

IDPC response to the 2013 Annual Report of the International Narcotics Control Board

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Executive summary

The publication of the International Narcotics Control Board (INCB) *Report for 2013* took place in the context of major shifts in the drug policy landscape. Uruguay became the world's first country to legally regulate the market for recreational cannabis, while the US states of Washington and Colorado also began the process of establishing structures for regulating their domestic cannabis markets. These measures represent a seismic shift for the international drug control system and the three treaties that underpin it.

The INCB presidency of Raymond Yans has been characterised by a sustained hostility to the reform of the drug control architecture and his foreword – the last he was to write – warns of the 'grave danger to public health and well-being' represented by the actions of Uruguay, which he goes on to term 'misguided'. As has often been the case, Mr. Yans' tone is strident and unyielding, and stretches to the limits of the INCB's mandate, which is to maintain 'cooperation' and 'continuing dialogue' with States Parties to the UN drug control conventions.¹

The main body of the *Report* is, as ever, packed with an impressive array of useful information. The least impressive area of the publication is the thematic chapter, which deals with 'the economic consequences of drug abuse'. Putting aside previous research seeking to quantify the financial and economic costs of drug use, the chapter elects instead to conduct an analysis based on a set of categories comprising

health, public safety, crime, productivity and governance. Curiously, the author fails to include references to the sources used in building his or her argument, nor does it allow for any potential benefits that may be obtained from illicit drug use. Overall, the thematic chapter simply represents an ideological defence of the present international drug control regime, conducted by carrying out a wholly one-sided account of the effects of drug use in 21st century societies. This is unfortunate, for much of the remainder of the *Report* shows improvements on previous efforts by the Board. In particular, it has reigned in its tendency toward 'mission creep' – when the intervention in question is outside its mandate and properly left to the discretion of governments – a development greatly to be welcomed. Nevertheless, the body of the *Report* contains further warnings of the dangers of a regulated cannabis market, and it is notable that Uruguay comes in for considerably more criticism around this issue than the USA.

The issue of harm reduction also remains an unnecessarily difficult one for the INCB. It is truly extraordinary that the *Report for 2013* does not make a single reference to the existence and operation of needle and syringe programmes (NSPs), let alone acknowledge the scientifically proven efficacy of the intervention in halting the spread of blood-borne diseases among people who inject drugs; nor does it encourage states to engage with the approach. Such a strategy appears to be part of a sustained attempt to reconcile the INCB's ideological and abstinence-based world-view with the reality of pragmatic

evidence-based policies operating within the territories of many Parties to the conventions. This remains the case even though the INCB's explicit attacks on harm reduction have been toned down in recent years. Moreover, the Board continues its 'selective reference' by 'welcoming' the ratification of the treaties, for example, but simply mentioning, in neutral terms, the setting up of drug treatment facilities; no 'welcome' here. A similar reticence is notable around the subject of human rights.

The Board has responsibility under the drug control conventions to ensure access to controlled drugs for medical and scientific purposes, one of its twin responsibilities, the other being the monitoring of treaty compliance in order to restrict the illicit use of these substances. The access principle is one that the Board has, historically, failed to privilege; however, one clear positive aspect of this *Report* is its emphasis on reminding governments of their duty under the conventions to provide the drugs necessary for medical use. Its continual attempts to have ketamine controlled under the international system, however, is at odds with this imperative, ketamine being such a vital drug for medical anaesthesia in developing countries.

In short, despite some marked improvements, the *INCB report for 2013* remains a deeply conflicted document, shot through with tensions; the optimists among us, however, may feel that the wind of change is at last beginning to penetrate this hidebound institution.

Introduction

If 2012 is now regarded as marking the beginning of the end of the treaty system in its long-standing form, then 2013 may be seen as the year when we began to see what the emerging new order might look like. Following on from ballot initiatives to establish regulated markets for the recreational use of cannabis late

in the previous year, 2013 saw the US states of Washington and Colorado begin to put the structures in place to implement the new and democratically instituted policies. To the south, at the national level, in December 2013, following passage of a bill through both chambers of the Uruguayan parliament, President José Mujica enacted Law 19.172. This made Uruguay the first country in the world to legally regulate the cannabis market from seed to sale. Under such conditions it became increasingly difficult to argue that either the USA or Uruguay remained in full compliance with the bed-rock of the current international drug control regime, the Single Convention on Narcotic Drugs. Amidst such tumultuous challenge and change, the fast approaching United Nations Special Session on Drugs (UNGASS) in 2016 – the timing of which is in many ways the result of the desire of some Latin American states to evaluate the current shape of the international drug control regime sooner rather than later – became a policy priority for nation states and UN agencies alike. In terms of the life cycle of the contemporary regime, then, 2013 certainly marked the dawning of an unprecedented era.

It is within this context that, on 4 March 2014, the International Narcotics Control Board (INCB or Board. See Box 1) launched its *Annual Report for 2013*.² And although the timing of the drafting process precluded inclusion of some of the events mentioned above, its content, tone and language provides an insight into the views of the Board under the often abrasive Presidency of Raymond Yans and in the face of open challenge to the system that the body has so long sought to defend. As IDPC is always keen to point out, in terms of scope, the publication represents an impressive feat of data collection, synthesis and presentation. It again contains much useful information on the state and functioning of the international drug control system, a system constructed with the aim of managing the global licit market for narcotics and psychotropic substances for medical and scientific purposes while simultaneously suppressing the illicit

Box 1. The INCB: Role and composition

The INCB is the 'independent and quasi-judicial' control organ for the implementation of the 1961 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), the 1971 Convention on Psychotropic Substances and the precursor control regime under the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Board was created under the Single Convention and became operational in 1968. It is theoretically independent of governments, as well as of the UN, with its 13 individual members serving in their personal capacities. The World Health Organisation (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 states. They are elected by the Economic and Social Council (ECOSOC) and can call upon the expert advice of the WHO. In addition to producing a stream of correspondence and detailed technical assessments arising from its 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.

market in those drugs. The *Report* is informative in relation to a wide range of issue areas, including not only the markets for what we might call traditional drugs – opiates, cannabis, cocaine and Amphetamine-Type Stimulants (ATS) – but also New Psychoactive Substances (NPS) and prescription drugs. It also comments upon the increasingly widespread phenomenon of internet pharmacies, while overlooking the rise in transactions on the 'Dark Web', an aspect of the retail market whose significance is growing rapidly. Further, the *Report* is useful as a record of the progress of parties to the drug control conventions relative to resolutions made within the Commission on Narcotic Drugs (CND or Commission).

Probably the most significant issue relating to the *Report* for 2013, however, did not make it into the text itself. Indeed, Mr. Yan's unprecedented condemnation of the death penalty for drug-related offences at the *Report's* launch in London³ is welcome if long overdue. Prior to this, the INCB had refused to take a position, not just on the death penalty but also on any human rights violation, arguing that criminal sanctions are the 'exclusive prerogative of states'.⁴ Mindful of the significance of this change of the Board's position, it is unfortunate

that it is not mentioned in the *Report*, even the President's Foreword. Presumably, this was because the decision on the death penalty was made at its session in February 2014 after the *Report* had gone to press.

