

# **Response to the 2008 Annual Report of the International Narcotics Control Board**

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**The International Drug Policy Consortium (IDPC) is a global network of NGOs and professional networks that specialise in issues related to illegal drug production and use. The Consortium aims to promote objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug-related harm. It produces occasional briefing papers, disseminates the reports of its member organizations about particular drug-related matters, and offers expert consultancy services to policymakers and officials around the world.**

### Introduction

Receiving less attention than usual (as a consequence of being published during the final stages of the negotiations on the UN 10-year review of drug policy) the INCB Annual Report for 2008 continued many of the themes of its predecessors. Perhaps the final report to be published under the chairmanship of Phillip Emafo, this document contained a wealth of technical information on the operation of the drug control system that attempts to manage the global licit market for narcotic and psychotropic substances for medical and research uses, while stifling the illicit market. Interspersed with these operational descriptions are references and discussions on certain policy issues – primarily observations on the strengths and weaknesses of the system, and what the INCB considers to be the main risks and threats to the effectiveness of that system. While much of this data and debate is a welcome contribution to the policy process, we continue to be concerned at the selective and subjective nature of the INCB’s concerns, that do not seem to flow from a balanced assessment of what constitutes non-compliance with the UN drug control conventions. The INCB continues to be quick to condemn what it sees as any move towards liberalisation of policy and practice, while ignoring clear breaches of the spirit and letter of the conventions that arise

from repressive policy in many countries.

The INCB is the “independent and quasi-judicial” control organ for the implementation of the drug control treaties. The Board was created under the 1961 Single Convention and became operational in 1968. It is technically independent of Governments, as well as of the UN, with its 13 individual members serving in their personal capacities. The WHO nominates a list of candidates from which three members of the INCB are chosen, with the remaining 10 selected from a list proposed by Member governments. They are elected by ECOSOC and can call upon the expert advice of the WHO. In addition to producing a stream of correspondence and technical assessments arising from its programme of country visits (all of which, like the minutes of INCB meetings, are never made publicly available), the INCB produces an annual report summarising its activities and views. This response to the 2008 Annual Report focuses on the INCB analysis of the history of the drug control system, and on its positions on three contemporary debates – harm reduction, the search for effective cannabis control, and the Bolivian request for reconsideration of the status of the coca leaf.

## Chapter 1 The International Drug Control Conventions: History, Achievements and Challenges

In the opening chapter of its Annual Report, it is customary for the INCB to take up the discussion of a topical theme. This year, in keeping with the reflective tone of the UNGASS review and the centennial of the 1909 Shanghai Opium Commission,<sup>1</sup> the Board has published its own reflections on the work of the UN. The text examines briefly the historical trajectory of the three conventions, elaborates its view of their achievements and the challenges they face at the beginning of the 21<sup>st</sup> century and concludes by making a short series of recommendations to the international community.

In a largely well-balanced historical overview, the Board correctly points out that drug control emerged from lengthy processes of global change, its juridical form being prefigured by equivalent movements in the fields of international relations and trade. It is interesting to note, however, that the also significant public health movement fails to receive mention.<sup>2</sup> The Report nonetheless explains how a complex web of interests and forces resulted in the eventual abolition of the Anglo-Indian opium trade to China and to the Hague Convention of 1912, which was the first international legal instrument to regulate commercial activity centred on opium. The Chapter gives a summarized narrative of the development of the present system, in which the three drug control conventions of 1961, 1971 and 1988 were adopted by the international community in order to restrict the use of narcotic and psychotropic drugs to “scientific and medical” purposes and

to facilitate their supply for these same ends. This narrative has become a familiar one over the last year, and it is not necessary to reprise it here.<sup>3</sup>

Having provided some useful context for the rest of the Chapter, the Report highlights the achievements of the extant regime, confidently noting that “The international control system for narcotic drugs and psychotropic substances can be considered one of the twentieth century’s most important achievements in international cooperation”(Para. 3.) It goes on to state that over 95% of UN members are signed up to the three treaties, representing some 99% of the world’s population.<sup>4</sup> Such a level of cooperative action is indeed an impressive achievement, although these figures do not indicate the increasingly pressing phenomenon of diverging views on treaty interpretation; an issue admittedly given space later in the Report. That said, while (licit) demand has soared over recent years, INCB is proud to point out that no cases of diversion of narcotics were detected in 2007; it acknowledges that “over-prescription, theft and diversion continue to occur at the domestic level” (Para. 3). The Chapter explains that the 1971 Psychotropics Convention was slow to achieve success, its gradual rate of accession resulting in the Treaty taking 6 years to come into force.

