

# **The 2013 Commission on Narcotic Drugs Report of Proceedings**

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## Executive Summary

It is no secret that in the past few years the international drug control regime has been coming under increased scrutiny and pressure from member states. Even by recent standards, however, the 12 months between the 2012 Commission on Narcotic Drugs (CND) and this year's CND have been extraordinary. A number of countries (or jurisdictions therein) are no longer simply engaging with non-prohibition oriented policy approaches that exploit the flexibility within the existing treaty framework. Rather, they are either seriously considering, or have decided, to adopt approaches that put them in breach of the drug control conventions. Even though calls expressing discontent at the fundamental architecture of the United Nations (UN) for drug control have been growing more frequent and louder, such events are unprecedented. They present the clearest threat to the current shape of the regime in its 100-year history. It was within this policy environment that delegates met at the Vienna International Centre on 11 to 15 March 2013 for the 56<sup>th</sup> session of the CND.

However, reflections upon this year's CND are mixed. On the one hand, some states went further than ever before in openly challenging the current regime on the grounds that, after a century, it needs modernising. That the government of Uruguay is currently considering a domestic policy on cannabis that would put it in breach of the Single Convention shows that, in one instance at least, we have moved beyond rhetoric and posturing. Moreover, while couched in terms of 'containment' and a confidence in

the fundamentals of the treaty framework as it stands, Mr. Fedotov's pronouncement that human rights and public health considerations must be at the core of international responses to drug use and to HIV represents the continuation of a welcome shift away from a law enforcement approach, an approach too long privileged within the Commission.

On the other hand, it is difficult to ignore several issues of concern. Vienna remains out of step with many other parts of the UN system in its dealings with non-governmental organisations (NGOs). This was at its most startlingly obvious in the Committee of the Whole during discussions of possible civil society engagement in the high-level review next year. This, however, is surely the time when all expertise, inter-governmental and NGO alike, must be brought to bear upon the issue. Moreover, it is hard to be positive about the demeanour of the President of the International Narcotics Control Board (INCB) at this year's meeting with NGOs. This remained hostile and confused, particularly relative to the INCB's mandate. Indeed, while in the current atmosphere there is a temptation to become preoccupied with potentialities beyond the present treaty framework, the INCB's overstepping of its remit regarding scheduling within the current regime has once again become a serious point of unease.

Despite these important issues, however, arguably the most memorable and telling aspect of the 2013 session was something upon which the INCB's stance is correct and an issue that barely received a mention: the state initiatives in Colorado and Washington, in the USA. Despite

attention within Raymond Yans' presentation of the INCB Report, what look sets to become the first hard defection from the regime remained the elephant in both conference rooms. This, in many ways, reflects the unwillingness of most member states to deal with problematic issues at the CND. The preference for pretending that 'everything is successful', as the Guatemalan delegate warned, remains strong and dominant. Such a worrying state of denial does not bode well for the high-level review next year nor for the 2016 United Nations General Assembly Special Session (UNGASS) on drugs. Only when realism becomes the preeminent mode of thought will there be honest debate that genuinely takes into account the concerns of all member states.

## Introduction

It is no secret that in the past few years the international drug control regime has been coming under increased scrutiny and pressure from member states. Even by recent standards, the 12 months between the 2012 CND and this year's CND have been extraordinary. A number of countries (or jurisdictions therein) are no longer simply engaging with non-prohibition oriented policy approaches that exploit the flexibility within the existing treaty framework (including a range of harm reduction interventions and the decriminalisation of drug possession for personal use). Rather, they are either seriously considering, or have decided, to adopt approaches that put them in breach of the drug control conventions. In June 2012 President José Mujica of Uruguay announced his intention to establish a government monopoly to control cannabis for recreational use. And, while more complicated in terms of the relationship between domestic and international law, in November the citizens in the US states of Colorado and Washington voted in favour of regulated markets for the

non-medical and non-scientific use of cannabis. Even though calls expressing discontent at the UN's fundamental architecture for drug control have been growing more frequent and louder, such events, particularly those within the United States of America (USA), are unprecedented. They present the clearest threat to the current shape of the regime in its 100 year history.

It was within this policy environment that delegates met at the Vienna International Centre on 11 to 15 March 2013 for the 56<sup>th</sup> session of the CND. Expectations of the week's discussions were high. Yet, as will be discussed in the pages that follow, although important debates took place and notable decisions were reached, the spirit of denial and deadlock that often characterises the CND continues to be an issue of concern, with many states responding to calls for reform with forceful defence of the status quo. But it takes on increased significance with the high-level review of progress made since the 2009 Political Declaration and Plan of Action rapidly approaching and the UN General Assembly Special Session on the world drug problem (UNGASS) following soon thereafter. It is at the UNGASS in 2016 that the international community is supposed to map out the future of international drug control for the next decade or so.

This report aims to provide a summary of what was discussed – and to highlight what was not – at this year's meeting, including various side events (see Boxes 3 and 4), and offers some analysis of the key discussions, debates and emerging new trends, as well as the Commission's re-engagement with some that are more familiar. A supplementary account of the proceedings can be found on the CND blog: <http://www.cndblog.org/2013/03/welcome-to-cnd-blog-2013.html> (coordinated by IDPC in partnership with Youth RISE). Official UN documentation relating to the session can be found at: <http://www.unodc.org/unodc/en/commissions/CND/session/56.html>.

## **The Executive Director's opening speech: 'Containment' (again), but positive words on human rights and public health**

The Executive Director of the United Nations Office on Drugs and Crime (UNODC or Office), Mr. Yury Fedotov, opened the proceedings of the 56<sup>th</sup> CND with a speech that ticked the boxes of UNODC's priorities while steering clear of those controversies which often mark the occasion. Gesturing toward the forthcoming review process and the 2016 UNGASS, he spoke of the 'important moment' in which the international community currently finds itself. Drugs and crime, he declared, represent a 'roadblock' hindering the progress of law and democracy and threatening social and economic development. However, he argued, the CND possesses 'the knowledge, experience and commitment' to provide a roadmap to the international community as it seeks to negotiate the threats and challenges lying in its path.

The Executive Director's presentation then ran through a listing of the UNODC's programmes and achievements in its struggle against drugs and crime across the globe; these achievements would be impossible without the strong support of donors, he continued, prominently placing the Office in the shop window of the CND for future financial contributions. The message here was not subtle, but it may not be out of place to remind the CND membership that much is being asked of UNODC at this historical juncture, and, as discussed below, none of it can be achieved without secure and adequate funding.

In the mid-section of Mr. Fedotov's speech, the themes with which we have grown (rather too) familiar over the past decade were once again rehearsed. They included the role of the drug control conventions in 'containing' and 'stabilising' the illicit consumption of drugs, and in suppressing the production of opium, which had allegedly reduced by some 80 per cent across the twentieth century. These claims have been subjected to considerable critical analysis

in previous publications by IDPC<sup>1</sup> and others,<sup>2</sup> and need not be repeated in detail here. It is necessary to point out, however, that the Office's major objective in its historical work (which seems to consist in defending the conventions against attacks, real or imagined) often renders its analysis simplistic, partial and distorted. It is a historical fact that the motives for establishing the drug control conventions were mixed, and included some that were less than noble. It is also the case that the reduction in opium production was greatly influenced by factors that had nothing to do with the international drug control system.<sup>3</sup>

Mr. Fedotov was on firmer ground when, as the presentation drew toward its closing passages, he argued for a humane interpretation of the conventions as they exist today. For example, he characterised HIV transmission through injecting drug use as 'one of the main unresolved challenges of the international community'. He continued that, '(w)idespread stigma, discrimination and lack of access to evidence-informed HIV services are among the key challenges'. And finally, 'let me be clear: human rights and public health considerations must be at the core of international responses to drug use and to HIV'. One wonders whether these remarks are not intended in part to be critical toward the government of his own country, the Russian Federation, from whose drug control policies human rights and public health are often very remote; either way, the presentation represents an important and welcome declaration of values, and promises some common ground on which civil society can meet the Executive Director.

## **The Plenary: Diverse dialogue (and an elephant in the conference room)**

As usual, discussion in the plenary was wide ranging. This included the standard statements, the now familiar round table sessions, administrative, management and budgetary

issues and the work of the INCB (see main text below), as well as presentations from the UNODC (see Box 1). Mindful of several key events within international drug control policy over the past 12 months, some points of debate were to be expected, but others (or more precisely the absence of others) were more of a surprise. The issue of scheduling, for instance, occupied an unusually prominent place within many country, regional group and NGO statements. This owed much to a resolution and plenary vote on the place of gamma-Hydroxybutyric acid (GHB) within the 1971 Convention (see below). Yet, as described below, little direct reference was made to the popular initiatives on regulated cannabis markets in Washington and Colorado—arguably the most urgent challenge to the shape of the current control framework. While this was the case, President Evo Morales could once again be relied upon to bring an element of theatre to the proceedings. In stating his belief in the need for some sort of treaty reform, but opposing ‘legalisation’, he highlighted the emerging complexities of the drug policy environment within Latin America.

### **Bolivian President livens up the CND for third year**

In his third appearance before the CND since taking office, Bolivian President Evo Morales woke up participants in his mid-morning speech<sup>4</sup> on Monday, starting off by noting that he felt a ‘certain tension’ in the air and pondered whether that was because of the ‘failure of the drug war’. He then clarified that he had not come to annoy people but rather to ‘express differences’. Morales went on to thank the 169 countries that supported – or at least did not oppose – Bolivia’s return to the 1961 Convention with a reservation allowing for the use of the coca leaf within that country, claiming that this provides international recognition of the legitimate uses of coca. As a next step, he called for the removal of the coca leaf from the convention altogether: ‘The problem is not the coca leaf, but the conventions and the

global counter-drug strategy’. In contrast to last year, when, much like a travelling salesman plying his wares, he displayed an array of coca products, this year he only pulled out two coca leaves and reminded those present that in his first appearance at the CND in 2009, he defied authorities to arrest him for brandishing a coca leaf. Yet no one has dared to do so, and this, he argued, was further evidence of its legitimacy.

