

# **THE 2019 COMMISSION ON NARCOTIC DRUGS AND ITS MINISTERIAL SEGMENT**

Taking stock of the implementation of the commitments made to jointly address and counter the world drug problem, in particular in light of the 2019 target date

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# Executive summary

The 62<sup>nd</sup> session of the Commission on Narcotic Drugs (Commission or CND) and its Ministerial Segment took place in Vienna between 14 and 22 March 2019. Protracted and sometimes conflicted discussions led up to the event, held ten years on from the Political Declaration and Plan of Action of 2009, which had passed with little sign of success. In the words of the 2018 *World Drug Report*, ‘Both the range of drugs and drug markets are expanding and diversifying as never before’.

The global situation has produced a range of often profoundly different policy responses by member states, which can loosely be characterised as heading in two directions: one dominated by law enforcement measures, the second accepting the reality of the market and seeking to manage its harmful effects. The decision of Canada to introduce a legally regulated market for cannabis has prompted a strident response by the Russian Federation, which repeatedly attacked the Canadian move during the CND. These contrasting views were reflected continually in the country statements of the Ministerial Segment, and in later CND sessions. The Ministerial Declaration itself reiterated some of the themes of the 2016 UNGASS Outcome Document, while reflecting these policy tensions between member states. Amongst the most significant components of the Ministerial Declaration is the apparently unprecedented acknowledgement of the ‘persistent and emerging challenges’ faced by the international drug control regime.

There were eight draft resolutions proposed at the Committee of the Whole (CoW). The most controversial of these, stemming as it did from the tensions surrounding cannabis regulation policy, was that of the Russian Federation, finally entitled ‘Supporting the International Narcotics Control Board in fulfilling its treaty-mandated functions in cooperation with Member States and in collaboration with the Commission on Narcotic Drugs and the World Health Organization’ (Resolution L3). The Russian resolution was intended to support and enhance

the role of the INCB in its role of policing compliance with the international drug control conventions, and in particular in responding to cannabis legalisation, which preoccupied Russia throughout the Commission. In the event, the resolution was negotiated through intensive debates at the CoW and in informal meetings, the ultimate version being less strident than the original. Other resolutions, including some important ones on hepatitis C (the very first CND resolution on this topic) and HIV prevention among women who use drugs, are detailed below.

In addition, there were a number of decisions made at the 62<sup>nd</sup> CND regarding the scheduling of substances under the drug control conventions, with CND members voting on scheduling recommendations from the Expert Committee on Drug Dependence (ECDD; on drugs and medicines) and the International Narcotics Control Board (INCB; on precursors). They included four fentanyl now included under Schedule 1 of the 1961 Single Convention, five synthetic cannabinoids now included under Schedule 2 of the 1971 Psychotropic Convention, and three precursors now included under Table 1 of the 1988 Trafficking Convention. The Commission, however, postponed voting on recommendations made by the ECDD in relation to cannabis.

The CND was marked by vibrant civil society engagement, with almost 500 civil society delegates attending, several countries including civil society representatives on their country delegations, over 40 side events co-organised with civil society organisations, and civil society delegates delivering statements at the plenary. This represents a continued growth of civil society engagement in the Commission’s activities – despite stronger-than-usual tensions with UN building security staff. The now-familiar ‘informal dialogues’ took place, with discussion between civil society and the CND Chair, the Executive Director of the United Nations Office on Drugs and Crime (Office or UNODC) and the President of the INCB.

## Introduction

Expectations surrounding sessions of the CND in Vienna are always determined by a combination of factors, including pressing – and often divisive – contemporary debates and the timing of the meeting relative to the Commission’s own ‘review’ cycle. And so it was that member states, UN agency and UN Economic and Social Council (ECOSOC) accredited NGO delegations arrived in the Austrian capital for the CND’s 62<sup>nd</sup> session and, crucially, its Ministerial Segment; an extended event stretching from 14 to 22 March. With preparations for the 2019 meeting having done much to shape the Commission’s proceedings the previous year,<sup>1</sup> it seemed likely that the Segment, and the related Ministerial Declaration to which it was devoted, would determine not only the mood but also to some extent the resultant outcomes of the session. Bearing in mind the nature of the protracted and often laboured negotiations around the draft Declaration over the course of various reconvened and intersessional CND sessions and informal meetings in late 2018 and early 2019, the odds were high that it would be a fractious affair. The 2016 United Nations General Assembly Special Session (UNGASS) on the ‘world drug problem’ and the related Outcome Document had arguably done something to take the heat out of the long planned 2019 ‘High Level Segment’. Yet, it could not divert attention from the unavoidable fact that at the 10-year review of progress made since agreeing on the Political Declaration and Plan of Action<sup>2</sup> there has been – by all reasonable measures – little significant or sustained improvement in the global situation. Rather, as the UNODC demonstrated in its 2018 *World Drug Report*, ‘both the range of drugs and drug markets are expanding and diversifying as never before.’<sup>3</sup> Further, IDPC’s ‘Taking stock’ shadow report also showed the unprecedented levels of harms caused by repressive policies aiming to eradicate the illicit drug market over the past decade.<sup>4</sup>

As is now well known and documented, the emergence of such a situation has produced a divergence in approach across member states, with each country dealing with the increasingly complex policy dilemma in different ways depending on a range of cultural and political specificities. Nonetheless, at the risk of attracting charges of reductivism, it remains possible to identify two general directions of travel. On the one hand, some states have chosen

to pursue an approach underpinned by evidence and human rights that puts public health at its core. Reflecting natural variation, the result might be regarded as a spectrum of market management approaches embracing a range of harm reduction interventions, the decriminalisation of some drugs for personal use and, in some instances, legally regulated markets for the non-medical use of cannabis and, although a somewhat unique case, coca. On the other hand, some states prefer to remain true to a law enforcement-dominated approach built around the goals of market elimination and a ‘drug free world’; an approach often described, including by members states themselves, as a ‘war on drugs’; and one that reflects the traditional approach of the UN international drug control system.

It was within this increasingly familiar context that observers and participants alike wondered how the divide might play out at this year’s extended session. Or in the words of one high level delegate from a state preferring a health- and rights-oriented approach put it, how the ‘club of the progressives’ would interact with the champions of the ‘status quo’; an increasingly tricky balancing act still conducted within what might be referred to as the ‘logic of consensus’ within Vienna. To be sure, mindful of the Russian Federation’s bellicose response in preparatory meetings to Canada’s October 2018 implementation of a legally regulated market for non-medical cannabis use, there was some deliberation concerning not only Moscow’s likely approach to the issue but also its attention to diplomatic protocol during the session proper. It might be argued that the erosion of civility in public discourse has accompanied the rise of authoritarian populism in government, as demonstrated in the Twitterocracy of US President Donald Trump and elsewhere. Recent experience has shown how this erosion has penetrated even the institutions of the United Nations, which customarily represent a bastion of diplomacy and formal courtesy. Although they have been increasingly evident at the CND for the past decade or more, the tensions underlying the supposed ‘Vienna consensus’ appear to be erupting into an ever more strident and intolerant discourse of polarisation.

Indeed, it was with this environment that the Russian Federation introduced for negotiation at the regular segment a resolution intended to bolster the power of the International Narcotics Control Board (INCB or Board) in its response to states

pursuing regulated markets. Although from IDPC's perspective a pragmatic approach to dealing with cannabis markets, regulation certainly exceeds the inherent flexibilities of the current treaty framework and thus stands as a key point of systemic tension requiring attention from the CND. And this helps explain why Resolution L3 became a point of keen anticipation in the days leading up to the session. However, while cannabis and the implications of regulated markets on the international control system have arguably been *the* focal point for diverging views in recent years, delegations once again approached the meeting with opposing perspectives on a range of other issues, including the use of the death penalty for drug offences and, despite high-level rhetorical commitments, the general implementation of drug policy in line with human rights norms and principles.

Within such a context, and – as has been increasingly the case in recent years – mindful of the use of closed informal meetings by member states, this report aims to provide an overview of the central issues debated during the 62<sup>nd</sup> session of the Commission and its Ministerial Segment. With the ongoing objective of adding an often missed, yet crucial and holistic, human element to the formal UN reports of the meeting, as well as focusing on inter-state relations, the publication devotes considerable attention to the increasingly significant civil society engagement. In addition to statements within plenary sessions and involvement in side events, this includes the now regularised NGO dialogues with the heads of the core UN drug control bodies (the UNODC and the INCB) as well as with the CND chair. Moreover, in attempting once again to go beyond a merely descriptive account, the report offers some analysis of key topics of debate, both within the Ministerial and regular segments. In so doing it seeks to identify emerging and reoccurring issues as well as common narrative themes identifiable in member state statements, interventions and negotiating positions. Where appropriate, comparisons are also made with past CND sessions to identify trends and patterns within particular issues areas. As in previous years, a supplementary – and searchable – account of the entire session can be found on the CND Blog.<sup>5</sup> Official documentation relating to the session, including the official ECOSOC report, can be found on the UNODC website.<sup>6</sup>

## The Ministerial Segment

The Ministerial Segment of the 62<sup>nd</sup> CND opened on Thursday 14 March 2019, approximately a decade after the meetings that gave birth to the 2009 Political Declaration and Plan of Action; a document regarded by many analysts and commentators, including sections within the United Nations drug control apparatus and among some member states, as a project marked by its general failure.

Structurally, the arrangements for the 2019 Commission were somewhat odd, with the Ministerial Declaration (see Box 1) being published prior to the Member States' debates about it; an approach deployed at the 2016 UNGASS and perhaps reflective of a general reluctance in recent years to re-open high-level documents to negotiation. Indeed, the final text of the Declaration emerged following multiple meetings prior to the 2019 CND, including reconvened and intersessional encounters stretching across much of the past year, in addition to countless informal discussions between countries taking place behind closed doors.

Despite the usual rhetorical expressions of unity and consensus, the debates were characterised by profound disagreements and tensions that were to be reflected not only in the Ministerial Segment itself, but also across the regular CND session, both at the plenary and the CoW (as we shall see below). A central area of conflict, which has been building for several years, revolved around the issue of cannabis and its associated policies of control – an increasingly problematic topic brought further into the foreground by Canada's recently enacted legislation of non-medical consumption.

The Segment's opening slideshow, comprising a well-produced video complete with a sound track of pastoral acoustic guitars,<sup>7</sup> did its best to set the mood music for the event, evoking as it did the interconnecting notions of 'shared problems, shared solutions' and the 'Vienna Spirit'; the latter perhaps a rebrand of the now somewhat battered 'Vienna consensus' motif. Following statements from the Youth Forum, the Scientific Network and the Civil Society Task Force, Yury Fedotov, Executive Director of the UNODC, continued with an upbeat message stressing the many things 'that unite us in this room', the drug control Conventions that represent the 'cornerstone' of the response to the 'world drug problem' and multilateral solutions to global problems. He acknowledged the challenge faced



UN Secretary General makes a video-statement at the Ministerial Segment Credit: CND Tweets

by countries and UN agencies in the form of proliferating production, trafficking and consumption of an ever-widening range of drugs. Despite this challenge, he chose to stress the progress seen over the past decade, declaring that: ‘We have increased understanding of multifaceted drug problems and the balanced responses needed to confront them. We have continuously strengthened international cooperation and operational coordination.’<sup>8</sup>

Mr. Fedotov’s speech was followed by that of Dr. Viroj Sumyai, President of the INCB, who focused, in accordance with his organisation’s mandate, more closely on issues of compliance with the drug control conventions: ‘the achievements in their implementation are vast’ he said. After a general comment on the 2016 UNGASS and the high levels of adherence to the drug control treaties, Dr. Sumyai focused on Afghanistan. Here he mentioned the Board’s invocation of Article 14 bis of the 1961 Single Convention, the provision of technical and financial assistance to states deemed to be seriously endangering the aims of the Convention (Article 14). This is not unusual since that country has had a long and problematic relationship with Article 14 due to the deteriorating situation relating to illicit opium production within its borders. That said, as we shall see, while a normally narrow point of discussion, a broader application of the Article was to be raised by several member states over the course of the meeting. Dr. Sumyai then went on to

reference to Board’s recent Annual Report, which contains strong criticism of more tolerant policies toward the use of cannabis (see below).

Dr. Tedros, meanwhile, Director-General of the World Health Organisation (WHO) and one of three senior UN officials (including the Secretary General,<sup>9</sup> and the President of the General Assembly<sup>10</sup>) that submitted video-presentations for the opening morning, spoke of ‘a public health crisis unlike anything we have seen before’. He argued that ‘the opioid crisis in North America has brought a sharper focus to this issue.’<sup>11</sup> This crisis demonstrates, said Dr. Tedros, that it is ‘time to consider alternative approaches’, specifically those that prioritise public health and human rights.

Within his own video-presentation, António Guterres significantly chose to draw attention to the newly formed UN System Coordination Task Team on the Implementation of the UN System Common Position on drug-related matters and his hope that it would help the UN deliver more comprehensive assistance to countries facing ‘drug related challenges’. As is frequently the case when discussing the issue of drugs, he also referred to his own experiences as Prime Minister of Portugal during a period of significant drug policy reform. In stressing that this was an approach that ‘worked’, he also urged the audience to ‘learn from one another’.



Ministerial Segment debate Credit: CND Tweets

The prepared statements that followed and comprised the rest of the general debate reflected the tensions and at times outright conflicts that form a subtext to the much vaunted ‘Vienna Consensus’; a quixotic ideal that, despite its severely fractured form, continues to retain an almost sacred status within the conference halls of the Vienna International Centre when the international community convenes to discuss drug policy. Indeed, it is possible to illustrate a flavour of diverging perspectives and resultant policy positions and approaches through examination of a sample of the more than 120 country and regional group statements made over the course of 14 and 15 March.<sup>12</sup>

For instance, the German Drug Commissioner, Ms. Marlene Mortler, began her presentation with an honest depiction of the current state of affairs: ‘The world drug problem has neither been resolved nor has it lessened in recent years. In fact, what we are seeing in some parts of the world is a return to the War on Drugs and human rights violations committed in its name, runaway rates of opioid abuse and a global rise in areas under drug cultivation.’<sup>13</sup> Germany argued for a rules-based multilateralism that espoused a development-oriented drug control strategy, followed the Sustainable Development Goals (SDGs) and that lived up to the ideas included in the UNGASS Outcome Document. The European Union (EU) presentation agreed that ‘the drug situation is worsening in most parts of the world’ and included a powerful condemnation of capital punishment in all circumstances. Meanwhile,

Evo Morales, President of Bolivia, pronounced that ‘the war on drugs has failed’, and criticised the global financial system, through which, he contended, all of the proceeds of drug trafficking pass.

With some affinity to Bolivia having also taken formal – although more significant – policy decisions that challenge the basic prohibitive tenets of the extant control regime, Canada explained the evolution of its drug policy and highlighted the centrality of a health-oriented approach, including ‘supervised consumption sites, drug checking, making naloxone available without prescription and removing barriers to access to methadone and diacetylmorphine’. Moving on to address what was to become a key point of tension across the Commission in its entirety, Michelle Boudreau, Director General, Controlled Substances Directorate, Health Canada and Head of Delegation, continued: ‘...as delegations are aware, Canada’s domestic public health approach to legalize, strictly regulate and restrict access to cannabis came into force on October 17<sup>th</sup> 2018’. ‘The legislative and regulatory framework in place, along with the infrastructure to support such a framework’, she stressed, ‘has the objective to keep cannabis out of the hands of youth and to take profits out of the hands of criminals and organized crime, goals that are aligned with our commitment to safeguard the health and welfare of our citizens’. That said, the Director General was also keen to highlight that, ‘We do not advocate the legalisation of cannabis as a solution for other states’.