The 1988 trafficking Convention has enabled an appropriately globalized response to be brought to bear against drug trafficking groups, facilitating extradition, the tracking and confiscation of liquid capital, the exchange of information and resources between law enforcement agencies and so forth.

1 See UNODC Press release ‘Positive balance sheet from a century of drug control’. Available at: <http://www.unodc.org/unodc/en/press/releases/2009-02.26.html>

2 Fidler, David P. The globalization of public health: the first 100 years of international health diplomacy. Bulletin of the WHO, 2001 79(9)

3 UNODC (2009) ‘A Century of International Drug Control’, available at: <http://www.unodc.org/unodc/publications-by-date.html> See also IDPC ‘The 2008 World Drug Report: A response from the International Drug Policy Consortium’ available at: <http://www.idpc.net/php-bin/documents.pl?ID=1000179>

4 As the Report notes, there are also presently a total of 119 “narcotic” drugs and 116 psychotropic substances within the scope of these controls.

The Report goes on to repeat the UNODC's reports of progress made toward the UNGASS objectives over the period from 1998 to 2007, while recognizing that the general reduction in illicit crops has not taken place without exceptions, and is now intensively concentrated in locations such as Afghanistan. The Board notes that Afghanistan's problems are not caused by its opium and cannabis cultivation, being instead the result of political, social, economic and military instability and under-development; but that these problems are exacerbated by the cultivation of illicit crops. Finally, it notes that Oceania and, especially, Africa have not kept pace with other regions in this alleged progress toward reaching the UNGASS objectives. Much of Africa suffers from the same sorts of issues affecting Afghanistan, alongside those stemming from the inequities of global trade arrangements, by means of which developed countries pursue economic protectionist policies with respect to their own agricultural and commodity markets, thereby adding to the burdens carried by the developing world.

The core of the first chapter, however, is the section exploring the challenges the INCB sees facing the drug control system in its 100<sup>th</sup> year. It categorizes these as follows:

1. *Health-related challenges*; how to ensure the availability of narcotic drugs and psychotropic substances to meet medical and scientific requirements for pain relief and for the treatment of drug related problems.
2. *Legal challenges*; how to deal with differing interpretations and implementation of the conventions.
3. *The challenge of drug abuse prevention*; how to identify and disseminate reliable programmes and best practices that deter young people and other vulnerable segments of society from experimenting with drugs.

4. *The challenge of globalization*; how to deal with the cost benefits of globalization within the international drug control system.

These are all clearly important and timely issues for discussion and the Board must be commended for its decision to focus upon them in this year's report. It is difficult to disagree with much within the Chapter including many of its Recommendations such as those relating to greater investments in prevention, the encouragement of governments of countries where the consumption of opioid analgesics is low to stimulate rational use of those drugs through measures promoted by the Access to Controlled Medicines Programme,<sup>5</sup> recommendations for study of the Fairtrade model in relational to alternative development projects, better control of the internet for the sale of controlled substances and encouragement for governments to support multilateral initiatives against cybercrime. Nevertheless, and as will be discussed further below, while there are clearly positive points to be taken from the Board's discussion, there is much that remains problematic. Indeed, the INCB's questionable position on a number of controversial points highlighted within the Challenges section of the Chapter is reinforced at other points within the Report. While there is a certain degree overlap, the key areas worthy of attention are as follows.

