

The 2010 Commission on Narcotic Drugs – report of proceedings

April 2010



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The International Drug Policy Consortium (IDPC) is a global network of NGOs 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 organizations about particular drug-related matters, and offers expert consultancy services to policymakers and officials around the world.

Introduction

There was a mood of quiet expectancy in the lead up to the 53rd CND, which took place in Vienna between the 8th and the 12th of March. It seemed likely that after the events of the High Level Segment in 2009, including the final agreement on the new Political Declaration and the subsequent and unprecedented addition of an Interpretative Statement on harm reduction, this year's CND would be a generally low-key affair. The mood music during the preceding months suggested that most member states wished to avoid controversy and confrontation. While this was the case, expectations focused upon two potentially significant areas of change. The first of these concerned the actions of the US delegation. Participants at the 52nd session had appreciated that, only a few months into Barack Obama's Presidency, the change in administration in Washington would have limited impact upon the traditionally law enforcement dominated outlook of the US delegation in Vienna. Twelve months on, and with an apparent change in the Federal position on Needle and Syringe Programmes, the key question was "how would US officials at the CND approach the issue of harm reduction this year"? In light of the recent news, the second area of change concerned the imminent departure of the Executive Director of the UNODC. After eight years in post, how would the often-controversial Mr. Antonia Maria Costa approach his last CND

session? Although these both turned out to be important and recurring themes, others also rose to prominence throughout the course of the proceedings. This report aims to provide the reader with a summary of what happened at the meeting, including at the various satellite events (boxes 1 & 2), and offer some analysis of the key discussions and debates. A detailed account of the proceedings can be found on the International Harm Reduction Association's CNDblog at <http://www.ihra.net/March2010#CNDBlog2010>. Official UN documentation relating to the session can be found at <http://www.unodc.org/unodc/en/commissions/CND/>.

The Executive Director's Farewell Opening Statement

The opening statement to the Commission, *International Drug Policy: An Unfinished Architecture*, was Mr Costa's valedictory speech. In it he reflected upon some of the major themes of his period in office, and discussed the ways in which these have strengthened the architecture of UN drug control. This was, he argued, based upon three pillars: *health*, *balance* and *cohesion*. Echoing previous statements, particularly his 2008 *Fit for Purpose* discussion

paper that encapsulates what are arguably some of the most positive aspects of the Costa era, including recognition of some unintended negative consequences of international drug control, he declared that there is now a general understanding that “health is the key principle of drug policy.” The second pillar of the architecture that he perceived to represent his legacy is the increasingly balanced approach between measures to reduce supply and those focused on demand. Finally, he explained “cohesion” in terms of a growing sense of “shared responsibility”, countering the fact that “the world’s biggest consumers of the poison (the rich countries) impose the greatest damage upon the poor (in the supply and trafficking regions).”

Using this latter theme as a point of entry to criticise those national authorities and non-government organizations not in full support of all aspects of the treaty system, Mr. Costa then returned to some of his favourite targets, those “singers, models and bankers” (the introduction of the latter category demonstrating that his populist touch remains deft) who “amuse themselves in the role of trendsetters”. They reflect, he went on to say, a wider complacency in the developed world where the drug problem has levelled off in recent years. Both the “benign neglect” of these governments and the active folly of what he characteristically referred to as the ‘pro-drug lobby’ represent, he continued, a “neo-colonialism” that will “open the floodgates of a public health disaster in the Third World.” He invited doubters to “come with me to the slums of Nairobi or Mombassa where heroin addicts roam the streets with syringes in their hand.”

The Executive Director drew toward a close by emphasising the public health origins of the conventions, which reflected an awareness of the role of drugs in pain relief; stressed the importance of human rights and drug treatment, and reiterated that prison is not an appropriate response to a health problem. In a welcome acknowledgement of some inhumane practices taking place under the banner

of drug treatment, he also noted that the rhetoric of health may facilitate inhumanity and repression—“in some countries, drug treatment amounts to cruel, degrading punishment...” As is customary, and mindful of the state of the UNODC budget (See below) not unreasonable, Mr. Costa finished his address with a plea to Member States to provide adequate funding to enable the *Office* to realise these objectives.

In summary then, the opening presentation not only highlighted some of the most positive elements of Mr Costa’s tenure, it also revealed those attitudes and postures that have made him such a controversial figure, and that were to be fully exposed later in the week at the NGO open forum (See below).

The Plenary: The Russian Bear Awakes, and is annoyed

As usual, much of the discussion taking place in the Plenary consisted of prepared statements made on behalf of Member States pledging support to the drug control conventions, to the general objectives of drug control as understood in this setting, and offering evidence that governments had worked vigorously toward them. This evidence was composed of statistical information on seizures of drugs, tonnages destroyed and so on. Nonetheless, some interesting debates and exchanges took place.

One of the notable features of this year’s Commission involved some shifts in the roles and positions of Member States. Whereas in previous years the US delegation was often regarded as leading the ‘hard line’ faction, i.e., that group of countries most concerned with defending what have been the traditional norms of international drug control, this year the mantle arguably passed on to the Russian Federation. As discussed further below, the tone and content of US interventions changed in a number of ways at the 53rd CND, and the

BOX 1 Country and UN satellite events

A number of side events took place in parallel with the CND proceedings.

