation in an integrated and mutually reinforcing manner, while taking into consideration and addressing all of its aspects in a comprehensive manner. Observing and fully implementing this principle will enhance the ability of Member States to respond in a consistent and efficient manner to present and emerging challenges, and to formulate policies and programmes that address the phenomenon in all its forms and manifestations' (Para. 5).

The passage is so abstract, its demands so general and the claimed outcomes so blandly simple that it resembles once again an incantation rather than a piece of analysis. It is as though all the world needs to do is to apply this 'principle' and the problems clustered around drugs and their control will be resolved.

The text goes on to state that the principle of a comprehensive, integrated and balanced approach to addressing the world drug problem 'is not an end in itself but rather a means to an end' (Para. 6). Its ultimate objective is to achieve the overall aim of the drug control treaties, 'namely to ensure the mental and physical health and well-being of humankind' (Para. 6). A core aspect of this goal is to restrict the use of drugs to medical and scientific purposes, 'while preventing and significantly and measurably reducing, or eliminating, the illicit production of, trafficking in and use of such substances' (Para. 6). The phrasing here involves a minor reworking of that used in the 1998 Political Declaration and Plan of Action, and it is consequently unsurprising that the drug control objective of the INCB remains the same – to eliminate or significantly reduce the illicit production, trafficking and use of drugs. To revisit the principle of a comprehensive, integrated and balanced approach is, in fact, to revisit the enduring aims of the Board and, indeed, the traditional goals of the drug control system, despite the growing recognition of its failures over the past century.

According to the INCB, the principle of a comprehensive, integrated and balanced approach evolved during the course of time. The Board identifies its origins in the revised article 38 of the 1961 Convention as amended by the 1972 Protocol. This article 'reflected the need to adopt a multidisciplinary approach to the problem of narcotic drugs' (Para. 8). Article 38 introduced measures for the treatment and rehabilitation of people who use drugs, and according to the Board 'deems drug addiction a complex problem and indicates that treatment, aftercare, rehabilitation and social reintegration represent the four stages of remedial measures that are widely held to be necessary to restore the well-being and social usefulness of persons affected by drug addiction' (Para. 8). Article 20 of the 1971 Convention enshrines similar measures in the case of psychotropics.

The approach, which may be viewed as the legislative inception of demand reduction, is made explicit in the 1998 Political Declaration and in the Declaration on the Guiding Principles of Demand Reduction, and other documents from the 1998 and 2009 sessions. According to the Board, the 1998 Political Declaration 'elevated the issue of implementing a comprehensive, integrated and balanced approach to the status of a fundamental principle in addressing the world drug problem' (Para. 9). The optimal form of drug control, believes the Board, results in a balance between the two obligations.

The elements composing a comprehensive, integrated and balanced approach are then elaborated. First, the outcome of the approach must represent not only the prevention or significant reduction in trafficking in, and use of, narcotics drugs and psychoactive substances, but also the facilitation of access to controlled substances for medical and scientific purposes. Article 9 of the 1961 Single Convention on Narcotic Drugs stipulates that States Parties are responsible for ensuring the availability of controlled medicines, and gives the INCB the mandate to monitor their availability. The renewed enthusiasm for acting under this mandate is one of the most positive elements in the INCB's recent range of activities, and, as mentioned earlier, has marked the Presidency of Dr. Naidoo. Following an analysis of the present, unequal distribution of access to medicines, the Board again states that all that is required is for a comprehensive, integrated and balanced approach to be implemented to ensure access to licit medicines and suppress their illicit use. While in general and very abstract terms this might be the case, the 'devil is in the detail', and there are major obstructions lying in wait for any such project. In general, the Board appears to be believe that what is required is simply a more rigorous version of the past 50 years drug control efforts;

this is arguably a naive and unhistorical assessment of the complex relationships that human beings have had with drugs throughout the modern period, a relationship that shows little sign of radically changing, or of becoming less intense.[18]

Further elements of the Board's 'comprehensive, integrated and balanced approach' are listed as demand reduction, supply reduction, socioeconomic aspects, sociocultural aspects, and security and stability. These categories are familiar from previous INCB analyses, though 'sociocultural aspects' is the one having received probably the least attention from the Board, while it is, at the same time, amongst the most important. The Board acknowledges here that 'Cultural attitudes have a significant impact on the world drug problem' (Para. 28). The text refers to the INCB's previous work in its 1997 Annual Report, where 'the promotion of drug use in popular culture' was discussed, alongside the importance of education, by which is meant what amounts to anti-drug propaganda (Para. 30).[19] The Board's 1997 Report recommended both the influencing of attitudes and the restriction of illicit drug supplies, and it argues that these issues remain at least as important, if not more so, in the contemporary cultural context, and deserve to be considered as part of a 'comprehensive, integrated and balanced approach', a category whose elasticity and capaciousness appears to expand at every turn.

Chapter I then continues by discussing human rights as an integral element of the approach. Here the Board seeks to defend the drug control system in terms of its human rights practices. 'It is notable, since 2004, how many actors critical of the existing drug control regime based at least a part of their arguments on the premise that the drug control conventions would stand in contradiction to human rights norms', it opines (Para. 36). This human rights discourse, the Board continues, must be analysed and validated through legal norms, and their interpretation by human rights treaty bodies. The use of the term 'human rights' should refer, it adds, to legal rights as inscribed in the human rights conventions. The chapter points to the preamble of the drug control conventions, which refer to the health and welfare of humankind, and finds a congruence between drug control and human rights on that basis. The conceptual basis of this argument is indeed frail. Nonetheless, the Board appears to be comfortable and sees no fundamental dissonance between the two sets of treaties or, more importantly, their practical implementation by governments.

