



INTERNATIONAL DRUG POLICY CONSORTIUM

**THE 2008 COMMISSION ON NARCOTIC DRUGS
– REPORT OF PROCEEDINGS**

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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 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 its own briefing and position 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.

SUMMARY

The 51st annual meeting of the Commission on Narcotic Drugs (CND) was held in Vienna from 10th to 14th March 2008. This CND was designated as the point at which the international community would debate the progress made in international drug control in the 10 years since the Political Declaration of the 1998 UN General Assembly Special Session on Drugs (UNGASS) called for the eradication or significant reduction of the cultivation, supply and demand of illicit drugs. In the event, the plenary debate on this theme turned out to be a little disappointing, with very few governments acknowledging or engaging with the real policy dilemmas arising from the failure to achieve these significant reductions, or coming forward with ideas or proposals on how the international drug control system could be improved. The meeting was, however, notable for many other reasons - for example the significant increase in the involvement and influence of NGOs, the continuation of the process of open acceptance by UNODC of harm reduction principles and practice, the announcement by the Bolivian government of their intention to request the declassification of coca leaf within the drug control conventions, some extraordinary exchanges on the subject of drug control and human rights, and the open challenges made by many governments to the positions and working practices of the International Narcotics Control Board (INCB). In terms of the 10 year review, delegates at least agreed on a process for the discussion and development of text and materials to be placed in front of the high-level political meeting that will be held in March 2009, and that will agree the way forward for the UN drug control system.

NGO INVOLVEMENT – SOME PROGRESS, SOME FRUSTRATION

The IDPC and its members have consistently called for more respectful and constructive engagement for civil society in the CND. This Commission, the UNODC and the INCB have lagged a long way behind many other UN bodies in their mechanisms for receiving information and perspectives from NGOs, and involving them in the policymaking processes. While there is still a long way to go (Some countries still speak out against the principle of Civil Society involvement, NGOs are still largely assumed to have suspicious intentions, and are simplistically viewed through the prism of whether they are 'liberal' or 'prohibitionist'), the 2008 CND saw an identifiable improvement in the contribution of NGOs:

- Several countries (our estimate is around 10) included NGO or academic experts in their official delegations. This helped with clear communication during the week between the NGO group and governments, and provided the delegations with an immediately available source of expertise to help in reacting to events and preparing statements.
- According to the UNODC's civil society liaison officer, Ms. Dummar-Frahi, approximately 70 NGO delegates attended this year's CND.
- The NGO Forum meeting was well attended, and received a presentation from Antonio Maria Costa, Executive Director of the UNODC. Unfortunately, in the question and answer session, Mr Costa undermined his previous positive references to engagement with civil society by reacting dismissively to a perfectly civil question from an NGO delegate, and making derogatory remarks about the delegates to the recent Drug Policy Alliance conference in New Orleans.

- The 'Beyond 2008' initiative, which is facilitating a global NGO consultation in the context of the 10 year review, was referred to with approval by many government and UN speakers - attention now moves to the global NGO Forum scheduled for July 2008, and the submission of its outcomes to the 2009 CND.
- A large number of NGO speakers were permitted to make statements to the plenary of the CND during the Thematic Debate (see below). This level of speaking presence is entirely unprecedented at the CND and, while at times the arrangements were a little chaotic, the Chair (Ambassador Curia from Argentina) delivered on his promise to facilitate such interactions.
- NGO side events, including a March 10 briefing on human rights and drug control and a March 13 OSI briefing on the impact of drug law enforcement on women, were well attended, and included many member state representatives. The NGO groups that are members or associates of the IDPC were significantly represented throughout the week, and worked well together to keep each other informed of the fast-moving events, and to ensure that key tasks were covered.

The focus now moves on to the preparations for the 2009 high-level meeting. The resolution submitted by the European Union (EU) that defines this process (see below), has a clause that promotes the involvement of civil society in the working groups and intersessional meetings that will precede the 2009 meeting (despite some countries' objections). We will work with the CND secretariat to get an early view on the mechanisms that will be created to make this process meaningful.

THE THEMATIC DEBATE – IS THAT IT?

The 1998 UNGASS generated much excitement by its commitment to review progress against clear objectives for the global drug control system over a 10-year period. However, as the UN agencies and member states have come to realize how difficult it will be to claim success against the 1998 objectives, this commitment to transparent and objective review has receded to varying degrees. The 2003 mid-term review passed without any meaningful examination of progress and future options, and there are some in the UN system, and many member states, who would like to see the 2008/9 process pass by in the same way – the default option, of course, being 'business as usual'.

The preparations for, and conduct of, this thematic debate would therefore give a reasonable guide to the willingness of the various stakeholders to grapple with the difficult issues, policy dilemmas, and new challenges that we now face. We have to conclude that this process has so far been weak in several areas:

- The collation of information to support the debate relied heavily on official UN and government data, which is recognized by most independent analysts to be questionable at best. In that light, we would expect the emergence of constructive proposals that aim to improve the processes of data collection and management yet no such proposals were submitted for consideration.
- The attempts at the 2007 CND to facilitate the formation of an expert working group, and the consequent preparation of complementary data and information by regional bodies, resulted only in a series of bland conference room papers that were circulated before the CND, but were almost totally ignored in the debate.
- Most member state contributions to the debate continued the CND plenary custom of simply trotting out claimed national achievements, or simple exhortations to continue to support the conventions, with no detailed analysis of current policy challenges and choices.
- Where delegations did make statements that contained specific and substantive viewpoints, or that articulated the need for the CND to resolve current weaknesses or inconsistencies in the regime (notably Italy, Bolivia, Australia, UK, Uruguay, Argentina, New Zealand and Germany), these statements did not provoke any response or debate on the plenary floor.
- The USA, despite the wealth of resources it devotes to drug control and research, and the massive experience and expertise available to it (their delegation this year had 35 members), continues to play a largely negative or blocking role, limiting its interventions to calls for loyalty to the conventions, opposition to harm reduction, and support for measures such as school based drug testing.

It is easy to be disappointed at the lack of sophistication and objective inquiry in this process, but we have to bear in mind that the CND was never likely to be a setting for a meaningful debate, despite the efforts this year of the CND secretariat, who had called upon the participants to include experts in their delegations and

not to deliver prepared statements. With hundreds of delegates in the room, with most of them being diplomats or government officials with no specific expertise on the subject, and with a general culture of avoidance of diplomatic clashes, the result was a bland debate, with sometimes a lack of interventions. This experience showed that the plenary sessions of the CND as it currently operates are certainly not a conducive setting for the detailed examination of complex policy dilemmas.

It was therefore left to the NGOs and - in a pleasant surprise - Antonio Maria Costa himself, to make the most meaningful interventions in the debate. As mentioned above, several NGOs were given space to make statements, including:

- Ricardo Soberón from the Transnational Institute (TNI) criticized the recommendations of the INCB in its 2007 Annual Report which called on countries to abolish or prohibit coca leaf chewing and the manufacture of coca tea. He expressed support for the announcement by Bolivia to ask for the un-scheduling of the coca leaf from the list controlled substances of the 1961 UN Single Convention.
- Pascal Tanguay from the Asian Harm Reduction Network responded to Antonio Maria Costa's opening speech with a description of the key components of a harm reduction response to HIV. In addition, he encouraged UN agencies to ensure that the 10-year review of drug control policies included an assessment of progress in reducing harms associated with problematic drug use and thus called the establishment of a multi-sectoral working group to review progress in this area.
- Balazs Denes of the Hungarian Civil Liberties Union highlighted imbalances between drug control and drug treatment in his country and in the approach of UNODC and the INCB, and questioned concern with such issues as celebrity drug use while the UN drug control system failed to comment on issues such as the complete lack of substitution treatment in Russia.
- Rick Lines from the International Harm Reduction Association noted that 2008 is the 60th anniversary of the Universal Declaration of Human Rights, and in that context CND must incorporate the promotion of human rights as a central element of its work. Highlighting the consistent failure of CND to action successive General Assembly resolutions mandating that drug control activities be carried out in conformity with human rights, IHRA called for the implementation of human

rights impact assessments of all UNODC programmes and activities, and unambiguous support for harm reduction as an essential element of the fulfilling the right to health.

