



THE 2018 COMMISSION ON NARCOTIC DRUGS REPORT OF PROCEEDINGS

JUNE 2018



Executive summary

The 61st Commission on Narcotic Drugs, held in March 2018, was the last before the 2019 High Level session, at which a Ministerial Segment will review the 2009 Political Declaration and Plan of Action and set the direction international drug policy in the coming years. Amongst the 11 resolutions proposed, debated and submitted to ECOSOC from this year's CND, the most significant is the 'modalities resolution', guiding preparations for the 2019 Ministerial Segment. The ongoing fragility of the alleged 'Vienna Consensus' was fully apparent in the fractious and protracted negotiations surrounding this resolution.

This supposed consensus – always to some extent a rhetorical device – is fractured along a set of fault lines including human rights, public health and human development. The progressive language in which the 2016 UNGASS Outcome Document is framed, which features all of these, has made that document itself an object of tension and dispute. The lack of any reference in the text to the use of the death penalty provided a further focus for profound philosophical and political differences between member states. As the most recent consensual instrument, the Outcome Document was viewed by some states as the core text around which the 2019 should be organised. Others, by contrast, looked to the 2009 Political Declaration and Plan of Action as the key documentary resource, with 2019 marking the date of an extension and implementation of its strategy.

On the issue of human rights, whose prominence at the CND continues to grow, those states unwilling to engage with human rights discourse and practice deployed the familiar argument that states enjoy their own national sovereignty, and other states do not possess the right to intrude. Governments stressing the key place of human rights within drug control drew attention to the extrajudicial killings practiced with impunity in certain countries, observing that such phenomena represent the complete abrogation of human rights. The Philippines – the obvious centre around which

the discussion flowed – gave an extraordinary defence of its domestic practices, claiming them in the name of compassion and human rights. Others, such as Japan and Singapore, linked their robust enforcement measures to the objective of a 'drug-free society', and declared themselves to stand against a 'one size fits all' approach to drug control.

Another area of tension lay in cannabis policies, with particular reference to the question of regulated markets. Uruguay and Canada spoke at length on this issue, with Canada noting that, despite a century of prohibitive policy, cannabis use remains widespread among its population, whom the policy had failed to protect – especially its youth. Jamaica entered these discussion, with a broader call for a review of the current drug control architecture, to take into account changing cultural, scientific and medical realities.

Others defended the status quo, the Russian Federation being perhaps the leading voice here. The Russian delegate said his government 'strongly rejects calls for legalisation of narcotic substances'. Russia was prominent in its defence of the present drug control regime in both the Plenary and the Committee of the Whole (CoW), at one point walking out of the CoW to show its displeasure at the resolution on stigmatisation of PWUD, proposed by Uruguay and Canada. This report explores the symbolic battles that took place at the CoW, in which countries' tensions, ostensibly over drug policy, often represent wider underlying cultural and philosophical differences.

There was a considerable degree of scheduling activity at this year's CND, with 12 substances recommended for international control by the WHO. Many of the substances newly controlled were analogues of fentanyl, and most of the rest were synthetic cannabinoids. There was one stimulant; all of the substances were voted for control by the CND members, under the 1961 and 1971 Conventions.

Civil society engagement with the CND was stronger and more vocal than ever. There were several civil society members of state delegations; speeches in the plenary, and informal dialogues between civil society and the UNODC, the President of the INCB, and the Chair of the 61st CND. The latter was of special interest as its format permitted an informal and refreshing exchange with the Chair. There was also a rich array of side-events, 11 of which were organised or co-organised by IDPC.

The INCB, as is customary, presented its Annual Report, with a thematic chapter on drug treatment.

Overall, the CND was marked by dissensus and a changing organisational culture, with civil society playing an important role in bring about the latter.

Introduction

With the Ministerial Segment¹ of the 62nd Commission on Narcotic Drugs (CND or Commission) fast approaching, member state, UN agency and UN Economic and Social Council (ECOSOC) accredited NGO delegations arrived in Vienna in mid-March 2018 keen to learn how the last full CND meeting before the high-level session in 2019 would unfold. It would after all be a key moment for agreement on the approach to be taken by the Segment, and consequently any determination of the international community's next 10-year strategy for dealing with the so-called 'world drug problem': a vague phenomenon relating to an increasingly complex, diverse and, according to the UN's own World Drug Report,² expanding illicit drugs market.

Judging from the extremely limited progress to come out of the protracted, and often fraught, pre-CND negotiations around the 'modalities' resolution and the related structure to review the 2009 Political Declaration and Action Plan, there was for many delegates a sense that the increasingly fragile international consensus would inevitably unravel further. Indeed, what the Executive Director of the UN Office on Drugs and Crime (UNODC), Mr. Yury Fedotov, had described sardonically soon after the UN General Assembly Special Session (UNGASS) on drugs in April 2016 as a 'broad' consensus³ appears stretched to the very limits of plausibility. Within the context of a growing divergence of views and positions on a range of fundamental issues, it now seems appropriate to caveat any use or understanding of the term consensus with

a cautionary prefix. For some, the phrase 'faux consensus' seems more apposite than ever.⁴

While clinging onto the flimsy pretence of accord, tensions and resultant fissures between member states are deepening around a number of issues. Moreover, while the UNGASS Outcome Document has proved to be more constructive than perhaps initially thought, it has – as was demonstrated at last year's CND⁵ – itself become a point of contestation. The way those states favouring the status quo within the UN drug control regime are interpreting the Document certainly remains problematic. This is particularly the case in relation to the inter-related issues of human rights, public health and human development (as embodied in the UN system-wide Sustainable Development Agenda and related Sustainable Development Goals, SDA and SDGs respectively). Moreover, the Document's lack of reference to the use of the death penalty for drug offences provides an ongoing focus around which inter-state tension is coalescing.

Beyond this, significant discord also continues to intensify around the place of the UN's most recent soft law instrument on drugs vis-à-vis its predecessors and how they all relate to the review of the targets set in 2009. It will be recalled how almost a decade ago the international community committed to 'significantly reduce or eliminate' the global drugs market.⁶ Though the notion of a 'Vienna Consensus' on drugs has arguably never borne serious scrutiny, intrinsic philosophical differences in outlook, and hence policy approach, between states are increasingly difficult to hide. Intricacy and nuance characterise state engagement within this multilateral setting. Yet, more than ever it is possible to see a divide between those nations continuing to favour an idealistic quest for a drug-free world and those that, influenced by an increasingly robust evidence base and sophisticated appreciation of individual rights, are engaging with a variety of market management approaches. In the case of regulated recreational cannabis markets, this includes policy options that clearly operate beyond the boundaries of the extant regime.

Within such a context, and mindful of the increased use of closed informal meetings by member states, this report aims to provide an overview of the central issues debated during the 61st session of the Commission, held at the Vienna International Centre (VIC) between 12 and 16



Video presentation from the UN Secretary General at the 61st CND. Source: Harm Reduction Coalition

March 2018. With the ongoing objective of adding an often missed, yet crucial and holistic, human element to the formal UN reports of the meeting, as well as focusing on inter-state relations, the publication devotes considerable space to civil society engagement. This includes the now regularised NGO dialogues with representatives of the core UN drug control bodies (the UNODC and the International Narcotics Control Board – INCB or Board) as well as with the CND chair. Moreover, in attempting once again to go beyond a merely descriptive account, it offers some analysis of key topics of debate. In so doing, the report seeks to identify emerging issues of concern as expressed by delegations – for example the rise of crypto-drug markets (see Box 1) – and common narrative themes to emerge from member state statements, interventions and negotiating positions. Where appropriate, comparisons are also made with past CND sessions to identify trends and patterns within particular issue areas. As in previous years, a supplementary – and searchable – account of the entire session can be found on the CND Blog.⁷ Alongside the CND App,⁸ this now well-established civil society initiative aims to enhance transparency within the international policy making process and provide real time monitoring and reporting of proceedings. Official documentation relating to the session, including the ECOSOC report can be found on the UNODC website.⁹

The opening of the 61st Session of the Commission

Following the election of officers and the adoption of the agenda, the 61st CND opened with a video presentation from Mr. António Guterres, the Secretary General of the United Nations. In a brief message wishing the Commission well in its work, Mr. Guterres noted his pride in the reforms introduced in Portuguese drug policy during the time when he was Prime Minister, almost twenty years ago.¹⁰ The Secretary General also used his address to stress his view that, with the General Assembly special session ‘consensus as our blueprint...we can promote efforts to stop organized crime while protecting human rights’ and enable development and ensure rights-based treatment and support.

This video presentation was followed by the opening speech of Mr. Yury Fedotov.¹¹ Introducing the Commission as demonstrating time and again its ability to bring the world together to face the challenge represented by drugs, Mr. Fedotov went on to remind delegates of the important task of preparing for the 2019 Ministerial Segment, and the review of the 2009 Political Declaration and Plan of Action. This latter reference, without mention of the UNGASS Outcome Document, was arguably unfortunate since, as will be discussed at various points throughout this report, a significant number of countries are arguing against a continuation of the approach as laid out in the 2009 strategy.

On a brighter note, the Executive Director then turned to the question of gender equality, which



Opening of the 61st CND. Source: CND Tweets

appears to be high on the Office's agenda this year. Amongst other steps, the UNODC is working with UNAIDS to promote 'gender-responsive and rights-based' HIV Prevention, treatment and care for people who use drugs, including in prisons'.

Mindful of the deteriorating situation in Afghanistan, Mr. Fedotov followed this by noting the record levels of opium poppy cultivation in the country, with an area of 328,000 hectares under cultivation and potential opium production up to 9,000 tons.¹² The Executive Director referred to this situation as a 'genuine crisis'. It is difficult to disagree with this appraisal, at least in terms of the objectives of the present drug control regime. To be sure, it confronts the international community with a reality that demonstrates its failure with an unmistakable force. When the Political Declaration and Plan of Action were devised in 2009, Afghan poppy cultivation stood at 123,000 hectares and potential opium production at 6,900 – already at very high levels.¹³ According to Mr. Fedotov, the drug control response will centre on intelligence-led policing directed at organised crime and trafficking.

Moving onto another area of ongoing concern, he also referred to South East Asia as the world's largest illicit market for synthetics, particularly for methamphetamine, and noted that UNODC is expanding its support for the region. The SMART programme provides data to assist member

states in addressing the challenge posed by New Psychoactive Substances (NPS) and Amphetamine-Type Stimulants (ATS), said the Executive Director, before mentioning the potential scheduling of several NPS at this year's session of the CND.

Continuing last year's enthusiasm to highlight the links between the UNODC and the World Health Organisation (WHO), there then followed a video presentation from Dr. Tedros Adhanom Ghebreyesus, Director-General of WHO, who was elected in 2017. Borrowing the language of his predecessor at the 60th session regarding his work with 'Brother Yury', Dr. Tedros regretted that he could not attend the meeting and began by speaking of the 'tragic contradiction' of drugs, which, he alleged, killed 500,000 people annually, yet were vital pain killers. 'Thousands of people are left to face their pain and suffering without relief due to the lack of access to opioid analgesics', he said. This, he added, was due to over-regulation.¹⁴ Dr. Tedros also spoke out in favour of the importance of harm reduction services to prevent HIV, viral hepatitis and tuberculosis. He argued for the availability of controlled drugs for medical and scientific purposes, and for those with 'drug-use disorders'. While these objectives come with the WHO mandate, it was certainly positive to hear the Director-General speak so powerfully and passionately in their favour.

Plenary discussions

Following a full agenda covering both the standard operational issues of the UNODC, normative issues relating to the implementation of the drug control treaties, as well as preparations for the 2019 Ministerial Segment, discussion in the plenary over the course of the week naturally encompassed a wide range of – often interconnected – topics. While not claiming to be exhaustive, we explore some of the more prominent and reoccurring themes.