Its omission, however, characterises in many ways the ongoing weaknesses with the publication. It must be said, the *Report* for 2013 is in the main an improvement upon those from previous years. In particular, it includes fewer overt instances of what we have in the past called 'mission creep'; the propensity of the INCB to exceed its mandate. This is certainly the case for the main text, excluding the President's Foreword and his comments on challenges to the current regime. However, there remains an unwillingness to comment on important issues that appear to be within the Board's purview and warrant its attention; a practice that can be referred to as selective reticence. This is the case, even though there has been a noteworthy improvement on its position on the issue of access to essential medicines.

In an attempt to address some notable aspects of the document, this response to the Board's Annual *Report* for 2013 is organised under five inter-connected headings. The following

sections consequently examine the President's Foreword, the Board's approach to the 'Economic consequences of drug abuse' in the thematic chapter, issues surrounding its lack of comment on harm reduction, drug treatment and human rights, the Board's position on access to essential medicines and its reactions to shifts in the policy landscape.

The Foreword to the Report: The last words of President Yans

Raymond Yans begins his Foreword to the *Report* for 2013 by noting that its appearance represents a milestone insofar as it is the 45th *Report* since the INCB began its work in 1968. However, the *Report* also represents another moment of considerable significance – the end of Mr. Yans' Presidency. It has been a term characterised by hostility toward those whose views differed from his own, particularly around the topic of the reform of the international drug control system. This antagonistic attitude has often been expressed openly, regardless of whether the target was a civil society organisation or a sovereign state. The most flagrant example was probably his accusation of the government of Uruguay as negligent in relation to public health and possessed of a 'pirate attitude'.⁵ This tirade followed Uruguay's decision to establish a regulated market for cannabis; it led Martin Jelsma of the Transnational Institute (TNI), to state that Mr. Yans had 'disqualified himself and should consider stepping down'.⁶

In the event, Mr. Yans chose to remain in post. However, shortly thereafter in the Board's elections in May 2014, Mr. Yans' Presidency came to an end, and he was replaced by the South African physician Dr. Lochan Naidoo.⁷ The *Report* for 2013, therefore, is the last in which the President's customary duty of writing the Foreword will fall to Raymond Yans. It is an important duty, for the Foreword sets the tone regarding the way in which the main body of the

Report should be approached and understood. In this case, the Foreword begins by celebrating the UN's development of the principle of shared responsibility since the first INCB report appeared in 1969. It is, as we will see below, a significant selection of topic.

Mr. Yans states that, 'the INCB Reports.... serve as a "stock taking" of achievements made, challenges faced and additional efforts required' with respect to the international drug control project.⁸ He clearly sees this moment as a key juncture in the life of the international drug control regime, referencing several times the approach of the UNGASS on drugs in 2016. It is this forthcoming event, we are told, that led the INCB to include a thematic chapter on 'the economic consequences of drug abuse'.⁹ The Board, with Mr. Yans at the helm, evidently wished to draw the attention of States Parties to the alleged effect of illicit drug markets on their collective pockets. As we include a detailed analysis of this thematic chapter in what follows, it will not be repeated here, though approximately half the Foreword is taken up in rehearsing its main arguments.

Following its exposition of the high economic toll of 'drug abuse', the Foreword's concluding passages contain a ringing endorsement of the three drug control conventions of the kind we have learned to expect from the Board in recent years. Drug use, cultivation, production and supply result in an 'untold amount of suffering', we are warned, and the conventions 'set out the critical requirements' for preventing these harms while enabling access to essential medicines.¹⁰ Such unmitigated praise for the conventions and their implementation, however, rests upon claims that are impossibly exaggerated. Doubtless there is much to be said in favour of the conventions; they represent an international achievement which is impressive enough, but they are not perfect and they are not immutable. Instead, these treaties are the product, like all laws and systems of guidance, of a given set of social, political and

historical conditions. The social, cultural and technological changes that have arisen in the wake of the conventions are enormous and far-reaching, and it is only reasonable that they should require occasional revisions and reforms to accommodate the realities of the present, fast-changing world. There is, however, no recognition of this fact from the INCB, or from Mr. Yans' Foreword. Moreover, Mr. Yans appears to regard those seeking reforms, or even questioning the present arrangements, as guilty of either treason or heresy. There is a rich and vibrant debate taking place regarding the future direction of drug policy, and it is not for Mr. Yans or the INCB collectively to decide which position within this debate is the correct one.

The final paragraph returns to a theme to which Mr. Yans has warmed so often, and which he introduced earlier in the text: shared responsibility. 'Drug traffickers' he informs us, 'will choose the path of least resistance; so, it is essential that global efforts to tackle the drug problem are unified'. He goes on to reprise the Board's well-attested 'concern' regarding the adoption by certain jurisdictions of a regulated market in cannabis, permitting the non-medical, non-scientific use of a substance whose proper legal status has been in dispute for decades.¹¹ Mr. Yans explains that, 'Such initiatives, if pursued, would pose a grave danger to public health and well-being, the very things that States, in designing the conventions, intended to protect'.¹² It should be recalled that these treaties were motivated not solely by humanitarian and public health considerations – the account that the INCB and the United Nations Office on Drugs and Crime (UNODC) invariably employ – but also by those of geopolitical and economic power, racism and so on. There is a wealth of historical research that shows this to be the case.¹³

The INCB mandate under the terms of the 1961 Single Convention is of special significance here. In Article 9 (5), we read: 'All measures taken by the Board under this Convention shall

be those most consistent with the intent to further co-operation between Governments and the Board and to provide the mechanism for a continuing dialogue between Governments and the Board which will lend assistance to and facilitate effective national action to attain the aims of this Convention'.¹⁴ As was so often the case during this particular Presidency, one has to wonder whether the INCB's discourse, and particularly the utterances of Mr. Yans, fulfilled the basic terms of this mandate. The Foreword concludes with his promise that the Board will engage in 'continuing dialogue...including (with) those where such *misguided* initiatives are being pursued, with a view to ensuring the full implementation of the conventions and protecting public health' (emphasis added). And so, in Mr. Raymond Yans' last words as the Presidential author of the Foreword to the *Annual Report*, he takes aim once more at his 'piratical' reformist opponents in Latin America and in the errant regions of the United States. It is to be wondered how referring to one's partner in dialogue as 'misguided' and implying that they possess little care for the health of their citizens could constitute the means 'most consistent with the intent to further the co-operation of Governments with the Board and to provide the mechanism for a continuing dialogue' and the fulfilment of the aims of the conventions. Instead, down to his final Presidential words, Mr. Yans' ideological monologues seemed calculated to antagonise the dissenters in the UN ranks.

The thematic chapter: Amateur thematics?