- Stijn Goossens from INPUD reminded delegates that the hundreds of millions of people who use drugs are not all threats to social order, and should not have to forfeit their human rights and social standing simply through their choice of substance. He informed delegates of the work of INPUD, and its readiness to engage positively with policymakers to increase understanding of drug use and drug users, and to work together to improve policy.
- Deborah Small from Break the Chains critiqued the US policy of mass arrest and incarceration of drug users and drug-related offenders, pointing out its inevitable discriminatory impacts on poor, powerless, and black and ethnic minority users, the huge financial and administrative burden it places on police, court and prison systems, and its negligible impact on overall rates of drug use.

There was also a statement presented on behalf of the global network of Red Cross/Red Crescent societies, that unequivocally called for a public health approach to drug problems that prioritised the right to health, and the fight against drug related infections such as HIV and Hepatitis.

Most of these contributions were received by delegates with respectful attention. Considering that, only last year, questions were raised about the right of NGOs to even be in the Committee of the Whole, this has to be considered as progress. On the other hand, the lack of sufficient headsets, and clarity about the process for NGOs to be called, did cause some confusion. Deborah Small's presentation, for example, was interrupted when the Secretariat called her during the wrong section of the plenary and the U.S. Delegation objected, and Pascal Tanguay's contribution was interrupted while he was asked to clarify which organization he represented. Ricardo Soberón also was interrupted by the Chair who questioned the relevance of his comments to the particular item of the thematic debate, but he was allowed to continue after a short explanation. The texts of these NGO presentations are available to download from the IDPC website – www.idpc.info – and the TNI website – www.ungassondrugs.org.

One proponent of a meaningful debate, at least in the plenary, was the Executive Director of the UNODC, Antonio Maria Costa. The IDPC has been critical of Mr Costa's previous

attempts to present the review as simply a process of celebrating the success of current policies, but his tone at this CND was somewhat different. In his opening statement to the CND, he echoed some of the themes highlighted by NGOs, declaring the need for greater attention and funding to harm reduction, human rights, community mobilization, and the health aspects of the drug problem. He stressed that too many people were in prison, and too few in health services; that there are too few resources for prevention, treatment, and rehabilitation; and that there is too much eradication of drug crops, and not enough eradication of poverty. “Despite the fact that public health is the first principle of drug control,” Costa said, “public security has received much greater investment, at the expense of drug prevention and treatment (3:1 is the prevailing ratio). I fear this is political expediency: to focus on quick wins, like seizures and arrests (that reduce the problem), rather than on agents of slow change, like prevention and treatment (that solve the problem).” He also made clear statements that more attention needs to be given to development-based programmes in source countries, that he supports the contribution of civil society to the UNGASS review, that he welcomed the ‘pragmatic and comprehensive’ approach to HIV prevention in place in many countries, and that drug control should be guided by the UN Charter, and the Universal Declaration of Human Rights - “As we emphasize the health aspects of drug control, it stands to reason that implementation of the drug conventions must proceed with due regard to human rights,” he said. “Thus far, there has been little attention paid to this aspect of our work. This definitely needs to be amended. Although drugs kill, I don’t believe we need to kill because of drugs.” He reiterated his belief that the global drug control problem was being contained, not solved, basing this conclusion on a claimed stabilisation in global drug production and demand. While we continue to have doubts about the evidence behind these statements (see IDPC Briefing Paper 6 – http://www.internationaldrugpolicy.net/reports/IDPC_BP06_WorldDrugRpt2007_EN.pdf), the concept of containment is helpful in allowing policymakers to consider a more realistic set of objectives and activities in their efforts to reduce the scale of the market but also, and crucially, to focus more on efforts to reduce the harm caused by those markets, without seeing these efforts as undermining drug control. Put simply, irrespective of whether current policies are actually achieving some level of containment, the acknowledgment of the continued current and future existence of widespread drug use opens the door for more balanced policies. Indeed, Mr Costa then went on to openly acknowledge that ‘the drug control system has a number of...unintended consequences’, and that it was important to confront and tackle them. He listed the power and reach of the criminal black market, the ‘balloon effect’ (where successful supply reduction measures simply push the problem to another

area), and the marginalisation and stigmatisation of what he termed addicts. This last theme has since been picked up in comments by the UN Secretary General, Ban Ki Moon who, in a response to a report calling for a public health approach to HIV prevention in Asia, stated that he looked to governments to ‘amend outdated laws criminalising the most vulnerable sections of society, and take all the measures needed to ensure they live in dignity’.

Of course, it is hard to agree with some of Mr Costa’s more dismissive statements, and he again neglected to give prominence in his speech to the urgent need for greater action to scale up HIV prevention and treatment amongst IDUs. Nonetheless, he was clear in his call to member states to be more innovative in building a drug control system that ‘can be made fit for purpose for the 21st century’. Many of the themes of his speech are expanded upon in a conference room paper (E/CN.7/2008/CRP.17 – <http://www.unodc.org/documents/commissions/CND-Session51/CND-UNGASS-CRPs/ECN72008CRP17.pdf>), which presents many views and positions that are not dissimilar to those of the IDPC – we need to ensure that these do not just become empty words in a forgotten document.

Unfortunately, Mr. Costa’s openness to debate was less evident at the opening of the NGO forum, when an audience member asked him why the Netherlands, despite condemnations from UNODC as too liberal on drug policy, had lower rates of cannabis use compared to other countries with stricter enforcement policies. When the questioner suggested that Mr. Costa’s response, about the decreasing number of coffee shops in the Netherlands, did not directly address the question, Mr. Costa ruled him “out of order” and a security guard began to approach. Mr. Costa’s comments at this session also showed the limits of his tolerance for grassroots mobilization referenced in the plenary, describing the Drug Policy Alliance conference he attended in November as “1000 lunatics, 200 good people to talk to, the rest obviously on drugs.”

RESOLUTIONS – CHAOTIC PROCESS, BUT SOME ILLUMINATING DEBATES

The content and discussion of resolutions at the CND is usually of greater interest for the guide it provides to the mood and policy positions of the various actors, than for their impact on the operations of member states or UN agencies. This was again the case this year, but the procedural limitations of the process were particularly evident - many resolutions were tabled at the last minute, texts were constantly changing and rarely available in all languages, the convention that all resolutions should be passed by a consensus rather than majority vote (making it easy for a

small number of obstructive delegations to subvert the intentions of the majority) was continued, and the usual process pursued whereby wording of little importance is pored over in great detail in the early part of the week, and major controversies settled in a rush at the end.

The Chairman

The work of tabling and debating resolutions in the Committee of the Whole was chaired by Ambassador Shahbaz of Pakistan who managed the early, chaotic exchanges with reasonable patience in the face of what was, at times, extremely slow progress - on the first day, only two draft resolutions were ready to be discussed. Unfortunately, the objectivity of Ambassador Shahbaz seemed to wane towards the end of the week, when he was frequently involved in sharp exchanges with delegates, and seemed to be combining his position as chair with that of a country representative. This was most evident when the human rights resolution tabled by Uruguay, and the resolution on 'Promoting coordination and alignment of decisions between the Commission on Narcotic Drugs and the Programme Coordinating Board of the Joint United Nations Programme on HIV/AIDS', tabled by Switzerland/Norway, were being debated. In those cases he was not an impartial chair that guided the process, but acted more as the representative of a group of countries that were strongly opposed to those resolutions.