In three presentations, Bolivia, Peru and Thailand described their experience and lessons learned on alternative development. Thailand and Peru are planning to co-organise a conference in Bangkok in November 2010 to talk about this issue.

Three events addressed the drugs situation at the national, regional and international levels: the US government expressed its concerns about the increasing threat of drugged driving in the country; The UNODC Country Office in Peru provided an overview of the drug use situation in schools among children aged 13 to 17 in Latin America; and the UNODC presented its findings on the new trends observed regarding the Amphetamine-Type Stimulants (ATS) global drug market.

Another three events dealt with regional and international cooperation to tackle the drug market, notably in the fields of law enforcement, transnational crime, and more specifically with regard to the drug problem in Pakistan.

Finally, two events addressed access to drug treatment and HIV prevention among IDUs.

During the first of these, the UN Reference Group on HIV and Injecting Drug Use presented detailed recommendations. It supported several evidence-based interventions (including OST, NSPs, ART and sexual education for IDUs) and pressed governments to scale them up, including in prison settings, and declared that compulsory detention of drug users and detoxification in the absence of other interventions should be strictly avoided. The Group also stated that people arrested for drug possession for personal use should not be imprisoned.

The side event 'Towards Universal Access for Drug Dependence Treatment and Care,' was organized by the UNODC Prevention, Treatment and Rehabilitation Unit, the WHO and the VNGOC. Well-attended both by government officials and NGOs, the event provided examples of best practice and experience, but also challenges to be overcome to ensure universal access to drug dependence treatment and care. It incorporated a wide range of presentations including those from the US ONDCP, the Dutch government, a former drug user, the *Centro de Integración Juvenil* in Mexico and the Eurasian Harm Reduction Network. Notable among them was the introductory statement from Gilberto Gerra, chief of the UNODC Health and Human Development Section. Here, among other things, he fully supported harm reduction interventions.

Russians appeared to have stepped into the breach. This was perhaps best illustrated by the presentation of Mr Alexander Fedulov, Representative of the Federal Drug Control Service, made during the Thematic Debate on Tuesday 9th March. The item under debate was Regional and Inter-regional cooperation, within the broader theme of "a balanced approach to reducing drug demand and supply." The session had drifted along through a series of almost ritualized statements of support for regional cooperation and accounts of its successes, when Mr Fedulov intervened to inject considerable passion into the proceedings. In

contrast to the tone of much that went before, he declared bluntly that "Drug control is NOT WORKING! In the present world, we can't control illicit drugs." "Indeed," he continued, "The situation is getting worse, and we need a fresh approach." He went on to highlight the context of globalisation, claiming that "Traffickers work through the interconnections" of the globalized world, "in a socio-political and economic coagulation of evil."

It will be recognized that a part of this analysis is close to that of IDPC and a growing number of observers: the present system of drug

regulation is indeed highly ineffective. And to hear a clear recognition of the fact articulately stated by the impassioned Russian delegate made a refreshing contrast to the drowsy incantation of post-lunch self-congratulation which had preceded him. It is, of course in its moral evaluation of the drug trade as “evil” (it is merely an unregulated market), and its prescription for appropriate policy responses that we differ. In this last respect, Mr. Fedulov wanted more of the same—but a *lot* more. He called for the international community to “really crack down on illicit crops, the dimensions and scope of which are enormous.” To do so, we need good, proper, adequate data, to really look at these people’s use of drugs—“and there are proliferating hordes of them”—we need to collect and share this data in order to understand the nature and proportions of the problem. He concluded by rehearsing some statistics of his own, representing the successes that the Russian Federation has achieved through its own regional work with the Shanghai Cooperation Organization. It is possible, he insisted, to succeed against this “scourge”, but only if we really get serious about it. Indeed, outside the CND, the Russian Federation is denouncing Western indifference, if not perceived complicity, with Afghanistan’s drug dealers, pressing the US and NATO to start spraying Afghanistan opium fields with herbicides and is calling for an upgrade of the status of the Afghan drug production problem in the UN Security Council to the level of a threat to world peace and security.

There is a logic to the position of the Russian Federation; however, it is the same logic that drove the international supply-side programmes favoured by influential “international moral entrepreneurs” like the US Federal Bureau of Narcotic’s Harry J. Anslinger during the foundational years of transnational drug control and has produced many of the worst excesses of the current regime. The high levels of intravenous drug use related HIV within the Russian Federation point clearly to its continued shortcomings. (For more on the

Russian Federation’s increasingly isolated opposition to evidence based harm reduction interventions, such as opioid substitution therapy, see the Hungarian Civil Liberties Union’s film made at this year’s CND. <http://drogriporter.hu/en/russia>) Notwithstanding this, however, the Russian Federation received considerable support from other countries that see any softening of the old drug control norms as courting disaster. These include Iran, Indonesia, Zimbabwe, Morocco and several others. Delegations from such countries spoke in support of the Russian Federation, all of them listing supply-side successes and reaffirming their unswerving commitment to fight the scourge. This prompted the Chair to remind the assembly that the thematic debate was supposed to cover demand as well, and to invite contributions in this domain. The absence of any responses was striking.

