

# **THE 2021 COMMISSION ON NARCOTIC DRUGS REPORT OF PROCEEDINGS**

**JULY 2021**



# Executive summary

The 64<sup>th</sup> session of the Commission on Narcotic Drugs (CND or Commission) took place between 12 and 19 April 2021. The session was conducted as a hybrid meeting in response to COVID-19. Despite this format, many familiar issues and themes remained visible. With much pre-CND attention focusing on the practicalities of the hybrid meeting, expectations were not especially high. The tabling of only five resolutions, none of them seemingly contentious, suggested another quiet year. Commemoration of the 60<sup>th</sup> and 50<sup>th</sup> anniversaries of the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances respectively certainly generated more than the usual levels of support for the UN drug control treaties in general. Yet, while agreement on some specific issues could be seen – notably around access to controlled substances for medical purposes – increasingly diverging views were also on view.

As has been the case in recent years, health and human rights were prominent features of statements and discussions within both the Plenary and the Committee of the Whole (CoW). In both settings, member states' public rhetoric reflected vastly differing perspectives and domestic realities, including on occasion in relation to the use of the death penalty for drug-related offences. The disconnect between human rights and UN drug policy debates could also be seen in the CND's Statement – technically a resolution – on the ongoing global health emergency and its impact on the implementation of member states' joint commitments to address and counter all aspects of the 'world drug problem'. In this case, while due to both the pandemic and the increasing use of 'informals' the dynamics of the negotiations remain unclear, the consensus document missed the opportunity to acknowledge drug law enforcement as one of the key drivers for mass incarceration, arbitrary detention, and human rights violations. Elsewhere in the CoW, debate around the equally fundamental concept of 'social marginalisation'

resulted in unforeseen, protracted, and at times heated dispute.

It was in this context, however, that the US delegation demonstrated a significant shift in stance. Indeed, with the Biden-Harris administration having already announced in early April a more health-oriented approach to drug use within the USA, including 'Enhancing evidence-based harm reduction efforts', it was fascinating to see how this translated to the international stage. The US commitment to such a recalibrated outlook could certainly also be seen in its historic and explicit backing of harm reduction at the forum. Nonetheless, it remains unclear how the Biden administration's 'reformist drug strategy' will play out in the CND and elsewhere, including within the UN system. As with most aspects of US foreign policy, complexity is rife. And nowhere was this more obvious than in relation to the Task Team in charge of the implementation of the UN System Common Position on drug-related matters. As was the case at the 2020 session, along with the Common Position, the Team emerged as an important, perhaps deepening, point of contention. Though not generating an enormous amount of debate, those statements that did comment on the work of the Task Team revealed not only ongoing divisions within the Commission, but also curious alignments. On this issue, the Russian and US delegations found themselves on the same side in opposing the Team and seeing it as a threat to the Vienna-based agencies.

Once again Russia was also particularly vocal in its hostility towards any perceived undermining and relaxation of the international drug control system, especially in relation to policy positions on cannabis. The Russian statement in the General Debate raised its own national drug control strategy's identification of drugs as a national security priority and highlighted that one of its main aims 'is to prevent any weakening or review of the global drug control regime, including via legalization of drugs'. Several other states also explicitly noted their concern over the legalisation of



Closing session of the first-ever hybrid main CND session

cannabis. Conversely, while Mexico referred to democratic efforts within the country leading to ‘responsible regulation’, it was only the Jamaican statement that could be seen as a challenge to the existing control framework. These reformist-oriented comments were very much in line with the delegation’s position on medical cannabis and its enthusiasm for the Commission’s rescheduling decision in late 2020. And on this issue, division was also apparent. With support coming from an eclectic mix of states, it was predominantly – though not exclusively – African nations, including perhaps misleadingly the Group of African States, that remained uncomfortable with the decisions; one that passed with the narrowest of margins in December.

Despite some anxiety among civil society in the lead up to the session, the hybrid format did little to impact engagement. In fact, in many ways, use of the UN’s ‘Interprefy’ web-based platform facilitated greater involvement, raising questions concerning the extent to which some hybrid practices should be continued in future Commission meetings. As such, while virtual, civil society presence remained strong across the week. This was the case in not only the now normalised ‘informal dialogues’ with UN bodies and side events, but also statements within the Plenary.

## Introduction

In many ways capturing the rather surreal nature of the 64<sup>th</sup> Commission on Narcotic drugs (CND or Commission), the Commission Chair, H.E. Ambassador Ms Dominika Anna Krois of Poland, signalled the start of proceedings with the use of a small Swiss ‘gong’, a gift she announced from the vice chair of the Commission, Ambassador Wolfgang Amadeus Bruehlhart. And so, somewhat bizarrely, began the CND’s first ever hybrid meeting, a format adopted with varying degrees of success across the UN system in response to the global health pandemic. Consequently, unlike ‘normal’ Commission sessions, most participants – including government officials, UN staff and the representatives of civil society organisations – joined the event online, with the usually busy conference halls, corridors, and coffee bars eerily silent. Indeed, that the first substantive intervention of the meeting came from the Secretariat and concerned COVID-19 protocols, including how the hybrid approach would operate in practice, was indicative of the unknown territory within which the Commission was travelling (see Box 6). That said, with the unfamiliarity of ‘diplomacy in the times of COVID’, came many all too recognisable themes and issues, including the growing dissonance between the corner of the UN system dealing with international drug control and other parts of the organisation.

With much pre-CND energy focusing on the practicalities of the hybrid session, expectations were not especially high as delegates ‘convened’ on the morning of Monday 12<sup>th</sup> April. As in 2020, only five resolutions had been submitted for negotiation in the CoW and without any contentious scheduling decisions up for discussion and voting in the Plenary (see Box 1), the stage looked set for another relatively quiet year even though it marked significant anniversaries of both the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances. It is true that speculation surrounded the position of the US delegation following the change in administration in Washington D.C. in January. Moreover, in addition to issues relating to the impact of COVID-19 on drug policy, delegations from both member states and civil society organisations (CSOs) awaited with interest ongoing debates around not only the UN System Coordination Task Team on the Implementation of the UN System Common Position but also the place of cannabis, for both medical and non-medical use, within (and without) the UN control system. Nonetheless, leading into the session there was little to suggest that – as turned out to be the case – deliberations in parts would be quite spirited, extend right up to wire and in so doing necessitate a closing session late on Friday evening.

Despite the unprecedented form of this year’s CND, our goal here is to provide as far as possible a comprehensive, yet nuanced, overview of the debates and negotiations that took place ‘in’ the Vienna International Centre. With the contributing authors scattered around the world and following events online at – depending on time zones – various times of the day and night, the account inevitably lacks the sensitivity that can only be gained from participant observation of a ‘normal’ session. Although it is important to note that the hybrid approach compounded the recent trend among member states to shift traditionally open negotiations within the CoW to private ‘informal’ meetings. As is to be expected, significant attention is devoted to civil society engagement. This involved the now regularised NGO dialogues with representatives of the core UN drug control bodies, including with the CND chair. Moreover, in an effort to offer more than a standard descriptive account, the publication incorporates as appropriate some analysis of and comment on the key topics of debate. As such, we seek to identify emerging issues of concern expressed by delegations as well as familiar themes to emerge from member state statements, interventions and negotiating positions within both

Plenary sessions and the CoW. On occasions, comparisons will be drawn with previous CND sessions with the aim of highlighting trends and patterns within particular issue areas. As in previous years, a supplementary – and searchable – account of the entire session can be found on the CND Blog. Alongside the CND App, this now well-established civil society initiative aims to enhance transparency within the international policy making process and provide real time monitoring and reporting of proceedings. Important official UN documentation relating to the session, including the official report to be approved by the Economic and Social Council (ECOSOC), can also be found on the UNODC website.

## The Opening of the 64<sup>th</sup> Session of the Commission

The Commission formally began with the ‘Ceremonial Opening Segment’ to mark the 60<sup>th</sup> and 50<sup>th</sup> anniversaries of the 1961 and 1971 Conventions respectively. Including statements, either in person in Vienna, online or via video message, from the UN Secretary-General (Mr. Guterres – statement delivered by the UNODC Executive Director), the President of ECOSOC (H.E. Ambassador Munir Akram), the UNODC Executive Director (Ms. Waly), the Director-General of the WHO (Mr. Tedros), the President of the INCB (Mr. de Joncheere) and the Chair of the Vienna NGO Committee on Drugs (VNGOC, Mr. Bridge), the segment perhaps unsurprisingly adopted a predominantly celebratory, even self-congratulatory, tone with few hints at the structural dilemmas facing the UN treaty-based regime as it enters its seventh decade and faces an expanding and ever more complex and dynamic illicit market.

It is true, for example, that Ms. Waly noted how ‘This session comes at a unique juncture in the Commission’s history, as we commemorate an important anniversary, while looking ahead to a road filled with daunting challenges in international drug control’. Yet, despite increasing examples of a growing divergence in preferred policy approaches and resultant tension within the regime, the Executive Director stuck to her now recognisably quixotic script concerning unity and togetherness. For her, as was the case at her first Commission last year, the mythical ‘Vienna spirit’ would prevail across the course of the week’s discussions and the ‘landmark instruments’ whose anniversaries were being celebrated in 2021 ‘should guide our way forward’.





UNODC Executive Director Ghada Waly's statement at Opening segment of the CND

## Plenary discussions

In a display of remarkable resilience and, due to the occasional internet induced technical hiccup, patience, Ambassador Krois ably guided the hybrid normative and operational-focused discussion through a range of often interconnected issue areas. While in no way claiming to be exhaustive, we explore here some of the more prominent and reoccurring topics and themes, particularly within the General Debate. As the discussion reveals, there remains a sense of common purpose and agreement in principle among member states and UN agencies on a range of drug control issues – access and availability to controlled medicines prominent among them. Nonetheless, over the course of 89 wide-ranging country statements and associated agenda item interventions, it became clear that beneath the fragile patina of consensus tensions persist and are arguably growing.

To be sure, despite the Chair's efforts to radiate an atmosphere of unity, these were not far beneath the surface of the early adoption of the Commission's joint Statement on COVID-19. Originally proposed by the Russian Federation as a CND declaration in late 2020, the document reappeared ahead of the April session as a draft joint statement put forward by the CND Chair. As noted above and elsewhere, as with an increasing number of documents produced by the Commission in recent

years, negotiations for the final text were conducted in 'informal' sessions beyond the gaze of civil society observers. Consequently, while the precise nature of what appear to have been protracted and at times fraught negotiations remain unclear, the *Statement on the impact of coronavirus disease (COVID-19) pandemic on the implementation of the joint commitments of Member States to address and counter all aspects of the world drug problem* was merely rubber stamped early in the proceedings. As will be discussed below, while the Statement contained some positive language, it also revealed the ongoing disconnect in Vienna between drug policy and human rights.

### Key themes and issues: Progress, inertia, and regression

Mindful of the context within which this year's session took place and the intentional focus of the general debate on the impact of the pandemic, it was unsurprising that most statements, country, UN entity and NGO, referred to the additional challenges posed by COVID-19. Moreover, while it is almost a default mantra at the Commission for states and country groups to note that the conventions stand as the 'cornerstones' (or words to that effect) of international drug control efforts, the anniversaries of two core instruments ensured more emphasis on this point than in other years. Indeed, while there is always fluctuation in the extent of

## Box 1 Scheduling decisions

This year the plenary voted on eight uncontroversial scheduling recommendations from the WHO's Expert Committee on Drug Dependence.<sup>11</sup> While the logic behind the decision was not made clear, this was one of the few aspects of the session that required country delegates to be physically present in the conference room.

**Decision 64/1** – Isotonitazene – Schedule I of the 1961 Convention

**Decision 64/2** – CUMYL-PEGACLONE – Schedule II of the 1971 Convention

**Decision 64/3** – MDMA-4en-PINACA – Schedule II of the 1971 Convention

**Decision 64/4** – 3-methoxyphencyclidine – Schedule II of the 1971 Convention

**Decision 64/5** – Diphenidine – Schedule II of the 1971 Convention

**Decision 64/6** – Clonazolam – Schedule IV of the 1971 Convention

**Decision 64/7** – Diclazepam – Schedule IV of the 1971 Convention

**Decision 64/8** – Flubromazolam – Schedule IV of the 1971 Convention



Voting of substances at the 64th session of the CND

states' open criticism of the treaty system – a pattern driven by myriad domestic and international imperatives – the 64<sup>th</sup> session was relatively quiet in this regard. Nonetheless, over the course of the Plenary – both the general debate and the operational segment – divisions and associated tensions were readily apparent.