Underlying Tensions

One of the early discussions was on a draft resolution proposed by Morocco on behalf of a group of North African and Gulf states entitled "Reducing the demand for illicit drugs" (L.23). It called for strict adherence to the Conventions and expressed concern that some states "permit the use of substances that are under international control". The Pakistani ambassador had referred to "the atmosphere of acceptance of drug use in some countries", and the draft of the resolution noted that the INCB had pointed to the same phenomena in its last three reports. The countries were not named, but were presumably those allowing consumption rooms, heroin treatment, or relatively lenient legal responses toward cannabis. At times a powerful undercurrent of anger was discernible in the room, beneath the formal observances and diplomatic language; producing and transit countries apparently felt that too much laxity was being exercised in some of the traditional consuming states of 'the West'. It was an undercurrent of conflict that was never fully resolved, the Vienna tradition of consensus leaving a great deal buried underneath the language of compromise that held together the final draft of this, and other resolutions.

HIV/AIDS Prevention and Care

The same fundamental divisions characterized the treatment of a resolution presented by Switzerland and Norway, calling for

closer joint working between the UNODC and UNAIDS. On the closing evening of the CND, countries such as Pakistan and Nigeria objected to provisions in the draft resolution that would have instructed the UNODC to circulate to all member states, in its capacity as the lead UN agency on HIV prevention and care among injecting drug users and in prisons, the recommendations from a recent expert consultation meeting that they had organised on this subject. Pakistan, for example, argued that this was a technical expert meeting, without the participation of states, and objected to the suggestion that such recommendations should be received by the CND. Switzerland offered amendments that would make it clear that the recommendations "were not given political consideration by participating countries", but Pakistan maintained its objections, saying that such information could be made available to member states in other ways without any reference in a CND resolution, and Nigeria also felt that it raised procedural concerns. Norway expressed its disappointment that the CND would set a precedent of refusing to receive information from a technical expert group that is relevant to its work, and regretted that some states would take such an approach. In response, Pakistan declared that "of course, we don't want this information" or else "we would have asked for it." In the end, Norway proposed to accommodate the objections by removing this part of the resolution, and the resolution was then adopted by consensus.

Cannabis

Three resolutions on cannabis were tabled. The aforementioned resolution (L.23) "Reducing the demand for illicit drugs" was the most contentious one. Tabled by Morocco, Saudi Arabia, Sudan, the United Arab Emirates and Yemen, it voiced its concern that "some States permit the use of substances that are under international control" and called for "the criminalization of drug abuse" pursuant to the conventions. In the operational paragraphs it called "to uphold the established policies on the criminalization of the use of illicit drugs" and to "to take additional measures to criminalize the cultivation of cannabis, including for personal consumption, and to prosecute those engaging in such cultivation".

Approval of this draft would have significantly expanded the UN drug conventions. Even the most restrictive one, the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, does not oblige parties to criminalize the use of drugs or to prosecute cultivation of cannabis for personal use (prosecution is subject to national criminal justice systems). The draft was unacceptable to many countries and during the week endless consultations to change the draft continued. At one point even, a European ambassador was called upon to complain about the intransigence of the Arab countries.

In the end all references to criminalization were deleted. The resolution was one of those that had to be finalized on Friday evening in the Plenary. The main problem remaining was the first paragraph that stated “differences in some countries regarding the levels of penalties with respect to drug abuse are reducing the restrictions on cannabis that are under international control”. In the evening Canada proposed to change “drug abuse” into “cannabis related offences may be perceived as” and to the surprise of many involved in the weeklong negotiation process it was accepted without any opposition. However, somehow none of the original drafters of the resolution had noticed the change, and Morocco and Algeria tried to open the negotiations again in the late hours. That attempt was blocked by the Netherlands supported by a united front of other so-called ‘lenient’ countries.

The resolution called also for “a comprehensive study on cannabis which includes world trends in plant cultivation, use and its impact”. However, the Secretariat commented that a survey would require significant extra-budgetary resources and was thus subject to the financial mantra. Moreover, the secretariat pointed to the 2006 World Drug Report (WDR) in which a survey already had been undertaken as a result of previous resolutions and announced an upcoming issue of the Bulletin of Narcotics on the issue of cannabis.

This year’s resolution was almost identical as the one in 2002 when there was an attempt in the CND to criticise any perceived ‘leniency’. At the time it was based on the 2001 annual report of the INCB, which contained strong language about the tolerance trend. A draft resolution expressed the concern that “lenient policies towards the use of illicit drugs not in accordance with the international drug control treaties may hamper the efforts of the international community to address the world drug problem”, and called to “criminalize the use of narcotic drugs and psychotropic substances for non-medical purposes.” Then as now, the resolution was watered down in order to achieve consensus, but leaving proponents of both strict and lenient policies unhappy with the outcome.¹

UNGASS Review

¹ European Cannabis Policies Under Attack, TNI Briefing, April 2002 available at: http://www.ungassondrugs.org/index.php?option=com_content&task=view&id=132&Itemid=112

BOX 1: CANNABIS – NO PROSPECT FOR CONSENSUS

The exchanges at the 2008 CND around the various resolutions on cannabis demonstrated once again the seemingly unbridgeable divergence of views amongst member states on this issue.

While proponents of more strict policies towards cannabis use the CND nearly every year to press their point of view, the more tolerant countries tend to keep silent, opting to avoid a debate rather than add fuel to the polarisation. The outcome is that the language of the zero-tolerance countries is often accepted across the UN drug control system. One of the results of this process was the exaggerated claims by Mr Costa in the 2006 World Drug Report – which devoted a special chapter on cannabis – of a devastating “cannabis pandemic” caused by the unlimited supply and demand of cannabis “subject to the vagaries of government policy.”¹ Central to this claim was the emergence of high potency cannabis on the market, and the failure to control supply at global level.

Mr. Costa’s strong language was at odds with the content of the report, which was much more cautious and did not mention a cannabis pandemic. It recognized that “much of the early material on cannabis is now considered inaccurate, and that a series of studies in a range of countries have exonerated cannabis of many of the charges levelled against it.” In fact, the UNODC report implicitly acknowledged that the scientific base for putting cannabis on the list of the 1961 Single Convention at the same level as cocaine and heroin had been incorrect, and pointed to the key issue concerning cannabis today: “Either the gap between the letter and spirit of the Single Convention, so manifest with cannabis, needs to be bridged, or parties to the Convention need to discuss redefining the status of cannabis.”

Next year a resolution on cannabis is to be expected again by the countries that tabled the one this year and which were quite angry about the fate of the resolution on Friday night. It is again to be expected that this will result in a protracted and ultimately unsatisfying wrangle over wording. A more constructive approach to these differences would be to call for an updated and objective analysis of the options for cannabis control, and to seek a new approach based on current science and experience. The World Health Organisation has offered repeatedly to review the medical data on cannabis, and this scientific data could be combined with updated analysis of the social and cultural impacts of its use.

Further analysis is also necessary on the feasibility of controlling supply - the 2006 World Drug Report

¹ International Drug Control: 100 Years of Success? TNI comments on the UNODC World Drug Report, TNI Policy Briefing 18, June 2006 http://www.ungassondrugs.org/index.php?option=com_content&task=view&id=68&Itemid=114

acknowledged that supply-side control of cannabis is virtually impossible given the potential to grow the plant everywhere, and past efforts to control its availability have failed. To simply intensify efforts to control supply through harsh law enforcement would not be based on an analysis of cost-effectiveness in relation to other options, nor on any detailed analysis of why past efforts of supply reduction have failed.