As in previous years, Morales reviewed what he perceived to be the Bolivian government’s drug policy successes, this year focusing on the 12 per cent reduction in coca production in 2012 reported by the UNODC. Rather than ‘alternative development’, he called for ‘integral economic development with social investment’ and invited officials to come to Bolivia to observe its progress in generating economic development in coca growing regions, which has allowed for cooperative coca reduction. Disappointingly, no one from the Bolivian government attended the round-table discussion on alternative development. However, Bolivian officials provided more details on its drug policies and programmes at a well-attended side-event hosted by the Bolivian government later in the week.<sup>5</sup>

Despite his initial promise, President Morales actually succeeded in annoying foes and friends alike. Claiming that the imperialist powers use the coca leaf for their own economic and political ends, he had harsh words for the US government and called for the nationalisation and regionalisation of drug policy. But he



*Bolivian President Evo Morales at the 2013 CND*

also made it clear that Bolivia's position on the coca leaf in no way implies support for the legalisation of cocaine. He reiterated twice that he is 'not in agreement with what some other countries are proposing'. This was interpreted as a slap in the face to those governments in Latin America proposing a broader reform agenda – the very countries that are Bolivia's natural allies on the coca issue. For their part, the US government officials present appeared to be delighted with this turn of events. One noted, 'We've become very thick skinned with regards to Morales' attacks and we were very happy to hear his rejection of legalisation'. Overall, while certainly a break from the usually bland country statements, President Morales' speech did not live up to the expectations set by last year's performance.

**Group and country statements: Still reaffirmation of the regime, but growing calls for review**

Amongst the long list of default country statements heralding national successes against the 'world drug problem' and the 'scourge of drugs', a number of delegates' words were of note. Prominent among these was the statement from Uruguay. With much reaffirmation of the current treaty structures to be heard within the plenary, the Uruguayan delegate led the small but apparently growing number of states in directly questioning the status quo. Beginning with congratulations to Bolivia for its re-accession to the Single Convention, he argued that the current situation vis-à-vis drug control was far more complex than it had been 60 years ago and that the current approach had 'failed totally'. In reference to an over-concentration on supply-side issues, he stated that: 'Trying to block the sun with just one hand is an error'. Having explained that his country's revised approach to drug control was a product of increasing levels of drug-related violence within Uruguay, he stressed that, 'We believe in common and shared responsibility', but that under the current model of control nothing was common or shared. Rather, all the emphasis was

on the producer countries. Within this context, he continued, 'we need debate without pre-conceived ideas and taboos and should start looking at new paradigms and alternatives'. There is a 'need to review and update international instruments', he argued, 'But this doesn't mean getting rid of the whole system'. Instead, new policy should be 'humanist', based on public health and science and developed with the WHO. 'It cannot', he added, be based on 'criminal law as it has been in the past century'. In conclusion he stressed that, 'not to take the challenge and act will be an unforgettable error', with 'the weak of society' affected. With echoes of a famous Albert Einstein quote, he finished to significant applause by saying that: 'We cannot keep doing the same thing over and over and expect a different result'.

Although perhaps not as bold, a similar revisionist theme could also be found within other Latin America country statements. For instance, while beginning with a correction on Morales' figures regarding coca production in his country, the Colombian Vice Minister of Justice noted that President Santos had called for a review of the approach to the 'world drug problem' with a view to 'correct what needs correcting to guarantee public health'. In this regard, he highlighted the current review process taking place under the auspices of the Organization of American States (OAS), especially the scenario planning sessions in Cartagena.<sup>6</sup> Again, this was a point that raised some applause within the conference hall. The Guatemalan vice Minister of Foreign Affairs prefaced his statement by saying that his country's status as a drug transit country had generated a great deal of violence and repeated the Uruguayan line that 50 years after the establishment of the Single Convention, 'policy has not worked'. As such, he argued, there is a need for 'in-depth consideration of what we're doing wrong' and stressed the importance of the OAS review process. The Minister stated that Guatemala had called for a debate to review the international control 'instruments' in 2014 and that the agreed date of 2016 UNGASS was actually too late, with the

### Box 1. UNODC Presentations

Gilberto Gerra, from the Drug Prevention and Health Branch of the UNODC, used his brief plenary presentation to pick up on the issue of availability of controlled drugs for medical purposes raised during the presentation of the Board's report, and stressed the existence of the worrying 'anaesthesia crisis' in low income countries. In so doing, Dr Gerra highlighted the tension within the system on this issue. Indeed, while the INCB has long been enthusiastic about the scheduling of ketamine, the WHO Expert Committee on Drug Dependence (ECDD or Committee)'s recommendation against it was to a large degree predicated on its widespread use as an anaesthetic in 'developing countries'. In relation to new psychoactive substances (NPS) Dr Gerra also reported that for the first time in the history of the international control framework there are currently more substances outside the system than in it. Flagging up the findings of a new UNDOC report, *The challenge of new psychoactive substances*,<sup>7</sup> he continued to inform the delegates that the use of NPS now exceeds that of 'traditional' substances in some regions. While the UNODC has assisted member states in establishing early warning systems, NPS certainly present a significant challenge to system in the coming years. Presenting work that responded to the Japanese and Azerbaijan proposed Resolution in 2009 (52/5-Exploration of all aspects related to cannabis seeds for illicit purposes),<sup>8</sup> Angela Me (Head of the Statistics and Survey Section at the UNODC) argued that more data were needed, but she did conclude that, although cannabis seeds were available worldwide, quantities were small.

delay leading to the death of more people. He finished his statement by arguing that the fight against the 'scourge' of drugs must be based on 'strengthening the state, human rights and the principle of humanity'. Further, he claimed, we must be 'humble and recognise that we don't have all the answers, that we will make mistakes and that we can't just say everything is successful'.

Not all Latin American statements endorsed this view, however. While, as with other states, some from the region (including under the auspices of GRULAC) avoided the issue of treaty reform, the statement from the representative from Peru, Carmen Masías, was noteworthy in its opposition to reformist debate. The Executive President of the Peruvian drug control agency DEVIDA began by making it clear that Lima was very wary of Bolivia's policy on coca control. In this vein, she not only challenged Morales' statistics on coca, claiming that 90 per cent of illicit coca ended up in the illicit traffic and that there was a strong link between coca and

terrorism, but also remarked that: 'the only thing that cannot be replaced in cocaine production is the coca leaf'. Further, with implicit criticism of the operationalisation of policy in Bolivia, she also claimed that, 'alternative development is a perfect strategy when applied properly'. Masías agreed that there is 'a legitimacy for [coca] chewing', but that the 'conventions have put us on the right course'. She reaffirmed this belief by stressing that 'we will never accept statements that the fight against drugs has failed'.

A similar, although more conciliatory, message could be taken from the traditional defender of the treaty system, but one now harbouring a curious internal paradox: the USA. Delivered by the Assistant Secretary of the Bureau of International Narcotics and Law Enforcement Affairs, William Brownfield, the US statement understandably did not include any direct mention of the ballot initiatives in the states of Washington and Colorado. As within the domestic arena, this is clearly not an issue that the Obama administration is keen to discuss

openly. Put simply, it is too politically sensitive and remains in legal limbo. Indeed, despite its centrality to the stability of the current regime, the reality of regulated markets within the USA at a state level remained very much the elephant in the room; although everyone knew it was there, few wished to mention it. Instead, Brownfield admitted that, 'the United States does not claim a monopoly of best practices related to drug control' and that, 'All countries must consider their own circumstances and experiences'. Nonetheless, rather than admitting that there is a need for treaty revision, he pointed out that: '(e)ach government must decide its own course for how to best uphold its obligations under international law to protect its citizens against harms caused by illegal drugs'. With what turned out to be an erroneous prediction that treaty reform would be a recurring point of discussion throughout the week, the Assistant Secretary noted that, 'We will hear much this week about alternative approaches. As my own President Barack Obama has stated, the United States welcomes honest and open debate over the issue'. 'But', he continued, 'debate should be fact and science-based. The common drug control framework that we operate under – the conventions, the political declarations and the action plans approved and reaffirmed in the General Assembly – are products of years of careful consideration and field-based experience, in response to demands from our publics to reduce the social costs of illegal drugs. Those who advocate change to global drug policies should offer their own credible evidence or scientific research'. With this in mind he stressed that the High Level Segment of the CND in 2014 and the 2016 UNGASS are opportunities for systematic review, and that: 'We may have differences, but they shouldn't obscure our need to work together toward the common goal of protecting the health and security of our citizens'.

Interestingly, having arguably grown into the role of a powerful new defender of the existing UN drug control framework in recent years,

the delegation from the Russian Federation was relatively low key at this year's CND session. Clearly preoccupied with its domestic heroin market and the role of Afghanistan as a major source of opium, the Federation's drug Czar, Victor Ivanov, used the Russian plenary statement to highlight what he referred to as the 'right to development'. Having highlighted the international community's failure in curbing the production of opium in Afghanistan, he called for the Economic and Social Council (ECOSOC) to focus on alternative development and post-conflict development in 2015 within the country and, perhaps significantly for the way in which the issue might be framed in the future, argued that alternative development in Afghanistan should be discussed at the UN Security Council.<sup>9</sup>

### **The Roundtable sessions: Some debate, still lots of statements**

This was the third year that roundtable sessions have been incorporated within the plenary. But as in previous years they were only partially successful in achieving their core aim – shifting the thematic debate away from prepared country statements. Although some productive, unprompted, and at times somewhat surreal debate took place, many delegates remained unwilling to embrace the opportunity to explore the pre-determined issues and learn lessons from each other.

Roundtable (a) focused on **Drug demand reduction and related measures: Drug Prevention as a means to curb the world drug problem with the framework of a scientific evidence approach** and was chaired by Carmen Masías. The session was initially hampered by technical problems, with the result that many civil society delegates missed the first half of the session.

In terms of the discussion itself, many of the interventions consisted simply of generalised and well-rehearsed support for the principles

of prevention, calling for attention to parenting, strengthening of families and communities, measures to specifically target vulnerable groups, the raising of awareness in schools and workplaces, funding for scientific research, and so on. Several speakers expressed their approval of the Office's recent publication *International standards on drug use prevention*,<sup>10</sup> while others noted that the conventions do not mandate a 'War on Drugs' but rather a health and human rights based approach. In this regard it was noteworthy that Dr. Gilberto Gerra, from the Drug Prevention and Health Branch of the UNODC, made an important intervention highlighting that the conventions do not ask countries to criminalise drug use.

The intervention of the representative of Ukraine was, however, among the most interesting, providing as it did an illustration of the ways in which drugs continue to play a complex and powerful symbolic role in social life, and to stand for historical and cultural developments that provoke profound anxieties. In this case, the speaker sought to link drug use with wider social issues, arguing that 'virtual relationships have replaced real ones' and that 'human consciousness has become virtualised'. In this new technological environment, the delegate stated, moral considerations recede and people no longer pursue healthy hobbies; instead, they escape into gambling, night clubs, the internet, and drug subcultures. The intervention was a broadside against postmodern culture, moral and cultural relativism, and social difference; it demonstrated a type of social conservatism linked to a nostalgia for an imaginary past, when people knew their place in society and went cheerfully about their healthy hobbies, all of which were related to church and sport. It is a type of cultural politics which often forms an undercurrent of anti-drugs discourses.