As is the norm, many states, for example Cuba, Iran, Peru, the Philippines, South Africa, Tajikistan, and Venezuela, continued to speak of the 'scourge' of drugs. Demonstrating similarly unflinching support of the extant structures, others framed statements and interventions in terms of the international community working together for a 'world free of drugs', or phrases containing the same sentiments. These included Morocco, Pakistan, the Russian Federation, Singapore and Sri Lanka. Others, like the USA, spoke more operationally in terms of the conventions offering 'us important tools' to deal with new challenges. Meanwhile,

an admittedly small number of states viewed the anniversaries as an opportunity to, in varying degrees, reassess the status quo and functioning of the system. Australia, for instance, noted that 'to ensure the conventions continue to remain relevant into the future, we must be prepared to listen to expert scientific and medical advice and keep the scheduling of controlled substances up to date and in line with community expectations'; a point to which we will return. More explicitly, the Mexican delegate pointed out that this was an 'ideal opportunity to reaffirm commitment to international system... [and] *review and change what is not working*' (emphasis added). In only its second year as a CND member, Jamaica however was notable in its stark assessment of the current state of play. Considering the treaty anniversaries, the Jamaican delegate stressed, 'It is therefore opportune for us to take stock, prioritize the review of the current drug control architecture, and recalibrate the global response to drug control



matters'. He continued to stress that 'undoubtedly, the pandemic has impacted us all; albeit to varying degrees of severity, resulting in socio-economic upheaval, as well as leaving health systems on the brink of collapse. As such there is an urgent need for countries to be given greater flexibilities in designing policies that reflect their national realities and contexts. In this regard, we urge the Commission to employ pragmatic and innovative approaches in the delivery of its mandate'.

And national realities and contexts certainly provided the backdrop for discussion of a range of issues, including common and divergent perspectives; many of them familiar, although some increasing in visibility and, in some instances, intensity. For example, as has been the case since the establishment of the Sustainable Development Agenda in 2015, many states noted the significance of the Sustainable Development Goals (SDGs) within the design and implementation of drug policy. The importance of civil society inclusion was also a feature of numerous statements, including key supporters such as the European Union and Switzerland. Likewise, as in recent years, most states stressed the importance of availability of, and access to, controlled drugs for medical purposes. This remains one of the few remaining issues where consensus on the principle, if not the practice, can still be found. To be sure, once again concerned by what is perceived as misuse within their borders, several African states, including in the name of the Africa Group, called for the international control of tramadol (e.g., Algeria, Egypt and Sudan) with Nigeria pointedly arguing that the WHO 'needs to move beyond mere surveillance' to recommending scheduling.

The issue of human rights was also more explicitly apparent across the course of the week, with a range of statements revealing seemingly irreconcilable differences of perspective on a topic that sits at the very heart of progressive policy. Many states, including those represented by the EU as well as Australia and New Zealand, highlighted the importance of human rights and in some instances spoke out against not only use of the death penalty for drug offences but also extrajudicial action within drug markets. Meanwhile, the Philippines was keen to promote its 'comprehensive and balanced approach' and incredibly spoke of its policies 'protecting citizens from the scourge of drugs' and 'safeguarding human rights'. Similarly, the delegate from Singapore – a state that regularly executes

individuals for drug offences<sup>12</sup> – stressed that it was his country's belief that 'governments have a responsibility to protect our people's right to live in an environment that is free of drugs'.

Although states like Singapore remained apparently and perhaps unsurprisingly unbending in their policy positions, change – some of it potentially significant – was evident elsewhere. For example, while explicit backing for the decriminalisation of drug possession for personal use is not new and came from traditionally supportive states like Mexico, the Netherlands and Spain, fresh and unexpected support was given by Costa Rica and Malta. Moreover, and indicative of increasing engagement by a range of actors within the policy space, in its first statement at the CND the Global Fund to Fight AIDS, Tuberculosis and Malaria made a powerful case for the approach. The Fund's Executive Director, Peter Sands, linked criminalisation for drug offences to severely congested prisons and commended those countries that had taken measures to decongest prisons, noting the high-risk environment of overcrowded prisons for COVID-19 and other deadly communicable diseases. 'From a public health perspective' he said, 'decriminalisation is a good thing'. Ninan Varughese of UNAIDS made a similar point stressing how 'The UN Common Position on Drug Policy that was released two years ago reflected the need to decriminalise drug use and committed to taking actions to promote it'.

As with the issue of decriminalisation, mention of harm reduction within this year's plenary highlighted some interesting positions. The concept, and associated term, are no longer as controversial as they once were within the Commission. Nevertheless, it should be recalled that ongoing opposition from some states is such that the words 'harm reduction' are yet to be included within any CND agreed document. Rather the proxy phrase measures to 'reduce the adverse health and social consequences of drug abuse', or formulations thereof, is deployed. That said, many states explicitly supported the approach and mentioned harm reduction in their statements. That these included Canada, the Netherlands and, long an advocate of the approach, Iran comes as no surprise. India's inclusion within the group is a little more unexpected but represents a welcome increase in willingness to move beyond engagement within the national context and support it at the international level. The UNAIDS view that 'Harm reduction works. Harm reduction saves lives!' was



Regina LaBelle, Acting Director of the US Office of National Drug Control Policy, speaking at the 64th CND (video recording)

a manifestation of the entity's increasingly bold support in Vienna for an approach that it has long championed in other settings.

Most significant, however, was the shift in position of the US. With the change in administration and – due to the scheduling of the Commission around a month later in the year than usual – the release of the *Biden-Harris Statement on Drug Policy Priorities for Year One*<sup>13</sup> before the meeting, expectations among interested observers had been high. Amid signs of several positive shifts, the administration had already signalled its intention to pursue a more health-oriented domestic policy on drug use, including 'Enhancing evidence-based harm reduction efforts'. Nonetheless, it was refreshing to hear domestic commitment to this, and other important aspects of the issue area, explicitly confirmed at an international forum. Accordingly, Regina LaBelle, Acting Director of the Office of National Drug Control Policy stated that 'Every member of the CND knows we must address the problems that affect us all so we all may benefit. But we can't confront today's challenges with yesterday's methods; we have to modernize and make sure our approaches are responsive to current trends'. 'On April 1<sup>st</sup>', she continued, 'we released President Biden's plan to address the addiction and overdose epidemic, which calls for modern solutions – such as expanding access to evidence-based treatment services and harm reduction services and prioritizing racial equity'. Such overt support for harm reduction

marks a radical departure for the US delegation in Vienna. With harm reduction accurately described as 'long anathema to official policy',<sup>14</sup> the USA has for many years been at the vanguard of efforts to quash support within the Commission and even stymie related programmatic activities of the UNODC.<sup>15</sup> Precisely how the Biden administration's 'reformist drug strategy'<sup>16</sup> plays out in the CND and elsewhere within the UN system remains to be seen. It is certainly an issue worthy of close attention (see Box 2). However, as with most aspects of US foreign policy, complexity is rife. And nowhere was this clearer than within the Commission's deliberations on the UN system Common Position and the related UN system coordination Task Team on the Implementation of the UN System Common Position on drug-related matters.<sup>17</sup>

### Ongoing tension around the Common Position and Task Team

As was the case at last year's session, country stances on the Common Position and Task Team fell into broadly three camps: neutral, for and against. Although it did not generate an enormous amount of debate, those statements that did comment on the issue revealed ongoing – and perhaps deepening – divisions. Support came at various points across the week including within the general debate and under Items 7 ('Inter-agency cooperation and coordination



## Box 2 The USA, Biden's reformist drug strategy and implications for the CND

Although unlikely to be a complete game changer, the US's alteration of position on some key issues at this year's session was certainly significant. Aware of the contentious nature of the term in Vienna, it was especially noteworthy that the US chose to internationalise its explicit support for harm reduction through a statement within the general debate and thus send a clear signal of intent to the rest of the Commission and associated UN agencies as well as various audiences within the USA itself. Although the implications of the rhetorical – and within the US itself substantive policy – shift remain uncertain, it is plausible to suggest several possible positive repercussions. First, it may embolden other individual states or groups – either informal like-minded clusters, regional groups and/or formal supranational structures such as the EU – to step up their support for harm reduction and more actively push back on those states that continue to remain hostile to the approach and consequently make negotiations in the CoW and elsewhere difficult. Second, with the USA a major donor to the UNODC, Washington's stance might also encourage the Office to be more confident in its support for harm reduction and bring it more into line with other UN agencies and bodies. Although progress has been made in recent years, there is no doubt that the UNODC remains reticent relative to bodies like UNAIDS and UNDP for example.

While this is the case, the relationship between rhetoric and action will naturally remain a key issue of concern in the months and years ahead. Events in the CoW, however, suggest a positive direction of travel. That the US delegation was willing to energetically work for the appropriate framing of marginalised populations

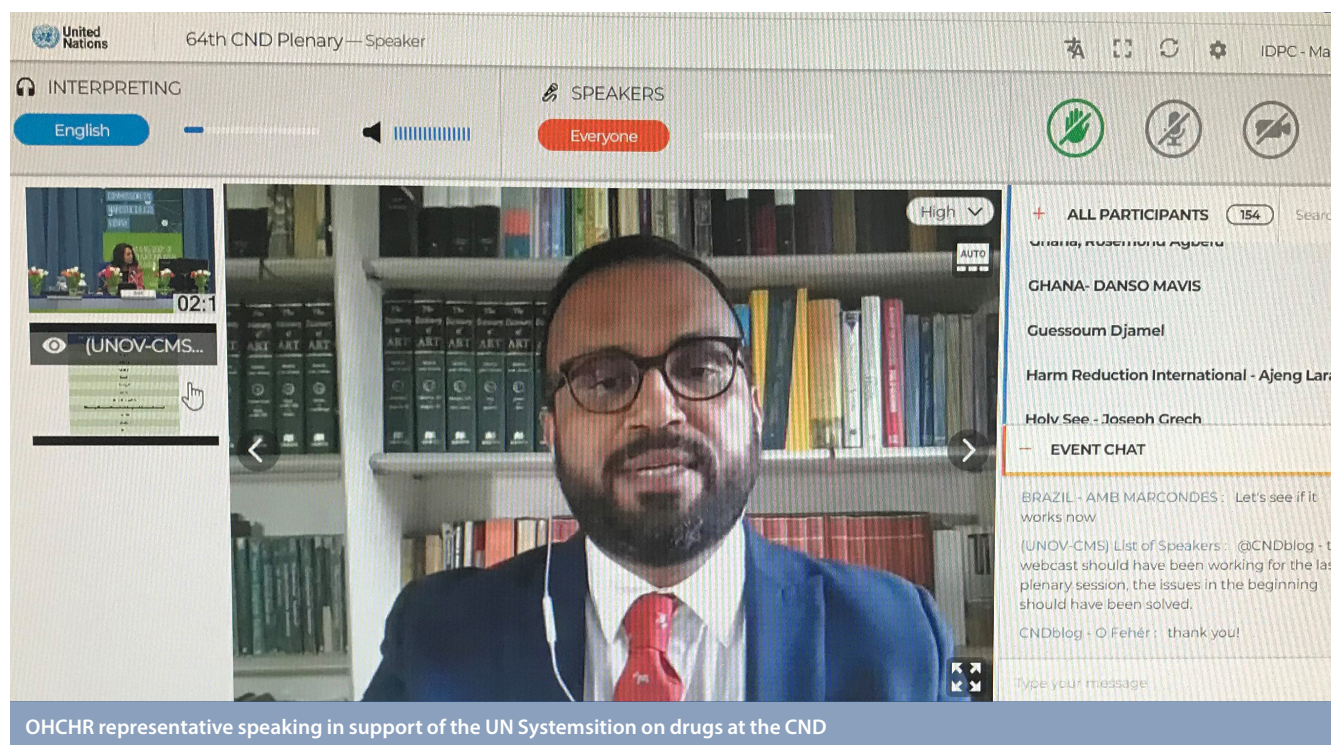
and fought for the inclusion of human rights language in resolution L3 bodes well. Mindful of the rigidity of the treaty architecture, resolutions and other soft law instruments are an increasingly important source of normative power. As such, active deployment of US 'muscle' for progressive positions is consequential.