Such analysis should at least include a study of the pros and cons of making cannabis subject to a control regime similar to harmful substances like alcohol and tobacco. The existing control regimes of alcohol and tobacco are showing that health and social gains can be achieved by trying exercise control through regulation over what is supplied where and how - which is not possible in an illicit market. The example of tobacco and alcohol control sets all kinds of examples to regulate use and change consumer behaviour.

These are difficult issues, but they will not be addressed through the semantic battles around CND resolutions. Only by tackling these dilemmas on the basis of evidence and objective analysis can the international community arrive at an effective policy on cannabis. We hope that the relevant authorities commission the necessary research and analytical work, but in the meantime, the Beckley Foundation is working on a major research review on this subject, that is due to be published in September 2008.

Two other key resolutions were tabled at this CND: One was from the European Union proposing a process for the completion of the UNGASS review, leading up to the 2009 high-level meeting. This resolution had been the subject of extensive consultation prior to the CND, but still met some resistance in the discussion. The resolution aimed to clarify the process by which the data, reports and debates at this CND would be translated into preparatory materials for the high-level political meeting that would be held in March 2009. The EU, supported by many co-sponsors, was keen that the process be made clear, so that member states would have sufficient opportunity to examine and debate the issues. Some countries (most vociferously Russia) objected in particular to the references to the involvement of civil society in this process. However, the key elements of the process survived intact, and the headlines are summarised in the box below. The other was from Uruguay, calling for member states and UN agencies to ensure that their drug control activities were carried out in compliance with their obligations under the UN human rights treaties, and the UN

Charter. This resolution provoked some fascinating exchanges, that are dealt with in the section below on Human Rights.

Supply Reduction

Issues such as trafficking across borders and the problems faced by transit countries, precursor control (including the innovative use by trafficking groups of new, non-traditional precursor materials) and unregulated and counterfeit medicines were all the subject of resolutions.

A draft resolution, introduced by Iran, proposed that financial assistance to states adjacent to Afghanistan—also, of course, itself the object of much attention—be allocated based on the states' differing performance in terms of drug control (L.12). Canada was the first delegation to object, raising the difficulty of measuring such performance, and of the possibility that those states most in need of assistance might not receive it were such a mechanism in operation. Iran's rejoinder was that the effort against the transit of Afghan opiates was highly uneven, and that countries' performance according to the World Drug Report should provide the basis for judgement. The Iranian delegate accused the international community of paying insufficient attention to the plight of transit states around Afghanistan, and insisted that if the measurement element was removed, it would represent in effect a lack of recognition and encouragement for those playing the most active role—and paying the highest price in terms of attrition against its law enforcement agencies, the spread of injecting heroin along transit routes and so on. In the event, the resolution was changed from "States...based on performance" to "most affected by the transit".

Celebrating a Century of Drug Control

There was also a resolution from the Chinese delegation, "Marking the centennial of the convening of the International Opium Commission." (L.11) This proposed an event, to be funded by the Chinese government, at which the work of the original Shanghai Commission that initiated the present global drug control regime would be celebrated in February 2009. The draft recognized "the great progress made by the international community since 1909," and the delegate explained that the celebration would involve a reflection on the successes so far, and the challenges that still remain, for the "ultimate goal of an international society free of drug abuse and drug trafficking."

This resolution was passed, as is customary, by consensus but with no conspicuous statements of approval or support to the Chinese government in organizing the event. Notably also, no effort was made to formally link the proposed event to the UNGASS review process.

THE PROCESS FOR THE UNGASS REVIEW - 'A PERIOD OF REFLECTION'

The CND, in a resolution that clarified the process of intergovernmental debate in the run up to the 2009 high-level meeting, called on the UNODC to:

- Establish 5 inter-governmental working groups (covering Demand Reduction, Supply Reduction, Money Laundering, Crop Eradication and Alternative Development, and Precursors and Amphetamine Type Stimulants) that will be charged with analysing the available information on their issue, and producing proposed text for the political declaration and associated documents to be placed in front of the high-level meeting.
- It is expected that each of these working groups will meet once (for a 3 day session) and have completed their work by September 2008, at which point the job of refining draft texts will pass to a series of intersessional meetings of the CND.
- Ensure that the working groups and intersessional meetings are able to receive information and representations from civil society. The resolution also called on member states to facilitate the involvement of non-governmental experts in the process.
- Prepare for a 2-day high-level meeting in March 2009, that would be supplementary to the normal 5 days of the 2009 CND. The resolution also called on member states to ensure a high-level of political representation at this meeting.

While the exact nature of the outcomes of the high-level meeting are yet to be decided, it has been decided that the key tangible product will be a political declaration, the tone and content of which will provide the backdrop for UN drug control policy and programmes for many years to come.

HUMAN RIGHTS – LONG OVERDUE ATTENTION, BUT A WORRYING LEVEL OF IGNORANCE

As the IDPC Advocacy Guide has noted, despite the fact that promotion and protection of human rights is central to the UN Charter (and therefore is a fundamental principle for all areas of UN activity, including drug control), very little attention has been given to these obligations at CND, or in the work of the UNODC and INCB. Consequently, IDPC members have been examining areas of tension between drug control activities, and the various human rights enshrined in the Charter and the various UN human rights treaties. These tensions have been summarised in a Beckley Foundation Report (co-authored with IHRA, Human Rights Watch, and the Canadian HIV/AIDS Legal Network – http://idpc.info/php-bin/documents/BFDPP_RP_13_Recal_Regime_EN.pdf), which formed the basis of a lunchtime workshop at the CND. Scheduled for the first day of the CND, this workshop was sponsored by the UK government, and was well attended by both NGOs and member states representatives. Three presentations were delivered:

- Rick Lines presented the IHRA report on the death penalty for drug offences [<http://www.ihra.net/uploads/downloads/NewsItems/DeathPenaltyforDrugOffences.pdf>], which demonstrated that the use of the death penalty for drug offences is a violation of human rights law, yet is increasing around the world.
- Richard Elliott, Executive Director of the Canadian HIV/AIDS Legal Network, outlined the many ways in which activities undertaken in the name of drug control undermine efforts to protect the right to health, particularly in terms of HIV prevention.
- Rebecca Schleifer of Human Rights Watch expanded this theme to cover a range of documented circumstances where governments had engaged in clear abuses of human rights in their efforts to eradicate drug cultivation or consumption.

One area of concern that was raised at this session became a running issue throughout the week. Reports had emerged in the days preceding the CND that the government of Thailand were considering a re-run of the 'war on drugs' perpetrated in 2003/4. Considering that well-researched reports of these events have shown that the 'war on drugs' resulted in over 2,800 extra-judicial killings, that over half of those killed were not involved in the drug market, and that no meaningful attempt has been made to hold those responsible to account, there was significant concern amongst NGOs, member states, and UN agency officials, that such a disastrous policy was being considered. The Thai delegation

to CND were present at the lunchtime workshop, and sought to reassure delegates that no decision had been made on the content of future drug control activities in Thailand, and that any policies and actions would respect due process and international law. While these interventions were welcome, they fell some way short of a guarantee that the events of 2003 will not be repeated, and the drug policy and human rights communities will therefore be watching events throughout Thailand very closely in the coming weeks. Due to the uncertainty as to the actual intentions of the Thai government, no government statements of concern were made in the formal sessions, but there was intense activity behind the scenes to ascertain what was likely to happen in Thailand, and to make it clear to the Thai delegation that a repeat of the 2003 clampdown would be met with considerable international criticism and resistance.