A point of view which was both humorous and more realistic was provided by the Czech delegate, who made the ironic assertion that, 'We need a magic pill to give to our young people

so they don't take drugs anymore...a Prevention Pill'. This speaker acknowledged that no matter how effective prevention might be, there will always be some people who want to take drugs, whether licit or illicit; no 'Prevention Pill' exists, no drug to stop people from taking drugs. It was a refreshing example of realism in a field that still tends toward visions of a golden age, whether in the past or the future, in which nobody takes drugs, and with which the present is always going to be unfavourably compared.

Roundtable (b) was rather clumsily entitled **Supply reduction and related measures: The importance of cooperation, coordination and funding to promote relevant activities and programmes on all aspects of alternative development in support of the drug control regime established by the three international drug control conventions, within a broader international framework.** It began with Jorge Rios, Chief of sustainable livelihoods at the UNODC, giving a brief history of alternative development in the context of the conventions. He stressed that until recently supply reduction meant eradication and went on to explain how the 1998 UNGASS developed the first Plan of Action that combined international cooperation with alternative development and acknowledged the social conditions driving illicit cultivation. This culminated in the 2009 Political Declaration. The remit of this Roundtable was, therefore, to review progress under the 2009 Plan of Action.

A core theme within the discussion was the centrality of the related structural problems of poverty and underdevelopment in supplier countries. Delegates agreed that alternative development initiatives would fail unless they address issues of food security, health, and education. The success of programmes must be measured both by improved social indicators and reduced acreage in illicit crop production; in addition, it must be understood that illicit cultivation is a rational response to chronic structural conditions of deprivation. While there

was agreement on these points, in an attempt to generate genuine discussion, the Chair (Simona Marin, Romania) kept interrupting delegates' presentations and asking them to please discuss *specific* challenges they had experienced implementing alternative development in their countries rather than reciting their countries' goals and visions. It should be acknowledged, however, that the short term challenges she wanted to hear about and note for her report are all functions of the lack of long term solutions to structural problems mentioned by almost all the delegates.

Most country statements also stressed that alternative development will only work if the global community helps them address the socio-economic conditions driving illicit cultivation at the local level. As such they called for implementation rather than lip service to the mantra of 'shared responsibility'. The tone of the statements was an interesting (and at times arguably theoretically incoherent) blend of community/local empowerment and neo-liberal market discourse. It went without saying by almost everyone that the paradigm of forced eradication alone is outdated and unsustainable. It was agreed that, unless alternative development is planned in consultation with communities either before eradication programmes or in conjunction with them, such projects will fail. The role of the non-producer world, the delegates argued, is to provide markets and free trade zones for goods produced through alternative development programmes, as well as enforcement aid and assistance with governance/infrastructure development. There was consensus that drug control has to get beyond the producer/consumer paradigm and treat countries trying to implement alternative development as equal partners in the global economy.

The discourse at the roundtable was very market-oriented: sustainable alternative development in vulnerable areas means producing, branding, and marketing environmentally friendly 'value-

added' items whose price point is competitive with raw materials purchased locally by drug traffickers. In this vein, France, Thailand and Lebanon all mentioned expanding the framework of inter-governmental / international institution cooperation regarding alternative development projects to include local and private investment, public-private partnerships (such as those between French supermarkets and Colombian chocolate producers), and NGOs as outside evaluators. Delegates emphasized the need for impartial evaluation and monitoring of projects rather than just throwing development dollars ('charity') at them and expecting them to succeed without requisite financial and infrastructure support for quality sustainable alternative development products.

Roundtable (c) was introduced under another unwieldy title, **Countering money-laundering and promoting judicial cooperation to enhance international cooperation: The importance of further strengthening the operational implementation of treaty based provisions on international cooperation, including for countering money laundering and preventing the illicit cross-border movement of cash and monetary instruments.** Similar in its intentions to roundtable (b), it was designed to address some of the issues raised at 2009 High Level Segment, within the associated Political Declaration and Actions Plans and in relation to associated member state commitments to multilateral instruments such as the 1988 Convention, the UN Convention Against Transnational Organized Crime and the UN Convention against Corruption. Participants were therefore encouraged to share their knowledge about lessons learned and experiences gained in countering money laundering and promoting judicial cooperation, in particular in relation to both challenges and opportunities.

It was agreed that while there was much transnational cooperation, there remained problems with countries with weak monitoring

systems and insufficient operational capacity as well as with those that do not effectively implement provisions for international cooperation. As such, participants discussed the need to improve cooperation with neighbours and regional and international partners. Specifically, this included better monitoring of cross border movements of cash, improved capacity to trace and confiscate proceeds of crime, joint financial investigations, bilateral and multilateral asset sharing agreements, better information sharing, improved extradition arrangements and mutual legal assistance.

As in the plenary proper and the other roundtable sessions, some states seemed to ignore the directions of the Chair and use the discussion as an opportunity to display their credentials within the issue area. Others were more constructive in their contributions. For instance, prompted by the Argentinean representative's note of concern regarding the problematic issue of seized asset sharing, the US delegate explained that while his country had agreements in place with 19 countries, and had shared US\$250m of seized funds since 1989, more work was needed to 'break down barriers on the ground.' For its part, India raised concerns regarding capturing specific data on drug money rather than the more general classification of the proceeds of organised crime. On this point, Spain argued that there is a need to seize all assets of criminal organisations, not just those relating to drugs. Moreover, the Spanish delegate stressed, the 'treaties should facilitate, not hinder, cooperation'. Highlighting a point that was to run through many of his country's contributions throughout the week, the delegate from the Russian Federation emphasised the links between drug money and terrorism and argued that further work needed to be done to learn more about the relationship. Perhaps predictably, bearing in mind his nation's key role in the construction of the international instruments on crime and corruption,<sup>11</sup> the US delegate argued that the treaty framework remained strong, but that there continued to be

an issue with implementation. For example, a core concern is related to the investigation of a crime that is committed in one country, but not recognised in another. This, he pointed out, can be worked around via 'cop to cop' engagement, but was still problematic. After much good quality discussion there was general agreement with the US that the roundtable had instigated 'constructive exchange'.

### **Voting at the CND – Scheduling and ongoing questions concerning mandates and protocol**

Many delegates to this year's CND participated in, or in the case of NGOs, observed, a rare process within the realm of international drug control: voting. Over the years it has become the custom within the Commission to decide on most issues via a consensus based process. This not only explains the normally bland and lowest common denominator character of the final versions of resolutions from the Committee of the Whole (CoW), but also does much to sustain the myth of a so-called 'Vienna Consensus'. The exception to this approach is in the case of scheduling, because the conventions explicitly require the CND to take a vote. Here, having – ostensibly at least – taken advice from the WHO Expert Committee on Drug Dependence (ECDD), members of the Commission must vote on whether to bring a substance under international control or to move one that is already listed in the conventions to another schedule; stricter or less harsh. For substances scheduled in the Single Convention the process is based upon a simple majority. For the 1971 Convention on Psychotropic Substances, a two thirds majority is required. Voting on the Wednesday of the 56<sup>th</sup> Commission was concerned with the re-scheduling of GHB ( $\gamma$ -Hydroxybutyric acid) from Schedule IV to the stricter Schedule II of the 1971 Convention. The process itself, which included a suspension of the debate in the CoW to allow voting, was not controversial. After a show of hands, 41 countries voted in favour and one against. Explaining its

lone opposition, Austria claimed that its position reflected the situation in the country whereby current controls are 'adequate' and 'misuse' of the substance 'relatively minor'. The Austrian delegate also claimed that the move would create an imbalance within the system since its sister substance, GLB ( $\gamma$ -butyrolactone) was not scheduled.

The issue of GHB was significant, however, because it provided an entry point into the increasingly confused, controversial and disputed issue of scheduling more generally, especially in relation to procedures laid out in the conventions. Indeed, while some delegations used the agenda item simply as an opportunity to state their position on GHB, many also raised concerns about the status of other substances. As in country statements earlier in the week, some argued for the scheduling of ketamine and tramadol (the latter, as mentioned in the main text of this report, was also the subject of a resolution in the CoW); two substances the WHO recommended to keep out of the UN control system in order not to compromise their availability for medical purposes.<sup>12</sup> Others (including the USA and the UK) noted fears about the increasing range of NPS that fall outside international control. Concern about NPS is valid and certainly raises difficult questions about the ability of the regime to cope with the dynamic drug using practices of significant numbers of people worldwide. Within this context, the plenary statement of Peter Dunne, New Zealand's Minister of Revenue was particularly interesting. Dunne outlined the innovative legislation coming before Parliament in the autumn (the Psychoactive Substances Bill) whereby all new substances will be banned unless a manufacturer can prove that they pose no more than a low risk of harm. Thus, rather than rush to prohibit all substances immediately, the New Zealand government plans to put the onus on the industry to ensure the safety of their products and 'if they pass muster' they will be placed in a regulatory schedule that will allow retail sales of the products under certain

conditions.<sup>13</sup> Repeated mention of ketamine, however, reignited previous debates around the present role of the INCB within the regime and revealed a less enlightened and pragmatic point of view. Indeed, as in a significant number of responses to the Board's report later that day, many countries over the course of the week noted the INCB's attention to ketamine in its report, voiced their concerns and urged its scheduling. These included Japan, Thailand and the G-77 and China, with both the Africa and the Asia Groups going so far as to regret the decision of the WHO not to recommend scheduling.

