



**THE 2016 COMMISSION ON NARCOTIC DRUGS  
AND ITS SPECIAL SEGMENT ON PREPARATIONS  
FOR THE UNGASS ON THE WORLD DRUG PROBLEM  
REPORT OF PROCEEDINGS**



# Executive summary

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International drug control is in a period of crisis and transition, with the 'Vienna Consensus' broken despite the veneer of agreement among states. Perhaps the primary signifier of this breakage lies in the establishment of legally regulated cannabis markets, which contravene the core principle of the international drug control conventions that drug use be restricted to medical and scientific use. However, this is not the only factor in the build-up of philosophical and practical differences representing those 'cracks in the consensus' that were evident at the Commission on Narcotic Drugs (CND).

This year's Commission ran from 14<sup>th</sup> to 22<sup>nd</sup> March 2016, and was powerfully coloured by its focus on the looming United Nations General Assembly Special Session (UNGASS), held in New York in April. The CND included a special segment on preparations for the UNGASS, including the production of an Outcome Document<sup>1</sup> to be approved at the New York Special Session.

The Commission opened with an invocation of the 'spirit of Vienna' in a video message from the President of the General Assembly, followed by an introductory presentation from Mr. Yury Fedotov, Executive Director of the United Nations Office on Drugs and Crime (UNODC). Subsequently, a series of prepared country statements were made, presenting what was, on the surface, a largely consensual position with regard to the international drug control regime and the conventions that underpin it, which were repeatedly lauded as the 'cornerstone' of global drug policy. Several

countries noted with satisfaction the flexibility of these conventions; similarly, many states referred to the human rights and public health objectives that should lie at the heart of drug policy. However, it was clear that a broad commitment to these principles could not conceal the widely differing understandings and practical applications of the meanings attached to these phrases.

Those states offering an explicit challenge to the existing architecture of international drug control, nonetheless, remained few. The Czech Republic was, perhaps, the leading exponent of change, and argued that the absence of an Outcome Document would be preferable to an Outcome Document that repeated the old stereotypes. In the event, the draft Outcome Document was subject to sharp criticism, especially from Office of the United Nations High Commissioner for Human Rights (OHCHR), which noted that the document contained no references to the right to health, no reference to harm reduction by name, or the use of the death penalty for drug-related offences or human rights violations relating to the action of law enforcement agencies. In relation to the prohibition of discrimination, it did not specifically address the discrimination experienced by ethnic minorities and women.

The issue of cannabis featured regularly at the CND and its side-events. The most powerful presentation came not from Uruguay or the United States, but from a spokesperson of the newly elected administration in Canada. The speaker from that country's Health Ministry repeated Canada's intention to legalise and strictly regulate cannabis,

and her passionate intervention brought forth a torrent of applause from some sections of the large civil society presence attending this year's CND.

By contrast, the driving force amongst the conservative faction was the Russian Federation, at regular intervals expressing its suspicion of harm reduction, legalisation and decriminalisation. It deployed a rhetorical narrative of history in defence of the present control regime, insisting that this was responsible for reducing opiate consumption from its peak in the early decades of the 20<sup>th</sup> century. Russia also argued for the securitisation of international drug control, viewing the drug trade as a global threat to peace and security, the response to which should be placed in the hands of the UN Security Council.

The CND voted on the scheduling of 7 substances, with only one of these providing the occasion for controversy (ketamine was not among them). The controversial substance was phenazepam, a benzodiazepine with similar properties to diazepam. The Russian Federation claimed prevalent domestic medical use of the substance, and employed the discussion to criticise the Expert Committee on Drug Dependence (ECDD) of the World Health Organisation (WHO), which is mandated with recommending on scheduling under the drug control conventions. Russia noted that the ECDD was influenced by the medical use of ketamine, but had not done so in this instance. It therefore accused the Committee of being erratic and opaque. The WHO responded by noting the thorough analysis and peer-reviews carried out in arriving at its recommendation.

The now-familiar informal dialogues with both the Executive Director of UNODC and President of the International Narcotics Control Board (INCB) took

place. In the former, Mr. Fedotov fielded questions on health, criminal justice and the UNGASS process. Bolstering the UNODC's stance on the issue, in response to a question on the death penalty he called for restraint and the establishment of a moratorium on the practice. Meanwhile, Mr. Werner Sipp also engaged in interesting discussions with civil society. Mr. Sipp appeared to be continuing the trend set by his predecessor Dr. Lochan Naidoo, and taking up a constructive and cooperative stance. Among the most important deliberations were the issue of improving access to controlled medicines, alternatives to incarceration, and the issue of cannabis in Uruguay and the United States. Mr. Sipp also asked, in response to a question, the role of the Board in relation to the 'ownership' of the conventions and the question of reform, acknowledging the difficult and ambivalent position that the INCB finds itself in as a result of its mandate as 'watchdog'.

The large numbers of civil society delegates present were involved with a correspondingly large and varied set of side events, and overall the civil society engagement at CND continues to expand. Nonetheless, there was a high degree of disappointment with the Outcome Document, despite the fact that it was by no means entirely a failure, which some reformers understood it to be. That said, the small gains within the Document could not counteract the overarching sense of let-down that many felt in view of the hopes that had been raised in the early phase of the UNGASS preparations. Perhaps this was an inevitable product of the political horse-trading that goes on at such events, or maybe a result of the institutional inertia of the Vienna status-quo. Either way, the eyes of those seeking reform of some aspects of the current treaty system will turn, post-UNGASS, to the High Level Meeting in 2019.



Vienna International Centre, March 2016

## Introduction

Whether universally acknowledged or not, today finds the international drug control regime in an unprecedented phase of crisis and transition. As has been well documented in recent years, despite optimistic – yet ultimately disingenuous – rhetoric to the contrary, it is hard to see the so-called ‘Vienna Consensus’ or ‘Spirit of Vienna’ on drugs as anything other than a shattered conception. State parties to the UN drug control conventions have certainly worked hard to maintain a slender sheen of agreement under the guise of soft law concepts like ‘shared responsibility’. This has been bolstered by apparently automated language reaffirming the hard law treaties as the cornerstones of endeavours to address effectively what within UN parlance is still referred to simply as the ‘world drug problem’. Yet behind this fragile façade lies an increasingly significant divergence of approach and a concomitant variance in the way states understand their commitments to, and relationships with, the international drug control system. It is true that in most instances shifts towards policy pluralism driven by national – even local – imperatives can be accommodated within the parameters of the existing treaty framework. In others, however, this is clearly not the case.

That said, while the creation of legally regulated cannabis markets for non-medical and non-scientific use may be an obvious and very visible example of disjuncture and resultant regime crisis, it is by no means alone. On high order issues there appears to be agreement. Nation states and drug policy-related UN agencies now frequently coalesce around the language of human rights and public health. This is clearly a welcome change. Nonetheless, precisely what is understood by these terms by many states remains unclear and is perhaps an inevitable function of the interpretative space necessary for the operation of a multilateral approach. To be sure, beneath these crucial overarching principles at the operational level, dissonance is more pronounced than ever. While calculated political denial on regulated cannabis markets from both the US federal government and authorities in Montevideo go some way to deflect attention away from what are breaches in the conventions, divergent views on other issues are not so easily sidestepped. Despite a wealth of scientific evidence demonstrating

its effectiveness, the health- and rights-oriented harm reduction approach still remains a point of contention, with the term itself still as toxic within inter-nation discourse as it has ever been. Moreover, although access to essential medicines and an overdue increase in focus on the enabling dimension of the regime has become a prominent feature of multilateral discussions, national positions vary. And of course, nowhere are the gulfs in views more pronounced than on the use of the death penalty for drug-related offences.

These, and other, points of dissonance would be pressing concerns at any time for the increasingly challenged regime framework. That the international community was in March 2016 preparing for the first UNGASS on the world drug problem in 18 years, however, made this year’s meeting of the CND particularly significant. Indeed, regardless of the considerable regular concerns of the Commission, after months of protracted and difficult negotiations,<sup>2</sup> there was an expectation that the 59<sup>th</sup> CND would finalise the UNGASS Outcome Document in readiness for approval in New York.

With increasingly frantic negotiations on the Document providing a complex and ultimately problematic backdrop for the meeting, delegates convened at the Vienna International Centre between 14<sup>th</sup> and 22<sup>nd</sup> March to discuss not only the regular business of the CND, but, building upon series of inter-sessionals, the final preparations for the UNGASS. As delegations, both from member states and civil society, arrived in the Austrian capital, expectations seemed to focus around a number of key areas. Would the Outcome Document be agreed in Vienna or would negotiations continue in the lead up to the New York meeting beginning on 19<sup>th</sup> April? If agreed at the CND, what would the final iteration look like and would it be fit for purpose relative to initiating a serious review of the regime or rather a product designed to defer difficult positions until the next scheduled high-level review in 2019? On a related issue, how would the Commission deal with the apparently irreconcilable topic of the death penalty? And, particularly in light of policy pledge made by the newly elected government in Canada in November 2015, how would both member states and the UN bureaucracy, especially the INCB and its new President, discuss regulated cannabis markets?

This report aims to provide an overview of the key issues discussed and debated during the special segment on UNGASS preparations and the regular segment of the 59<sup>th</sup> CND, including during various side events and NGO dialogues. In attempting to go beyond a functional narrative account, it offers some analysis of the prominent topics of debate, as well as highlighting emergent issues of concern and reoccurring themes. Where appropriate, comparisons are drawn with previous CND sessions in an attempt to offer some context for the debates and a sense of progression – or lack thereof – within certain issue areas. A supplementary account of the proceedings can be found on the CND blog, a project of the International Drug Policy Consortium (IDPC), in collaboration with NGO colleagues – this time, the International Centre for Science in Drug Policy. This aims to enhance transparency within the international policy making process and provide real-time monitoring and reporting of the discussion taking place at the meeting (<http://cndblog.org/>). Official UN documentation relating to both the special and regular segments, including the official report of the proceedings can be found at [https://www.unodc.org/unodc/en/commissions/CND/session/59\\_Session\\_2016/CND-59-Session\\_Index.html](https://www.unodc.org/unodc/en/commissions/CND/session/59_Session_2016/CND-59-Session_Index.html)

## The opening of the 59<sup>th</sup> session of the CND and its special segment on UNGASS preparations

Following a brief video presentation from Mr. Mogens Lykketoft, President of the UN General Assembly, which invoked the ‘spirit of Vienna’,<sup>3</sup> Mr. Yury Fedotov, Executive Director of UNODC, addressed some opening remarks to the delegates.<sup>4</sup> Commenting on the ‘long road leading to the UNGASS’, Mr. Fedotov expressed his hope that the Outcome Document for UNGASS would be concluded at the CND session. Originally, it had been hoped by IDPC and other civil society groups that the Document would be produced in New York, outside the direct sphere of influence of the Vienna agencies. Nevertheless, this proved to be an important process objective that was impossible to achieve.