Implementation of the UNGASS Outcome Document and the 2019 Ministerial Segment: Some agreement, but significant differences remain

As was to be expected, in between reoccurring language concerning the place of the treaties as the ‘cornerstone’ for international endeavour, much discussion in the plenary focused on the implementation of the UNGASS Outcome Document and the fast approaching 2019 Ministerial Segment of the CND. While there were some points of consensus across statements and interventions, including around access to controlled medicines (for example, from countries as diverse as the Russian Federation and Norway) and the importance of the SDGs to the design and implementation of drug policy at all levels, the deeply-rooted differences in perspectives identifiable immediately after the New York meeting in 2016 were never far from the surface.

A key example of this could be seen in relation to views on the use of the death penalty for drug-related offences. Although no state came out explicitly in favour of this approach (see below), as had been the case last year,¹⁵ many (including most European nations and others such as Canada) continued to note their disappointment that the issue had not been incorporated into the Outcome Document. Indeed, several states and regional groups, including European Union under its Bulgarian presidency and Bolivia on behalf of GRULAC, flagged the UNGASS Outcome Document as a ‘key milestone’¹⁶ that puts human rights and health at the ‘core’ of drug policy. And yet, the omission of any reference to the death penalty in high-level UN declarations on drugs, including within the UNGASS Outcome Document, has become increasingly incongruous. Moreover, when taken within the context of statements from those states reluctant to move beyond high-level

rhetoric and engage with more human rights and health-oriented policies on the ground, Mexico’s optimistic view that ‘The paradigm shift which we agreed upon two years ago, has effectively become the international benchmark on which all countries increasingly base their efforts’ only served to further highlight the increasingly divided character of debates within the Commission. And, although admittedly less stark than in 2017, this divergence could be seen to play out in relation to the perceived hierarchy of soft law instruments and states’ approach to the 2019 Ministerial Segment – a central point of contention discussed further below in relation to events in the Committee of the Whole (CoW).

As the most recent consensus-negotiated instrument on the issue, some states regard the Outcome Document as central to the 2019 process. For example, the EU noted that 2019 should give impetus for the implementation of the document, with Portugal going further and noting that ‘no new political commitment’ was ‘necessary and that the 2019 Ministerial Segment should reaffirm the UNGASS Outcome Document which builds upon the 2009 Political Declaration and its Plan of Action’. For the Portuguese delegate, the goal was to retain what has been ‘achieved so far’ but take ‘into account the developments and emerging challenges’. Similarly, at one point during the week, Mexico noted that ‘The creation of an Expert Group on UNGASS Implementation’ had been proposed and approved within CICAD, ‘with a view to assessing the needs and challenges of Member States, and subsequently aligning agendas at the regional level’. For Uruguay, the significance of the UNGASS and its relation to the 2019 process was clear: the Special Session had ‘ended the utopia of a world without drugs’, seen the ‘defeat of [a] single thought based on repression’ and ‘defined the need to face drugs as a global problem and not as a war’. No doubt keen to legitimise his country’s position vis-à-vis regulated markets for the recreational use of cannabis, the Uruguayan delegate also pointed to the Outcome Document’s inclusion of language recognising the flexibility of the conventions to allow different national approaches; a point echoed by Bolivia on behalf of GRULAC despite the clear limitations of this elasticity.

On the other side of the spectrum, a number of states chose to play down the significance of the Outcome Document, preferring instead to make

a case – sometimes implicitly – for the primacy of the 2009 Political Declaration. Notably, speaking on behalf of the Africa Group and framing his comments in terms of the need to appreciate differing regional challenges, the Egyptian delegate put forward the view that the targets within the Political Declaration should be extended beyond 2019; a view ardently opposed by Uruguay. For Vietnam, the past few years had seen the 2009 instrument as ‘a key document’ upon which the international community would ‘build further in 2019’. ‘We should strengthen cooperation at national, regional and international levels, we should balance demand and supply’ he said, concluding that ‘2019 should focus on implementing the 2009 political declaration’.

Ongoing tensions around human rights

As has been the case in the past few years, beyond the death penalty, the issue of extra-judicial killings was also at times a point of tension and divergence within the 2018 Commission, with the familiar defence of national sovereignty deployed against adherence to human rights obligations seemingly more commonplace than in previous years amongst those states reluctant to engage with international human rights norms.

Although mentioned by several states and regional groups, including the EU, one of the most poignant interventions on the issue came from the Czech Republic. Highlighting the importance of human rights for drug policy and its central place within the UNGASS process, the Czech delegate noted that ‘Unfortunately, not long after we all signed the UNGASS outcome document in 2016, we saw many people being murdered without a trial. It is very apparent that such policies are in full breach of basic human rights principles’. Further, in one of an unprecedented three interventions over the course of the week by the United Nations Office of the High Commissioner for Human Rights (OHCHR), it was stressed how ‘extrajudicial responses to drug-related criminality are in clear violation of the international drug control conventions, which require that drug-related crime be addressed through formal criminal justice responses; and which require adherence to internationally recognized fair trial and due process norms and standards’; a position echoing that of the INCB within its Annual report¹⁷ (see below). Sidestepping diplomatic protocol to explicitly name the country in question, the OHCHR representative also referred to the recent decision of the Prosecutor

of the International Criminal Court to undertake a preliminary examination of the Philippines’ policy approach.

In response to such statements, and demonstrating the clear divergence of views that still exists on human rights within the CND, the delegate from the Philippines explained how his country, in line with ASEAN’s objectives, was working towards the goal of a drug-free community by 2022 through the adoption of a ‘compassionate approach’ and, incredibly, within a ‘framework with respect for human rights’. ‘While the world drug problem is a common and shared responsibility’, he continued ‘we underscore the sovereign right and duty of each state to determine the best approaches to address its drug problem, considering its historical, political, economic, social and cultural context and social norms’. Noting once again that Filipino policies were in line with human rights principles, he concluded by stressing that ‘All respect for the sovereignty and territorial integrity of states as well as the principle of non-intervention in internal affairs of a state must be observed by all. We will not stand idly while the scourge of illegal drugs affects our people, especially the young’.

Although perhaps not as blatant as the case of the Philippines, conflicting views around human rights were also evident elsewhere, including in relation to harm reduction; an issue area that seemed to be losing its controversial status within Vienna. Some states, including Colombia and Mexico, directly linked a health and human rights approach to the SDGs. Other nations and regional groups, including the EU, the Netherlands and Canada – the latter stressing its centrality to its 2016 Drugs and Substances Strategy – were keen to highlight their ongoing or revived support for harm reduction in particular.

Within this context, the Canadian delegate, for example, stressed that ‘The government of Canada is committed to addressing problematic substance use through a comprehensive, compassionate, collaborative and evidence-based approach... All drug policy must be rooted in the recognition of and respect for human rights’, with her colleague from India reiterating his country’s ‘commitment to ensuring access to substances for medical and scientific purposes, and to remove barriers that hamper OST, palliative care and pain relief’. Various UN and other agencies, including the Pompidou



Plenary of the CND. Source: ECHO

Group¹⁸ and UNAIDS, also made noteworthy statements on the importance of human rights in drug policy. This time demonstrating a much-needed push for system-wide coherence on the issue, the OHCHR stressed how it stood ready ‘to provide support to States and other stakeholders, including civil society organisations, for the promotion and protection of human rights in addressing drug problems, and in the implementation of human rights commitments included in the Chapter 4 of the UNGASS Outcome Document 2016’.

With such dialogue prominent within the plenary debates, it was interesting to note the response of states that have had longstanding reticence towards a human rights approach, particularly in relation to harm reduction. A case in point here is Japan, an ardent and long-time supporter of the zero-tolerance approach to drug use. In one example of a statement from what was an unusually vocal Japanese delegation, the plenary was used as an opportunity to explain the country’s demand reduction policy. Stressing the goal of a ‘drug-free society’ it was stated how while all countries ‘carry out their various measures such as prevention, enforcement and treatment... based on the actual drug situation, we cannot make one strategy applicable to all countries’. The delegate continued to note that ‘We understand that some measures on harm reduction are effective in some situations, e.g. in combating the spread of infectious diseases. However, harm reduction should not

be recommended for all countries’. In what appeared like an expression of hostility towards those governments and UN agencies supporting harm reduction, he concluded by stating that ‘The UN should not excessively recommend harm reduction’ and that ‘Japan has been effective in stemming drug abuse including through social rehabilitation programmes and strict enforcement on methamphetamine abuse’.

Repeating a similar theme, and one also stressed by the Philippines, in outlining its own ‘harm prevention strategy’, an approach based on ‘tough laws and robust enforcement’, the delegate from Singapore was keen to highlight that his country has ‘an approach that is effective and has worked well for us’. ‘We are one of the few countries in the world where the drug situation has been under control’ he continued, before noting: ‘But every country is different and there is no one-size-fits-all approach. We should respect every country’s sovereign right and responsibility to address its own drug challenges taking into account the historical, political, economic and social contexts of its society’.

Cannabis smoke, but (still) without fire: Reactions to regulated recreational markets

Mindful of actual, imminent and increasingly discussed policy shifts within some member states, it will come as no surprise that cannabis policy was

another point of substantive divergence. Indeed, although in many ways remaining the ‘elephant in the room’ in terms of serious and incendiary debate concerning the impact of regulated markets on the integrity and future shape of the UN drug control regime, cannabis and the liberalisation of policy more generally was a reoccurring – if strangely and familiarly low key – theme within the plenary. This was evident regarding both the Uruguayan and Canadian statements on the issue, to date the most significant states in terms of current or impending national-level legalisation.

Framing the policy choice in conceptual terms of the state as a ‘guarantor of the freedom and coexistence of the citizens’ the delegate from Uruguay pointed out that the country had ‘proposed to regain control of a market, that of cannabis, which as a result of the ban...had been left to organizations criminals (sic)’. ‘We must be emphatic’, he continued. ‘Uruguay does not intend to ‘liberalize the marijuana use (sic), or neglect in any case the effects that this can cause on the health of the population’. Rather, he went on to say, ‘Uruguay will continue to advise its inhabitants, not to ‘consume drugs, will deepen the messages of prevention and care of health, but’ the country has ‘simultaneously decided to realistically recognize that the use of cannabis exists and that the orthodoxy of the policies implemented so far...have been shown to be ineffective and harmful’. Moving on to frame the substance in the same terms as the more typically licit psychoactive substances, the delegate highlighted that ‘during the last year, the main components of this regulation,...together with that of the tobacco and alcoholic beverages market, contribute to the adoption of a responsible attitude of a State that seeks the greatest effectiveness in fulfilling its obligations as a guarantor of public health and Human rights’. As part of an ongoing effort to explain the situation within the country, an invitation was extended to the UNODC and ‘member countries’ of the Commission to ‘continue dialoguing (sic)... in order to better understand the precise scope of this policy, which is assumed in a sovereign way to effectively apply the mandates to increase Public Health, social welfare and Human Rights but that must be open and transparent in its procedures and results’.

Perhaps to avoid too much excitement – and indeed attention – concerning the planned policy shift in July 2018, the Canadian delegate made very

limited reference to the issue. And even then, it was in a very functional, and unlike the Uruguayans, no-frills fashion. ‘Canada continues to move forward with its plan to legalize and strictly regulate access to cannabis’, she informed the plenary, continuing by highlighting that the ‘reality in Canada is that despite nearly a century of strict criminal prohibition of cannabis and the commitment of substantial law enforcement resources, cannabis remains widely available’ within the country, and that the ‘current approach in Canada is not adequately protecting the health and safety of Canadians, especially youth’. Consequently, the delegate continued, ‘On April 13 of 2017, the government of Canada introduced the Cannabis Act to better achieve health and safety outcomes. The act creates a comprehensive national framework to provide restricted access to regulated cannabis and controls its production, distribution, sale, import, export and possession’. The focus on cannabis concluded by informing the room that ‘Regulatory proposals on areas including licencing, security, products and packaging and labelling are being developed’.

Other states with a less immediate interest in, or a neutral stance on, the issue of regulated cannabis markets also used the plenary as an opportunity to pass comment. For instance, in putting forward the view that the goal of a drug-free society is ‘hindersome to effective policy and a comprehensive approach’ and moreover is not helpful in relation to the SDA’s overarching objective of ‘leave no one behind’ (sic), the Norwegian delegate stressed that ‘legalization [is] not an option for Norway’.