Rick Lines did use the IHRA statement to the plenary session on the Tuesday to make a reference to the Thai situation, in the context of a call to the CND to speak out against abusive drug control policies wherever they occur. This presentation was well received by most delegates but, as we describe in the box below, seemed to stimulate some bizarre resistance amongst others when a resolution on this subject was debated towards the end of the week. It was also heartening to hear Antonio Maria Costa making a clear reference in the plenary to the need to recognise the human rights context of all drug control activities. The issue was, however, given scant attention in the presentation of Dr Philip Emafo, Chairman of the INCB, which was a disappointment following the focus in their Annual Report on the principle of proportionality in dealing with drug offences. As discussed in two IDPC papers distributed at the CND [http://idpc.info/php-bin/documents/IDPC_BP_07_INCB_TensionsAndOptions_EN.pdf and http://idpc.info/php-bin/documents/IDPC_Response2INCB_AnnRpt07_EN.pdf], the INCB had finally given long overdue prominence in their latest report to the fact that member states needed to observe international standards of judicial process and human rights in their drug law enforcement. We commended them for their statements in this year's report, but pointed out that they had never publicly criticised any member state for breaching these standards in their ongoing casework – a fact made more unpalatable in the light of their willingness to criticise member states for pursuing public health approaches, or individual celebrities such as Amy Winehouse for their own personal problems.

The extent to which the raising of the issue of human rights and drug control had touched a nerve, became more apparent towards the end of the week. A resolution had been proposed by the Uruguayan delegation that called for the proper integration of the UN human rights system, and international drug control

policy. As can be seen from our description of the debate on this resolution, some delegates had difficulty understanding the relevance of human rights to their work, and fought to minimise the impact of the resolution – preferring, presumably, to be left free to implement whatever drug control activities they prefer, with no responsibility to the fundamental freedoms and rights enshrined in the UN charter. The eventual adoption (late on the last day of the CND) of a much watered-down resolution, exposed the frailties of the CND process – in particular its preference for adopting all declarations and resolutions by consensus. While it is understandable that member states should prefer consensus where possible, this 'convention' has enabled a small number of member states to effectively block the will of the majority. This is undemocratic at best, but when such blocking positions directly contradict policies and declarations that have previously been agreed in higher UN forums, the process brings the operation of the CND into disrepute.

THE HUMAN RIGHTS RESOLUTION – REWRITING INTERNATIONAL LAW?

The resolution - entitled "Proper integration of the United Nations human rights system with international drug control policy"- was introduced by Uruguay with the co-sponsorship of Bolivia, Argentina and Switzerland. The first resolution of its kind at CND, it recognised the 60th anniversary of the Universal Declaration of Human Rights (an event being celebrated throughout the UN system during 2008) and affirmed "that international drug control activities must be conducted in conformity with international human rights law". The resolution requested UNODC "to work closely towards those ends with the Office of the High Commissioner for Human Rights and the relevant Special Procedures of the Human Rights Council." The original draft also recognised the adoption of the UN Declaration on the Rights of Indigenous Peoples and called for an end to the death penalty for drug offences. Any reference to the death penalty was removed, however, before the resolution came up for debate.

On Thursday 13 March, the draft resolution was taken to the Committee of the Whole. It was here that a small coalition of states sought to block, or at least undermine, the resolution. China, for example, stated that "Discussion of political issues such as human rights are inappropriate at CND". It questioned whether it was within the mandate of CND to celebrate the 60th anniversary of

the Universal Declaration, and stated, incredibly, that “It is ridiculous to require us [meaning the CND] to work in accordance with human rights law.”

Joining China were Japan, Nigeria, Iran and Thailand. Nigeria asked “What do we mean by the United Nations human rights system?” and Japan questioned whether the Universal Declaration of Human Rights is international law. Thailand worried that “If we bring in the issue of human rights within CND, it will disrupt the tradition of consensus.”

Speaking in full support of the resolution were Uruguay, the UK, Italy, Bolivia, Argentina, Romania, France, the Netherlands, Norway, Belgium, Switzerland, Finland, Germany, Spain, Slovenia (on behalf of the European Union), Ireland and Peru. The UK delegation played a leading role in defending the resolution, pointing out that the primacy of human rights over drug control within international law was “clear and unambiguous”. They stated that as a Functional Commission of the Economic and Social Council of the UN, human rights is squarely within CND’s mandate.

The Netherlands delegation noted that the issue of human rights was “Important enough for Executive Director Costa to bring it up in his opening, so I see no reason why we should not discuss it here.” Switzerland, one of the resolution’s co-sponsors, argued that “Human rights are not just something we defend in Geneva or a goal we seek to attain. They are a profound belief at the heart of the UN system.” Bolivia argued that the resolution was important so that “fundamental human rights are not lost sight of in the fight against drugs”.

During the debates, which took place over many hours on Thursday 13th and Friday 14th, four major changes were made, all weakening the human rights content.

First, any reference to the UN Declaration on the Rights of Indigenous Peoples was removed at the insistence of the U.S. and Canada and with the support of France. Bolivia conceded the issue following the rejection of its suggestions for compromise, saying that it wanted to respect the spirit of consensus. But it also stated on the record that it opposed the removal of this reference and proposed that these issues be addressed in working group(s) as part of the UNGASS review leading up to the

2009 CND.

Second, any references to international human rights law in either preambular or operative paragraphs of the resolution were whittled down or deleted. While a preambular paragraph “recalling” the 60th anniversary of the Universal Declaration of Human Rights survived, specific reference to the UDHR was relegated to a single mention following recognition of the drug conventions. A position that in no way reflects the legal hierarchy of these instruments.

Third, with respect to the operative provisions, the original draft resolution: (1) reaffirmed that international drug control must be conducted in conformity with international human rights law; and (2) requested the UNODC to work closely toward those ends with the Office of the UN High Commissioner for Human Rights and the special procedures of the Human Rights Council.

The first of these was eliminated, largely at the behest of China, Pakistan and Egypt, and replaced with a verbatim repetition of a statement agreed at the General Assembly in its 2006 resolution, reaffirming that countering the world drug problem must be in conformity with the UN Charter and “in particular with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States and all human rights and fundamental freedoms, and on the basis of the principles of equal rights and mutual respect.” As a result, there was no new ground broken on this front, but the requirement of conformity with human rights was retained.

Any explicit reference to cooperation or coordination with the OHCHR and the Human Rights Council was opposed by the same countries. China made an effort to frustrate the very purpose of the resolution, and render it completely meaningless, by proposing that the resolution request UNODC “to continue to cooperate closely with other UN organs in field of drug control” with no reference to human rights. While this proposal was rejected, other efforts to render the resolution more diffuse, or to limit the scope of any possible engagement with UN human rights bodies, continued. Pakistan and Nigeria, proposed to refer in general terms to “other competent UN organs, including human rights bodies”, but in the face of continued objections from China, they

quickly proposed to water this down even further to a simple reference to “other competent organs”, with no reference to human rights at all. Switzerland and Italy proposed that a broad phrase would be acceptable, but only if it included a reference to “human rights organs.”

The Chair, somewhat inappropriately, noted that “it seems we can’t have any reference to human rights” in the resolution if it were to be acceptable to all members. Uruguay, as a co-sponsor, asked the Chair for a vote on the resolution, thereby proposing to break with the practice of consensus. In response, China claimed that it wished “to demonstrate a certain degree of flexibility” and therefore proposed, in light of the “very significant divergence” among CND members on this issue, that to “safeguard and maintain the spirit of consensus”, it endorsed a proposal by Thailand to suspend discussion. Further informal negotiations led to a proposal by Argentina, which China agreed not to block. However, it cautioned against what it called a “dangerous trend” toward discussing issues that “exceed the competence and mandate” of the CND and wanted its position noted on that record that at future sessions the CND should “try its best to avoid considering such resolutions”. In the end, the final resolution adopted by the CND, “requests, in furtherance of this resolution, the UNODC within its existing mandate to continue to work closely with competent UN organs including UN human rights agencies.”