All that said, such examples should not be understood as indicators of a wholesale reversal of policy position. As was demonstrated again at this year's session, the US remains openly hostile to the Common Position and the related Task Team. And in more general terms, it still often plays down the negative impacts of punitive policies on traditional producer states, a position that can be seen to generate tension with the SDGs. For instance, as things stand it looks like the Biden administration is minded to support the resumption of the aerial fumigation of coca crops in Colombia.<sup>18</sup>

Systemic tensions concerning the SDGs would, however, be dwarfed if – as may well be the case – the USA moves towards regulated cannabis markets at the federal level. Long relying on 'untidy legal' justifications to side-step criticism from the INCB concerning regulated markets within US states,<sup>19</sup> Washington would be forced to confront the issue of treaty breach and the implications for international law more broadly. Although speculative at this point, hints towards any future approach may be gleaned from the Biden administration's response, if any, to shifts in approach towards cannabis in other member states, Mexico prominent among them. This is particularly so bearing in mind the deafening US silence on the Russian Federation's intense criticism since 2018 of Canada's legally regulated cannabis market.

of efforts in addressing and countering the world drug problem') and 10 ('Provisional agenda for the sixty-fifth session of the Commission'). As such, strong backing could be seen in EU statements as well as from Canada, Mexico, the Netherlands, Portugal and Switzerland. Support also came from UNAIDS and the OHCHR, with the latter noting that drug policy was significant driver of over-incarceration and that 'The UN Common Position on drug related matters provides clear guidance and direction for actions for supporting States in the

implementation of human rights based policies'. Beyond general points highlighting the important role of the Task Team in improving system-wide coherence, it was particularly interesting to see the EU, the Netherlands and Switzerland pushing for the UNODC, as the lead entity within the Task Team (Box 3), to report back to member states on progress. In this regard, an EU statement included the view that coordination efforts should be included in the World Drug Report. The Swiss were especially forthright on this point and stressed



that Switzerland would 'continue to request an annual update on activities on the implementation of the of the UN Common Position', to ensure that the CND as the leading body on drug control is kept abreast of developments.

And it was the role of the Common Position and Task Team relative to the Commission and the UNODC that remained the main point of contestation for states adopting a critical position. Several countries, including Morocco, the Russian Federation and the USA, were very keen to highlight the ongoing centrality of Vienna in the UN's work on drug control. Underlining CND resolution 60/6 from 2017, 'Intensifying coordination and cooperation among United Nations entities and relevant domestic sectors, including health, education and criminal justice sectors, to address and counter the world drug problem',<sup>20</sup> the US delegate stressed that this 'Does not cede the policy making authority of the CND to task teams or other mechanisms that may be established to enhance UN system-wide collaboration'. Vienna agencies, he went on to note, must 'continue to serve as the primary locus' for discussions on drug control activities. Adopting a similar stance and stating unequivocally that it 'cannot agree with the Common Position', the Russian Federation argued it was a 'one sided view' containing 'doubtful recommendations that do not have support from all members of the Commission'. Criticising the method used to

establish the initiative, the Russian delegate put forward the perspective that 'there is no mandate from the CND' and that there had been 'no consultation with member states'. 'If it is supposed to improve interagency cooperation', he asked, 'why is it being foisted on member states as guidelines for cooperation?' Just in case there continued to be any doubt on Moscow's stance, he concluded by saying, 'We cannot agree to the use of this document as the basis for regional coordination in the UN system'. Unsurprisingly, this view carried over to Item 10 where discussion included adding the Task Team as an agenda item for 2022. Here the Russian delegate noted that 'we confirm that we are not in a position to agree to the mentioning of this document [The Common Position] in the provisional agenda for the next session of the Commission, because this document does not meet or is not aligned with the political commitments of states that are set forth in the 2019 Ministerial Declaration'. A similar position was adopted by Egypt and Turkey, with both claiming that there was no room for amendments and extra items especially, noted the Egyptian delegate, 'when it doesn't enjoy consensus between members of the Commission'.

### Cannabis: Low key but constant sparring

The Russian Federation was once again also notably vocal in its hostility towards any perceived undermining and relaxation of the international

## Box 3 The UNODC, the Common Position and the Task Team

Considering its role as lead agency within the Task Team, the UNODC has been surprisingly reticent in its support for its activities and related outputs. It is true, as Jean-Luc Lemahieu (Director of the Division for Policy Analysis and Public Affairs), pointed out under agenda item 7, that the Office has provided updates to other agencies on the work of the CND as well as facilitated briefing sessions with member states on the Team's What We Have Learned Over the Last Ten Years report.<sup>21</sup> These involved events with the EU and Mexico in Vienna and Geneva respectively, with a planned briefing in New York cancelled due to COVID-19. In addition to working on the coordination of data, the UNODC is also – we were informed – currently preparing to distribute the report to country teams in the field.

That said, in addition to not promoting them more widely in general statements – including the UNODC Executive Director's opening remarks at this year's session where they were completely ignored – it is strange that the Office's first corporate strategy<sup>22</sup> in nearly a decade and released in February this year

fails to mention either the Common Position or the Task Team.<sup>23</sup> It is difficult to say what lies beneath this apparent disconnect. Clearly the ongoing, and perhaps deepening, disagreement surrounding both the Position and Team among member states themselves puts the Office in a difficult position. Indeed, Mr. Lemahieu was keen to highlight that the Team is 'an internal UN mechanism' and that its 'members are exclusively UN entities'. A more prosaic, and not unreasonable, explanation may relate to bandwidth. As the Director noted, it should not be forgotten that the Office's additional role within the Task Team is being delivered 'within existing working resources'. To reiterate the point, he stressed that 'no added funding has been added' to a body that is 'already stretched' in terms of both chairing and secretariat functions.

Whatever the explanation, it is our hope that – preferably with, but even without additional resources – the UNODC becomes a more vocal supporter of what looks set to be an increasingly important initiative from the Secretary-General.

drug control system, particularly in relation to policy positions on cannabis. Flagging up its own national drug control strategy and the identification of drugs as a national security priority, the Russian statement in the general debate highlighted that one of its main aims 'is to prevent any weakening or' critically 'review of the global drug control regime, including via legalization of drugs'. Its concern was not isolated, however, with two inter-related issues repeatedly noticeable over the course of the week: legalisation, and the rescheduling of cannabis.

Indeed, several states explicitly noted their concern over legalisation. These included China, Cuba and Kyrgyzstan, with the Chinese delegate unusually outspoken and stressing that his country 'resolutely opposed legalization of drugs in any way, shape or form'. More specifically, the Nigerian delegate stressed the view that cannabis remained a 'threat to the security, health and well-being of the global population' and reiterated that 'legalization of the illicit use of cannabis is a violation of the drug treaties'. Incredibly, the Filipino delegate put forward the view that legalisation was a departure from human rights. As what appeared to

be a lone counter point, and one clearly related to possible shifts in domestic policy position in the near future, the Mexican delegate noted how democratic efforts within Mexico were leading to 'responsible regulation'.

Other states, principally though not exclusively from Africa,<sup>24</sup> raised concern regarding last December's rescheduling decision. Interestingly, reminding states that cannabis and cannabis resin remained 'under strict international control in schedule I' of the Single Convention, the Group of African States made clear the 'discretion' of states 'to further exercise domestic control in accordance with article 39'. It will be recalled how this relates to the 'Application of stricter national control measures than those required by the Convention'. Representing what appears to be an emerging legal response to the deletion of cannabis and cannabis resin from Schedule IV, this view was echoed in the country statement of Algeria. Highlighting the view that cannabis and its derivatives 'continue to be a threat to public health' and fears concerning the implications of the adoption of the WHO recommendation, the Algerian delegate argued



that the margin of one vote in December ‘proves’ that the process was not required. Algeria, he said, ‘does not support relaxation of the regime’ and argued that ‘cannabis must be condemned’. Kenya, meanwhile, also opposed rescheduling and put forward the view that the decision will alter perceptions of risk and thus increase use. Reflecting on how the conventions remained ‘relevant, flexible and sufficiently resilient’, the Kenyan delegate opined that there was no need to change the system ‘to suit sporadic states’ (see Box 4).

All that said, a significant number of states welcomed the Commission’s vote on the WHO recommendations in December. These included Australia, Jamaica, New Zealand, Peru, South Africa and the USA. In a powerful statement, the Jamaican delegate noted that the removal of cannabis and cannabis resin from Schedule IV was a ‘major achievement not just for the Commission but for the countless millions of persons worldwide who are in dire need of various treatments’. He went on to stress that ‘The Commission by its vote in December for the first time gave a long overdue recognition that the medicinal and scientific value of cannabis far outweighs its risks’. ‘We are confident that this is a positive start in the journey towards harnessing the full medical and scientific potential of cannabis worldwide’, he said. Indeed, other supportive statements focused more specifically on the pragmatic implications of the decision and the new reality of the rapidly expanding medical cannabis market. For example, the USA was ‘particularly interested in the INCB’s efforts to help clarify how data on cannabis and cannabinoids should be reported for the purposes of estimates and statistical returns as well as to provide guidelines for import and export on cannabinoids’. ‘It is our hope’, the US delegate stressed, ‘that this process will provide greater clarity to member states engaged in the cultivation and trade of cannabinoids for medical and scientific purposes and will strengthen the international control system by identifying and resolving potentially ambiguous situations’. This was a point also made by the Peruvian delegate who too was seeking guidance concerning the nascent industry.

## Box 4 African ‘unity’ in Vienna

As discussed here, as is usually the case in Vienna, many African states adopted a particularly hostile stance regarding what they deemed to be a relaxation of drug control, especially where cannabis is concerned. Indeed, a cursory glance at the position of African countries at the CND – including in relation to Tramadol – would suggest a continent unified in its pursuit of a traditional ‘war on drugs’.

The reality, however, is more nuanced. While numerous states do certainly still favour a law enforcement-dominated approach, significant numbers of others are moving towards a more health-oriented outlook. For example, Cote D’Ivoire, Kenya, Mauritius, Senegal, Sierra Leone, South Africa and Tanzania are among the countries currently implementing harm reduction programmes. Meanwhile Lesotho, Malawi, South Africa, Zimbabwe have legally regulated medical cannabis production. Furthermore, although still an outlier, Ghana – a first-time CND member since January and now with a mission in Vienna – has also recently taken ‘bold steps towards decriminalisation’.

Such positions and intentions, however, are almost invisible within the Commission with most progressive states reluctant to openly acknowledge policy realities within such an international forum. Instead, statements tend to be dominated by data relating to seizures and arrests. Moreover, most countries within the region allow the Africa Group to be dominated primarily by Egypt and Nigeria; a dynamic that gives a distorted and damaging impression of a unified hard-line position. As has been cogently argued elsewhere, what is urgently needed, especially within the context of the SDGs, is ‘African governments to challenge the statements and process of the so-called “Africa Group”, to increase accountability, and put Africa’s interest first – rather than calling for controls and decisions which would directly harm Africans.’<sup>25</sup>



Chair of the Committee of the Whole, Amb. Wolfgang Amadeus Bruehlhart

## The Committee of the Whole: A surprisingly contentious affair

At first glance, 2021 was once again relatively quiet in terms of resolutions (see Box 5, including final resolution identification numbers). Nonetheless, while only five in number (including the COVID Statement) and negotiated predominantly within informals, open discussions around the draft resolutions revealed stark differences of perspective on several fundamental issues. Indeed, the Committee Chairperson, Ambassador Wolfgang Amadeus Bruehlhart of Switzerland, had to work hard to ensure that agreement was reached before the end of proceedings on Friday evening.

### L2: 'Statement of the Commission on Narcotic Drugs on the impact of the coronavirus disease (COVID-19) pandemic on the implementation of Member States' joint commitments to address and counter all aspects of the world drug problem'

While formally a resolution, L2 is also the Commission's contribution to the 2021 High Level Political Forum on Sustainable Development, which will focus on a 'sustainable and resilient recovery from the COVID-19 pandemic'.<sup>26</sup> Consequently, it is notable

and surprising that the resolution does not make any attempt to approach the world drug situation through the lens of the 2030 Agenda for Sustainable Development. This would have arguably<sup>27</sup> required an increased focus on certain issues that are currently absent from the resolution, such as universal health coverage, gender equality, environmental protection, violence reduction, and building accountable and inclusive institutions.