However, from a far more receptive position, the delegate from Jamaica – in a very thoughtful and well-crafted statement – pointed out that despite remaining committed to its obligations under the drug control treaties: ‘we maintain that the current international drug control architecture does not allow for the requisite policy space to design appropriate domestic policies suited to changing national realities, such as consideration of cultural perspectives and practices, safeguarding of the right to freedom of religion and consideration for the human development of our citizens, in keeping with SDGs 3 and 16, in particular.’¹⁹ To this end, she went on to reiterate Jamaica’s ‘call for the establishment of a follow-up mechanism to review the drug control architecture and propose a recalibration of the response of the international community in keeping with evolving realities and

the need to formulate dynamic policy responses undergirded by scientific and medicinal research that complement development objectives, while remaining consistent with the rule of law’.

Such a view represented a relatively rare example of an explicit call to reassess the international control structures; a trend that has oscillated in recent years. Other less direct instances at the 2018 session included Colombia’s call acknowledging that ‘the war on drugs has not been won’ and highlighting the need for ‘new strategies and responses that match the needs of our citizens’, Uruguay’s desire to move forward in 2019 with a ‘realistic people focused approach’ and ‘paradigm shift’ and the Czech Republic’s concern that ‘we are at a crossroads and have to allow the new knowledge’ to be ‘discussed as some analytics (sic) say that the international drug control system might fall apart soon if the evidence internationally available continues to be ignored’.

As a counterweight to any calls for a ‘recalibration’ of the system, other more status quo-oriented states were of course keen to get their positions heard. Accompanied by the frequent deployment of emotive terms such as ‘scourge’ (for example, Iran, Egypt, Tunisia and South Africa), these spanned a broad spectrum of perspectives ranging from the curiously cautious to the ardently opposed. Interestingly, while occupying the position of a regional leader for calls to reassess the overarching architecture and prohibition-oriented approach of the current international framework, the Mexican delegate spoke out against approaches that were not multilateral in nature. No doubt referring obliquely to the situation in the United States, while in favour of ‘open dialogue that is multi-faceted’, Mexico appeared to be critical of ‘unilateral decision making...such as legalizing marijuana’ and its role in standing in the way of demand reduction.

Other states, including in the form of regional groups, were more directly hostile to liberalising trends, particularly in relation to cannabis. These included Bangladesh, on behalf of the Asia Pacific Group, and Iran that, stating it was ‘near the end of patience’, opposed decriminalisation as well as legalisation and framed the issue as a failure of shared responsibility and a serious challenge to producer and transit countries. Regarding the treaties as the ‘foundations of international drug control’, the Iranian delegate argued that the international com-

munity ‘must not be influenced by marginal matters and politics’. Iran’s eastern neighbour, Pakistan, stressing the centrality of the 2009 Political Declaration to international endeavour, highlighted its concern ‘with the legalisation of illicit drugs in some regions’. ‘The conventions clearly prohibit the recreational use of illicit drugs’ the Pakistani delegate stated, noting that ‘We urge the Commission and the UNODC to play an active role to guard against such trends’.

From a different regional perspective, Zambia was also keen to highlight its recognition that ‘the three International Drug Conventions and related Protocols are firm pillars for the Global Drug Prevention and Control’. ‘Therefore’ the Zambian delegate continued, ‘calls for legalization of some illicit drugs, such as cannabis, for recreation purposes are against the spirit of the international drug control conventions and go beyond the public health needs of society’. Echoing Pakistani calls, he also noted that the UNODC and WHO ‘should continue to provide timely technical guidance and evidence-based information on medical use of drugs such as cannabis’. On this point it is worth noting Japan’s hostility to medical marijuana based on the view that there is no evidence to support it. More generally, the Vietnamese delegate stressed that his country was ‘resolute against the legalisation of drugs’ and would ‘strive to achieve a drug-free society’. A similar position was adopted by Malaysia, which, working within the ASEAN vision for a ‘society free from drug abuse’ stated that it ‘stands firm against the legalisation of drugs. Another example of a state keen to highlight national sovereignty on the issue and perhaps resist what appeared to be increasingly perceived as a liberalising trend, the Malaysian delegate pointed out that ‘The world drug problem must be collectively addressed through common and shared responsibilities. In the fight against drug abuse, there is no one-size fits all approach. It is the sovereign rights of every government and its citizen to decide the best approach to tackle drug menace according to their national policies’.

While all these positions are of interest, perhaps the most important statement was that coming from the Russian Federation; a state increasingly regarded to be the leading defender of the extant international drug control framework and one that regards multilateral drug control to be a key foreign policy concern. Indeed, as the Russian delegate noted, ‘Our task...to further strengthen the international

Box 1 The darknet: An increasing issue of concern

References to the darknet and crypto-drug markets were once again peppered throughout the week. Beyond the usual acknowledgment of the phenomena from a regional group like the EU – which noted increasing market complexity, including the ‘internet’ – other states previously quiet on the subject chose to include it within statements. These included, for example, mentions by the Republic of Korea, Hungary, Ecuador on behalf of the G-77 and China, Bolivia on behalf of GRULAC and the Asia Pacific Group. Reference by Iran focused on the use of the internet by organised crime and terrorism with Kazakhstan stressing that international community needed to ‘ensure that crypto-payments do not become the standard for drugs payments’. While it is difficult to prove definitively, many comments on the issue appeared to be driven by references to the darknet within the UNODC’s 2017 World Drug Report;²⁰ a subtle example of how the UN apparatus can influence debates among member states.

anti-drug regime, based on the three core UN conventions’ had been confirmed by President Vladimir Putin in a speech in late February. Reflecting his country’s work in building prohibition-oriented anti-drug alliances around the globe, the delegate’s statement included reference to the Collective Security Treaty Organisation, the Central Asian Regional Information and Coordination Centre for Combatting Illicit Trafficking of Narcotic Drugs, Psychotropic Substances and their precursors and ASEAN as well as, at a state-to-state level, Nicaragua and Peru. Of note, and perhaps deliberately emphasising what he perceived as the welcome rise of a non-western bloc within the issue area, the delegate also mentioned ‘An increasingly clear anti-drug profile... acquired by the BRICS [Brazil, Russia, India, China and South Africa] in its intercontinental dimension’. Interestingly, and perhaps hinting at some form of coordinated action between the two states – and as a result a more vocal position at this year’s CND – the Russian statement also included a specific mention to Japan. ‘The contribution of the Japanese government’, he noted, ‘is a clear example of the unity of interstate efforts to repulse a

common enemy in the face of drug crime’ and important in the process of countering drugs. With all this in mind, the Russian delegate’s position on liberalisation was predictably robust and again reflected diametrically opposing views on the relationship between human rights and drug policy held within the CND: ‘We strongly reject calls for the legalization of narcotic substances. We consider that it is impossible to legalize death and human suffering. In addition, legalization goes against human rights, including the right to life and health...our ideal is to build a world free of drugs. If we all together take up the embodiment of this dream, then it can become a reality.’

Metrics: Still a lack of a human rights dimension

As has been the case during recent Commission sessions, the issue of metrics and indicators was once again evident in discussions within the plenary and side events. Although perhaps less prominent than in 2017, the process surrounding the revision of the Annual Report Questionnaire (ARQ) ensured that attention was periodically brought back to data. Beyond the usual references by some states, typically African and Asian, to seizure statistics, some statements included references to the need for ‘reliable and comparable data’ (Africa Group) and ‘accurate and comparable data’ (The Group of Latin American and Caribbean states, GRULAC), with others calling for the periodic review of policies in order to evaluate progress (Costa Rica), the need for indicators that link to the SDGs (including Goal 17 ‘Partnerships for the Goals’ by Panama), and for more ‘measurable’ and ‘realistic’ indicators to evaluate progress towards the objectives of the Outcome Document (Portugal). For Mexico, it was stressed how ‘a comprehensive and balanced drug policy requires adequate indicators and evaluation methods, which is why my delegation would like to underscore the adoption of the omnibus resolution on drugs by the General Assembly, entitled “International cooperation to address and counter the world drug problem”²¹. Acknowledging the need to adopt a different approach to indicators, Colombia observed that ‘we cannot rely on data’ relating simply to ‘acreage’ of crops eradicated since this provides ‘an inaccurate picture’.

At various points in the proceedings, including within the plenary (under item 5d) and at a specially organised civil society hearing on the issue, the UNODC spoke to the poor ARQ return rates and the



Angela Me presenting the Expert Consultation on the ARQ from January 2018 at a meeting with civil society. Source: Marie Nougier, IDPC

processes underway to revise the Questionnaires. Put in motion by CND Resolution 60/1 in 2017, this established an 'Expert Consultation on improving drug statistics and strengthening the Annual Report Questionnaire',²² the findings of which were presented to the Commission as a Conference Room Paper.²³ Several states welcomed the process, with the Netherlands, for example, noting its full commitment 'to strengthening and streamlining our global monitoring tools and capacities'. 'This is also a crucial element for expanding our evidence base', the Dutch delegate pointed out, before going on to stress 'We need to get a realistic picture of the world drug problem to underpin our discussions and policy decisions'. In this regard, he concluded, 'we welcome the steps taken towards improving the Annual Report Questionnaire last year by UNODC, in close cooperation with member states and other UN entities. We encourage them to continue their work in the year to come. This will help us to get set for the post-2019 era. Also, Madam Chair, for that reason, incorporation of this element in the modalities resolution is key for my country.'

One of the UN entities implicitly mentioned, however, was evidently less enamoured by the revision process. Indeed, at several points over the course of the week, the representative from the OHCHR noted how he was not especially impressed that the Expert Consultation held in January 2018²⁴

had not managed to incorporate any mechanisms to capture data on human rights. In the general debate at the beginning of the week the Zaved Mahmood (Rule of Law and Democracy Section) laid out the OHCHR's role in encouraging member states to 'fully cooperate with special procedure mandate holders of the Human Rights Council, providing them full access as requested and implementing their recommendations, in particular, those related to human rights and drug policy'. In this regard, it was also stressed how 'The Universal Periodic Review (UPR) mechanism of the Human Rights Council also provides a unique opportunity to advance human rights in relation to drug control efforts'. He continued to highlight that the 'UN human rights treaty bodies continue to formulate recommendations to assist State parties in fulfilling their obligations under the respective human rights treaties, while addressing drug problems. We urge States to fully implement those recommendations of human rights treaty bodies. We also urge this Commission to take note of the work and recommendations of all the UN human rights entities that bear relevance to issues related to human rights and drug policies.'

Later in the week, under Item 7 (follow-up to the Special Session) this general overview was supplemented by a more specific statement by the OHCHR concerning 'The need for a human rights approach

to data and information collection for measuring drug policies'. Here, in relation to recommendations within the Outcome Document, it was stressed how 'There is a growing realization that traditional indicators regarding arrests, seizures and criminal justice responses are inadequate to show the real impact of drug policies on communities. The success of drug control strategies should increasingly be measured through an assessment of the impact of drug control efforts in the enjoyment of human rights and other critical aspects such as security, health and social/economic development'. 'In this context', Mr. Mahmood continued, 'intersections between SDGs indicators and the measurement of drug policy implementation should be considered. The addition of a human rights approach in data collection would also strengthen the process'. 'OHCHR', he pointed out, 'has developed a set of human rights indicators for the realization of human rights and a guidance on human rights-based approach to data collection in the implementation of the SDGs. Both could be useful in strengthening and streamlining existing data-collection and analysis tools in drug control efforts'.

The Committee of the Whole: Symbolic battles in Vienna

As the policy-making body for the drug control apparatus, each year the Commission adopts a series of resolutions that develop and apply the international drug control conventions. The CoW is a technical committee of the Commission where those resolutions are discussed, negotiated and approved by consensus prior to submission to the Plenary and thereafter to ECOSOC. These debates over the content and wording of resolutions reveal countries' views on drug policy, and, underpinning these, their broader culture, social policies and philosophical positions. So, what on the surface is simply a set of technical debates represents something much deeper. We will analyse and examine some of these underlying patterns of belief in the following paragraphs.