## Box 1 The Ministerial Declaration on ‘Strengthening our actions at the national, regional and international levels to accelerate the implementation of our joint commitments to address and counter the world drug problem’

As the most recent substantive soft law instrument since the UNGASS Outcome Document in 2016, it is no surprise that the Ministerial Declaration<sup>14</sup> contains not only many of the key themes of the Document itself, but also reflects some of the ongoing tensions surrounding interpretation of its place within a hierarchy of outputs since 2009. Reading very much as a politically functional document deemed necessary to sustain some semblance of consensus for at least the duration of the Ministerial Segment, the Declaration presents both welcome and disappointing language. It also holds some mixed messaging that surely reflects the hard-fought nature of the negotiations held during various reconvened and intersessional CND and informal meetings in late 2018 and early 2019 and the unavoidable fact that by all reasonable measures there has been little significant or sustained improvement in the ‘world drug problem’ since 2009.

The primary example of such internal dissonance can be seen in the acknowledgement of ‘tangible progress’ towards the ‘implementation of the commitments made over the past decade in addressing and countering the world drug problem’; an upbeat assessment that is immediately followed and largely undermined by a lengthy explanatory paragraph that begins with the line ‘We note with

concern persistent and emerging challenges related to the world drug problem’. With an eerie sense of déjà vu, this juxtaposition is evocative of the UNODC Executive Director’s 2003 tagline ‘encouraging progress towards still distant goals’; a defensive tactic deployed at the mid-term review of the targets set by the 1998 UNGASS.<sup>15</sup>

The apparently unprecedented admission of the challenges faced by member states is certainly welcome. However, it is unfortunate that the document sticks with the idealistic (and unrealistic) quest for a ‘drug free world’. As such it commits member states to once again ‘work towards the elimination’ of cultivation, production, trafficking and use, and reiterates the goal of ‘actively promoting a society free of drug abuse’. Indeed, all ‘aspirational goals’ of documents from high-level meetings in 2009, 2014 and 2016 are explicitly restated, including the problematic eradication goals contained within operational paragraph 36 of the 2009 Political Declaration. While this is the case, it should be noted that such an approach towards the attainment of high-level goals within previous documents does also leave some space for member states to focus on aspects of the 2016 Outcome Document, including the Sustainable Development Agenda as mentioned at various points throughout.



Another more directly positive aspect of the Declaration is the explicit incorporation of the commitment ‘to strengthen international and inter-agency cooperation’ and ‘enhance coherence within the United Nations system at all levels with regard to the World Drug Problem’. With the emergence of an increasingly sophisticated system-wide approach across the UN, including notably within New York with engagement by the Chief Executives Board for Coordination,<sup>16</sup> the adoption of the UN System Common Position, and the establishment of the UN System Coordination Task Team (including its March 2019 Report, *What we have learned over the last ten years: A summary of knowledge acquired and produced by the UN system on drug-related matters*)<sup>17</sup> the omission of such a position would have been glaring

That said, other increasingly prominent themes – at the rhetorical level at least – appear to have been the victim of the contested negotiating process and ‘push back from more conservative governments’.<sup>18</sup> Key among these are real commitments to respect human rights and to achieve the SDGs. Consequently, language within the Declaration can be seen as a reiteration of already agreed general wording around both human rights and development, rather than a strong commitment to respect, protect and fulfil human rights and fundamental freedoms, or to advance development in all aspects of drug policy, for the next decade.<sup>19</sup>

Mindful of the increasing divergence of views within the international community and the perceived need for some sort of document marking the end of the

target period set in 2009, perhaps the use of already agreed language is all that could be expected. Within this context it is positive that, drawing upon the Outcome Document, mention is made to improving availability of controlled medicines, promoting alternatives to conviction and punishments and – although as ever avoiding use of the term – harm reduction services.

Similarly, it is unfortunate but anticipated that there is no mention of systemic tensions around either the death penalty for drug offences or regulated markets for the non-medical use of cannabis. These remain squarely in the ‘too hot to handle’ category.

The faux consensus also helps explain, if not excuse, the omission of meaningful targets intended to help reduce violations of human rights. Possible finger-holds for future work, however, might be found in the Declaration’s admission that ‘geographical coverage and availability of reliable data on various aspects of the world drug problem requires improvement’ (emphasis added). Moreover, amidst significant space devoted to ‘promoting and improving the collection, analysis and sharing of quality and comparable data’ and the Annual Report Questionnaire (ARQ) review process, it is interesting to note the following sentence: ‘Ensuring the collection of reliable and comparable data, through a strengthened and streamlined annual report questionnaire, reflects all commitments’ (emphasis added). Presumably ‘all commitments’ include those made at the 2016 UNGASS in relation to human rights, access to medicines and development (see Box 2).

In stark contrast to the positions of Canada and others embracing a health- and rights-oriented perspective, many other states displayed their ongoing faith in a traditional law enforcement-dominated approach. In a contentious intervention, for example, the Russian Federation’s Foreign Minister, Sergey Lavrov, declared that ‘only states that honestly perform the regulations of the UN conventions have the moral right to take part in the CND’s operation’.<sup>20</sup> The not-so-oblique reference was clearly aimed at Canada and its implementation of regulated markets for non-medical cannabis use. Any other approach undermines the authority of the CND, said Mr. Lavrov. He then went on to argue that the legalisation was proceeding under the pretext of human rights, a move that represented a ‘grave concern’. Legalisation was, he

added, ‘a straight road to Hell’, reiterating that drugs represented an ‘evil’, a ‘plague’, a ‘tyranny’, and a ‘scourge’. The Russian stance was supported by Singapore that argued: ‘First, there is a strong consensus’ and went on to criticise those who are attempting to legally regulate the use of cannabis. The Philippines reinforced this stance, and celebrated the Presidency of Mr. Duterte, elected by a ‘landslide vote’. The speaker admitted to ‘shocking abuses’ in its ‘war on drugs’ but insisted that there were ‘not many’ and that they were committed by ‘rogue cops’. But, said the delegate, ‘abuses are no reason to stop the war on drugs’.<sup>21</sup> He said that the war had emerged out of a drug plan that had lasted for years – ‘we just gave it a sharper edge, a longer blade and a wider swing’. The violence of this rhetoric was

genuinely startling, heard as it was in the heart of the United Nations. The Philippines was, however, determined to defend its position and its methods: ‘The Philippine war on drugs has braved withering criticism... Hand in hand with this vilification campaign, European NGOs fund another war – against our society and national security...’ The speaker was referring to the community insurgency in the country’s islands, which he claimed was funded by money from the EU diverted through an NGO. The speech appeared to conflate this allegation with those NGOs that have been critical of the Philippine drug war and the numerous extrajudicial and other killings associated with it.<sup>22</sup>

One issue that apparently crossed the liberal/progressive-authoritarian divide was that of data, with countries of differing views arguing that improved data was necessary for dealing effectively with the ‘world drug problem’ (see Box 2). This imperative united, for example, Malaysia and the Netherlands. However, there can be little doubt that the devil lies in the detail, and the type of data gathered and the uses to which it might be put is likely to vary greatly between countries.

### Ministerial Segment roundtable discussions

In line with Resolution 61/10, ‘Preparations for the ministerial segment to be held during the sixty-second session of the Commission on Narcotic Drugs, in 2019’<sup>23</sup> as well as the general debate, the Ministerial Segment comprised two ‘interactive multi-stakeholder round tables’.<sup>24</sup> Roundtable A was titled, ‘Taking stock of the implementation of all commitments made to jointly address and counter the world drug problem, in particular in the light of the 2019 target date for the goals set in paragraph 36 of the Political Declaration; analysing existing and emerging trends, gaps and challenges’. Roundtable B was titled ‘Safeguarding the future: enhancing our efforts to respond to the world drug problem through strengthening international cooperation, including means of implementation, capacity-building and technical assistance, on the basis of common and shared responsibility’. Both sessions included a range of contributions, including from civil society, and generated some worthwhile discussion.

As is often the case, however, the hoped interactivity gave way in many instances to the simple delivery of statements. During the discussion at the

‘Taking Stock’ roundtable, many states welcomed the progress made towards the targets set in 2009, but more in terms of data collection and information sharing than reducing the scale of the illicit market. A noteworthy number of speakers also stressed the centrality of scientific evidence-based public health approaches. As was the case across the course of the full seven days, the issue of limited access to ‘pain relief’ received attention, as did the issue of extrajudicial killings. Several speakers noted the essential nature of adherence to the drug control conventions and, without mentioning any country by name, highlighted concern about the effects of the ‘legalisation’ of cannabis and related effects on the wellbeing of young people. There was a general feeling that the international community needs to do more work filling data gaps and sharing information, including in relation to the ARQ. Importantly, there was also a general view that the next decade should focus on joint commitments made in the operational recommendations of the UNGASS outcome document. That said, despite some discussion about the lack of success towards achieving them, several speakers noted that the goals set out in 2009 remain relevant and that both the Outcome Document and the Political Declaration should be implemented in a balanced and comprehensive matter. Interestingly, and revealing the Russian Federation’s view of the ‘world drug problem’ as a criminogenic and security issue rather than anything to do with public health, the Russian delegate pointed out ‘that these discussions have bolstered my view of the fact that the drug situation is a result of narco-criminality and is closer and closer to narcoterrorism and criminality. If we don’t get our act together, we won’t be able to address this effectively’.

The ‘Safeguarding the future’ roundtable generated similarly wide-ranging – and some might say at times vague – discussion, with few perceptible outputs. Nonetheless, some interesting interventions were to be heard among many of the issues already discussed at the previous roundtable. Indeed, amidst comments on shared responsibility, access to controlled substances for medical use, the increasing complexity of drug markets, links to organised crime, the need for the UNODC to cooperate further with other UN bodies, the importance of the SDGs and the need to improve data tools and analysis (including in relation to the ARQ), a clear demarcation emerged around how best to deal with drug markets. For example, while

Morocco stated the need to ‘depenalize, decriminalize, and destigmatize addiction’, Pakistan noted with concern moves towards ‘drug tolerant’ societies. On the more specific issue of cannabis regulation, Japan observed that the international drug control treaties are the ‘cornerstones in tackling the [world drug] problem’ and that while some ‘legalize cannabis’, ‘we have grave concerns against it and call attention to the INCB warnings’. This was a position echoed by Iran. Reflecting once again a divergence in views between states, Pakistan also argued that the 2009 Political Declaration still ‘provides strategic direction’ and as such ‘does not need to be replaced by any political document’; an implicit and far from complimentary commentary on the Ministerial Declaration that was not to be unique across the course of the 62<sup>nd</sup> session. Meanwhile, the civil society panellist, Isabel Pereira representing the Colombian NGO Dejusticia, drew from the Latin American experience to highlight the need for drug policies grounded in the principles of equality, non-discrimination, public health and development.

### Ministerial Segment side events

Over the course of the Ministerial Segment, 12 side events with high-level political participation were held on issues as diverse as alternative development, drug law enforcement, health services for people who use drugs, access to controlled medicines, human rights and drug policy reform.

Of particular importance was the launch of the International Guidelines on Human Rights and Drug Policy.<sup>25</sup> Developed by a coalition of governments, UN officials and human rights and drug policy experts, the Guidelines offer practical advice on how to incorporate international human rights commitments into drug policies and programmes. The event included powerful remarks from the UN Development Programme (UNDP), WHO, UNAIDS and the International Network of People Who Use Drugs (INPUD), as well as a moving testimony from Justice Edwin Cameron of South Africa, who shared his experience of being the first homosexual man living with HIV named as a judge under Mandela’s government shortly after the apartheid ended. In his intervention, Justice Cameron highlighted the clear links between drug use, stigma and disproportionate criminal justice responses in his country.<sup>26</sup>

Another event of interest related to the global overdose response, with presentations from the UNODC, the European Monitoring Centre for Drugs and Drug Addiction, the governments of Romania, Slovenia, the UK and the USA, and two civil society speakers representing the EU Civil Society Forum on Drugs and the Romanian Association Against AIDS. The panellists called for the expansion of, and funding for, critical harm reduction interventions such as naloxone distribution, supervised consumption rooms, OST and drug checking to respond to the recent surge in overdose deaths in Europe and North America. The urgent need to address legislative,



Isabel Pereira, presenting on behalf of Dejusticia at the ‘Safeguarding the future’ roundtable Credit: Marie Nougier, IDPC

political and structural barriers was also highlighted, in particular reducing stigma, decriminalisation and the empowering people who use drugs in the harm reduction response.<sup>27</sup>

Running in parallel, the side event on the Global Fund was strategically important from a civil society standpoint. Resulting from years of advocacy with the French government, this was the first opportunity for the French Civil Society Platform on Drug Policy (an informal coalition of a dozen French NGOs working together on international drug policy advocacy) to organise a side event in partnership with their government at the CND. Chaired by a representative of the Platform, the event underscored the need for increased leadership in funding the harm reduction response, especially in light of the 6<sup>th</sup> replenishment conference of the Global Fund next October.<sup>28</sup>

Finally, the high-level event on the ‘complexity of the drug problem’ offered concrete options for reform at country level in the fields of criminal justice, on the promotion of health and human rights and around cannabis regulation, with interventions from Guatemala, Mexico, the Netherlands and IDPC. The discussion was particularly timely, coming just an hour after the Ministerial Declaration had been adopted in the Plenary.<sup>29</sup>

### CND regular session: Plenary discussions

Unsurprisingly, discussions within the regular

segment plenary repeated similar themes and patterns to those already heard in the Ministerial Segment, in terms of both the general debate and the roundtables. Indeed, most statements and interventions within the regular segment built upon points made in the previous week, although with a surprising lack of reference to the Ministerial Declaration itself in many instances. Thus, amidst the standard recounting of a range of national process indicators, including drug seizures and crop eradication, as well as policy and administrative advances designed to demonstrate that states are doing something to counter the ‘world drug problem’, came more signs of divisions and divergence across a number of core issues, principally cannabis, human rights and in relation to the latter, national sovereignty.

As had been the case at the 2018 session of the Commission, Canada kept a low profile regarding its shift towards a regulated cannabis market for non-medical use. Having unavoidably addressed the issue within the Ministerial Segment, such a tactic was no doubt designed to the limit criticism from some states and the INCB. The approach was not especially successful. As during 14 and 15 March, several states noted their concern. Notable among these were Belarus and Japan, with the latter apparently following a set message across numerous interventions. Belarus stressed that since cannabis legalisation was not in line with the treaties the international community needed to



Side event on the International Guidelines on Human Rights and Drug Policy Credit: CND Tweets



Side event on the complexity of the drug problem Credit: CND Tweets

## Box 2 Moving towards non-traditional metrics?

As noted here and in previous IDPC reports on CND proceedings<sup>30</sup> the issue of drug policy metrics and indicators has had an increasing profile at the Commission in recent years. This is partly to do with the ongoing review of the ARQ; a key tool used by the UNODC to collect data from member states for, among other things, the preparation of the *World Drug Report*. Indeed, as well as mention within the roundtables, several statements, for example by France and Jamaica, made specific reference to the ARQ review process.