<sup>5</sup> See World Health Organization website at: [http://www.who.int/medicines/areas/quality\\_safety/access\\_to\\_cmp/en/index.html](http://www.who.int/medicines/areas/quality_safety/access_to_cmp/en/index.html)

## Harm Reduction The Return of the Scare Quotes

As in previous Reports, the Board once again highlights the problem of HIV epidemics driven by injection drug use. There are references to the phenomena in relation to a number of regions, particularly South, South East and Central Asia with as a matter of fact the term HIV appearing 64 times in total (including 22 times as HIV/AIDS. See Paras. 536, 559, 671, 726, 736 inter alia.) In terms of content analysis, this reflects an improvement on last year's Report where HIV was only mentioned 54 times. The Report also contains references, although limited and fewer than last year, to the provision of sterilized needles in a number of states, including China, Indonesia, Malaysia and Viet Nam (Para. 559.) Furthermore, Opioid Substitution Therapy (OST) is mentioned at a number of points within the body of the Report. This includes, for instance, noting the existence of programmes in China, Indonesia, Malaysia and Viet Nam (Para. 554, 559), agreement among Bangladesh, India and Nepal that provision needed to be increased (Para. 653) and that a national task force on the issue had been established in Lebanon. The Board also describes various states' engagement with methadone maintenance in particular. For example, it notes the extensive use of methadone in North America (the United States and Canada) and Europe (Germany, Italy and Spain) as well as the increasing implementation of maintenance programmes in China and the Islamic Republic of Iran (Para. 105).

As this demonstrates, in fulfilling its mandate to describe the global situation relative to the conventions within the Report, the Board has little choice but to once again implicitly acknowledges the existence of harm reduction approaches. That said, the Report for 2008 in many ways represents a backward step in the Board's long problematic relationship with this increasingly widespread approach to problematic drug use. While fewer mentions of sterilized needles is noteworthy, the most obvious manifestation of this regression is

that the phrase harm reduction, which is specifically mentioned three times, is once again found within scare quotes. Indeed, in the Health-related challenges section of Chapter One, the Board notes that the advent of HIV and HCV have generated drug-related health problems that the conventions could not have anticipated, and that in the mid-1980s, some governments "faced with increasing problems involving drug abuse by injection viewed 'harm reduction' as a pragmatic response, if not solution, to those problems" (Para. 18.) What the report fails to register, however, is the fact that these strategies for the prevention of HIV/AIDS are specifically accepted and promoted by the responsible global agencies dealing with health issues – UNAIDS, the World Health Organisation, and the Global Fund to fight AIDS, Tuberculosis and Malaria.

As we noted in last year's response to the Annual Report, having the term harm reduction out of scare quotes for the first time in the 2007 Report should not have been a remarkable step. As the Board itself is forced to recognize throughout its Reports, the concept has been embraced by increasing numbers of states around the world. Furthermore, many other parts of the UN system openly engage with harm reduction and use the non-scare quoted term as a matter of course. While this is the case, it was encouraging to see the Board remove such symbolic punctuation. It is consequently disappointing to discover that in the period since the publication of the 2007 Report the Board has apparently hardened its stance and become more reluctant to accept the term as a legitimate part of the international discourse. Indeed, familiar antipathy is re-emphasised in a footnote in Chapter One where the Board sees fit to stress that "...harm reduction...is...taken to mean...measures and policies that are aimed at reducing the negative consequences of drug abuse and that do not necessarily include abstinence. The Board believes that the goal of any programme to prevent drug abuse should be abstinence" (Note 16, page 5.)

The secrecy shrouding the operations of the INCB means that we can only guess at what internal processes led to this about-face. Perhaps some of the more conservative members of the Board succeeded in reversing this small but significant textual refinement. Mindful of the recent change in Board membership and its executive officers, the IDPC will be monitoring the issue closely and with great interest.