It is customary for the First Vice-Chair of the Commission to chair the CoW, and this year the role was taken up by Mr. Michael Adipo Okoth Oyugi, Permanent Representative of Kenya to the United Nations at Vienna.²⁵ Mr. Oyugi had difficulty managing the often-intensive debates at the CoW, with the cultural differences that underpinned countries'

stances on them. This year there were a total of 11 resolutions (see Box 2).²⁶

The most significant of these for the international drug control regime is, in the longer term, the 'modalities resolution' (resolution 61/10), which sets out the broad parameters of the Ministerial Segment due to take place at next year's CND and represents the ten-year watermark of the Political Declaration and Plan of Action constructed in 2009 at the close of the 'UNGASS Decade'.

The modalities for the 2019 Ministerial Segment: A clear breach in consensus

The radical differences in policy at the CND were perhaps at their most marked in the debates surrounding the 'modalities resolution'. In 2009, the 52nd meeting of the CND had featured a High-Level Segment,²⁷ and devised a new Political Declaration and Plan of Action,²⁸ which largely reiterated the UNGASS objectives of 1998.²⁹ These were encapsulated in the following passage:

'the ultimate goal of both demand and supply reduction strategies and sustainable development strategies is to minimize and eventually eliminate the availability and use of illicit drugs and psychotropic substances'³⁰

The goal of the Political Declaration and Plan of Action was, in other words, a 'drug-free world' or significant and measurable steps toward it. Since 1990, the international drug control apparatus has set up a high-level meeting approximately every ten years to take stock of progress and to affirm new goals for the next decade. In practice, however, although the process has brought some refreshing statements on the importance of health and human rights, these high-level meetings have tended to re-state the same approach and set of policy objectives. The modalities resolution will set the direction of the 2019 Ministerial Segment at next year's CND, and whether it continues the trend of decennial reiteration or points the way toward new and more realistic policies. The 61st CND was driven by tensions between the countries supportive of one or the other of these alternatives.³¹

Those seeking a change in the tone and direction of international drug control policy tended to draw their language and approach on the 2016 UNGASS Outcome Document, while the bloc committed to

reaffirming the 2009 Political Declaration and Plan of Action repeatedly expressed an underlying anxiety and hostility toward the Outcome Document and its much stronger human rights components. Discussions on resolution 61/10 had been launched a month prior to CND, and continued throughout the week in Vienna. In an unusual practice, they were held entirely in informals, and those precluded from these closed meetings, which of course included observers from civil society, were unable to follow the living minutiae of the debate. Nonetheless, there were enough snatches of official discourse and corridor commentary to trace the trajectory of the exchange, tense and disputatious as it was. There were new drafts provided on a daily basis, with one (presumably record-breaking) session continuing until three in the morning.³²

The resolution was finally agreed on the final day of the CND week, with the Mexican CND Chair Ambassador Alicia Buenrostro Massieu presenting a radically shortened draft of the resolution. This was agreed at the very end of the session, after a number of controversial paragraphs had been removed – including all but one preambular paragraph reaffirming resolution 60/1, agreed the previous year, on the modalities for 2019. Unable to strike a consensus, the CND Chair eventually stripped the resolution of any details on the modalities for the Ministerial Segment, keeping only the previously agreed elements from resolution 60/1 and the sparse content on which some agreement could be found. It was agreed that two roundtables would be organised but no theme was agreed for either of these; as for the general debate, no detail was included as

to whether this would focus on the 2009 Political Declaration or the 2016 UNGASS Outcome Document, or both documents. Similarly, the outcome of the Ministerial Segment resulted in a rather vague ‘summary by the Chair’ of the general debate and roundtables, and an ‘outline for the way beyond 2019’ – rather than a ‘detailed roadmap’ as had been considered in previous iterations of the resolution. Despite many disappointments regarding the final iteration of the resolution, the mention – for the first time in a CND resolution – of the role of the Civil Society Task Force at the upcoming Ministerial Segment, was welcome by many NGO advocates.

Following its consensual adoption, the modalities resolution remained an object of controversy, when a group of countries, led by the Russian Federation, expressed its discontent with the surviving text. In addition to Russia, the group included Algeria, Belarus, China, Cuba, Egypt, Iran, Namibia, Pakistan, South Africa and Vietnam. These countries stated that they did not feel the approved version of the resolution represented a consensus, nor that their views had been sufficiently taken into account. In the words of the Official Report on the CND session (advance, unedited draft):

‘Taking into account the reservations to the draft by the group of countries making the statement, those countries would like to come back to all pending issues related to preparations for the ministerial segment during the intersessional process of the Commission.’³³

This appears a most curious state of affairs, with the modalities resolution being adopted, but with



Committee of the Whole chaired by Mr. Michael Adipo Okoth Oyugi, Permanent Representative of Kenya to the United Nations at Vienna. Source: CND Tweets

a number of States reserving the right to revise it during the intersessional meetings of the CND. Moreover, this manoeuvre was carried out in the name of consensus: a ‘faux consensus’ indeed. It was perhaps the only thing to be expected given the groaning cracks that stretch ever wider across the structures of international drug control.

‘Drug use’ versus ‘drug abuse’: Ending stigma towards people who use drugs

Having analysed the modalities resolution, we will focus now on the other resolutions that are of particular interest and importance to IDPC and its constituency.

The CoW proceedings got underway with Resolution 61/4, ‘Promoting measures for the prevention of mother-to-child transmission of HIV, hepatitis B and C and syphilis among women who use drugs.’ This had been anticipated to be a straightforward technical proposal with medical objectives, in line with a similar resolution presented at the 2017 session of the Commission on Crime Prevention and Criminal Justice.³⁴ However, it developed into an ideological argument, much of which centred on the use of the term ‘drug use’, which Pakistan wished to replace with ‘drug abuse’.

The final version of the resolution contained several references to ‘drug abuse’. Canada led those delegations arguing for the ‘drug use’ formulation. While Pakistan stated that it had ‘lost count of how many times this term (‘abuse’) had been utilised in agreed documents, Canada noted that ‘drug use’ also appeared in official UN documentation, including the most recent high-level document, the 2016 UN-GASS Outcome Document – which featured both terms. Australia intervened to propose a third option that might offer a way out of this impasse, suggesting that ‘we could perhaps use “drug use disorders”’. However, Indonesia responded that it wished to retain ‘drug abuse’ in this context and was supported by Nigeria. Despite the adoption of the ‘drug abuse’ language, references to addressing barriers to treatment – including poverty – were included.

At this point the resolution was sent to ‘informals’; the CND term for smaller meetings, taking place in a side room away from the main CoW discussions, at which the key participants in debates surrounding a resolution meet to try to resolve differences – although these informal meetings are private and cannot be observed by civil society delegates. Despite the increased use of such a mechanism, the

Chair expressed his growing sense of exasperation at the pace of progress toward agreement on resolutions. ‘We cannot continue like this’, he said, ‘A day and half and nothing decided or, apparently, even close to decision’.

This dispute over terminology was reiterated in several resolutions. The underlying values and ideas at stake in the ‘use/abuse’ debate were perhaps most clearly visible in the discussions surrounding the resolution proposed by Canada and Uruguay, Resolution 61/11 ‘Promoting non-stigmatizing attitudes to ensure the availability, access and delivery of health, care and social services for drug users’. The Canadian co-sponsor introduced the resolution, explaining that the stigmatisation of people who use drugs runs counter to health and human rights, which should underpin responses to drug use. Following these introductory remarks, Mr. Oleg Syromolotov, head of delegation for the Russian Federation, responded to the resolution and the concept of stigma as applied to drug use. ‘We are acting on instructions from capital’, said Mr. Syromolotov. ‘We don’t understand the concept of stigma in our country. We believe it refers to saintly people – and drug users are not saintly’. It should be noted that the concept of stigma as it was applied in this resolution derives from sociology, where it was first used by the American social scientist Erving Goffman to denote the marking of an individual with the sign of the outsider – Goffman used it to analyse the cases of the mad and the criminal.³⁵

Within this context, the Russian Federation was surely being disingenuous when it claimed to have no knowledge of the use of the term as a social metaphor. The use of the term ‘drug abuse’ is arguably itself a term of stigmatisation; as such, the Russian Federation appeared to actively support the stigmatisation of people who use drugs. Mr. Syromolotov continued with his critique of the resolution:

‘This resolution attempts to bring to drug abusers a new quality – namely, that they possess some sort of immunity from criticism. We say that they have this belief that taking heroin is the same as quaffing a glass of beer. This concept of stigma is undermining the very idea of stopping addiction. We will not be able to support this resolution’.

At the close of this speech, the Russian Federation delegation rose as one and left the room. Later, they were to be seen covertly observing

Box 2 Resolutions agreed at the 61st CND³⁶

Resolution 61/1: Budget for the biennium 2018–2019 for the Fund of the United Nations International Drug Control Programme

Resolution 61/2: Strengthening efforts to prevent drug abuse in educational settings

Resolution 61/3: Laboratory support for the implementation of the scheduling decisions of the Commission of Narcotic Drugs

Resolution 61/4: Promoting measures for the prevention of mother-to-child transmission of HIV, hepatitis B and C and syphilis among women who use drugs

Resolution 61/5: Promoting the implementation of the electronic International Import and Export Authorization System for licit trade in narcotic drugs and psychotropic substances

Resolution 61/6: Promoting the implementation of the United Nations Guiding Principles on Alternative Development and related commitments on alternative development and regional,

interregional and international cooperation on development-oriented, balanced drug control policy addressing socioeconomic issues

Resolution 61/7: Addressing the specific needs of vulnerable members of society in response to the world drug problem

Resolution 61/8: Enhancing and strengthening international and regional cooperation and domestic efforts to address the international threats posed by the non-medical use of synthetic opioids

Resolution 61/9: Protecting children from the illicit drug challenge

Resolution 61/10: Preparations for the ministerial segment to be held during the sixty-second session of the Commission on Narcotic Drugs, in 2019

Resolution 61/11: Promoting non-stigmatizing attitudes to ensure the availability, access and delivery of health, care and social services for drug users

proceedings from the back of the Boardroom. Canada then spoke to the assembled delegates, noting that numerous UN documents deploy the concept of stigmatisation, stigmatising attitudes, ‘And yes, stigma’. Australia then lent its support to the resolution and to the concept of social stigma.

‘A couple of points,’ said the Australian delegate, ‘on the nature of stigmatization. Consider the concept of “mental health” – the idea is not to normalise mental health problems or to encourage people to have mental health problems’. He explained the counterpoint between the language of ‘mental health’ and the use of terms such as ‘lunacy’ and ‘madness’. ‘It’s the same for drug use’, he elucidated; ‘It’s the exact opposite of normalising drug use; rather, it is intended to encourage people – drug users – to come forward for treatment, to feel it is respectful and relevant to them’.

Nonetheless, a group of countries continued to support the use of terms such as ‘drug abuse’. This included Iran, which echoed the sentiments of the Russian Federation, along with China, Pakistan and Egypt. China’s main problem, it contended, was

with the use of the term ‘people who use drugs’; it preferred ‘drug abusers’, itself an item of stigmatising language. These countries are culturally conservative with little in the way of civil society engagement, and restrictive modes of governance. Those in favour of the resolution and its language included the Czech Republic, Belgium, the UK, Bulgaria, Sweden, the Netherlands and Denmark.

At length, Iran agreed, under pressure from the resolution’s sponsors and the Chair to achieve consensus, to use the term ‘drug use’ rather than its own preference, while Canada dropped its preference for ‘people who use drugs’ and accept this compromise measure. The resolution now speaks mostly of ‘drug use’ and ‘drug users’, a fitting abandonment of the most stigmatising terminology. It is interesting to note here that Iran, while considered one of the hard-line conservative countries at the CND, is the regional leader in the provision of harm reduction services.³⁷ Despite this, stigmatisation of people who use drugs remains one of the major barriers to access to treatment and harm reduction services.