Finally, the thematic chapter concludes with a set of recommendations deriving from the foregoing deliberations. The first refers to the UNGASS of 2016, which, says the Board, is 'critically important for re-addressing the centrality of the principle of a balanced and comprehensive approach to addressing the world drug problem' (Para. 39). It adds that the forthcoming Special Session offers an opportunity to ensure that the principle is constituted by practical measures rather than remaining at the level of rhetoric. The majority of the recommendations repeat points made in the course of the chapter; they include mentions of demand reduction, supply reduction and the balance between the two, and respect for human rights in drug control. The Board also invites other UN agencies to participate in the implementation of a comprehensive, integrated and balanced approach to addressing the world drug problem, since some of the measures it proposes do not fall under the direct authority of the drug control treaty bodies (Para. 40, Section g). If this is actualised, it will represent a positive and potentially very important step, though it remains to be seen how far the Vienna drug control agencies will go in allowing other UN agencies to recommend in their areas of special competence, or to raise the matter of the negative consequences of drug control.

Amongst other important measures at the current juncture is the call for governments to ensure the availability of essential medicines to their citizens. However, the Board's own valorisation of the 'principle of a comprehensive, integrated and balanced approach to addressing the world drug problem' has, notably, not succeeded in preventing it from becoming entangled in the contradictions stemming from the dual imperatives of the drug control conventions, as we saw in the case of ketamine. Here, the INCB's advocacy of international scheduling of that substance in order to prevent its recreational use, clashed with the obligation to ensure its availability for medical purposes in developing countries where there is often no realistic alternative.[20] It is difficult to see how such conduct on the part of the Board maps onto the principle of 'balance' and 'integrity' that it offers the international community as a palliative to the 'world drug problem'.

Moreover, it can be argued that the Board, through its refusal to recognise even the possibility that the half-century old drug control system is not longer fit for purpose and requires reforms and adaptations, is actually blocking a "comprehensive, integrated and balanced approach to addressing the

world drug problem", and thereby forcing member states to find solutions that go beyond the obligations of the Conventions. Such an attitude, in addition, is in conflict with the INCB's mandate 'to maintain friendly relations with Governments, guided in carrying out the Conventions by a spirit of co-operation rather than by a narrow view of the letter of the law'.[21] Acting in such a way, the INCB could play a useful role in assisting member states to carefully manage the unavoidable future changes in the treaty system.

The INCB on human rights: Definite progress, but a long (long) way to go

Despite the protestations to the contrary discussed above, in reality the Board has long been silent on the central issue of human rights. Within this context, it must once again be commended for its position against the use of the death penalty for drug-related offences. This, as discussed earlier, is a point given prominence within the President's foreword; a conscious effort to demonstrate the INCB's appreciation that 'drug control measures do not exist in a vacuum'. Moreover, within the Report itself, the state of Oman's proposal to 'make use of the death penalty for offenses related to drug trafficking' is highlighted. Referring to the Board's statement of 4 March 2014,[22] the Report responds by pointing out that then it 'encouraged States that retain and continue to impose the death penalty for drug-related offences to consider abolishing the death penalty for such offences' (Para. 547).

Such a position is clearly welcome. However, mindful of the Report's utility in 'naming and shaming' particular states – a device often used in the past in relation to a range of national policy choices, and arguably sometimes beyond its mandate – one wonders why the Board is not more specific in singling out other states where the death penalty is already in use for drug related offences, for example China, the Islamic Republic of Iran, Pakistan and Indonesia.[23] Indeed, reluctance to do so might be seen as a manifestation of the Board's still tentative engagement, or selective reticence, regarding the issue of human rights and ongoing tendency to continue to view many aspects of drug policy as operating within a vacuum.

The narrow definition laid out in the foreword permeates the text with other human rights violations, or, at the very least, systemic tensions between the operation of the drug control regime and human rights norms, remaining overlooked. For instance, as in recent Reports, despite reference to drug market-related violence within the Americas (especially, El Salvador, Guatemala, Honduras, Paras. 311 & 314), there is no acknowledgement of the human rights violations associated with militarised policing within some countries within the region.[24] Additionally, although levels of drug market related-violence remain high in Mexico, there is no reference to the ongoing carnage and the human rights implications for Mexican citizens of government interventions against the various 'cartels'. Similarly, in its analysis of the situation in South America, the Report fails to mention the human rights implications of Colombia's use of aerial spraying to destroy coca crops (Para. 433). This is the case even though, as we have noted elsewhere, the practice generates a range of human rights violations including in relation to indigenous, social and economic rights and health. The latter point has taken on more salience with the March 2015 conclusion of a WHO working group that glyphosate is 'probably carcinogenic to humans';[25] a position that led the Santos administration to make moves in May 2015 to suspend its aerial eradication programme.[26] Within this context, we hope that the topic receives coverage in next year's Annual Report, not just in terms of 'national legislation, policy and action', but also in relation to the human rights of those exposed to glyphosate as well as other antifoliants that may be used by the Colombian government to replace it.

To be sure, the relationship between human rights and health remains a key area of concern within the Board's Report for 2014. This is particularly the case when considering Recommendation 4, which states, 'The Board invites Governments to address all factors that fuel the world drug problem in an effective and sustainable manner by including drug issues in the broader socioeconomic development agenda, and to *incorporate all relevant human rights norms* into drug-related policies, including as they relate to particularly *vulnerable populations* such as children '(686) (Emphasis added). The sentiment expressed here is to be applauded. What is more problematic, however, is the Board's own application of said human rights norms as a lens through which to assess the 'functioning of the international drug control system and what it refers to as 'the world situation' within the Report. A disconnect can be identified in relation to a number of inter-connected issue areas.

Drug treatment

Once again, the Report's handling of drug treatment is of concern. It is true that the Board makes a number of positive and welcome statements with regard to treatment provision in a number of states, particularly in relation to its previous recommendations on the issue. Examples include references to youth-oriented treatment in Mexico (Para. 186), the popularity of community-based treatment approaches in Cambodia, China, the Lao People's Democratic Republic and Brunei Darussalam (485) and commendation of 'steps taken' in Myanmar (Para. 192). Furthermore, the Report also flags up that treatment and rehabilitation of 'drug dependant persons' remains inadequate in many African countries (Paras. 302 & 310), including Zimbabwe (Para. 200). In a shift in approach to the Report for 2013, this year the INCB does not refer to compulsory treatments centres. As such, it avoids putting itself in a position where a lack of critical comment is glaring. That said, at no point in the text does the Board note the widespread condemnation of Compulsory Centres for Drug Users within the UN system, including by the UNODC, and highlight the human rights tensions that result from such a practice. Moreover, while it should be commended on reiterating the need for 'capacity-building in the field of treatment and rehabilitation of drug-dependent people', in, for example the Americas (Para. 351), the Board misses the opportunity to comment upon what is meant by acceptable treatment that adheres to fundamental human rights standards.