With the use of scare quotes around the term in Chapter One setting the tone for the Report's approach to the issue, it is little surprise to discover that much of the familiar reticence, and in some instances renewed hostility, regarding harm reduction can be found in this year's publication. For example,

- In stressing that it considers certain “harm reduction” measures to run counter to the drug control conventions, the Board notes that the approach serves “primarily as a form of social control.” (Para. 29) This is a somewhat curious analytical departure for the Board, and takes it into critical territory with which it is clearly unfamiliar. Analysis of drug policy is often carried out in terms which seek to explore the power relations in play, for example in the ways that drug laws, penalties and modes of treatment function to construct, maintain or mask inequalities of wealth, status and opportunity. INCB generally remains aloof from these questions of power and politics in drug policy; it would, perhaps, be wise to continue this stance, since if the question of “social control” is to be raised, powerful arguments may be adduced in relation to the entire drug control apparatus. There is little theoretical coherence in raising the topic in this piecemeal fashion, the Board having studiously ignored it throughout its institutional career.
- While acknowledging the role of injecting drug use (IDU) as a key factor in the transmission of HIV at a number of points within the text, the Board once again remains

reluctant to applaud those nations engaging in interventions proven to reduce the spread of IDU related blood borne infections. This is the case despite acknowledgement of the international community's agreement to “reduce the adverse consequences of drug abuse to individuals and to society” (For example Para 18.) Indeed, in contrast to last year where the practice was mentioned three times in reference to Viet Nam and Malaysia, the Report does not refer to needle exchange programmes.

- In the Health-related challenges of Chapter One the Board highlights the need for authorities to provide adequate medications for OST acknowledging that such treatment is associated with reductions in illicit use, criminality and overdose deaths. Again, however, the Board's ideological reservations are brought into the equation; it recognizes that evidence-based responses to HIV include OST, but articulates this point with a substantial caveat — that such treatment “should *only be provided under a medically supervised programme aimed at eventual abstinence* and should be accompanied by adequate measures to prevent the abuse and diversion of drugs” (25, emphasis added). The restrictive stipulations placed around the provision of substitute medications arguably exceed the INCB's mandate. Advice from the Board about Members States' clinical and therapeutic decisions may be received with particular sensitivity at a time when one of its members, the Russian Tatyana Dmitrieva, has recently been re-elected amidst considerable controversy, prompted largely by her extreme views on OST, which some commentators believe to conflict with her role as a member of INCB. Further, where substitution therapy is mentioned in the rest of the Report, the practice is consistently contextualized in terms of guarding against diversion of methadone and buprenorphine into illicit markets rather than in encouraging uptake (For example, Para. 105.) Indeed, this is the

dominant context in which buprenorphine is mentioned (Paras. 120, 122, 123, 124, 137). While refusing to appropriately balance the benefits of substitution therapy with the legitimate concerns of diversion, the Board privileges the issue of diversion in one of its overall recommendations. Recommendation 26 notes, “The Board requests the Governments of all countries where methadone is used for medical purposes to be vigilant with regard to cases involving methadone diversion, trafficking or abuse and to take effective countermeasures, if necessary.” (p. 116.)

- Although the Board “acknowledges the challenge of preventing HIV transmission among persons who abuse drugs by injection and recognizes a spectrum of treatment modalities, including the use of substitution therapy” it once again challenges a fundamental principle of harm reduction by stressing that these should only be aimed at “eventual abstinence” (Para 25.) This is a point given prominence in the Preface, where the President of the Board, Hamid Ghodse, notes that although substitution programmes “have their place in drug control policy, they should not necessarily be regarded as the ultimate goal but as an interim stage that would eventually lead to the development of a healthy, drug-free lifestyle” (p. iv.) There is a valid debate regarding the appropriate integration and balance between different types of treatment for drug dependence but, in intervening in this debate in such a selective manner, the Board once again seems to be overstepping its mandate.
- As is now the norm within the Annual Reports, The Board once again adopts a critical position of those nation states pursuing what it deems to be policies that run counter to the conventions. Indeed, within the Legal Challenges section of Chapter One the Report notes that “The Board acknowledges the respect accorded