Addressing the needs of people with vulnerabilities

A further conflict occurred in debates over Resolution 61/7 'Addressing the specific needs of vulnerable members of society in response to the world drug problem'. Iran and particularly Egypt objected to the use of the term 'social consequences' in the conceptualisation of vulnerability. It appeared that Egypt wished to link 'addiction' to 'vulnerable members of society', articulating drug problems solely with individuals rather than the social context. The co-sponsors, Australia and New Zealand, with support from Belgium, argued that this language is included in agreed UN documents. Egypt insisted that to claim that this is agreed language 'twists the context', as it refers to something quite different here. It was never made clear in quite what way the present use of the term was different. Eventually, the Egyptian delegation agreed to the use of 'consequences of drug abuse'.

Once again, the discourse appeared to be one that sought to stigmatise those people who use drugs. Australia and Germany argued that the resolution should refer to 'key populations', while Pakistan, Iran, Turkey, Iraq and the Russian Federation preferred 'vulnerable members of society'. According to Egypt, this characterisation featured in the UNGASS Outcome Document; which indeed it does on several occasions. Australia countered by contending that 'we cannot always, in all circumstances, use previously agreed language. If we do so, we are unable to include and take account of scientific and social advances'. The Russian Federation argued that the phrase 'key population' was reminiscent of racist formulations. The resolution returned to informals, apparently with little progress. On returning to the CoW, where the conflict was resumed, Norway expressed its exasperation. 'We went through all of this in informals', said the Norwegian delegate.

There was further debate on women who use drugs in prisons, including women with special requirements such as pregnancy and childcare. The Russian Federation intervened to state that in Russia, 'there is no drug abuse in prisons'; a point that is patently untrue. Indeed, according to one large Russian study, 10% of 1000 inmates injected drugs, with 66% sharing syringes.³⁸ Despite the existence of such data, the Russian delegate went on to say that, 'We have the best prisons in the world. There is

no drug abuse in our prisons, which is why we must insist on changing the present wording'.

After the discussion on this resolution closed for yet another round of informals, it was possible to hear a series of remarks – obviously intended to be private – over an open microphone: 'They keep saying it was all agreed in informals – but it was only agreed by Western European countries and Australia. They were saying that we're talking about babies: if we're talking about babies, let's make sure we *are* talking about babies, and not about abortions'. It was not possible to identify with certainty the source of these observations, but it was clearly derived from one of the conservative countries, who were unhappy with the views of the 'Western European countries'. Clearly, the ideological debates were not confined to issues of drug use but extended to other cultural differences including sexuality and abortion. In all of the instances discussed in the foregoing, these countries valorise the stigmatisation of people who use drugs, apparently believing that such stigma works to prevent or stop the consumption of controlled drugs.

Changes in the scope of control: Scheduling at the 61st CND

On the morning of Wednesday 14 March, voting took place on changes in the scope of control; a process that takes place in the Plenary and that currently represents the only aspect of the Commission's work where votes are taken. There were 12 substances recommended by the WHO Expert Committee on Drug Dependence (ECDD) for scheduling under the 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol or the 1971 Convention on Psychotropic Substances.

Each convention has four schedules featuring varying degrees of restriction, which are intended to reflect the levels of risk associated with the substance in question.³⁹ The voting arrangements differ between these two treaties: the Single Convention requires a simple majority of votes for the recommendation to be accepted, while the Psychotropics Convention requires a two thirds majority, which equates to 35 members of the CND.⁴⁰ In the voting process for these two conventions, each substance is introduced by the WHO. Votes are then cast by show of hands (for, against or abstain), and counted by the Secretariat. The decision is announced by the Chair.



Voting on scheduling at the 61st CND. Source: CND Tweets

Many of the substances recommended for inclusion under the controls of the international treaties this year were fentanyl analogues (see Box 3). The first proposal represented carfentanil. Mr. Gilles Forte of the WHO explained that this is an extremely potent substance, some hundred times stronger than fentanyl, which is itself approximately one hundred times stronger than morphine.⁴¹ This renders carfentanil a powerful risk to public health. There were six fentanyl analogue drugs recommended for inclusion under the control schedules of the Single Convention. Each was voted for scheduling, with no votes against or abstentions. Of the remaining six substances recommended for scheduling, five belong to the class of synthetic cannabinoids, and one, 4-fluoroamphetamine (4-FA), is a stimulant.⁴² All of these were voted for inclusion under the control schedules of the 1971 Psychotropics Convention.

The INCB: More steps forward, but also backward movement

As is the norm, under 'Implementation of the international drug control treaties' the INCB presented to the Commission its Annual Report for 2017 and its precursors report.⁴⁴ The President of the Board, Dr. Viroj Sumyai, began by highlighting that 'Marking the seventieth anniversary of the Universal

Declaration of Human Rights, the Annual Report has a special focus on the linkages between human rights and drug policy'. In this vein, he continued to point out that 'The thematic first chapter of this year's annual report is on treatment, rehabilitation and social reintegration for drug use disorders as essential components of drug demand reduction'. As such, the plenary was informed, the Board 'draw attention to protecting the rights of people impacted by drug use disorders. We emphasize the importance of non-discriminatory access to treatment, rehabilitation and social reintegration services'. Dr. Sumyai was also keen to state that the 'report shows that treatment of drug dependence is highly cost-effective and, ultimately, much less expensive than criminal justice interventions'.

Dr. Sumyai then noted that 2018 marks a number of anniversaries beyond the 70th anniversary of the adoption of the Universal Declaration of Human Rights, specifically the 25th anniversary of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights and the 30th anniversary of the adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. 'These anniversaries', the President stated, 'provide an opportunity to reflect on the relationship between drug control and human rights and take action accordingly'. As such, he said, 'INCB continues to

Box 3 Decisions at the 61st CND⁴⁴

Decision 61/1: Inclusion of carfentanil in Schedules I and IV of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol

Decision 61/2: Inclusion of ocfentanil in Schedule I of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol

Decision 61/3: Inclusion of furanylfentanyl in Schedule I of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol

Decision 61/4: Inclusion of acryloylfentanyl (acrylfentanyl) in Schedule I of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol

Decision 61/5: Inclusion of 4-fluoroisobutyrfentanyl (4-FIBF, pFIBF) in Schedule I of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol

Decision 61/6: Inclusion of tetrahydrofurfanylfentanyl (THF-F) in Schedule I of the Single Conven-

tion on Narcotic Drugs of 1961 as amended by the 1972 Protocol

Decision 61/7: Inclusion of AB-CHMINACA in Schedule II of the Convention on Psychotropic Substances of 1971

Decision 61/8: Inclusion of 5F-MDMB-PINACA in Schedule II of the Convention on Psychotropic Substances of 1971

Decision 61/9: Inclusion of AB-PINACA in Schedule II of the Convention on Psychotropic Substances of 1971

Decision 61/10: Inclusion of UR-144 in Schedule II of the Convention on Psychotropic Substances of 1971

Decision 61/11: Inclusion of 5F-PB-22 in Schedule II of the Convention on Psychotropic Substances of 1971

Decision 61/12: Inclusion of 4-fluoroamphetamine (4-FA) in Schedule II of the Convention on Psychotropic Substances of 1971

emphasize that for drug control action to be successful and sustainable, it must be consistent with international human rights standards’.

On the more problematic issue of non-medical use of cannabis, or so called ‘recreational use’, he emphasised that ‘any measures that permit the use of cannabis for non-medical purposes are contrary to the international drug control conventions’. Despite the ongoing reluctance of the Commission to resolve the tensions within the system, the President pointed out that ‘Further action in this regard rests collectively with you, the members of the international community, including through the Commission’. In relation to ‘drug consumption rooms’ (DCRs), and reflecting a more cautious position than in the Annual Report for 2016,⁴⁵ the President reiterated that ‘their ultimate objective must be to reduce the adverse consequences of drug abuse without condoning or encouraging drug use and trafficking, *and that such facilities must provide or actively refer patients to treatment, rehabilitation and social reintegration services, with rehabilitation and social reintegration remaining the ultimate objective*’ (emphasis added).

The focus of another special topic within the Report is the risk of long-term opioid use and the consumption of opioid analgesics. The President noted that the Board ‘highlight that the global consumption of opioid analgesics has been increasing in recent decades, particularly in high-income countries’. Moreover, he continued, ‘INCB is drawing attention to the “global pain divide” and how this ‘imbalance in the availability of opioid analgesics has a disproportionate impact upon low- and middle-income countries’. On this point, the President called upon states to ‘close this gap’.

Mindful of some states’ unease about the issue, it is also worth noting the Board’s position on the growing number of governments⁴⁶ that are authorising the therapeutic use of cannabinoids. The President reiterated the INCB’s position that ‘authorizing the use of cannabinoids for medical purposes is permissible under the 1961 Convention provided that certain conditions are met’. Consequently, he continued, ‘We recommend that Governments considering the medical use of cannabinoids examine the results of scientific studies and trials and ensure that prescription for medical



Informal NGO dialogue with the INCB President. Source: Marie Nougier, IDPC

use is performed with competent medical knowledge and supervision’.

As is often the case, the President’s statement, and the Report to which it referred, received a mixed response from member states. The dominant reaction was positive, with various states and agencies commending the Board’s work. For example, there was support for the INCB’s position on access to controlled medicines (Russian Federation, Belgium, Venezuela, Australia, Norway), human rights, including the death penalty (EU, Denmark, Norway, OHCHR) and fentanyl (USA), with the Russian Federation noting that ‘the basis of our policy is the provisions of the international anti-drug law, the inviolability of which was confirmed at the special session of the UN General Assembly in 2016’ and that ‘The International Narcotics Control Board acts as the custodian and guarantor of its consistent implementation’. Although not overtly critical of the Board’s position, the Africa Group chose to highlight ongoing concerns regarding tramadol and ketamine.⁴⁷

Aware of the notably hard-line position adopted by the Japanese delegation at this year’s session, it was no great surprise that in response to the President’s point on medical cannabis, the Japanese delegate ‘strongly’ supported ‘the concerns expressed by INCB’ noting that ‘the prescription of cannabinoids must be done under competent medical guidance’. Perhaps more significant, however, was the Japanese position on the Report’s special topic on ‘drug use disorders’. Echoing a constant theme from the country throughout the week, the Japanese delegate noted that the INCB recommendation ‘that offences of lesser gravity’ should not be met by ‘punitive sanc-

tions’ but by ‘providing treatment’ and then stressed that ‘The gravity of punishment and how to give punishment and treatment in a well-balanced manner *should be based on the legal system of each countries’* (emphasis added). ‘It is not appropriate to have universal standards across the world’, he continued. ‘Punishment of drug abusers in our country helps the drug problem. Compulsory treatment should be discouraged, however it is necessary to preventing addicts from causing harm and it is medically necessary to treat them’ (sic). The delegate also reminded the plenary that articles 23 and 39 of the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances respectively ‘clearly stipulate’ that a party can implement stricter provisions than those provided for by the conventions.

Criticism, but this time more in line with human rights norms, also came from Switzerland. Picking up on the Board’s more reluctantly supportive stance on drug consumption rooms, the Swiss delegate made the following and uncharacteristically forthright intervention:

‘We were pleased to host the INCB and note their recommendations concerning our safe drug consumption rooms. The objective of these rooms is to reduce the harmful effects of drugs. We disagree that the safe rooms should guide individuals to treatment because this must be a free and voluntary choice and can thus not be a prerequisite of these rooms. The rooms are part of a larger scale initiative as part of a holistic approach which aim to reduce the worst effects of drugs abuse. We have had these rooms for over 30 years and they have been shown to help save lives and they

do help individuals access other services. They assure safety for consumption’.

In welcoming the INCB’s increasingly vocal position on human rights, Denmark also commented that there was a need to ‘avoid generalizations’ about drug consumption rooms and, within the context of the opening of the country’s first facility, commented upon constructive dialogue with the Board. Interestingly, the Norwegian delegate took the opportunity under the agenda item to highlight the lack of explicit reference within the report to harm reduction and the fact that there appeared to be ‘no good reason’ for this stance. Finally, in a welcome comment upon the Board’s operating practice, the Swiss delegate noted how ‘We would like the INCB to be more transparent including country reports’ (sic).