Since at least 2004 the Board has periodically raised its concern about the need for international control of ketamine. It is true that in the last few years its position on the drug has become more nuanced from that maintained within its Report for 2009. As the IDPC Response to the Report discussed in detail, the Board then openly argued that ketamine should be brought under international control.<sup>14</sup> This was not within its gift as outlined by the Single Convention and represented a stance that conflicted with the WHO; the treaty body actually responsible for making such recommendations. Having discussed the drug in its 34<sup>th</sup> meeting in 2006, the ECDD 'concluded that the information' at that point 'was not sufficient to warrant scheduling' and requested its Secretariat to provide an updated version of the 'critical review' on which to base its decisions. This was to be discussed at the ECDD's 35<sup>th</sup> session, which, due to financial issues, did not meet until June 2012.<sup>15</sup> Then, as suggested above, the Committee recommended against scheduling. This position was taken because, among other things, the Committee concluded that the drug is a 'widely used anaesthetic, especially in developing countries', is included in the WHO Model List of Essential Medicines and that 'abuse currently does not appear to pose a significant global public health risk'. It also noted that: 'Concerns were raised that if ketamine were placed under international control, this would adversely impact its availability and accessibility. This

in turn would limit access to essential and emergency surgery, which would constitute a public-health crisis in countries where no affordable alternative anesthetic is available.<sup>16</sup>

While not as strident in its calls for control as it has been in the past, as evidenced in this year's Commission, the Board still has considerable impact on the debate around ketamine and arguably still exceeds its mandate. In claiming that the 'Board shares the opinion of the governments concerned that national control measures alone may not be sufficient to enable law enforcement cooperation between the countries involved', it comes perilously close to stepping beyond the legitimate bounds of its remit by presenting its opinion alongside those of certain member states. As noted elsewhere, 'It is the CND and member states that make it up, that should determine policies'.<sup>17</sup> Moreover, it can be argued that in a circular process of self-reinforcement, the member states' concerns that the Board currently champions are themselves in many ways the product of previous INCB statements concerning the need for the scheduling of ketamine. DrugScope raised some of these issues in its NGO plenary statement (see below). Finally, the issue of ketamine provides another example of what we have referred to as the Board's 'Selective Reticence'.<sup>18</sup> As pointed out elsewhere, in this instance 'the INCB fails to account for the broader health implications of its proposal. As so often, INCB fails to give equal weight to the positive aspects of its duties: focused obsessively on the restriction of non-medical drug use (the law enforcement aspect), it ignores the urgent medical considerations at stake in the question (the vital role ketamine plays as an anaesthetic in the developing world)'.<sup>19</sup>

The issue of scheduling GHB also provoked a number of interventions in relation to one of the main active ingredients within cannabis, dronabinol. In recent years discussions, action and inaction around the scheduling of this substance have resulted in considerable

confusion. This was an issue picked up on in particular by a member of the Dutch delegation. He pointed out that, as discussed above, the 'WHO is mandated to make recommendations and that the CND is then supposed to vote'. As he went on to explain, a 2006 WHO assessment of the drug recommended that it be down-scheduled from Schedule II to III of 1971 Convention on Psychotropic Substances; a decision based upon dronabinol's use in the treatment of a range of illnesses, including anorexia, and the fact that, in the words of the Dutch delegate 'abuse is non-existent'. That de-scheduling recommendation, however, triggered so much political controversy that – contrary to normal procedure – it was not put to a vote. Instead the CND had asked the WHO to come up with another recommendation. Since the WHO had submitted a letter to UN Secretary-General in 2012 saying that there was no new evidence on the on issue and that the ECDD's position thus remained unchanged,<sup>20</sup> the Netherlands was therefore 'concerned' that the original recommendation had not been re-submitted to the CND by the Secretariat for decision by vote. 'The WHO decision should stand', the Dutch delegate stated. He concluded by arguing that there had been many discussions within the CND about shared responsibility and that this should apply to essential medicines; an issue that the Netherlands 'will push for'. On the issue of dronabinol, the Swiss delegation also stressed that it wanted 'clear process'. These positions bolstered that of the Government of Croatia, which prior to the CND had agreed that the WHO's recommendation should stand.<sup>21</sup> Canada's response to these views within the plenary, however, provided a hint as to why, despite a lack of formal and mandate-based opposition, the WHO's recommendation has been deliberately lost in the system. The Canadian delegate put forward its view – and that held by other states – that shifting dronabinol into a lower schedule would send the 'wrong signal' and give the impression to advocates of cannabis reform that THC was only harmful in its natural form. On these grounds, he therefore opposed rescheduling and in so doing crystallised the

politicised nature of the debate.<sup>22</sup> This is clearly an issue of concern. There is currently much discussion around regulated markets and the integrity of the conventions. Yet, there seems to be a lack of appreciation, among opponents of current trends to reform some aspects of these conventions, that the very act of avoiding even discussion of scientific recommendations on political grounds itself undermines the credibility of the very same treaty system and the schedules upon which it is based.

The ketamine and dronabinol examples certainly illustrate the difficulties the UN drug control system currently experiences in dealing with WHO recommendations that contradict the zero-tolerance control logic that has become predominant in its implementation. This brings into question the ability of the system to recalibrate and adapt to modern standards using the embedded treaty procedures in an evidence-based manner. The eagerness displayed by the INCB in these cases to jump into that gap and to provide its own recommendations, contradicting the WHO and in absence of a treaty mandate to do so, only adds credence to growing doubts about the what can be regarded as the convention's inherent mechanisms for repair. The positive thing about this CND, however, is that these tensions came to the surface more clearly than ever before and that a decision was made to make this issue and the WHO mandate under the treaties, a special agenda item at the CND next year.

### **The Committee of the Whole: The civil society cat amongst the pigeons of consensus?**

The CoW is the space in which draft resolutions are proposed and refined through discussion and debate to arrive at a form of words acceptable to the assembled delegations. Resolutions are then submitted to the Plenary for adoption by the CND, and finally to ECOSOC

for adoption by the UN. This year the CoW was chaired by Mr. Khaled Abdelrahman Shamaa of Egypt, First Vice-Chair of the Commission. With the economic climate imposing new constraints on the CND budget, there were restricted translation hours available and discussion time was consequently at a premium for the CoW. Despite this, during the early part of the week the Chair was unable to prevent protracted debates over the minutiae of wording, but this resulted in the resolutions flying through with very little discussion and few changes made as the event drew to a close.

A total of 18 resolutions were agreed, ranging from the familiar (continued support for the Paris Pact Initiative against trafficking from Afghanistan, strengthening the principle of shared responsibility, cooperation against trafficking in West Africa) to the more unusual – the upgrading of GHB from Schedule IV to Schedule II of the 1971 Convention on Psychotropic Substances (see below). As is the usual practice in IDPC's report of the CND proceedings, we will concentrate on those resolutions that seem to us to be most significant in terms of content, and those whose passage through the CoW provoked relevant interventions or debates.

In general, this year's CoW sessions were without the controversies that attended debates over the phrasing of resolutions dealing with harm reduction. In this respect, it was somewhat reminiscent of last year's CND: a spirit of consensus on the surface, accompanied by the rather bland, middle-of-the-road propositions upon which consensus often depends, while the underlying differences occasionally broke through- differences of policy and of philosophical orientation. This year, it was the issue of civil society engagement in the review process that provoked those differences to reveal themselves. The major conflict occurred in relation to Resolution 56/12- 'Preparations for the high -level review of the implementation by Member States of the Political Declaration

and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem'. This resolution was submitted by the Chair, with support from Colombia and Ukraine, and referred to next year's high-level review and the 2016 UNGASS. Among other things, the draft 'welcomed the important role played by civil society, in particular non-governmental organisations, in addressing the world drug problem', expressed appreciation for civil society's role in the preparations for the 2009 Political Declaration and Plan of Action, and called for its participation in 'the formulation and implementation of drug demand and supply reduction policy'. It also stipulated that information from civil society should be taken into account in the inter-sessional meetings devoted to the preparations for the review.

All of this, on the face of it, possessed considerable promise for civil society organisations (CSOs) seeking to play a part in the review of the implementation of the Political Declaration and Plan of Action. However, the proposals remained vague regarding the shape this participation was to take. St Lucia, which was one of the few delegations to include civil society experts, then caused something of a stir when it proposed the addition of a new paragraph dealing with civil society engagement in the preparations for the high-level review, and demanding formal participation in the process. The St Lucia proposal made reference to the 2011 CND Resolution 54/11, 'Improving the participatory role of civil society in addressing the world drug problem', which noted that, 'representatives of affected populations and civil society entities, where appropriate, should be enabled to play a participatory role in the formulation and implementation of drug demand and supply reduction policy'.<sup>23</sup> A number of countries were quick to speak out against St Lucia's suggestion. It was significant that objections came in the main from states without a strong tradition of civil society participation in their domestic politics, and included several of the 'usual suspects' in this regard: Pakistan,

Turkey, Egypt, Algeria, Cameroon, Cuba and Venezuela. The Russian Federation, as ever, appeared wary of civil society involvement in drug control policy and characteristically suspicious of its intentions; however, it should be noted that the Russian speaker at the CoW did adopt a more conciliatory approach than we have experienced from the Russian delegation over the past couple of years.

One of the first responses to St Lucia's proposed additional paragraph came from Pakistan, and set the tone for others resisting its addition to the text: 'Responsibility for addressing the world drug problem lies with member states, not civil society, though civil society does have an important role in addressing the multi-dimensional aspects of the problem'. Russia intervened to remind delegates that the title of the resolution gave an important indication of where responsibility should lie; it referred to the High Level Segment – in other words, to a matter to be decided between states. The text suggested by St Lucia did not make it clear, contended the Russian speaker, whether CSOs were to be involved in the preparatory process or in the review itself. Moreover, he added, Russia could not support the 'participation' of civil society, preferring to speak instead of the 'contribution' it could make. In addition, the text already contained reference to that contribution – so there was no need to add anything more. Following this came interventions by two of the supportive states, the Netherlands pointing out that St Lucia's text included the proviso that civil society would participate *where appropriate*, and the placing of such limits should soothe the anxieties of the Russian Federation. Norway recommended that the use of language taken from the Political Declaration might provide a way around the disagreement; the Declaration had, after all, been signed off by all of the CND's member states. Pakistan insisted that it was not in a position to agree to the proposal. The Russian delegation interjected once more that its government sought a compromise, and believed that this could be found in the language of the Political Declaration.

It was clear that a profound divide underpinned the textual clash, which was structured by fundamental differences of attitude toward the nature and extent of civil society involvement in the business of government. With Norway supporting the inclusion of CSOs in the high-level review process, the interventions of the Pakistani delegation now became increasingly curt, while the Russian Federation was, despite its avowed wish for compromise, showing its old intransigence: 'This review should be conducted by CND. There's not a place for civil society in this, it's an intergovernmental procedure. We cannot go along with this proposal'. Meanwhile Norway, Switzerland, the UK, the US, Finland and the Netherlands lined up to support the inclusion of the St Lucian paragraph and civil society engagement in the review process.