to national legal systems under the conventions but is concerned that differing interpretations of international obligations are weakening the overall efficacy of the control system.” (Para. 27) Moreover, “In the Board’s view, some Governments interpret their international obligations in ways that call into question their commitment to pursuing the aims of the conventions.” (Para. 28) These are serious claims and it should be pointed out that the Board’s own interpretation of the conventions is also just that: an interpretation. Indeed, one of the reasons that the conventions command widespread adherence is, arguably, just this interpretive space, which provides for flexibility; this is also, perhaps, their greatest asset in terms of surviving the current period of unprecedented social change. Nonetheless, the Report expresses the INCB’s concern about both drug consumption rooms and heroin prescription in the Netherlands and urges the authorities there to “comply fully with its international obligations under the international drug control conventions.” (Para 178 & 182.) While noting the explanations given for the operation of drug consumption rooms in Switzerland, the Board also expresses its discontent by urging the Government to “provide adequate treatment facilities to drug addicts in accordance with the provisions of the international drug control treaties. (Para 222) The distribution of “safer crack kits” in several cities in Canada is an additional point of tension. It is especially significant, however, that the Board arguably undermines its stated respect for national legal systems in criticizing the Supreme Court of British Columbia for its May 2008 decision to permit the safe injecting room in Vancouver to continue to operate (Para 430.) Finally on this point, in urging all countries to refrain from establishing such facilities, the Board is keen to highlight that evaluation projects in Norway provided no evidence that a “drug injection room” resulted in a reduction in overdose rates or fatalities and that it may contribute to

the perpetuation of drug abuse (Para 709.) Such a position contradicts evidence of the benefits of safer injection facilities documented in peer-reviewed literature, although this alternative perspective is not included within the Report. Similarly, although not unexpectedly, the Board also once again refrains from mentioning the 2002 analysis of the Legal Affairs section of the UN International Drug Control Programme. As is now well known, this detailed arguments justifying safer injection facilities, as well as other harm reduction programmes, and suggests that such interventions do not breach the drug control conventions. Nonetheless, the Board's rigid stance on such facilities continues to be reflected in another of the Report's overall recommendations. (See Recommendation 29, p. 116) Such a position typifies what we have referred to elsewhere as the Board's selective reticence. Indeed, while the Report continues the trend of focusing critically upon national policies that deviate from its own rigid interpretation of the conventions, it remains reluctant to challenge instances of apparent breaches of the spirit or letter of the conventions that arise from repressive policies - such as disproportionate punishment, failure to provide proven treatments or medications, or human rights abuses.

## Cannabis: Seeking Resolution?

**M**indful of the continuing profile given to the issue of cannabis use in recent international discussion and various UN documents, including the UNODC's 2006 *World Drug Report* and previous INCB Reports, it is little surprise to find the drug flagged up for special attention not only within the Foreword of this year's Report but also in the Challenges of Prevention section in Chapter One. Within the Foreword the Board suggests that "The international community may wish to review

the issue of cannabis." It points out that "Over the years, cannabis has become more potent and is associated with an increasing number of emergency room admissions. Cannabis is often the first illicit drug that young people take.<sup>6</sup> It is frequently called a gateway drug. In spite of all these facts, the use of cannabis is often trivialized and, in some countries, controls over the cultivation, possession and use of cannabis are less strict than for other drugs." (p. iv) There are clearly questions to be raised about some of these so-called "facts," many of which are also expressed elsewhere in the Report (for example Para 33 where cannabis related schizophrenia is also mentioned). However, what is perhaps of more interest here is the way the Board frames the issue.

We agree with the Board that the growing inconsistencies in the way that cannabis is treated within the conventions need to be addressed. That the drug is scheduled within the Single Convention along side heroin, yet is in effect depenalized in an increasing number of nations is a case in point. That said, we remain concerned that the Board is not approaching such issues from a technical, objective position, but with a fixed and narrow agenda. Indeed, having suggested a review of cannabis and highlighted legal challenges concerning treaty interpretation (Para. 29), the INCB does not actually offer to assist in the resolution of increasing tensions surrounding the drug's place within the international system. The Board refers to the tensions between recreational use of cannabis and its position in Schedules I and IV of the 1961 Single Convention (Para 34.) Nonetheless, other mentions of the issue

<sup>6</sup> It is interesting to note that within the Challenges of Prevention section in Chapter One the Board makes reference to the "welfare and protection of the young" within the Convention on the Rights of the Child, specifically Article 33, which requires parties to the Convention to "take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances ... and to prevent the use of children in the illicit production and trafficking of such substances." (Para 35) It is also noteworthy that such a willingness to read across to other conventions has not yet been demonstrated in relation to other human rights instruments. This includes the Declaration on the Rights of Indigenous Peoples; a piece of soft law that makes the INCB's position on the coca leaf harder to sustain.