NGO participation: Stronger and more vocal than ever

NGO engagement in the Plenary

As in recent years, the 61st session demonstrated a great deal of civil society activity.⁴⁸ This could be seen in terms of involvement with side events (see Box 4), the inclusion of NGO representatives in member state delegations (for example within the delegations of Mexico, New Zealand, the Neth-

erlands and Switzerland) and the activities of NGO delegates themselves. To be sure, a manifestation of such civil society action was the wide range of NGO speakers in the plenary session.

The International Association for Hospice and Palliative Care (IAHPC) delivered the first NGO statement of the week on agenda item 5(d) ‘International cooperation to ensure the availability of narcotic drugs and psychotropic substances for medical and scientific purposes while preventing their diversion’. In arguing for improved access to controlled medicines, IAHPC highlighted how providing morphine worldwide to those suffering from moderate to severe pain would be less costly than what the United States alone is spending on drug law enforcement.

Several NGOs, including Harm Reduction International (HRI), IDPC, the International Federation of Red Cross and Red Crescent Societies (ICRC) strongly condemned the human rights violations committed in the name of drug control. Specific mentions were made of inhumane treatment and punishment against people who use drugs, capital punishment against drug offenders, and extrajudicial killings – with HRI justifiably breaking the CND protocol by naming and shaming the Philippines and its continued war on drugs.

Unsurprisingly, considering the ongoing debates



IDPC pre-CND orientation meeting. Source: Steve Rolles

on the 2019 Ministerial Segment, most NGO statements were made on agenda item 6 on the implementation of the 2009 Political Declaration and Plan of Action on the ‘world drug problem’, and on agenda item 7 on UNGASS implementation. IDPC called on member states to abandon the harmful goal of achieving a drug-free world which underpins the 2009 Political Declaration and is the cause of the many harms currently associated with drug policy. In the context of the 10th anniversary of Antonio Maria Costa’s report ‘Making drug control fit-for-purpose’ – in which the UN acknowledged for the first time the ‘unintended consequences’ of repressive drug policy – IDPC concluded that ‘we can no longer ignore the devastating negative impacts that have resulted from misguided drug policies’. In light of these conclusions, the UNGASS was considered by IDPC, the ICRC and the Norwegian FORUT as a turning point in global drug policy and ‘an excellent roadmap for years to come’.

There also seemed to be an understanding among all NGO speakers that drug use should be approached via public health and social inclusion, and no longer with criminalisation and punishment – although the speakers had diverging views on what this approach should look like. While the ICRC promoted harm reduction, Asociación Proyecto Hombre focused on treatment and recovery via therapeutic communities. In turn, FORUT, IOGT International and the World Federation against Drugs prioritised drug prevention interventions. Similarly, while various NGOs called for the end of the ‘drug-free world’ goal, others strongly promoted it.

Furthermore, in what can be considered a highly controversial statement, Smart Approaches to Marijuana (SAM) provided dubious data on the impact of cannabis regulation in the USA, including an apparent major increase in cannabis use among youth, deaths by drugged-driving, increases in arrests of African-Americans, etc. This was the case despite the 2017 World Drug Report pointing to the complexity and uncertainty of the data surrounding the shift to regulated markets within some US states and noting that ‘It is difficult to quantify the impact of the new cannabis legalisation as it seems that a combination of elements was already in the process of changing the cannabis use market in those jurisdictions when the legalization measures were put in place’.⁴⁹ Moreover, the SAM representative concluded, ‘A substantial majority of citizens around the world do not agree

Box 4 Side events

Although the UNODC Secretariat limited the number of side events at this year’s Commission – a move arguably necessitated by the complexities of last year’s programme – there remained an impressive array across the week with panels covering a wide range of topics and issue areas.

While many side events organised by member states, UN agencies and civil society – often a combination of all three as hosts and co-hosts – focused on relatively uncontroversial issues such as markets around NPS and synthetics, the side events remained important ‘constructive spaces’ where delegates could discuss topics that were being largely side-stepped within the formal diplomatic setting of the plenary and the CoW. As such, several events focused specifically on human rights,⁵⁰ public health and harm reduction with others discussing drug policy metrics,⁵¹ civil society participation⁵² and, in the absence of any substantive discussion elsewhere, regulated cannabis markets and the conventions.⁵³



In partnership with civil society colleagues, UN agencies and member state delegates, IDPC was involved in the organisation of 11 events. Reflecting the diversity of content present across the week, these covered issues as varied as gender and drug policy,⁵⁴ human rights defenders engaged in the war on drugs,⁵⁵ harm reduction,⁵⁶ drug courts⁵⁷ and others.⁵⁸

with legalizing cannabis. Legalization is about one thing: making a small number of business people rich'. While commercialisation and profiteering are clearly issues of valid concern, this statement chose to overlook the fact that most regulated schemes in the USA resulted from citizen-led referenda. In another controversial claim, the SAM representative also reproached those calling for legal regulation of ignoring the harms associated with cannabis. Such a stance appeared to show a fundamental misunderstanding of the arguments brought forward both by reform-oriented NGOs and government officials (in particular Uruguay and Canada) – as their primary reason for promoting legal regulation is to take back control over the market to reduce the harms associated with cannabis use, especially among youth.

The New Zealand Drug Foundation closed the list of NGO speakers by delivering a compelling speech on the issue of stigma, taking the opportunity to welcome resolutions 61/7 and 61/11 presented by Canada/Uruguay and Australia, and declaring:

'Throughout the last few days we have consistently heard phrases such as "they", "them", "those people" and "addicts in our society". If we are to successfully address stigma and discrimination we believe we need a shift in mindset. Aside from cultural, societal and religious differences when we continue to see people who use drugs as "other" and as separate to ourselves then we will never address stigma and discrimination in any meaningful way... We believe we need to build a society in which we have a world free of drug harms. If we are to achieve this we must address stigma and discrimination, develop and mature our thinking about drug use.'

Informal NGO dialogue with the UNODC: A game of two halves

As with the previous years of the now regularly scheduled Informal Dialogue with the UNODC, the Executive Director was joined on the panel by his colleagues Jean-Luc Lemahieu (Director of Policy Analysis and Public Affairs) and Dr. Gilberto Gerra (Chief of Drug Prevention and Health Branch), as well as Esbjörn Hörnberg (then VNGOC chair).⁵⁹ Mr. Fedotov opened the Informal Dialogue by referring to the large numbers of NGO participants as a reflection of the importance of their work within the CND, and expressed his appreciation for Mr. Hörnberg's leadership within the VNGOC and facilitation

of the Dialogue, as well as for the work of the Civil Society Task Force and its role in the 2019 process.

The first set of questions directly referred to human rights. Harm Reduction International asked about the progress in UNODC's operationalisation and monitoring of the implementation of its 2012 human rights guidance document⁶⁰ and proposed human rights planning tool, especially in states that retain the death penalty for drug offences. Mr. Fedotov responded that the tool was developed last year, and made available to all UNODC staff, missions and field offices, as well as for all programmes, alongside other guidance and training tools to help staff identify and mitigate human rights risks. He said that the UNODC's position is in line with the UN position against any use of the death penalty and recalled a meeting during week with the Iranian delegation, who shared a briefing on their efforts to change the law and move away from the death penalty. The Executive Director then outlined the Office's commitment to continue working to end the use of the death penalty for drug offences, including through the work of the UNODC's Human Rights Group, which consults staff in the field on any complex situations. He added that UNODC programmes and efforts have a strong emphasis on protecting and promoting human rights as a priority, with a practical application in the field, including with regards to the human rights of prisoners in line with human rights standards.

This was followed by questions from the International Center for Ethnobotanical Education, Research and Service (ICEERS) and Accion Semilla, Bolivia on the rights of indigenous peoples, especially on how to address the inherent tensions between indigenous rights and drug control, and the UNODC's view on the drug law reforms in Bolivia. In response, Mr. Fedotov noted that the UNODC is working with the government of Bolivia to support it on the monitoring systems required in their efforts to counter illicit drug production while also permitting the licit cultivation of coca leaves. He also noted that the Office is willing to provide assistance to Bolivia in the areas of strengthening the rule of law and promoting human rights in line with the SDGs, including through their field office there, but that the situation is ultimately subject to the authority of the government.

A series of questions then focused on demand reduction issues, including by the Turkish Green



Informal NGO dialogue with the UNODC Executive Director. Source: Marie Nougier, IDPC

Crescent Society on UNODC's work in ensuring drug-free work places and improving the quality of life for people in recovery; a question by the Slum Child Foundation on the 'Listen First' programme and how the Office was working with civil society to reach intended beneficiaries; as well as a query from Dianova International around the UNODC's role in promoting the availability of training for professionals on drug demand reduction. In response, the Executive Director pointed out that in 2017 it trained many practitioners and policy makers across many countries and would do even more in this area if the Office had more funding. On civil society involvement, Mr. Lemahieu mentioned the UNODC's work with 500 NGOs on an annual basis, but also the fact that this depends on the willingness of governments to be open to the Office's support and collaboration.

The NGO Proyecto Hombre then commented on the significantly different drug policies that countries continue to implement, from highly criminalising legislation to new regulation policies on cannabis, and asked to what extent member states were adopting demand reduction policies based on evidence and effectiveness. In an interesting response, Mr. Fedotov pointed out that in many countries drug policies are not led by departments of health, and in many cases the services provided are not based on science, and not evaluated to determine their effectiveness. He concluded that the Office is prepared to support countries by all means, although promoting a science-based approach was the prerogative of national legislation.

In continuing with the health aspects of drug control, the French NGO FAAAT next referred to the role of the 1961 and 1971 Conventions in promoting health and science, asking whether the UNODC's focus on crime made it difficult to ensure people-centred and health-based approaches. Mr. Fedotov responded that it was incorrect to claim that the focus of UNODC is on crime. In fact, he noted, the Office is fully committed to a balanced approach including health, demand reduction and supply reduction. The main aim of the conventions, he continued, is to protect the health and well-being of humankind. The UNODC has been working with the WHO in more than 40 countries since 2009 on evidence-based health approaches, and as well as with the WHO, the INCB and the Union for International Cancer Control on access to controlled medicines. He also stressed that the UNODC, as one of the co-sponsors of UNAIDS, focuses on people who use drugs in prisons and is about to launch the new version of the International Standards on Prevention, as well as the International Standards on Treatment – although the latter was the subject of considerable controversy ahead of the CND.⁶¹

Turning to alternative development, the Observatory of Crops Declared Illicit asked about the role of the Office in ensuring the security of leaders and communities involved in the cultivation of coca, cannabis and opium. Mr. Fedotov noted that one of the Office's own experts had been kidnapped and held by FARC for the last two months in Colombia, underlining the need for security and safety. The Executive Director also pointed out the UNODC's

focus on community approaches that make their work safer, although issues of concern clearly remain. Reflecting upon his own experiences, Mr. Fedotov recalled how, when visiting a UNODC alternative development programme in Colombia, the location had to be changed three times due to security risks. He concluded by stressing that the UNODC remains ready to support Colombia in the implementation of the peace agreement.

SAM then asked about the UNODC's role in raising awareness of the harms of high-potency, 'westernised' cannabis. Dr. Gerra replied that the UNODC is not the 'master state' and pointed out that it was doing what member states asked it to do. He stressed that the WHO has updated the scientific literature on the medical use of cannabis but noted that he did not understand why there are very tough policies on tobacco because of the harms it causes, but not towards marijuana. Having mused at length on the debates around medical marijuana, Dr. Gerra, as a 'humble servant of the international community', called on member states to apply the same rules to this medicine as to all others, including in relation to single substances of the plant, by applying clinical tests, different levels of pilots and research, and stages of trials. Staying with the issue of medical use of plant-based drugs, a representative from Diogenis then asked whether the UNODC could look further into the medical use of opium. As part of a full answer that included an analysis of the Afghan situation, Mr. Lemahieu responded that there were no 'magic bullet' answers.