That said, a noticeable – if admittedly relatively limited – change in approach to the issue was made at the 62<sup>nd</sup> session, in relation to the mention of non-traditional drug policy indicators. It is true that most states across the entire event spoke of the importance of ‘reliable, comprehensive and comparable data’, with many apparently reflecting upon this in terms of traditional process indicators (including seizures) as well as some health-related data. However, other states also broadened the scope. For example, while Chile spoke of data collection in relation to the SDGs, the Swiss reflected upon domestic efforts to link drug policy statistics and human development. ‘Statistics are the past and future of drug policy’, the delegate stressed; a position bolstered once again by the Swiss co-sponsorship of a side event devoted to the issue, this year on aligning data collection with UNGASS implementation and the SDGs.<sup>31</sup> Norway, another ardent supporter of a recalibration of drug policy metrics, was also vocal on the issue. As well as putting forward the general view that ‘more work needs to be done on metrics’, the Norwegian delegate stressed that this was particularly the case in relation to ‘developing metrics and indicators to better assess the effectiveness of our efforts and monitor progress, reflecting the seven chapters of the UNGASS outcome document’. As was the case in 2018, however, it was left to the OHCHR to crystallise the current dilemma facing the international community: the disconnect between member states’ high order commitments to human rights and measuring the outcomes of policy practice on the ground.

During his statement under Item 11 (Follow-up to the Special Session of the General Assembly on the world drug problem held in 2016, including the seven thematic areas of the outcome document to

of the special session), the OHCHR representative specifically addressed the issue of measuring drug policies from a human rights perspective. In this regard he pointed out that ‘Protecting human rights within drug laws, policies and strategies requires tracking data and conducting a regular assessment of the human rights situation as it relates to drug control’. ‘There is a growing realization’, he continued, ‘that traditional indicators regarding arrests, seizures and criminal justice responses are inadequate to show the real impact of drug policies on communities’. As a result, it was argued, ‘The success of drug control strategies should increasingly be measured through an assessment of the impact of drug control efforts on the enjoyment of human rights and other critical aspects such as security, welfare, health and social-economic development’.

Moving on to concrete approaches, the OHCHR speaker drew attention to the fact that ‘Human rights-based and gender sensitive indicators are being used in many areas, including poverty reduction, development and other critical areas, to ensure that States fulfil all obligations created by the various human rights, or at least that they can measure their progress in this regard’. Moreover, it was stressed, ‘In 2009, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health recommended three categories of indicators – structural, process and outcome indicators (nine indicators in total) for assessing the drug policy from the right to health perspective (A/65/255, paragraph 72)’. He concluded by pointing out that ‘OHCHR has developed a set of human rights indicators for the realization of human rights and a guidance on a human right based approach to data collection in the implementation of the Sustainable Development Goals’. ‘All these tools could be useful’, he concluded, ‘in strengthening and streamlining existing data-collection and analysis tools in drug control efforts’.

Judging by the ongoing reluctance of some states to integrate any human rights indicators into any future data collection apparatus (whether it be at national or international level in the form of a revised ARQ), the extent to which such recommendations might be taken on board remains to be seen.

prevent ‘dilution’, while also adding the view that there were ‘hazards’ associated with attempts to internationally reschedule the substance. Echoing these ideas, the Japanese delegate noted in relation to cannabis: ‘we support the INCB’ and the ‘international society must work together’. ‘Why?’, the delegate asked before going on to answer this rhetorical question – because of the Japanese concern with the cultivation of THC cannabis and ‘with popular products such as cannabis cookies/chocolates’. ‘Japan believes’, he continued, that ‘this could influence innocent and juveniles, and cause severe health disorders’.

Moving away from the issue of cannabis, the Japanese delegate was also keen to point out his country’s quest for a ‘drug-free society’ based on a ‘balanced approach’ to drug policy. In this regard, however, it was stressed that each country has ‘its own approach’. Acknowledging the arguably inescapable scientific evidence base underpinning many interventions, he stated that ‘We know that some measures included in harm reduction are effective and important in certain conditions and such projects carried out in countries affected by infectious diseases should be promoted’. ‘However’, the delegate continued, ‘these should not be recommended to all countries and should not be used excessively. Japan has been able to stabilize domestic drug abuse by implementing programs based on progressive policies through rehabilitation and preventing methamphetamine abuse’.

Tensions between human rights and national sovereignty could also be seen more starkly in relation to the death penalty for drug-related offences. While many statements included explicit opposition to both the death penalty and extrajudicial killings, including those from Norway, France, the EU, Canada and the Office of the High Commissioner for Human Rights (OHCHR), others implicitly defended these policy choices. In light of the somewhat tetchy relationship between some sections of civil society and the VIC security team at this year’s meeting (see below), it is also noteworthy that the OHCHR statement included the following: ‘Our Office values the engagement of civil society organizations and effected communities, including people who use drugs, in the development and the implementation of drug policies. Civil society organizations should be supported. They should be protected from any intimidation, threat and harassment’.

## The Committee of the Whole: Opening ‘Pandora’s box’

Draft resolutions are debated and approved at the CoW, a technical committee of the CND, prior to submission to the Plenary for adoption. This year there were eight resolutions submitted to the CoW (see Box 3). The chair of the Committee was the First Vice-Chair of the 62<sup>nd</sup> Commission, Mr. Kazem Gharib Abadi (Islamic Republic of Iran).

### Resolution L3: ‘Supporting the International Narcotics Control Board in fulfilling its treaty-mandated role’

It is in the CoW that countries’ cultural, social and underlying philosophical positions are often revealed in their clearest form. This was certainly the case this year, particularly in the example of the Russian Federation Resolution L3, ‘Supporting the International Narcotics Control Board in fulfilling its treaty-mandated role’.<sup>32</sup> In order to understand the importance of this resolution, it is necessary to review the discussions taking place in the build up to the 62<sup>nd</sup> CND over the past year.

At the second intersessional meeting of the CND in June 2018, Mikhail Ulyanov, the Permanent Representative of the Russian Federation in Vienna, spoke of the ‘dramatic development in international drug control policy related to recent measures taken by the Canadian authorities’.<sup>33</sup> He alleged that this move would ‘tangibly breach the UN drug control conventions’. He continued by noting that the INCB had written to Canada with its assessment of these developments, underlining that they were incompatible with the treaty obligations to which Canada is bound. Mr. Ulyanov said that he regretted that the Canadian authorities had ‘totally ignored’ the Board’s statement. Canada had attempted to justify the legalisation of cannabis, he went on, by reference to Paragraph 1 of the Preamble to the 1961 Single Convention, stating that the measure would contribute to protecting the health and welfare of its people. ‘This argument is completely false and means a switch of the notions’, judged the Russian Federation. With growing hostility, the Ambassador declared that: ‘Apparently, it is assumed in Ottawa that this serious violation of the drug control conventions will pass unnoticed... This assumption is absolutely wrong... Ottawa has no right to make unilateral decisions, which are meant to impact the



Resolution L3 adopted at the CoW Credit: Carrie Fowlie

integrity of the international drug control conventions, and promote a selective approach to their implementation, thus opening Pandora's box'. 'This approach', he added, 'could lead to the control system 'undergoing deep erosion and potentially being destroyed'. Canada, as a member of the CND, was then accused of 'destroying the conventions from inside'. He urged the country to change its mind about legalisation and hoped that 'a responsible approach will finally prevail in Ottawa'.

On the same day at the intersessional meeting, Canada provided what was effectively a response to the Russian intervention. The Permanent Representative of Canada in Vienna, Ambassador Heidi Hulan, told delegates that the country recognises that 'cannabis legalization is a policy issue that is of great interest to the Commission and of concern to some States Parties to the drug Conventions'.<sup>34</sup> She noted that Canada had briefed both the CND and the INCB several times on its cannabis policy. In her June 2018 submission, Ms. Hulan made a crucial point to delegates: 'The reality is that, in Canada at least, our former approach simply did not work. Despite nearly a century of strict criminal prohibition of cannabis, supported by substantial law enforcement resources, cannabis use has become widespread across Canada today and the drug is easily available to Canadian youth and adults alike'.<sup>35</sup>

She continued that the Canadian government was well aware of the potential harms to youth from the consumption of cannabis, and that this was one of the chief motivating factors behind the search for a more effective policy response. She also noted that the percentage of Canadian youth using tobacco had dropped from 27% in 1985 to 10% in 2015 – a public health success story whose lessons had been transferred to the country's new cannabis policy. The Canadian speaker next elaborated on the policy significance of the Canadian measures, making it clear that they were a response to its domestic situation and were not intended to apply in other countries with their own distinctive challenges. She also wished to make it clear that Canada remains a strong supporter of the international drug control system. 'We recognise that our treaty partners are pursuing different policy approaches to cannabis, and we do not intend for our system to negatively impact their efforts'. Consequently, she added, the trafficking of cannabis across Canada's borders would remain a serious criminal offence.

This was the context in which the Russian Federation introduced its resolution on 'Supporting the INCB'; the debates had continued throughout the previous CND sessions and at numerous informal meetings, and tensions clearly remained. The Russian resolution was 'expressing deep concern about legalization of non-medical use of certain

## Box 3 Resolutions agreed at the 62nd session of the CND

**Resolution 62/1:** Strengthening international cooperation and comprehensive regulatory and institutional frameworks for the control of precursors used in the illicit manufacture of narcotic drugs and psychotropic substances

**Resolution 62/2:** Enhancing detection and identification capacity for synthetic drugs for non-medical use by increasing international collaboration

**Resolution 62/3:** Promoting alternative development as a development-oriented drug control strategy

**Resolution 62/4:** Advancing effective and innovative approaches, through national, regional and international action, to address the multifaceted challenges posed by the non-medical use of synthetic drugs, particularly synthetic opioids

**Resolution 62/5:** Enhancing the capacity of Member States to adequately estimate and assess the need for internationally controlled substances for medical and scientific purposes

**Resolution 62/6:** Promoting measures to prevent transmission of HIV attributable to drug use among women and for women who are exposed to risk factors associated with drug use, including by improving access to post-exposure prophylaxis

**Resolution 62/7:** Promoting measures to prevent and treat viral hepatitis C attributable to drug use

**Resolution 62/8:** Supporting the International Narcotics Control Board in fulfilling its treaty-mandated functions in cooperation with Member States and in collaboration with the Commission

drugs in some regions, which represents a challenge to the universal implementation of the drug control conventions, a challenge to public health and well-being, particularly among young people, and a challenge to the States parties to the conventions.<sup>36</sup>

It is notable that the phrasing of the Russian text is almost identical to that of the INCB in its criticisms of Canada. In its operative paragraphs, Resolution L3 ‘welcomes the continuous efforts of the International Narcotics Control Board’ in monitoring and meeting the challenges faced by the global community. It also invites the Board to ‘proactively implement its mandate’, to try to achieve universal adherence to the Conventions, ‘and to ensure their implementation by all States parties in good faith through applying, where appropriate, various means envisaged in the conventions’. The unnamed ‘various means’ are presumably a veiled reference to measures such as the invocation of Article 14 of the Single Convention, which may be invoked by the INCB in situations where states parties are seen to fail to adhere to their treaty obligations. This was, consequently, a potentially powerful resolution that we can only assume was directed at those countries, like Canada, which have elected to attempt to implement innovative measures in the face of a century of

failure represented by the drug control orthodoxy. Japan and Russia had already suggested in their statements in the plenary to invoke Article 14 of the 1961 Single Convention against countries that have legalised and regulated [cannabis](#), with Russia mentioning Canada specifically (see below).

The informal discussions between the Russian Federation and its co-proposers<sup>37</sup> and those with reservations on aspects of Resolution L3 included much regarding the treaty-mandated role of the INCB. Much of the debate in the CoW was focused on limiting the work of the INCB to its mandate within the treaty, in particular to dismantle Operative Paragraph 8, which intended to ‘ensure that the Board has sufficient resources to carry out its treaty-mandated functions fully and effectively, including in monitoring treaty implementation and compliance by, inter alia, strengthening the Board’s capacity to undertake legal research and analysis.’

Strengthening the Board’s ‘capacity to undertake legal research and analysis’ would have been potentially problematic and would have widened the Board’s mandate. The INCB self-defines as a ‘quasi-judicial body’ and its membership does not include experts in international law. While the Board has the mandate to raise concerns about the violation of treaty obligations, such as allowing the recreational use of cannabis, it has no mandate

to act – this remains the prerogative of member states and the CND, and the Board has no mandate to interpret international law. The resolution would have given the Board more opportunities to engage with, and give direction to, member states and the CND on the issue of non-medical use of cannabis. The paragraph might be seen as an attempt to counter recent debates about treaty reform options, such as the *inter se* modification of the UN drug control conventions, put forward by the Global Drug Policy Observatory (GDPO), the Transnational Institute (TNI), and the Washington Office on Latin America (WOLA).<sup>38</sup> An *inter se* agreement on cannabis regulation would allow a group of countries to modify certain treaty provisions amongst themselves, for instance regarding non-medical cannabis, while maintaining a clear commitment to the original treaty's aim to promote the health and welfare of humankind and to the original treaty obligations vis-à-vis countries that are not party to the agreement. Such a legally-grounded and coordinated collective response has clear benefits compared to a chaotic scenario of a growing number of different unilateral reservations and questionable re-interpretations.

The INCB already attempted to intervene in this debate by way of writing a letter to the Canadian Senate Foreign Affairs Committee in the course of their studying of Bill C-45 that legalised and regulated the non-medical use and production of cannabis. Then, it had argued against the possible option of *inter se* modification, declaring the limitation of cannabis to medical and scientific use in the treaties to be a peremptory norm in international law, for which implementation is a *sine qua non* of compliance with the international legal drug control framework.<sup>39</sup> Seen in this context, it could be argued that Resolution L3 was designed to permit the Board's intervention in this debate and provide financial resources to counter legal analysis that would give reform-minded nations room for manoeuvre to legalise and regulate non-medical use and production of cannabis within the legal confines of international law.

Informal consultations and the debate in the CoW continued during the week, with members of the INCB Secretariat pacing around nervously in the corridors, and the United States, Canada and several European allies clashing with Russia. The resolution was the last one to be completed on Friday just in time for the final plenary. The final version of

the resolution was amended to: 'Invites the Board to continue diligently performing all the functions entrusted to it under the three drug control conventions, adhering to and mindful of its mandates, taking into consideration, as appropriate, the constitutional limitations, legal systems and domestic law of Parties'; a phrasing in which the invitation to the Board is significantly circumscribed in multiple ways.