within the Report clearly reflects its desire to tighten up controls and bring the policies of some nation states back into line with its own rigid interpretation of the conventions. For example, as in many earlier Reports, the Board criticizes the Netherlands' pursuit of the coffee shop system (Para. 29 & 178.) However, this year, the Board also makes special reference to recent moves in the Netherlands to reduce the number of coffee shops (Para 180) noting that "The Board welcomes the shift in the policy of the Government of the Netherlands regarding "coffee shops," which is an important step towards full compliance with the provisions of the international drug control treaties." (Para 182. It is also noteworthy that here the Board expresses its wish that similar moves are taken regarding drug consumption rooms within the country.) Such a rigid interpretative position is also discernable in a number of other points. For example,

- The Board states that "The relationship between the cannabis policies implemented in different countries and impact of those policies on patterns of illicit use is unclear." (Para 34) In reality a growing body of evidence suggests that drug policies have very little sustained and substantive impact upon the scale of illicit drug markets, particularly cannabis.<sup>7</sup>
- The Board welcomed the rejection of plans in Switzerland to decriminalize cannabis (Para 221)
- The Board noted its concern over the continuing disagreement between the US Federal Government and a number of US states regarding the use of "medical cannabis" (Original punctuation.) It stressed its concern that state policies "may lead to a further increase in cannabis abuse in the

United States and may affect other states." As such, and arguably overreaching its mandate by implicitly casting judgement upon the operation of the US Federal system, the Board called upon the "authorities of the United States to continue its efforts to stop that practice, which is in contradiction to national law and is in violation of article 23 of the 1961 Convention" (Para 432.) In so doing, the Board also once again ventured into the realm of determining what is and is not legitimate medical practice.

- Finally, having contextualized the issue in terms of its concern that cannabis is seen in some states as a "soft drug" and that decriminalization sends "the wrong message to the general public," the Board points out in Recommendation 21 that it "*again* (emphasis added) wishes to draw the attention of Governments to the fact that cannabis is a narcotic drug included in Schedules I and IV of the 1961 Convention and that drugs in Schedule IV are those particularly liable to abuse. The Board calls on all Governments to develop and make available programmes for the prevention of cannabis abuse and for educating the general public about the dangers of such abuse (p. 115.)

Such an attitude, therefore, represents a worrying paradox. While justifiably pointing out that the cannabis issue reflects a point of inconsistency and tension within the control regime but then failing to address it in any way other than recommending the rollback of liberal policies within certain member states, the Board itself actually does much to further systemic inconsistencies.

<sup>7</sup> See for example, Craig Reinerman and Peter D. A. Cohen and Hendrien L. Kaal, 'The Limited Relevance of Drug Policy: Cannabis in Amsterdam and in San Francisco,' *American Journal of Public Health*, May 2004, Vol. 94, No. 5., pp. 836-842.

## Coca Leaf: Increasing Rigidity

As became clear in the 2006 INCB Report, recent years have witnessed the Board's increasing concern about Bolivia's national policy towards the coca leaf. Consequently, the issue unsurprisingly figured prominently within this year's report, including within the Legal Challenges section of Chapter One. Adopting the now familiar line, the Board stressed that despite its Reservation to the 1988 Convention (Article 3, Para. 2) on the grounds that the provisions of that paragraph were "contrary to principles of its Constitution and basic concepts of its legal system," Bolivia is still bound, according to Article 25 of the 1988 Convention, by its prior obligations under the 1961 Convention (Para. 32.) This was a point reiterated elsewhere (for example, Paras. 218, 492, 505) and, displaying its refusal to engage with the issue, remained the case after the Board met with a high-level delegation from the Government of Bolivia to "discuss and exchange views...on issues related to the country's implementation of the international drug control conventions" (Para 217.) The Board's concern was also manifest in its cautionary advice to ensure that any alteration in national legislation allowing the use of coca leaf for traditional purposes and for a wide range of industrial products, should comply with Bolivia's obligations under the 1961 Convention (Para. 219.) As noted elsewhere, such a position reflects a hardening in the INCB's stance on the issue and is a long way from the more conciliatory tone shown in its 1994 supplement on the *Effectiveness of the International Drug Control Treaties*. (IDPC, *The International Narcotics Control Board: Current Tensions and Options for Reform*, Briefing Paper 7, February 2008)