As the title suggests, L2 seeks to describe the impact of the COVID-19 pandemic on the world drug situation and on state responses, delving on issues such as the continued emergence of darknet platforms,<sup>28</sup> the consequences of the pandemic on health services,<sup>29</sup> and widespread concerns that drug policy budgets will be syphoned into the COVID-19 response.<sup>30</sup> Negotiations added welcome references to the importance of ensuring access to, and availability of, controlled substances for medical and scientific purposes – a sustained concern of the INCB during the pandemic<sup>31</sup> – and to ensure appropriate levels of support for 'measures aimed at minimizing the adverse public health and social consequences of drug abuse'. Equally positive is the acknowledgement of 'peer support and community outreach'<sup>32</sup> during the pandemic, and of the 'important role of the scientific community, academia, civil society in particular non-governmental organisations'.<sup>33</sup>

Nonetheless, the resolution is remarkably shy in laying down lessons learned or policy change derived from the pandemic. Despite what were apparently heated debates during negotiations on the issue, the resolution does not include any explicit reference to the risks COVID-19 poses to people deprived of liberty in prisons and other places of detention.<sup>34</sup> This is unfortunate. While acknowledging that ‘people with drug use disorders, *including those incarcerated*, may be at increased risk of more severe illness and mortality from COVID-19’ (emphasis added), the Statement ignores the fact that some countries have successfully introduced prison release schemes in response to the pandemic; a policy approach encouraged under certain circumstances by the UN expert on the right to health.<sup>35</sup> It also fails to highlight the urgent need to reduce prison overcrowding. As such, it is difficult to disagree with the view that ‘the continued denial’ within the Commission ‘of how drug law enforcement is one of the key drivers for mass incarceration, arbitrary detention and human rights violations encapsulates the dire disconnect that hinders UN drug policy debates.’<sup>36</sup>

It is also interesting to note that the initial draft encouraged member states to designate drug treatment and related services as ‘essential health services’, but this was discarded during the negotiations. Telemedicine and e-health platforms are commended, but there is no reference to the wave of regulatory changes that allowed for a significant increase of take-home Opioid Agonist Therapy (OAT) drugs and naloxone during the pandemic.<sup>37</sup> All in all, it seems that for the Commission the main response to the disruption brought by the pandemic is to double down on the system as it existed beforehand.

### **L3: ‘Facilitating access to comprehensive, scientific evidence-based drug demand reduction services and related measures, including for people impacted by social marginalization’**

Presented by Canada and eventually co-sponsored by Honduras, Japan, Malta, Mexico, Philippines, Portugal, Uruguay, UK, and the USA, L3 was easily the most controversial resolution of this year’s CND, with tense negotiations lasting until Friday evening.<sup>38</sup>

The controversy extended to the very premise of the resolution, i.e., what was meant by ‘social marginalisation’. This constituted the crux of the debates,

initiating with a discussion on whether to use the term ‘marginalized’ or ‘vulnerable’ populations. Canada, with support from Malta and the Netherlands, resisted Russia’s proposal of using ‘vulnerable’, since ‘marginalized’ people ‘are not necessarily vulnerable in all situations; they are socially excluded or excluded from accessing services, and that makes them vulnerable’.

An attempt at defining ‘social marginalization’ was made in the last preambular paragraph (PP) and the first operative paragraph (OP) of the resolution. In the original text, the latter listed the following groups: ‘Black and Indigenous communities, People of Colour, people in contact with the criminal justice system, women and gender diverse individuals, people living with HIV, economically disadvantaged individuals, young people, the elderly, people with disabilities and people impacted by public health emergencies’.

Unsurprisingly, this list was met with resistance from various member states, with the Turkish delegate specifically opposing the mention of ‘women’, going as far as stating: ‘why are women listed as marginalised, I am a woman, and I am not marginalised, I find that discriminatory’. The Russian delegate objected to ‘people living with HIV’ and ‘economically disadvantaged individuals’, while Egypt resisted language on ‘people in public health emergencies’. Despite efforts from Argentina, Australia, Belgium, Finland, France, Guatemala, New Zealand and the USA to propose compromise language, the whole list was eventually deleted in OP1, while the last PP of the resolution simply stated: ‘Emphasizing that people impacted by social marginalization will differ according to national context’. This led the US delegate to deplore that the very definition of marginalisation is the ‘act of treating a person, group or concept as something that is insignificant or not worth mentioning’, and ‘what we’ve just done is decide that these people are not worth mentioning’. Australia, alongside Argentina, Canada, and Guatemala, particularly lamented the removal of ‘indigenous communities’ from the text.

Another major issue related to language around prisons and alternatives to incarceration, which was met with strong opposition from Egypt, Iran, and the Russian Federation. These paragraphs were eventually deleted on Friday afternoon, with Canada proposing the removal of any paragraph that did not meet consensus to finalise the negotiations on time.



More positively, the resolution includes language on harm reduction throughout, using the usual formulation of ‘initiatives to address the adverse consequences of drug use’. At Russia’s request, however, the goal to ‘actively promote a society free of drug abuse’ was also included in the final text – although this was counter-balanced by a PP on human rights, requested by the French delegate.

Another major fight within L3 related to the UN System Common Position on drugs, which received resistance from Egypt, Iran, Japan, the Russian Federation, Singapore, Turkey and the USA, despite efforts by France and the Netherlands to retain original language. In the end, compromise text referred to ‘effective United Nations inter-agency collaboration’.

A final negotiation point worth mentioning relates to the original mention of the need to consult with civil society and ‘people with experience of drug use’. This new, progressive language was unfortunately removed due to objections from Turkey.

#### **L4: ‘Promoting alternative development as a development-oriented drug control strategy, including in the context of the coronavirus disease (COVID-19) pandemic and its consequences’**

For over a decade,<sup>39</sup> a group of countries currently led by Germany, Peru and Thailand have engaged in the remarkable exercise of what might be seen as norm entrepreneurship, by tabling almost every year a resolution on alternative development. Each year, the proposed text incorporates a few minor changes in comparison to the one adopted in the preceding session, presumably with the aim of showcasing the slow but steady evolution of the ‘Vienna consensus’. Intriguingly, no other similar initiative has emerged so far on a different drug-related topic.

Because of its reliance on already-agreed language, the annual resolution on alternative development is invariably amongst the least controversial of each session. This year was no exception, as the final text was adopted on the second day of the Commission, and co-sponsored by Guatemala, in addition to the original proponents of the resolution.<sup>40</sup> All negotiations took place in informal meetings, with the lead sponsor – Peru – merely updating the CoW on agreements achieved elsewhere.<sup>41</sup>

Disappointingly, the resolution continues to include harmful language stating that alternative development is ‘a choice in favour of a society free of drug abuse’; it also continues to affirm that efforts to achieve the SDGs and to ‘effectively address the world drug problem’ are ‘complementary and mutually reinforcing’.<sup>42</sup> This stands in stark contrast with evidence showing that, in practice and for decades, forced eradication and crop-substitution programmes have harmed the livelihoods of communities involved in the cultivation of crops, and with increasing calls for de-linking alternative development from an exclusive focus on crop eradication,<sup>43</sup> a perspective recently adopted by the EU.<sup>44</sup>

The title of this year’s resolution mentions COVID-19 ‘and its consequences’, but the body of the text only contains two substantive references to the pandemic. First, it notes the concern that funding for drug policies, including for alternative development, might be diverted to COVID-19 responses,<sup>45</sup> clearly a real fear also highlighted in L2. Secondly, the resolution acknowledges that the economic disruption brought by the pandemic ‘may have’ affected the livelihood of people at risk of being involved in illegal drug activities<sup>46</sup> although no policy implications are drawn from such recognition.

In a very welcome move, L4 incorporated new language – mostly borrowed from the UNGASS Outcome Document<sup>47</sup> – encouraging member states to ‘mainstream’ a gender perspective at all stages of alternative development programmes, from design to evaluation, and to take into account the needs for women and girls.<sup>48</sup> The resolution also retains positive additions from last year, such as a reference to alternative development in ‘urban areas’, and an OP on data collection to identify the socio-economic drivers of illegal drug cultivation, manufacturing and trafficking.<sup>49</sup> On a more negative note, the resolution has also kept very weak language on the necessary participation of affected communities in development programmes, merely ‘inviting’ states to ‘consider the importance of community-based agreements’.<sup>50</sup>

#### **L5: ‘Promoting scientific evidence-based, quality, affordable and comprehensive drug prevention, treatment, sustained recovery and related support services’**

L5 was proposed by Portugal on behalf of the EU, and later co-sponsored by Albania, Algeria, Ango-

## Box 5 Resolutions agreed at the 64<sup>th</sup> CND

**Resolution 64/1:** Statement of the Commission on Narcotic Drugs on the impact of the coronavirus disease (COVID-19) pandemic on the implementation of Member States' joint commitments to address and counter all aspects of the world drug problem.

**Resolution 64/2:** Promoting alternative development as a development-oriented drug control strategy, including in the context of the coronavirus disease (COVID-19) pandemic and its consequences.

**Resolution 64/3:** Promoting scientific evidence-based, quality, affordable and comprehensive drug prevention, treatment, sustained recovery and related support services.

**Resolution 64/4:** Improving data collection on, and responses to, the harmful effects of the non-medical use of pharmaceuticals containing narcotic drugs, psychotropic substances or new psychoactive substances.

**Resolution 64/5:** Facilitating access to comprehensive, scientific evidence-based drug demand reduction services and related measures, including for people impacted by social marginalization.

la, Australia, Brazil, Honduras, Mexico, Norway, the Philippines, the UK and Thailand.<sup>51</sup> As with some of the other resolutions, much of the negotiations were held in informals.

One of the key objectives for this resolution was to retain the concepts of affordability, voluntary treatment, and a recognition of the 'essential' nature of these services. Positively, affordability, quality and voluntary access were all retained in the final text. In addition, indirect reference to harm reduction ('related support services') was added throughout. The recognition of demand reduction and related services as 'essential', however, met some resistance from various member states, including the USA, despite push back from Argentina, Australia, Canada, Italy, Mexico, Sweden, and the EU. Eventually, the phrasing 'essential health-care systems' was removed from the preambular part of the resolution but retained in OPs 12 and 13 in relation to the COVID-19 pandemic.

A major point of contention related to preventing 'any possible acts of torture, cruel, inhuman or degrading treatment or punishment' in services. After objections from Egypt and the USA on the use of 'torture' in this context, compromise language was reached by dropping the term, but retaining 'cruel, inhuman or degrading'. Torture was included in OP4, which reiterates the strongest human rights paragraph of the UNGASS Outcome Document (paragraph 4(o)) on criminal justice issues. Positive language on the quality of treatment was also included, updating language from the 2009 Political declaration and Resolution 61/11 on non-stigmatising attitudes: 'ensure that those specialists continue to carry out their tasks *in an ethical manner and with a respectful and non-judgemental approach*' (OP7, emphasis added).

The inclusion of language on 'gender diversity and sexual orientation' in the original text led to much discussion, with objections from Egypt, Iran, Turkey and the Russian Federation. Despite a strong stance from the UK and, to a lesser extent, Argentina and Canada, this was eventually deleted, but OP1 does include new language calling on member states to account 'for specific age and gender needs'. This late compromise is an interesting expansion of agreed language on gender which generally only focuses on women.

Echoing the negotiations on L3, discussions were held on the inclusion of 'social marginalization' in several paragraphs of L5. The final version of the resolution retains this language, reflecting agreements made in L3, but also includes: 'special emphasis on the poor, vulnerable and marginalized segments of the population'. Going further than L3, resolution L5 also retains language on 'persons in prison or pretrial detention' (OP12), and the consideration of 'alternatives or in addition to conviction or punishment measures such as treatment...'

As in L3, language on collaboration and exchange of information between the UNODC and other UN agencies was watered down in the negotiations, with specific mentions of UNAIDS, the OHCHR, the Global Fund and UNITAID rejected by the Russian Federation despite opposition from Canada, Spain, Switzerland, the UK, and the EU.

Finally, the resolution includes strong language on the role of civil society, including in partnerships for the design, implementation, monitoring and evaluation of programmes, exchange of information, putting into research on the quality of services, and

in developing and implementing public information campaigns. The original text included ‘people who use drugs’ and ‘people with lived experience of drug use’ alongside ‘civil society’, but this was eventually replaced with ‘affected populations’ after objections from Burkina Faso, Egypt, Iran, Russia, Turkey, and Singapore.

## L6: ‘Improving data collection on, and responses to, the harmful effects of the non-medical use of pharmaceuticals containing narcotic drugs, psychotropic substances or new psychoactive substances’

Tabled by Egypt and Nigeria, and co-sponsored by Angola, Australia, Kenya, Malaysia, Singapore and Thailand, this resolution underwent very significant changes during negotiations. The initial draft, which arguably aimed to place tramadol – an unscheduled opioid painkiller – at the crosshairs of the international drug control system, evolved into a broader and more balanced text during negotiations, with a focus on the non-medical use of pharmaceuticals containing both scheduled and unscheduled narcotic drugs. Once again, these negotiations took place in informal meetings of member states, behind closed doors.