Essential medicines

A similar situation pertains in relation to access to essential medicines. The Board must be applauded for its increasingly explicit calls upon the international community, to ensure the availability for opiates and synthetic opioids for pain relief; an issue on which, as we noted above, Dr. Naidoo has been particularly strong.[27] Early on in the Report the INCB notes, for example, that it would like 'to remind Governments that the overall goal of the international drug control conventions is a well-functioning national and international system for managing the availability of narcotic drugs that should provide relief from pain and suffering by ensuring the safe delivery of the best affordable drugs to those patients who need them…' (Para. 96). Moreover, having noted the unevenness in access, 'with consumption concentrated primarily in countries in North America, Western Europe and Oceania' (Para. 95), the Board flags up – often after missions or in light of previous recommendations to those countries – particular nations where improvements need to be or have been made. This includes India (Para. 489), Nicaragua (Para. 167), Panama (Para. 169) Tanzania (Para. 173), Costa Rica (Para. 180), El Salvador (Para. 183), Myanmar (Para. 193), Zimbabwe (Para. 198) and Mexico (Paras. 189 & 360). Indeed, at various points, the Report highlights recommendations and advice by WHO and INCB within both the 2010 *Report of the International Narcotics Control Board on the Availability of Internationally Controlled Drugs Ensuring Adequate Access for medical and Scientific Purposes*[28] (Para. 198) and the 2012 *Guide on Estimating Requirements for Substances under international Control*[29] (para. 125). Attention is also drawn to these important reports within Recommendation 6, which reiterates earlier statements concerning availability of 'controlled substances for medical and scientific purposes'. This is bolstered by the following Recommendation stating, 'The Board invites countries to take all necessary measures to facilitate access to opioid analgesics and psychotropic substances for those who need them, including through the provision of training to health professionals and the streamlining of administrative procedures regulating prescriptions, adequate domestic distribution and importation practices.

However, as has long been the case, tensions between such positions emerge in relation to Board's position on the drug control treaty's concomitant aim in 'preventing the diversion of drugs for the purpose of abuse' (Para. 96); what we have called its aversion to diversion.[30] While in no way intending to diminish the risks to health and life associated with diversion of drugs from licit channels and the misuse of prescription drugs (Para. 95), IDPC would to once again like stress the need for the Board to strike an appropriate balance and adhere to this beyond the rhetoric of the Report. As was discussed in detail in the IDPC Response to the Annual Report for 2013 in relation to substances not under international control, this is not always so. Within this in mind, this year's Report represents a considerable improvement in the Board's tone on tramadol and ketamine.[31] It would be remiss, nonetheless, to ignore its statement that in light of ketamine abuse in the region, governments within East and South East Asia 'strongly supported the adoption of the resolution on ketamine at the fifty-seventh session of the Commission on Narcotic Drugs and sought tighter control measures on ketamine in order to prevent abuse' (Para. 487). This was certainly the case. Nevertheless, it is important to note not only

the full title of the Resolution 57/10, 'Preventing the diversion of ketamine from legal sources, *while ensuring availability for medical use*' (emphasis added), but also that passage was the result of long negotiations and much informal work by states acknowledging the importance of ketamine as a therapeutic substance, notably the Netherlands.[32]

Harm reduction

The Board's awkward stance on human rights and health, however, is particularly stark in relation to a range of harm reduction interventions; an issue that we had reason to comment upon in last year's response to the Board's Annual Report. That engagement with, at the conceptual level, human rights standards and, on the ground, vulnerable groups of people who use drugs – particularly those who inject drugs – is integral to the harm reduction approach once again makes the complete absence of any reference to NSPs a glaring, arguably even wilful, omission. This is particularly so since the Board, quite rightly, notes the widespread operation of another scientifically proven and widely accepted intervention, OST. This includes 'methadone maintenance treatment' in India (Para. 528), plans to initiate a 'national programme on methadone treatment for opiate users' in Kenya (Para. 305), 'methadone substitution and buprenorphine substitution therapy' in the Islamic republic of Iran (Para. 586), an 'opioid substitution treatment programme' in Lebanon (Para. 587), the significant scale up of access to OST in Belarus and Ukraine and provision on a limited scale in the Republic of Moldova (Para. 656). It is disappointing, within the context of health and human rights, that while noting the situation, Board makes no comment on the continued ban on OST in the Russian Federation (Para. 656). Moreover, even after noting 'In August 2013, the Government approved its State policy strategy on narcotic drugs for the period until 2020, which focuses on treatment and rehabilitation of drug addicts based on international best practices' (Para. 604), the Board fails to mention that withdrawal of OST within Crimea after its annexation by the Russian Federation in March 2014 is inexcusable. Home to more than 800 OST patients, the Crimean Peninsula had been part of Ukraine's engagement with the intervention. Although not without its problems,[33] the country's 'recent reduction of new HIV infections has been put down to the widespread implementations of harm reduction programmes'.[34] Yet, as the UN Secretary General's Special Envoy for HIV/AIDS in Eastern Europe and Central Asia, Michel Kazatchkine, noted in the *British Medical Journal* in May 2014 – well before the November deadline for information for inclusion with the Report for 2014 – the ban would have 'huge repercussions' and 'bring unnecessary suffering to the people of Crimea' and ultimately worsen the HIV/AIDS epidemic in the country.[35]