Indeed, the Executive Director of UNODC appeared highly satisfied with the preparations as these had

progressed so far, speaking of the CND’s ‘inclusive and active preparations for UNGASS’, the ‘broad and diverse’ work carried out, and the ‘informed and frank’ debates that it had ‘facilitated’. ‘By encompassing issues of drugs and health, drugs and crime, human rights, security and safety, emerging challenges and sustainable development’, he explained, ‘the UNGASS process has helped to promote a more comprehensive understanding of the problems we face’. He argued that the UNGASS process had placed the focus of attention on ‘the lives lost and the needless suffering caused by the world drug problem’. The precise composition of the ‘world drug problem’ was, as usual, not made explicit, though the assumption was that there exists an inexorable causal relationship between ‘drugs’ and the morbidity and mortality referred to above. Moreover, there was no recognition from Mr. Fedotov, and very little from most of the government delegates present over the course of the event, of the implication of the drug control regime itself in generating these problems. Nor did the numerous people who consume controlled drugs for non-medical purposes without appreciable ill effects receive a mention, though the Executive Director quoted the *World Drug Report* to the effect that some 27 million people suffer from drug use disorders, including 12 million people who inject drugs.

The greater focus on health that has characterised the international drug control regime in recent years was prominent in the opening speech, and is, of course, to be welcomed. In the words of Mr. Fedotov, ‘The UNGASS process has helped to raise awareness of this continuing global health problem, and the need to put people first when developing responses’. While the shift from punishment and enforcement toward public health is a positive development, it must be recalled that, for some governments, ‘health’ measures can closely resemble the forms of incarceration and torture that they are supposed to replace.<sup>5</sup> Amongst the most extreme of these examples is that of the Russian Federation, where opioid substitution therapy (OST) is banned by law until at least 2020. The head of Russia’s drug agency has also claimed that ‘distribution of sterile needles and syringes stimulates society to tolerate drug dependent persons and violates the Criminal Code’.<sup>6</sup> That is to say, under the guise of its ‘narcological’ treatment modality, Russia actively seeks to alienate people who use drugs, a condition



Special Segment on the UNGASS preparations, March 2016

that is recognised elsewhere as having negative health consequences.

Mr. Fedotov went on to refer to the issue of the death penalty, which, he contends, has been highlighted by the UNGASS discussions, and whose use has never been a part of the letter or spirit of the drug control conventions. Other issues raised by the UNGASS included development, access to essential medicines, proportionality of punishment and sentencing, and dealing with organised criminal groups. He concluded his presentation by stating that the deliberations of those present at CND and towards the UNGASS ‘can help to take further crucial steps forward to promote a healthier, safer and more prosperous future for all’. He wished success for these efforts, and pledged UNODC’s continuing support.

Among other introductory statements, that made by the President of the INCB was particularly notable. Taking to the podium for his first full Commission since being elected as President in May 2015, Mr. Werner Sipp reminded the delegations that ‘You have an important task ahead’ in the lead into the UNGASS. The President stressed that the special session and the ‘preparatory process are important as a means of taking stock of the accomplishments and gaps in drug control, and of exchanging best practices in addressing the world’s drug problem’. ‘The special session’ he continued, ‘will contribute to laying the ground for the best way forward in drug policy’. Having explained that the Board wanted to contribute to a ‘differentiated assessment of the drug control system in light of its mandate and experience’ the President noted that the INCB’s view of the implementation of

the 2009 Political Declaration was ‘ambivalent’. While there had been ‘remarkable success’ in some areas, elsewhere targets had not been met. That said, reinforcing the key themes within Mr. Fedotov’s statement, Mr. Sipp stressed that the ‘health and welfare of mankind’ is ‘elemental’ to the international drug control system. He then pointed out that when ‘monitoring the compliance of State parties with the treaties, the INCB found that, in many countries of the world, drug control policies relied primarily on criminal justice approaches and incarceration while drug demand measures based on prevention, treatment, rehabilitation and social integration were often neglected’. ‘The result’ he continued, ‘was an unbalanced drug policy, implemented at significant social and economic costs, and whose narrow scope was ill-suited to address the complex and multifaceted nature of the drug control problem’.

To be sure, how authorities are choosing – in a differentiated way – to deal with such complexities relative to the legal parameters of the drug control conventions was a point the President chose to highlight within this prominent section of the proceedings. Noting that in recent years there have been ‘legislative developments’ that permit the non-medical use of controlled substances, notably cannabis’ Mr. Sipp stressed the Board’s concern, ‘because they are not in compliance with the treaties that require that cannabis should be used exclusively for medical and scientific purposes’. ‘These legislations’, he went on ‘challenge not only the international consensus expressed in the conventions, but also international cooperation and the principle of shared responsibility upon which the international drug control system and

international rule of law are founded'. Initiating a valid theme that he was to return to a number of times over the course of the meeting, the President stated 'You, the State Parties – who are the "owners" of the international treaties – must find a response to that challenge'.

Addressing an increasingly pressing subject of discussion, Mr. Sipp went on to point out that 'some proponents of these new legislations pretend that the flexibility of the conventions allows such regulations'. 'In fact', he continued, 'the debate on flexibility is at the core of the general debate on future drug policy because it regards the possibilities and the limitations of the conventions'. Speaking to the crux of the issue, the President then stated: 'Undoubtedly, there exists flexibility in the conventions – but not in each and every respect'. In order to offer complete clarity on this point, Mr. Sipp stressed that 'The conventions require to limit (sic) the use of drugs exclusively to medical and scientific purposes. Non-medical use has to be prohibited and considered as unlawful behaviour. There is no flexibility in the conventions for allowing and regulating any kind of non-medical use'. Mr. Sipp then used his statement to offer the Board's views on where flexibility did exist, in relation to possession for personal use for example, and, as well as touching upon access to medicines and new challenges, directed his attention towards what he categorised as 'new' approaches.

Framing this within the context of the forthcoming event in New York, he stated that 'Member States' governments and civil society are taking the opportunity of UNGASS 2016 to discuss possible "new approaches" to the world drug problem'. Mindful of its place within the system, it was unsurprising that the President stressed that the 'INCB is convinced that the current drug control framework does not need to be discarded in order to adopt "new approaches"'. 'In fact', he continued, 'we don't need really "new approaches in drug policy. Quite the contrary, we need to better implement the approaches of the existing drug control treaties and Political Declarations that require a balanced, comprehensive and integrated approach where health and welfare is at the core of drug control policy, where human rights are promoted and the principle of proportionality is applied'.

## Box 1 Welcome calls for new drug policy metrics

In recent years, discussions at the CND have begun to include the issue of drug policy metrics and indicators. Although in the past remaining largely a topic for the corridors, side events and, in 2015, a round table, it was notable that this year a number of states and UN agencies noted the importance of metrics in their statements and interventions. In the case of Brazil, Ghana and the United Nations Development Programme (UNDP), for example, this related directly to the SDGs; an obvious and increasingly pressing intersection necessitating serious discussion. That said, the Canadian statement within the special segment also spoke explicitly to the increasingly pressing subject beyond the domain of development. Within the context of the need for evidence-based policy, the Canadian delegate highlighted with great erudition that her country 'supports the development of improved, broadened metrics to better evaluate our success in ameliorating drug control and addressing problematic substance use, and which also take into account the harms associated with illicit drug activities, such as their impact on health, peace and security, development and human rights'. 'We acknowledge that this may require some member states, including ourselves, to rethink how information and data are collected and prioritized', she said.

## Preparing for the UNGASS: The Special Segment of the 59<sup>th</sup> CND

Despite the repeated concept of consensus amongst member states and the invocation of the 'Spirit of Vienna', the Special Segment on preparations for the 2016 UNGASS was peppered with dissonance and dispute concerning the policies that the international community should follow. It is true that on the surface there appeared to be a degree of consensus with, for example, the statements of almost all states referring to the three drug control conventions as an appropriate 'framework' for or 'cornerstone' of international drug policy. Within this context, and echoing the comments of Mr. Sipp in the opening

session, a significant number of delegates noted the existence of considerable flexibility within the conventions and that, within reason, the extant system could accommodate a plurality of approaches. As both the EU and US statements put it, there are ‘no one size fits all’ solutions or answers. Similarly, many states noted that public health and human rights (incorporating access to essential medicines) should be at the core of approaches to dealing with the world drug problem, with some – including Mexico, the United States, Italy and Guatemala – linking this fundamental concept to the existing room for manoeuvre within the treaties. Meanwhile others stressed the importance of evidence-based policy and the importance of linking drug policy to the development agenda, including the Sustainable Development Goals (SDGs).

That said, as touched on above and noted elsewhere, the statements also revealed how interpretation of what is meant by health-based approaches, human rights and even evidence varies between states. For example, while Guatemala called for the UNGASS process to promote an ‘open plural evidence based discussion’ and Canada (having stated the ‘critical’ role of harm reduction) stressed the importance of ‘evidence-based policy’ and a related need for new policy indicators (see Box 1), Singapore offered the view that there was evidence that the harm reduction approach doesn’t work. This is a view clearly at odds with many states beyond Canada, including all within the EU. However, the view of Singapore was also implicitly supported later in the proceedings by Japan, with the Japanese delegate stressing that it is inappropriate to impose harm reduction on countries and that his own government had no intention of implementing it.