As noted above, the *Report* for 2013 includes a thematic chapter focusing on the 'economic consequences of drug abuse'. As we saw in former President Yans' Foreword, the selection of this topic was driven by the approach in 2016 of the next UNGASS on the world drug problem, and the chapter's rationale is that an 'understanding of the economic costs of drug abuse is necessary

to develop policies that reduce such costs' (Para. 1). The prospect of saving funds is obviously one that will appeal to governments. However, it should be noted at the outset that the analysis presented in Chapter one does not involve any actual costings, in the sense of dollar and cents figures consequential on various aspects of the consumption of drugs. Neither does it utilise any of the previous research into the question.¹⁵ Rather, it makes the observation that '(a)ttempts to calculate the global monetary burden of drug abuse...are mired in data limitations in the many areas that must be taken into account to arrive at even a rough estimate of the total global cost of drug abuse' (Para. 1). Instead of attempting to replicate or extend these efforts, a proposal it apparently believes to be largely fruitless, the author uses this chapter to develop an analysis of broad areas in which funds are expended as a consequence of 'drug abuse'. There is, as a result, a certain tension in the objectives of this analysis, as demonstrated in the opening sentence, which begins by stating that, 'Drug abuse inflicts immeasurable harm on public health and safety around the world each year...' (Para. 1). Having declared this harm to be 'immeasurable', the chapter then sets out to identify the economically costly responses to it, even as it leaves aside the difficult business of empirical research or actual economic quantification. The claim that drug-related expenditure is liable to be concentrated in various domains is, of course, one that is less than novel; however, it does provide the grounds for an ideological intervention. And an ideological intervention is, essentially, what the chapter offers. In the overall context of the *Report*, which is less strident in tone than many of its predecessors, the thematic chapter represents a disappointing return to the un-evidenced assertion of the recent past. There are, accordingly, profound conceptual and methodological flaws in the manner in which the Board takes up its thematic material, and these render the validity of its recommendations and conclusions highly questionable. These will be considered in the course of reviewing the chapter contents.

The author's initial step is to stipulate five analytical domains across which the alleged economic costs are to be elaborated. These five domains are: health, public safety, crime, productivity and governance; a section is then devoted to each.

Health

In the first example, the impact on health is considered. 'A person's health is greatly affected by drug abuse', begins the Board. 'Economically, this manifests itself in prevention and treatment costs, healthcare and hospital costs, increased morbidity and mortality' (Para. 4). Once these areas of cost are identified, they are then analysed further: so, we are told that in order to respond to 'drug abuse', societies must 'dedicate resources to evidence-based prevention, education and interventions, including treatment and rehabilitation' (Para. 5). The author claims that for each US dollar spent, 'good prevention programmes can save Governments up to \$10 in subsequent costs' (Para. 5). The chapter goes on to assert that heroin, cannabis and cocaine are the drugs most reported by those in treatment across the globe, but that only one in six 'problem drug users' who require treatment currently receive it. In Africa, it is noted, this figure drops to one in eighteen. In terms of costs, research in the United States has found that for each \$1 spent, between \$4 and \$12 is saved in criminal justice and healthcare outlay (Para. 6). Curiously, this 'research conducted in the United States of America' – like the 'research findings' that 'clearly show that investment in treatment is cost-effective' mentioned just prior to it – is not referenced. In fact, excluding a few mentions of other UN and INCB documents, the entire chapter includes no references at all. The reader is given no clue as to why the Board has elected not to identify its sources, a basic research and analytical practice taught to undergraduate students. Another glaring omission involves the lack of any mention of harm reduction, which

has been demonstrated to include a highly cost-effective set of interventions, particularly in relation to the spread of viral infection and overdose.¹⁶

The discussion of the impact of drugs on health costs continues with a paragraph on healthcare and hospitals. 'Visits to hospital in connection with drug abuse are costly to society', we are informed (Para. 7). The author goes on to explain that such visits derive from overdoses, adverse drug-reactions, psychotic episodes and the symptoms of infectious diseases that can be transmitted through injecting equipment. Finally, hospitals often treat the victims of crimes and accidents linked to drug use.

The final entry in the health section focuses on morbidity and mortality. According to the data provided here, drug-related deaths account for between 0.5 and 1.3 per cent of global deaths in the 15-64 year age range, or some 211,000 deaths annually. Of the estimated 14 million people who inject drugs globally, 1.2 million live with HIV, 7.2 million with hepatitis C virus (HCV) and 1.2 million with hepatitis B virus (HBV) (Para. 8). Further statistical data is presented; once more, no references are given to indicate the source of this information. There appears to be no recognition of the methodological difficulties involved in using drug-related death data, which are usually based on coroners' reports. Instead, the data are presented as though they are all transparent and unproblematic, which is certainly not the case.¹⁷

Public safety

The subsequent domain to be addressed is that of 'public safety'. In this category, accidents while driving are cited as the major threat, along with the environmental degradation resulting from the illicit manufacture and production of drugs. The text informs us that: 'The abuse of drugs affects perception, attention, cognition, coordination and reaction time, among other neurological functions, which affect

safe driving' (Para. 10). Several claims are made in this paragraph regarding the effect of various drugs on the ability to drive a car, including quantifications of increased risk. Again, no sources are cited. In such specific claims, particularly, such a lack of citation is unacceptable.

The other public safety factors discussed involve the effect on the environment of illicit drug production. According to the chapter, this environmental damage is the result of 'the precursor chemicals required for manufacture, the manufacturing process itself and the active ingredient or substance' (Para. 11). The consequent poisoning of humans and the environment is what generates the costs to societies and their governments. This passage is a representative example of some of the fundamental problems with the author's understanding of drugs. If we look back to the earlier phases of industrialisation, factories, chemical plants, mills and so forth impacted the environment in similarly destructive and costly ways; this was because the profit motive was not ameliorated by the regulatory actions of the state. The illicit drug business is in a precisely analogous position in the contemporary world, operating in an unregulated market driven solely by the objective of profit. It is this lack of oversight and control that results in environmental degradation rather than drug production itself or its chemical constituents. In contrast to the reports of previous years, this year's *Report* does mention the environmental costs of efforts to eradicate illicit cultivation of drug crops, such as the aerial spraying with herbicides of coca bush in Colombia, but it fails to mention the health damage.¹⁸ These policies might not only cause more harms than they claim to resolve, they are also ineffective – another point the *Report* fails to address. Indeed, 'The available evidence almost definitively indicates that aerial spraying and manual eradication of illicit crops have been very costly and barely effective in reducing cocaine production', notes Daniel Mejía, an economist with the Center

for Studies on Security and Drugs at Bogotá's University of the Andes.¹⁹ As we will see below, the absence of these kinds of contextual elements distorts the Board's analysis in other areas of the production-supply-consumption chain as well.

On the face of it, the INCB claims familiarity with the argument we are making here, as the following passage illustrates: 'Some have argued that alternatives to the present control system would result in lower costs. They argue that enforcement costs resulting from the current international drug control regime, not drugs themselves, are the source of most of the costs' (Para. 32). The chapter's mention of the argument that attributes many of these harms to the control architecture, rather than to drug use itself, has the distinct air of being added as an afterthought. In addition, it will be noticed that the quoted passage reduces the argument to 'enforcement costs' alone. This is to misunderstand the issue. A system that criminalises and marginalises has impacts in terms of health, well-being, human rights, crime, environmental integrity, democracy and community participation, and quality of life, and all of these give rise to economic consequences, as well as other effects that cannot be translated into monetary value. It is a complex system of impacts, reinforcements, impediments and repressions, and cannot be reduced to abstract savings in one domain.

Crime

In each of the domains it has selected for analysis, the chapter assembles statements and claims, and sometimes statistical data, in order to support its argument and its attribution of a wide range of economic impacts to the illicit consumption of drugs: the focus of the chapter. In the case of crime, the next domain to be discussed in chapter one of the *Report*, the psychopharmacological influence of drugs is alleged to result in the commission of criminal acts. Again, no evidence is offered in support of

this statement, merely an unidentified 'study' that found that 55 per cent of 'convicted offenders reported that they were under the influence of drugs at the time of the offence' (Para.15). With no reference cited, it is impossible to examine the methodological rigour of this unknown research. However, one wonders if account was taken of the various reasons that offenders might have for self-reporting themselves to have been intoxicated when the crime was committed – for example, it may have been treated as a mitigating circumstance and reduced the punishment and so on. Again, such data are rarely straightforward; the provision of references enables claims to be critically interrogated.