It is worth noting that the resolution was introduced by its lead sponsor, Nigeria, without consulting with – and to the dismay of – the health authorities of their own country. This points to a broader trend at CND: the adoption of unbalanced and repressive positions by Vienna delegations, despite in many instances the very real progress in terms of harm reduction and criminal justice reform taking place in their own countries (see Box 4). While in the case of tramadol this phenomenon is particularly salient with regards to African countries,<sup>52</sup> it is certainly not restricted to them.

Tramadol is a synthetic opioid used in over 100 countries to treat both acute and chronic pain of moderate to severe intensity.<sup>53</sup> It is thought to carry low potential for dependence when compared to morphine, and withdrawal symptoms are comparatively mild.<sup>54</sup> Tramadol was included in the 21<sup>st</sup> WHO Model List of Essential Medicines,<sup>55</sup> and by 2017 it had been added to a large number of national essential medicines lists, including in Botswana, Egypt, Ghana, Morocco and Namibia, amongst many others.<sup>56</sup>

The tramadol market has grown rapidly over the past 20 years, particularly in countries in North Africa and the Middle East, where it is often the only painkiller available to deal with moderate to severe pain.<sup>57</sup> The growth has been registered in both the legal and illegal markets – though a good part of tramadol demand in the illegal market is due to self-medication.<sup>58</sup> One of the reasons for tramadol’s capacity to fill the gap in the demand for pain treatment in many lower or middle income countries is precisely that it is not subject to international controls, which entail costly and complex regulatory requirements.<sup>59</sup>

In recent years, several attempts to subject tramadol to international scheduling have failed, as the World Health Organisation’s Expert Committee on Drug Dependence (ECDD) has repeatedly found, after scientific reviews, that international control would unduly restrict access to the medicine. The last time this happened, in 2018, the ECDD’s decision provoked a strong rebuke from China, Egypt and Nigeria at the reconvened 61<sup>st</sup> CND plenary.<sup>60</sup> In that context, the initial text of this year’s resolution could have been interpreted as a first step towards the ‘scheduling by resolution’<sup>61</sup> of tramadol, namely the imposition of international controls on a substance bypassing the ECDD’s scientific review – a move that China attempted with regards to ketamine in 2016.<sup>62</sup>

This harmful outcome, however, was avoided through a careful redrafting of the resolution during the negotiations. This resulted in a broader and more balanced text. The scope of the resolution was widened by removing most references to tramadol,<sup>63</sup> and by substituting the term ‘pharmaceutical opioids’ with the much broader ‘pharmaceuticals containing narcotic drugs, psychotropic substances, or new psychoactive substances’.<sup>64</sup> The final text also incorporates several helpful references to the importance of ensuring the availability of, and access to, controlled substances for medical and scientific purposes, particularly for the relief of pain and suffering.<sup>65</sup>

That said, in spite of this largely successful effort at avoiding a ‘scheduling by resolution’ of tramadol, the final text still prioritises control efforts over the need to ensure the rational availability of medicines. To be sure, despite the CND’s rhetorical support for availability of and access to medicines, this arguably remains the case for the UN drug control regime at large.<sup>66</sup>



## Box 6 Implications of the virtual CND

Although described as a ‘hybrid format’, this year’s CND was held predominantly online – in practice, any physical attendance was limited to essential UNODC staff and a handful of Vienna-based diplomats, and for certain sessions only, as the COVID-19 pandemic continued to preclude international travel. In Austria itself, government restrictions were tightened in the week preceding the CND – putting an end to initial plans for eight NGO representatives to be physically allowed into the Vienna International Centre.

While it had been relatively clear for several months that the Session would have to be online, the precise modalities were only agreed by ‘silent procedure’ after the Kyoto Crime Congress in March 2021 – resulting in the whole process being unnecessarily rushed. Nonetheless, the virtual format seemed to work well. On the few inevitable instances where speakers were unable to connect or their sound or video quality was too poor for others to follow, the CND Chair and Secretariat were clearly working hard to overcome these challenges.

The obvious benefits of an unprecedented, virtual CND were inclusiveness and transparency. Whereas in previous years only the opening sessions have been webcast, this time all Plenary sessions (including the votes on substances) were publicly available to watch ‘live’ via the CND website – making it easier than ever before for observers from around the world to engage, from governments (especially expert participants from capitals, and smaller states that do not have a permanent presence in Vienna) and civil society. For a smaller number of participants (around 750 – 1,000 people), access was also provided to the main ‘Interprefy’ platform – a relatively simple and intuitive interface which allowed users to request the floor, to see and directly message with other participants, and to follow the CoW (which was not webcast due to concerns raised by some member states). The record number of official side events (see Box 7) were also all hosted online and open to any participants – which seemed to have a very positive impact on attendance overall.

One notable gap was the continued reluctance of the CND Secretariat to record the Plenary session webcasts so that they could be viewed later – something that would be a significant enabler for

participants from different time zones who were otherwise being asked to ‘attend’ sessions at 2am or 8pm.

Overall, the CND showed that such online models are both possible and effective. But there were, perhaps surprisingly, a few downsides to the increased inclusiveness. First, there was a distinct hesitancy from member states to engage in ‘real’ debate during the CoW – perhaps cognisant of the fact that it was being observed by more people than usual, or anxious of the risks of being recorded (although the CND Blog has long documented Committee sessions). As elaborated throughout this account, and even more than in previous years, most of the meaningful discussions seemed to happen in ‘informal’ meetings (also online, but with no non-governmental observers). The Committee sessions were initially reduced to a rubber-stamping exercise for resolution texts that had already been ‘agreed ad ref’ – and it only heated up in the final moments of the CND once the informal discussions had failed to obtain any consensus.

More significantly, the CND was used by a senior representative of Myanmar’s military junta to make his first formal intervention at the UN since the coup of February 2021. Lieutenant General Than Hlaing was appointed as Deputy Minister of Home Affairs and Chief of Police in Myanmar the day after the coup. At the CND, he delivered a video intervention in the General Debate reviewing drug control measures in Myanmar, including their alternative development work, and calling for greater international cooperation. The statement was highly regrettable, as it provides the military regime with legitimacy and voice that has not been earned diplomatically but by force, and the CND has since been criticised by those close to the situation in Myanmar.<sup>67</sup> Had the meeting been an in-person affair, it is highly unlikely that Lieutenant General Than Hlaing would have been present – he is currently black-listed by the EU and other governments for his prominent role in the coup and the ongoing violence in the country, with hundreds of civilians killed in trying to resist the military take-over. In the end, however, there seems to be little that the CND Secretariat could do to prevent Myanmar from speaking due to the highly political nature of national representation and the existing protocols.

## The INCB: Familiar topics and intriguing comments

Over the course of the session, several statements from the INCB reprised some familiar topics and, in the main, unsurprising positions.<sup>68</sup> These included comments in relation to medical cannabis as well as pre-precursors, NPS and, as a welcome continuation of approach, the importance of human rights. As is the norm, Board's President, then Mr. Cornelis P. de Joncheere, also provided an overview of the 2020 INCB annual report.<sup>69</sup> Here he highlighted its key themes, including the analysis of the impact of COVID-19 on the availability of internationally controlled substances and on illegal activity as well as its thematic chapter on the 'hidden epidemic of drug use among older people'.

Comments in the ceremonial opening segment, however, seemed to hint at a slight – but perhaps significant – change in the Boards' outlook. Embracing the celebratory tone of the week, especially that of the Monday morning, the President put forward the view that 'Even in the face of the constantly shifting contours of the world drug problem, the three international drug control conventions have proved their value as the cornerstones of international cooperation in drug policy'. Having highlighted what he deemed to be the successes of the system, 'international control of licit production, trade and consumption of controlled substances', Mr. de Joncheere also noted that 'critical challenges remain'. The substantial list included those relating to ensuring the availability of drugs for medical and scientific purposes, reducing illegal cultivation, trafficking, and non-medical use of drugs, and providing treatment and rehabilitation services to 'people suffering from drug dependence'. In relation to implementation challenges he also flagged up how, 'Universal adherence to the three international drug control treaties is undermined by developments in a number of countries that have legalized or permitted the use of cannabis for non-medical purposes'. 'The international drug control system, when fully implemented', he stressed, 'contributes to protecting the health and welfare of people worldwide, it ensures balanced national approaches, and is important in addressing both old and new challenges'. At this point, however, the President appeared to move away from the Board's traditional stance on the immutability of the current treaty regime and seemed to acknowledge the need for some form of change within the system, a position echoing to

some extent that made in the supplement to the Annual Report, *Celebrating 60 Years of the Single Convention of 1961 and 50 years of the Convention on Psychotropic Substances of 1971*.<sup>70</sup> To be sure, having presented what the Board deemed to be the ongoing challenges to as well as accomplishments and strengths of the regime, the President noted that 'the anniversary is also an opportunity to *reflect on possible additional tools and forms of cooperation* to respond to the changing nature and magnitude of the global problem, *including those not foreseeable at the time of adoption of the conventions*' (emphasis added). Beyond the suggestion of additional mechanisms for dealing with 'new challenges' arising from issues like NPS and the internet, could this be the tentative beginnings of moves to resolve the systemic problem generated by regulated cannabis markets?

Whether or not this is the case, the limited country responses to the INCB's overview of the 2020 annual report failed to mention the Board's position. It is true that the Japanese delegate noted that the international community was in a 'world of increased confusion', that there was a related 'lack of clarity on implementation of conventions' and hoped that the INCB 'will provide guidance on cannabis and cannabis related substances'. Yet other states that spoke on Item 5c (Implementation of the international drug control treaties, International Narcotics Control Board), offered relatively bland statements of support (e.g., China and, regarding human rights, the EU), with Indonesia calling for international organisations including the Board, to cooperate with nations while respecting national sovereignty. As observers of the Commission will recall, this is a standard line from states that are uncomfortable with scrutiny concerning human rights.

## NGO participation

### Civil society presence remains strong, if virtual

As the CND neared, anxiety had been growing amongst civil society about the extent to which they would be able to engage in an online meeting. Just over a month before the meeting, and in the absence of any formal announcements about modalities, the Vienna NGO Committee on Drugs (VNGOC) released a position statement containing urgent recommendations and emphasising that 'an online CND should be an opportunity to *expand*



participation, rather than limit it'.<sup>71</sup> Refreshingly, many of these expectations were met. 158 of the 750-1,000 places on the 'Interprefy' platform were reserved for ECOSOC-accredited NGOs. Although this is a fraction of the usual NGO participation at CND, it proved sufficient to meet the demand – with each NGO permitted to take one or two passes, and all other civil society participants encouraged to watch the webcasts instead. Due to the shortened discussion time in the Plenary (with two-hour sessions rather than the usual three-hours), three civil society speaking slots were guaranteed by the CND Chair and Secretariat for each agenda item – with a selection made by the VNGOC Board following an open call.