In general, and much to the relief of Canada, the finally agreed resolution was much more balanced and considerably less directly hostile to measures such as legalisation, though it did retain the core aim of criticising 'responses not in conformity with the three international drug control conventions', mentioned in the 2019 Ministerial Declaration, though here this was paired with, and balanced by, 'not in conformity with applicable international human rights obligations'. Together these were viewed as composing a challenge to 'the implementation of joint commitments based on the principle of common and shared responsibility'.<sup>40</sup> One can see here the value of the UN's 'consensus', a reality of which IDPC has in the past often spoken critically. However, the process of consensus largely emasculated a potentially authoritarian resolution by modifying and re-crafting the language it contained, thereby effectively closing this particular Pandora's box – at least for the time being.

#### Resolution L4: 'Promoting measures to prevent and treat viral hepatitis C attributable to drug use'

Yet another important contribution to the Resolutions was L4 'Promoting measures to prevent and treat viral hepatitis C attributable to drug use'. This was the first CND resolution devoted to the important topic of hepatitis C among people who use drugs – and was submitted by Norway. This is a particularly timely and critical resolution since the WHO estimated that in 2017, approximately 71 million people were chronically infected with hepatitis C, with 23% of new infections and 33% of HCV-mortality attributable to injecting drug use. Deaths attributed to the hepatitis C virus outstrip those from HIV, and the resolution highlights this in its preambular paragraphs.<sup>41</sup>

Early in the negotiation process, the resolution also gained support from Egypt (an unusual ally for such affairs at the CND, but a global champion of the hepatitis C response) and was eventually also

co-sponsored by a varied list of members states including Australia, Andorra, Canada, Kenya, Mexico, New Zealand and Ukraine.

The original draft referred to the fact that ‘some countries and regions have made significant progress in expanding health-related risk and harm reduction programmes’. However, in response to objections from those countries to whom the mention of ‘harm reduction’ remains anathema, this reference was removed. Instead, as has so often been the case in the past, the term was replaced by ‘some countries have made considerable progress in expanding evidence-based, comprehensive HIV and HCV interventions aimed at minimizing the adverse public health and social consequences of drug use’. These evidence-based interventions are, nonetheless, what are normally termed ‘harm reduction’ measures; the fact that such interventions are utilised is perhaps more important than what they are called, particularly for those who benefit from them. However, it is frankly bizarre that after decades of the effective use of harm reduction interventions, there remains a group of countries who insist that they must not be referred to by name. This is particularly so given the stand taken by Germany and the ‘Group of Twenty Six’ in 2009, when an ‘Interpretive Statement’ was appended to the Political Declaration, stating that the term ‘related support services’ included ‘measures which a number of states, international organizations and NGOs call harm reduction measures’.<sup>42</sup> Moreover, the term ‘harm reduction’ was used in the 2016 General Assembly High Level Meeting on Ending AIDS, and appears in the Political Declaration on HIV and AIDS produced in that meeting, where it is noted that ‘some countries and regions have made significant progress in expanding health-related risk and harm reduction programmes’.<sup>43</sup>

However, the resolution specifically references and recommits to the WHO’s global health sector strategy on viral hepatitis 2016-2021 – a document which explicitly and strongly endorses harm reduction and ‘public health alternatives to criminalization’, and even includes a specific target for member states to provide 300 sterile needles and syringes per person who injects drugs per year by 2030.<sup>44</sup> Acknowledging the role of the WHO as ‘the lead United Nations agency for the hepatitis response’, the resolution also cites the WHO Guidance on Prevention of Viral Hepatitis B and C among People Who Inject Drugs.<sup>45</sup>

Some content was added to the resolution during negotiations, including on universal health care, while – as in several other resolutions – there were lengthy discussions about terminology between ‘drug users’ and ‘people who use drugs’ (the latter generally regarded as being more humanising and less stigmatising). The eventual compromise was to stay true to the language used in the original source of the text each time, leading to a mix in the wording used throughout the document. Positively, Norway’s efforts to include an operative paragraph on working with ‘networks of people who use drugs’ eventually led to the CND’s first acknowledgement of ‘community-led organizations and initiatives’ and the need to engage them in programme design, prevention, diagnosis and treatment. Other operative paragraphs recommit, inter alia, to key harm reduction measures, the relevant SDG targets, voluntary screening for hepatitis C, and services in prison.

#### **Resolution L5: Enhancing detection and identification capacity of synthetic drugs for non-medical use by increasing international collaboration**

Another point of tension between the Russian Federation and Canada, as well as groups of countries on both sides, was the question of stigmatisation of people who use drugs. During the CoW discussions on Resolution L5, ‘Enhancing detection and identification capacity of synthetic drugs for non-medical use by increasing international collaboration’, which was proposed by Australia, the Australian delegate attempted to include reference to non-stigmatising attitudes in the training of staff. Pakistan, Russia, Singapore, Iran and Japan were amongst those countries that sought to block the use of this language, arguing that it had no relevance here. Japan went somewhat further and claimed that the term was ‘not internationally established’, leading Canada to refer to its Resolution 61/11 of 2018, which explained in detail the concept of stigma and elaborated upon its role in deterring people who use drugs from taking up drug treatment. In the event, no mention of stigmatisation was retained in the final version of Resolution L5. Disputes over the use of the term and concept of stigmatisation occurred in discussing various other resolutions, and it appears to be a term that undercuts the drug control consensus – and is likely to continue to do so. Nonetheless, it remains an important discourse, which IDPC will further support.



### Resolution L6: Promoting alternative development as a development-oriented drug control strategy

Resolution L6 was submitted by Germany, Peru and Thailand.<sup>46</sup> It argued in favour of alternative development, and specified that drug policies and programmes, including in the field of development, should be conducted in line with the UN Charter, the principles of human rights and the Sustainable Development Agenda and its Goals, though the place of the latter within it was relatively minor. As is customary for many drug control resolutions, it also traced the trajectory and reaffirmed the commitments and documents of 2009, 2014 and 2016.

There was protracted discussion over a phrase referring to alternative development as a support to create ‘societies free of drug abuse’. Canada suggested another and more realistic option, that of ‘minimising the adverse public health and social consequences of drug abuse’. Russia announced that it could accept ‘society free of drug abuse’ in the singular, while France added that it would not accede to the plural use and supported Canada on the inclusion of human rights protections. Peru stated that this was a technical resolution, and that it had used previously agreed language precisely to avoid the politicisation of the issue. The claim that others’ interventions constituted political readings of the ‘purely technical’ question at hand was a tactic used by numerous states, while insisting (of course) that their own interventions were purely technical. To some extent, it took place across the divide between progressive and conservative states at the CND.

In the event, the resolution was agreed, with the phrase now appearing in its singular form: ‘alternative development is an important, lawful, viable and sustainable alternative to the illicit cultivation of drug crops and an effective measure to counter

the world drug problem and other drug-related crime challenges, as well as a choice in favour of promoting a society free of drug abuse’.

Canada had noted that it had accepted the phrase ‘society free of drug abuse’ in the Ministerial Declaration because there it was balanced by strong human rights language, recognition of fundamental freedoms and the inherent dignity of all individuals. In this resolution, a similar trade-off was made between the law enforcement conservatives and the human-rights progressives, the outcome being somewhat convoluted as the text sought to express a consensus involving radically different political positions and sets of values.

### Resolution L9: Promoting measures to prevent transmission of HIV for women who use drugs, including by improving access to post-exposure prophylaxis

The disputes over the optimum manner of referring to people who use drugs appeared once again in L9 ‘Promoting measures to prevent transmission of HIV for women who use drugs, including by improving access to post-exposure prophylaxis’, a resolution proposed by Brazil. Introducing the resolution, the Brazilian speaker explained that it had already been through four sets of informals, and that a form of language had been adopted to get around the lack of consensus over ‘women who use drugs’ and ‘women drug users/abusers’. Brazil requested assistance from the Chair to achieve flexibility of the same kind that had been evidenced in L.4, in order to proceed with the resolution. Egypt, Pakistan, Russian Federation and China all mentioned their misgivings about the use of ‘women who use drugs’, the Russian delegate even asking the secretariat to clarify what was meant by the term: ‘Which women? Do we mean nonmedical users? Or do you mean abusers? Misusers of medical drugs?’ The secretariat

responded by explaining that ‘when we use the term “women who use drugs”, we mean women who use narcotic drugs, in many countries illicit drugs – not people who use medicines’. Ultimately, the resolution was adopted with, as shown above, the phrase ‘women who use drugs’ included in the title.

## Changes in the Scope of Control: Scheduling decisions (and non-decisions)

At its 41<sup>st</sup> Meeting, the WHO’s Expert Committee on Drug Dependence (ECDD) reviewed several substances, which were recommended for inclusion in the control schedules of the 1961 and 1971 Conventions.<sup>47</sup> Recommendations were received at the CND for control of four fentanyl and five synthetic cannabinoids. The ECDD had also reviewed cannabis for the first time under the contemporary conditions of review, as well as a set of extracts and preparations of cannabis. However, since these recommendations arrived very late to the Commission, many states asked for more time to consider the complexities – both pharmacological and political – they involved, and a postponement of the votes at this year’s CND.

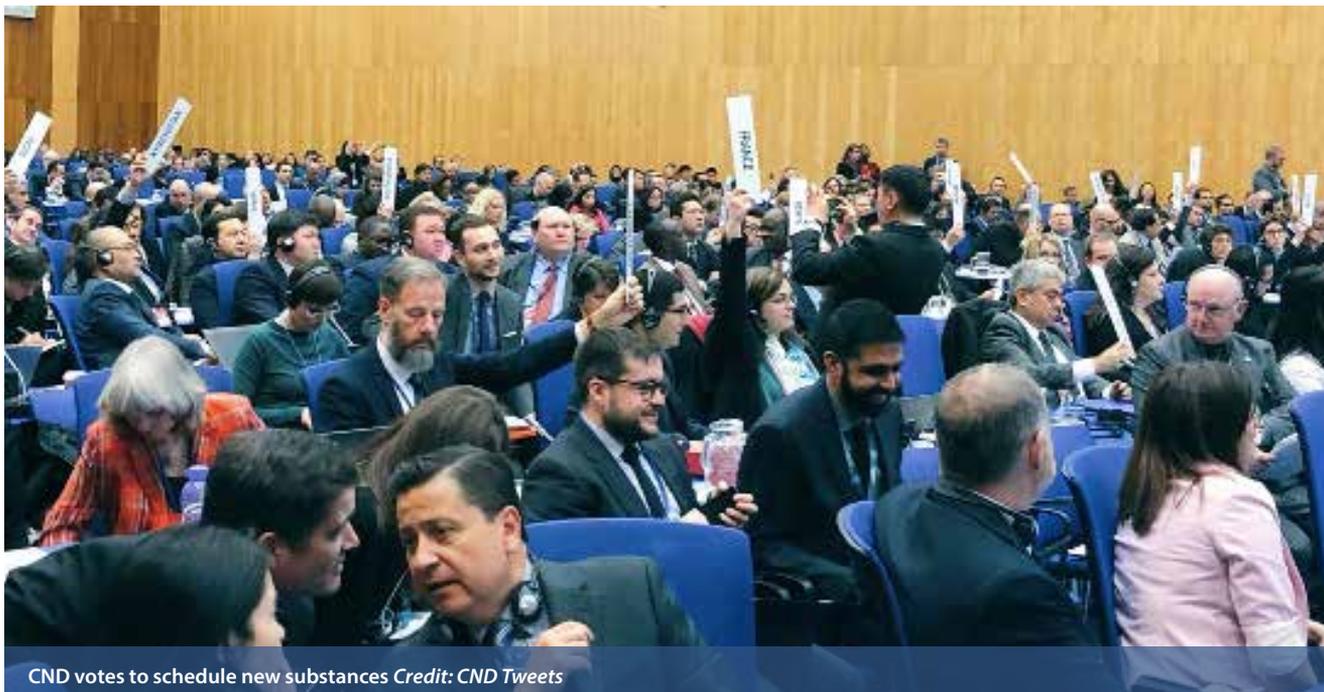
The votes on substances and recommendations that were considered at the CND took place on 19 March, the CoW being suspended to allow states to participate in the voting (see Box 4).<sup>48</sup> The four fentanyl were dealt with first: parafluorobutyrylfentanyl, orthofluorofentanyl, methoxyacetylfentanyl and cyclopropylfentanyl, each of which had been recommended by the ECDD for control under Schedule 1 of the 1961 Single Convention. A brief summary of the substances was provided by Mr. Gilles Forte of the WHO, and then states were invited to vote, a simple majority being required for inclusion in the 1961 treaty. In the event, all four recommendations were agreed upon by member states, and these fentanyl are now amongst those controlled under the Single Convention.

The five synthetic cannabinoids recommended for control under the 1971 Convention were then introduced. These were ADB-FUBINACA, FUB-AMB, CUMYL-4CN-BINACA, ADB-CHMINACA (MAB-CHMINACA) and N-Ethylnorpentylone (ephylone). Again, each was voted upon, the 1972 stipulating a two thirds majority as necessary for

the recommendation to be adopted and the substance scheduled. As with the fentanyls, the recommendations were not viewed as controversial, and all five synthetic cannabinoids were voted for control under Schedule 2 of the 1971 Convention.

Under the 1988 Trafficking Convention, the INCB is mandated with making recommendations on precursors for addition to the tables of that treaty. This year, there were three precursors recommended for inclusion in Table 1 of the 1988 Convention: 3,4-MDP-2P-methylglycidate, 3,4-MDP-2P-methylglycidic acid, both pre-precursors for the manufacture of MDMA, and alpha-phenylacetoacetamide (APAA) acid. All were voted for adoption, with a two-thirds majority being required under the 1988 Convention. A fourth substance, hydroiodic acid, had been notified by the government of Argentina, but was not recommended for scheduling by the INCB, which explained that other, cheaper substances were available with the same precursor role, and that controlling hydroiodic acid would not affect the illicit market. No states voted in favour of scheduling this substance when a vote was called, and it consequently remains outside the remit of the drug control system.

Nonetheless, there was considerable reaction at this session to the ECDD’s recommendations regarding cannabis. Countries such as Japan supported the postponement of the vote, arguing that it would give more time for a proper consideration of the options. Uruguay, by contrast, regretted the delay, citing the growing evidence for the efficacy of cannabis-based medications and the need to change the regulatory landscape in order to facilitate it. The continued listing of cannabis in Schedule 4 of the 1961 Convention can restrict scientific research into the therapeutic benefits of the drug, it was argued. The Uruguayan delegate added that, ‘We cannot ignore that this recommendation marks a significant change in the position of WHO, which during the last six decades had positioned itself against the use of cannabis in medicine. We warmly welcome this evolution in the concepts that the WHO is involved in.’<sup>50</sup> The speaker went on to add that the postponement demonstrated that the CND was unable to meet the tasks assigned to it under the drug control conventions. Uruguay made a formal request to the CND that the vote should take place at the next Reconvened session in December 2019. The delegate from Jamaica made a similar critical point, expressing herself as



CND votes to schedule new substances Credit: CND Tweets

‘disappointed that the ECDD recommendations on cannabis will not be discussed at this CND. We could have demonstrated,’ she added, ‘that we can change with circumstances. Instead, this was an opportunity lost’.