The fourth change, consistent with the gutting of the human rights references in the resolution, China proposed to change the title of the resolution to: “Full respect for sovereignty and territorial integrity of states, non-interventions, and human rights and fundamental freedoms in drug control policy.” While this did not succeed, after further haggling, rather than referring to “integration” of the UN human rights system and international drug control policy, the agreed title indicates that the resolution aims at “strengthening cooperation between the UNODC and other UN bodies, including the human rights agencies, in accordance with Article 2 of the 1998 UNGASS Political Declaration”.

As a result of a previously-agreed amendment, the UNODC Executive Director is not required to report on progress in this cooperation until the CND session in 2010, conveniently *after* the high-level meeting in 2009

that is supposed to conclude the process of reviewing the decade of implementing the 1998 UNGASS Political Declaration. This, of course, does not preclude an earlier report to the CND in 2009 on its cooperation with UN human right agencies, so this will likely be an area where further engagement of UNODC (and the UN human rights bodies) by civil society will be needed.

So, in the end, the CND adopted a human rights resolution that supports UNODC collaboration with UN human rights bodies. While the final language was watered down, it still represents a significant event for a UN body that has never brought discussions of human rights into its work. Clearly this weakened resolution alone is insufficient, given the scale of human rights abuses related to drug policy worldwide, but it does provide a basis for continued advocacy on human rights issues within the international drug control system. It marks an important precedent and should be expanded in the next CND session, despite the opposition and difficulties encountered. A similar resolution should also be introduced at the UN Human Rights Council in Geneva.

COCA LEAF – FURTHER POLARISATION AMID INCB CONTRADICTIONS

Criticism by the INCB of the traditional use of the coca leaf in Bolivia, and the robust response from the Bolivian delegation, yet again polarised delegations at this year’s CND. There was a strong rejection by some countries of the demands expressed in the 2007 INCB Annual Report for countries to abolish coca leaf chewing and other uses of coca leaf. Immediately at the plenary session on Monday, Bolivia’s Vice-Minister of Foreign Affairs Hugo Fernandez echoed a strong protest, for “*the people of Bolivia feel assaulted and profoundly offended by this unscrupulous and prejudiced expressions used in this report against its ancestral, as to its ritual and medicinal uses*”. He read from the letter President Evo Morales sent to the UN Secretary General, expressing a “*generalised climate of indignation for this enormous lack of respect*,” announcing Bolivia would undertake the formal steps to request the UN to unschedule the coca leaf from List 1 of the 1961 Convention. “Bolivia is convinced that the day will come that the INCB will recognize its error, just as the Pontifical Academy of Sciences of the Vatican recently did with Galileo and his contribution to science,” Fernandez said. He ended his intervention with “Causachun coca! (quechua), viva la coca. Long life to coca leaf!”

One speaker preceding him, The Italian Minister of Social Solidarity, Paolo Ferrero, had referred to the erroneous confusion between cocaine and coca leaf in his speech, noting that the coca leaf has a use “*entrenched in the tradition and in the culture of some Andean countries.*” His plea to make a “*clear difference between coca leaves and cocaine (since) a comparison is groundless*” was a clear sign of support for the Bolivian claim². At the continued discussion of the INCB report, Peru also condemned the INCB’s rejection of what they called “*an integral part of the customs and traditions of Peru.*” Peru also called on the INCB “*to have more profound dialogue with governments.*”

Other countries with traditional uses did not speak out³, as expected, although during the discussion of the Human Rights resolution (co-sponsored by Bolivia) again the issue was indirectly raised. The paragraph on the Declaration on the Right of Indigenous Peoples, that contains several references to traditional, and ritual customs to be protected and respected, while attacked by Canada and the USA, and defended by Bolivia, also received support for its inclusion from Cuba, Ecuador and Argentina. As a result of opposition by those countries, which have not signed the UN Declaration on the Rights of Indigenous Peoples, reference to that declaration was removed from the final text of the resolution. Furthermore, in the discussion of the Human Rights resolution, the Nigerian delegate asked if defending human rights at the CND implied defending the rights of people to grow coca leaves, voting against such an interpretation. However, the Bolivia delegation asked that the issue be considered as part of the UNGASS review process.

Notably, few countries explicitly supported the INCB position on the coca leaf, with the notable exception of the USA, who said: “*Coca leaf is a narcotic drug; coca should be limited as is the case with any other narcotic drug.*”

HARM REDUCTION – UNODC EXECUTIVE DIRECTOR A NEW SUPPORTER, JAPAN AND USA MAINTAIN OPPOSITION

Harm reduction at this year’s CND found support not only from Latin American and EU member states, but also from less likely sources including UNODC Executive Director Antonio Costa and representatives of the Thai government. Mr. Costa opened the 51st session by stressing the need for greater attention and funding for harm reduction, as well as to grass roots mobilization, alternative development, and human rights. Urging that countries

not get caught up in sensitivities about words, he referred attendees to the UNODC discussion paper (“Reducing the adverse health and social consequences of drug abuse,” available at www.unodc.org) that supports pragmatic and comprehensive approaches such as those in Australia, Canada or parts of Asia. Mr. Costa also noted that health was a basic human right and a foundation of international drug control, that too many were in prison and that too few were in treatment for illicit drugs, and that the “health principle” was a cornerstone of drug control and required greater money and commitment. The expansiveness of Mr. Costa’s comments, however, showed their limits: rather than highlighting specific interventions such as needle exchange, substitution treatment, or overdose prevention, Costa instead declared that “everything UNODC did” was harm reduction. Echoing the report of the International Narcotics Control Board report for 2007, he also described safer injection sites as problematic while ignoring evidence showing their positive effect. Interestingly, INCB President Phillip Emafo did not mention safer injection sites while presenting the INCB report to the CND; nor did he repeat the report’s criticisms of Canada for implementation of such sites or efforts to reduce harms associated with crack use.

In the plenary debate, UNAIDS made a statement highlighting the “overwhelming evidence” in favour of a “comprehensive set of measures” for addressing HIV among people who use drugs, including needle and syringe programmes, opioid substitution therapy and antiretroviral treatment, and pointing out that many countries continue to fail to implement these measures. The UNAIDS representative, Ms Susan Timberlake, also pointed out that many countries “take an approach to drug use that focuses on criminalization while neglecting a public health response”. UNAIDS was critical of “legal and social barriers” that “severely impede access to such health and social interventions. For instance, many countries criminalize possession of syringes without prescriptions and continue to classify methadone and other opioid substitutes as illegal. In many countries, imprisonment and forced treatment with ineffective methods are the primary responses to drug use, with little to nothing being done about HIV. And in some countries, imprisonment is compounded by killings, rape, unwarranted use of force, arbitrary arrests, harassment, extortion, and violation of medical privacy and confidentiality.” UNAIDS reminded Member States of their commitment to human rights stated in the unanimous Declaration of Commitment on HIV/AIDS at the 2001 UNGASS on HIV/AIDS and more recently in the General Assembly’s Political Declaration on HIV/AIDS adopted in 2006. UNAIDS urged the Member States of the CND to ensure that States’ drug control obligations conform to their human rights obligations and support public health goals, including the rights and health of people who use drugs. UNAIDS also urged States to use both the upcoming High-Level Meeting

² http://www.ungassondrugs.org/images/stories/Ferrero_CND.pdf

³ Argentina, Colombia and Chile

on HIV/AIDS (in June 2008) and the current year-long review of 1998 declaration from the UNGASS on Drugs to intensify efforts to increase voluntary and effective HIV prevention, treatment, care and support programmes for people who use drugs, and offered its support to UNODC.