All of this ensured that the civil society 'presence' remained strong at the CND. A significant number of the 110 side events (see Box 7) were co-hosted by NGOs, the Plenary statements gave a balanced and professional impression, and the VNGOC Chair, Jamie Bridge, made Plenary interventions at the opening and closing of the Session. The latter statement was made jointly on behalf of VNGOC and the New York NGO Committee on Drugs (NYNGOC) and promoted the idea that some online elements from 2021 could be maintained for future Sessions. Indeed, on the last day of the session it was noted how 'This week has demonstrated the power and inclusiveness of online participation... We hope that some of the experiences, adaptations and

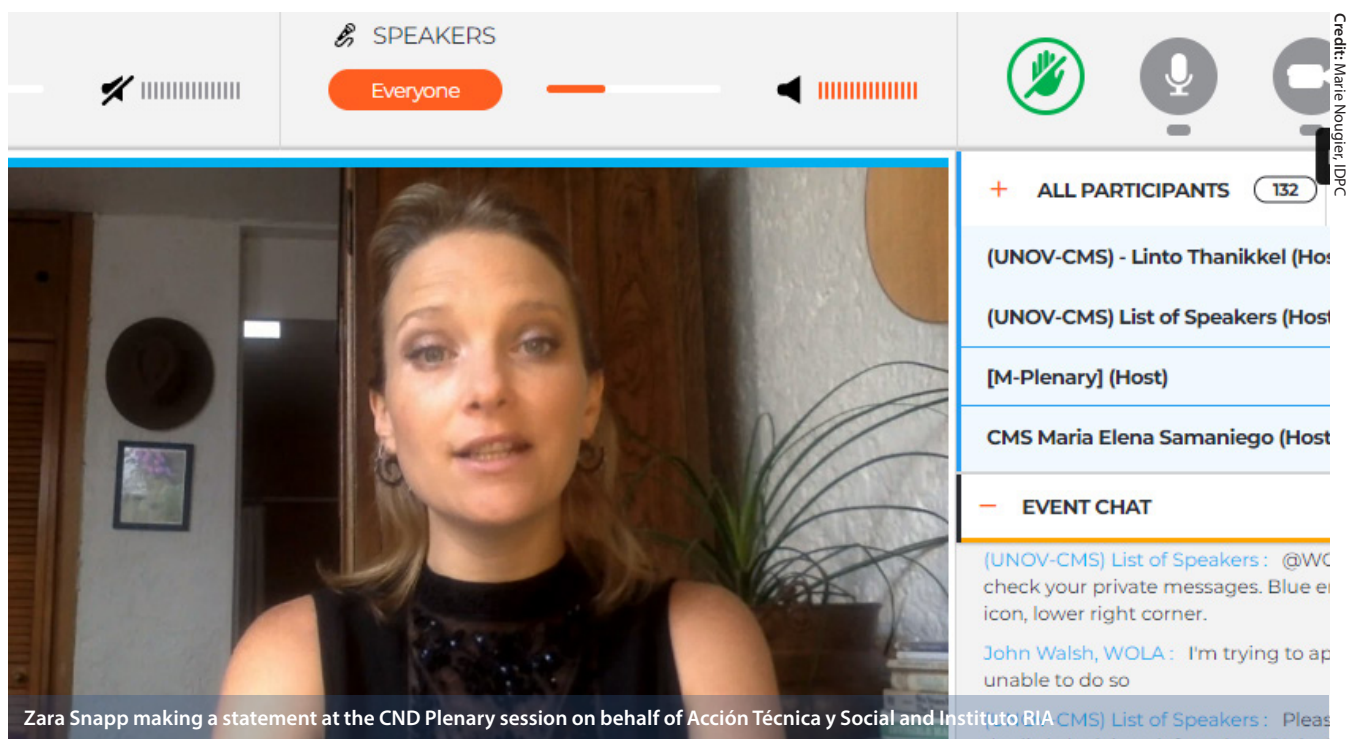
approaches from this last week can be repeated, and that more hybrid approaches will become the norm for 2022 and beyond'.<sup>72</sup>

The VNGOC itself made the decision to shift all of its own meetings to online platforms – the Informal Dialogues were held with the heads of the UNODC, the INCB, representatives of the WHO and the CND Chair (see below), and the Annual General Meeting was successfully held on Zoom in two parts with a well-organised series of online elections in between. After 150 organisations registered to vote, Jamie Bridge (IDPC) and Penny Hill (Harm Reduction Australia) were re-elected as Chair and Deputy Secretary, respectively, and Heloísa Broggiato Matter (International Association for Hospice & Palliative Care) was elected as the Deputy Treasurer.

### NGO engagement in the Plenary: Positive formalised involvement

With three slots guaranteed for NGO speakers on each agenda item, NGO involvement in this first virtual CND was welcomed in a joint statement by the Vienna and New York NGO Committees on Drugs. At the Ceremonial Opening segment, the VNGOC underscored the 'vital role' of NGOs, especially 'in linking the work on the ground with the discussions here in Vienna'.<sup>73</sup> Bringing real life experiences to the bureaucratic processes surrounding the CND certainly remains critical. Indeed, many of the interventions that followed mentioned the impacts





of COVID-19 and related restrictions on service delivery, in particular harm reduction,<sup>74</sup> and civil society space.

As 2021 marked the five-year anniversary of the UNGASS, IDPC's statement focused on the devastating costs of punitive drug policies on health, human rights, development, and civil society space,<sup>75</sup> presenting data from its new report 'Taking stock of half a decade of drug policy: An evaluation of UNGASS implementation'.<sup>76</sup> Similarly, FORUT, on behalf of Drug Policy Futures, presented the conclusions of their 'Zooming in on UNGASS' report on drug prevention.<sup>77</sup>

The UN System Common Position also featured prominently in NGO statements. Harm Reduction International, for instance, criticised the new UNODC Strategy 2021-2025, which 'does not reference the 2018 UN system Common Position on drugs and does not reflect shared commitments to put people, health and human rights at the centre'<sup>78</sup> (see Box 3). Echoing HRI's intervention, the Transnational Institute called on 'Member States to actively support the work of the Task Team... and to ensure that all relevant UN entities—including UNODC—actively promote the UN Common Position'.<sup>79</sup>

Unsurprisingly following the 2020 scheduling vote, various NGOs discussed cannabis policies. The Turkish Green Crescent Society was 'deeply concerned' by the removal of cannabis from

schedule IV of the 1961 Convention, fearing it would 'cause a wave of legalization around the world'.<sup>80</sup> The Washington Office on Latin America (WOLA), meanwhile, welcomed the 'belated recognition of the medicinal value of cannabis', but criticised the INCB's efforts in developing new guidelines without WHO involvement.

Looking beyond medicinal use, WOLA discussed the implications of policy reforms for non-medical use for the global drug control regime: 'An impasse therefore seems to be looming: a growing number and variety of countries determined to adopt models of regulated access to cannabis for non-medical uses, colliding with a treaty system that provides zero space for such a policy'.<sup>81</sup> DRCnet Foundation also called for a review of the conventions to address ongoing challenges for the 'achievement of the Sustainable Development Goals', and to protect human rights.<sup>82</sup> Mirroring these concerns, Acción Técnica Social and Instituto RIA advocated 'for member states to create incentives to transition from an illegal to a legal market' and for 'cultivating communities to be incorporated into legal regulation frameworks, using social justice principles'.<sup>83</sup>

The issues faced by cultivating communities were also raised by Dejusticia, which condemned the imminent return to aerial spraying with glyphosate in Colombia and called for 'programmes of rural transformation based on proper sequencing,



Informal dialogue with the UNODC Executive Director

participation and rural development’ that ‘prioritize the security, dignity and livelihoods of the rural population.’<sup>84</sup>

As in previous years, drug prevention was a recurring theme, with the Fazaldad Human Rights Institute<sup>85</sup> and the Singapore Anti-Narcotic Association<sup>86</sup> both calling for a drug-free society. In contrast, the International Council of AIDS Service Organizations, on behalf of INPUD, concluded that ‘the pursuit of a drug free world has not only failed to reduce drug production or use, but has proliferated human rights abuses globally’, highlighting the ‘stigma, violence and discrimination’ faced by people who use drugs.<sup>87</sup> Similarly, and responding to the earlier presentations in the Commission’s now regular Youth Forum session where there was an exclusive focus on prevention, Students for Sensible Drug Policies criticised the lack of transparency in the Forum’s composition and the need to promote harm reduction and the voice of young people in CND debates.<sup>88</sup>

Finally, the need for gender mainstreaming in drug policy was underscored by the World Federation Against Drugs, which called for ‘gender sensitive, trauma informed, interventions’ to tackle stigma and violence,<sup>89</sup> while CELS shed light on the severe impacts of criminalisation and incarceration on women, especially at times of the COVID-19 pandemic.<sup>90</sup>

## Informal dialogue with the UNODC Executive Director

The NGO dialogue with Ms. Ghada Waly took place on Wednesday 14 April.<sup>91</sup> Given that Ms. Waly was unable to attend the event in 2020 for personal reasons, participants were eager for the opportunity to finally hear from the Executive Director first-hand. Ms. Waly was flanked on the panel by her senior management colleagues: Jean-Luc Lemahieu (Director of the Division for Policy Analysis and Public Affairs), who took over the responses after Ms. Waly’s departure, Miwa Kato (Director of the Division for Operations) and John Brandolino (Director of the Division of Treaty Affairs). The event was moderated by the VNGOC chair, Jamie Bridge.

Whilst taking place virtually on MS Teams, the event continued with the same format of previous years, with questions being submitted to the UNODC via the VNGOC ahead of the event. Questions were posed on a range of topics, including youth, the COVID-19 pandemic, the UN System Common Position, and civil society engagement amongst others. Positively, all the submitted questions were heard during the session, with Ms. Waly reading pre-prepared responses from her Office.

In contrast to last year, UNODC failed to mention harm reduction or decriminalisation in their responses and nor were any questions asked on these

## Box 7 Side Events

Despite the side events being entirely online at the 64th session of the CND, a record breaking 113 events took place from Monday 12 to Friday 16 April. While many of the side events sadly clashed with the plenary sessions being shown via webcast, most events were attended by over 100 participants due to the open access format. However, because of the open access format and the clashes with CND proceedings, it was hard to gage the attendance and impact of the events on UN diplomats.

Popular themes for this year's side events included drug markets<sup>92</sup> (5 events), cannabis<sup>93</sup> (5 events), women and drugs<sup>94</sup> (6 events) and prevention<sup>95</sup> (5 events). Other topics included legal regulation<sup>96</sup> and human rights.<sup>97</sup> Of course, given the tumultuous year, COVID-19 was an intersecting topic for almost all the events.

This year, IDPC co-organised six side events covering topics such as legal regulation, women and protecting civil society space. Most notably, given that 2021 was the five-year anniversary of the UNGASS, IDPC held a side event<sup>98</sup> to launch their new report which takes stock of progress made on the implementation of the recommendations included in the UNGASS Outcome Document.<sup>99</sup>

As a historical analysis of CND side events based on their stance regarding drug policy reform shows, although no longer in decline, the number of progressive side events this year plateaued rather than increased.



Yennifer Martínez Murillo, Asociación de trabajadores campesinos Agroecológicos del municipio de mesetas meta, sharing how Drug policies have impacted her life as a woman cultivating coca in Colombia, at IDPC side event on the 5 years of the UNGASS

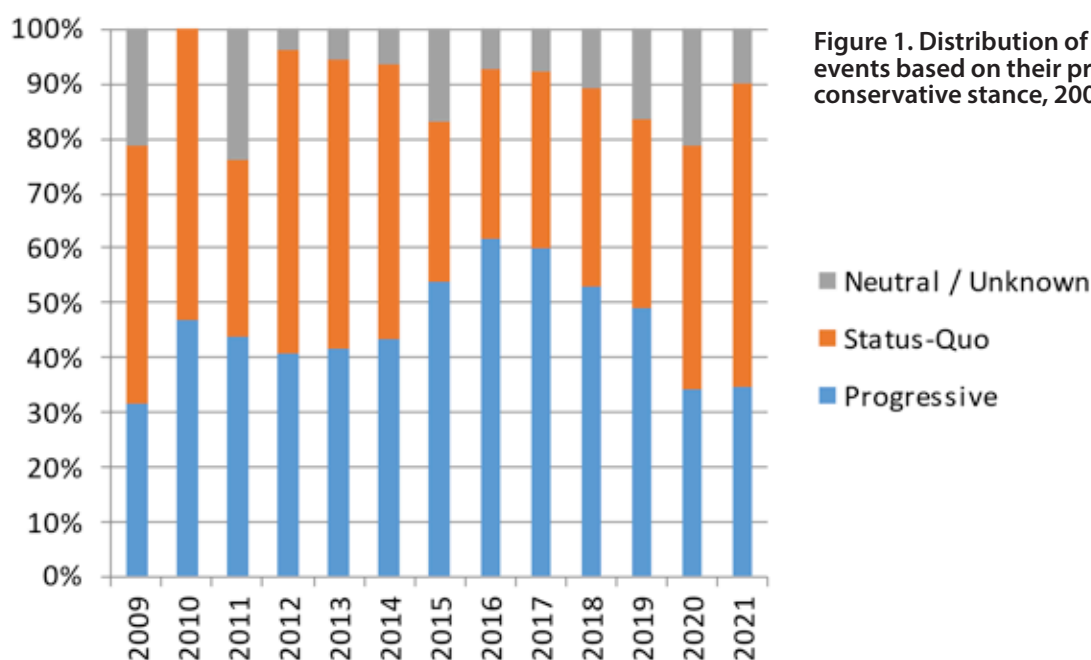


Figure 1. Distribution of CND side events based on their progressive/conservative stance, 2009-2021

Credit: Marie Nougier, IDPC



topics. Instead, UNODC referenced drug prevention numerous times, as well as explicitly mentioning that the Office is providing grants for drug prevention initiatives in Japan with the Drug Abuse Prevention Centre, as well as funding drug use prevention programmes for families and schools.