This response was followed by a question from Youth RISE, who asked the UNODC to comment on the failure to achieve the drug-free world which has been called for by the international community since 1998, and asked about the apparent lack of evaluation of the effectiveness of international drug control in the lead up to the 2019 Ministerial Segment. Mr. Lemahieu responded that within all the UNODC's programmes, evaluation is essential. However, he continued, it is up to the member states to decide on the process, and the UNODC is trying to find ways of working that are acceptable to them. Picking up on this issue, IDPC referred to the harmful consequences of using drug-free world goals as 'aspirational', as these then justify extra-judicial killings, the death penalty and mass incarceration in many parts of world. In what might be regarded as a sidestep, Dr. Gerra invited IDPC to join the special event on alternatives to punishment later that day and said that the Drug Prevention and

Health Branch has been very active in promoting the message that punishment is not a part of rehabilitation processes. Somewhat bizarrely, he also suggested establishing a reciprocal agreement whereby no-one can prevent anyone from dreams, so if people want to think about a world where drugs are not so available, then they have a human right to dream. He then went onto say that he was very conscious that people have misinterpreted this dream and continued to abuse people.

On more technical issues, FAAAT enquired about the UNODC's work to ensure greater transparency and accountability through UN Web TV, broadcasting, or weekly press briefings. The Executive Director responded that the Office is not yet able to use the UN Web TV system extensively for technical and financial reasons, but that CND sessions are often webcast live. Another question by the Canadian HIV/AIDS Legal Network's referred to one of their side events at this year's CND for which it was banned from including the names of the countries featured in the event's discussions. Objecting to this procedure, the Legal Network asked for clarification. It should be noted here that it is not the first time that NGOs have been confronted to such unnecessary restrictions. Ahead of the 2017 CND, 55 IDPC members and partners had already drafted a letter to the VNGOC Board, asking them to raise these concerns with the UNODC. Mr. Fedotov responded that, within the UN system, member states develop their own rules, and guidelines at the Commission are developed by the Extended Bureau – and both the CND Secretariat and the UNODC must abide by these decisions. He also stressed that there is a long-standing tradition for side events not to mention the names of countries without their agreement, absence of objection.

Informal NGO dialogue with the INCB President: Some regression, but overall more positive engagement

Held on Friday 16th March, the informal dialogue with the INCB was chaired by the newly-elected vice-chair of the Vienna NGO Committee on Narcotic Drugs (VNGOC), Lucia Goberna (see Box 5). The current President of the Board, Dr. Viroj Sumyai, kicked off the dialogue with an opening statement in which he praised the role of NGOs as being 'instrumental in addressing gaps in raising awareness in the area of prevention, treatment and rehabilitation'. He continued by highlighting the various ways in which the

INCB engages with NGOs in their work – including with meetings during the INCB country missions, consultations with NGOs on drug policy issues, possible partnerships with NGOs on increasing access to drug dependence treatment and addressing stigma.

Dr. Sumyai then briefly presented the main conclusions from the INCB Annual Report for 2017 – released just a few days before the 61st Session. This specific report, Dr. Sumyai declared echoing many of the key points made earlier in the week in the Plenary, was produced in the context of the 70th anniversary of the Universal Declaration on Human Rights – which provided an important opportunity to better link human rights with drug policy. This, he continued, includes the right to health in accessing treatment and ensuring the availability of controlled substances for medical and scientific purposes (while preventing their diversion through illicit channels), the need for more proportionate sentencing and the abolition of the death penalty, as well as putting an end to extrajudicial killings which he deemed ‘unacceptable under the international drug control framework’. The INCB President also raised concerns about the use of cannabis for non-medical purposes – a measure that is ‘contrary to the United Nations drug conventions’. Many of these points were raised again during the Q&A with civil society participants.

A delegate from ICEERS started the debate by asking why the drug control conventions classify cannabis as a dangerous substance, when such a description is ‘based upon prejudice rather than scientific evidence’. The Board, despite describing this as an ‘interesting question’, effectively side-stepped it, and neglected to provide a clear answer, instead referring to the technical processes of the WHO ECDD. Another question regarding the adoption of regulated drug markets showed the INCB President’s position on drug use and dependence – by defining people who use drugs as ‘people who fall victims of drugs’ and who consequently require treatment. This lack of understanding of the intricacies surrounding the various types of drug use (and the fact that only one in ten people who use drugs experience drug dependence)⁶² was a disappointment.

A debate then followed on the rights of indigenous people and how they should be better protected under the UN drug control system. Last year, on a similar question asked by the Transnational Insti-

tute (TNI), Werner Sipp (then INCB President) had acknowledged the complexity of the question and the ‘contradictions’ between the UN drug conventions and human rights law. This year, Dr. Sumyai merely described the restrictions within the conventions and the lack of ‘any exceptions’ allowing ‘traditional and religious use’. ‘Nobody’, he explained, ‘was concerned with religious or traditional use at the time of the signature of the 1961 Convention’. This explanation is questionable since several countries from the Global South did raise concerns about need to ensure the religious and traditional use of coca, opium and cannabis during the negotiations of the Single Convention.⁶³ However, it is certain that the hegemony of Western countries – in particular the United States – over countries from the Global South in the 1960s did result in a global drug control system where those substances considered as appropriate for the Global North (alcohol, tobacco, caffeine) were not covered by the 1961 Convention, while those deemed inappropriate and harmful (cannabis, coca, opium) by the Global North made it in.⁶⁴

Also linked to the relationship between drug control and human rights, the INCB President was asked to react about the hierarchy of international norms and the primacy of human rights over drug control obligations. Referring back to the latest INCB Annual Report, Dr. Sumyai declared that the celebration of the 70th anniversary of the Universal Declaration on Human Rights should be ‘an opportunity to reinstate human rights in drug policy’ and ‘emphasise the need to respect the rights of drug users including in criminal justice proceedings’. ‘The drug conventions’, he added, ‘cannot be applied in a vacuum which ignores other international law, particularly those related to human rights’.

The President then mentioned the Board’s efforts to end the killings committed in the course of drug control activities, raising clear concerns about ‘experiences in South East Asia, although’ he continued, ‘I will not name any country’. He mentioned the past months of dialogue with the Philippines (without ever mentioning the country by name), as well as the welcome INCB press releases and public statements made since mid-2016 condemning the killings. He also mentioned his plans for a country visit there. The highlight of the dialogue was probably Dr. Sumyai’s conclusion on President Duterte’s state of mind: ‘He cannot



Informal NGO dialogue with the CND Chair. Source: CND Tweets

sleep at night. He must be using some psychotropic substances to get to sleep!!

When asked to produce more guidance to UN member states on the need to ensure access to naloxone and medically-assisted treatment, Dr. Sumyai also showed important leadership. He talked of his experience of 20 years working in medically-assisted treatment and highlighted the importance of providing naloxone to prevent overdose deaths. To stress the urgency of ensuring better access to naloxone, he mentioned a country visit he organised in a South East Asian country where doctors refused to administer morphine to patients because of the risk of overdoses and lack of access to naloxone.

Referring back to his past experience working for an NGO promoting HIV prevention, treatment and care in Thailand, Dr. Sumyai concluded the dialogue by making a welcome appeal for NGOs to send him regular comments and contributions. This commitment for the INCB to better engage with NGOs seems to be already materialising, as the INCB announced a number of dialogues with civil society on cannabis planned for May 2018 – the first of their kind.

Informal NGO dialogue with the CND Chair: A refreshing exchange

The final NGO informal dialogue of the 61st CND was with the CND Chair, Mexican Ambassador Alicia Buenrostro-Massieu.⁶⁵ Held in one of the smaller conference rooms and with as a result the Ambassador and participants seated around a circle, the format of this dialogue facilitated a kind of informality not present in earlier dialogues with the UNODC and INCB.

From the outset, Ambassador Buenrostro was very warm and welcoming to participants, opening the event by expressing how much she appreciated the importance of civil society participation, from her perspective both as a Mexican citizen and as CND Chair. She also praised civil society for the role it had played at the UNGASS and throughout the post-UNGASS process and said how important it was that this work should continue.

Shifting to the topic of the CND specifically, she turned to the negotiations around the modalities resolution – stating that ‘it has not been an easy one’. She described her efforts to move towards a holistic approach, to attempt to see the issues through a broader scope in order to recognise all commitments, recognising that, in addition to the 2016 Outcome Document, the 2009 Political Declaration is also important with its 103 objectives that must be followed. She lamented the ‘polarization’ at the core of the negotiations, so extreme that the ‘conservatives’ and the ‘progressives’ had ‘cornered themselves’ in their positions. The Chair described her compromise proposal that she had hoped could strike a balance by Friday evening, and how important it was to her that everyone feels as if they have been listened to. At this point in the week, the resolution had been reduced to the modalities only and everything else had been taken out. It was a very technical, procedural resolution, and she said that she felt that member states ‘could do better’, especially on certain issues such as civil society engagement, data collection, and others. Her hope was that member states could work more constructively together to come to a better final product. The Ambassador closed her remarks by reiterating her welcome to

in the upcoming 2019 Ministerial Segment, was posed by IDPC. Ambassador Buenrostro assured the group that procedurally her intention was to follow the format for the high-level review in 2014 for the general debate at the Ministerial Segment and the procedural rules of UNGASS for the roundtables. For the intersessionals, she planned (if there was consensus) to adhere to the guidelines from the post-UNGASS facilitator – in any case she assured the participants that the process will be very inclusive. The Ambassador also agreed with the VNGOC Chair's perspective about the value of including as many different voices in the debate, emphasising the importance for civil society organisations to continue to push their views in the side events, noting the almost 100 side events this year. Using the issue of access to controlled medicines as an example, Ambassador Buenrostro-Massieu said it was also good to see civil society organisations working on a consensus basis even when it is difficult.

She then addressed a question posed by Turkish Green Crescent regarding how governments can be better motivated to collaborate with civil society by offering her personal opinion (not as CND Chair) that the level of collaboration had to do with the maturity of the society in question. The changes in Mexico from 1997 to 2017 were, in her opinion, a great example of how a society could mature over time. Having played a very minor role in public affairs early on, NGOs now play a huge role in all areas, even climate change, she pointed out.

One of the most difficult questions posed to the Ambassador in the dialogue, and one already touched upon in the informal dialogue with the UNODC as discussed above, came from the Canadian HIV/AIDS Legal Network concerning whether civil society organisations should be permitted to name countries in their events where the country's identity was central to the discussion, i.e., when discussing human rights abuses taking place in a specific country. The Ambassador responded along the same line as the UNODC, by explaining the rule: side events, while not part of the official proceedings, are organised under the rules approved by the Extended Bureau (EB). According to the decision of the Extended Bureau, because the main sponsor of an event "finds its limits in the rights of others" event organisers cannot use the names of other organizations or countries without their involvement. Because she personally

understood the concern, however, she promised to raise the issue with the Extended Bureau to see what could be done.

In response to other questions from the floor, she committed to include issues concerning young people (in response to a question from the African NGO Slum Child Foundation), to bring some cohesion to UN agencies particularly with respect to WHO proceedings in Geneva and the CND, and (in response to a question from the New York NGO Committee) to try to enhance the participation of member states in civil society events in the lead-up to 2019.

Mr. Hörnberg then gave a brief update on civil society; an update that must be considered a personal view rather than the official position of the VNGOC. He mentioned the consensus regarding certain issues such as the death penalty but the division with respect to others. He also noted that he did not find it appropriate for NGOs to criticise member states in this forum in light of the fact that the committee was 'trying very hard to foster communication to get all of the member states to see civil society as a resource and not be afraid of them'. In critiquing the apparent disconnect between state rhetoric and action, he also made the point that while member states frequently talked about the importance of civil society, at the national level and at the funding level, they were often not engaged.

In wrapping up the session, Ambassador Buenrostro said that she had listened carefully to the participants' concerns and would think about the best ways to address them. Perhaps a mechanism is needed to facilitate more efficiency as well as cohesiveness, she wondered. In addition to calling for more funding and engagement at the member state level, above all she encouraged participants to 'keep on striving', expressing again her own openness to all the work of civil society. In her words, 'even small steps are good – that's the way we move forward' and she stressed again that listening to different voices was very important. The Ambassador concluded by letting participants know that they could reach out to her anytime with issues or concerns. Overall, it was a refreshing exchange with an exceptionally welcoming CND Chair who went out of her way to show that she was in favour of including civil society in the lead-up to 2019 to the fullest extent possible.