At the beginning of a second session devoted to this resolution, the Venezuelan delegate remarked that, 'This is a sensitive set of issues, we must proceed with great caution. We need more time'. The Chair, now growing increasingly impatient, replied, 'That's a commodity we don't have much of'. Ultimately, it was the pressure of time that prevailed, and a consensus was arrived

at. It was the Norwegian delegate who intervened at the key moment, with the Chair expressing exasperation and the debate becoming mired. The Norwegian stated that, while his government supported St Lucia's proposal, he recognised the resistance in the room, and suggested instead an informal civil society dialogue along the lines of that which now takes place at the CND. It was this concrete proposal that appeared to break the deadlock, not because it said anything that had not been said already, but because the moment was propitious, with the conflicting delegations not wishing to be seen to be obstructive. Could St Lucia accept Norway's proposition, inquired the Chair? The collective gaze focused on the tiny St Lucian delegation at the rear of the room. To the evident relief of the Chair, the St Lucian delegate replied, 'I think we can live with that'. The eventual resolution excluded St Lucia's call for the formal participation of CSOs in the review but enshrined an informal involvement, the precise nature of which remains to be decided in a series of sessions in which the preparatory work for the review will be carried out. Nevertheless, the final text contains no explicit mention of an informal civil society dialogue equivalent to that taking place at the CND.

## **Box 2. Resolutions and Decisions at this year's CND<sup>24</sup>**

Resolution 56/- Implementation of the budget for the biennium 2012-2013 for the Fund of the United Nations International Drug Control Programme.

Resolution 56/2- Accra declaration.

Resolution 56/3- Strengthening international cooperation in combating illicit opiates originating in Afghanistan through continuous and reinforced support to the Paris Pact Initiative.

Resolution 56/4- Enhancing international cooperation in the identification and reporting of new psychoactive substances.

Resolution 56/5- Promoting the sharing of expertise in and knowledge on forensic drug profiling.

Resolution 56/6- Intensifying the efforts to achieve the targets of the 2011 Political Declaration on HIV/AIDS among people who use drugs, in particular the target to reduce HIV transmission among people who inject drugs by 50 per cent by 2015.

Resolution 56/7- Promoting the development and use of the international electronic import and export authorization system for licit international trade in narcotic drugs and psychotropic substances.

Resolution 56/8- Promoting initiatives for the safe, secure and appropriate return for disposal of prescription drugs, in particular those containing narcotic drugs and psychotropic substances under international control.

Resolution 56/9- Strengthening of the principle of common and shared responsibility as the basis for guiding international action in combating the world drug problem with a comprehensive and balanced approach.

Resolution 56/10- Tools to improve data collection to monitor and evaluate the implementation of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem.

Resolution 56/11- Improving the governance and financial situation of the United Nations Office on Drugs and Crime: recommendations of the standing open-ended intergovernmental working group on improving the governance and financial situation of the United Nations Office on Drugs and Crime.

Resolution 56/12- Preparations for the high-level review of the implementation by Member States of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem.

Resolution 56/13- Precursors: raising awareness on the diversion in international trade of non-scheduled substances for use as alternatives to scheduled substances in the illicit manufacture of narcotic drugs and psychotropic substances.

Resolution 56/14- Strengthening international cooperation in addressing the non-medical use and abuse, the illicit manufacture and the illicit domestic and international distribution of tramadol.

Resolution 56/15- Follow-up to the Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem with respect to the development of strategies on voluntary marketing tools for products stemming from alternative development, including preventive alternative development.

Resolution 56/16- Enhancing international cooperation to strengthen efforts in West Africa to counter illicit drug trafficking.

Decision 56/1- Transfer of *gamma*-hydroxybutyric acid from Schedule IV to Schedule II of the Convention on Psychotropic Substances of 1971.

A second significant resolution from IDPC's perspective was Resolution 56/14- 'Strengthening international cooperation in addressing the non-medical use and abuse, the illicit manufacture and the illicit domestic and international distribution of tramadol'. While some of the questions surrounding the scheduling of substances are addressed in more details below, the CoW discussions surrounding the opioid painkiller tramadol are noteworthy and give some cause for alarm. This is due to the striking lack of balance characterising many if not most interventions, a lack of balance that structures the resolution itself: the final text of the resolution has three paragraphs drawing attention to medical need, while twelve paragraphs refer to restrictive control.

As emphasised by the WHO in its report, *Ensuring balance in national policies on controlled substances*,<sup>25</sup> governments should take care that laws and regulatory frameworks designed to prevent diversion onto the illicit market do not obstruct the availability of drugs for legitimate medical purposes. In fact, the WHO points to plentiful evidence that this is precisely what does happen, and offers guidance to authorities in how to achieve an appropriate balance in drug control policy and practice. In the CoW, repeated expressions of 'concern' regarding the unauthorised use (or as it was repeatedly referred to, 'abuse') and trafficking of tramadol and calls for stricter controls dominated the discourse. The drug's essential role in medicine was not accorded anything like equivalent importance.

The consideration of this resolution featured examples of the CoW at its worst, entailing protracted, obscure and circular debates over (among other things) the precise meaning of the term 'diversion'. More problematic was the apparent lack of understanding of the importance of drugs such as tramadol, especially to the practice of medicine in the developing world. The attractiveness of tramadol in parts of Africa, Asia and Latin America derives in large part from the fact that it is *not* controlled under

the conventions, and is therefore considerably easier to access, distribute and employ in legitimate medicine than those drugs which are so controlled. It is worth remembering that the forthcoming review, and the Political Declaration and Plan of Action whose implementation it seeks to assess, refer to 'international cooperation towards *an integrated and balanced strategy* to counter the world drug problem' (emphasis added). There was little evidence of such integration and balance in the discussion of tramadol, nor recognition that an adequate conception of the 'world drug problem' must include the lack of painkillers available to those suffering moderate to severe pain around the globe. For many of these, the real 'world drug problem' is characterised not by the presence of illicit drugs, but the absence of licit ones.

The speed at which the last two days of the CoW had to be conducted meant that certain resolutions which might have attracted critical attention under different circumstances were passed without incident. Moreover, many of the potentially problematic resolutions were effectively finalized in bilateral settings before reaching the floor.<sup>26</sup> These included Resolution 56/6- 'Intensifying the efforts to achieve the targets of the 2011 Political Declaration on HIV/AIDS among people who use drugs, in particular the target to reduce HIV transmission among people who inject drugs by 50 per cent by 2015'. This resolution was facilitated partly by the work of the Czech, Norwegian and other delegations who took part in lengthy informal sessions to get the wording agreed. It represents a powerful endorsement of the role of CSOs in the provision of prevention, treatment, care and related services for people living with HIV, especially people who use drugs. It also references the *WHO, UNODC and UNAIDS Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users*,<sup>27</sup> and also mentioned TB and gender issues. As noted by the Vienna NGO Committee on Drugs (VNGOC), this 'is a very strong resolution – as long as the

resources to implement it are made available'.<sup>28</sup> Like numerous other resolutions and other publications from the UN drug control bodies, it supports implicitly those 'related services' which were previously termed, with much controversy, 'harm reduction services'. Part of the reason why the CoW has been a relatively calm place this year is that the practice of harm reduction has been absorbed into the programmes and policies of both international and many national drug control systems, even if the term harm reduction remains a toxic one for some governments. It remains to be seen whether civil society engagement will be the latest controversial issue to ignite discord between the CND members.

### **NGO engagement: Generally positive (with the usual exception)**

This year's CND saw 165 NGO delegates representing 55 ECOSOC accredited NGOs in Vienna. This was a slight increase on 2012. That said, in what appears to be the beginning of a worrying trend, as was the case last year, fewer NGO representatives were invited to

be part of country delegations. For instance, once again the UK, for many years an exemplar of engagement with CSOs, did not include an NGO representative among its delegates. This can be seen as emblematic of the UK's unfortunate relegation from a progressive and dynamic presence at the CND into a somewhat passive delegation that seems wary to put its head above the parapet for fear of upsetting other member states, particularly the USA. It was, nonetheless, reassuring to see the UK argue in the CoW for civil society involvement in the High Level Review. It is IDPC's hope that both the forthcoming high level segment of the Commission and the UNGASS in 2016 will spur the UK and other states to engage more with NGOs (both in terms of bilateral meetings and where appropriate as part of national delegations) in order to tap into civil society expertise on a range of drug related issues. Indeed, as we enter a crucial time in the history of the international drug control system, civil society must be seen as an important keeper of institutional memory. While diplomats and civil servants rotate in and out of post, many NGO delegates have been involved with the issue area for many years.



*NGO briefing at NGO Lounge on Monday 11<sup>th</sup> March*

While the lack of NGO representation on country delegations helps maintain the CND as an outlier within the UN system in terms of moving beyond the traditional observer role, engagement by the drug control apparatus remained largely positive. The VNGOC continued to take responsibility for coordinating NGO involvement with the NGO 'lounge' providing a useful space for NGO delegates to meet. As in previous years, space was also provided for the display of NGO materials. If anything, the NGO table, often emblematic of the UNODC Secretariat's view of civil society within the event, was larger than in 2012. The VNGOC once again organised informal dialogues with the President of the Board and the UNODC Executive Director. This year, due to scheduling issues, there was no dialogue with the Chair of the CND. Despite this absence, the dialogue process remains a welcome part of the agenda, even if sometimes the content of that process falls short of what IDPC would like to see. After the success of last year's inaugural event, the 2013 session also included the more general Informal Civil Society Hearing (ICSH). Here, as discussed below, there was ample opportunity for NGOs to make statements and discuss a range of issues. Mindful of the number of, on occasion quite lengthy, NGO plenary statements that were made in addition to these events, it must be said that the Commission, notably the Secretariat, is continuing to improve its engagement with civil society. Yet, as we noted last year and was reflected within heated debates in the CoW, the CND in general still lags behind other parts of the UN family, particularly those relating to human rights, in its willingness to engage with civil society. Progress has been made, but much remains to be done.

### **The Informal Civil Society Hearing: Another good year**

The ICSH represents an opportunity for the spectrum of CSOs attending the CND to be seen and heard in an audience including civil society, member state and UNODC representatives.<sup>29</sup> The format of the ICSH this year was novel:

one segment displaying the work of NGOs in contributing to the implementation of the 2009 Political Declaration and Plan of Action, and three panel discussions on topics relating to the role of NGOs in the development, implementation and review of drug policy. In his opening remarks, the VNGOC Chair, Michel Perron, said that the purpose of the ICSH was to exchange best practices and recommendations on how to work with civil society, including at the upcoming 2014 high-level review of the Political Declaration and Plan of Action.