While omission of what was then the unfolding health crisis in Crimea is in this case hugely problematic, references throughout the Report to OST – which in 2014 operated in 80 countries around the world[36]– throw into stark relief the lack of any mention of NSPs. Operating in 90 countries around the world in 2014,[37] the intervention is also supported by a wealth of evidence demonstrating a range of proven health benefits, including preventing the spread of HIV/AIDS and other blood borne diseases among and beyond communities of people who inject drugs. Indeed, the high prevalence rates of HIV/AIDS among people who inject drugs, especially heroin, is inevitably noted on a number of occasions throughout the Report. This includes reference to the situation in India (Para. 527) as well as countries in East and South East Asia (Para. 483), Africa (Para. 303), West Asia (Para. 589) and the Middle East (Para. 590), and notably Eastern and South-Eastern Europe, particularly the Russian Federation (Para. 592, 661, 662) where prevalence figures are well above the global average. Nonetheless, there is no mention of where authorities are operating NSPs in response to the spread of HIV/AIDS among people who inject drugs. This includes in reference to programmes developed by the Brazilian Ministry of Health for the 'prevention of HIV/AIDS, hepatitis C and other medical conditions associated with drug abuse' (Para. 455) and despite the fact that Brazil has the highest number of harm reduction programmes compared to any country within Latin America.[38] The intervention's omission is also striking since, while in regions like Latin America incidence of injecting drug use appears to be declining, in others, like Western Europe, patterns of injecting behaviour seem to be merely changing. Here there are moves away from heroin towards the 'injection of pharmaceutical or synthetic opioids, amphetamine-type stimulants and new psychoactive substances' (Para. 663). In some cases these substances require repeated and frequent injection and so carry a heightened risk of infection through the sharing of needles, especially where NSPs are scarce or non-existent.

Additionally, the lack of mention of NSPs results in a situation whereby the reader is left to read between

the lines to seek possible explanations for improvement in the health of people who inject drugs. For example, while it is fair to link, as the Report does, the decline of drug-related HIV infection in Western and Central Europe to a reduction in the size of the heroin market in the region (Para. 645 & 663) it is disingenuous not to acknowledge the possible role played by NSPs in the trend. Having noted that there had been recent outbreaks of HIV among people who inject drugs in Greece and Romania, the Board states without comment that 'In other countries of the region, the rate of new diagnoses of HIV among people who inject drugs is declining. Abuse of drugs by injection remains the most prevalent vector for transmission of hepatitis C in Europe, yet the rate of infection among those who inject drugs is reported to be declining' (Para. 663). Such an omission is incongruous since direct causality for shifts in the shape of the market are mentioned elsewhere in instances where the dynamics are more complex than suggested. This is particularly so, as has been the case in previous years, in relation to the reduced scale of the cocaine market in North America. While it is undoubtedly true that 'declining cocaine production in Colombia and intensified law enforcement efforts in Mexico' (Para. 406) played important roles in a reduction in cocaine use, other factors such as market maturation and trends within drug use behaviour must not be ignored.

Any argument that the Report omits references to NSPs because it only includes new policy developments, for example OST in the Lebanon or Kenya, is unpersuasive since a range of existing policies, including expansion in 'drug treatment capacity' (including OST programmes) is incorporated within the Report. Further, NSP provision is far from static with it being constantly scaled up within some countries, particularly at regional levels (with or without government funding)[39]. Between 2012 and 2014 the number of NSP sites were increased within 29 countries. In the same period the Dominican Republic, Colombia, Jordan, Kenya and Senegal all adopted the intervention for the first time;[40] policy developments that would seem worthy of inclusion within the Report. On a similar point, it is worth noting here that the Board neglects to mention a decrease in funding to harm reductions programmes in some parts for the world, for example Greece and Romania, and the likely negative repercussions on rates of HIV and hepatitis C among people who inject drugs.

Within this context, it is difficult not to conclude that NSPs remain a puzzling residue or legacy of the Board's once explicit hostility towards the harm reduction approach. Although far less confrontational on the issue than in previous years, it seems clear that there remains a discomfort with the approach, presumably because it accepts continued engagement with the illicit market by people who inject drugs. While this position is the same as in the Report for 2013, it is more problematic this year for several reasons. First, the omission of any mention of NSPs is indefensible in light of the Board's aforementioned recommendation encouraging states to pay attention to 'relevant human rights norms'. Such incongruence is heightened when one recalls the UNODC's shift to engage with health as a human rights issue, including the publication of its position paper *UNODC and the Promotion and Protection of Human Rights* in 2012.[41] It should also be recalled that NSPs are included as part of the comprehensive package of interventions within the 2009 *WHO, UNODC, UNAIDS Technical Guide for countries to set targets for universal access for HIV prevention, treatment and care for injecting drug users*.[21] Second, the lack of reference to NSPs should also be read in parallel with what might be seen as a slight softening of the Board's position on Drug Consumption Rooms (DCRs). As in past years, the Report draws attention to the perceived conflict between the operation of DCRs and the drug control conventions. However, whereas the norm has been to state categorically that the intervention runs counter to the provisions of the treaties, this year there is more legal nuance and empathy. In relation to both 'drug injection rooms' in Canada and a pilot 'supervised "drug-use facility"' in Athens, the INCB notes that 'such facilities could be inconsistent with the provisions of the international drug control conventions (Paras. 603 & 362, emphasis added). Such a stance is far more in line than in previous years with the 2002 report to the INCB by the Legal Affairs Section (LAS) of the then UN International Drug Control Programme. Titled *Flexibility of treaty provisions as regards harm reduction approaches*, the internal LAS document details multiple arguments that justified 'Needle or Syringe Exchange', Substitution and Maintenance Treatment' and 'Drug Injection Rooms' under the terms of the treaties.[43]

Reactions to the shifting policy landscape

Considering the substantial policy developments regarding cannabis that are taking place, the extent of comment at various points within the Report is unsurprising. Before embarking on an analysis of the cannabis issue, however, it is worth comment-

ing briefly upon the Board's position on Bolivia. It will be recalled how only a few years ago, the INCB – particularly its president Raymond Yans – was warning the international community how Bolivia's intention to withdraw from the Single Convention on Narcotic Drugs and re-accede with a reservation on coca chewing would threaten the stability of the entire UN drug control system. With the treaty framework absorbing the action of La Paz to adjust its own relationship with the Single Convention, and hence undergoing a subtle process of reform, the Board – much as last year – only mentions Bolivia's actions in passing. And this is done in a very matter of fact manner (Para. 432).