In addition, the author states that economic costs come from crimes undertaken in order to fund dependence on drugs, and from the violence resulting from disputes between criminal gangs and in the course of 'turf wars' and other conflict. Once again, it is possible to argue powerfully that the violence of disputes between trafficking groups is not connected with drugs per se, but rather with their status and function as a currency within the illicit economy. In this way, despite this chapter's shoddy attempt to repudiate a perspective it has clearly failed to understand, it can be argued that many of the economic and social harms derive from the international control system rather than the substances known to our society as 'drugs'.²⁰

The 'economic-compulsive' element of crime refers to the funding of dependence by theft, burglary and so on. Once more, the behaviour in question is largely the product of the present control architecture. The 'heroin addict' of the popular imagination uses his or her drugs in a back alley in some urban ghetto, usually by injection; equipment such as needles and syringes are often shared, largely because they are illegal, or stigmatised, or both, and this affects their availability. Sharing equipment, in turn, results in the transmission of blood-borne infections such as HIV, HCV, HBV, and the individual's health suffers accordingly.

Moreover, the heroin injected in these radically unhygienic conditions is impure, and the materials with which it is cut are unknown. It will have been adulterated at multiple steps in its journey from the remote territories in which the poppy was cultivated, passing through the hands of the transnational trafficking groups that shipped it to Europe or the United States, and when it was sold on through wholesale and mid-level markets, and lastly to retail sources prior to its entry into the veins of our 'typical addict'. Due to this repeated cutting with unknown substances, the purity of the drug is impossible to gauge; it is likely to be severely weakened, while a relatively pure batch can easily cause overdose. In addition to adulteration, the price of this heroin has increased thousand fold; those located at each layer of the distribution system are motivated solely by the desire for profits. The exorbitant price paid by the dependent user is met through recourse to large amounts of petty crime. This is a full time occupation, a lifestyle in which there is no money left over for buying clothes, no time left to wash or care for the body; all energies are directed at obtaining money and buying heroin, while avoiding the attentions of the police and other governmental agencies. This – albeit a stereotypical image – is what it means to consume heroin under the present regulatory system.

An alternative is provided by the system known as 'Heroin Assisted Treatment' (HAT), in which the user is provided with clean heroin of a consistent quality. This is used under medical supervision, and there is no sharing of equipment – as the programme provides sterile needles and syringes – and therefore no transmission of viruses. Additional medical and social services are available, and overall the individuals involved are likely to enjoy a very different quality of life from that described above.²¹ Both scenarios involve people who use drugs, but the regulatory context is radically different, and so is the outcome. A study of the HAT programme in Switzerland showed that people who inject drugs found a steady, legal

means for their dependence; their illicit drug use was substantially reduced as well as their need to deal in heroin and engage in other criminal activities. By removing local 'addicts' and dealers, Swiss casual users found it more difficult to make contact with sellers.²²

Productivity

In terms of productivity, the chapter's fourth domain, the economic consequences stem from the non-participation of people who use drugs in the labour market, or from compromised performance. 'Studies have put the costs of lost productivity borne by employers at tens of billions of dollars' (Para. 20), we are told, but without any clue as to what those studies are. Further to this, the text informs us, workers cannot do productive work while they are in treatment, hospital, prison or the morgue. The claim that people who use drugs cannot undertake productive work while in treatment – for example, opioid substitution therapy – is one for which there is no evidence, and many people do so successfully.²³ Indeed, more people would be able to enter employment were it not for the stigma that surrounds the use of certain drugs.²⁴

Governance

In the final domain, that of governance, the performance of government is affected by corruption, which results in ineffective law enforcement. The chapter acknowledges in this respect that, 'these connections may not be straightforward' (Para. 24), and does seem to refer only to the further expansion of drug crops, which makes the argument somewhat circular. The single additional effect mentioned by the text is the financing of terrorism through trafficking.

In the course of its overall analysis, moreover, the author makes some curious assertions that appear to be simply factually incorrect. For example, the claim that, 'It is sometimes argued that criminal organisations might be deprived

of revenues if drugs were legalised, as alcohol is. However, those criminal organisations obtain their resources not just from illicit drug sales...' (Para.35). According to those who have researched organised crime, however, while these groups certainly do exploit other illicit areas for profit, drugs remain their most important and largest source of funds. While the removal of illicit drug market opportunities will of course not lead to the disappearance of organised crime, reducing its power and wealth is surely a valid aim. As the UNODC has stated, drug trafficking 'continues to be the most lucrative form of business for criminals, with an estimated annual value of \$320 billion. In 2009, UNODC placed the approximate annual worth of the global cocaine and opiate markets alone at \$85 billion and \$68 billion, respectively'.²⁵ Elsewhere, it has stated that: 'The largest income for transnational organised crime seems to come from illicit drugs, accounting for a fifth of all crime proceeds.'²⁶

A need for a more balanced and evidenced approach

Overall, the thematic chapter represents an ideological defence of the present international drug control regime, conducted by carrying out a wholly one-sided account of the effects of the use of drugs in our 21st century societies. It is an example of INCB at its worst, relying on assertion and disdaining research, it contributes little of value to the forthcoming review of the drug control system, and of the problems and challenges our societies must confront around the use and regulation of drugs over the coming decades. A more balanced and constructive approach would have been to look at the economic consequences of illicit drug markets, acknowledged their complexities and make a serious attempt at analysing three questions:

- What are the types of costs arising from illicit drug production, distribution and consumption, and what can we say about their scale?

- In what ways does the control architecture itself contribute to those costs?
- What can reliable research tell us about the policies and programmes that seem to be most effective in reducing these costs?

Such analyses will be challenged by immense complexity, will always contain choices about values, and will probably remain chronically provisional. Despite these difficulties, a body such as the UN is perhaps best placed to undertake such a venture. Unfortunately, this chapter of the INCB *Report* evades the challenge, instead repeating the weary rhetoric of policy failure, and doing little to inform us of better ways to deal with a set of problems that is both perennial and continually renewed.

Still selective reticence – Harm reduction, drug treatment and human rights

As was the case with the *Report for 2012*, the Board's most recent offering once again refrains from blatant examples of 'mission creep' and illegitimate comment upon the policy choices of sovereign jurisdictions. This is another example of an ongoing enhancement in the overall quality of the main body of the text. However, despite this vast improvement in approach, the *Report* retains too many instances of selective reticence. Although present in relation to a number of themes, this is most obvious with regard to harm reduction, particularly in connection with people who inject drugs, drug treatment and the related issue of human rights.