Box 5 The VNGOC elects its new Board

The VNGOC held its Annual General Meeting (AGM) on Thursday 15th March. The meeting, which extended well beyond its 2-hour time slot, took place in a packed room – something that might have been unimaginable only a few years ago. Traditionally, reform-oriented NGOs did not pay much attention to the Committee, which, as a result, was predominantly composed of organisations promoting a drug-free world. The attraction for this body only truly materialised in the lead up to the UNGASS, when the VNGOC started to play a key role as a liaison between civil society and UN agencies focusing on drug control, alongside the New York NGO Committee (NYNGOC) and the Civil Society Task Force.⁶⁶

Since the announcement that an UNGASS would be held in April 2016, the VNGOC's membership quickly expanded to welcome new members focusing on harm reduction and drug policy reform – allowing for a more balanced view. Inevitably, this more balanced membership was also reflected within the VNGOC Board. With the 2019 Ministerial Segment barely a year from now, the composition of the new VNGOC Board was a key issue for this AGM.

The election was a rather tense process, lasting the greater part of three hours, during which several NGOs whose candidates were not elected

sought to undermine the elections by claiming that 'serious procedural issues' had taken place throughout the process – although it took another 20 minutes for them to clearly delineate what these issues might have been. Various candidates even withdrew from running when they saw the level of coordination among drug policy reform NGOs. These allegations (one of which being that there was 'too much excitement in the room') were eventually addressed after lengthy discussions.

Despite these tensions, an overwhelming majority of VNGOC members voted in favour of the following candidates, making the composition of the VNGOC more balanced than ever before in terms of geographic representation, gender, ideology and expertise:

- **Chair:** Jamie Bridge from IDPC
- **Deputy Chairperson:** Lucia Goberna from Dianova International
- **Treasurer:** Orsi Feher from Students for Sensible Drug Policy
- **Deputy Treasurer:** Zoran Jelic from NGO Stijena Resoc
- **Secretary:** Tania Ramirez from Mexico Unido Contra la Delincuencia (MUCD)
- **Deputy Secretary:** Shaun Shelly from the TB/HIV Care Association in South Africa.



New Board of the VNGOC, elected at the margins of the 61st CND. Source: Scott Bernstein

civil society, expressing that she was 'happy to see civil society playing a constructive role' and hoped to see it continue in this way.

The then VNGOC Chair Esbjörn Hörnberg then opened the floor for discussion. The first question, an overarching one on how the Ambassador intended to ensure meaningful civil society participation

UNODC Budgetary, governance and management issues

Within the plenary there was once again a familiar feel about discussions of the UNODC's budget, governance and management. Income projections for the Office for 2018-19 show overall funding at \$762.8 million. Nonetheless, according to statements and accompanying documentation under Item 4 (Strategic management, budgetary and administrative questions), in terms of the Consolidated Budget line for the Fund for the United Nations International Drug Control Programme the Office remains in a difficult financial position, particularly – as has been the case for many years – in relation to General Purpose Funds (GPF). Indeed, Special Purpose Funds (SPF) represented 86.8% of the overall income projection. The Commission was informed that over past biennium UNODC has seen 'exponential growth in the volume and scope of technical assistance programmes; a testament of continuing donor confidence in the Office's objectives, programmes and achievements'.⁶⁷

That said, while the Office's position on SPF was solid (seeing a programmatic increase of 31.2% that resulted mainly from the start of a new project on alternative development within the framework of the implementation of the Peace Agreement in Colombia - \$315 million over 4 years), problems remain regarding the 'persistent deterioration' of GPF. This is an issue compounded by added pressure on regular budget and programme support costs. In fact, while delegates to the CND will be familiar with this narrative, it is noteworthy that GPF income is projected to reach an all-time low of \$6.8 million (declining from \$27.5 million in the biennium 2010-11 and now less than 1% of total UNODC income), with the regular budget (\$39.6 million) representing a 0.9% reduction in real terms.

As a result, delegates were informed, the UNODC will have to reduce funding streams in some areas and make some changes to its operational

approach. These include, for example, only funding limited core functions, some normative work and the New York liaison office for a total of \$2.4 million; making available only \$2.2 million to UNODC field offices facing problematic challenges to enable their work in the short term; making available a remaining \$2 million for overcoming programmatic needs – mainly for the further preservation of the integrity of the field office network; and significantly, gradually transferring to SPF resources for the Research and Trend Analysis Branch (\$43.8 million) and the Justice Section (\$1 million).⁶⁸

It has been noted elsewhere how the lack of GPF may have a negative impact upon the work of the Branch and its staff.⁶⁹ The reduction in unearmarked resources also means that over 20 posts will cease to be funded by GPF, including 7 field office representatives, 14 posts in Research and Trends Analysis Branch and 3 in the Justice Section.⁷⁰

In an effort to counter and reduce the impact of the downward funding trend, the Office is, among other things, intending to build up reserves in programme support cost funding, currently projected to be \$54 million total. This is a process that will work within the full direct costing model introduced in 2014-15. Similarly, the Commission was informed, the Office remains keen to further develop the system of full cost recovery, including direct and indirect cost of programmes and projects. Within such a chastened financial environment, it was also no surprise to learn of the UNODC's intention to increase efforts to raise non-earmarked funds for programmes and explore opportunities to broaden its donor base.⁷¹

Item 4 also included a discussion of the work of the standing open-ended intergovernmental working group on improving the governance and financial situation of the United Nations Office on Drugs and Crime (FINGOV)⁷². Among a range of activities and focal issues, work towards gender parity among the staff of the Office at all levels and equitable geographical representation were noted. As has been the case in recent years, states and regional groups remained positive about the working group. For instance, the Africa Group regarded FINGOV as 'crucial', welcomed the Egyptian co-chair's role and supported an extension of the programme. Similarly, Bolivia on behalf of GRULAC regarded it as a 'relevant forum', with Thailand commending its work. Reflecting upon one of FINGOV's key tasking lines, the Africa Group also highlighted the ongoing

need for geographic and gender balance within the UNODC, both in Vienna and in country offices, with GRULAC also noting concern, especially in relation to managerial roles. In this regard, the delegate called on the Executive Director to address this issue, particularly in relation to women from the Caribbean. In relation to financial issues, GRULAC called upon the UNODC to organise preliminary meetings with FINGOV prior to the publication of the draft consolidated budget and to help improve engagement between member states and the Office on the budget process.

Conclusions

With the clock ticking down towards the Ministerial Segment, it was perhaps not surprising that the overall mood of the Commission's 61st session was greatly influenced by concerns around the 2019 meeting and its decennial review of the achievements of the international drug control regime against the goals set by the 2009 Political Declaration and Action Plan. As is always the case, it was possible to identify emerging themes of concern as well as those that are recurring and oscillate on and off the agenda with varying levels of prominence. Despite in some instances lacking explicit reference to the high-level segment, it was difficult to identify many issues that did not relate in one way or another to the overarching 2019 narrative.

Within such a context, it is fair to conclude that this year's CND produced some positive outcomes. Growing references to human rights by many actors, including member states and UN agencies – once again notably the INCB – should be highlighted. Furthermore, the ongoing attention to, and universal support for, access to controlled medicines must be regarded as one of the success stories of recent years. It is true that much work remains to be done in operationalising at the national level the commitments made within Vienna. Yet, the fact that – drawing upon language within the Outcome Document – states are recognising and working to address the global crisis in access cannot be underestimated. This process is dependent to a large extent upon the work of key member states and UN agencies, the INCB and WHO notable among them. Nonetheless, the role of civil society in what can legitimately be regarded as an organisational culture shift must be recognised. In addition to raising the profile of the issue through the organisation of side events

and providing information for plenary statements as evidenced at this year's meeting, behind-the-scenes activity and transnational advocacy not only helped trigger the debate but has also ensured that momentum has been maintained.

Indeed, civil society as a whole retained a noteworthy level of engagement again this year, including in relation to plenary statements and side events. The latter continued to represent an important constructive space for the discussion of issues apparently deemed by many member states to be too politically controversial to discuss genuinely within the conference rooms of the VIC. Prominent in this regard were the tensions within the regime generated by regulated markets for the non-medical and non-scientific use of cannabis and the relationship between human rights and drug policy. On the latter, it was also notable that while the issue of drug policy metrics was for the sixth consecutive year the focus of an NGO co-organised side event,⁷³ it took on more prominence within the plenary itself. This, as discussed above, was in no small measure due to engagement of the OHCHR with this increasingly important topic, in light of the 2019 meeting and the SDA. While the outcome of the ARQ review process has been disappointing in terms of the lack of inclusion of non-traditional indicators, apparent moves by the Office of the High Commissioner to establish parallel but connecting mechanisms relating to human rights in Geneva seem promising. Ironically then, one might conclude that in these and other cases, progress is being made within an increasingly dysfunction arena.

Reflecting upon the increasingly problematic operation of the CND, a senior member of the UNODC's Policy Analysis and Research Branch remarked in 2004 that the Commission was beginning to look more and more like the 'theatre of the absurd'; a stage characterised by a lack of harmony, chaos and contradiction.⁷⁴ When observing the apparently irreconcilable ideational differences between states on how to safeguard the health and welfare of humankind as directed by the drug control conventions, this description appears more apt than ever. Despite high-level language within consensus-negotiated instruments like the Outcome Document and its predecessors, it has for many years been possible to identify the extent of diverging approaches on a range of issues within the plenary. This is after all where states can put forward, within the limits of diplomatic protocol,

their views – both for and against – on issues like human rights, including in relation to public health and harm reduction, decriminalisation and more recently legal regulation. Such a pattern was particularly prominent this year amongst those states favouring the status quo and holding onto the notion of a drug-free world.

Perhaps feeling under pressure from the significant shifts towards a variety of market management approaches in many parts of the world, states like the Russian Federation and Japan along with allies from Africa, the Middle East and Asia forcibly and vocally criticised a range of policy choices that they deemed to threaten the integrity of the prohibition-oriented regime. Indeed, recourse to the use of the ‘national sovereignty’ argument to defend policies devoid of human rights considerations – including notably the use of the death penalty for drug offences – seemed to be deployed more at the 61st session than in previous years. This perhaps hints at the extent to which such states feel threatened by the shifting policy terrain around them. This was the case although calculated political denial still seems to characterise the way member states are choosing to deal, or not, with regulated cannabis markets operating beyond the limits of the existing treaty framework. One wonders how sustainable this position will be if the Canadian government does, as intended, implement cannabis regulation for recreational purposes this year.

A degree of discord when states come together to work on issues of multilateral concern is of course to be expected. As a reading of the IDPC Report of the Proceedings since 2005⁷⁵ and other more historical accounts reveal, the field of international drug policy is no exception. That said, while the international community has long been struggling to maintain the façade of consensus on drug policy, this year’s session arguably represented a watershed. It is difficult to remember a meeting of the CND where the divergences in state perspective proved so difficult to overcome in the CoW; a venue, where despite hard fought negotiations, late night sittings and sometimes the withdrawal of drafts, the business of resolution formulation normally generates results. As described in the preceding pages, several resolutions were particularly hard fought this year. Yet, despite preliminary meetings, the negotiations around the ‘modalities’ resolution, proved so intense and views so diametrically opposed that at times it seemed as if the entire

policy making apparatus would stall. It has become increasingly evident that the sand of divergence has been getting into the gears of the CND’s consensus-driven machinery, but never has it seemed so close to bringing it all to a grinding halt. In our concluding thoughts on the 60th CND, we asked ‘How long will the Commission be able to maintain the pretence of business as usual?’ After this year’s proceedings, and with the Ministerial Segment looming, the question becomes ever more pressing.

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The International Drug Policy Consortium is a global network of non-government organisations that specialise in issues related to illegal drug production and use. The Consortium aims to promote 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 harm. It produces briefing papers, disseminates the reports of its member organisations, and offers expert advice to policy makers and officials around the world.

This report provides an overview and analysis of the central issues debated at the 61st Session of the Commission on Narcotic Drugs, covering the negotiations of key resolutions, as well as discussions in the Plenary, side events and NGO dialogues.

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