A more critical approach, however, is taken on the issue of medical marijuana. That it is given prominence as a Special Topic – 'Control measures applicable to programmes for the use of cannabis for medical purposes pursuant to the 1961 Single Convention on Narcotic Drugs' – clearly reflects the Board's continuing ill ease with some aspects of the policy choice. Indeed, in addition to describing the status of medical marijuana programmes within the USA (Para. 355), the Report once again points out that 'Pursuant to articles 23 and 28 of the Single Convention, States wishing to establish programmes for the use of cannabis for medical purposes that are consistent with the requirements of the Single Convention must establish a national cannabis agency to control, supervise and license the cultivation of cannabis crops' (Paras. 221 & 225). This remains a valid concern with it being difficult to argue that any of the 23 US states and the District of Columbia operating medical marijuana programmes fully, or in some cases even partially, comply with this requirement. The Board's concern is also evident in its intention to highlight governments' responsibilities regarding the prohibition of unauthorised cultivation, including that for personal medical use. This is a concern not only driven by apprehension regarding the potential damage to health associated with unregulated medicinal use, but also once again fears concerning diversion to the illicit market (Paras. 222 & 224, 225). In what within the context of the main text of this year's Report is a relatively rare example of mission creep, the Board reveals the extent of its discomfort with medical marijuana in reiterating 'its invitation to WHO to evaluate the potential medical utility of cannabis and the extent to which cannabis poses a danger to human health, in line with its mandate under the Single Convention' (Para. 225. Also see Para. 688). It is fair to comment (as is highlighted in Recommendation 8) that many programmes in the USA currently fall short in terms of 'competent medical knowledge and supervision'. The Board, however, is exceeding its mandate even in implicitly questioning the decisions of national and sub-national authorities concerning the medical usefulness of cannabis[44] and in pushing the WHO into a particular course of action.

It is, however, on far firmer ground in its stance on the adoption of legally regulated markets for recreational cannabis in Uruguay and, at the state level, the USA. In addition to mentions at various other points throughout, it should come as no revelation that both countries are examined in the Report's section on 'Evaluation of treaty compliance in selected countries' and within the Recommendations section on 'Promoting the consistent application of the international drug control treaties'. Maintaining the same position as in the Report for 2013 when these policies were emerging, the Board states that countries are pursuing regulated cannabis markets are running counter to the provisions of the drug control treaties. Framing the issue within the context of universal adherence, the Report highlights that 'In March 2014, at the high-level segment of the fifty-seventh session of the Commission on Narcotic Drugs, Government representatives adopted by consensus a joint ministerial statement, in which they underscored that the three international drug control conventions constituted the cornerstone of the international drug control system'. As a result, it continues, 'The Board is concerned about initiatives, inconsistent with these conventions, that have legalized cannabis for non-medical purposes in Uruguay and some states of the United States' (Para. 694).

In relation to the USA, in addition to describing the situation within the country (e.g. Paras. 354, 368, 370) the Report notes that 'The Board reiterates its concern that action by the Government to date with regard to the legalization of the production, sale and distribution of cannabis for non-medical and non-scientific purposes in the states of Alaska, Colorado, Oregon and Washington does not meet the requirements of the international drug control treaties. In particular, the 1961 Convention as amended, establishes that the parties to the Convention should take such legislative and administrative measures as may be necessary "to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs"' (Para. 142). In an apparent response to the USA's legally shaky but politically shrewd defence of its position by Ambassador William Brownfield, Assistant Sec-

retary of State for International Narcotics and Law Enforcement,[45] it goes onto to stress that 'This provision is strictly binding and not subject to flexible interpretation. In addition, the Convention establishes that States parties have "to give effect to and carry out the provisions of this Convention within their own territories". This provision also applies to States with federal structures' (Para. 142). The situation is also given prominence in the 'Highlights' section for Chapter III where it is noted that 'the results of ballot initiatives in the states of Alaska and Oregon, and in Washington DC, on the use of cannabis for non-medical purposes represents further challenges to the compliance by the Government of the United States with its obligations under the international drug control treaties' (p. 43).

Similarly, beyond merely describing the situation in Uruguay, the Board legitimately calls out the Government for operating 'legislation contrary to the provisions of the international drug control conventions'. Here is draws attention to 'article 4, paragraph (c), and article 36 of the 1961 Convention as amended by the 1972 Protocol and article 3, paragraph (1) (a), of the 1988 Convention' (Para. 419).

As we noted in last year's response to the INCB's Annual Report[46], IDPC is in agreement with the Board that the operation of regulated cannabis markets brings both the USA and Uruguay into a state of breach regarding the Single Convention and the 1988 Convention. This remains the view even though it may be possible to argue that Uruguay's legal justification regarding concerns for health – concerns that are not mentioned within the Report for 2014 – are more convincing than the US flexibility argument and might even be regarded as some form of 'justifiable breach'; an interesting proposition bearing in mind the Board's current enthusiasm for human rights. Common ground, of sorts, can also be found in relation to the Board's view that 'the legalization of non-medical use of scheduled substances… *could* undermine the integrity of the international drug control system (Recommendation 15. Emphasis added). Here the Board is clearly stating the case for a reversion to policies that operate within the boundaries of the treaties. IDPC would argue that the current situation *has already* undermined the integrity of the international drug control system. From this perspective, policy shifts in Uruguay and at the subnational level in the USA give greater urgency to long building calls from some sections of civil society, as well as a growing number of member states, for nuanced discussions concerning substantive reform and modification of the system as it currently stands; including states' relationships with it.

Views diverge more significantly on the context and consequences of the current untidy legal situation and what might be seen as a state of surreal limbo. The Board contends that the legalisation of non-medical use of scheduled substances, at this point cannabis, 'may put' the 'citizens' of states following such a path 'at increased health risk' (Recommendation 15). Mindful of the abundant and growing evidence concerning the myriad health harms associated with the pursuit of prohibition-oriented policies, such a position is at the very least misleading. Although in no way denying the health risks associated with drug use, it is likely that in some instances these would be reduced through the operation of well-designed regulated markets; a likelihood that is only partially acknowledged through use of the qualifying modal verb 'may'.