Harm reduction

As is always the case, and inevitable within any survey of international drug policy around the world, the *Report for 2013* at various points notes 'the abuse of drugs by injection', on occasions

uses the less pejorative term, 'intravenous drug users' and refers to the often concomitant existence of HIV and other blood-borne diseases. To be more precise, HIV is mentioned 33 times. Such references come within the context of national drug control policies and/or the state of particular drug markets and associated drug using populations. Consequently, for instance, the Board informs us of the 'increase in the abuse of drugs by injection and in HIV infection' in Kyrgyzstan (Para. 50) and that there are 'indications that the abuse of heroin and other drugs by injection is increasing in Kenya, particularly along the coast and in large urban centres' (Para. 88). While noting that 'Over the past decade, intravenous drug abuse in North America has declined significantly' we are also informed that 'Approximately 13.5 per cent of intravenous drug users in the region are estimated to be infected with HIV' (Para. 415); a statement that fails to mention disputes around the HIV data within the UNODC's *World Drug Report 2013*.²⁷

Furthermore, the Board notes that 'East and South-East Asia reported high levels of injecting drug abuse, accounting for 27 per cent of all injecting drug users worldwide injecting heroin, amphetamine-type stimulants, tranquillisers and sedatives' and that 'The public health risks' in the region 'include a higher prevalence of HIV/AIDS among drug injecting users' (Para. 502). Additionally, among other examples, we are told of 'new trends' regarding the injection of methamphetamine within Iran and the associated 'increased risks of blood-borne infections, such as hepatitis and HIV/AIDS' (Para. 602), HIV among 'injecting drug users' in Lebanon (Para. 605) and within Eastern and South East European countries (Para. 667). Indeed, according to the *Report* 'About 30 per cent of the global population of injecting drug users infected with HIV/AIDS' live within these regions (Para. 667).

In this context, it is astonishing that within its *Report for 2013* the INCB does not make a single reference to the existence and operation of needle and syringe programmes (NSPs), let

alone acknowledge the scientifically proven efficacy of the intervention in halting the spread of blood-borne diseases among people who inject drugs and encourage states to engage with the approach. This remains the case even when, for example, the *Report* notes that 'In Kenya, the availability of services for the treatment of persons who abuse drugs by injection is low compared with the estimated number of such persons, *and that this is of particular concern given the increased likelihood of the spread of blood-borne diseases*' (Para. 88, emphasis added).

Such an unbalanced portrayal of both the world's policy and scientific landscapes is unfortunately a more serious case of selective reticence than last year. Then, as IDPC noted, despite the operation of NSPs in 86 countries and territories, the *Annual Report* only acknowledged the existence of the intervention twice.²⁸ Mindful of the occasional reference to, if not positive comment on, the operation of opioid substitution programmes within some countries (see for example Singapore, Iran, China, India, Nepal, New Zealand and Vietnam, Paras. 100, 602, 504, 550-1, 554, 696 and 235 & 485 respectively) it is difficult to see how such a complete omission of NSPs from the *Report for 2013* can be anything but deliberate. In fact, such an approach can legitimately be seen as part of a long-running attempt to reconcile the INCB's predominantly ideologically grounded abstinence-based world-view with the reality of pragmatic evidence-based policies operating within many Parties to the conventions.

It is true that the INCB's overt hostility to the harm reduction approach has receded in recent years. It is mentioned in a matter of fact manner once in relation to Australia's national drug control strategy for 2010-2015 (Para. 105). Yet, the comprehensive lack of reference to NSPs can be regarded as an implicit, but at the same time glaring, indication of the Board's ongoing discomfort with interventions that accept continued engagement by people who inject drugs with the illicit market. The Board continues

to openly criticise as running at odds with the treaties the 'medically supervised injecting centre' in Sydney, Australia, (Para. 109), 'trusts that the Government of the Netherlands will review its policy on "drug consumption rooms"' (Para. 58) and, in relation to Canada, 'reiterates its position that the establishment and operation of drug consumption facilities is inconsistent with the provisions of the drug control conventions' (Para. 367). Despite a growing evidence base regarding their efficacy,²⁹ the controversial nature of drug consumption rooms within some quarters, both at the national and international level, allows the Board to continue to hold such a position. In relation to NSPs, however, a combination of widespread engagement by states, a range of UN body endorsements – including from UNODC, WHO and UNAIDS³⁰ – and the solid evidential base underpinning their operation³¹ precludes similar open criticism. As such, it appears as if the Board's only recourse for disapproval is omission from the *Report* and a not so subtle attempt to write the interventions' existence out of the entire account.

It is also important to point out once again that the Board seldom commends states upon the implementation of health-oriented policies. For example, while noting Vietnam's moves to expand methadone maintenance treatment among 'the country's large population of HIV-vulnerable injection drug users' (Paras. 235 & 485), it does not go as far as commending the policy. This is in contrast to other sections of the *Report* where it 'welcomes' the ratification of the drug control treaties and the implementation of a range of law enforcement policies, including, despite arguably an issue that is beyond its mandate, those relating to money laundering (see for example Paras. 67, 106, 509 and 574). Compounding this is the fact that, as in previous years, the INCB chooses not to comment upon countries where there are bans on the WHO-listed essential medicines methadone and buprenorphine. Mindful of the Board's acknowledgement of the high levels of HIV/AIDS among people who inject drugs in East

and South East European countries, the lack of mention of the restrictive policies of the Russian Federation is acute. As discussed further below, it is also at odds with some of its more positive comments on access to essential medicines made elsewhere in the *Report*.

Drug treatment

A similar tension and asymmetry can be seen with regard to the *Report's* references to drug treatment. As IDPC has discussed in previous responses to the INCB's *Annual Report*,³² while there are numerous mentions of drug treatment, there remains little discussion of what is meant by acceptable treatment that adheres to fundamental human rights standards. Indeed, although the Board must be commended for its comments regarding practice within Cambodia, there remains within the *Report* an ambiguous position on policy in other countries.

Following a mission to Cambodia in December 2012, the Board notes its concern regarding the Cambodian authority's focus on 'lower-level drug traffickers and drug abusers' and that 'drug abusers are being treated in compulsory treatment centres'. As such, the Board 'urges the Government of Cambodia to continue developing community based programmes for the treatment of drug abusers throughout the country' (Para. 76). Although arguably a somewhat tepid critique, this is a welcome corrective to the Board's lack of comment on the use of compulsory treatment centres in that country in its *Report for 2012*, a position that bordered on condoning human rights abuses. Indeed, that the Board also explicitly encourages governments in East and South East Asia to continue to expand treatment services provision, including the introduction and development of voluntary treatment alternatives, such as community-based treatment, and to facilitate access to treatment and drug prevention services for all people who use drugs (Para. 503) must be welcomed.

That said, there remains a lack of clarity in relation to the situation within the region and regarding what constitutes appropriate treatment. For example, elsewhere within the *Report* the Board notes without comment that in Singapore 'Drug treatment in the country is compulsory' (Para. 100) and that in China, alongside the operation of community-based programmes and 'methadone maintenance treatment clinics', '202,000 individuals were placed in 678 compulsory drug treatment centres' (Para. 504). With regard to West Asia, the Board notes without comment that in Kazakhstan, authorities are introducing a range of legislative initiatives 'including the establishment of compulsory treatment programmes, instead of incarceration, for drug addicts committing minor criminal offences' (Para. 569). Mindful of the widespread condemnation of compulsory centres for drug users (CCDUs) within the UN system, a position endorsed by UNODC, such ambiguity remains problematic.³³ As with its recently announced stance against the death penalty for drug offences, it is surely time for the INCB to clarify its position on CCDUs and come out unequivocally in opposition.