The Russian Federation’s intervention was highly critical of those countries who have elected to regulate non-medical uses of cannabis. Pointing out that the ECDD recommendations have, unusually, been highlighted in the mass media, the speaker referred to ‘countries...violating international law by legalising cannabis’. He speculated that the experts of the ECDD are merely ‘technical experts’ and do not have to consider the repercussions of their decisions – something that is certainly not the case.<sup>51</sup>

The Russian speaker then asked why, after 58 years in Schedule 4, ‘all of a sudden we have an expert group of the WHO saying that it needs to be taken out’. The Russian Federation then accused the ECDD of ‘forcing through’ the recommendation, declaring that it was ‘not the WHO recommendation, but the ECDD recommendation’. This is a curious analysis, as the WHO appoints a committee of those with expert knowledge of the substance, and they submit their recommendation to the Director-General of the WHO, who passes it on to the Commission. ‘The way they forced this theme through in such a hurry and with such conviction raises a multitude of questions in our mind’, continued the Russian

delegate. He reported that the Russian government had asked the ECDD for the list of scientific articles on which they are basing their decision, and received no answer to date; this, despite the fact that the ECDD Review document is fully referenced with numerous peer-reviewed scientific journal articles.<sup>52</sup>

Reflecting many of the Russian Federation’s interventions at the Commission’s 62<sup>nd</sup> session, comments on the Expert Committee were overtly hostile and unbalanced, and arguably motivated by the country’s extreme narcophobic ideology. This takes us back to the matters mentioned in our introduction – the polarisation of debate and the demise of civility even in contexts in which the language of diplomacy customarily holds sway. Russia had already attacked Canada for its cannabis policies and claimed that only those who followed what are effectively its own interpretation of the drug control conventions had the moral right to speak at and participate in the CND. Nevertheless, the postponement of the vote was probably a wise decision. Although the recommendations include some clearly positive points, especially acknowledging the medicinal usefulness of cannabis by removing it from Schedule 4 of the 1961 Single Convention and clarifying that CBD is not under international control, they also reveal problematic underlying evaluation methods and scheduling procedures, along with a questionable rationale for keeping cannabis in Schedule 1.<sup>53</sup>

## Box 4 Scheduling decisions at the 62nd CND

**Decision 62/1:** Inclusion of parafluorobutyrylfentanyl in Schedule I of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol

**Decision 62/2:** Inclusion of ortho-fluorofentanyl in Schedule I of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol

**Decision 62/3:** Inclusion of methoxyacetylfentanyl in Schedule I of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol

**Decision 62/4:** Inclusion of cyclopropylfentanyl in Schedule I of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol

**Decision 62/5:** Inclusion of ADB-FUBINACA in Schedule II of the Convention on Psychotropic Substances of 1971

**Decision 62/6:** Inclusion of FUB-AMB (MMB-FUBINACA, AMB-FUBINACA) in Schedule II of the Convention on Psychotropic Substances of 1971

**Decision 62/7:** Inclusion of CUMYL-4CN-BINACA in Schedule II of the Convention on Psychotropic Substances of 1971

**Decision 62/8:** Inclusion of ADB-CHMINACA (MAB-CHMINACA) in Schedule II of the Convention on Psychotropic Substances of 1971

**Decision 62/9:** Inclusion of N-ethylnorpropylone (ephylone) in Schedule II of the Convention on Psychotropic Substances of 1971

**Decision 62/10:** Inclusion of “3,4-MDP-2-P methyl glycidate” (“PMK glycidate”) (all stereoisomers) in Table I of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

**Decision 62/11:** Inclusion of 3,4-MDP-2-P methyl glycidic acid (“PMK glycidic acid”) (all stereoisomers) in Table I of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

**Decision 62/12:** Inclusion of alpha-phenylacetacetamide (APAA) (including its optical isomers) in Table I of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

**Decision 62/13:** Consideration of hydriodic acid for inclusion in the tables of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

**Decision 62/14:** Changes in the scope of control of substances: proposed scheduling recommendations by the World Health Organization on cannabis and cannabis-related substances: Postponed.

## The INCB: Cannabis in the spotlight

The INCB made usual interventions and statements, but perhaps was under increased scrutiny this year because of its position on cannabis. At the beginning of what was a busy seven days for the President of the Board, the first outing for Dr. Viroj Sumyai was, as noted above, during the opening of the Ministerial Segment. Here, reminding states of their commitment to the three international drug conventions made at the 2016 UNGASS and immediately setting the tone regarding their sacrosanct immutability, he stressed that the ‘ultimate concern of the conventions is the health and welfare of all humankind’. Ignoring, as is the norm, some inherent contradictions within the Board’s logic, he went on to note that ‘this includes the full enjoyment of human rights,’

including ‘the right of children to be protected from drug abuse and drug trafficking’. Amidst a somewhat simplistic reference to the view that the ‘full implementation of the treaties can contribute to achievement’ of the SDGs – particularly Goal 3 relating to good health and wellbeing – the President gave welcome attention to the availability of narcotic drugs and psychotropic substances for medical purposes. As noted above, he also flagged up the deterioration of the situation in Afghanistan and the Board’s resultant invocation of Article 14 bis of the Single Convention; a normally arcane issue that, this year, received attention beyond the usual Afghan context. As well as mentioning several other issues of concern, including amphetamine-type stimulants, synthetic opioids, new psychoactive substances (NPS) and ‘designer precursors’, Dr. Sumyai devoted considerable attention to cannabis.



INCB President presents Annual Report at 62nd CND Credit: INCB website

‘INCB’s Annual Report warns’ he noted, ‘of the risks of poorly regulated medical cannabis programmes’. ‘The legislative developments concerning the “recreational” use of cannabis are a real concern’, he continued, ‘not least for their potential impact on health, particularly of youth’. Returning to his reoccurring theme of universal implementation and ‘health and welfare’, he stressed that the concern also resulted from the fact that these legislative developments ‘are contrary to *your* treaties and the commitments *you* made to one another’ (emphasis added). Ensuring that there was no confusion concerning the Board’s view, the President stressed that ‘State Parties have made a legal commitment to limit the use of narcotic drugs and psychotropic substances exclusively to medical and scientific purposes. This is the fundamental principle of the treaties. Any divergence poses a grave threat to public health, particularly among young people, and represents a challenge to the States parties to the treaties’.

While containing some valid points and others that merit scrutiny, it was nonetheless positive that he also pointed out that the ‘complex challenges’ raised in his statement must be addressed ‘in full respect of the rule of law and human rights obligations without recourse to extrajudicial responses of capital punishment, both of which are unjustifiable and unacceptable’. ‘Measures to reduce illicit supply and demand’, he continued, ‘must be carried out in a balanced way, and in the spirit of shared responsibility’. Finishing with a flourish that reflects the Board’s apparently unswerving faith in the extant international system, Dr. Sumyai noted that ‘The drug challenges we see today have a profound impact on public health and wellbeing’. ‘Yet, over

the past 110 years, since the first intergovernmental meeting on drug control in 1909’, he went on, ‘similar challenges have been overcome through international cooperation and political commitment’. ‘I encourage you to invoke that same spirit, as you chart the path ahead for international cooperation in drug control’, he said.

Having laid out some key themes and areas of concern within the Ministerial Segment, it was to be expected that many would be reprised in various forms within other interventions across the Commission’s regular segment. Indeed, in presenting the 2018 INCB Annual Report, the Special Report on availability and, produced during the 30<sup>th</sup> anniversary of the conclusion of the 1988 Convention, the Precursors Report,<sup>54</sup> Dr. Sumyai once again stressed that ‘Access to and availability of controlled medicines remain a challenge in many countries. As a result, people go without adequate treatment and may even have to experience surgical procedures without anaesthesia’. In this instance, he also pointed out that the Board noted that ‘in a few countries poor regulation and overprescribing of controlled medicines has led to increases in drug dependence, overdose and diversion’. Similar messages were also included within the INCB statement under Item 9 (d): ‘international cooperation to ensure the availability of narcotic drugs and psychotropic substances for medical and scientific purposes while preventing their diversion’. Here, having stressed that ‘Almost 60 years since the adoption of the Single Convention, the goal of ensuring the availability of and access to narcotic drugs and psychotropic substances for medical and scientific purposes is still

far from being *universally* met', the President highlighted steps to improve access; recommended steps that had been developed from data reported to the Board and survey responses from governments and CSOs.<sup>55</sup>

In reference to the more general work of the Board under Item 9(c), in addition to further discussion of Afghanistan, some of the recommendations of the Annual Report – including the Board's opposition to capital punishment for drug-related offences – and key messages from both the Special and Precursors Reports, the President chose to highlight the Annual Report's thematic chapter. Titled 'Cannabis and cannabinoids for medical, scientific and "recreational" use: risks and benefits', Dr. Sumyai used his focus on the chapter to stress that the Board emphasizes that 'poorly regulated programmes can have adverse effects on public health and may increase non-medical cannabis use'. Following this highly critical – yet in the main feebly evidenced – tack, the President went on to say: 'Also, poorly regulated medical cannabis programmes can increase the risk of diversion of cannabis to non-medical use and may also contribute to the legalization of "recreational" cannabis use by reducing perceived risk associated with use, especially among youth'. As well as outlining measures for governments to take to prevent such risks, the President also reiterated that 'personal cultivation of cannabis for medical use is inconsistent with the obligations' under the Single Convention and that smoking cannabis or cannabinoids 'is not a medically accepted way to deliver standardized doses of a medicine'. Here, as in other parts of the chapter and hence the President's comments, the Board seems to be overstepping its mandate. Indeed, it is unclear how the INCB can legitimately define how medicinal cannabis should be administered.

As is often the case, responses to the Board's statements – particularly presentation of the Annual Report – over the course of the CND varied depending upon the perspective of the responding state or UN body. Indeed, in the main and in line with diplomatic protocol most reactions were positive and polite, with delegates picking out aspects of Dr. Sumyai's words that were most pertinent to their current circumstances or main issues of concern. For example, the EU was supportive of the Board's ongoing stance on human rights, particularly in relation to opposition to the death penalty, and regarding the topic of proportionality encouraged the INCB to

update the 2007 Annual Report on the matter. Similar support on human rights and extrajudicial acts of violence came from, among others, the Dutch and the OHCHR. The former noted his appreciation for the Board's emphasis on human rights and the SDGs and put forward the view that members states that do not comply with human rights obligations, also do not comply with the three drug conventions. At the same time and reflecting the existence of diametrically opposing views that exist within the Commission, Indonesia noted that in its view any comment by the Board on capital punishment was beyond its mandate. All that said, other than a few technical queries and complaints regarding specific terminology within the Annual Report for 2018<sup>56</sup> and requests from the Dutch and the Swiss to improve the transparency of country missions and check draft findings of mission reports before publication, the key area of tension around the Board's work related to cannabis.

Some states from what might be referred to as the more progressive side of the debate openly questioned aspects of the Board's stance. For example, reacting directly to the recent INCB mission to their country, the Swiss, while courteously welcoming the Board's recommendations, requested what information they were based on. 'It is important for us to foster an open and transparent dialogue', the Swiss delegate noted, before continuing to point out that 'We requested an explanation in our mission report and now we reiterate this request again'. Adding some detail to what remains a private set of communications between Bern and the Board, it was noted that the goal of the three conventions is to protect the health and welfare of mankind and to ensure appropriate access to substances for medical purposes'. As a result, it was argued, 'the Board should support cannabis research'. Moreover, the delegate continued, 'we find it interesting that the Board would comment on public perception without any scientific evidence. This is not within their mandate as a quasi-judicial body'. Rather it was pointed out, 'It is in the mandate of the WHO' and the INCB should contribute to 'informed decisions of member states based on scientific information on all issues'. A similar line of reasoning was put forward by Denmark: 'We believe reports on how cannabis helped patients cannot be ignored bearing in mind that medical use differs fundamentally from recreational use and also that medical use is in line with the three drug conventions'.

From the contrary position, several states, including Pakistan and Indonesia, wholeheartedly supported the Board's stance on developments in cannabis legislation, including its predominately hostile attitude to anything other than strictly regulated pharmaceutical medical use. That said, of particular note were statements from three of the most active defenders of the status quo: China, Japan and the Russian Federation. The Chinese delegate recounted that the INCB's Annual Report expressed concern about the 'legalization of cannabis', including its negative impact on public health, particularly to the welfare of youth, its undermining of the legal framework set out by the three treaties and the view that the policy shift compromised the 'international order'. 'We concur with this statement', he said. Expressing appreciation for the efforts undertaken by INCB, the delegate then stated, 'We will continue to support the INCB's work', and perhaps foreshadowing what his colleagues from the Russian Federation and Japan were about to say, hoped that it 'will play an even greater role within its mandate'.

As well as articulating support for the concerns expressed by the INCB that cannabis and cannabinoids can have potentially adverse effects on public health, the Japanese delegate emphasized that 'obligations under the conventions relating to narcotic and psychotropic drugs' mean it is 'our duty to prevent suffering on human health, peace and security' and that 'all regions should cooperate and fulfil this duty'. 'We have just confirmed that the three drug control conventions are the cornerstones of international drug control', he continued, before stating that 'We have a great concern that some countries have violated these controls'.

While such expressions of concern have been quite routine in recent years, the Japanese statement also included a significant deviation from the standard fare. Indeed, in an escalation of opposition to regulated markets for the recreational use of cannabis and without identifying any particular nation, the delegate drew attention to the fact that Article 14 of the 1961 Convention mentions 'several measures that INCB can take against member states that do not uphold the conventions'. This was a position that the Russian Federation also followed, although in this case without the diplomatic protocol that normally prevents the identification of specific states. Indeed, the unusual bellicosity of the statement from, significantly, the Head of the enormous delegation (75

delegates), Sergey Lavrov, Minister of Foreign Affairs, is notable. As such, the statement is worth referring to at length.

It begins by noting that: 'Looking at events of the past few years, one cannot fail to note that the international community has entered a new and more complex phase in the fight against the drug threat. Until recently, we had a shared goal and shared understanding, with universal commitment to three drug conventions'. Having attempted to establish the notion of some kind of global drug policy nirvana, Mr. Lavrov then moved on to highlight that, 'Several states have started to openly challenge the fundamental legal principles' arguing that the 'legalization of marijuana in Canada last year opened a Pandora's box'; clearly by this point a favoured phrase with Moscow's prohibitionist lexicon. In his view, 'Cases of violations are beginning to multiply' with 'violators' insisting that this is a 'normal event that warrants no special attention'. In this regard, he continued, 'We fully agree with INCB that the legalization of drugs is a serious threat and a violation of international law. Selective implementation of legal obligations is unacceptable'.

Moreover, and mindful of the Russian Federation's own selective approach to international law across a range of issue areas, he then made the remarkable claim that 'Demonstrably rejecting key provisions is hardly compatible with civilized international obligations' and could 'unleash' a chain reaction. Indeed, Mr. Lavrov expressed his pleasure that speakers from China and Japan paid special attention to this point and believed that they were correct in mentioning the use of Article 14 of the 1961 Single Convention. Moving back to the idea of the loss of universalism, he also noted that some delegations called into question the fundamental aims of the 'war on drugs', which have to date served as a unifying basis for international endeavour; specifically, 'a society free of drug abuse, and the task of reducing supply and demand'. 'High international drug standards are under threat', he claimed. However, as the Outcome Document has shown, Mr. Lavrov continued, the 'international community is still capable of finding mutual solutions' and it is 'possible to agree on a strong and balanced text'. 'Against the backdrop of recent events', he concluded 'there is an increasing need for the INCB to build its collaboration with the CND', with Mr. Lavrov pointing out that his country had 'put forward a resolution on the INCB's work' (See above in relation to Resolution L3).