As will be seen from Mr Fedulov’s intervention, Russia is amongst those nations publicly supportive of the key role of data in underpinning good drug policy (See also the discussion of resolutions in the Committee of the Whole in this respect). The theme of improving the quality and scope of the data on which international drug policy is built was prominent last year, and was resumed at the 53rd Commission as the next item in the thematic debate. Discussions began with a presentation from Sandeep Chawla, Director of the Division for Policy Analysis and Public Affairs at UNODC. Mr Chawla said that data and trend analysis are key areas of the *Office’s* work, and that member states wished for better data and information on trends to assist them in developing strategies. Remarking that the *World Drug Report (WDR)* is both the *Office’s* flagship publication and the most downloaded document on its website, he claimed that it has improved much over the last 10 years, that its data on opiates and cocaine production was of a good standard and reliable, but that this was not the case for cannabis and Amphetamine Type Stimulants (ATS). As in previous years, Mr. Chawla stated candidly the problems

that confront the UNODC: the capacity to understand and control drug markets is “fairly limited”, he pointed out, chiefly because they evolve so rapidly. He announced that a threat assessment report on transnational organised crime is being prepared and will be published in the coming months, but wished member states to bear in mind that the global transnational cocaine market is worth the region of \$80-90 billion, compared to which the *Office’s* budget is very limited. “We can’t address everything”, he acknowledged, and said that it is for Member States to select the areas of priority for research and analysis. The WDR is dependent on the voluntary contributions of Member States, and the *Office* would need an increase in the amount and predictability of resources in order to meet their growing demands for both quantity and quality of data. Other speakers reinforced the importance of good data, and Dr Bob Keizer of the Trimbos Institute in the Netherlands bolstered the point that good data is expensive, and that governments must recognise this from the outset. The Australian government, one of the champions of the drive for better quality data, emphasised again the crucial role of good data in grounding policy, and warned against over-simplifying research instruments. It recommended the use of a variety of sources, and observed that some of the best information it had gathered came from direct questions asked of drug users. It was noticeable, however, that despite such recommendations much of the debate itself was of a poor quality and ultimately no concrete actions were taken to address the ongoing need for better data collection.

The Committee of the Whole: Universal access and the return of the two word phrase.

The Committee of the Whole (COW) was ably chaired by the Czech ambassador, Ms Veronika Kuchynova-Smigolova, who managed to keep the debates moving along to

schedule. The process was no doubt assisted by the fact that many of the resolutions were relatively uncontroversial, centring on drug use prevention and on measures against trafficking and organised crime. There was one major exception to this trend, however, and this was a resolution introduced by the EU and sponsored by Switzerland, Thailand and the US, entitled, “*Achieving universal access to treatment, care and support for people with HIV, including injecting drug users, by 2010.*” The draft resolution contained references to both human rights and harm reduction, and it was, in accordance with the trend in recent years, around these concepts and their place in drug policies that countries were divided. The language to be employed in the resolutions provides the ground on which these differences are played out.

Preambular paragraph three in the original draft resolution set the tone in this respect. It read: “*Concerned* that the coverage of HIV prevention services is far from adequate in many countries with a high prevalence of injecting drug use and that HIV responses in many countries fail to meet international legal obligations to promote, protect and respect human rights...” Russia, Pakistan and Zimbabwe called for the removal of these references to human rights, while Spain, speaking on behalf of the EU, insisted that it was important that human rights *were* mentioned, as a lack of attention to these rights often results in denial of access to treatment. The Thai delegation intervened to affirm the importance of human rights, and suggested that the paragraph could include a reference to the highest attainable standard of health as accepted in the Universal Declaration of Human Rights. (The support of Thailand for human rights language is one of a number of promising new developments in that country’s policy positions noted this year.) The arguments over this resolution grew lengthy and protracted, extending to whether to include the year 2010 in the title, to which the Russian Federation delegate objected. This prompted the chair to comment that “it’s a little bit ridiculous to fight over a date in a title when

we have such a lot of work to do.” In the event, Russia agreed in the interests of flexibility to leave the date as it was. However, the inclusion or otherwise of reference to human rights led to further clashes. The UK drew attention to the Human Rights Council’s 2009 resolution on HIV and human rights, and to the wide acceptance within the UN of the strong linkage between the two. The Russian delegate retorted that, “We’re not at the Human Rights council. This is the Commission on Narcotic Drugs and we have our own work to do here.”

The mention of harm reduction in operational paragraph two led to further *contretemps* between the two camps. This included reference to, “the provision of a comprehensive package of services for drug users, including risk prevention and harm reduction programmes in relation to HIV...” Russia urged the removal of any reference to harm reduction; Japan declared its “complete support” for the Russian proposal, and the Iranian delegate commented further that, “Whenever I hear these words ‘harm reduction’ it makes me worried.” The UK delegate then noted that the language was a direct quotation from the Programme Co-ordinating Board of UNAIDS, and by its inclusion, she said, the Commission was fulfilling its role in the cohesive work of the UN family. But the Russian delegate was implacable on this point: “We don’t have to repeat the proposals of other bodies,” he said, offering instead its own quotation from the Plan of Action agreed at last year’s Commission, which, of course, made no reference to the phrase ‘harm reduction’. Zimbabwe once again offered its support to Russia, stating that “the concept of ‘harm reduction’ is outside our consensus—if we’re constructive, we’ll go with the Russian language. We have big problems with harm reduction.”