One can speculate that failure to do so and be clearer on the issue of appropriate treatment is linked to the Board's position, or lack thereof, on human rights. For, in relation to human rights questions in general, the INCB continues to effectively isolate itself from what might be called the international human rights regime and related treaty bodies, and represents an obstacle to the systemic coherence that the UN seeks to achieve. The Board still appears reluctant to meaningfully engage with many human rights issues and abuses, and fails repeatedly to draw attention to countries' obligations under relevant international law. Were the Board to give prominence to the issue when reviewing and commenting upon national policies, it is likely that approaches incorporating the use of CCDUs would be more roundly condemned. Indeed, it is worth noting that the term 'human rights' is mentioned only

once within the *Report for 2013*. And then it is a direct reference to policy discussions taking place within Mexico (Para. 371) rather than an observation in relation to broader normative standards that should underpin all aspects of drug control. In this light, it is disappointing that in Recommendation 1 concerning a 'balanced approach to drug control' and incorporating the Board's encouragement to states to 'ensure that an adequate and sustained level of investment is made in prevention, treatment and rehabilitation programmes' there is no explicit opposition to compulsory treatment or a call for adherence to human rights standards (see Para. 699). Similarly, this is lacking at other points within the *Report* when the Board encourages states to adopt 'comprehensive' and 'well balanced' national drug control strategies (see for example in relation to Kyrgyzstan, Para. 50). In drafting Recommendation 1, the Board also misses an opportunity to call for the provision of gender-sensitive treatment. Indeed, while the Board must be commended for raising the issue at various points throughout the *Report* (see for example Paras. 55, 84, 336 and 409) such scattered references make it easy to overlook this important policy consideration.

Access to essential medicines: An improving, but still contradictory, position

As is increasingly well known, the Board has, in cooperation with national governments, an important role to fulfil within the international system in ensuring that adequate supplies of licit drugs are available for medical and scientific uses. As the *Report* notes, within the conventions this is given equal status to the prevention of diversion of drugs from licit sources to illicit channels (Para. 167). While this is the case, among other organisations and experts, IDPC has noted on a number of occasions that such a responsibility has

frequently been overshadowed by the Board's concern for diversion, especially in relation to substitution treatment programmes.³⁴ Consequently, in its comments and positions the INCB often privileges law enforcement and drug control over the facilitation of access to essential medicines. The *Report for 2012* was representative of this practice in that it made relatively limited reference to the lack of availability of drugs for medical purposes in many parts of the world.

What might be referred to as an aversion to diversion remains. It is, however, a positive move that the *Report for 2013* is not only replete with mention of national shortcomings on this issue, but also crucially includes comment and recommendation that these need to be addressed. In light of uneven patterns of consumption of narcotic drugs for pain relief, the Board 'calls' in general terms 'on Governments to ensure that substances under international control used for pain relief are available and accessible to people in need and asks Governments to make every effort to facilitate that process' (Para. 227 emphasis added). This is a position also repeated among chapter four's recommendations. Here, under the heading, 'Availability of opiates for pain relief', the Board recommends that 'all Governments ensure that internationally controlled substances used for pain relief are accessible to people who need them and asks Governments to make every effort to facilitate this process, including through the education of health professionals' (Recommendation 5, Para. 703). More specifically, among other statements, at various points in the *Report*, it flags up and recommends remedial action concerning shortcomings in the availability of opioid analgesics in Cambodia (Para. 76) and 'drugs for medical and scientific purposes' in Mozambique (Para. 97) and Haiti (Para. 82). It also comments on limited access to essential medicines for pain and/or palliative care in Indonesia (Para. 84) and Kenya (Para. 87) and expresses concern regarding the lack of availability of opioids for the 'treatment of pain'

in Croatia (Para. 113), Guatemala (Para. 117) and countries within South Asia (Para. 525).

Moreover, in a rare instance of commending a policy not directly related to the tightening of law enforcement measures, the Board 'welcomes' the efforts of the Government of India in improving accessibility to opioids, although such commendation was also linked with the maintenance of 'adequate controls' (Paras. 122 and 234). Indeed, although the Board must be applauded for its increasingly proactive approach to ensuring access to essential medicines, it is difficult to ignore what continues to be its contradictory position on what it defines as legitimate use and 'Substances not under international control'. This is a topic discussed within every regional section of chapter three, 'Analysis of the world situation' and, despite its lack of mandate to deal with substances not scheduled under the UN conventions, driven by its preoccupation with diversion.

As discussed in detail in a recent report by IDPC and TNI, *Scheduling in the international drug control system*, in recent years the Board has actively encroached upon the mandate of the WHO in an attempt to ensure that certain drugs are brought under international control.³⁵ Notable among these is ketamine – the focus of a scheduling and mandate issue that IDPC touched upon in its response to the Board's *Report for 2012* and has been explored elsewhere.³⁶ In many 'developing countries' ketamine is often the sole available anaesthetic, and due to its unique properties the most appropriate for difficult surgical environments. It is also consumed recreationally in some parts of the world as a hallucinogen. This is a form of consumption that has grown in recent years and has prompted moves to control the substance. Ketamine currently remains unscheduled at the UN level, and according to the WHO's Expert Committee on Drugs and Dependence (ECDD) the application of international controls would likely create a 'public health crisis' in African countries where the drug is widely used for

medical purposes.³⁷ Such a view is based on the well-founded belief that, far from merely regulating the market for certain substances and reducing 'abuse', international control risks greatly restricting their availability for legitimate uses, a point well illustrated by the fact that the Board is increasingly urging governments to improve access to internationally controlled drugs for medical purposes.³⁸ It is, in addition, a point acknowledged by the Board itself in its role as consulting partner to the WHO's Access to Controlled Medications Programme.³⁹

As such, in pushing against the WHO's advice to keep ketamine unscheduled at the UN level, the Board seems intent on creating an environment where the 'rational use' of drugs⁴⁰ is increasingly difficult to realise. Put simply, on the one hand the INCB is quite rightly championing improved access to controlled substances for legitimate purposes. Meanwhile, on the other hand, it is encouraging the expansion of that list of controlled drugs and in so doing potentially further limiting access to essential medicines from the licit market. It is therefore ironic that, within the broader context of attempts to schedule a drug like ketamine, when calling for the government of the Lao People's Democratic Republic to 'take steps to ensure adequate availability and rational use of pain relieving medication', the Board also calls for an 'increase in the number of trained and qualified professionals who can administer opioid analgesics' (Para. 91). Here the INCB overlooks the fact that in many so-called 'developing countries' ketamine is used in medical procedures precisely because, unlike opioids, its administration does not require highly skilled medical staff.⁴¹

It is within this broader context that the Board's preoccupation with tramadol, a substance also not under international control, becomes a point of concern. Tramadol is a synthetic opioid analogue of codeine with an analgesic effect comparable to pethidine and morphine but with fewer adverse side effects. It is widely used for

the treatment of acute and chronic pain, with its consumption increasing more than tenfold between 1993 and 2000. As a recent TNI report points out, in 2006 the ECDD noted that 'it would be difficult to explain such a rapid increase in tramadol consumption without considering its "regulatory advantage" on the competitive market for analgesics drugs'. The authors of *Bouncing back: Relapse in the Golden Triangle* note that 'Since most opiate analgesics are difficult to obtain because of overly stringent regulations, tramadol's non-scheduled status offered a welcome alternative'.⁴²

As has been the case with ketamine in recent annual reports,⁴³ the 'abuse' and trafficking of tramadol is noted at numerous points within the publication for 2013. More precisely, it receives 51 mentions and, while these are more or less worldwide, the drug appears to be a key area of concern in countries in the Middle East, particularly Egypt (Paras. 325, 562, 595 and 597). In this regard, the Board 'calls on the countries in the region to remain vigilant vis-à-vis the apparently growing non-medical use and/or abuse of tramadol and urges countries where diversion and illicit trafficking already occur to *consider the adoption of more stringent control measures* over the trade in and distribution and dispensing of tramadol to ensure that preparations containing tramadol are dispensed for legitimate medical use and to limit their diversion into illicit distribution channels' (Para. 597, emphasis added).