Representatives of the Thai government were also supportive of harm reduction. At a side event attended by more than 70 country and NGO representatives entitled “Recalibrating the Regime: Drug Control, Health, and Human Rights,” Thai representatives responded to criticisms of a Thai return to drug war policy by expressing commitment to international human rights standards, and by pledging that Thailand would likely adopt harm reduction measures such as methadone and “even needle exchange” in the near future, perhaps this fiscal year, in light of the increasing share of HIV cases among IDUs. For those who had heard previous commitments from Thailand, including declarations by then Prime Minister Thaksin Shinawatra - in 2003, while his government were pursuing a ‘war on drugs’ that resulted in 2,300 extra judicial killings - that Thailand would treat drug users as patients rather than criminals, these comments reminded observers of the importance of judging governments by actions rather than words.

More generally, while no resolutions contained explicit references to harm reduction, many countries affirmed the value of a comprehensive approach, including harm reduction measures, in their statements during the thematic debate. Germany, the Netherlands, and Switzerland reminded delegates that safer injection sites (which translators erroneously referred to as “shooting galleries” when translating from French) were a part of a comprehensive response to health problems associated with drug use. The Argentinian representative underscored the importance of an approach that moved beyond zero tolerance and included measures to reduce drug related harms. The United States was perhaps the most vocal critic of harm reduction, noting repeatedly that it did not support measures that facilitated drug abuse, and instead emphasizing the value of treatment and rehabilitation, including treatment with methadone and buprenorphine. The fact that the U.S. representative stumbled at the pronunciation of “buprenorphine” suggested that he was perhaps less familiar with this intervention than with others listed as effective by the U.S., including school-based drug testing.

Japan strongly opposed promotion of needle exchange by UNODC, noting that drug abuse itself was the fundamental problem, and Sweden noted that harm reduction would always be secondary to prevention and treatment measures.

Later in the week, member states and NGO representatives considered harm reduction through the lens of gender at a briefing

sponsored by the Open Society Institute. The briefing included presentations by experts examining the role of the conventions, and the effects of drug law enforcement on women in the U.S., Ukraine, and Southeast Asia.

THE INTERNATIONAL NARCOTICS CONTROL BOARD – SOME SKIRMISHES, BUT NO ESCALATION

As with the previous CND, there was noteworthy debate on the operation and some of the current positions of the INCB, particularly this year in relation to its transparency, the death penalty and, once again, the issues of drug consumption rooms and the coca leaf.

On the first day of the CND, the President of the Board, Dr. Philip O. Emafo, presented the INCB *Annual Report*, mentioning among other things its focus on proportionality, the underuse of opioid analgesics for the management of pain, and trafficking in precursor chemicals. Dr. Emafo also highlighted the importance of missions within the work of the Board, pointing out that eleven had taken place in 2007. Giving specific mention to civil society at this point, he noted that “The Board members on missions... discussed with non-governmental organizations in the countries visited, to familiarize themselves with their drug control activities.” Although he didn’t elaborate on which NGOs had been engaged, and in what countries, this statement stood in sharp contract to Dr. Emafo’s statements a year earlier: at a press conference on March 7, 2007, when questioned about numerous criticisms of the INCB’s working processes, he declared that: “Our mandate is not with civil society... We have a mandate to discuss with governments. We do not go about seeking information from outside.” Dr Emafo’s CND speech also noted that “The Board appreciates the work of all institutions involved in drug control – Governments, inter-governmental and civil society.” Bearing in mind the very limited reference to civil society and non-governmental organizations within the *Annual Report* itself, such references within the statement are a small but welcome recognition of the concept of a civil society aspect to the Board’s work.

Dr Emafo’s comments on missions, however, also reflected the Board’s continuing concern on the issue of cannabis. Speaking of Board member’s discussions with “drug abusers” within organized treatment facilities, he noted that “I value these visits because they open our eyes and unmask the myths behind certain drugs.” Tellingly he continued on this theme by noting that “I have seen how cannabis, despite its public reputation as a ‘harmless’ drug has wreaked unimaginable havoc in the lives of some young

people. I value these visits because they challenge conventional wisdoms. In fact, some of the drug abusers do strongly support governments' efforts at preventing the substances that led to their problems being readily available."

Dr. Emafo concluded his presentation by repeating the final section of his foreword to the 2007 *Annual Report*, reiterating to the national delegates at the CND that "There are no 'quick fix' solutions to the drug problem. Governments should continue to take action to address drug abuse and illicit drug trafficking in a comprehensive, sustained and concerted manner. That is where the solution to the drug problem lies. To do nothing is not an option." While there is little to criticise in this position, problems do clearly continue to exist, however, in the Board's reluctance to do something to address ongoing and developing tensions in relation to its operation and some of its positions. Indeed, despite overall support for the work of the INCB over the last year, some country and regional group statements did highlight specific areas of concern.

The twin issues of INCB transparency and external dialogue were flagged by a number of delegations, notably Norway, Switzerland and the Netherlands. The Swiss statement in particular summarized concern for the Board's opaque working practices noting "The way in which the INCB carries out its mandate and more particularly the question of knowing what criteria are used in its methodology in establishing priorities in its work remains to be answered. Transparency is necessary when it comes to procedures that lead to the formulation of recommendations for states parties." Expressing continuing concern for necessary communication and discussion during its work, the related issue of respectful and constant dialogue between the Board and member states was also mentioned by these three states, as well as the GRULAC group. The EU also commented that it looked forward to enhanced communication between member states and the INCB and, although it is unclear exactly where there had been a change to previous practices, noted that it appreciated "increased transparency." Reflecting the EU's own improving engagement with NGOs, the EU also (and significantly, bearing in mind the Board's traditional reluctance to engage with NGOs) noted that it considered communication between the INCB and civil society to be important.

Although human rights was to become a highly controversial issue in the Committee of the Whole later in the week, the status of the death penalty in relation to national obligations under the provisions of the international drug control conventions did receive some prominence in the discussion on proportionality. Some member states including Italy, Switzerland, Norway and the Netherlands urged the Board to leave no doubt about its opposition to the death penalty and state parties' implementation

of the conventions. Norway even went so far as to highlight the need for a specific sub-charter on sentencing and human rights. Once again, in its 2007 Annual Report, the INCB urged "the Governments of countries where drug injection rooms are operated for the purpose of administering illicitly obtained drugs, to close those facilities and to provide appropriate evidence-based medical services and facilities for the treatment of drug abusers." Switzerland effectively framed drug consumption rooms (DCRs) as part of its demand reduction strategy in terms of the health of people and their human rights. Similarly, in justifying the legal legitimacy of its policy choice, and in reference to comments made in Mr Costa's opening address, The Netherlands stated that DCRs were a vital tool for engaging with hard to reach problem drug using populations. DCRs are part of a comprehensive drug demand reduction policy and do not operate for the purpose of administering drugs, but for the purpose of protection of health. The Dutch also referred to the document "[Flexibility of Treaty Provisions as Regards Harm Reduction Approaches](#)" of the UNODC (then the UNDCP) Legal Affairs Section. The document argues that most harm reduction measures are in fact acceptable under the conventions. According to the Legal Affairs Section "it could easily be argued that the Guiding Principles of Drug Demand Reduction provide a clear mandate for the institution of harm reduction policies that, respecting cultural and gender differences, provide for a more supportive environment for drug users."⁴ Canada, which came in for specific criticism again on this issue in this year's INCB report, was conspicuously silent.