Thus, in the end the debate revolved around the decision as to which elements of approved UN language should appear in the resolution—the language taken from the environment of drug control, which makes no direct reference to what we might refer to here as *the two-word*

phrase, or the language used by the wider UN, which employs the two-word phrase routinely and without apparent discomfort. In the interests of the adoption on the substantive elements of this resolution, the former course was taken, and the more restrictive, drug control language used. It should be noted, however, that despite the removal of the two-word phrase, the resolution is of considerable significance. It refers to a U.N. technical guide that promotes certain harm reduction measures, including needle exchange and opiate substitution therapy, fully embraces a human rights approach to HIV/AIDS, and reaffirms the role of drug users in developing policy responses. As such, its adoption sent out ripples of delight through much of the NGO presence at the Commission, who were also encouraged to see the US come on board as co-sponsors. Although, as noted below, that US engagement with the resolution was only possible after the removal of the phrase harm reduction reflected the delegation’s ongoing reticence on the issue.

The International Narcotics Control Board – Conflict with some conciliation

As is customary, the President of the INCB used the statement at the CND to highlight the main themes of the Board’s Annual Report. (For statement see http://www.incb.org/documents/President_statements_09/2010_CND_53_STATEMENT_PRESIDENT.PDF) One of the most controversial issues discussed in the light of this report related to the INCB’s comments upon the trend to decriminalize possession for personal use in Argentina, Brazil and Mexico. Last year Mexico decriminalized possession of cannabis, heroin, cocaine, and other drugs found in small amounts. Argentina followed with a Supreme Court ruling (the Arriola ruling¹) in

¹ For more information on the Arriola ruling, see: Drug Law Reform in Argentina; <http://www.tni.org/article/drug-law-reform>

August 2009 stating the unconstitutionality of the arrest of five youths carrying a small amount of cannabis. Brazil adopted legislation to replace jail sentences with educational measures in 2006.

In her opening speech on the first day, INCB President, Professor Sevil Atasoy reiterated that the Board “recognizes that powers of federal states, regions or provinces are guaranteed in the constitutional framework of some States parties. However, domestic legal systems should not prevent parties from fully complying with treaties. States parties have to pursue strategies and measures that ensure full compliance with the treaties. Treaty obligations must be applicable in the entire territory of each State party.”

The remarks were clearly directed at the decriminalization trend in Latin America, as well as developments in the United States, where 15 States have now decriminalized possession of cannabis for personal use in different degrees and 14 allow medical marijuana in one form or another. In a limited response, the US stated that the federal government was opposed to legalizing marijuana and that medicine should be determined by science, not popular vote. In contrast, however, the Argentinean delegation made a strong protest expressing “concern and aggravation” about the INCB’s disrespect over the country’s sovereignty and constitutional order. The Argentinean statement put forward the view that the INCB offered “insufficient explication and substantiation” and announced that there would be an official reply later this year demanding that the INCB should “reconsider” its remarks. Unfounded value judgements will only contribute to impair the good functioning of the Board, Argentina added. Mexico also said that they were worried about the INCB criticism of their legislative reform and the INCB’s “partial and mistaken vision” that the 1988 Convention does not allow governments certain latitude to reform their laws. Costa Rica, representing the Latin-American group GRULAC, also uttered some veiled protest.

Such argumentation had been put forward in February in a critical response to the INCB report by the Washington Office on Latin America (WOLA) and the Transnational Institute (TNI). The two organizations argued that Board had overstepped its mandate and that its position in the report on constitutional frameworks and national decisions to liberalize policies on drug possession represented “unwarranted intrusions into these countries’ sovereign decision-making.”² The WOLA-TNI critique pointed out that not only does the INCB lack the mandate to raise such issues, but it also misreads the 1988 Convention itself, asserting an absolute obligation to criminalize drug possession when the Convention explicitly affords some flexibility on this matter.³

In her reply to comments by delegations, Professor Atasoy welcomed a proposal by Ambassadors from Costa Rica, Argentina and Mexico to discuss the framework of decriminalisation measures in the countries concerned. It is our hope that such discussions are constructive and help to improve mutual understanding between these states and the Board. We watch with interest. If the INCB’s improving engagement with civil society is reflective of a new era of conciliation, then the outcome of any meeting might be positive.

The President’s plenary statement noted the value of engagement with non-governmental organizations: “Partnerships with civil society need to be forged at the local, national and international level to ensure the most efficient use of scarce resources and to increase effectiveness in reducing the prevalence of drug

2 UN’s International Narcotics Control Board’s Annual Report oversteps mandate and interferes with countries’ sovereignty, TNI/WOLA Press release, February 24, 2010; <http://www.idpc.net/alerts/incb-annual-report-oversepts-mandate-interferes-with-countries-sovereignty>

3 This was an issue also touched upon in a recent IDPC advocacy note highlighting ongoing challenges to the Board’s new secretary, A Call to the new Secretary of the International Narcotics Control Board: Ongoing Challenges, IDPC Advocacy Note, March 2010; <http://www.idpc.net/publications/idpc-advocacy-note-call-to-incb-chair-march-2010>

abuse. Credible non-governmental organizations promoting the well-being of children and youth can lead prevention efforts at the local level. Due to their vast experience in that area, such organizations have an important perspective that should be heard at the policy-making level.” And within this context, this year for the first time the INCB engaged in a dialogue with civil society organised by the Vienna NGO Committee (VNGOC). The meeting with Professor Atasoy was a very constructive and pleasant one, and in stark contrast with exchanges with previous INCB Chairs and that experienced in a similar meeting with Mr Costa. Furthermore, she was accompanied by staff of the secretariat and the discussion on strengthening an INCB dialogue with civil society seems to go beyond Professor Atasoy herself. The President stated that this was to be the start of regular meetings between the INCB and NGOs, and not only those proposed by member states. The VNGOC will follow up with proposals for next year, including a discussion on content.