In relation to human rights, many states and groupings (including the EU, Mexico and Chile) used their plenary statements to show dissatisfaction with the lack of reference to the opposition of the death penalty for drug-related offences in the draft of the Outcome Document. This was an issue also taken up by a particularly powerful statement from the OHCHR (see Box 2). Other states, however, noted the sanctity of national sovereignty in oblique references to this issue. The Indonesian delegate, for example, noted ‘My delegation... believes that to suppress and eliminate the scourge of drugs, a zero-tolerance approach is needed to provide people and communities in the region with

## Box 2 The OHCHR’s critique of the draft Outcome Document

As has been increasingly the case in recent years, this year’s CND saw UN agencies with a mandate relating in some way to the drug issue present forthright statements, particularly regarding the health implications of policy. The representative from UNAIDS, for example, noted that the body welcomes the stronger focus on a ‘people centred health and rights approach to the world drug problem’ that is emerging globally from the ongoing debates in the context of the UNGASS. ‘This’, he continued, ‘is consistent with the overarching purpose of drug control to ensure health, well-being and security of individuals, while respecting their agency and human rights at all times’ before stressing that ‘UNAIDS sincerely hopes this will be reflected in the Outcome Document’. While a welcome sentiment, agency statements on the Outcome Document were dominated by that from the OHCHR. In an incredibly powerful critique, Robert Husbands was refreshingly candid in his comments upon the draft. Noting that ‘while there are certainly positive features’, he stressed that ‘there are a number of human rights issues which have either not been adequately addressed, or not addressed at all’. He then carefully deconstructed the draft to highlight that it contained no references to the right to health – including no reference to harm reduction by name – or the use of the death penalty for drug-related offences or human rights violations relating to the action of law enforcement agencies. In relation to the prohibition of discrimination, Mr. Husbands stressed that the draft document did not specifically address the discrimination experienced by ethnic minorities and women and that in relation to the rights of the child there was no recommendation of the Committee on the Rights of the Child that ‘children who use drugs should not be subject to criminal prosecution’. He concluded by highlighting that the draft Document was also lacking relative to the rights of indigenous peoples.

a society free from drug abuse and its ill effects'. He went on to state that 'My delegation stresses that the transnational challenges posed by the world drug problem should be addressed with full respect for the sovereignty and territorial integrity of States, and the principle of non-intervention in the internal affairs of States. In other words, each country has the sovereign right and responsibility to decide on the most appropriate approach to address the drug problem within its borders, taking into account the historical, political, economic, social and cultural contexts and norms of its society'.

Considering the delicate state of negotiations for the Outcome Document and the necessary work still required at the beginning of the 59<sup>th</sup> session, it was perhaps unsurprising that few states openly challenged the existing control architecture. The Argentinean delegate came close in saying 'drugs are part of our reality and approaches need to be reviewed' and, as discussed below, the Czech Republic was highly critical of the dominant law enforcement approach. Interestingly, picking up on calls from some sections of civil society<sup>7</sup> and Jamaica,<sup>8</sup> the Colombian delegate called for an expert group to examine the operation of the conventions; a statement that was, however, accompanied by the view that drugs should not be legalised for non-medical and non-scientific use since this undermines the conventions.

Indeed, the issue of regulated cannabis markets was a point of clear dissensus within the proceedings. Remaining very much the elephant in the room for most of the statements and debates, the issue was mentioned a number of times in the special segment, although not at all by the United States and only briefly by Uruguay. In the case of the latter, Milton Romani Gerner, the Secretary General of the Junta Nacional de Drogas, stated that 'Our new model to regulate the cannabis market is based on our Constitution and complies with international legal instruments'. It is, he continued, 'health-orientated. It has a mechanism of permanent and rigorous evaluation. It responds to our history and particularities'. Apparently keen to avoid embroilment in any debates beyond Uruguayan border, he also stressed that 'It doesn't aspire to become a solution for other countries'. It is likely that, for want of a better phrase, both delegations were keen to keep their heads down. In light of the domestic policy pledges of the Trudeau

### Box 3 Canada's cannabis pledge

While Uruguay and the United States kept a low profile on the issue of regulated cannabis markets, the Canadian delegation offered a forthright and honest appraisal of its position. Presented in the special segment on 15th March, the statement given by Hilary Geller, Assistant Deputy Minister of Health, included a full overview of the situation within Canada and the rationale behind the government's intentions. As such, it is worth quoting at length. Mrs. Geller noted that '...members of the Commission will likely be aware that Canada has committed to legalize, strictly regulate and restrict access to marijuana. The Government of Canada in its electoral platform stated that the current national approach is not working. Canadian youth use marijuana at rates among the highest in the world. Thousands of Canadians are dealing with the consequences of having criminal records for non-violent drug offences every year while organized crime is reaping the benefits of billions of dollars in profits from the illegal marijuana trade. And, finally, most Canadians no longer believe that marijuana should be subject to harsh criminal sanctions, and support the Government's commitment to legalize, tax and regulate marijuana. Canada recognizes that this is both a serious and a complex undertaking. The Government remains committed to strong international cooperation to combat the world drug problem and wherever possible, will seek to align its objectives for a new marijuana regime with the objectives of the international drug control framework and the spirit of the Conventions. We will keep these shared objectives front and center as Canada's Ministers of Justice, Public Safety and Health move forward to establish a task force to consult with experts, our provinces and territories, and Canadians leading to the design and implementation of a new regime'.

Administration, Canada, however, addressed the issue head on and stressed the problems associated with current approaches and Ottawa's intention to establish a regulated market (see Box 3). Conversely, the ASEAN grouping and a number of states

including Algeria, Cuba, Qatar and – as discussed in more detail below – the Russian Federation, stressed their disapproval, with Qatar pointing out the ‘dire consequences of legalisation’. Tacitly supporting such a position, the African Group spoke of its work towards the ‘dream of a continent free of drugs’.

It became clear then that for many states taking part in the proceedings, the philosophical differences were of a fundamental order, and could not be resolved by simple appeals to consensus or the flexible use of terms. And on this point it is instructive to examine in some detail the presentations of a small number of countries with opposing views and policies; an exercise that reiterates many of the themes just discussed. There were nations whose presentations were, in general terms, representative of the positions of blocks of countries present at the special segment, and it is these we have attempted to capture below, both to elaborate their views and to illuminate the fractures that cut across the international drug control regime.

Perhaps the leading country amongst what might be called the conservative faction within the current setting is the Russian Federation, which was able to draw – to varying degrees – some other governments into its anti-reform orbit. It was notable that Mr. Viktor Petrovitch Ivanov, former director of Russia’s Federal Drug Control Service, based his argument defending the status quo upon the ‘opium epidemic’ in the late *Qing* and republican period in China (1839-1949). This was a tactic previously utilised by UNODC in its *2008 World Drug Report*.<sup>9</sup> In the latter publication, the alleged ‘epidemic of addiction’ was used to defend the notion that the international drug control conventions had greatly reduced opium consumption and achieved stability in the global cultivation, production and use of opiates.<sup>10</sup>

While it closely followed the UNODC argument, Mr. Ivanov’s at the 59<sup>th</sup> CND was a little different. The Russian Federation was determined to obstruct any slackening of legal controls over drugs. ‘Any relaxation of the international drug control system will result in tragic and disastrous consequences’, as he put it. Mr. Ivanov said that the ‘most vivid example’ of the consequences of legalisation was that involving China; in 1858, Britain imposed a legal regime on the drug following its military defeat of the country. He argued that opium use was

unknown in China in the 18<sup>th</sup> century, a contention that is factually incorrect. He then claimed that by the close of the 19<sup>th</sup> century, the number of ‘addicts’ had risen to 25 million, with 40 million tons of opium produced in British India each year. These figures are highly speculative, and probably drawn from the largely polemical work of the 1909 Shanghai Opium Commission. The Russian argument is that the introduction of the international drug control conventions reduced addiction and maintained it at much lower levels, up to and including our own time. While making use of historical imagery as a rhetorical device, such an analysis demonstrates an impoverished understanding of the real historical forces that had helped to drive the processes of change. As is discussed at length elsewhere, many of these had little to do with either ‘drugs’ themselves or the policies that were supposed to suppress them.<sup>11</sup>

The Russian Federation was also prominent in the suspicion it directed toward legalisation and decriminalisation taking place in other nations, but was not alone, gaining the support of others, particularly countries in Asia. Mr. Desmond Lee, Senior Minister of State for Home Affairs, spoke for Singapore and articulated its hard-line stance against drug use. ‘It may come as a surprise to many to know that opium was once legal in Singapore’, he told delegates. ‘This was in the early 1900s when we were a British colony.’<sup>12</sup> The legal opium trade, he explained, produced high levels of tax revenue for the British exchequer. For the people of Singapore, however, the social cost of legalised opium proved ‘way too high’, with the drug’s consumption alleged linked to crime, violence, and familial breakdown. Opium was eventually prohibited in 1946 under pressure from the United States.

Since its independence, Singapore has taken a hard line against the use of drugs. Mr. Lee explained that harm reduction programmes ‘do not address the collective harm to society caused by drug addiction’, or recognise the impaired capacity for rational choice amongst ‘addicts’. In addition, decriminalisation and legalisation do not apply to his country’s situation, which is, he alleged, close to being drug-free, and such policies are, further, contrary to the provisions of the drug control conventions. The island’s academic experts confirm, moreover, that cannabis is a harmful and addictive substance, one which the government

has no intention to legalise. Mr. Lee’s presentation concluded by stating: ‘We want a drug-free Singapore, not a drug-tolerant Singapore.’

The Russian Federation also included in its presentation a shift from historical rhetoric to contemporary global politics, informing the plenary that it wished to draw its attention ‘to proposals on new measures and approaches of the antidrug policy, which will allow to (sic) drastically improve the existing global drug situation’.<sup>13</sup> The primary problem with the international community’s drug strategy is the perception of the drug problem as fundamentally a problem of crime and individual health, said Mr. Ivanov. The main aspect, however, is the ‘devastating impact of drugs on the national, regional, and global economy’. This, he insisted, is customarily left aside.