More significantly, however, the Board's concern regarding the 'abuse' of tramadol extends to its inclusion as one of the Report's 'Special topics'. This was a result of an Egyptian-sponsored resolution at the CND in 2013, itself arguably the product of the Board's concern regarding 'abuse' of the drug within Egypt in its *Report for 2012*. The 'Global development in the non-medical use of tramadol' section of the *Report*, is based on information gathered via an INCB questionnaire and reveals some interesting, and for the Board no doubt disappointing, information. Indeed,

although 33 of the 81 countries responding to the questionnaire 'reported non-medical use and or abuse' of tramadol (mostly providing anecdotal information) (Para. 265), only five of the 32 countries responding to the specific question indicated that the 'abuse' of the substance 'posed a serious risk to public health' (Para. 267). Furthermore, 72 per cent of the 46 countries that responded to the specific question about control measures 'were not considering placing tramadol under control, expressing concern that the introduction of control measures would limit accessibility and make doctors reluctant to prescribe the drug' (Para. 266).

As the authors of *Bouncing back* highlight, 'The Board had difficulty hiding its disappointment on this point in concluding, "It seems that a number of States do not intend to strengthen control measures for tramadol because they do not want to limit accessibility and because they do not have strong evidence of abuse and illicit trafficking"'.⁴⁴ While the Board rightly acknowledges that it is 'important to ensure that tramadol is available for medical purposes' (Para. 270), it seems clear from a close reading of the *Report* that its preeminent concerns remain diversion and illegitimate use. Although not wishing to downplay the negative health consequences of the non-medical and quasi-medical use of tramadol, such a focus is problematic since it must take into account the broader policy context and the INCB's own role in generating an environment where what it terms 'abuse' takes place. Examination of what is implicitly seen by the Board as little more than recreational use reveals a 'complex picture' in which 'tramadol seems to have played a crucial role in filling a gap caused by over-restrictive drug controls on opiates that have excessively limited their availability for medical purposes'.⁴⁵

Reactions to shifts in the policy landscape

Mindful of the events that took place in the months between the publication of the *Report for 2012* and the final drafting of the Board's latest *Annual Report*, it is not surprising that, in addition to mention in the President's Foreword, the publication contains substantial comment upon the significant policy shifts taking place in the United States and Uruguay.

While this is the case, it is also worth stressing that the Board remains critical of a number of other policy approaches and developments that will be recognisable to those familiar with recent INCB annual reports. These include the 'so-called coffee shops' in the Netherlands (Paras. 54-56 and 623) and, with some justification, 'medical cannabis programmes'. Many of these medical programmes, the Board correctly argues, continue to operate in a manner that is inconsistent with the provisions of the Single Convention, i.e. without oversight of an appropriate government agency as laid out in Article 28 (see for example Paras. 169, 374 and Recommendation 3, Para. 701).⁴⁶ On the issue of medical cannabis schemes, the Board is also quick to 'acknowledge the positive changes that have been made to the medical cannabis access scheme in Canada, in particular the phasing-out of personal cultivation and the adoption of other measures aimed at preventing diversion' (Para. 380).

Interestingly, despite its almost apocalyptic warnings in previous reports about the ramifications to the international control regime of the Plurinational State of Bolivia's withdrawal from the Single Convention and re-accession with a reservation on the traditional use of the coca leaf, the Board makes no comment on the topic. In fact, it merely notes the revised state of affairs in Bolivia (Para. 418), and highlights that 'the traditional habit of chewing coca leaf has not been abolished in Peru, as required under the 1961 Convention...' (Para. 61). Reluctance

to engage with the issue of coca chewing in Bolivia is perhaps unsurprising since, while undoubtedly a significant moment of change in the history of the regime, the country-specific nature of the move did not bring about substantive change to the entire international framework as the INCB had warned.

The same cannot be said, however, about the creation of legally regulated markets for cannabis in the US states of Colorado and Washington and, at the national level, Uruguay. It is for this reason that, while in many ways a futile attempt to challenge such policy shifts after they have already taken place – although at the time of the *Report's* writing not fully approved and/or implemented – the Board devotes considerable space to the issue. To be sure, the INCB grabs a number of opportunities within the *Report* to point out that legislation regulating the use of cannabis for non-medical and non-scientific purposes contravenes the Single Convention (see for example Paras. 169, 375, 712 and 713). In so doing, it puts forward its views in relation to the policy shifts in the 'Americas' collectively, as well as the specific situations within the United States and Uruguay. In all these instances, the Board is on solid legal ground regarding the tension between the new policies and the 1961 Convention.

That said, other aspects of its analysis are questionable. For example, it remains uncertain whether, as the Board asserts with confidence, regulated cannabis markets 'would have a serious impact on the health of their populations, particularly young people, at a time when there is increasing scientific evidence of the harm caused by drug use and abuse' (Para. 340). This theme is reiterated in the *Report's* concluding chapter. Here the Board 'urges all Governments and the international community to carefully consider the negative impact of such developments' [the creation of regulated cannabis markets] and goes on to note that in its 'opinion, the likely increase in the abuse of cannabis will lead to an increase in related public health costs' (Recommendation 2,

Para. 700). With reference to Uruguay, the 'Board further urges' the Government 'to carefully consider all possible consequences on the health and welfare of its population, in particular its youth, before embarking on a course of action that would permit the sale of cannabis herb for non-medical purposes' (Recommendation 15, Para. 712).

While there is little dispute that cannabis is not a harmless substance, proponents of legal markets within the USA, Uruguay and beyond would contend that a regulated framework will do more to safeguard public health and protect young people from both the harm of cannabis use itself and policy-related harms than prohibition-oriented approaches, in particular the violence generated by the illicit market. Similarly, while softened by use of a qualifying modal verb, it is also far from certain that, as the Board contends, regulation 'could contribute to illegal markets, crime, trafficking, corruption and violence, as well as transmit ambiguous messages regarding the health dangers of drug use and abuse' (Para. 340, emphasis added). Beyond the point that such comment is arguably beyond its mandate, the Board can, in particular, be taken to task on the concept of ambiguous messages, a familiar defensive tactic deployed in this instance to both the United States and Uruguay.