The Board, once again, must also be taken to task on the different ways it deals with the USA and Uruguay. In some respects, it is perhaps understandable, although not excusable, that the Board takes an apparently harder position on the Government of Uruguay. That cannabis remains prohibited by the Controlled Substances Act makes the US Federal government one-step removed from the business of cannabis legalization. This awkward situation resulted in Ambassador Brownfield's justification in terms of treaty flexibility, but does not equate to a central government instigated process. That said, it is difficult to see how the INCB can explicitly argue that cannabis policy in Uruguay, and by dint of omission not the USA, will 'negatively affect the control of drugs, particularly cannabis, in other countries, both neighbouring and beyond' (Para. 145. Also see Para. 149). First, while ramifications of the policy shifts on both countries remain unclear, it seems as if the US Federal government's current predicament has increased space for at least discussion of cannabis policy reform in other states. Although in a sovereign state like Jamaica, this involves concerns to operate within the confines of international law.[47] Second, again, while we must observe the situation carefully, it is likely that events in Oregon will have some impact on the policy outlook of British Colombia to the North. Moreover, one wonders if the Board will change its stance when, for it is almost certain to be the case, to the South, California joins the small but growing group of US states to adopt legally regulated cannabis markets. How in this instance will the Mexican Government react?

Conclusions

Overall then, the Report for 2014 reveals an interesting state of affairs concerning the Board's view of the functioning of the regime during a period of unprecedented flux and challenge. Again, it is important to restate that the Report contains a great deal of valuable information, with the Board making legitimate and timely calls to governments to improve not only data return but also data capture mechanisms in order to provide a more accurate picture of the global situation. It is also worth noting that in many respects the Report represents an improvement upon those of previous years. This is particularly so in terms of reduced mission creep as demonstrated, among other things, by a decrease in the inappropriate use of the terms 'urges' and 'welcomes' – often powerful words within the rarefied atmosphere of Vienna – to issues that arguably fall outside the INCB's purview. The Board must also be commended on its stance against the use of the death penalty for drug offences and a proactive approach on improving access to essential medicines; an approach that is more in line with the INCB's important role within the drug control system.

That said, it is unfortunate that the Board continues to adopt a reticent position on a range of issues relating to the human rights – and hence health-related – dimensions of drug policy, including various harm reduction interventions and drug treatment. Of special note is, once again, its complete omission of any references to NSPs. In this regard, much like the concept of 'Negative Space' within art, what is omitted from the Report is as instructive as the content itself. Mindful of the shifting composition of the Board, one wonders how much such a position can be attributed to inertia within the drafting process and the lead role taken by the INCB secretariat. As noted here, whatever its origin this reticence takes on more salience as the INCB rightly adjusts its long held views and explicitly engages with human rights norms and standards that exist beyond, yet are directly applicable to, the UN drug policy structures and apparatus. Engagement with the issue of capital punishment specifically, and the concept of human rights norms more generally, is welcome and to be commended. However, the narrow conception of what can be construed as human rights and hence consequential for the application of drug policies is problematic. In this regard, Mr. Naidoo's own phrase 'much remains to be done' possesses ironic resonance. Indeed, as important as this may be, beyond the Convention on the Rights of the Child where drugs are specifically mentioned, it is justifiable to call for the Board to consider using its influence to point out where tensions exist between drug control policies and a range of other hard and soft international law instruments relating to human rights. These include, to name but a few examples, the UN Charter, the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[48] Such comment would not be unprecedented. For example, in relation to laws on the use of force against drug trafficking non-commercial flights by the air forces of Peru, Brazil, Chile and Venezuela, this year's Report notes that 'such statutes may contravene the Convention on International Civil Aviation and other international obligations related to civil aviation'(Para. 422).

Another missed opportunity relates to the thematic chapter. Although the topic of a 'comprehensive, integrated and balanced approach' to dealing with the 'world drug problem' is important, the chapter failed to deal with the complexity of the current illicit market or policy landscape in any meaningful way. Furthermore, while perhaps to be expected from a body that is a creature of the current system, incantations regarding the appropriateness of the regime in its current form felt much like entrance into an alternative reality. That both the USA and Uruguay have in their different ways moved far beyond what can be reasonably regarded as the boundaries of the extant legal framework graphically demonstrates its limitations in the face of growing policy pluralism. The inadequacy of the conventions in meeting the contemporary requirements of states is also demonstrated by the difficulties, mentioned earlier, that Bolivia faced in obtaining the legal status of coca in international law, despite the fact that the practice of coca chewing is fully in accordance with the fundamental principles of the country's domestic constitution.

As such, the Board's Recommendation 5 appears somewhat hollow. It states 'The Board invites Governments to use the opportunity provided by the upcoming special session of the General Assembly on the world drug problem to be held in 2016 to make a critical assessment of existing drug control policies and of the extent to which the principle of a balanced, integrated and comprehensive approach is reflected in practice, including with regard to political support and funding patterns'. In light of the Secretary General's statements on the

UNGASS, this could be read in terms of the instigation of serious discussion about the tensions that exist between cannabis policies on the ground and the international drug control treaties. As we have noted elsewhere, the INCB possesses the potential to provide expert advice to help member states deal with the current changes to the regime. Nonetheless, it seems clear that while admittedly beginning to broaden its horizons, for the Board the UNGASS represents an opportunity to reaffirm the current system.

For this reason, the role of exploring and resolving the present policy tensions might be better assigned to some form of special expert advisory group with a sufficiently broad mandate to address these increasingly contentious issues. Such a group could cover key issues emerging in the UNGASS preparations, such as the UN institutional drug-control architecture; UN system-wide coherence on drug policy; harmonisation of drug control with human rights and development principles; inconsistencies within the treaty regime regarding scheduling criteria and procedures; enhancing the availability of controlled drugs for medical purposes; the legal tensions with regard to traditional uses of coca leaf and the evolving policy practices of cannabis regulation. The group's main task would be to recommend how to better deal with these complex issues – which are unlikely to result in a satisfactory consensus – following the 2016 UNGASS, in preparation for the next UN high-level review in 2019.