‘All this actually entails a fiasco of standard drug measures and approaches, since, in fact, uncoordinated activities of the international community are opposed to global transnational crime, which can within the shortest possible time pass from accumulating financial resources and drug trafficking to setting political goals and transforming into an entity of alternative political and geopolitical governance’, said Mr. Ivanov.

This process resulted from close relationships between terrorist organisations and the drug business, relationships that have already been clear for a considerable time. Mr. Ivanov claimed that there is a ‘widespread’ and ‘erroneous’ view that ‘drugs are just an instrument of funding terrorist organisations’. On the contrary, he said, terrorist organisations are an instrument for the leaders of the drug business, a hired task force that works for the drug mafia.

The level of murders in the Latin American countries, he also alleged – some 100,000 per annum – ‘has long turned into terrorism, just without the customary, media-imposed attributes of the Eastern Hemisphere’s “Islamism”’. This long-term, targeted violence and corruption, which permeates every hemisphere, is equivalent to the problems of ‘terrorism, piracy, and nuclear non-proliferation in terms of its scope and consequences’. This is why – and the Russian Federation has argued this before – it is necessary to view the drug trade as a threat to peace and security, to enhance the measures

available to combat it and to place these tools at the disposal of the Security Council, he claimed. The key targets are Afghanistan, the hub for heroin production and trafficking, and the Andean region, for cocaine. Each year, according to Mr. Ivanov, 100,000 people die from Afghan and Latin American drugs.

It will be seen that the Russian Federation is here advocating a renewed, and entirely real, war on drugs, in sharp contrast to the thematic change that the UN has adopted along with the majority of member states.<sup>14</sup> It is impossible, in practical terms, to absorb both these sets of views into a ‘consensus’, except upon the surface.

The Czech speaker, for example, Dr. Svatopluk Nemecek, the Minister of Health, spoke powerfully of the ‘situation of escalated violence and extreme death toll, which is directly related to the so-called War on Drugs – a war that failed a long time ago’.<sup>15</sup> He also spoke of addressing those countries that called for the UNGASS, and not failing to assist those countries who are ‘suffering because the War on Drugs was exported to them in its most violent form’. The Czech Republic has experience of a variety of drug policy approaches, and, ‘after a quarter of a century, we can provide conclusive evidence that depenalisation and decriminalisation do work’. Dr. Nemecek outlined how the Czech Republic has the lowest number of fatal drug overdoses per capita, globally; belongs to the small set of countries with the lowest prevalence of HIV and AIDS amongst people who inject drugs; has a uniquely low prevalence of hepatitis B and C amongst people who inject drugs, ‘probably the lowest globally’; has very low levels of violent organised crime; and, as a result of its harm reduction approach, has approximately 85 per cent of ‘problematic drug users’ in regular contact with social and medical services.

According to the Czech Republic, neither humans nor human institutions have the right to kill; sentencing should be proportionate, and harm reduction is of great importance, as there is conclusive evidence that harm reduction saves lives, improves health and public safety, and leads to reduced social and economic costs. The Czech Republic called for this to be stated in the UNGASS Outcome Document. The country is in favour of retaining the international drug control

conventions. ‘However,’ said the speaker, ‘if we demand “more of the same” from the countries no matter if it has demonstrably failed, we will not only deeply disappoint those who had called for a *special* summit at the highest UN level – we will risk the very existence of the international drug control system.’

As Dr. Nemecek drew to a close, he stated that: ‘In the view of the Czech Republic, no Outcome Document at all would be better than a weak outcome document for UNGASS 2016’. Upon examination of the eventual Outcome Document, it is unfortunate that more governments did not hold to this position. This is an issue discussed further below.

## **The INCB: Ever better, but some mixed messages**

Reflecting its status as a standing item on the agenda of the CND’s normative debates, an important intervention within the session was the INCB President’s overview of the work of the Board. The President’s statement, however, was principally concerned with the contents of the INCB’s Annual Report,<sup>16</sup> which this year was accompanied by not only its standard Precursors Report but also a supplement<sup>17</sup> devoted to the analysis of global access to controlled substances for medical and scientific purposes. Consequently, this topic was also given specific attention in a separate statement later on 14<sup>th</sup> March. This highlighted the lack of use and access to medicines, particularly opioid analgesics, in many parts of the world.

Mr. Sipp chose to highlight early within his statement that ‘the situation of the supply of medications for pain relief and for medical conditions requiring the use of psychoactive substances is still unsatisfactory’. Taking up one of the key themes developed by his predecessor, he continued by noting that even though there had been a ‘shift in the impediments’ to availability, ‘much work needs to be done in terms of capacity building if unnecessary pain and suffering is to be avoided’. The President also used his introductory comments to flag up the importance of the thematic chapters of the Annual Reports over the last twenty years, arguing that their contents remained relevant to today’s debates

and should provide the ‘context’ for collective preparations for the UNGASS. Mindful of the varying quality of the chapters over the last few years, this was a brave move which, within the currently complex and divergent policy environment, perhaps served as useful foregrounding for the most recent chapter as much as a reflection on the utility of all past examples.

Indeed, in view of the fast-approaching UNGASS, the thematic chapter within the Annual Report for 2015, the President informed the hall, focuses on the ‘fundamental topic of “the health and welfare of mankind: challenges and opportunities of the international control of drugs”’. Having highlighted some of the key points from the chapter, including the need for proportionality, the importance approaching drug control in a manner consistent with ‘international human rights standards’, and the need for states to look ‘deeper at socio-economic and socio-cultural factors’ when designing and implementing drug control policies, Mr. Sipp outlined the Board’s conclusions on how drug control can promote health and welfare. In so doing, he pointed out that for the Board, promoting the health and well-being of individuals and societies means ‘primarily preventing and reducing drug abuse’. That said, the President also acknowledged that a number of other efforts should accompany this goal. These include the application of scientific knowledge, humane thinking and respect for human rights, applying the principle of proportionality and moderation, preventing harm that can result as an unintended consequence of drug control and, as a somewhat uncomfortable accommodation of harm reduction within this narrative, ‘reducing the adverse and social consequences of drug abuse that is a complementary element of a comprehensive demand reduction strategy’. In continuing recent and welcome efforts to shift the focus of contemporary drug control policies more into line with the principles laid out in the preambles of all the drug control treaties – that is to say a concern for the ‘health and welfare’ of humankind – but away from the traditional punitive approach, Mr. Sipp also made a point of stressing that the conventions ‘do not call for a “war on drugs”. Moreover, he continued, ‘Some of the policies existing in some countries, which are associated with militarized law enforcement, disregard human rights, over-incarceration, the denial of medically appropriate treatment and inhumane or

disproportionate approaches are not in accordance with the principles of the conventions. Although a perspective to be applauded, even if it underplays the privileging of a law enforcement-dominated approach within the treaties, the message was immediately undermined by the President's following line of reasoning. Echoing his comments made in the opening session of the special segment, Mr. Sipp argued that because the current control system does not require a 'war on drugs,' '...we don't need really "new approaches" to drugs policy.' 'Quite the contrary,' the President continued 'we need to better implement the approaches of the drug control treaties which require a balanced and comprehensive approach where health and welfare are at the core of drug control policy.' As noted earlier in relation to the opening of the special segment, on this point, it is hard to ignore the incongruousness of such a position relative to his call for State Parties to find a response to the tensions between regulated cannabis markets and international obligations under the drug control conventions.

During a brief diversion away from his discussion of the conventions themselves, Mr. Sipp commented upon the reporting obligations of competent national authorities, the abuse of prescription drugs, precursor chemicals, the challenge of new psychoactive substances (NPS), the situation in Afghanistan and cooperation between the INCB and member states. On this last point, the President took the opportunity to note the important work of civil society and how the Board values the cooperation it enjoys with NGOs. Mr. Sipp also made a brief reference to the work of the INCB in collecting information on ketamine in relation to a number of CND resolutions over the past few years and urged 'governments to submit to the Board the latest information on the status of national control over' the drug.

However, the President made sure that the final section of his statement reiterated in strong terms the Board's views on state obligations. Returning to the issue of access to medicines, he stressed that 'You, the member states, in formulating the conventions and declarations, recognized the need for a balance between reducing the illicit supply of drugs of abuse and ensuring the availability of narcotic and psychotropic substances for medical purposes.' 'Unfortunately, however,' he continued,

'treaty implementation to date has often been neither complete nor balanced'. Mr. Sipp then deftly shifted the focus of his closing remarks away from specifics of the access issue to obligations more generally and ultimately the inviolability of the extant treaty framework. 'Our best chances of preventing and minimizing the suffering and social harms caused by inadequate access and availability for medical purposes, drug abuse, drug trafficking and illicit drug production and cultivation rest upon following a balanced comprehensive approach' he said, stressing that this must take place with 'full respect for human rights and utilizing policies and practices founded in evidence'. Building to a crescendo, the President went on to say that as 'we approach and participate in UNGASS 2016, I urge you to bear in mind the principles of the existing framework upon which the international drug control system is founded. I trust that Member states will seize the opportunity to collectively identify ways and means of ensuring its full and balanced implementation. He then finished with a flourish of moral suasion: 'The health and welfare of mankind is in your hands'.

Responding to the statement, the Annual Report and the work of the Board in general, most states were complimentary and showed their appreciation. That said, the state responses offered another opportunity for the differences in views on death penalty to become visible. While some states applauded the INCB's position on the issue, China, for example, argued that it was exceeding its mandate and that 'each and every state has the right to policy in light of its own circumstances'.