As noted on a number of occasions elsewhere,⁴ in the past the Board has kept its distance from NGOs. Rather, it maintained a position that its mandate is to communicate with governments, not civil society. This stance has resulted in various calls from some sections of civil society for the Board to increase engagement with NGOs among other things in order to provide checks and balances against official information supplied by member states. Indeed, civil society is often best placed to convey information and perspectives from the field, something that the sometimes remote UN monitoring and policy bodies are ill-equipped to do. Without the different modes of information derived from non-governmental stakeholders, it is impossible for the INCB to gain the insight, understanding and richness of perspective required to fulfil

its mandate.⁵ Professor Atasoy’s initiative, along with support from some elements of the secretariat, seems to depart from the INCB’s previous stance and follow other UN bodies, notably the human rights treaty bodies, which do engage with civil society for precisely these reasons. Although a positive and encouraging move, it is our hope that engagement will not be limited to the rather restricted youth oriented focus outlined in her plenary and the Annual Report. It also remains unclear what is meant by “credible non-governmental organizations”, and who is assessing that credibility.

These issues aside, it was a welcome development that Professor Atasoy *informally* agreed to all of the Beyond 2008 recommendations addressed to the INCB, including to broaden the scope of key informants used in their analysis by systematically involving NGOs and affected groups in that process; to establish a mechanism for NGOs to request clarification of statements made in the INCB Annual Report; to meet with civil society representatives, including affected and stigmatized populations, when conducting in-country assessments; and publish reports on substantive discussions and outcomes from their meeting with Governments and NGOs.⁶

It should be noted, however, that there was a frisson of tension during the meeting with NGOs on the issue of harm reduction, with Professor Atasoy responding to concerns about the Board’s consistently reserved attitude to

4 See International Drug Policy Consortium, *The International Narcotics Control Board: Current Tensions and Options for Reform*, IDPC Briefing Paper 7, February 2008 and previous IDPC responses to the INCB Annual Report.

5 A Call to the new Secretary of the International Narcotics Control Board: Ongoing Challenges, IDPC Advocacy Note, March 2010; <http://www.idpc.net/publications/idpc-advocacy-note-call-to-incb-chair-march-2010>. Also see International Drug Policy Consortium, *The International Narcotics Control Board: Current Tensions and Options for Reform*, IDPC Briefing Paper 7, February 2008.

6 See: *Another Commission on Narcotic Drugs like all others?* by Michel Perron at http://michelperron.blogspot.com/2010_03_01_archive.html; and Paper submitted by the Vienna NGO Committee on Drugs on behalf of the participants and contributors to Beyond 2008, E/CN.7/2010/CRP.2; <http://www.unodc.org/unodc/en/commissions/CND/session/53-crps.html>

the approach with a complaint that there was no clear definition of it. The INCB remains largely hostile despite the fact that UN member states have twice unanimously endorsed their commitment to provide people at risk of HIV with harm reduction services. Moreover, other UN agencies, such as the WHO, the United Nations Development Programme, UNAIDS and more recently and tentatively, the UNODC, have chosen to engage with and support harm reduction principles. The Board has also never acknowledged the existence of a 2002 report by the Legal Affairs Section of the UNODC's predecessor. This document concluded that most harm reduction interventions, including "needle and syringe exchange," "substitution and maintenance treatment" and "drug injection rooms" did not contravene the conventions.⁷ Such a reality reflects the traditional position of the Board and one from which Professor Atasoy's attitude is in many ways a refreshing and welcome change. It remains to be seen, however, if this new approach towards NGOs will continue after she leaves the INCB later this year or if, as with the issue of harm reduction, under new leadership the Board will continue to remain aloof and hostile while other parts of the UN increase engagement.

The US Delegation at the CND: Moving Closer to Harm Reduction

The U.S. delegation arrived in Vienna this year with the same marching orders as in 2009: a definitive "no" to the inclusion of the term "harm reduction" in CND resolutions. In the written version of his opening statement, Gil Kerlikowske, the Director of the Office of National Drug Control Policy (ONDCP), proclaimed: "We do not use the phrase 'harm

reduction' to describe our policies because we believe it creates unnecessary confusion and is too often misused to further policies and ideologies which promote drug use." However, in line with the U.S.'s softer visible profile at the CND, this was omitted from his opening remarks in the plenary.

Despite this formal stance, the U.S. delegation went much further this year in their support for HIV-related risk prevention measures and a human rights-based approach. As noted above, the United States agreed to support the EU resolution on *Achieving universal access to prevention, treatment, care and support for drug users and people living with or affected by HIV*. While references to the term 'harm reduction' were removed to gain U.S. support, the key concepts and calls to action remained intact and crucially included many issues that the United States has in recent years refused to support.