In last year's Report the Board made a point to challenge any nation's justification of coca chewing in reference to Article 2 (14) of the 1988 Convention. This states, "The measures adopted shall respect fundamental human rights and shall take due account of traditional licit use, where there is historic evidence of such use." This theme is developed in a more

explicit and direct fashion this year. In noting that a "legal impasse" has developed between international and national law (Para 30) the Board makes specific reference to human rights in an effort to undermine the legitimacy of calls to reassess coca's place within the international control system. The INCB sets the scene by noting that it "believes that drug control must be, *and is*, fully reconcilable with respect for human rights" (Emphasis added.) That drug control is fully reconcilable with respect for human rights is certainly a matter of contention. However, it is also significant to note that the Board specifically notes, "the international drug control conventions do not accept the existence of a "right" to possess narcotic drugs or psychotropic substances unless they are to be used for medical or scientific purposes." As such it notes that "The position of coca leaf in Schedule I of the 1961 Convention is clear: non-medical consumption of the coca leaf without prior extraction of its principal active alkaloids, including cocaine, is prohibited" (Para 31.)

In so doing, the Board continues to adopt a worrying level of insensitivity towards what is a complex and culturally specific issue. Regarded by the Bolivian government as a major historical mistake, the current classification of coca clearly continues to conflict with culturally ingrained use; a practice that is widespread many years after the end of a 25-year transition period laid down with Article 49 of the Single Convention. The Bolivian proposal to remove coca from schedule I, where it is classified along with cocaine as a dangerous narcotic drug subject to all control measures, therefore seeks to remedy ambiguities within the international system and get beyond the "legal impasse" of which the INCB speaks. As such, it remains the view of the IDPC that the Board's antipathy to such an endeavour is not only unwarranted and unhelpful, but is also at odds with its role within the control system, particularly in requesting guidance from the CND and the WHO on the issue.

## The Real Challenges of Globalization

In its Chapter One section dealing with the Challenges of Globalization, the Board defines the phenomenon as facilitated by “successive technological revolutions that have cut the costs of transportation, information and communications...” (Para. 40.) Globalization has resulted in developing countries gaining more access to the world economy, but its benefits are viewed by the Board as being unevenly distributed. Although it does not refer to the concept, many of the conditions the Board sees as characteristic of globalization are those that social scientists have viewed as attributes of neoliberalism, the political and economic project which emerged from the Reagan-Thatcher years.<sup>8</sup> Thus, the text notes that governments “have less influence over the labour environment than in the past, particularly with regard to their more vulnerable populations. In many countries, there has been a weakening of social safety nets once provided by the state, the employer and the family, and a consequent reduction of social capital” (Para. 41.)

Unfortunately, the Board does not link these global changes with issues such as the erosion of traditional social forms, increased importance of consumerism, the growth of a broadly conceived politics of identity and the advent of postmodern culture to assist in understanding drug use amongst the young.<sup>9</sup> Nor yet does it see the legal challenges exemplified by Bolivia’s move toward de-scheduling coca, in terms of a post-colonialism that forms an important component of globalization, and that renders problematic the entire edifice of the drug control system, which, broadly speaking, criminalizes all drugs apart from those embedded in the cultural orthodoxy of European and American modernity. The advent of globalization is likely

to pose challenges which the Board has hardly begun to imagine.