## **Changes in the scope of control: Scheduling of substances at CND**

On the Friday morning the Commission turned its attention to: 'Changes in the scope of control', CND language for the scheduling or rescheduling of substances. Despite initial concern from some countries and NGOs that China would once again bring the issue of the international scheduling of ketamine to the deliberations, this was not the case. Although it is only possible to speculate why this was so, it is likely that informal opposition from some states and NGOs, as well as the WHO's reaffirmation of its position against scheduling

## Box 4 Uncontroversial scheduling decisions

The first straight-forward decision concerned **acetylfentanyl**, which was recommended for inclusion in schedules I and IV of the Single Convention. The WHO explained that this was a typical morphine-like compound, which had dependence-producing properties and no current therapeutic application. The vote to follow the WHO's recommendation was unanimous, and Acetylfentanyl was scheduled accordingly (Decision 59/1). Next came **MT 45**, a similar substance. It was voted for control under schedule I of the Single Convention (Decision 59/2).

The subsequent recommendation involved **para-methoxymethylamphetamine (PMMA)**, proposed by the WHO for control under schedule I of the 1971 Convention. Described by the WHO speaker as 'a very serious substance', it is illicitly manufactured, poses a public health risk and is without recognised medical use.<sup>18</sup> The vote was unanimous, and PMMA was controlled under schedule I of the 1971 Convention (Decision 59/3). The fourth recommendation from WHO

was  **$\alpha$ -pyrrolidinovalerophenone ( $\alpha$ -PVP)**, an NPS proposed for inclusion in schedule II of the 1971 Convention. This synthetic cathinone has been sold as 'bath salts', 'plant food' and 'research chemicals', amongst other designations. It was voted unanimously (with one abstention) for inclusion in schedule II of the 1971 Convention (Decision 59/4).

Next came **para-methyl-4-methylaminorex (4,4'-DMAR)**, a stimulant NPS marketed along similar lines to the previous substance. WHO recommended its inclusion under schedule II of the Convention on Psychotropic Substances of 1971. The CND members voted for its scheduling (unanimous with one abstention) according to the WHO recommendation (Decision 59/5). The substance **methoxetamine (MXE)** is placed in the same pharmacological class as PCP and ketamine, and was recommended for international control by the WHO in schedule II of the Convention on Psychotropic Substances of 1971. The CND members voted for its inclusion in this schedule, with one abstention (Decision 59/6).

in its special segment statement played a role. Rather, seven other substances were considered, each in this case having been recommended for international control by the ECDD of the WHO. As outlined in Box 4, the recommendations were voted upon by CND member states. Under the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol ('the Single Convention'), a simple majority is sufficient to win the vote, while under the Convention on Psychotropic Substances of 1971 ('the 1971 Convention'), a two-thirds majority is required. Prior to each vote, Dr. Gilles Forte of the WHO gave an outline of the substance and the WHO's scheduling recommendation.

As suggested in Box 4, scheduling recommendations at the 59<sup>th</sup> CND were largely uncontroversial, with single abstentions representing the only departure from consensus the imposition of the recommended controls on these substances. However, when it came to deliberations over the final drug, sharp differences in views became clear.

The substance in question was **phenazepam**, a benzodiazepine with similar properties to diazepam (formerly known as valium), and the WHO had recommended its placement in schedule IV of the Convention on Psychotropic Substances of 1971. The WHO informed delegates that the non-medical or illicit use of phenazepam had increased in recent years, and that it had been implicated in a number of serious traffic accidents. Phenazepam was therefore associated with a number of health-risks, though it possessed some limited therapeutic uses; consequently, the WHO recommended its inclusion in schedule IV, the least restrictive regime of controls available under the terms of the 1971 Convention. The vote was 46 in favour, 2 against the recommendation, resulting in the inclusion of phenazepam in schedule IV of the Convention on Psychotropic Substances of 1971 (Decision 59/7).

The two dissenting member states then explained their positions. Belarus intervened to state that it had voted against the recommendation because the substance was widely used in medicine,

noting that there are many similar drugs that are not internationally scheduled. The Russian Federation spoke in support, the delegate explaining that Russia imposed domestic controls on benzodiazepines except for phenazepam. It expressed its disappointment at the vote, since this is a substance with broad therapeutic applications reaching back to the 1970s. Moreover, phenazepam is subject to little illicit use. Why control it internationally?

The Russian Federation was then highly critical of the WHO regarding scheduling, on this drug and more generally, claiming that its reasoning was obscure and lacked transparency. This accusation was surely unfounded, since all of the Expert Committee's deliberations are published on its website, along with rigorous peer reviews. However, the Russian delegate continued in this vein, claiming that one reason given for the recommendation against the scheduling of ketamine was its important uses in medicine. 'But this is not applied here. We insist

on standardised and transparent criteria by WHO', declaimed the Russian Federation. 'We also want this statement included in the official report of the CND'. The Japanese delegate, too, supported including the statement in the CND report.

The UK countered this, thanking the WHO 'for its excellent work' and for its identification of the most harmful substances. Speaking up for the WHO, Dr. Forte said that phenazepam had been reviewed by 37 experts, with two peer reviews being carried out. He once again elaborated on the health risks associated with the substance, and noted that it was one of 30 benzodiazepines controlled in this way. However, the WHO might have responded more powerfully to the Russian attack; the guidelines followed by the ECDD in its reviews of substances are clearly structured and published, while the CND can make use of social, economic and other arguments to oppose the WHO recommendations, and these broad categories are neither transparent nor explicit. The WHO's scheduling work is in fact exemplary, and the Russian Federation's critique was on this occasion simplistic and ideological.

## NGO engagement: Another largely positive year

Reflecting increased civil society engagement in the lead up to the UNGASS, there were approximately 300 representatives of 84 NGOs at the 59<sup>th</sup> session of the CND (an increase from 227 representatives of 66 NGOs in 2015), constituting one of the largest ever presence of NGOs at a CND session. NGOs were actively involved with both side events (see Box 5) and in giving statements within the formal proceedings. As with previous CND sessions, though unlike the UNGASS special segment in 2015, NGOs were generally only allowed to make their statements after member states and international agencies had delivered theirs – thereby diminishing the degree of interactive debate between member states and NGOs. Perhaps due to the large number of NGO participants, and demonstrating a level of organising amongst NGOs sharing common positions, several statements were delivered on behalf of a group of NGOs.

During the UNGASS special segment, the Vienna NGO Committee on Drugs (VNGOC), as the official



NGO publications table at CND, March 2016

entity based in Vienna facilitating NGO participation in CND processes (the New York NGO Committee on Drugs, or NYNGOC, performs a parallel role in New York), gave a statement on the commonality of views across NGOs on the need for the abolition of the death penalty and a public health approach to drug policy. Such a public health approach involves evidence-based prevention and treatment, adequate harm reduction services and access to essential medicines and palliative care. The VNGOC noted a diverse range of views amongst NGOs on the recent trends relating to the decriminalisation of drug use, regulation, and the flexibilities in interpreting and implementing the drug control treaties. While some NGOs advocate for the preservation of the treaties and making use of the flexibilities allowed under them, others propose reinterpreting and revisiting the treaties to allow greater scope for drug policy experimentation by member states.

The NGO Active Sobriety, Friendship and Peace delivered a joint statement for 17 NGOs, including the World Federation Against Drugs, IOGT International and the Turkish Green Crescent Society, on its strong support for the drug treaties to remain as the cornerstone of the international drug control system and opposition to the legalisation of cannabis and militarisation of drug policies. It also referred to the outcome of consultations amongst over 100 organisations for the UNGASS Civil Society Task Force, including the need to prioritise prevention, enable better use of existing resources, improve data gathering on the use of drugs especially in the global South, and better support children growing up in marginalised areas and affected by poverty to solve the world drug problem. One of the NGOs co-sponsoring this statement, Europe Against Drugs (EURAD), made a separate statement focused on the need to invest in recovery-oriented programmes for people who use drugs. EURAD stated that while harm reduction services fail to address the bulk of drug-related harm, they are nonetheless essential and can lead to recovery, with recovery being the ultimate final goal.

Another joint statement was made by IDPC,<sup>19</sup> on behalf of a further 194 civil society organisations, based closely on an open statement released by the same group on the opening day of the 59<sup>th</sup> CND session, which condemned governments for failing

to acknowledge the devastating consequences of punitive and repressive drug policies during the preparations for the UNGASS.<sup>20</sup> It expressed serious concern for the lack of progress in the UNGASS preparations and draft Outcome Document toward ensuring that the UNGASS would conduct, in an open and inclusive manner, an honest assessment of what is, and what is not, working in global drug control. Given that the UN Secretary General had called on member states to have the broadest debate possible and consider 'all options', it was considered unacceptable to simply reaffirm the current approach and claim without justification that 'tangible and measurable progress' had been achieved.

In a separate statement, the Eurasian Harm Reduction Network outlined its disappointment with the draft Outcome Document and called for it to include agreement on a number of key issues. These included the abolition of the death penalty for drug offences, the decriminalisation of drug use, the meaningful involvement of civil society in the formulation of services and policies, and the provision of harm reduction and social reintegration such as OST and rehabilitation programmes in prison. Three members of the Civil Society Task Force – Harm Reduction International, IDPC and Penal Reform International – and Amnesty International and Reprieve, delivered a joint statement that reiterated many of these themes. This highlighted concerns with the absence of crucial references to human rights in the draft Outcome Document, and the failure of certain recommendations to meet international human rights law and standards, such as agreement to abolish the death penalty for drug offences.

During the regular segment of the 59<sup>th</sup> CND session, only four NGO statements were made. Having impressed all in attendance with an impressive, if somewhat laboured, sprint to an available microphone, a representative from Smart Approaches to Marijuana (SAM) spoke – slowly until he got his breath back – against the legalisation of drugs, stating that there is conclusive evidence showing that cannabis leads to several mental health problems and claiming that cannabis legalisation is about mass industrialisation, thereby making certain companies very rich by making products that target the poor and disenfranchised.

Focusing on the enabling dimension of the treaty framework, the International Association for Hospice and Palliative Care (IAHPC) expressed appreciation for the work of the INCB, the WHO, UNODC and some member states on improving access to controlled medicines, which is incorporated as a priority area in the draft Outcome Document. IAHPC called for sustainable earmarked funding and political will to pursue the multi-stakeholder collaborations, knowledge and technical assistance required to ensure adequate access to controlled essential medicines such as morphine.