As has been discussed in other publications, the INCB Annual Report once again urged Bolivia to eliminate use of the coca leaf, which it views as contrary to the provisions of the Single Convention (See *Abolishing Coca Leaf Consumption – The INCB Needs to Perform a Reality Check*, The Transnational Institute, http://www.ungassondrugs.org/images/stories/PR05032008_E.pdf and *Response to the 2007 Annual Report of the International Narcotics Control Board*, International Drug Policy Consortium, March 2008, <http://www.idpc.info/php-bin/documents.pl?ID=1000135>)

Due to the pressure of time in the plenary session, Dr Emafo had a few days to formulate his response to these government comments, and in particular to the assertive statement of the Bolivian Deputy Minister of Foreign Affairs, that included notification of Bolivia's intention to formally request the un-scheduling of the coca leaf in the Single Convention. His return to make a plenary statement was scheduled for the Thursday, and was much anticipated. In the event, his presentation was to say the least anticlimactic. Dr. Emafo made no further reference to civil society engagement, completely ignored the issues of

⁴ [Flexibility of Treaty Provisions as Regards Harm Reduction Approaches](#). Prepared by the Legal Affairs Section, E/INCB/2002/W.13/SS.5, 30 September 2002

human rights and harm reduction and made a brief and very predictable statement that the “Board would be as transparent as possible” in line with its mandate as laid out in the conventions. Significantly, and somewhat bizarrely, despite the highly critical tone of the Annual Report’s comments on coca, Dr. Emafo stated that the Board did not have a “hard-line” on Bolivia. As such, the President of the INCB clearly decided that at this point and in this venue doing nothing on these issues was in fact the best option for the Board.

UNODC BUDGET – CONTINUED INCREASES, BUT THE SAME OLD LIMITATIONS

Documentation published around the CND revealed that the consolidated UNODC budget for the biennium 2006-7 amounted to \$335.9 million. This included \$72 million from the regular budget, although only \$33 million (10%) of this sum went to the UNDOC with the rest going to cover the expenses of services shared with the UN Office in Vienna. Consistent with long running funding patterns, voluntary contributions remained dominant, with \$189.2 million going to the drug programme and \$74.7 million the crime programme. General purpose funding (GPF) for drugs and crime amounted to \$54.1 million.

In 2007, \$178.9 million in voluntary contributions for both the drugs and crime programmes were pledged, an increase of 26% on the \$141.6 million pledged in 2006. In terms of distribution, \$164.2 million (91.8%) was pledged for programmes, with only \$14.7 million going to general purposes. In line with the recent trend, there was also a relative increase in pledged funding for the crime fund over the drugs programme. While still retaining the larger portion of overall funding, the drugs programme budget was down from 80% of the consolidated budget in 2006 to 63% in 2007.

Cumulatively, the level of voluntary funding for the UNODC has increased 113% over the past three years. That said, for the first time in three years, in 2007 the *Office* managed to record a slight increase in un-earmarked or ‘general purposes’ income.⁵ However, as in the 2007 CND, the twin issues of voluntary and earmarked funding spurred on a number of regional groups to make strong pleas for a bigger share of the UNODC core costs to come from the regular UN budget. It was argued that this was necessary in order to reduce the influence of particular member states on the operation of the *Office* and to strengthen the UNODC’s financial stability; an area of increasing unease. This was a position adopted by the ‘Group of 77’ countries (G-77) and China, the Group of Latin American and Caribbean

countries (GRULAC) and the Africa Group. Ongoing concern for the UNODC’s difficult budgetary position was also reflected in a report by the Executive Director.⁶ In line with the concerns raised by these regional groups, the report noted not only that the “sufficiency and multilateral core resources are critical to the UNODC’s mission and mandate” but also that major problems surrounded the Office’s fragmented budget, not least that it is costly and cumbersome to administer. The regional groups also raised additional concerns in relation to the way the CND dealt with financial issues. It was noted that the Commission needed to resist the temptation of automatically inserting the so-called financial mantra of “subject to the availability of extra-budgetary resources” into resolutions because it often becomes a restriction upon the implementation of clauses within a resolution. As the G-77 and China pointed out, responsibility for financial issues actually lies in New York with the General Assembly’s Fifth Committee; the suggestion being that such a course of action further constrained the operation of the UNODC and ensured the dominant influence of key donors upon its work programme.

⁵ All figures taken from *Annual Report 2008* (Covering Activities in 2007), United Nations Office on Drugs and Crime, p. 57. http://www.unodc.org/documents/about-unodc/AR08_WEB.pdf

⁶ *Financial issues and difficulties faced by the United Nations Office on Drugs and Crime in implementing mandates and an initial assessment of ways and means of improving the financial situation*, E/CN.7/2008/11-E/CN.15/2008/15

CONCLUSION

The 2008 Commission on Narcotic Drugs once again demonstrated all of the substantive and procedural flaws that have previously been described in IDPC documents. In the context of the current review of the UN drug control framework, and the process of wider UN reform that seeks greater system-wide cohesion, now is surely the time to consider some changes to its method of operation. The IDPC will be bringing forward some proposals in this regard in the coming months. Notwithstanding the frustrations inherent in the process, the 2008 meeting did include some important steps forward in the development of a drug control system that is more balanced and 'fit for purpose':

- A harm reduction approach to the prevention of HIV infection amongst drug users has, for the first year, been explicitly and unequivocally supported by UNODC. Moreover, the official report of the CND included an unprecedented acknowledgment that 'several countries now felt that harm reduction is an integral part of global drug policy and that there is a growing body of evidence to support its effectiveness'. More specifically, there was mention of 'disagreement' of several member states with the fact that the INCB considered consumption rooms in violation of the treaties, and a mention that 'some countries' appreciated the recommendations coming from the stakeholders meeting on HIV/AIDS the week before the CND (these were the meeting recommendations, clearly promoting harm reduction, that were so hotly debated in the Committee of the Whole).
- The INCB was put under repeated pressure to improve its methods of operation, and to demonstrate the evidence base and argumentation behind its positions and statements. In contrast to previous years, the INCB Chairman was forced to take a defensive and conciliatory position in the face of (in diplomatic terms) clear and unambiguous dissatisfaction from several member states. The lack of transparency in INCB activities has also been sustained to some extent by governments' unwillingness to publish correspondence with the INCB. In recent years, the UK government has broken with this convention, and the Dutch parliament has recently resolved to do the same. If others follow, the work of the INCB will be open to more scrutiny, which can only improve its quality.
- The implications of the human rights standards and obligations of UN member states, in terms of drug control, were aired meaningfully at the CND for the first time, stimulated by the INCB report, NGO activity, and a resolution tabled on the subject. The debates around that resolution also showed the wide divergence of views between member states on an issue that is crucial to effective drug policy. While many countries spoke in support of the concept of closer cohesion between the UN human rights and drug control agencies, several others felt threatened by the idea that drug control should be constrained by consideration of the human rights of users. This debate exposed a shocking lack of understanding amongst some delegations of their obligations under the UN Charter and the various human rights treaties. This issue is sure to be returned to in the coming months and years.
- Finally, (and despite the general lack of a full and objective review of progress since 1998, and challenges for the future of drug control, at the CND) there are signs that the UNODC may be willing to lead the debate in a more constructive manner. Antonio Maria Costa's speech to the plenary, and the related conference room paper on which it was based, contained some brave attempts to engage with the real dilemmas facing policymakers as they consider the way forward – 50 years of energetic implementation of global drug control have failed to halt the expansion of the illegal market; at best, a stabilisation or 'containment' of the scale of the market in recent years can be claimed; there have been several 'unintended consequences' of the implementation of drug control that must be resolved; and new challenges, unforeseen when the conventions were conceived, need to be given priority. Taking this lead, we hope that the international community can indeed agree on a balanced and evidence-based approach to drug policy from 2009 onwards – the alternative is continually widening polarisation between differing views that can only lead to a fragmentation of the whole system.