Nonetheless, INCB is surely right to point to the importance of “poverty, climate change, environmental degradation, flooding, drought,” (Para. 42) in addition to shortage of food and energy and the likelihood of large scale social and political instability, for the drug control system and its operation. It draws attention to the link between the cultivation of drug crops and poverty and the need to overcome cost and sustainability in the provision of alternative development; and to the potential role for Fairtrade<sup>10</sup> projects in reducing and reversing trade the imbalances that aggravate poverty. Turning again to the forces of neoliberalism, it notes the attenuation of regulatory frameworks that accompanied deregulation of the financial markets and eases the flow of money from the illicit drug trade into licit channels. It also refers to the increasing use of the internet as a mechanism for the distribution of drugs, and the profound difficulties for governance arising with a technology that proliferates so readily across borders. To this technologically-driven challenge it links another, which is the increasing advertising and sale of counterfeit medicines “deliberately and fraudulently mislabelled with respect to identity and/or source”(Para. 50.) It reports that the WHO has estimated that 7 to 10% of all *pharmaceuticals* may be counterfeit, with other sources suggesting that the figure in some African countries may be as high as 30-40%. The Board observes that “counterfeiting is inevitably greatest in regions where regulatory oversight is weakest and where vulnerable populations can be more easily exploited” (Para 51.) To this list of threats to regulatory regimes posed by technological development is added the general category of cybercrime — “that which is enabled by or directed against electronic communications devices”(p.11) — which is increasingly initiated from jurisdictions where regulation is frail.

<sup>8</sup> See for example Harvey, D. *A Brief History of Neoliberalism* Oxford University Press 2005

<sup>9</sup> See for example Giddens, A. *Runaway World: How Globalization is Reshaping Our Lives* Routledge 2002, and Bauman, Z. *Liquid Modernity* Polity Press, 2000.

<sup>10</sup> <http://www.fairtrade.org.uk/>

While the Board quite rightly brings its readers attention to the wide range of challenges that globalisation and technological advances bring to the drug control system, they make very little attempt to construct a rationale for how their preferred response to these challenges – stricter observance of the spirit and letter of the conventions by member states – will lead to more effective drug control.

In concluding its discussion on globalization, the Board believes that “challenges to the international drug control system are at least as daunting today as they were a century ago—and perhaps more complex.” (Para 53.) It argues that the conventions maintain their relevance and are “more necessary now than in the past”(Para 53.) While it recognizes that the system is “not perfect” and points out that procedures do exist for its modification, the Board appears in practice to stifle any attempt to question the efficacy of traditional interpretations of the conventions, and to continue its defensive posture toward measures which seek to respond to the profound changes in the realities that confront systems of governance in the age of globalization. Indeed, this is perhaps exemplified in a recommendation at the end of Chapter One. Here the INCB “invites Governments to study the discrepancies between international and domestic law with a view to fulfilling their obligations under the international drug control conventions” but urges that states consider their “good faith” in pursuing the aims of the conventions (Para 55.) It is clear, therefore, that while the Board makes a symbolic yet ultimately hollow nod in the direction of treaty modification, in reality it remains hostile towards any Parties that seek to deviate from its own strict interpretation of the conventions.

This limited and selective view neatly summarises our concerns with the operation of the INCB in the early 21<sup>st</sup> century – its single-minded assumption that the current mix of laws and activities, as enshrined in agreements now almost 50 years old, are the best and only acceptable reaction to a complex health and social policy challenge. As we have pointed out repeatedly, this demonstrates a blinkered view on which aspects of the conventions (i.e. those associated with strong enforcement and social disapproval) are important to defend, and which aspects are not worthy of their attention (i.e. the ultimate objective of promoting the health and welfare of mankind, and the obligation to protect and promote fundamental human rights).

We consider that the INCB has a crucial role to play within a global control system that is fit for purpose in the 21<sup>st</sup> century, but that it will need to make significant changes to its perspectives and operating procedures in order to gain the confidence of many civil society and government stakeholders. In particular, the INCB needs to become more transparent and collaborative in its engagement with member states, other multilateral agencies, and civil society, and needs to develop a wider range of skills and perspectives amongst its elected members, and within the secretariat. The outcome of the 2009 elections of 6 members to the Board do not give us confidence in this regard, but we will continue to call for these improvements until a truly balanced and objective INCB is in place.

International Drug Policy Consortium  
388 Old Street, London  
EC1V 9LT, United Kingdom

telephone: +44 (0)20 7749 4042  
email: [contact@idpc.net](mailto:contact@idpc.net)  
website: [www.idpc.net](http://www.idpc.net)

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