For instance, the Board refers to the findings of the National Institute of Drug Abuse Monitoring the Future survey for 2012 and attempts to link a rise in the use of cannabis among adolescents, with 'falling risk perceptions': perceptions, that had altered 'in line with ongoing discussions on legalization of cannabis in various states of the United States' (Para. 410). Similarly, 'The Board notes with concern the low perception of risk regarding cannabis abuse by the young population in some South American countries'. However, in focusing on Uruguay in isolation, it suggests that the reduction in students' perceptions of the risks associated with recreational cannabis use

have been influenced by discussions around the creation of a regulated market within that country (Para. 486). In disingenuously failing to provide information from other South American countries or, in more general terms, acknowledge that changing perceptions of risk are complex and affected by multiple variables, the Board dangerously simplifies the issue.

Indeed, while the argumentation in both instances is plausible, causality is very difficult to prove and consequently warrants far more caution than is given. In Colorado, for instance, new survey data indicate that marijuana legalisation so far has not led to an increase in pot smoking by teenagers, as opponents to the policy shift warned it would: 37 per cent of high school students reported that they had ever tried marijuana, down from 39 per cent in 2011. The percentage who reported using marijuana in the previous month ("current" use) also declined, from 22 per cent in 2011 to 20 per cent in 2013. Although those decreases may not be statistically significant, they 'are part of a general downward trend in Colorado that has continued since the legalization of medical marijuana in 2001, the commercialization of medical marijuana in 2009 (when the industry took off after its legal status became more secure), and the legalization of recreational use (along with home cultivation and sharing among adults) at the end of 2012'.⁴⁷

As a final point on the issue of regulated cannabis markets, it is worth briefly noting the different ways in which the Board deals with the United States and Uruguay. Within the new highlights section at the beginning of chapter three, the Board notes that 'Use of cannabis in some states of the United States of America has *not yet been adequately addressed* by the federal Government in a manner consistent with the provisions of the drug control Conventions' (p. 37, emphasis added). As this paragraph suggests, while certainly critical of the results of the ballot initiatives in the states of Colorado and Washington, the Board appears to regard

the current circumstances as a work in progress. It is also keen to highlight that the Controlled Substances Act continues to 'prohibit cannabis production, trafficking and possession' and lists 'cannabis in its Schedule I, which contains substances having a high potential for abuse and no scientifically proven medical value and for which there is a lack of acceptance that the drug can be safely used under medical supervision' (Para. 370). Moreover, in recounting the response of the Deputy United States Attorney General, the Board points out that his 'memorandum reaffirms the determination made by Congress that cannabis is a dangerous drug and that the illegal distribution and sale of the substance is a serious crime and reaffirms the commitment of the Department of Justice to enforcing federal law accordingly' (Para. 375). Thus, the Board establishes that, while at odds with the Single Convention due to the policies within two states, Washington D.C. remains in essence opposed to regulated cannabis markets. It then goes on to somewhat hopefully conclude its commentary on the issue by urging 'the Government of the United States to *continue* to ensure the full implementation of the international drug control treaties on its entire territory' (Recommendation 16, Para. 713, emphasis added). Overall, the approach then appears much like that of a sympathetic friend.

Contrast this with the INCB's stance on Uruguay. Admittedly, circumstances here negate any opportunity to explain (or justify) the pursuit of policies that are contrary to the provisions of the Single Convention via a federal system of governance. Nonetheless, as hinted at above, the Board makes no attempt to understand why elected officials in Montevideo chose to move towards a regulated cannabis market, including attempts to reduce violence (see Para. 429). Indeed, while it mentions increases in dependence on 'cocaine base paste' in South America, including Uruguay (Para. 471), the *Report* fails to make the connection with this particularly dangerous – and often violent – market and the driving imperative to separate

the cannabis and 'paco' markets.⁴⁸ Indeed, in combination with President Yan's comments regarding Uruguay's 'pirate' attitude, it is not hard to see why President José Mujica wondered of the Board, 'Do they have two discourses, one for Uruguay and another for those who are strong'.⁴⁹

Conclusions

What then can we conclude about the *Report for 2013* and what it tells us of the Board's view of the international drug control system during what can only be seen as the early stages of regime change? To begin, it is important to reiterate that the *Report* contains much valuable material and in some respects represents an improvement on previous documents – a point to which we will return. Yet, it cannot be ignored that the Board unfortunately continues in its practice of selective reticence on a number of issues. In particular, a lack of specificity on treatment standards and human rights norms in relation to treatment and other aspects of drug policies in general are worrying omissions. While not discussed here, there is also a lack of mention of the drug-related violence in Mexico and, despite Mr. Yans announcement at the *Report's* launch, the ongoing use of the death penalty for drug offences in some countries. This year's refusal to explicitly mention, let alone commend and encourage, an intervention like NSPs, however, is astonishing. This is particularly so when in his Foreword President Yans deliberately depicts policy shifts on cannabis that are in tension with the Single Convention as being a 'grave danger to public health and well-being'. Moreover, that Mr. Yans used the launch of the *Report* to link the mention of drugs in the Convention on the Rights of the Child to human rights and the Board's condemnation of the establishment of legally regulated markets for cannabis in the United States and Uruguay suggests a somewhat disingenuous approach to, at least his own, view of the issue.⁵⁰

Indeed, just as this is not a new conceptual link, it is unsurprising that the *Report* remains resolute in its defence of the current shape of the regime and that Mr. Yans continues to frame adherence to all provisions of the Single Convention in terms of 'shared responsibility'; a stance that also appears in the main body of the *Report* and its Recommendations (Recommendation 2, Para. 700). As IDPC has discussed elsewhere, while the Board is within its rights to argue that in its view both the United States and Uruguay are pursuing policies not in line with the Convention, it is not its remit to engage in debates about the best way for the global community to approach the issue of drugs.⁵¹ Indeed, what is needed during this time of flux is for the Board to fulfil the role of a repository of balanced, technically informed and sophisticated advice to help member states deal with the current changes to the regime that are underway.

In this regard, it is worrying that during such a crucial period, the quality of the thematic chapter within this year's *Report* is so weak. This is in contrast with much of the main body of the *Report* that, while is still problematic, is far intellectually tighter and less politicised than has been the case in the past. Perhaps this can be attributed to the changing composition of the Board in recent years. That said, since chapter one is always outsourced to 'experts' beyond the INCB apparatus, it is appropriate to ask questions about not only the chosen topic but also the selection of author and the review process following initial submission.

To some extent, the conservative stance of the INCB may be expected from a body whose role it is to monitor compliance with the set of treaties that underpin the present system. Nonetheless, as pointed out above, the Board has no mandate to lecture global society and governments on the shape of future arrangements, or to insist that the present arrangements, the cornerstone of which was laid over half a century ago in a very different world, will remain forever 'fit for purpose'.

The *2013 Report* is shot through with tensions; these may reflect the current historical juncture of the drug control regime, or they may be evidence of a shift of emphasis attendant upon the end of Raymond Yans' antagonistic Presidency and the arrival of a more flexible and pragmatic President. In his early interventions, which have focused largely upon the enabling principle of the conventions – access to medicines, ending the death penalty for drug offences, flexibility of response toward drug law offenders – Dr. Lochan Naidoo has shown considerable promise.⁵² In addition, as remarked above, there are new or recent members of the INCB whose views one cannot imagine being accommodated a decade ago, or

less. The optimists among us may tentatively conclude that the wind of change is blowing at last through these hidebound institutions, and those civil society groups calling for reform will be watching this new phase in the life of the INCB with particular interest.

Acknowledgements

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Endnotes

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