In response to the Association for Safer Drug policies and IDPC's question on the work of the UN system coordination Task Team, Ms. Waly explained that the UNODC will roll out guidance on the UN System Common Position to all UN coordinators and country teams in an effort to support member states to develop and implement drug policies. This is a welcome statement, but one with which civil society must proactively engage and hold the UNODC to account given the overall concerns that have been raised about its lack of proactivity and leadership on this issue to date.

Positively, Ms. Waly confirmed the UNODC's plans to 'strengthen partnerships' with civil society, as outlined in the new UNODC strategy 2021-2025. Ms. Waly explained that the UNODC will take part in a mapping exercise alongside the VNGOC and Alliance of NGOs on Crime Prevention and Criminal Justice to identify NGOs with whom the UNODC can engage at global, regional and national levels. Later on, Ms. Waly expressed eagerness to engage with civil society to foster exchange of experiences and invited civil society to use the VNGOC to reach out to the UNODC directly. Unfortunately, Mr. Lemahieu failed to provide an appropriate response to IDPC's follow up question on civil society providing meaningful contributions to the *World Drug Report*. Instead, he simply stated that data are collected through the ARQ via national governments as well as academic journals, while continuing to insist that the ARQ provides an accurate picture of the situation within countries.

Following on from the cannabis vote at the Reconvened CND in December, many questions focused on how it will affect the availability of cannabis for medical purposes in member states. Ms. Waly reinforced the UNODC's work with the WHO and INCB to aid member states in improving accessibility and availability of controlled substances for medical and scientific purposes. Now that the medical value of cannabis has been explicitly acknowledged in the international drug control system, it is hoped that we will see a transformation in the access to cannabis for medical use – particularly since the Director of the Division for Policy Analysis and

Public Affairs' final remark before closing was that 'those who are medically justified to get access... regretfully do not fall within that category of those benefiting from it'. This was a positive recognition from the UNODC, and a possible signal that access to medical cannabis might improve in the coming year. That said, it was also announced that the thematic chapter for this year's *World Drug Report* will be cannabis and young people, and it is likely that the narrative used will be very cautious regarding improved access to this drug.

## Informal dialogue with the INCB President

The informal dialogue with Mr. Cornelis P. de Joncheere was chaired by the Deputy Secretary of the Board of the VNGOC, Penelope Hill, and included Mark Calhoun, the new Secretary of the INCB. As with the previous year's dialogues with the President of the Board, most of the questions submitted beforehand concerned cannabis. Indeed, the Centre on Drug Policy Evaluation (Canada) kicked off proceedings by asking about the INCB's next steps on medicinal cannabis following the CND vote on the WHO scheduling recommendations. The President referred to the lack of clarity amongst countries on the requirements relating to the legal cultivation of cannabis for medical purposes, for example reporting, scientific issues, interpretation of articles in the conventions as well as describing ongoing efforts to resolve them. In this regard, he noted, the Board will prepare a questionnaire to gather inputs from civil society, although he stressed that state parties will make the final decisions. Following on from this, the Veterans Action Council (asked about the INCB's process for developing guidelines on cannabis, and the reasons for the apparent preference for the private sector's involvement over that of civil society, patients and medical doctors. Mr. de Joncheere explained that the Board's invitation goes to national governments and they decide on the composition of their delegation for the process. It was noted, however, that the INCB did invite industry representatives as well as medical specialists to the expert group meeting since the former group also possess technical knowledge. The San Patrignano Foundation then asked how the INCB will address Mexico's legalisation of cannabis for recreational use. The President said that the Board reiterates that legalisation for non-medical purposes is incompatible with article 4(c) of the Single Convention and engages with coun-

tries in dialogue about fulfilling their obligations under the Conventions. On a related point, Europe for Action on Drugs asked what the INCB can do to support the conventions given the large corporate investments in cannabis businesses, accompanied by political campaigns to reform cannabis laws, in different parts of the world. Somewhat side-stepping the question, the President responded that countries with commercial cannabis industries for non-medical use, and cultivation for illegal markets, need to ensure compliance with the conventions, i.e., articles 23 and 28. And finally on this topic, the Cannabis Education Guild (Canada) asked about the precautionary measures taken by the INCB to ensure monitoring of activities relating to the cannabis market, specifically to prevent human rights violations. The President responded that the INCB supports member state adherence to regulatory standards on human rights protection.

Moving on to a different issue, the Slum Child Foundation asked about the Board's plans for more frequent meetings with civil society during country visits when they can resume. The President referred to the almost 20 country visits conducted in the year before the COVID-19 pandemic started, which included meetings with relevant NGOs. The Community Anti-Drug Coalitions of America then asked how the INCB will work with the UNODC, WHO and others to promote drug prevention as a higher priority. The President agreed that there is a lack of commitment to sound investment in prevention and treatment programmes, while acknowledging that the conventions leave it up to member states. The Turkish Green Crescent Society asked about the INCB's efforts to ensure the prevention of the illegal diversion of ketamine while ensuring its availability of medical use which is critical during the COVID-19 pandemic. The President responded that the Board requested countries experiencing problems with ketamine to schedule it nationally, and to report their actions on a voluntary basis. As with another important medicine, morphine, countries need to take measures to ensure their availability and safe use as a medicine, he said.

And finally, IDPC asked about the steps the INCB can take to redress the tensions between the conventions and the rights of indigenous people, for instance those relating to the cultivation and use of plants under international control. The President stressed the Board's commitment to implementing its treaty mandated functions to protect human

rights and pointed out that it is mindful that governments have mutually enforcing obligations under both drug control and human rights instruments as it engages with countries on decision-making processes on the personal use of controlled substances.

## Informal dialogue with the WHO delegation

The informal dialogue between civil society and the WHO delegation at the margins of CND was introduced for the first time in 2020. It is thus welcome news that this format is consolidating with a second edition in 2021, particularly since the health perspective on the world drug situation is often under-represented in Vienna discussions. In this year's informal dialogue,<sup>100</sup> the WHO was represented by Mr. Vladimir Poznyak, of the WHO Management of Substance Abuse programme, and Mr. Gilles Forte, of the Essential Medicines and Health Products Department and ECDD Secretariat.

Still under the impact of the December 2020 vote to remove cannabis from Schedule IV of the 1961 Single Convention, which followed – in part – the recommendations provided by the ECDD, a significant number of participants went back to the issue of cannabis use, both for medical and non-medical purposes.

Mr. Forte faced several enquiries (including from IDPC) regarding the WHO's plans to conduct yet another review of cannabis, considering the widespread critiques<sup>101</sup> of the latest critical review, and of the rapidly evolving situation at national level. He did not, however, provide much clarity in return. Mr. Forte noted that the ECDD Secretariat continues to collect information on the medical use, as well as on the harm, abuse and dependence, associated to cannabis and cannabis preparations, and pointed out that the Committee would consider a future review if a substantial amount of new information would justify it.

Answering a question from the Veterans Action Council, Mr. Forte also highlighted that the WHO's global pharmacovigilance programme continues to collect information on the side effects of the recommended medical uses of cannabis-based medicines – just as it does for any other medicine.

Transform Drug Policy Foundation enquired about the prospects of a WHO expert guideline on best practices concerning the legal regulation of

non-medical cannabis, just as it has been published for alcohol and tobacco markets. In response to this, Mr. Pozniak explained that, because cannabis remains an internationally scheduled substance and therefore the only uses allowed under international law are medical and scientific, it will fall on national authorities to develop regulations for non-medical markets. However, he also pointed out that there are important lessons to be learned from existing recommendations and guidelines on tobacco and alcohol markets, such as limitations on advertising and marketing, plain packaging policies, age limits, pricing restrictions, and regulations on licensing or outlet density.

Switching to the topic of prevention, Mr. Pozniak responded to a question by Community Anti-Drug Coalitions of America by describing several interventions undertaken by the WHO to promote prevention, particularly in partnership with other UN entities, while at the same time pointing out that fostering prevention should not come at the price of denying the validity and cost-effectiveness of other interventions, like treatment and harm reduction. He also acknowledged concerns about the de-prioritisation of prevention – and broadly speaking, of drug policy – in the context of the COVID-19 pandemic, and pointed to the SDGs, and particularly to SDG target 3.5, as a hook for promoting these interventions.

In response to a question by Ungdomens Nykterhetsförbund on ‘protecting’ youth from ‘substance abuse’ during the pandemic, Mr. Pozniak stressed that for the WHO it is essential to communicate effectively to young people that the use of psychoactive substances – not only illegal drugs, but also alcohol – is not a good coping mechanism for the stresses and anxiety that can be induced by lockdowns, and the pandemic more generally. He also pointed out that states should be watchful about the side effects of relaxing regulations concerning the home delivery of alcohol, while noting that the relaxation of measures on take-home OAT could be ‘really beneficial’ to those undergoing treatment.

Youth RISE Uganda came back to the same topic, asking what measures the WHO had taken to protect the health of young people who use drugs in times of lockdown and social distancing. Mr. Pozniak confirmed that it is a long-standing position of the WHO that peers need to be involved in the design and implementation of drug responses

addressing young people, and that the WHO supports the involvement of peers in harm reduction as well as in primary prevention activities for young people. He also pointed to ongoing internal discussions at the WHO on how to increase engagement with young people.

Lastly, the Association for Safer Drug Policies Sweden enquired about the WHO’s plans concerning the implementation of the UN System Common Position on drugs. Mr. Pozniak emphasised that the WHO had substantially contributed to the elaboration of the Common Position, and that it is disseminating it through its own channels, as well as using it for the design and implementation of its drug-related technical activities – noting that the Common Position is an internal policy of UN agencies. Mr. Pozniak also mentioned that WHO is a member of the Task Team to implement the Common Position, led by the UN-ODC, which is currently working to disseminate this critical document to UN country teams. However, he not unreasonably acknowledged that in times of COVID-19 drug policy might not come at the forefront of the agenda for many country teams.

## Informal dialogue with the CND Chair

The informal dialogue with CND Chair, Ambassador Dominika Krois (Poland), was chaired by Matej Kosir, Deputy Chairperson of the VNGOC Board. It started with Actis (Norwegian policy network on alcohol and drugs) and Europe for Action on Drugs asking the Ambassador how the CND could improve member state efforts to mobilise local communities as part of their implementation of the UNGASS Outcome Document. The Chair suggested discussing it with delegations and preparing well for the meetings to ensure persuasiveness. More specifically, ‘communicate good examples of your organisation’s work’, she advised. IDPC then asked about the lessons learned by the CND Bureau and Secretariat from the last 12 months. This was particularly focused on how to ensure better online participation at the CND in the long term for civil society and member states that are not able to attend the sessions in Vienna in person. The Chair responded that this was mainly a question to the CND Secretariat, and noted that the shortcomings of the online format are evident. For example, she noted how difficult it is to negotiate documents without face-to-face informals. That said, she also pointed out that it is still a great achievement to be able to have a discussion and that the hybrid format of conducting the CND has added value and may be continued in future.



As with the informal dialogue with the INCB President, several of the questions were about cannabis. For example, the Turkish Green Crescent Society asked for clarification on whether the WHO recommendation on cannabis and the subsequent CND vote in December 2020 was a step towards legalisation. The Chair replied this is a sensitive issue seen differently by member states, and the vote was decisive so there are no plans to issue any clarification as Chair. Slum Child Foundation then asked why the CND vote on cannabis scheduling initially planned for 2019 was delayed to December 2020. The Ambassador explained that member states requested the postponement to allow more time to process the data on cannabis and its impacts and that they cannot be forced to vote on a matter. Finally on the issue, the World Federation Against Drugs asked about the strategy of the CND to protect international drug policy developments from undue influence by vested interests such as cannabis industry actors and what can be learned from the WHO in this respect. The Chair responded that as all decisions are taken by consensus, it is very difficult for any single entity to influence the whole Commission.

Moving on to different topics, FORUT asked how promising models of community prevention programmes could be made a more prominent part of the UNGASS follow-up processes towards 2029. The Chair reiterated her earlier advice about spreading information to member states, e.g., through side events. Association Proyecto Hombre (Spain) asked which quality early prevention policies and measures targeting young people should be promoted in member states with the support of civil society. The Chair once again repeated her advice about sharing information through conducting side events, and to record and post them online so that more people can watch them afterwards. The Commission prioritises young people and considers it important to include them in discussions, she stressed. The Chair also supported approaches that create a situation where children do not have to hide what they do. And finally, IDPC asked about plans to follow up after the CND on what worked and what did not work with the hybrid format, inclusive of civil society (also see Box 6). The Chair replied that there will be an evaluation, with the possibility of working with the VN-GOC to gather feedback from NGOs.