Lastly, and of particular note, there were two NGO statements on youth perspectives delivered by Viva Rio and Youth RISE, and Students for Sensible Drug Policies (SSDP). The first statement by Viva Rio and Youth RISE noted the failure to achieve the drug-free world called for in 1998, and subsequent need to consider new approaches. It called for the draft Outcome Document to include clear language promoting harm reduction as a key tool in protecting health and ensuring that youth are not damaged, stigmatised and discriminated against by drug policies around the world. SSDP, a global grassroots NGO working with thousands of youth to acknowledge the many realities of drug use, drug markets, and drug control in our communities, referred to the outcomes of its extensive consultation with thousands of youth from every continent. SSDP outlined its belief that punitive drug policies have failed this generation and society, and that while governments typically justify their drug policies by invoking the need to protect young people, the voices of the young have often been absent from drug policy debates. They called for a drug policy that embraces harm reduction, creates a culture of safety around drug use, is based on evidence, compassion, health, and human rights, and encouraged UN member states to implement a number of recommendations including investment in harm reduction services such as drug checking, supervised injecting facilities, nightlife harm reduction, the decriminalisation of drug use and possession for use, and ensuring active and meaningful participation of youth and youth-related organisations in the development, implementation and evaluation of drug policies and programmes. Both statements called on governments to adopt their recommendations as steps towards a better future for youth – the goal alluded to in the slogan for UNGASS: ‘A better tomorrow for the world’s youth’.

## The NGO informal dialogue with UNODC

As is now standard practice, NGOs gathered during the beginning of the CND proceedings to discuss drug policy with the UNODC Executive Director.<sup>21</sup> The meeting was cordial and open to constructive dialogue, with discussions mainly focusing on health, criminal justice issues and the UNGASS process.

On the health side, and in response to questions asked by IDPC and EURAD, Mr. Fedotov recalled his commitment to a health-based approach towards people who use drugs, including access to evidence-based prevention, harm reduction services and drug dependence treatment. IAHPC then raised the need to include the issue of access to controlled medicines for medical purposes. In response, Mr. Fedotov mentioned work done in that regard for the UNODC 2014 *World Drug Report* and offered to better highlight this issue in the 2017 Report.

Turning to criminal justice issues, the Executive Director reiterated his call for the removal of criminal sanctions for people who use drugs, as well as for the need to promote alternatives to incarceration for minor drug offences. Mr. Fedotov’s position was clear: ‘Incarceration for minor offences makes no sense.’ Responding to a question from the Women’s International Harm Reduction Network, Gilberto Gerra, Chief of UNODC’s Drug prevention and Health Branch, recalled UNODC’s report *From coercion to cohesion* and the violation of the principles ‘health and human rights’ caused by compulsory detention, highlighting the work done by UNODC with countries in the field to move away from compulsory detention centres.

When asked by IDPC about the use of the death penalty for drug offences and the issue of international donors’ complicity in funding governments using capital punishment in anti-drug efforts by StoptheDrugWar.org, the Executive Director stated once again his clear opposition to the use of the death penalty. He argued that there was little evidence that the practice had an impact on the scale of the illicit drug market in a given country, and that the use of capital punishment could jeopardise international cooperation efforts to face the world drug problem. He called for ‘restraint’ and the establishment of ‘a moratorium



Informal dialogue with the UNODC Executive Director, March 2016

on the death penalty'. Taking the example of Iran, Mr. Fedotov explained how UNODC worked with governments to support moves away from using capital punishment on drug offenders.

Finally, Open Society Foundations raised concerns regarding the lack of transparency, openness and inclusiveness in the UNGASS process, in particular in the drafting of the UNGASS Outcome Document and mentioned the civil society statement released ahead of the CND and signed by over 200 NGOs.<sup>22</sup> In response, Mr. Fedotov stated that, in his personal experience, this was 'one of the most transparent processes of negotiations of UN documents', mentioning the contributions posted on the UNGASS website<sup>23</sup> and the variety of events organised around the UNGASS in New York, Vienna and Geneva, sometimes in collaboration with civil society. Although these were indeed important opportunities to bring the voice of civil society in UNGASS-related debates, as discussed in more detail below, IDPC wishes to reiterate our disappointment on how opaque the process of preparation and the UNGASS itself have been.

## Dialogue with the INCB President: An opportunity for open, frank and revealing discussion

This year's informal dialogue with the INCB President continued the more moderate and respectful tone introduced by Dr. Naidoo in 2015. Indeed, Mr. Sipp's opening comments reflected what appears to be genuine positivity regarding the Board's development of a constructive and cooperative relationship with civil society. 'Your inputs and insights have always been valuable, and we appreciate them in various contexts in all regions of the world', the President remarked before going on to say that 'NGOs have been instrumental in implementing drug policies in many countries, especially in areas of awareness raising, treatment and rehabilitation at the grass roots level'.

Mr. Sipp also took the opportunity to highlight the growing attention now being given to the enabling dimension of the treaty system by noting that member states were 'finally talking about access

to controlled medicines'. This was, he claimed, 'something that the Board has been advocating for over 30 years'. Such a comment undoubtedly simplified the Board's position on the issue since it can be argued that by privileging the prohibitive aspects of the treaties for many years, the INCB has in fact contributed to a lack of access; a situation that we have referred to elsewhere as an aversion to diversion.<sup>24</sup> Nonetheless, it is true that recent years have seen the Board actively encourage authorities to improve their understanding of both the need for and access to medicines. This shift in emphasis must be commended. On this point, it was also noteworthy that the President issued a special acknowledgement for the 'work of a small number of pioneering NGOs that have been working in this field also for a very long time'.

With this in mind, it was fitting that the opening issue of discussion concerned access to medicines. Responding to a question enquiring about the Board's recommendations on improving the current situation, the President highlighted what he regarded to be major problems. It was interesting to note that a lack of training and awareness of people working in the health field was seen to be more significant than 'legislative barriers'. That said, Mr. Sipp did call on governments to change their systems *and* legislation to 'reduce these impediments'. In relation to an associated question on the role of the WHO – a query that one suspects was related to the marginalisation of that body within proceedings in Vienna – the President outlined the constant cooperation between the two bodies and the important role played by the WHO in relation to medicinal training. This, he said, is 'not in our capacity'.

Having responded to questions regarding the Board's position on alternatives to incarceration and 'minor offences', discussions perhaps inevitably shifted towards the tensions between cannabis policies in Uruguay and the United States and the drug control conventions. Mr. Sipp reiterated the Board's view that while considerable room for manoeuvre does exist with the treaty framework, in regard to non-medical and non-scientific use of cannabis, things are clear, 'there is no flexibility'. He noted that the Board had maintained a good dialogue with Uruguay on the issue of cannabis, but what the government was doing is outside of the conventions. The conventions do not allow for an escape clause, that is to say for 'experimentation', he

said. Encapsulating the fundamental tension within the multilateral approach to transnational issues in general, the President went on to point out that, at the same time, the conventions are in the hands of governments since states are the 'owners' of the conventions. As such, he continued, 'in principle they can change them...But as they stand, this is a very clear statement'.

The Board's awkwardness vis-à-vis its mandate as a watchdog of a suite of conventions that are owned by the member states with increasingly different views on how to deal with drug markets was brought into sharp focus by a question from Richard Elliot of the Canadian HIV Legal Network. Inferring to the situation within his own country since the election of the Trudeau administration in October 2015, he asked Mr. Sipp, for those countries in breach or those that may soon be, 'what role do you see for the INCB in a discussion of proposals to amend the treaties?' In response the President was refreshingly frank; 'Our role in this case is rather difficult'. Mr. Sipp explained that, on the one hand the Board is mandated to say what is and is not in the conventions, but that is also has a mandate to assist governments to comply with the conventions. As such, and demonstrating the Board's natural systemic tendency to maintain the status quo, the President noted that the INCB must work with governments to see if there is a way that they could 'come back'. That is to say, shift policies back into line with the conventions. He also pointed out that such moves are political issues and that even if governments continue to be in breach, the INCB is obliged to keep the dialogue open. Interestingly, expanding on this point, Mr. Sipp explained that during a recent mission to Uruguay he had asked the authorities about implementation of the regulatory model for cannabis and its impact on consumption, criminality and health systems. 'These are all things, independently of the fact that they are not in line with the conventions' he commented 'that are of interest to us and we continue to enquire as part of our continuous dialogue with these countries'.

Staying with the issue of the conventions, in response to a question on possible incongruities between the drug control treaties and those on human rights, the President argued that there was no contradiction since the former were predicated on a concern to promote the 'health and welfare of mankind, which is a human right'. He did acknowledge,

however, that policy implementation was another matter and that contradictions sometimes occur, for example in relation to some forms of treatment. Responding to a query that UN agencies, including the INCB, had opposed changes to the conventions, Mr. Sipp said 'we are modest and this is not our business'. Returning to some of his previous points he continued, 'This is the task and responsibility of states'. However, giving a fascinating and hitherto unspoken insight into the possible role of the Board within any reformed drug control regime, the President stated that 'We will then be bound to monitor the changed conventions, as they are drafted and signed by the states. So, we cannot tell states not to change the conventions. It is possible that states may come up with other options. If the international community makes another convention or changes existing ones, we would still work with these. So we would not promote or object to this'. While there remains a degree of contradiction in relation to his earlier comments about encouraging states to 'come back' to the existing parameters of the conventions, such a statement reflected the extent to which the international policy environment has changed in a relatively short length of time. Only a few years ago it would have been sacrilege for an INCB President to consider openly engaging with a reformed treaty framework.