Such a move is not unprecedented, with similar groups formed around previous UNGASS events on drugs.[49] The fragmentation that underlies the surface consensus within the drug control regime seems unlikely to be addressed with the necessary realism and candour at the forthcoming UNGASS, particularly in the light of the framing of the Special Session as it appears in the 2014 Annual Report. This is unfortunate, since many of those in civil society, and some member states, had pinned considerable hopes on its outcome, and believed that meaningful, long overdue and serious discussions of change could result. A more balanced INCB might possess the range of abilities necessary to negotiate the regime through what is liable to be a long and difficult passage across the UNGASS and on to the high-level review in 2019. As things stand now, however, an expert advisory group with a high degree of both expertise and, crucially, independence, appears the more likely bet to take on the task.

Acknowledgments

The lead authors, Dave Bewley-Taylor and Christopher Hallam, express their gratitude to IDPC members, the IDPC Secretariat, Katherine Pettus (IAHPC), Katie Stone and Catherine Cook (HRI) and Tom Blickman (TNI) for their feedback on, and various contributions to, this report.

Endnotes

1. See IDPC, The 2014 Commission on Narcotic Drugs and its High-Level Segment. Report of Proceedings, June 2014 http://idpc.net/publications/2014/06/the-2014-commission-on-narcotic-drugs-and-its-high-level-segment-report-of-proceedings & IDPC, The 2013 Commission on Narcotic Drugs. Report of Proceedings, May 2013 http://idpc.net/publications/2013/05/idpc-report-of-proceedings-the-2013-commission-on-narcotic-drugs
2. International Narcotic Control Board *Report 2014*, page iii https://www.incb.org/incb/en/publications/annual-reports/annual-report-2014.html
3. Ibid.
4. Ibid.
5. Bewley Taylor, D. (2012), *International drug control: Consensus fractured* (Cambridge: Cambridge University Press), pp. 51- 52. For LAS report itself, see here: http://idpc.net/publications/2008/02/flexibility-of-treaty-provisions-as-regards-harm-reduction-approaches.
6. International Narcotic Control Board *Report 2014*, page iii.
7. http://www.ohchr.org/en/professionalinterest/pages/crc.aspx
8. Jelsma, M. (5 March 2014), *INCB speaks out against death penalty*, INCB Watch, http://idpc.net/incb-watch/updates/2014/03/incb-speaks-out-against-death-penalty
9. Single Convention on Narcotic Drugs, 1961 As amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961. Article 39. https://www.unodc.org/pdf/convention_1961_en.pdf
10. International Narcotic Control Board *Report 2014*, page iv.
11. Ibid.
12. Ibid.
13. Secretary General Ban Ki Moon, 26 June 2013. http://www.un.org/sg/statements/index.asp?nid=693 5
14. Tom Blickman, TNI 2008. http://www.undrugcontrol.info/en/weblog/item/2029-refreshing-costas-memory
15. Hallam, C. & Bewley-Taylor, D. (2010), 'Mapping the world drug problem: Science and Politics in the United Nations drug control system', *International Journal of Drug Policy*, 21(1): 1-3
16. Costa, A.M. (2008) '*Making drug control 'fit for purpose': Building on the UNGASS decade*' (Vienna: United Nations Office on Drugs and Crime). https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_51/1_CRPs/E-CN7-2008-CRP17_E.pdf
17. United Nations Office on Drugs and Crime (2009), Political *declaration and plan of action on international cooperation towards an integrated and balanced strategy to counter the world drug problem* (Vienna: United Nations), https://www.unodc.org/documents/ungass2016/V0984963-English.pdf
18. See: Courtwright, D.T. (2001), *Forces of habit: Drugs and the making of the modern world* (Cambridge: Harvard University Press); see also: Klein, A. (2008), Drugs and the world (London: Reaktion Books)
19. International Narcotics Control Board (1998) *Annual Report for 1997* (Vienna: United Nations), https://www.incb.org/documents/Publications/AnnualReports/AR1997/AR_1997_E.pdf
20. Fact Sheet on the proposal to discuss international scheduling of ketamine at the 58th CND, http://idpc.net/publications/2015/01/fact-sheet-on-the-proposal-to-discuss-international-scheduling-of-ketamine-at-the-58th-cnd
21. Commentary on the 1972 Protocol Amending the Single Convention on Narcotic Drugs, p. 11, § 5). https://www.unodc.org/documents/