In the first segment on the contribution of NGOs, the Harm Reduction Coalition (HRC) presented its global work in preventing overdose deaths, including programmes distributing naloxone and training on overdose prevention. The Eurasian Harm Reduction Network (EHRN) representative called for the UNODC to support governments in making their drug policies more consistent with HIV prevention policies for people who use drugs. She cited a recent meeting between the UNODC and selected NGOs in February 2013 as an example of open and productive, and highlighted the need for the UNODC to develop updated model drug laws (especially in relation to the decriminalisation of use/possession for personal use) as discussed during the dialogue. She also noted the significant progress made in dialogue between civil society, governments and the UNODC at the CND over the past ten years that she has attended. It seemed odd for the UNODC to also present in this segment, as it is not an NGO, although it was positive to hear of the UNODC's commitment to HIV prevention, treatment and care and to receive an update on its work in developing a list of priority countries and a revised strategy to make a stronger effort in reducing HIV prevalence amongst people who inject drugs.

For a dialogue intended to amplify the voice of NGOs, it was surprising that the speakers list was dominated by government and UNODC representatives. Although the speakers unanimously expressed support for some degree

of civil society engagement, the inclusion of more non-governmental speakers might have allowed for more critical discussion. The first panel discussion topic referred to Article 10 of the 2009 Political Declaration, which states that 'representatives of affected populations and civil society entities, where appropriate, should be enabled to play a participatory role in the formulation and implementation of drug demand and supply reduction policy', and posed the question: When is it 'appropriate' for affected populations and civil society entities to play a participatory role in the formulation and implementation of drug policy? As a panel discussant, the UNODC Deputy Executive Director and Director of the Division for Policy Analysis and Public Affairs of the UNODC, Mr. Sandeep Chawla, ruminated on the possibilities of reforming drug policies and concluded that the multilateral system of drug control developed over the past century cannot be thrown out and replaced with a new one. He stated that drug policy is driven by member states that do not always agree, and that the UNODC is best placed to mediate between states. He admitted that over the past century, concern about the impact of drugs has driven the drug control agenda into the realm of law enforcement, which is less concerned with public health. He said that, 'we have forgotten this principle' that the objective of drug control is the protection of public health,

and that, 'civil society organisations can help bring it back'. However, he concluded that it was not appropriate for NGOs to attack the UN over issues that they cannot control, for example, in the context of the ongoing debate on drug-related human rights violations, as the UN can only seek to persuade governments to act but not decide how they will act.

The other two panel discussions included positive contributions from government representatives which supported civil society participation but only vaguely addressed the designated questions: How can we create conditions to optimise effective implementation in cooperation with NGOs? How can NGOs most effectively contribute to the high-level review of the Political Declaration and its Plan of Action at its 57<sup>th</sup> session of the CND? However there were valuable inputs from NGO representatives such as Actis (Norwegian Policy Network on Alcohol and Drugs), who noted that there is a spectrum of NGOs which do not necessarily agree, therefore international agencies and governments also play an important role in reaching consensus on drug issues, and Commitment Indonesia (a coalition of NGOs advocating for harm reduction), who identified a need for consultations leading up to the 2014 and 2016 reviews to be regionalised to secure greater engagement from national level NGOs.

### **Box 3. NGO Side events**

Reflecting the increasing level of NGO engagement with all aspects of the CND, this year's session witnessed the largest ever number of CSO organised side events. Focusing on a range of issues and often co-hosted with national delegations, these were targeted at member state delegates, as well as NGO representatives, and provided a useful forum for discussing key policies.

The IDPC-Transnational Institute (TNI) side event, *Cannabis and the 1961 Single Convention on Narcotic Drugs*, focused on recent cannabis policy reform movements and their implications for the control system set up in the 1961 Convention. The event started with a short introduction by Dave Bewley-Taylor (IDPC associate and director of the Global Drug Policy Observatory, Swansea University, UK) outlining the political dynamics of the current situation. This was followed by a presentation from James Mills (Professor of history at the University of Strathclyde, UK) about the history around cannabis control in the UN drug conventions, and the fact that the

inclusion of cannabis into the 1961 Convention was based on political sensitivities rather than on scientific and medical assessments. Diego Canepa (President of the Permanent Commission on Democracy and Human Rights of the Inter-parliamentary Coalition in Uruguay) then presented a new Uruguayan bill that will allow for the legal regulation of cannabis production, supply and use in the country. Finally, Martin Jelsma (Coordinator of the Drugs & Democracy programme at TNI) provided some insights into the current cannabis reform movements that have been happening in Uruguay, but also in the USA, the Netherlands and elsewhere. This invitation-only session, which was well attended by country delegates and members of the UNODC Secretariat, demonstrated that there has been a shift from tensions within to clear breaches of the UN conventions, and there is a subsequent need for a recalibration of the regime to accommodate these new trends.<sup>30</sup>

Organised by the Permanent Missions of Switzerland and the Czech Republic and IDPC, the *Modernising drug law enforcement* event outlined a new joint initiative between IDPC, Chatham House and the International Institute of Strategic Studies. This aims to stimulate debate on how drug law enforcement managers can better tackle the challenges faced by rapidly changing drug markets, and their associated harms.<sup>31</sup> Following introductory comments by Mike Trace (Chair of IDPC) and Dave Bewley-Taylor, Olivier Guéniat (Chief of Police, Canton of Jura, Switzerland) spoke about close coordination between the police, health and community sectors as crucial in reducing supply and the harms associated with drug use, while improving public safety. Graham Bartlett (Chief Superintendent, Sussex Police, UK) gave an account of the high rates of drug use, drug related deaths and crime rates that led to police experimenting by forming partnerships with the health sector and referring people who use drugs to treatment services as an option, instead of relying on the criminal justice process. As a result, the number of drug-related deaths and crimes drastically fell, and the numbers of people attending treatment services increased.<sup>32</sup>

In another collaboration between NGOs and member states, the African Union, the Africa Group, the United Republic of Tanzania and IDPC co-organised an event on *Drug policy in the African Union* to highlight recent developments in the continent. Olawale Maiyegun from the African Union presented its newly-approved '*Plan of Action on Drug Control*' – a balanced, integrated policy framework which includes harm reduction, supply reduction and demand reduction approaches.<sup>33</sup> Adeolu Ogunrombi then introduced the new *West African Commission on Drugs*, which has been launched by Kofi Annan in response to increasing drug trafficking and consumption in the region.<sup>34</sup>

At the IDPC-TNI-Washington Office on Latin America (WOLA) side event, *The Latin American agenda for drug policy reform*, a range of presentations reflected



IDPC/AU Commission/Africa Group side event on the African Union drug policy



Julio Calzada, General Secretary, Uruguayan National Drug Secretariat, presenting the Uruguayan cannabis law reform process at IDPC side event on Latin America

on the recent drug policy reform movements in Latin America. It was discussed how many governments have decided to review their policies and strategies towards drugs. This was the case in Bolivia over the coca leaf issue, of Uruguay where the government has introduced a bill on the legal regulation of cannabis production, sale and use, and of other countries moving away from crop eradication campaigns towards alternative livelihoods policies. Positive movements for reform also include the leadership of the Guatemalan government and other Latin American heads of state in calling for drug policy reform both at national and international level. However, challenges remain for meaningful reform, as was highlighted throughout the event, with resistance among policy makers, the media and public opinion.<sup>35</sup>

*Decriminalisation: Models and practice* was hosted by IDPC and Release, and opened with a presentation by Jamie Bridge (IDPC Senior Policy and Operations

Manager) of Release's 2012 report *A quiet revolution: Drug decriminalisation policies in practice across the globe*<sup>36</sup> which identified decriminalisation models in 21 jurisdictions. A wide range of approaches exist in terms of the drug(s) covered, the penalties imposed and the thresholds set to define 'personal consumption'. João Goulão (Portuguese Drug Czar) and Jindrich Voboril (Czech Anti-Drug Coordinator) described their country's models in more detail. Both countries came to adopt decriminalisation after consultation with a range of sectors – including public health, civil society and criminal justice – and achieved public and media support for the reform. The session concluded with a discussion of IDPC's draft 'Models of Decriminalisation' table which attempts to categorise different decriminalisation approaches, and will be published later this year.<sup>37</sup>

Events organised by NGOs more in favour of the current shape of the international drug control system included, 'How cannabis can negatively affect young people: A discussion of scientific evidence' (San Patrignano), and 'Community-based rehabilitation: Dianova, an Italian experience' (Dianova International and Dianova Onlus). There was also a wide range of national delegation-organised side events (see Box 4).

### The NGO informal dialogue with the UNODC Executive Director: Constructive, but evasive

This is the fifth year in which the Executive Director has attended an 'informal dialogue' with representatives of civil society and NGOs, and Mr. Fedotov's third such encounter. His performance was that of a highly competent professional diplomat, and provided a striking contrast with the equivalent civil society dialogue with INCB President Raymond Yans.

The questions posed by representatives in the audience reflected the diverse positions held across civil society, in particular the profound divide which continues to exist between the broadly reformist elements and those who remain committed to a 'drug-free world'. While the Executive Director greeted each of his interlocutors with a respectful tone, it must be said that he appeared more comfortable with questions that took for granted the status quo vis-à-vis the conventions and the drug control system they underpin. An example arose when Thanasis Apostolou, of the South East



*Informal NGO dialogue with UNODC Executive Director, Yury Fedotov*

European NGO Diogenis, asked about the recent proliferation of drug policy experimentation, such as decriminalisation, drug consumption rooms and calls for the regulation of cannabis. The representative mentioned the fact that some states felt discomfort with the lack of flexibility in the conventions regarding such measures. In the face of this question, Mr. Fedotov seemed to go onto the defensive. He denied that states were uncomfortable in this respect, insisting that the conventions enabled states to offer prevention, treatment and care, rehabilitation and reintegration in society. Where there were problems, he argued, it was at the national state level, and it was here that the Office sought to defend the health and human rights of people who use drugs and to have them treated as patients rather than criminals. He did not respond to the key issue raised in the question, which concerned the wish of certain states to permit regulated markets in the use of drugs for non-medical purposes.

Similarly, Transform Drug Policy Foundation posed a question concerning the upcoming review as a moment in which alternatives to the present drug control arrangements might be considered. The Executive Director largely sidestepped the issue of alternative controls by focusing his reply on the *World Drug Report* and the analysis of data trends; he was not prepared to confront directly the consideration of different

forms of drug control. The same went for the question raised by US NGOs Law Enforcement Against Prohibition (LEAP) and Students for Sensible Drug Policies (SSDP) regarding those problems which, they argued, are caused by the present control system – Mr. Fedotov simply referred the questioner to the work that the UNODC does on drug use prevention. Other inquiries touching on drug policy reform received replies still more cursory.