## NGO participation: Vibrant, vocal and victim of unclear rules

### NGO engagement in the Plenary

NGO engagement at this year's CND was more vibrant than ever, with almost 500 civil society representatives in attendance,<sup>58</sup> the (co-)organisation of over 40 side events (see Box 5), the inclusion of NGO representatives in various member state delegations (including Canada, Mexico, New Zealand, Norway and Switzerland) and a number of statements delivered in the Plenary session.

The negotiations of the Ministerial Declaration showed member states' inability to agree on which document should prevail beyond 2019 – the final text eventually reiterating *all* commitments adopted since 2009. Unsurprisingly, and in a similar fashion to member states' speeches, NGO statements broadly aligned with either the 2009 Political Declaration (for more conservative NGOs) or the UNGASS Outcome Document (for reform-oriented NGOs). As such, interventions from IOGT International, the Singapore Anti-Narcotics Association and the Turkish Green Crescent Society on the implementation of the 2009 Political Declaration (agenda item 10, 'Implementation of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem') promoted the status quo, and a focus on drug prevention and recovery measures with the goal of creating a society free of drugs. The notable exception was a palliative care physician from Colombia representing the International Association for Hospice and Palliative Care and also speaking on item 10. The physician called on member states to address ongoing legislative, structural and practical barriers hampering access to morphine, highlighting the lack of focus on this issue in the 2009 Political Declaration and the major advances made in 2016 in this regard.<sup>59</sup>

As was to be expected, however, most reform-minded NGOs spoke on item 11 on UNGASS follow-up.<sup>60</sup> These followed a lengthy statement delivered by Smart Approaches to Marijuana (SAM) that presented rather questionable data on the seemingly apocalyptic consequences of cannabis legalisation in Colorado, including a rise by 100% in impaired

cannabis driving deaths in the first year of regulation or the claim that over 70% of cannabis shops now offer products tailored to pregnant women and offering children cannabis candy. Using more substantiated data, Harm Reduction International offered a bleak drug policy landscape: 4,366 people executed for drug offences worldwide since 2008 and another 7,000 on death row, while lack of political will and funding have left 99% of people who use drugs around the world without adequate access to life-saving harm reduction services. According to the Harm Reduction Coalition speaker, the 2011 global target of halving HIV among people who use drugs by 2015 was 'missed by a staggering 80%'. 'Given the explicit endorsement of harm reduction within the UN human rights system', he concluded, 'provision of harm reduction services cannot be seen as a policy option at the discretion of States, but must instead be understood as a core obligation of States to meet their international legal obligations'.

The need for improved access to harm reduction, education and treatment grounded in dignity and evidence was also highlighted by Acción Technical y Social, whose representative underscored the unrealistic nature of the drug-free world goals and concluded that 'responsible regulation' was not only possible, but also preferable to a war on drugs approach which had 'caused more harms than the drugs themselves', especially among young people. Young people's access to harm reduction interventions, without fear of punishment, stigma or discrimination, was also central to the intervention made by Students for Sensible Drug Policies. Issues affecting women – another vulnerable group left behind by drug policies – were raised by the Women and Harm Reduction International Network, who read an abstract of the Barcelona Declaration, an advocacy document drafted by a group of feminists calling for drug policy reform.<sup>61</sup>

After this followed IDPC's statement, which referred to the critical advances made at the UNGASS and with the SDGs, and praised the UN System Common Position and its implementation Task Team as milestones in the path towards improved 'UN system-wide coherence on drug policy'. Still, referring to IDPC's Shadow Report<sup>62</sup> the IDPC speaker raised major concerns over the many 'persistent and new challenges' of drug policy. These, IDPC concluded, will not be addressed



Civil Society representatives address the CND plenary. From left to right: Julián Quintero (ATS – Colombia), Kathryn Leafe (NZNEP – New Zealand), Ann Fordham (IDPC Secretariat), Ruth Birgin (WHRIN – Global), Benjamin Phillips (Harm Reduction Coalition – US)

in the coming decade ‘unless there is a significant shift and genuine reorientation of drug policies’ away from the drug-free goals, criminalisation and stigmatisation, and towards policies that truly seek to promote human rights, health and development, ‘in line with the SDG vision of “leaving no one behind”’.

Wednesday’s afternoon session concluded with an emotional intervention from the New Zealand Drug Foundation on the tragic killings of over 50 Muslim people in Christchurch, New Zealand, just a few days before the CND. The statement made a strong plea to governments: ‘People who use drugs are our family. They are amongst us and beside us. And we sit beside them. They are us and we are them. If we apply such thinking, we see that responses to drug use should not be about blame or punishment... We can support those who need it, provide them with opportunities for empowerment, stand beside our family as they find solutions to the challenges that they face.’

Also of note was the intervention made by the Canadian HIV/AIDS Legal Network. During the session on the UN drug control treaties, the NGO representative drew member states’ attention to the International Guidelines on Human Rights and Drug Policy. ‘States have... repeatedly and unanimously declared their commitment to ensuring full respect for human rights in law, policy and practice related to drugs,’ he stated, while urging member states to ‘make use of this new resource in order to fulfil this commitment.’<sup>63</sup> Friday’s Plenary session dedicated to the SDGs (Item 14) provided one last opportunity for civil society to offer recommendations to member states – with interventions from the Women and Harm Reduction International Network, Médecins du Monde, Harm Reduction Coalition and ENCOD. Significantly, Médecins du monde welcomed the first ever CND resolution on hepatitis C, which had just been approved in the CoW after lengthy negotiations, highlighting its relevance for the achievement of SDG 3.<sup>64</sup>

## Informal NGO dialogue with the UNODC Executive Director: Welcome nuance within an increasingly conflictual environment

The questions asked by civil society organisations at the Informal Dialogue with the UNODC Executive Director covered concerns with the implementation of harm reduction measures, availability of data on drug use, the use of tramadol (see Box 6), the needs of migrants and refugees who use drugs, the negative consequences of drug prohibition, the criminalisation of drug use, the legal regulation of cannabis and prevention programmes – what was referred to by IOGT International as the ‘addiction industries’ – and the use of the death penalty and extrajudicial killings.<sup>65</sup>

Of particular note was the Executive Director’s response to the current crisis of overdose deaths, raised in a question by IDPC, where he affirmed the UNODC’s collaboration with the WHO, including on overdose prevention, and gave the example of the *Stop Overdose Safely* (SOS) initiative that includes provision of emergency methadone as part of their ongoing efforts.<sup>66</sup> The Dalgarno Institute made its reservations about harm reduction clear, and after stating that it should be about ‘drug use exiting strategies, not drug use normalisation tactics,’ asked the UNODC if it endorsed interpretations that ‘enable’ and facilitate ongoing drug use. In response, Mr. Fedotov referred to the ‘full range of interventions’ endorsed by the UN drug control system, which include both primary prevention and measures to reduce the health and social consequences of use. He then reiterated the importance of community-based treatment and that the UNODC does not support non-medical uses of controlled substances.

On the issue of prevention, Asociación Proyecto Hombre referred to the need for member states to take adequate measures to provide effective prevention programmes that reach vulnerable groups

## Box 5 **CND side events**

86 side events were held during the regular session of the CND, from Monday 18 to Thursday 21 March.<sup>67</sup> Although this is less than the record-breaking 94 side events of 2018, it nonetheless made for a busy schedule with up to six side events running in parallel. A 10-year analysis of side events organised at the CND show that progressive side events have largely increased over the years – culminating with 54 such events at the CND that immediately followed the 2016 UNGASS, in 2017. In 2019, those progressive events comprised about half of all CND side events – a slight reduction from the 60-62% recorded in 2016 and 2017 (see Figure 1).

And indeed, the most popular themes discussed this year were prevention and recovery (14 events) followed by drug law enforcement strategies (9 events). However, various events also focused on options for drug policy reform (8 events) and harm reduction interventions (7 events). Other themes addressed this year included methods and experiences of civil society engagement in policy-making processes, youth, data collection, policies towards NPS and synthetic drugs, access to controlled medicines, cannabis policies, development and women.

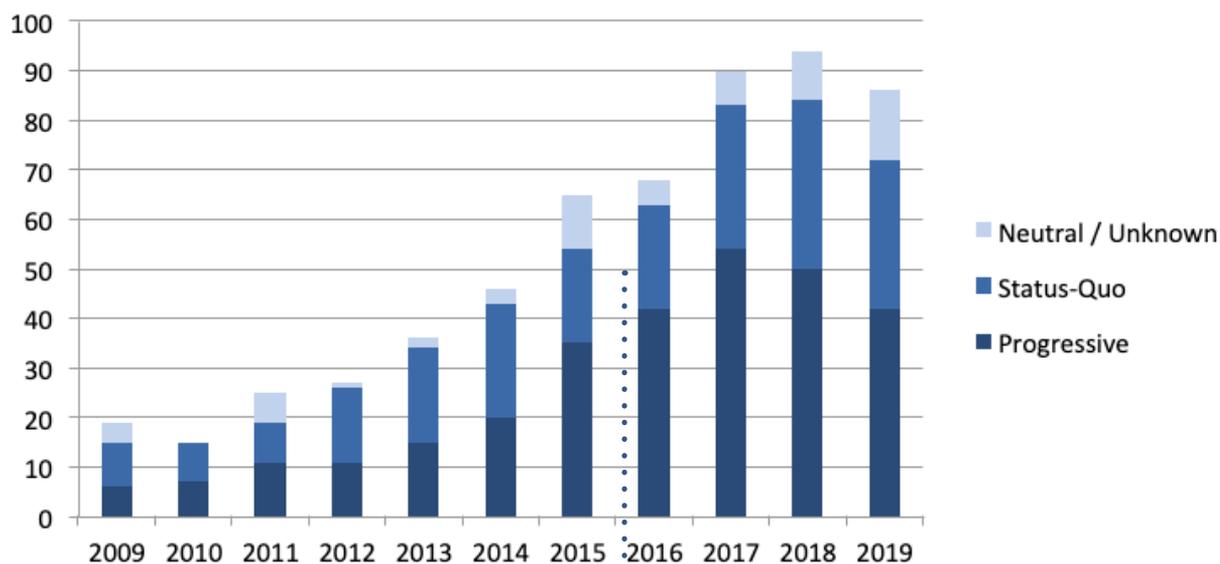
Positively, about a third of side events this year were organised or co-sponsored by IDPC



Launch of IDPC's report '10 years of drug policy in Asia: How far have we come?' at the 62nd session of the CND, Vienna  
Credit: Marie Nougier, IDPC

members.<sup>68</sup> The IDPC Secretariat was involved in seven events<sup>69</sup> on issues related to harm reduction,<sup>70</sup> drug policies in West Africa (francophone event),<sup>71</sup> civil society involvement in government delegations at the CND,<sup>72</sup> women and incarceration<sup>73</sup> and data collection,<sup>74</sup> and another two to launch Asia- and Colombia-focused adaptations<sup>75</sup> of IDPC's shadow report for 2019 'Taking stock: A decade of drug policy'.<sup>76</sup>

**Figure 1. Classification of CND side events based on their progressive/conservative stance, 2009-2019**



such as children or women. Mr. Fedotov went on to outline the UNODC's launch of the *Listen First* programme, which focuses on supporting poor countries to develop family-based activities, in addition to existing programmes in 30 countries where he said that positive impacts on the resilience and development of children have been documented.<sup>77</sup> In response to a question from the Slum Child Foundation about the UNODC's plans to work on alternative development programmes in informal settlements, Mr. Fedotov was of the view that such challenging contexts cannot be solved by focusing on drug issues but requires a broader development approach including in the framework of implementation of the SDGs. He hoped that the UN Secretary General's reforms which aim to bring UN agencies closer together in their work, will help in enabling a comprehensive and efficient approach.

There was only one question on the issue of legal regulation of cannabis, from Smart Approaches to Marijuana (SAM), which asked about the UNODC's position on member states legalising cannabis including in the USA, whether it was allowed under the UN conventions and whether Mr. Fedotov thought it was a good or bad development. In what seemed to be a rather neutral position, Mr. Fedotov responded that whatever is not supported by the conventions by definition contravenes international law, and in the case of the USA the issue of cannabis regulation is a matter between the federal government and the states. He referred further to the INCB and its stated position that cannabis regulation contravenes the treaties, and that while one country cannot change the provisions of international law, it is for member states to decide on modification of the conventions. On a related note, the Foundation for Alternative Approaches to Addiction Think & Do Tank (FAAAT) asked how drug policies can be modified to create a more balanced approach without creating a prohibitionist environment under which trafficking can thrive and people who use drug are imprisoned as criminals. Mr. Fedotov referred to existing commitments including the Ministerial Declaration agreed in the previous week that support a balanced approach and said that such an approach needs to focus on people's health and rights, while also requiring an important focus on law enforcement aimed at supply reduction.

In response to IOGT International's question about the possibility of the UNODC working to facilitate

a discussion on protecting government decision-making from the 'growing influence of the addiction industries', Mr. Fedotov interestingly responded that oversimplification of different views, along with over-politicisation, is not helpful and urged all to listen to the views of others and not consider people with different views as enemies.

After Mr. Fedotov departed the Informal Dialogue, the Chief of the UNODC's Organised Crime and Trafficking Branch responded to IDPC's question about the agency's efforts to counter use of the death penalty and extrajudicial killings in the name of drug control, by saying that they issue advice to member states against use of the death penalty. In what appears to be of notable significance given the UNODC's resistance against specifically recommending the decriminalisation of drug use, the agency's lead on drug prevention and health, Mr. Gilberto Gerra, responded to a question from Paroles Autour de la Santé about the criminalisation of people who use drugs by saying that the conventions do not oblige member states to do so and that in the past ten years the UNODC has promoted a culture of decriminalisation of minor crimes and people who use drugs, at all levels.

### **Informal NGO dialogue with the INCB President: Cordial and largely spontaneous, but still some way to go**

The informal NGO dialogue with Dr. Viroj Sumyai was held on Wednesday 20 March.<sup>78</sup> As with the other dialogues, questions were submitted in advance through the VNGOC.

Possibly for first time, in such a dialogue, the INCB President put significant emphasis on the role of the WHO and its mandate in the drug policy field. This was the case in Dr. Sumyai's responses on the prescription of medicines for Post-Traumatic Stress Disorder (PTSD) and their links with suicide rates (asked by FAAAT), evidence on the medical cannabis use (from ICEERS), a possible technical discrepancy in the WHO's ECDD recommendation on cannabis (raised by the Community Alliances for Drug Free Youth), and the therapeutic potential of psychedelics (INPUD). As the INCB has often been criticised by IDPC on its tendency for 'mission creep',<sup>81</sup> the fact that the President put the WHO's role front and centre in his responses on a variety of health-related issues is to be welcomed.

## Box 6 Tramadol: Still bubbling in the background

Mindful of the emerging hostility towards the WHO's Expert Committee on Drug Dependence (ECDD) seen at this year's Commission, it is worthwhile highlighting some of the comments made by member states in reference to tramadol.