The informal dialogue was also instructive in going some way to get an insight on the Board's view, or at least the views of the President, on the feasibility of policy shifts under the guise of medical and scientific experimentation, medical marijuana and the issue of decriminalisation. Addressing a question concerning the lack of definition of medical and scientific purposes within the treaties, Mr. Sipp voluntarily referred to a recent article by a member of the INCB, which, he was quick to point out, had been written in a personal capacity and was yet to be discussed by the Board.<sup>25</sup> Whether deliberate or otherwise, the President side-stepped related and problematic discussions concerning definitions of science within the conventions to include *social science* and instead concentrated the notions of scientific and medical advances. In so doing, he stated that 'I personally think that the concept of science is not defined in all its extent. You cannot, as a legislator, define what is science in a way that will not change. Science changes and it is different now from 1961'. He then noted that medical methods have changed and that these are open

concepts and must be open and must be adapted'. Mr. Sipp's concluding comments, however, suggest a view in line with the Commentaries of the treaties in that he did not confuse the uses to which substances may be put with the scientific or evidence base for policy or take the phrase out of context.<sup>26</sup> Indeed, following the reasoning within the Commentary for the Single Convention that refers to 'medical science',<sup>27</sup> the President was clear on where responsibility for interpretation lies. 'You cannot define what is scientific or medical use – it depends on what the *medical community* tells us are accepted methods (emphasis added)' he said. The Board's 116<sup>th</sup> Session in May did not result in any further discussion on this issue, at least in the public domain.

A deference to medical expertise, and an accompanying and welcome change from the Board's hostile position in the past, was also apparent in the President's views on the medicinal use of cannabis. When answering a question on the issue he commented that whether cannabis can be used medically or has a medical, therapeutic impact 'is something we cannot decide'. Having flagged up the INCB's close cooperation with the WHO in relation to access to medicines, it would have been constructive, however, if Mr. Sipp could have used the platform to call for member states to increase WHO funding for research into the issue. Rather he stressed that he had urged the body to make an assessment without making any reference to the financial implications of such a process. Indeed, while as we have demonstrated in this document, the WHO seems to be less isolated within Vienna than in the past,<sup>28</sup> like other bodies including UNODC (see below) it remains woefully underfunded during a time when they are being requested to undertake a heavier workload.

Finally, Mr. Sipp offered an interesting view on the issue of decriminalisation. Referring to a question on the recently 'leaked' UNODC paper on the topic,<sup>29</sup> he stressed that the paper was 'not made in conjunction with us' and that he did not like the term decriminalisation because it is 'not well enough defined'. Having reiterated that unlawful behaviour requires that 'the act is a criminal one', he pointed out that the 'response does not need to be criminal'; presumably a reference to adjustments in related punishments. Bringing the session to an end, the President noted that the

## Box 5 Side events: A record number

Continuing the upward trend of recent years, the 59th CND included a record 71 side events, an increase of 10 from last year. Mindful of the success in scheduling all the events and the ensuring easy access for participants, even those not involved with the CND as a whole, the UNODC secretariat must be commended. Sponsored and co-sponsored by a wide range of governments, NGOs, UN agencies and regional bodies, the events ran across both the special segment and some of the regular segment of the Commission between Monday 14th and Friday 18th March.

Reflecting increasingly close cooperation between many member states as well as UN and other bodies with civil society, numerous sessions were collaborative endeavours showcasing the constructive interface between these different actors, each bringing their own specific expertise and perspectives. Most were very well attended and offered a relatively

unencumbered space to discuss some key issues in the lead up to the UNGASS. The side events covered an impressive diversity of subjects including public health (prevention, treatment, recovery and harm reduction, access to medicines), human rights (including the use of the death penalty for drug-related offences), national drug control strategies, organised crime, alternative development, drug policy metrics, NPS, decriminalisation and drug courts.

IDPC was involved with six side events across a wide range of issues including drug policy metrics, decriminalisation, proportionality, harm reduction and UNGASS, women incarcerated for drug offences and sustainable development.

While the overarching character of many events at this year's CND may be classified as supporting the 'status quo', many were what might be termed 'progressive' and indicative of the growing willingness to engage in



IDPC side event on proportionality of sentencing, March 2016



Full room at CND side event on 'New realities: Cannabis policy innovations', March 2016

discussion of various aspects of drug policy reform within Vienna.<sup>30</sup> Noteworthy here were the Beckley Foundation event 'Roadmaps to regulation: Coca, cocaine and derivatives', and the explanation of their model by representatives from Cannabis Social Clubs.<sup>31</sup> These were supplemented by 'New realities: Cannabis policy innovations', organised by the Government of Uruguay, the Washington Office on Latin America, the Transnational Institute and the International Centre for Ethnobotanical Education, Research and Service. That said, it should also be noted that

organisations opposing regulated markets were also active with the session 'Experience with cannabis legalization' (organised by the Community Alliances for Drug Free Youth, Smart Approaches to Marijuana, the World Federation Against Drugs and European Cities Against Drugs). It should also be noted that a side event on the dark net organised by the governments of Austria and Germany and the UNODC Studies and Threat Analysis Section was one of the few times this potentially transformative topic was discussed at any point during the CND.

Board's role in the lead up to UNGASS 'is to explain what I have said today in many fora...and try to show and explain to governments the possibilities within the conventions'

## The Committee of the Whole

The Committee of the Whole (or 'COW') is the space in which the draft resolutions proposed by member states are debated and revised so that they are acceptable to all the delegations, before being passed on to the CND Plenary, and then the UN Economic and Social Council, for adoption. In terms of process, and a far cry from the more

traditional methods involving the UNODC secretariat reading aloud revised language, resolutions are placed on the main screen within Boardroom A and amendments or deletions are recorded through 'tracked changes' – with any disagreement marked with square brackets around certain sentences or paragraphs. In many ways, the COW is where observers can gain insight into the tensions, positions and manoeuvres that underpin these debates at the international level: it is where the various views of members states are rendered visible, and where they directly debate and challenge one another on issues (albeit with a veneer of diplomatic courtesy).

This was especially welcomed this year, given that all of the UNGASS Outcome Document negotiations were taking place behind closed doors. The COW negotiations became quite heated at times, despite the excellent and straightforward chairing from the Norwegian Ambassador to Austria, Bente Angell-Hansen. In many ways, the COW became a peephole into the Outcome Document negotiations – with a number of delegations bringing language and issues from those discussions into the COW and even holding certain paragraphs ‘hostage’ to influence the Outcome Document itself. This drew several comments and pleas from Ambassador Angell-Hansen to keep the two discussions separate: ‘We don’t want parallel negotiations in this room...I do not want a two-track negotiation’.

A total of 11 resolutions were submitted by member states on a range of issues (see Box 6). All but one of these submissions was eventually agreed and passed, with the three proposals on NPS being hastily merged into one resolution – a herculean effort steered by Australia among others. In keeping with previous years, most resolutions were not presented to the COW until they had been through various ‘informal’ (i.e. closed and, presumably, more frank) discussions between the interested member states. But Ambassador Angell-Hansen was skilful in bringing these to the main room as soon as possible, conscious of both the limited time available and the fraught nature of the parallel Outcome Document negotiations taking place in the room next door.

Resolution 59/2 presented the text of the Abu Dhabi declaration which had been negotiated previously at the 50<sup>th</sup> Sub-Commission on Illicit Drug Traffic and Related Matters in the Near and Middle East – and was referred straight to the Plenary. However, it was strange to see a regional meeting declaration submitted as a proposal in this way, as other similar declarations were simply uploaded to the UNGASS website.<sup>32</sup> Accordingly, Mexico and others did raise concerns in the Plenary and made some significant changes to acknowledge the breadth of different intergovernmental meetings that had taken place in the build-up to the UNGASS.

In a relatively uncommon development, one submitted resolution was eventually withdrawn due to a lack of consensus – the latest in a series of submissions on the Paris Pact Initiative in Afghanistan by the Russian Federation (similar resolutions were passed in 2013, 2012, 2011 and 2010 and 2006).

The Paris Pact was launched in 2003, and was an initiative aiming to promote coordinated measures to counter the trafficking of opiates in and from Afghanistan.<sup>33</sup> It involved some 70 countries and organisations.<sup>34</sup> On this occasion, citing changed global circumstances, Afghanistan objected to the inclusion of the phrase ‘opiates originating in Afghanistan’, which appeared in the title and the text of the resolution. Russia, supported by other Paris Pact partners such as Iran and Pakistan, insisted on maintaining the phrase, which has featured repeatedly in previous resolutions and was



Negotiation of resolutions at the Committee of the Whole, March 2016

## Box 6 Resolutions and decisions at the 59th CND

Promoting the implementation of the United Nations Guiding Principles on Alternative Development – This resolution is for discussion at the General Assembly, and is not a CND resolution per se, though it was the topic of some deliberations at the COW. At the time of writing, the resolution does not possess an official numerical designation.

### Resolution 59/1

Special session of the General Assembly on the world drug problem in 2016: Draft resolution transmitting the Outcome Document to the General Assembly\*

### Resolution 59/2

Outcomes of the meetings of the subsidiary bodies of the Commission on Narcotic Drugs, and the Abu Dhabi declaration\*

### Resolution 59/3

Promoting informal networking within the scientific community and the sharing of scientific evidence-based findings that may inform policies and practices to address the world drug problem

### Resolution 59/4

Development and dissemination of international standards for the treatment of drug use disorders

### Resolution 59/5

Mainstreaming a gender perspective into drug-related policies and programmes

### Resolution 59/6

Promoting prevention strategies and policies

### Resolution 59/7

Promotion of proportionate sentencing for drug related offences of an appropriate nature in implementing drug control policies

### Resolution 59/8

Promotion of measures to target new psychoactive substances and amphetamine-type stimulants

### Decision 59/1

Inclusion of acetylfentanyl in Schedules I and IV of the 1961 Convention as amended by the 1972 Protocol

### Decision 59/2

Inclusion of MT-45 in Schedule I of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol

### Decision 59/3

Inclusion of para-methoxymethylamphetamine (PMMA) in Schedule I of the Convention on Psychotropic Substances of 1971

### Decision 59/4

Inclusion of  $\alpha$ -pyrrolidinovalerophenone ( $\alpha$ -PVP) in Schedule II of the Convention on Psychotropic Substances of 1971

### Decision 59/5

Inclusion of para-methyl-4-methylaminorex (4,4'-DMAR) in Schedule II of the Convention on Psychotropic Substances of 1971

### Decision 59/6

Inclusion of methoxetamine (MXE) in Schedule II of the Convention on Psychotropic Substances of 1971

### Decision 59/7

Inclusion of phenazepam in Schedule IV

\* Not debated at the Committee of the Whole. Discussed in special segment.

included in the original strap line of the initiative. The Afghan government declared that it could only agree to the use of the phrase if the resolution were further amended to address the root causes of poppy cultivation in the country, which, it argued, are regional and international in nature. Russia contended that the inclusion of the term 'opiates originating in Afghanistan' was fundamental to the Paris Pact mandate, and that its objective was to support the Afghan government, not to 'point the

finger'. In the event, however, it proved impossible to resolve this dispute, and the resolution was withdrawn by its sponsors.