Keeping the United States on board, however, was no easy matter. In addition to arduous closed-door negotiations in the lead up to the CND, a key moment of tension emerged in the initial debate on the resolution in the COW. Although the U.S. had agreed upon compromise language with EU delegates prior to the opening of the debate, in the COW it began to support Russian proposals that would have dramatically altered the resolution. Speaking on behalf of the United States was Kevin Sabat, formally of the NGO initiative Project SUNDIAL, who has resurfaced as a special advisor on policy matters to Kerlikowske. Established in 2008, the stated goal of Project SUNDIAL was "to garner support for the United Nations (UN) Conventions on Illicit Drug Abuse from non-governmental organizations" during the Beyond 2008 process.⁸ By the next discussion of the resolution in the COW, the U.S. was back to supporting the previously negotiated wording. If nothing else, the back and forth was a reminder

⁷ Flexibility of Treaty Provisions as Regards Harm Reduction Approaches, Prepared by the Legal Affairs Section, E/INCB/2002/W.13/SS.5; <http://www.idpc.net/publications/flexibility-of-treaty-provisions-as-regard-harm-reduction-approaches>

⁸ <http://www.ungassdrugs.org/>

that many of those within the U.S. delegation have taken very different positions in past CNDs and the new directions in U.S. policy still need to be consolidated.

The U.S. also sponsored, as was promised last year, a resolution on access to essential medicines and another on promoting community-based drug use prevention. Furthermore, the analysis presented by ONDCP deputy director Tom McLellan in the thematic debate on measures to improve the understanding of ‘addictions’ was a refreshing rhetorical departure from the past. He gave a presentation on treating problematic drug use, acknowledging both the lack of availability of effective drug treatment for chronic addictions in the United States for most of those in need, and the unattractiveness of current treatment services that keeps many from accessing them. McLellan called for integrating treatment of problematic drug use into mainstream health care. Having a renowned expert on drug treatment in the Obama administration and a declared focus on evidence-based approaches to prevention and treatment are both welcome changes, as was the US emphasis in the CND on “evidence-based programs, balance and collaboration,” as underscored by Kerlikowske in his opening statement.

Yet it is also important to point out that, as reiterated in Kerlikowske’s speech, domestic and international law enforcement remain at the core of U.S. drug control policy. And while change appears evident in the U.S. approach to demand-related issues, it is less visible with regards to supply-related strategies. The rhetoric is better: at the CND, U.S. representatives emphasized the intention to work more collaboratively at the international level and to place a higher priority on demand reduction programs within international funding. In practice, however, little has changed on the ground. For example, in Latin America, particularly Colombia, the Obama administration remains fully committed to aerial fumigation and forced eradication of coca and poppy crops.

At the last CND, the first year of the Obama administration, the U.S. delegation shifted course and endorsed needle exchange programmes to reduce the transmission of HIV/AIDS and other blood-borne diseases.⁹ This year, significantly more progress was made. Perhaps at the 54th CND in 2011, the U.S. delegation will finally move beyond the ideological refusal to say those two little words: harm reduction. The example of Pakistan, which used to be strongly opposed to harm reduction, illustrates that movement is possible. At this year’s CND Pakistan offered muted support for exploring successful harm reduction services and even invited a pilot project on opioid substitution therapy. It has asked the Dutch government to help.

NGO Engagement at the CND: A Mixed Story

According to the UNODC, 117 NGO delegates representing 50 official NGOs attended this year’s session. It was generally agreed that the NGO lounge proved to be a useful space for NGO delegates to consult documentation, and gather to discuss the CND proceedings. The VNGOC organised helpful morning briefings, and provided technical assistance to coordinate the work of the NGO participants at the CND. The Civil Society Team and the UNODC secretariat also provided welcome support. Several NGOs organised and were involved in well-attended satellite events, which ran in parallel to the formal CND proceedings (boxes 1 & 2). For the first time, these events appeared in the official agenda.

NGOs, however, only had a few opportunities to intervene in the plenary debates. On the second day of the CND, the International Federation of the Red Cross and Red Crescent Societies

⁹ See International Drug Policy Consortium, *The 2009 Commission on Narcotic Drugs and Its High Level Segment – Report of Proceedings*, April 2009, pp. 8-9

BOX 2 NGO Satellite events

The IDPC organised two satellite events. On Tuesday 9th, IDPC launched its Drug Policy Guide <http://www.idpc.net/publications/idpc-drug-policy-guide-version-1>. The session was opened by Mike Trace, chair of IDPC, who described the Guide as a resource for national policy-makers to support the formulation of balanced drug control strategies, as well as being an important advocacy tool for civil society organisations. This was followed by two speakers, Mr. Thanasis Apostolou of the Andreas Papandreou Foundation, and Mr. Milton Romani of the Uruguayan National Drug Council, who both provided an insight as to how the guide could be used in practice.

The second IDPC event entitled 'Time for an impact assessment of drug policy' was organised in collaboration with the Transform Drug Policy Foundation. After a brief introduction by Mike Trace, Martin Powell from Transform presented the aims, advantages and challenges of setting up an impact assessment of drug policy. Mr. Carel Edwards, head of the European Commission Anti-Drugs Policy, closed the session by providing his insight on the role that an impact assessment could have on European drug policy.

The third event was organised by the World Health Organisation, VNGOC, the Swiss Federation Office of Public Health, the International Union against Cancer, Human Rights Watch, the Drug Control and Access to medicines Consortium, and Open Society Institute. The speakers presented their experience and lessons learned on access to opioid medicines in Uganda, India, Panama and Kyrgystan. The main conclusion was that developing countries could improve access to essential medicines, if the needed reforms are supported by key players, including national government, and if funds are provided externally to support them. None of these reforms led to an increase in use or diversion of controlled substances.