treaties/organized_crime/Drug%20Convention/Commentary_on_the_protocol_1961.pdf

22. On this, see: Jelsma, M. (5 March 2014), *INCB speaks out against death penalty*, INCB Watch, http://idpc.net/incb-watch/updates/2014/03/incb-speaks-out-against-death-penalty
23. See: 'New UN report highlights ongoing conflicts on the death penalty for drugs: Joint Statement: INCB Report Launch and the Death Penalty for Drug Offences, http://www.tdpf.org.uk/blog/new-un-report-highlights-ongoing-conflicts-death-penalty-drugs
24. See: Eventon, R. (March 2015), *Justifying militarisation; 'Counter-narcotics' and 'counter narco-terrorism',* Policy report 3 (Global Drug Policy Observatory, Swansea University), http://www.swansea.ac.uk/media/Militarisation%20FINAL%20.pdf . Youngers, C & Rosin, E (Eds), (2005) *Drugs and Democracy in Latin America: The Impact of US Policy,* Lynne Reinner.
25. Carcinogenicity of tetrachlorvinphos, parathion, malathion, diazion, and glyphosate, The Lancet – Oncology http://www.thelancet.com/pdfs/journals/lanonc/PIIS1470-2045(15)70134-8.pdf
26. See: Eventon, R., 'Chemicals don't discriminate', Le Monde Diplomatique blog, http://mondediplo.com/blogs/chemicals-don-t-discriminate
27. On this, also see: International Drug Policy Consortium (4 March 2015), *INCB focuses on access to pain medication in 2014 Annual Report*, INCB Watch http://idpc.net/incb-watch/updates/2015/03/incb-focuses-on-access-to-pain-medication-in-2014-annual-report
28. https://www.incb.org/documents/Publications/AnnualReports/AR2010/Supplement-AR10_availability_English.pdf
29. https://www.incb.org/documents/Narcotic-Drugs/Guidelines/estimating_requirements/NAR_Guide_on_Estimating_EN_Ebook.pdf
30. International Drug Policy Consortium (August 2014), IDPC response to the 2013 Annual Report of the International Narcotics Control Board, p. 14, http://idpc.net/publications/2014/08/idpc-response-to-the-2013-annual-report-of-the-international-narcotics-control-board
31. The Report for 2014 does not overtly push for the international control of ketamine. That said, there it is interesting to note the inclusion of the availability of narcotic drugs and psychotropic substances in emergency situations as a Special Topic (Paras. 228-238). Ketamine is an important drug within these situations with international control of the substance very likely making access harder. access. .
32. International Drug Policy Consortium (June 2014), *The 2014 Commission on Narcotic Drugs and its High Level Segment. Report of Proceedings*, pp. 25-26, http://idpc.net/publications/2014/06/the-2014-commission-on-narcotic-drugs-and-its-high-level-segment-report-of-proceedings
33. Foundation for AIDS Research (August 2015), *Harm reduction and the global HIV epidemic. interventions to prevent and treat HIV among people who inject drugs*, p. 6 http://www.amfar.org/uploadedFiles/_amfarorg/Articles/On_The_Hill/2015/DC-PWID-Policy-Report_08-31-15v205.pdf
34. Holt, E. (29 March 2014) 'Fears over future of opioid substitution therapy in Crimea. Under Russian control opioid substitution therapy for hundreds of Crimeans could come to an abrupt halt', The Lancet, http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(14)60234-8.pdf
35. Kazatchkine, M. (May 2014), 'Russia's ban on methadone for drug users in Crimea will worsen the HIV/AIDS epidemic and risk public health', *British Medical Journal*, http://www.bmj.com/content/348/bmj.g3118; Also see EHRN's Statement on the closure of opioid substitution therapy program in Crimea, http://www.harm-reduction.org/news/ehrns-statement-closure-opioid-substitution-therapy-program-crimea
36. Harm Reduction International (2015), *Global State of Harm Reduction 2014*, p. 10, http://www.ihra.net/contents/1524
37. Harm Reduction International (2015), *Global State of Harm Reduction 2014*, p. 10, http://www.ihra.net/contents/1524
38. Harm Reduction International (2015), *Global State of Harm Reduction 2014*, p. 80, http://www.ihra.net/contents/1524
39. http://www.bizjournals.com/cincinnati/news/2014/02/10/cincinnati-needle-exchange-program.html new NEP Feb 2014
40. Afghanistan, India, Malaysia, Thailand, Armenia, Azerbaijan, Bosnia & Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kyrgyzstan, Macedonia, Romania, Austria, Belgium, Finland, France, Germany, Greece, Ireland, Luxembourg, Norway, Sweden, USA, Australia, Egypt, Iran, Morocco. Information kindly provided by HRI
41. Also see: 'UNODC is protecting human rights and human health. Interview with Gilberto Gerra', Osservatorio Droga (Undated) http://www.osservatoriodroga.it/unodc-is-protecting-human-rights-and-human-health-interview-with-gilberto-gerra/#sthash.FI8MnFrh.dpbs
42. https://www.unodc.org/documents/hiv-aids/idu_target_setting_guide.pdf
43. See: http://www.undrugcontrol.info/en/static/item/2307-flexibility-of-treaty-provisions
44. See Bewley Taylor, D. (2012), *International drug control: Consensus fractured* (Cambridge: Cambridge University Press), p. 248
45. On this, see: Jelsma, M., Barrett, D. & Bewley-Taylor, D. (18 November 2014), *Fatal attraction: Brownfield's flexibility doctrine and global drug policy reform*, Huffington Post Blog, http://www.huffingtonpost.co.uk/damon-barett/drug-policy-reform_b_6158144.html
46. IDPC, Response to the 2013 Annual Report of the International Narcotics Control Baord http://idpc.net/publications/2014/08/idpc-response-to-the-2013-annual-report-of-the-international-narcotics-control-board
47. See: http://jis.gov.jm/senator-golding-calls-revised-war-drugs-approach/
48. On this see, for example: Barrett, D & Nowak, M. (2009), 'The United Nations and Drug Policy: Towards a Human Rights Based Approach' in Constantinides , A. & Zaikos, N. (Eds) *The Diversity of International Law: Essays in Honour of Professor Kalliopi.K. Koufa*, Brill/Martinus, http://www.ihra.net/files/2010/07/01/The_United_Nations_and_Drug_Policy_(with_Manfred_Nowak).pdf
49. See: Jelsma, M. (2015), UNGASS 2016: *Prospects for treaty reform and UN System-wide coherence on drug policy* (Brookings Institution), http://www.brookings.edu/~/media/Research/Files/Papers/2015/04/global-drug-policy/Jelsma--United-Nations-final.pdf?la=en

Report design by Mathew Birch: mathew@mathewbirch.com
Cover artwork by Rudy Tun-Sánchez: rudo.tun@gmail.com

Tel: +44 (0) 20 7324 2975
Fax: +44 (0) 20 7324 2977
Email: contact@idpc.net
Website: www.idpc.net

Funded, in part, by:

OPEN SOCIETY FOUNDATIONS

ROBERT CARR FUND
for civil society networks

The International Drug Policy Consortium (IDPC) is a global network of NGOs that promotes objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug -related harms. IDPC members have a wide range of experience and expertise in the analysis of drug problems and policies, and contribute to national and international policy debates. IDPC offers specialist advice through the dissemination of written materials, presentations at conferences, meetings with key policy makers and study tours. IDPC also provides capacity building and advocacy training for civil society organisations.

This report intends to offer an analysis of the INCB Annual Report for 2014, under four inter-related headings that examine the Presidents' Foreword, the Board's view on the 'Implementation of a comprehensive, integrated and balanced approach to addressing the world drug problem' as discussed in the thematic chapter, issues surrounding the Board's position on human rights and its reaction to the continuing shifts in the policy landscape.