## UNODC budgetary, governance and management issues, FINGOV, etc.

As was to be expected, discussion of the Office's budget, governance and management was heavily influenced by the pandemic. In his introductory remarks the Director of the Division of Management informed delegates of the especially significant impact of COVID-19 on programme delivery. As could be gleaned from the remarks of Mr. Dennis Thatchaichawalit and the related documents accompanying agenda item 4 (Strategic management, budgetary and administrative questions),<sup>102</sup> the UNODC has reviewed its activities, coordinated the scheduling of activities with donors and national beneficiaries and taken measures to support implementation both at headquarters and in the field. Nonetheless, despite the 'rapid response' by the UNODC, programme delivery is projected to decrease by 18.5% compared with the initial budget of US\$697.9m for 2020-21. That said, beneath the immediate consequences of the pandemic, recognisable long-term fiscal dilemmas could be seen. Funding certainly remains an ongoing issue of concern.

Amidst discussions of a new strategic plan and funding model, it was clear that the Office has continued to actively engage with partners. Indeed, in 2020 the number of donors increased from 95 to 105 with special programme contributions totalling US\$325.6 million and thus 'maintaining a positive trend line'. Interestingly, most pledges, 79%, were towards the crime mandate. However, despite efforts to increase fundraising and partnerships, it became clear that 'the financial situation of the UNODC remains vulnerable'. This continues to be the case in relation to deterioration in general purpose funding combined with the added pressures on its regular budget and programme support cost funds. More specifically, general-purpose income in 2020 reached \$4.7 million, which 'reflects a stagnant trend'. Furthermore, the low levels of unearmarked funding were justifiably seen to be a 'major challenge to the effective implementation of the mandates and programmes of UNODC, as well as to its ability to manage its operations strategically, exercise effective corporate oversight, fund key activities and launch new initiatives and programmes'.

Discussion of the activities of the standing open-ended intergovernmental working group on improving the governance and financial situation of the UNODC (FINGOV) were somewhat more positive in nature.<sup>103</sup> Following Mr. Thatchaichawalit's overview, which included emphasising the importance of staff composition (gender and geographical diversity) and the Office's zero-tolerance position on harassment, the floor was given to the delegate from Spain to present a report on the working group on behalf of himself and the other co-chairs from Colombia and Brazil. Although it included a description of activities, the key point to come from the presentation was that the work of FINGOV had been extended by ECOSOC until the end of 2021. Although the working group is currently discussing what will happen after this date, it was deemed to be a welcome move considering the 'huge potential for constructive dialogue' regarding governance and financial issues.

This appeared to be a view held by the limited number of countries making statements on this item. Most speakers recognised the challenges posed by the pandemic and were positive regarding the efforts and flexibility of the UNODC in upholding programme delivery, with many specifically identifying the value of FINGOV. The USA, for example, noted that FINGOV was an 'important tool', welcomed improvements in gender and geographical representation and, somewhat incongruously bearing in mind its position of the Task Team, welcomed 'increased UNODC collaboration' with other UN entities and civil society. Other states, including China and Japan, were keen to note their appreciation for the UNODC's new Strategic Vision and related regional strategies, the first of which is being rolled out with Africa. The Chinese delegate also expressed the hope that the Office would support the South East Asia region, especially the 'Golden Triangle'. Meanwhile, more generally, Jamaica noted how the new 'Vision' and 'regional visions' were important for the future work of the UNODC.

Although the USA noted the extrabudgetary consequences of some resolutions, a point frequently and not unreasonably raised by the UNODC, it was interesting that only Jamaica highlighted the need for donors to increase support and move away from the emphasis on the Office's crime mandate. Indeed, the Jamaican delegate made a valid point when he stressed that the worryingly low level of unearmarked funding reduced the flexibility of the UNODC in delivering its mandate.

## Conclusion

In the lead up to 12 April, the hybrid format of this year's session had generated an understandable degree of nervousness among member state and civil society delegations alike. By the end of the week, however, the general view was that the approach had in the main worked well. Among the central benefits was the inclusion of small states and CSOs that under normal circumstances would have been unable to travel to Vienna. Indeed, increased access to the Commission 'via hybrid modalities'<sup>104</sup> was a point highlighted by the US delegation, among others. It will be interesting to see the extent to which the hybrid approach may be deployed to ensure continued inclusion when COVID-related travel restrictions are relaxed. However, while the secretariat of the CND – a body within an organisation built upon on the principles of human rights – found itself in an awkward position this year, the statement by Myanmar's Lieutenant General Than Hlaing certainly highlighted the need for protocols concerning the allocation of virtual speaking slots. It should also be noted how the hybrid format compounded the ongoing trend to shift substantial negotiations from the CoW, where they can be attended and observed by all participants, including civil society, to informal meetings of member states, which take place behind closed doors.<sup>105</sup>

All that said, despite the unprecedented format of the 64<sup>th</sup> session of the CND, familiar themes and trends were discernible. As is usually the case, several positive outcomes could be identified. Key among these was the ongoing support for availability of and access to controlled substances for medical purposes. It is true that the gap between rhetoric and intent remained evident with some African states continuing to push for the international control of tramadol. Yet, it was encouraging to see attempts to 'reschedule by resolution' thwarted within the CoW. In addition to continuing levels of CSO engagement, especially within the plenary, the recognition within the COVID-19 Statement of the increased risk to people with 'drug use disorders' of more severe illnesses and morality from the virus was also welcome. That said, as discussed above, it was certainly a missed opportunity that the Statement did not go further in acknowledging the role of drug policy as a driver for over-incarceration. Indeed, this seems particularly out of line with the conclusions of the recently released study for the Human

Rights Council by the UN Working Group on Arbitrary Detention, *Arbitrary Detention Relating to Drug Policies*.<sup>106</sup>

Also of note was the USA's substantial change in stance on harm reduction. That some recalibration of outlook was in place was also demonstrated in relation to the marginalisation of people who use drugs as negotiated in resolution L3. How this actually plays out in the months and years to come remains unclear, however. As could be seen in relation to other issues over the course of the week, it would be unwise to view this year's statement as a wholehearted shift from previous positions. For example, among other things it should not be overlooked that despite comments within the general debate on the need to modernise drug policy within the domestic sphere, the US statement also stressed that 'The treaties provide the framework, and the CND provides the mechanism for member states to find a way to act on key issues'; a point to which we will return.

And, as in recent years, it is member states' increasingly divergent positions on how to act on 'key issues' that are continuing to generate tensions within the system. While most states continued to emphasise the importance of the treaties as the cornerstones of international endeavour, others – though noting their ongoing value – chose to openly highlight the need for some form of reconsideration. Additionally, while simmering in the background, tensions around regulated cannabis markets for adult non-medical use cannot be ignored. This is especially so with authorities in Mexico apparently setting the mood music for a shift in policy and, even more significantly, momentum seemingly building in the USA for a change in approach at the federal level. Admittedly speculative at this point, the question of how Washington D.C might, in the context of any policy shift, deal with its obligations to the conventions is significant not only for the USA itself but also the entire treaty framework.<sup>107</sup>

On a related point, it was also interesting to note the defensive position adopted by many, predominantly although not exclusively, African states on the issue of medical cannabis after the rescheduling vote at the reconvened session of the Commission in December 2020. Considering the intersections between the drug control regime and that relating to human rights, repeated statements this year concerning application of article 39 of the

Single Convention should be regarded with caution. Indeed, although recent years have witnessed increasing divergence on the issue of human rights and drug policy, negotiations around the language in L3 on the issue of marginalisation provided a very real example of just how far apart member states remain concerning the rights of people who use drugs. Debates and related friction on the issue are unlikely to end with eventual agreement on L3. For instance, as noted elsewhere,<sup>108</sup> 'The tension between Indigenous rights and the now 60-year old 1961 Convention is a topic that will surface more strongly especially given the growing global movement to challenge damaging colonial legacies... the disproportionate impact of the "war on drugs" on people of colour is... becoming more visible and in June, OHCHR will present a report on promoting the human rights of Africans and people of African descent against violations by law enforcement'.<sup>109</sup>

At a structural level, ongoing disagreement concerning the Common Position and Task Team revealed not only differing perspectives between member states but also the complexity of informal coalitions around different issues. For example, standing shoulder to shoulder with the Russian Federation, the USA's hostility here stood in stark contrast to its position on harm reduction and marginalisation. Moreover, the Common Position and Task Team offered an insight into ongoing, perhaps increasing, dissonance within the UN system, not just between member states. For whatever reason, the UNODC's apparent reluctance to engage with this key UN document puts it at risk of being increasingly out of step with other parts of the organisation. Aware of political challenges facing the Office, not least in relation to sustained funding, the contrast in approach is becoming ever more obvious as other UN bodies, including different human rights oriented working groups, give statements at the Commission, and produce critical reports and studies.<sup>110</sup>

Amidst such a situation it should not be forgotten that since the birth of multilateral efforts to control drugs in 1912, there have always been differing views among parties to the various international instruments, including since 1961 and those that constitute the contemporary regime. As in all areas of transnational concern differences are traditionally managed through negotiation and compromise. Moreover, as discussed in detail elsewhere, the regime apparatus itself has over the years



displayed an impressive ability to absorb changes in circumstances and related policy approaches.<sup>111</sup> Nonetheless, as another year passes, apparently irresolvable differences in outlook remain, and associated tension within the system seems to increase, the question remains, just how flexible is the current system? In her statement during the opening ceremonial segment, Ms. Waly perhaps inevitably chose to highlight what seem to be the system's increasingly mythologised characteristics. 'Unity is what brought about the international drug control system, and it will always represent its greatest strength', she said before going on to stress that 'Beyond the legal texts of the conventions, we should also look to what they represent; the spirit in which these conventions were drafted and developed is one of unity and adaptability'. This is certainly a worthy sentiment. Nonetheless, within the current environment, the words of the Chair of the VNGOC in the same segment seem more apt: 'failure to adapt is a failure to survive'.

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## Endnotes

1. <https://www.flickr.com/photos/ungass2016/albums/72157718983587314>
2. Events since March 2020 online and hybrid, but first main session
3. See Munoz, M. (16 July 2020), 'Diplomacy in the Times of COVID-19', *Diplo*, <https://www.diplomacy.edu/blog/diplomacy-times-covid-19>; Millett, P. (August 2020), 'The Impact of Covid-19 on Diplomacy', *Global Partners Governance*, <https://www.gpggovernance.net/blog/the-impact-of-covid-19-on-diplomacy/>
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109. United Nations High Commissioner for Human Rights (1 June 2021), *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, A/HRC/47/53, <https://www.ohchr.org/EN/Issues/Racism/Pages/Call-Implementation-HRC-Resolution-43-1.aspx>

110. See for example the powerful statement by the OHCHR's Working Group of Experts on the People of African Descent: 'Although Black and non-Black communities all over the world possess, use, sell, traffic, and access the drug economy at similar rates, The War on Drugs has always targeted People of African descent'. Also see the Chair of UN Working Group on Discrimination against Women and Girls (Elizabeth Broderick) remarks at a side event. ER <https://www.youtube.com/watch?v=dMSVcGIR-74> ICK'S REMARKS. These seem to be following the lead of the OHCHR Working Group on Arbitrary Detention which attended the 63<sup>rd</sup> session of the CND

111. See: Bewley-Taylor, D.R. (2012), *International drug control: Consensus fractured* (Cambridge University Press); Bewley-Taylor, D.R. (October 2020), 'Politics and finite flexibilities: The UN drug control conventions and their future development', *American Journal of International Law Unbound*, **114**: 285-90, <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/politics-and-finite-flexibilities-the-un-drug-control-conventions-and-their-future-development/7083B126DB9BBCC66AAE041205489CA0>

## **The International Drug Policy Consortium (IDPC)**

is a global network of NGOs that come together to promote drug policies that advance social justice and human rights. IDPC's mission is to amplify and strengthen a diverse global movement to repair the harms caused by punitive drug policies, and to promote just responses.

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This report offers an overview of the key issues debated at the 64th session of the Commission on Narcotic Drugs, including the implications of its hybrid format, an analysis of key themes and resolutions negotiated, and highlights from civil society participation.

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