It will be recalled how at its 41<sup>st</sup> meeting in November 2018 the ECDD recommended against the international scheduling of the drug; a synthetic opioid used as a painkiller particularly in many parts of the so-called developing world.<sup>79</sup> Judging by numerous references to the drug in CND debates, it is likely that, despite now being considered for control six times by the Committee, tramadol will soon end up back on its agenda.

For example, while noting the importance of access, Cameroon stressed increased illicit trafficking as did Egypt, with the latter stating that it was 'high time to impose international control on all shipments of tramadol'. This was a position echoed by China, which noted with 'regret' the 'WHO stopping short of scheduling'. There was in its view, a need for the international control, 'while allowing access'. Similarly, while speaking initially on the issue of cannabis, Nigeria noted 'We welcome the votes on the postponement of the recommendation of WHO, however we are concerned that tramadol has become one of the most

used drugs in West Africa and our research indicates that tramadol is the second most used drug in Nigeria'. 'A dangerous pattern is emerging where the contents of some pills go from 100mg to 500mg', the delegate said, before concluding that 'we believe that tramadol should be kept under review and be scheduled'.

At the UNODC side event 'Opioid crisis: Tramadol in West Africa and other regions', Dr. Axel Klein<sup>80</sup> of GDPO made a useful observation about the issue: 'What we have failed to understand is that, talking about international control, this will have a serious impact on patients who are currently left with nothing to rely on for their pain. What we also need to understand is that the leakages of tramadol are mainly falsified tramadol and not from the medical sector. Our concern needs to be on the falsified medicines such as anti-malarial, antibiotics flooding our markets and causing deaths. Scheduling it will have serious consequences on patients. Pain is a health issue and deliberately allowing people to suffer in pain without making available medicines for pain management is a gross violation of their fundamental human rights to adequate health service'.

However, looking at the on-going pressure of some member states it is unlikely they will accept the ECDD's decision without some push back. Watch this space.

As expected, several questions related to cannabis. ICEERS kicked off those discussions by requesting guidance for states to implement medical cannabis programmes. In response, the INCB President highlighted that the 1961 Single Convention does allow access of cannabis for medical purposes, although, he added, the prerogative to establish such programmes remains with member states. Responding to a question by Latinoamerica Reforma regarding which cannabis products are allowed within those schemes, the INCB President discarded home cultivation, cannabis oil, as well as the flowering top of the cannabis plant or the leaf itself. 'Smoking the cannabis plant is not medical cannabis', he said, reflecting the Board's questionable position on non-pharmaceutical cannabis contained within the thematic chapter of the Annual Report for 2018. According to the INCB then, medicinal cannabis would only be limited to pharmaceutical products – despite the fact that several countries do allow for a variety of cannabis products (including the plant

itself, oils and teas) in their own national schemes.<sup>82</sup> The Board promised to clarify its position through guidelines on the cultivation and production of medicinal cannabis. On this issue, it should be noted that the INCB did not mention the WHO's mandate or its just-released critical review of the plant.

The responses from Dr. Sumyai on non-medical cannabis use also reflected the ongoing conservative stance of the Board on this sensitive issue, when WOLA requested a clarification regarding the INCB's views on whether it considers the USA to be in compliance with the UN drug control treaties in light of its state-level cannabis regulation reforms. There, the INCB President made a somewhat odd analogy, comparing the USA to 'a big family': 'The United States has 51 sons, 51 states. You have ten stubborn ones. What are you going to do with your sons? The Federal government must impose some measures on the stubborn child. The Federal government does it already'. Dr. Sumyai then reiterated



Juan Fernandez Ochoa, IDPC, asking a question at the informal dialogue with the INCB President *Credit: Béchir Bouderbala*

the Board’s willingness to continue its dialogue with the Federal government, encouraging it ‘to solve the problem’ – although since most reforms were decided by referendum, it seems unlikely that the government would impose harsh sanctions on those states, despite reprimands from the Board.

Next came a question by IOGT International, asking the INCB President which additional tools the INCB might need to better respond to breaches of the drug conventions. Dr. Sumyai highlighted the INCB’s role as a ‘quasi-judicial body’ which decides ‘what is right or wrong according to the Conventions’, concluding that they already had all necessary tools at their disposal within the treaties. However, he explained, although the INCB takes initial diplomatic steps, it is eventually up to member states and the CND to take further action. He also highlighted the need to keep difficult conversations with non-compliant member states confidential to avoid diplomatic tensions: ‘we cannot make member states lose face with the situation’, he concluded.

Although IOGT’s intervention was clearly an attempt to criticise cannabis regulation, the question is also relevant for human rights violations committed in the name of drug control – an issue raised by ENCOD at the dialogue. In this regard, the INCB reiterated the need to respect the principle of proportionality of sentencing and to abolish capital punishment for drug offences. Another human rights issue touched upon was women’s

severely limited access to drug dependence treatment, raised by Asociación Proyecto Hombre. The INCB President shared these concerns, noting that ‘stigma is the most important barrier for seeking treatment’.

Regarding civil society engagement in the work of the INCB, IDPC enquired as to whether the Board was planning a second civil society hearing – using the same model as the very first event of this nature, held in May 2018 on cannabis. The INCB President responded enthusiastically, the issue having already been explored at the Board’s session in February and confirmed that a second hearing, this time on ‘young people and drugs’, would be held in May. At this point, Dr. Sumyai underscored the importance for the Board to hear ‘from advocacy groups from the grassroots level on the situation on the ground concerning young people and drugs’.

Finally, focusing on the lack of transparency surrounding the INCB’s work, IDPC requested clarification as to why the Board’s reports on country visits and other events were not made available in the public domain, as is the case for most UN agencies. The INCB’s response was rather convoluted, the President referring once again to the issue of confidentiality – although this would not entirely explain why even the said member states have no access to these reports, an issue which as mentioned above Switzerland questioned during the Plenary debate.<sup>83</sup>

Overall, this year's dialogue with the INCB was cordial, perhaps with the most spontaneous discussions of the three dialogues held this year and showed increased openness to debate with civil society on a number of issues. However, the INCB President has a long way to go to ensure a more balanced and evidence-based approach to cannabis policy reform.

### Informal NGO dialogue with the CND Chair: Important issues, some vague responses

On Thursday 21 March, civil society met with the CND Chair, Ambassador Mirghani Abbaker Altayev of Sudan, and the Nigerian Facilitator, Ambassador Vivian Okeke. A brief opening statement from both Ambassadors was followed by carefully crafted responses to the questions sent out in advance by civil society organisations. These were followed by additional questions from the participants, allowing for more interactivity and spontaneity in the discussions.<sup>84</sup>

IDPC kicked off the dialogue by asking the CND Chair to elaborate on the steps taken by the Commission to address the discrepancies between UN drug control and human rights obligations with regards to the rights of indigenous peoples. In response, the CND Chair reiterated the obligation for member states to protect the 'health and welfare of humankind' and to take account of traditional uses in accordance with the treaties. However, the Chair carefully avoided the crux of the matter: that the conventions themselves include clear contradictions that constitute a major barrier to the enjoyment of human rights by indigenous groups. This general response did little, therefore, to explain the steps the CND had undertaken to address this critical issue.

In a similar vein, ICEERS requested information on the CND's strategy to respond to the criminalisation of migrant communities for their traditional use of the coca leaf, as is currently the case in Spain.<sup>85</sup> On this issue, the CND Chair highlighted the role of UN member states in calling for the scheduling of substances, where the CND can then 'bear in mind the economy, social, legal and other factors in considers relevant' (although interestingly the WHO's key role on this matter was not mentioned in the CND Chair's response).

Regarding the deployment of evidence-based health interventions for people who use drugs,

the Asian Harm Reduction Network asked about the possibility for the CND to establish a scientific working group in charge of comparing national policy efforts around harm reduction and drug dependence treatment. The Nigerian Facilitator did not respond to this specific request, underscoring instead the discussions held on this specific issue at past CND intersessionals and during the negotiations of the Ministerial Declaration and resolutions at this year's CND (no doubt in light of resolutions L.4 on hepatitis C, L.7 on synthetic opioids and L.9 on HIV prevention among women who use drugs). When asked by the VNGOC about the possibility of holding future thematic discussions to follow up on the Ministerial Segment and UNGASS implementation, the CND Secretariat provided a rather non-committal response about the possibility of this happening, 'subject to budgetary resources'.

Moving on to the development aspects of drug policy, the CND Chair was asked to describe the work that the Commission had been undertaking to ensure that drug policies are aligned with the 2030 Agenda for Sustainable Development. Here again, the response was rather vague, with references to the Ministerial Declaration's recognition that drug policies and the SDGs are 'complementary and mutually reinforcing' and its commitment to accelerate the implementation of all commitments 'to ensure that nobody affected by the world drug problem is left behind'.

The rest of the discussions focused on civil society participation in CND debates. The French Civil Society Platform on Drug Policy raised the issue of visa refusals for several NGO colleagues who wanted to attend the Commission meeting this year – including representatives of affected populations, mostly from Africa and Asia. The CND Chair was particularly sympathetic on this issue, as several of his African government colleagues had also got their visa denied this year. NGO participants were informed that delivering visas is unfortunately a prerogative of the Austrian government, and the CND Chair and Secretariat can do very little to help. Recommendations going forward included sending visa requests as early as possible and seeking a support letter from the VNGOC (as an organisation based in Austria. See Box 7).

The Chair was then asked by the EU Civil Society Forum on Drugs whether NGOs could be better involved in regional or open-ended working group

## Box 7 VNGOC Annual General Meeting and elections

As is customary at the CND, the Vienna NGO Committee on Drugs (VNGOC) held its Annual General Meeting (AGM), in a packed room on Tuesday 19 March. The 90-or-so organisations present reflected the increasingly balanced membership of the Committee, with both reform- and abstinence-minded NGOs present. As well as several routine agenda items and points of order, the meeting included more in-depth discussions about the possible future structure of the UN NGO committees on drugs, as well as elections for three of the six Board positions. The membership also discussed a proposed 'Code of Conduct' for NGOs attending the CND – something that became even more timely following a series of flashpoints during the preceding days (see below).

Regarding the UN NGO committee structure, a background paper was issued by the VNGOC Board outlining some key considerations.<sup>86</sup> Since the early 1980s, there have been NGO Committees on drugs based in Vienna and New York – with a varied history of engagement and collaboration, including in the wide-reaching 'Beyond 2008' exercise and more recently for the Civil Society Task Force that had ensured strong NGO engagement over the past year. Members present – including some who were members of both Committees (such as IDPC) – were invited to share their thoughts about the current situation and what they see as the best way forward. It was clear that a variety of views were held in the room: some participants were keen to emphasise the perceived prominence of the VNGOC over its sister organisation in New York, while others were keen to highlight the value of having both structures in place. Many partici-

pants reflected a preference for a simpler, single committee going forward – one with a global remit and membership (as both the VNGOC and NYNGOC currently have). Inevitably, the devil is in the detail about how this might be achieved, and what it will look like. A decision was taken by consensus to mandate the VNGOC Board to explore the options over the coming year, and through consultation with members, the NYNGOC and other stakeholders, to present recommendations at the 2020 CND.

For the first time, following the adoption of new Statutes and Rules of Procedure in 2017, elections were held for three of the six Board positions – rather than all six positions being elected every two years – to ensure better transitions and sustainability. Whereas the process and atmosphere were noticeably tense at the 2018 elections, this year's event was far more controlled and efficient – with credit to the Nominations Committee (Ernesto Cortes, George Ochieng Odalo, Hannah Hetzer and Linda Nilsson) who volunteered to manage the nominations and voting processes. Votes could be cast in person, by proxy, through online participation (Skype) or by email in advance.

First up was the position of Chair, and the election was won by Jamie Bridge from IDPC, with around 75% of the votes cast. The position of Deputy Treasurer was uncontested, meaning that the incumbent – Zoran Jelic from Stjena Resoc, Croatia – was elected for a further two years. The final position of Deputy Secretary had three nominees and was won by Penny Hill from Harm Reduction Australia with just over 50% of the votes cast. This maintained a very healthy balance within the Board in terms of gender and ideological perspectives



The new VNGOC Board, following the elections on Tuesday 19 March. Left-Right: Sarah Piker (VNGOC Project Manager, Austria), Tania Ramirez (Secretary, Mexico), Penny Hill (Deputy Secretary, Australia), Jamie Bridge (Chairperson, United Kingdom), Lucia Goberna (Deputy Chairperson, Spain), Orsi Feher (Treasurer, Austria), and Zoran Jelic (Deputy Treasurer, Croatia)

meetings of the CND. This was met by welcome comments from the Sudanese Ambassador who took the opportunity to highlight the many civil society interventions made in Plenary (noting – somewhat erroneously – that some of these statements were ‘much longer than those from member states, and we have let it go!’), and agreeing to look into further participation. The CND Secretariat mentioned the involvement of civil society in the ARQ review process in December 2017 as a good practice example – although it should be noted that such NGO engagement was severely limited and heavily criticised by IDPC.<sup>87</sup> But the CND Secretariat showed some caution about NGO involvement in more technical meetings such as those of the CND subsidiary bodies. This was echoed by the Nigerian Facilitator who mentioned possible resistance by some member states on sensitive issues related to drug law enforcement.

Finally, as in previous years, FAAAT Think & Do Tank asked about the possibility of video streaming the CND through UN Web TV, allowing for better visibility of the debates for those unable to attend, and a recording of the plenary sessions with multilingual functionality. While welcoming the idea, the CND Chair mentioned lack of resources, and recommended that this request be redirected towards UNOV and the UN in New York.

### Heightened tensions between civil society and UN security: ‘You know the rules’

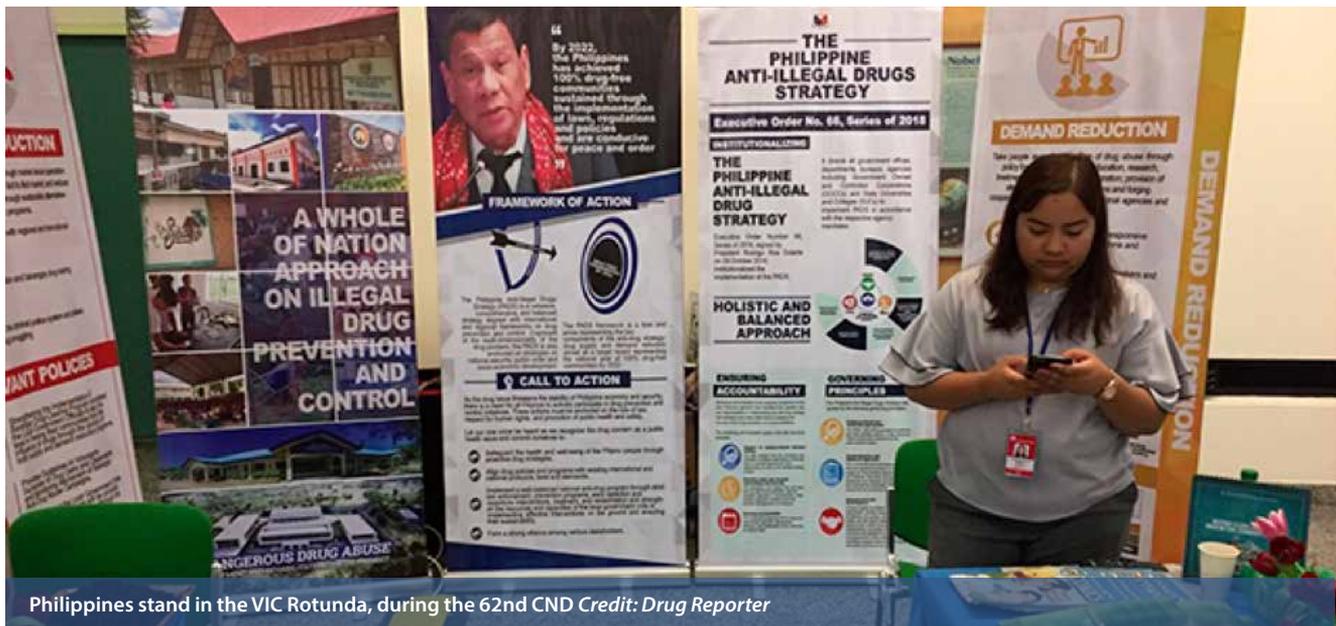
The seemingly arbitrary and impervious command of the UN security services has been an ongoing bug-bear for some civil society participants over the years – including at the UNGASS itself when materials were confiscated and participants were refused entry for having images of cannabis on their t-shirts.<sup>88</sup> Yet matters came to a head at the 62<sup>nd</sup> CND, leading to threats of expulsion, removed building passes, and other sanctions against civil society participants.