Nonetheless, the Executive Director repeated his support for human rights and for ‘active and meaningful’ civil society involvement in the CND, the review process and the 2016 UNGASS on drugs. He stated, however, that the degree to which civil society engagement in the review can be formalised is a matter that can only be decided by member states, and he is correct in his observation that civil society cannot participate on an equal footing with member states. In the long run, it will be important for civil society expertise to be included as part of national delegations. As for Mr. Fedotov, it appears that he will encourage a flexible and humane interpretation of the drug control conventions, but will not venture beyond them to consider alternative modes of regulation that permit the use of drugs for non-medical purposes. Whether this will prove enough for those countries seeking an innovative way out of their domestic drug- and drug-control-related problems remains to be seen.

#### Box 4. Country delegation side events

Noteworthy among a wide range of country delegation organised events was *Drug Crimes and the death penalty*. This was hosted by Austria and Switzerland to highlight a ‘systematic problem that needs systematic change’. Although there is a general trend away from the use of the death penalty, certain countries such as Iran continue to be highly committed to this approach. The European Union reiterated their ‘strong and principled’ position on the death penalty, with clear guidelines for its abolishment globally. Austria also stated that the death penalty has no deterrent effect for drug crimes, while the World Coalition Against the Death Penalty stressed that it is a violation of Article 6 of the International Covenant on Civil and Political Rights (that ‘every human being has the inherent right to life’). Finally, Damon Barrett from Harm Reduction International stated that the death penalty for drug offences was a ‘human rights catastrophe’ and called on the CND to stop its praise of drug control efforts in countries that retain the death penalty, corporal punishment and other abuses for people who use drugs.



*Side event on Bolivia and the Single Convention on Narcotic Drugs, 1961*

As was mentioned earlier, the Bolivian delegation organised the event *Bolivia and the Single Convention on Narcotic Drugs, 1961*, which aimed to explain Bolivia’s move to denounce and re-access the Single Convention with a reservation on coca leaf chewing, as well as the next steps that the government would be implementing in the coming year to ensure that the coca leaf will not be diverted to illicit drug markets.<sup>38</sup>

#### The NGO informal dialogue with the INCB President: Disappointing in tone and content

The INCB President opened the session with a modest demeanour, describing Board members as unpaid non-professionals and himself as a retired gentleman farmer who comes to Vienna for three INCB sessions per year; ‘I was chosen for my independence of mind and was re-elected with a very good score’. Yet his answers to

questions posed by NGO representatives about human rights violations as a routine feature of narcotics control across a broad spectrum of countries, made it clear that intellectual independence is not a qualification for Board membership. Mr. Yans consistently pledged that it was beyond its mandate to charges that the INCB ignores the egregious human rights abuses and public health harms some governments perpetrate in the name of domestic

drug control – ‘The INCB did not create the drug control conventions. Governments created the INCB and the conventions, and governments can amend the relevant provisions according to designated procedures’. Frederik Polak, from the Netherlands and representing the NGO ENCOD, caught the contradiction between Mr. Yans’ first claim to be ‘such an independent person’ and his soothing depiction of the Board as a mere functionary of the Parties, and asked, ‘So why do you need independence? Why not just appoint an administrator?’ In response, Mr. Yans got personal and fired back saying ‘Dutch drug policy is a total failure. The Netherlands is a distribution platform for heroin, cocaine, and now ecstasy, and cannabis... Foreign criminal networks use it to distribute other types of drugs’.

This exchange revealed that the President, and by association the Board, can still selectively bare its teeth and attack countries experimenting with regulating cannabis and providing safe injection sites, but not those that systematically violate human rights, including the right to health. To Donald MacPherson’s (Canadian Drug Policy Coalition) question as to why the INCB again singled out Insite, the safe drug injection facility in Vancouver, ‘a medically supervised injection site that has now been constitutionally confirmed’, for critique in the Report for 2012, Mr. Yans stuck with the INCB’s regressive theory of treaty interpretation: ‘Because the conventions haven’t changed since last year... A public government cannot encourage the use of illicitly acquired drugs that are not distributed under medical control’. Mr. Yans pointed out that the INCB does advise countries to implement measures such as Opioid Substitution Therapy (OST) and Needle Syringe Programmes (NSP), while clarifying to them that such programmes are not contrary to the conventions. What is contrary to the conventions in the INCB’s view, however, is a popular movement such as the one in the US state of Colorado to create a regulated market for the recreational use of cannabis. On this the Board is arguably correct. Its reasoning, however, went awry when Mr. Yans claimed that ‘It contravenes the first rule of drug policy – prevention... If you

break that first rule you break the whole system of trying to control drugs. If young people read, “Marijuana legalised in Colorado”, etc. what idea of prevention does it give to them when they have the opportunity to touch their first joint?’

Yet as all professionals working on drug dependence know, not even the best prevention programme is 100 per cent successful and repeat relapse is often the rule in treatment. So what about countries such as Saudi Arabia and Iran, where evidence based prevention and treatment aren’t even on the policy radar, and executions of drug offenders – an issue raised by Eliot Albers (Executive Director of the International Network of People Who Use Drugs, INPUD) – are routine? They get a free pass in the INCB’s Annual Report because, according to Mr. Yans (whose independence suddenly failed him as he cited his predecessor, the late Professor Hamid Ghodse), ‘the Board does not have mandate to give advice on human rights’.

However, in response to a question on the Convention on the Rights of the Child, Mr. Yans conceded that the INCB *is* looking at the intersection between human rights violations and drug laws, and never insists that governments criminalise drug use. Instead, the Board advises governments of the range of options available under the conventions. So civil society efforts may be bearing fruit after all. Mr. Yans even referred to the emotional toll NGO criticism takes on the Board: ‘when you call us inhuman it makes us feel very bad because it is said publicly and our children might read about it but we are not sad because we know it is not true’.

A pointed question about the Board’s mandate under the Single Convention to ensure global access to pain medicine, although 80 per cent of the world goes without it, gave Mr. Yans the opportunity to state proudly, ‘This is one of our priorities. We show countries how low their consumption is compared with neighbouring countries. Then we give them the brochure and guides we have written with WHO and NGOs’. The fact that the Board is failing to ensure

access as per the Single Convention, and that as a result there is a 'global pandemic of untreated pain',<sup>39</sup> seemed lost on him. Asked to comment on the future of evolving drug policy and the 2016 UNGASS, Mr. Yans refused to speculate, citing collective action problems at the UN and the INCB's subordinate role; 'It is a multilateral system and as such is very slow. The INCB is not going to negotiate any type of change. We follow the requests of the CND or the international community and present the data we have collected from the governments'.

**NGO Plenary statements: Many, varied and, this year, un-censored**

It is unclear whether the UNODC Secretariat made a conscious decision to be more receptive to NGO requests to give statements within this year's plenary. It will be recalled that in 2012 there was a degree of tension surrounding the censorship of some statements.<sup>40</sup> Whether by design or otherwise, it was pleasing to see the willingness of the Secretariat to assist NGOs in freely making statements. Although in some instances civil society delegates requested speaking slots very late in the discussion of agenda items, the Secretariat ensured that session chairs were aware of requests and expertly facilitated their delivery.

Within this mutually respectful environment, Mike Trace, Chair of IDPC, made a statement on behalf of DrugScope concerning the operation of the UN system. He noted that within a time of constantly diversifying markets and rapidly developing science, the process of scheduling drugs within the treaties was 'more important than ever'. Unfortunately, Mr. Trace pointed out that, 'the process is not working as strongly as it should'. This, he argued, was partly due to the under-resourcing of the WHO ECDD. A lack of funding not only made it difficult for the ECDD to 'keep up with new substances', but also to review those that were already under control, Mr. Trace said. However, another important issue of concern was the role of the INCB, which in recent years has become 'unclear'. He argued

that sometimes the Board exceeds its mandated role to raise issues of concern by commenting on the 'science' of the scheduling process, a habit that sometimes conflicts with the position of the WHO. This created a dilemma for member states since it led both into a 'temptation to engage in discussions through other mechanisms' and a potential politicisation of the issue, claimed Mr. Trace. 'Sometimes states may disagree with the WHO', he concluded, but it was important that 'due process regarding scheduling decisions' were followed.

Another statement on behalf of DrugScope was made by IDPC Executive Director Ann Fordham. She used this opportunity to highlight the importance of the mid-term review of the Political Declaration and Plan of Action in 2014 and the UNGASS in 2016 as 'crucial moments of reflection and evaluation of the international drug control system'. Having noted that the meetings were important for finding ways to improve the current system, she pointed out that, 'Several member states have already begun experimenting with new approaches to preventing drug related health problems, to tackling organised crime and violence, or responding to the proliferation of NPS. The global system needs to embrace and incorporate these different approaches, rather than continuing to assume that one solution fits all'. 'In particular',



*Ann Fordham, IDPC Executive Director making an NGO statement at CND Plenary Session on UNGASS process*

she continued, 'the current proposals for the regulation of cannabis signals that the status of cannabis within the treaty regime requires urgent review'. Echoing Mr. Trace's comments earlier in the week, Ms. Fordham also stressed that, 'The mandate of the World Health Organisation to make recommendations as to appropriate scheduling must be fully recognized. The WHO should be given adequate financial support for this important task. It will also be important to clarify the limitations of the mandate of the International Narcotics Control Board in this regard'.<sup>41</sup>

Demonstrating the good level of CSO engagement, during the course of the week a wide range of other NGOs made statements, among them the Canadian Centre on Substance Abuse, Harm Reduction International, the International Network of People who Use Drugs and the Union for International Cancer Control (For more details, see the CND Blog <http://www.cndblog.org/search/label/NGO%20statements>).

### **The International Narcotics Control Board: 'Shared responsibility' as defence of the status quo**

As is the norm, the INCB President presented the Annual Report of the Board and the Board's report on precursor chemicals to the plenary. The Report for 2012 was dedicated to the memory of member and former President of the Board, Professor Hamid Ghodse, who passed away in December. In making this point, the current President, Mr. Raymond Yans, noted that over the two decades of his membership of the Board, Ghodse 'made an immense contribution to efforts to address the drug problem – from an international, academic and human perspective, and as a health professional in helping drug-dependent individuals and their families'. Mr. Yans' words here reinforced those of many delegates who prefaced their statements concerning the Board with dedications to Professor Ghodse.