On the third day of the CND, the International AIDS Society also organised a lunchtime side event to publicise the upcoming 28th International AIDS Conference in Vienna. Attendance was by invitation only, and was targeted at Member State delegates to encourage them to send not only health officials to the AIDS conference but also law enforcement and judicial officials in order to highlight the need for a coordinated and balanced approach to drug control. Michel Sidibe, the Executive Director of UNAIDS and Christian Kroll, the UNODC Global Coordinator for HIV/AIDS both spoke at the event.

called on governments to address drug abuse as a humanitarian and public health challenge, and no longer as a criminal one. It also referred to the crucial role played by civil society organisations to provide culturally sensitive services tailored to local realities to populations most at risk of HIV. The International AIDS Society also addressed the plenary, urging the CND and ministries of justice to understand the impact of drug control policies on HIV around the world. Matthew Southwell from the International Network of People who Use Drugs (INPUD), also made a declaration as a member of the UK delegation on the importance to ensure system-wide coherence within the UN system. He stated that this required the engagement of all stakeholders in the debate, including law enforcement officials, health professionals, policymakers

and drug users. Finally, the Eurasian Harm Reduction Network called on governments to prioritise health for drug treatment therapy, and put an end to drug dependence treatment that relies on coercion, torture, cruel and inhumane punishments.

Despite such positive, if limited, engagement with the CND process, the most memorable NGO experience to come out of this year's session was probably the meeting that the VNGOC facilitated with Mr. Costa. Representatives from most of the NGOs present attended the meeting in good faith to engage with the outgoing Executive Director, wondering perhaps if there would be some statesman-like speech prior to his departure after eight years in post.

Mr Costa opened the discussion predictably by reaffirming the comments he made in his opening speech on the first day of this CND, including references to the “pro-drug lobby.” He also made it clear that he supported the need to scale up access to essential medicines for pain relief. However, the Executive Director was adamant that this movement must not focus on the supply side issues. Such an approach, he argued, was being used as a basis for justifying the continued levels of opium cultivation in Afghanistan and was ultimately a ‘back door for legalisation’. Instead, he argued, the focus must be on creating proper demand for such medicines through changing overly stringent legislation and educating doctors and health workers on this issue. He also referred to the recent paper from the UNODC Secretariat on human rights, for which he had received many positive comments and asked the NGOs to note this important contribution.¹⁰

The Executive Director concluded his opening remarks by highlighting that the UNODC is not a ‘debating society’ and was not concerned with ideological debates, saying that ‘We want a health-based drug policy’.

The floor was then opened to the NGOs present for questions and comments. Mr Costa was asked why, if he did not wish to engage in ideological debates, he insisted on using divisive and unhelpful distinctions such as ‘drug neo-colonialism’ and the ‘pro-drug lobby’. Such expressions pit people against one another and do not support open and constructive debate. At this point, Mr Costa became openly contemptuous, dismissing the question and the person who asked it. He suggested that the focus should be on the real question of continuing drug problems in poor countries that perhaps some members of the audience (including the person asking the question) did not understand.

There then followed a number of follow-up questions from the audience asking for clarification on Mr Costa’s often used term ‘the pro-drug lobby’. Who are these people? Are they in this room? Would Mr Costa include such organisations as the International AIDS Society who supported a new publication from the Transform Drug Policy Foundation, ‘After the War on Drugs: A Blueprint for Regulation’¹¹? Does Mr Costa think that calling people ‘pro-drug’ who do not see themselves as such but who actually advocate to reduce the harms relating to drugs and drug policies is in the spirit of partnership with civil society?

Mr Costa seemed very aggrieved by these questions and became defensive. He said that he did not know who the ‘pro-drug lobby’ were but he knew that they were “out there.” If you really want to find them, he advised, it would be easy – they have an open membership policy. But he did not want to discuss them any further. He referred a few times to the constant attacks on him as a supporter of the unacceptable treatment of drug addicts such as extra-judicial killings and compulsory drug treatment. He argued that this has to stop as it is not the case.

In general, then, the dialogue unfortunately did not represent the spirit of open and constructive communication in which it was meant. It should be noted that Mr Costa did reaffirm his support for the ‘Beyond 2008’ process and continuing engagement with civil society. He also commended the work of the Mentor Foundation and felt that UNODC perhaps had not done enough to engage with former drug users (although it seemed to be implied that current drug users were not ‘lucid’ enough for engagement). Additionally, he commended very highly the work of Human Rights Watch (HRW) and confirmed that UNODC would follow up on the compulsory drug treatment issue in Cambodia following HRW’s recent report. That said, overall the meeting was disappointing.

10 See Note by the Executive Director, *Drug control, crime prevention and criminal justice: A Human Rights perspective*, E/CN.7/2010/CRP.6-E/CN.15/2010/CRP.1 http://www.unodc.org/documents/commissions/CND-Uploads/CND-53-RelatedFiles/ECN72010_CRP6eV1051605.pdf

11 See <http://www.tdpf.org.uk/blueprint%20download.htm>

Mr Costa was thanked for his contribution over the past eight years and the many sacrifices he must have made in a difficult and challenging role. Nonetheless, it is hoped that the new Executive Director will bring with them a more constructive relationship with all elements of civil society that are themselves engaging in respectful dialogue with drug policy debates.