The main magnifier of these tensions was an exhibition stand from the Philippine Government, lauding their ‘Anti-Illegal Drugs Strategy’ as a great success and a model to be replicated. Having pro-drug war exhibitions from member states is nothing new for the ‘rotunda’ (the central hall of the Vienna International Centre): previous years have seen elaborate stands and displays from the likes of Saudi Arabia

and Singapore, for example. Yet this year’s promotions understandably riled many human rights defenders at the Commission, coming as it does from a government that has murdered more than 12,000 people<sup>89</sup> under the watch of a President – pictured on the central banner – who has personally urged members of the public to kill people they suspect of using drugs.<sup>90</sup>

The flashpoint came on the final day of the Ministerial Segment, Friday 15 March, when a group of 15-20 civil society participants held a protest and ‘die-in’ in front of the exhibition. Security were quick onto the scene and started to take names and photos of those participating as the protest had not been pre-approved and was consequently a violation of the UN’s security rules. As many of the participants were officially attending as representatives of third-party NGOs (due to the rules around access passes), this threatened to impact on the ECOSOC status and future participation of some key NGOs – including the VNGOC itself! In the end, and after prolonged discussions and efforts to de-escalate the situation, no further action was taken. But the message was clear: the CND remains a member states meeting, and civil society must respect this space. Any protests must be pre-notified and approved, or held outside (as has been the case in the past).

The following Monday, behind-the-scenes discussions continued about the protest, the conduct of security staff, and how to avoid any further flashpoints. Yet on the same day, and completely unrelated to the Friday event, IDPC coordinated a group photo in the central courtyard as part of its ongoing Support Don’t Punish campaign.<sup>91</sup> Unlike Friday’s event, this *had* been pre-notified to the security team in Vienna, and permission had been secured via email. Yet when the group – around 75 people – gathered for the photo, security once again descended and began to make their presence felt. When presented with the email providing permission, they responded that the Support. Don’t Punish posters were not allowed as they constituted a protest. When challenged on where this rule is written, the security personnel doubled-down on their stance and once again began to threaten people with expulsion and sanctions. As the convenors, IDPC agreed to put the posters away (these were taken by security and never returned), and to take the photo anyway. Yet after the photo was taken, security insisted on keeping the whole group outside for a protracted, stern lecture about their behaviour.



When one participant tried to re-enter the building rather than listen to the admonishment, he was escorted out of the UN building and his access pass was confiscated (the participant in question was eventually allowed back into the meeting after a one-day suspension, after intervention from both the UNODC and the Dutch Government).

During the rebuke, one woman in particular introduced herself as the 'Head of Security' and informed the participants that 'You are only here because we invite you' and that 'You know the rules'. And this is where an important problem seems to lie; civil society participants at the CND are constantly told about these 'rules' (especially when they are inadvertently broken), yet they have never seen them. Where, for example, does it say that holding up a poster is a protest, or one cannot wear an image of cannabis, or that certain messages are prohibited?

The reality is that these all appear to be arbitrary rules and that everything is at the discretion of an all-powerful security service that does not understand the issues being discussed and debated. For example, group photos with posters have passed with no concern at CNDs in previous years, including for the Support. Don't Punish campaign as well as many UNODC campaigns and slogans. Yet, as what might be seen as a knee-jerk over-compensation for the events on Friday, the security personnel over-reacted and unnecessarily escalated the situation on Monday. It seems clear, therefore, that greater clarity is needed on the rules and limits of civil society expression at the UN in Vienna, as well as better dialogue with the security services to

prevent any similar clashes in 2020.<sup>92</sup>

### UNODC budgetary, governance and management issues

While perhaps lacking the theatre and rhetorical flair once surrounding discussions of the UNODC budget and financial situation,<sup>93</sup> the issue remains one of serious reflection and concern. Indeed, as both discussion under item 8 (Strategic management, budgetary and administrative questions) and information within the accompanying documentation reveals, the Office continues to pursue an uncomfortable balancing act to deliver the increasing demands of member states on reduced resources; an ongoing dilemma once again writ large in relation to General Purpose Funding (GPF) where the trend in contributions continues 'to be worrying'.<sup>94</sup> In this regard, 'income levels continue to raise serious concerns about medium-term sustainability'. Despite a slight growth in projected income – the result of increased contributions from Sweden and Luxembourg – general-purpose funds 'constitute a mere 1.2 per cent of extrabudgetary contributions'. This, according to the UNODC, coupled with tight earmarking of special-purpose contributions, 'hinders the ability' of the Office 'to execute its mandates, manage programmatic shortfalls, exert strategic direction and oversight, and implement improvements, including United Nations reform initiatives'.<sup>95</sup> To be sure, although the pressure on GPF has in the past sometimes been offset to a certain degree by a solid commitment by member states to Special Purpose Funds (SPF), the biennium 2018-19 saw special purpose income



Civil society representatives gathered to take a family photo for the Support. Don't Punish campaign Credit: Juan Fernandez Ochoa, IDPC

adjusted downward. This represented a drop of USD 33 million to a total of USD 629.4 million.<sup>96</sup> As of December last year, the income projection reflected increased contributions from Mexico, Norway and Panama, and lower contributions from others in 2018.

In terms of programme delivery, the UNODC currently estimates a figure of USD 648.9 million, a decrease of USD 23.6 million from the initial budget. This fits with the observation that overall there had been a reduction in SPF implementation during the period 2012-2019 and related programme support cost income.<sup>97</sup> The recent downward revision is seen to reflect decreased delivery in 2018 of USD 298.2 million (initial budget USD 365.4 million) with higher projected estimates for 2019 of USD 350.7 million (initial budget USD 307.0 million), an increase of 17.6% from the revised estimates for 2018. Interestingly, the decrease in the biennial programme projections owed much to lower delivery in Latin America and the Caribbean, especially the delayed start of a new alternative development project in Colombia.<sup>98</sup> All of this demonstrates the fluid and challenging financial environment within which the UNODC continues to operate. Moreover, as the UNODC Director of Management Affairs

pointed out in the Plenary, all current discussion of the Office's operation is taking place within the context of a UN system-wide initiative focusing on management reform, including the transfer of a number of central support functions to 'global services centres' and the establishment in the field of 'common back-office facilities'.

While the implications for the UNODC are still being considered, including in relation to costs, the Director managed to maintain an upbeat tone. Presumably referring to the revised projected estimates for programme delivery, the Director noted that we 'appreciate donor confidence' and are expecting a 17 per cent increase in our budget. He also noted that 'It is a time of transformation for the UN as a whole, with wide ranging reforms coming into place this year.' 'We strive for a more nimble, efficient and effective organisation', he continued. In this regard, he stressed how the Office looked forward to the implementation of the global service delivery model, pointed out how UNODC field offices would benefit from country team operational and support platforms and highlighted how the extension of the Umoja online management system<sup>99</sup> would be key in relation to planning and managing capacities.

Much discussion under Item 8, however, concerned staff composition and matters relating to the ongoing work of the standing open-ended intergovernmental working group on improving the governance and financial situation of the United Nations Office on Drugs and Crime (FINGOV).<sup>100</sup> The group's chair was keen to relay news of the hard work undertaken, including three informal meetings in late 2018 and a formal meeting in January 2019 and, stressing widespread participation by a range of delegations, pointed out that 10 years after its establishment, FINGOV was still working to enhance transparency.

This was in the main well received. Not missing the opportunity to get on the record the fact that it provided about USD 70 million to GPF, the USA encouraged ongoing reforms and highlighted that – while there were still concerns regarding programme support costs – FINGOV is a 'vital tool for transparency'. This was a view echoed by Brazil. Reflecting concerns about funding, Chile noted the general drop in GPF and requested member states to increase contributions. Similarly, Jamaica noted the 'fragile' and 'vulnerable' state of non-ear-marked funding.

As has been the case in previous years, interest in transparency and openness related particularly to gender parity and balanced geographical representation. Both of which, the UNODC was keen to point out, were being promoted by the Executive Director who, to some extent placing the responsibility back on national capitals, encouraged member states to propose 'diverse candidates' for Office positions. Speaking from the floor, several states passively pushed back on this stance by stating that more could be done by the Office itself. Chile, for example, pointed out shortfalls in geographic representation from Latin America and gender balance within senior positions within the UNODC secretariat. Korea also requested more gender balance, with Jamaica welcoming both the process of gender mainstreaming and noting with concern the underrepresentation of some countries in the UNODC staff. On this point, Brazil noted that the lack of representatives from GRULAC was 'significant' and that 'immediate change is paramount'. Additionally, while the USA expressed its enthusiasm for a 50-50 gender balance, Brazil – generally pleased with progress – requested more information on what processes were being deployed to ensure better gender balance.

## Conclusions

Despite expectations, this year's CND was in many ways an inversion of previous sessions involving a high-level segment. For example, at the 2009 session, it seemed as if having expended so much energy on the Ministerial Segment, member states had little left for regular segment; a session that consequently felt somewhat flat.<sup>101</sup> This year, however, with what almost appeared to be a desire to quickly get the Ministerial Declaration out of the way, member states used their high-level statements as springboards from which to energetically support and pursue their preferred policy positions within the regular segment; a segment that was marked by unusually undiplomatic language and demeanour.

That said, reflecting upon what was ultimately a dynamic, fluid and at times contradictory environment, it is difficult to draw clear conclusions or make definitive assessments of the CND's 62<sup>nd</sup> session, including its Ministerial Segment. Yet, it is also difficult to ignore the remarkable resilience displayed by the UN drug control system and the ability of a body like the Commission to absorb divergence on how best to deal with the 'world drug problem'; a vague phenomenon relating to an increasingly complex, diverse and, according to the UN's own *World Drug Report*, expanding illicit drugs market. Indeed, as the preceding pages here have shown, there remains division and associated tension within the CND, in some cases increasing year on year, around several core issues.

Nevertheless, while in our report on the 2018 CND we wondered 'how long will the Commission be able to maintain the pretence of business as usual?'<sup>102</sup> we find ourselves asking the same question a year on. In spite of the inescapable sands of divergence within its gears, the CND's consensus-driven machinery continues to grind away; albeit in an increasingly juddering fashion. And amidst that grinding, some positive progress was made. For example, increasing and apparently genuine concern regarding access to controlled medicines was a feature of the meeting, with negotiations around several of the resolutions, for instance L4, L9 and, after much torment and deliberation, L3, ultimately resulting in decent texts. Furthermore, putting the unfortunate interaction with the VIC security aside, NGO engagement was once again overwhelmingly positive. This was noticeable not only in inclusion of

statements within session and references to the value of civil society within the statements of various countries and UN agencies, but also the inclusion of a number of NGO representatives within country delegations, with Canada, Mexico, New Zealand and Switzerland being noteworthy in this regard.

On the flipside, despite high-level rhetorical commitments within a range of soft law instruments, including the freshly minted Ministerial Declaration, it is hard not to note with concern the continuing divergence on the issue of human rights and the multiple tensions that result, including in relation to the SDGs. Moreover, on a related point, with the Ministerial Declaration having ostensibly set the direction for the next decade of international drug policy there remains a lack of clarity concerning the system-wide character of the processes for reviewing 'progress in implementing all [our] international drug policy commitments', in 2029 and during a 'mid-term review' in 2024.<sup>103</sup> Indeed, amidst discussion about data collection and the ongoing review of the ARQ, it is important not to lose sight of efforts to measure progress relating to the intersections between both the Sustainable Development Agenda and the high-level commitments made to human rights within a range of 'complementary and mutually reinforcing' soft law instruments. Towards this end, the nascent UN system coordination Task Team could be leveraged to further improve engagement of the wider UN family and strengthen the gains made over the last decade on intersectionality between drug control, human rights, health and development.

Meanwhile, although the implementation of a regulated market in Canada meant that the non-medical use of cannabis was always likely to be a contentious issue, it was unfortunate to witness the pugnaciousness and shear aggression shown on occasions by the delegation from the Russian Federation; an approach meted out to both the Canadian delegation and, perhaps to a lesser extent, the ECDD. Significantly, the tone of some interventions may represent a shift within the political dynamics of the Commission, a space that has to some degree in the past few years been home to a politically calculated denial of the reality of treaty breach in relation to cannabis. Mindful of this shift, from not just the Russian Federation but also from other supporters of the status quo like Japan, comes increasing pressure to find a way to resolve tensions around cannabis regulation; tensions that are likely

to increase as a number of countries, including crucially Mexico, look set to follow a similar path to Canada.

Indeed, while there appears to be an increasingly uncomfortable synergy of views between the Russian Federation and the INCB on the issue of cannabis the Board is correct to claim that the regulated markets lay outside the boundaries of the extant treaty framework. Moreover, it is also right in saying, as did the President during the NGO informal dialogue, that while the INCB can take diplomatic steps on the issue, it is ultimately up to member states to take further action; although to be fair he was probably thinking more in terms of sanction than solution. However, it is worth pointing out the position justifiably adopted by Mr. Fedotov on the issue when he noted that 'it is for member states to decide on modification of the conventions'. To be sure, while the Board can be criticised for failing to adequately assist in seeking to resolve the current dilemma around cannabis, for the sake of international law if not the international drug control system specifically, the time is surely right for member states themselves to seek a legally robust and politically realistic way out of the increasingly pressing predicament.

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**The International Drug Policy Consortium** is a global network of non-government organisations that specialise in issues related to illegal drug production and use. The Consortium aims to promote objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug-related harm. It produces briefing papers, disseminates the reports of its member organisations, and offers expert advice to policy makers and officials around the world.

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This report provides an overview of the central issues debated during the 62nd session of the Commission and its Ministerial Segment, an analysis of the negotiations of the Ministerial Declaration and CND resolutions, and highlights from civil society participation.

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