Moving on to his overview of the Report, the president duly detailed its key features. He began by highlighting that in addressing a 'topic of critical importance to global drug control efforts', chapter one focused on 'shared responsibility in preventing the suffering caused by inadequate access to controlled medicines, drug abuse, drug trafficking and illicit production, and to reduce the crime, violence and corruption that is associated with illicit drug markets.' While broadly a valid point, it was interesting to note that, as in the Report itself, Mr. Yans' emphasis on shared responsibility was very much a cipher for the Board's belief in the need for universal adherence to the treaties in their current form. Indeed, in choosing to give weight to the idea that weak primary prevention of the use of 'so-called recreational drugs' in 'Western countries' might be 'considered as a discouraging sign by countries committed to fighting drug trafficking', Mr. Yans conjured up the ghost of former Director of the UNODC Mr. Antonio Costa's characterisation of liberal states as the weak link in the chain of international drug control.<sup>42</sup>

Moreover, introducing what was to become a recurring theme of Mr. Yans' unusually long presentation, he highlighted that shared responsibility was 'contingent on states fully meeting their treaty obligations at the national and [mindful of the situation within the USA] sub-national levels'. Among wide ranging observations concerning the implementation of the treaties (including in relation to Afghanistan, the availability of drugs for medical purposes, the 'abuse' or misuse of prescription drugs and the re-accession of Bolivia to the Single Convention) as well as the need for information sharing about NPS, he drew special attention to moves towards regulated markets for recreational drug use. Having highlighted that medical marijuana schemes must be implemented in full compliance with the Single Convention, he stressed that the 'INCB has noted with concern that a number of declarations and initiatives include proposals for the legalization of narcotic drugs and psychoactive substances for purposes other

than medical or scientific use, and the cultivation of cannabis plants for non-medical use'. Mr. Yans went on to emphasise that the Board 'warns against initiatives that aim to broaden the use of internationally controlled substances beyond medical and scientific purposes' and noted that this principle is the 'cornerstone of the international drug control framework, the fundamental purpose of which is to protect health and promote welfare, preventing suffering caused by drug abuse and through inadequate access to medicine for pain and illness'.

With specific reference to the USA, the President pointed out that the Board had taken note of a statement by the Office of the Attorney General in December 2012 – after the finalisation of the Report for 2012 – that regardless of any changes in state law, 'growing, selling or possessing any amount of marijuana remains illegal under federal law'. 'However the INCB has to underline', he continued, 'it is our mandate, the central role of the 1961 Convention which needs to be implemented worldwide, on the national level, but also on the sub-national level'. This was a point that the President returned to in response to member state comments. Mr. Yans then reiterated that the Board was reassured by the response of the US Federal government to events in Washington and Colorado, but that Washington D.C. 'must do more' and ensure that the Single Convention is followed throughout US territory. Although IDPC has, in recent years, had reason to question the Board's interpretation of the treaties, this reading of the Single Convention is hard to challenge. While complex in terms of both national and international law, that the current situation effectively puts the US in breach of the Convention leaves one of the current regime's most ardent supporters in an awkward position. It is little surprise therefore that the US response to Mr. Yans' statement was complimentary in tone and content. It duly referenced the Single Convention as the 'backbone of our efforts', noted that the Board had earned 'the gratitude of our government' for playing an 'invaluable role' and was devoid of any mention of its domestic predicament.

With the exception of Argentina's now expected challenge of various statistics concerning drug seizures and trafficking flows within and from its territory, most country responses, including that of France, which commended the Board as the 'vigilant watchdog of the treaties', followed a similar line. In a display of impeccable diplomatic etiquette, Bolivia used its response to the presentation of the Report to note that the document was 'sincere in its tone' and further thanked member states for their understanding around the issue of coca and re-accession. The Bolivian delegate also stated that La Paz wished to continue to work closely with the INCB in relation to coca eradication and, once again illustrating the complexity of policy positions within Latin America, reiterated that his country was in no way supportive of any moves to legalise recreational drug use. Rather, he claimed, Bolivia wanted to improve the current legal framework and seek 'optimal policies'. It is also worth pointing out that although not openly criticising the INCB for its 'selective reticence' and, at times, outright hostility to some harm reduction interventions, the Swiss delegate commended the Board on the prominence it had given to HIV with the Report but strongly encouraged the INCB to stress the issue within future reports.

### **The UNODC finances – Switching the lights off?**

At last year's CND, there was a certain degree of optimism about the state of the UNODC's finances. This stemmed from discussions concerning a small increase in funding from the UN's regular budget and a resultant degree of much needed fiscal stability. A year, however, is a long time in the pecuniary fortunes of a UN agency. Indeed, as the Director of the UNODC Division for Policy Analysis and Public Affairs, Mr. Sandeep Chawla, noted during a presentation on its work during the Plenary, the Office is facing a serious dilemma. On the one hand, even during the global financial crisis, donor confidence in the UNODC remains strong. This can be seen in the high levels of do-

nations to the Special Purpose Fund (SPF) of the UN's International Drug Control Programme; a figure equating to USD 581 million at the midpoint of the 2012-13 biennium. However, on the other hand, and as with previous years, this has not been matched by support for General Purpose Funding (GPF). This has decreased from USD 27 million to an expected USD 20.2 million in 2012-13. In real terms, these figures combine to mean that GPF spend is set to exceed USD 21 million. Consequently, Mr. Chawla warned, for the first time in its history the Office is currently in a position where GPF income will not cover core costs, including salaries. This remains the case despite savings of USD 1.9 million derived from cost cutting measures including hire freezes and withholding post upgrades. Asymmetry in donor funding patterns has thus created a paradox where member states are giving more money to the UNODC to spend, but cutting the means of spending it, Mr. Chawla wryly observed. In appealing to states to recognise that increases in SPF required commensurate increases in GPF, he stressed the urgency of the situation by claiming that the UNODC 'will have to start switching off the lights in some areas of work', including in some country offices, unless they can help make up the GPF shortfall of around USD 1 million. Repeating a phrase that he has used in previous years, but perhaps on this occasion with more reason, the Director stated that: 'All of the flesh and muscle is cut and we're now cutting to the bone'. This was a position echoed by the Chair of Management and resources of the UNODC who stated that the dire circumstances of Office are 'not sustainable' even having shifted some staff costs to the programme support budget line.

In relation to this predicament, Mr. Chawla pointed out that the open-ended intergovernmental working group on improving the governance and the financial situation of the UNODC ('WG FinGov')<sup>43</sup> was offering a range of options, including the clearer definition of core functions in order to better define costs and increased transparency in programme support. The plenary was informed that this view was shared by the Controller of the UN, and is among the approaches soon

to be implemented by the Office. Indeed, during plenary statements and interventions concerning budgetary matters, a number of member states, and regional groups including GRULAC, noted their concern over the budget, called for increased un-earmarked contributions and commended much of FinGov's work. Despite this, a number of states still justified their unwillingness to give support to the GPF because, as Norway put it, 'there need to be improvements in the way the UNODC is run'. GRULAC specifically highlighted the need for increased efficiency in thematic and region programmes while the Norwegian delegate pointed out that at times the Office lacked direction and needed restructuring to be more open to CSOs. He also noted that his government would be keeping an eye on the UNODC in relation to human rights.

We have noted in previous CND proceedings reports that member states cannot expect the UNODC to deliver the increasingly widespread portfolio of duties that they demand without adequate and stable funding streams to support core functions. On this, IDPC's position remains the same. It is true, as some member states stressed again this year, in some areas – improved engagement with the NGO community and a stronger appreciation of human rights issues within its work for example – the Office is still in need of reform. That said, while starving the GPF of money may be seen in some capitals as an incentive for institutional reform, it should not be forgotten that such an approach also risks a drop in the quality of delivery of programmes funded by the very same countries. Clearly a balance must be struck.

## Conclusions

Reflections upon this year's CND are mixed. On the one hand, although admittedly few in number and all from Latin America, some states arguably went further than ever before in openly challenging the current regime on the grounds that, after a century, it needs modernising. That Uruguay is currently considering a domestic

policy on cannabis that would put it in breach of the Single Convention shows that, in one instance at least, we have moved beyond rhetoric and posturing. Moreover, while couched in terms of 'containment' and a confidence in the fundamentals of the treaty framework as it stands, Mr. Fedotov's pronouncement that human rights and public health considerations must be at the core of international responses to drug use and to HIV represents the continuation of a welcome shift away from a law enforcement approach, an approach too long privileged within the Commission. We will have to see to what extent this remains rhetoric or if the UNODC will actively encourage states to put human rights and public health at the core of drug policy. In terms of civil society engagement, the 56<sup>th</sup> CND could also be seen in a positive light. Indeed, relative to last year's unfortunate wranglings over censorship, the plenary was a place of mutual respect and cooperation.

On the other hand, it is difficult to ignore that are still many issues of concern. Vienna remains out of step with many other parts of the UN system in its dealings with NGOs. This was at its most startlingly obvious in the CoW during discussions of possible CSO engagement in the high-level review next year. This, as we noted earlier, is surely exactly the time when all expertise, inter-governmental and NGO alike, must be brought to bear upon the issue. Moreover, it is hard to be positive about the demeanour of the President of the INCB at this year's meeting with NGOs. This remained hostile and confused, particularly relative to the Board's mandate. Indeed, while within the current atmosphere

there is a temptation to become pre-occupied with potentialities beyond the present treaty framework, the Board's over-stepping of its remit regarding scheduling within the current regime has once again become a serious point of unease. It is vital that, as laid out in the conventions, the WHO remains central to this process and that its recommendations are considered seriously in the Commission. Without this, there is a real risk that pain relief in much of the so-called 'developing world' will be sacrificed to the obsession over 'diversion' that the Board has done so much to create. It is certainly a difficult issue to address, but again an appropriate balance must be found.

Despite these important issues, however, arguably the most memorable and telling aspect of the 2013 session was something upon which the INCB's stance is correct and an issue that barely received a mention; the state initiatives in Colorado and Washington. Despite attention within Raymond Yans' presentation on the INCB Report, what look sets to become the first hard defection from the regime remained the elephant in both conference rooms. This, in many ways, reflects the unwillingness of most member states to deal with problematic issues at the CND. The preference for pretending that 'everything is successful', as the Guatemalan delegate warned, remains strong and dominant. Such a worrying state of denial does not bode well for the high-level review next year and the 2016 UNGASS. Only when realism becomes the preeminent mode of thought will there be honest debate that genuinely takes into account the concerns of all member states.

**The International Drug Policy Consortium is a global network of non-government organisations and professional networks 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 occasional briefing papers, disseminates the reports of its member organisations about particular drug-related matters, and offers expert consultancy services to policy makers and officials around the world.**

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- 43 This was established in 2008 as part of a wide ranging review of the UNODC. The Inspectors welcomed it as an initiative that provided an avenue to create a dialogue not only within the Member State community, donors and recipient countries, but also with UNODC senior management. See: Zhang, Y., Fall, P. L., & Inomata, T. (2010), *Review of the management and administration in the United Nations Office on Drugs and Crime (UNODC)*, Joint Inspection Unit, Geneva, United Nations, p. 4

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