UNODC Finances: An Issue of Perennial Concern

As in previous years, the Executive Director used his opening statement at the 53rd session to highlight concerns surrounding the UNODC's financial situation. Using characteristically colourful imagery, Mr Costa stressed, "While the UNODC's mandate is too big to be small, our budget is too small to be big – to cope with the many Tyrannosaurus Rex that roam from the Andes to Africa, from West Asia to Europe." Indeed, in 2009, the *Office* certainly faced a difficult situation with a sharp decline in general-purpose income, partially exacerbated by the global financial crisis. General-purpose income dropped from \$17.8 million to an estimated \$13.1 million, a decline of 26%. This reality necessitated the implementation of a series of cost-cutting measures, including the abolition of 29 posts funded by general-purpose income. Other affected areas included reductions in travel, consultancies, training, operating expenses and contractual services. These measures also entailed a substantial realignment of the field offices network, increased cost sharing of common costs with special-purpose projects and the streamlining of the work of some organizational units. While the general-purpose funding represents less than 6% of the total funding available to the UNODC, the "savings requirements had a disproportionate impact on the day-to-day functioning of UNODC and presented a

serious challenge to the work of the UNODC."¹² This funding stream supports, in part, the Independent Evaluation Unit, policy analysis and research, advocacy, strategic planning, human security and rule of law, health and human development, field offices and the Programme and Financial Information Management System (ProFi). At the same time, special-purpose income dropped from \$270.6 million to an estimated \$197.9 million in 2009, a decline of 26.9%. The level of special-purpose funds in proportion to general-purpose funds continues to place considerable strain on UNODC programmes and programme support services that are funded from declining multilateral core resources, that is to say general-purpose funds and the regular UN budget. Furthermore, most voluntary contributions continue to be tightly earmarked for specific programmes favoured by individual member states and thus leave little operating flexibility for the UNODC to respond to complex programming and management challenges.¹³

While overall voluntary contributions declined, major donors increased their funding in 2009. However, although the UNODC has intensified cooperation with its donors, the approved consolidated drugs and crime programme budget for the biennium 2010-11 was necessarily austere. Indeed, current cost saving measures will have to carry on, and possibly be deepened, unless general purpose funding increases in the near future. As Mr Chawla stressed within the plenary session, this is of particular significance in relation to the issue policy and analysis. While there is a growing appreciation for the need for good data, it is, as Bob Keizer pointed out, expensive. Moreover, as noted in the Executive Director's Report on the *Activities of the United Nations Office on Drugs and Crime* "...while UNODC has the capacity

¹² Report of the Executive Director, *Activities of the United Nations Office on Drugs and Crime*, E/CN.7/2010/3-E/CN.15/2010/3, p. 22.

¹³ Also see Note by the Secretariat, *Financial situation of the United Nations Office on Drugs and Crime*, E/CN.7/2010/CRP.7

to assess the threat posed by drugs and crime and has deepened its capacity to tackle the complex and interlinked challenges involved, a significant mismatch between mandates and low funding has made it difficult to implement multi-year programmes.¹⁴

Conclusions

In comparison to last year's CND session, the 53rd meeting did prove to be a somewhat quiet event. That said, although the Political Declaration and Action Plan agreed at the High Level Segment quietly underpinned the structure of the Thematic Debate, the key point of contention within that process was still very much in evidence; particularly within the Committee of the Whole. Despite, or perhaps because of, 2009's Interpretative Statement on the issue, harm reduction remained at the epicentre of the ever deepening cracks within the Vienna consensus. It can be regarded as a sign of limited progress that the advance and unedited version of this year's official CND report included mention of the term. However, the acknowledgement that while several speakers spoke in favour of the approach, "a number of speakers expressed a different view", revealed the ongoing tension within the Commission.¹⁵ Furthermore, while health

and human rights are becoming increasingly central to the approach taken by the UNODC, member states still hold divergent views on the issue and many remain wedded to supply-side law enforcement approaches. The Russian Federation's emergence as the most vocal of the zero-tolerance bloc is certainly a cause for concern; especially when more than 80% of HIV/AIDS cases within that country are related to needle sharing. Although Russia appears to have moved to fill the space, it was encouraging to see the US delegation making tentative steps away from its traditionally hard line and obstructionist approach to the question of harm reduction. In addition, while maintaining a problematic position on that particular issue, it is also heartening to witness the INCB's engagement with civil society. It is our hope that such a stance will continue with the departure of the current INCB President, Professor Atasoy. We also await with interest the appointment of a new UNODC Executive Director. The appointee will certainly have many challenges to face, not least the diverging perspectives on various aspects of non-medical drug use held by increasing numbers of member states. Nonetheless, the IDPC looks forward to a new era where both the head of the *Office* and the INCB will work towards resolving tensions within the system rather than defending one particular reading of the drug control conventions upon which it is based.

¹⁴ Report of the Executive Director, Activities of the United Nations Office on Drugs and Crime, E/CN.7/2010/3-E/CN.15/2010/3, p. 3

¹⁵ Commission on Narcotic Drugs, Report on the fifty-third session (2 December 2009 and 8-12 March 2010), Economic and Social Council Official Records, 2010, Supplement No. 8, E/CN.7/2010/18, p. 57

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