The European Union's main focus was its resolution 59/7 on proportionality, which it regarded as a victory as it is the first CND resolution to acknowledge this important concept, and builds upon last year's resolution 58/5 on alternatives to conviction or punishment. However, as is always

the case, the original language was significantly watered-down during the COW and 'informal' negotiations. This is especially problematic for a two-way concept such as proportionality: although the authors' aims were to promote more effective and humane responses for minor drug offences, some of the additions such as 'non-intervention in the domestic affairs of other states', 'the integrity of applicable national legislation, in particular criminal law' and 'aggravating factors', among others, have raised concerns that the resolution could be interpreted by more regressive delegations as justification for harsher penalties and even the death penalty. Nonetheless, the resolution was eventually passed on the final day, following a 'package' of amendments from the informal negotiations.

Resolution 59/5 on gender was perhaps the pick of the bunch from the 59<sup>th</sup> CND, submitted and expertly chaperoned by Mexico, before being co-sponsored by a host of other countries. It acknowledges the 'social barriers that continue to hinder the access of women to treatment for drug use', 'the great contribution of women to the development of society and the family', and 'the specific needs and circumstances of women subject to arrest, detention, prosecution, trial or the implementation of a sentence for drug-related offences'. The final resolution also calls for non-custodial measures 'when sentencing or deciding on pre-trial measures for a pregnant woman or a

woman who is a child's sole or primary caretaker'. The Russian Federation repeatedly adopted obstructionist tactics during the discussions on this resolution, using alleged difficulties over language in an attempt to defend its own social arrangements, such as insisting that reference to 'families' was maintained. In addition, it objected to the use of the terms 'reproductive and sexual health services' (and was here backed by the Holy See) and reference to UN Women, as the latter 'have no relevance to drug related issues'. In short, it proposed wholesale deletions and their replacement with extended phrases taken from the draft Outcome Document. These interventions resulted in considerable exasperation amongst other member states, with Germany asking Russia to 'please show some flexibility'. Uruguay stated that Russia's proposals were 'not constructive'.

The highlight of this year's COW, however, came late on Friday 18<sup>th</sup> March when tired and irritable delegates were negotiating the General Assembly resolution on alternative development. Ecuador asked to amend some paragraphs that had already been agreed by the COW, which led to a scolding from Germany, Peru, Morocco, Thailand among others. Ecuador protested that they have a small delegation and were unable to be in all discussions at all times – a crucial issue with the model of informal negotiations that was raised in



The Chair gathered all the quarrelling parties to a huddle at the front of the room for some inaudible debate and finger pointing

the previous IDPC CND proceedings report. The Chair had heard enough, removed her headphones and microphone, and gathered all the quarrelling parties to a huddle at the front of the room for some inaudible debate and finger pointing. The COW session went on until the late evening.

The other event of note concerned resolution 59/8 on NPS – a merger of three broadly similar proposals submitted by countries as disparate as the United States, Russia, Australia and Japan. Although there was lengthy discussion about the merged text, it was China’s interventions which created the most heat. Having decided against raising the issue within the normative segment on ‘changes in the scope of control of substances’, China wanted to insert ketamine into the resolution title and body, citing UNODC reports that labelled ketamine as an NSP (despite the drug being discovered in 1962 and being included on the WHO List of Essential Medicines<sup>35</sup>). China made a lengthy argument (which lasted some 20 minutes) about ‘severe consequences with over 1 million affected in China’ and ‘the lack of data’ from the WHO’s ECDD (which is mandated by the international drug control conventions to review the evidence and make recommendations prior to any scheduling decision at CND – and which has recommended on multiple occasions against the scheduling of ketamine on the grounds that it does not represent a serious public health threat, and is a widely used anaesthetic for both human and veterinary surgery, especially in the developing world).<sup>36</sup> But these were strongly countered by the Netherlands, which insisted on references to the Expert Committee’s most recent report and their warnings of a public health disaster if ketamine were to be scheduled. Australia, keen to see the resolution survive and also compromised by their own ambitions to include methamphetamine (also not an NPS) in the resolution, tried to broker a compromise. At one point, delegates huddled in the corner of the room to discuss the issue face-to-face for more than 30 minutes. But, by the final day, the Chair still had to issue an ultimatum: ‘I think the best thing to do now would be to get together and have a five-minute break, and the result can be either a resolution, or no resolution’. China then withdrew their amendments, and the resolution was passed with no mention of ketamine. Mindful of China’s interest in the issue, it is likely that the international scheduling of ketamine is an issue that will return to the CND in one form or another.

## **The UNGASS Outcome Document negotiations: Diplomacy or denial?**

The undeniable focus of attention throughout the 59<sup>th</sup> CND, however, was the tense and difficult negotiation of the UNGASS Outcome Document.<sup>37</sup> This process had begun several months prior to the CND through a series of intersessional meetings and informal discussions in Vienna, and went on throughout the CND itself, often until very late at night. The Outcome Document was finally agreed by consensus at around midnight on Tuesday 22<sup>nd</sup> March and, signifying the intense and problematic nature of the negotiations only after discussions in the COW had been suspended on both the Monday and Tuesday of the second week. The Document was then deemed ready to be presented to the General Assembly in April with the expectation that it would be adopted without further changes.

The moment the Outcome Document was approved, several countries opened the debate again, giving statements on issues that had not been resolved. The Netherlands, on behalf of the EU, supported by Switzerland, Serbia, Argentina, Colombia, Canada, Mexico, Costa Rica, El Salvador and Turkey, gave a statement about the failure to include language opposing the death penalty, regretting that the document did not include language about the abolition of the death penalty and calling on countries to adopt a moratorium on the use of the death penalty. Switzerland made a reservation, pending the approval of its government, on the preambular paragraph 7 concerning human rights. The Swiss delegation also had difficulty with preambular paragraph 4 mentioning a ‘society free of drug abuse’, wanting to include a mention on responding to the public health and social problems resulting from drug abuse.<sup>38</sup>

From the outset, the negotiation process was dominated by the status quo forces of the Vienna-based UN drug control apparatus – actively designed to limit and exclude many forward-looking proposals from member states, other UN agencies and civil society.<sup>39</sup> Many member states, especially those from the Caribbean and Africa, were largely unable to participate as they do not have permanent representation in Vienna. Although all member states, regional groups and UN entities

were encouraged to make written contributions to the process,<sup>40</sup> the more progressive ideas by member states and UN agencies were never seriously considered in the document drafts.<sup>41</sup> Most significantly, as noted above, all of the negotiations during the CND took place in closed ‘informal’ sessions – with civil society, UN agencies and even regional bodies such as the European Union and African Union unable to participate. Towards the end of the CND, discussions were even restricted to bilateral meetings between selected countries, with other delegations unaware of what was happening or what was being agreed.

As a result of the structure of the preparations, and the self-imposed reliance on consensus-based decision-making in Vienna (which enables a handful of vocal and regressive countries to block progressive language), the final Outcome Document is, at best, a mixed bag. On the one hand, there has been solid progress and ‘wins’ on some specific areas – especially compared to previous CND documents. On the other hand, the overall document is a far cry from the promise of a ‘short, substantive, concise and action-oriented document’ that proposes ‘ways to address long-standing and emerging challenges in countering the world drug problem’ intended by the related CND resolution agreed last year.<sup>42</sup>

### Small steps forward in some areas

The first positive step is in the structure of the document itself, which moves away from the overly-simplistic and limiting three pillars of the 2009 Political Declaration (demand reduction, supply reduction and money laundering / international cooperation) – a shift which IDPC and other civil society partners advocated strongly for. The final Outcome Document instead builds on the five agreed UNGASS roundtable topics, and is divided into seven operational areas: demand reduction and related measures; access to controlled substances for medical and scientific purposes; supply reduction and related measures; human rights and cross-cutting issues; evolving trends and emerging challenges; international cooperation; and alternative development. The new structure better captures the broad nature of the impacts of drug control, and has enabled much better content on essential medicines, human rights and development than has been possible before.

The Outcome Document welcomes the SDGs<sup>43</sup> as

‘complementary and mutually reinforcing’ to drug control, and recommends ‘the use of relevant human development indicators’. There is also a specific mention of the target to end the HIV epidemic by 2030, which was hard fought for. References to the concept of proportionality were also secured for the first time, and the document further calls for ‘the development, adoption and implementation... of alternative or additional measures with regard to conviction or punishment’, and states that the ‘the three international drug control conventions... allow for sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs’. This latter point remains contentious, but can be regarded as granting permission for decriminalisation approaches (especially when taken alongside the comments from the INCB President as discussed at a number of points above).

Many of the member states who support harm reduction were broadly satisfied that the Outcome Document included specific references to naloxone and overdose prevention, ‘medication-assisted therapy programmes’ and ‘injecting equipment programmes’ (the latter two representing compromise language for opioid substitution therapy and needle and syringe programmes in one of the final paragraphs to be agreed). This was the furthest that any drug policy statement from Vienna has gone, and came alongside an endorsement of the WHO, UNODC and UNAIDS Technical Guide that outlines a harm reduction package.<sup>44</sup>

Elsewhere, the Outcome Document also includes welcome language on coherence within the United Nations system, the role of civil society and the scientific community, balanced approaches, voluntary participation in evidence-based drug treatment, non-discriminatory access to healthcare (including in prisons), focusing law enforcement efforts on larger scale crimes, the United Nations Declaration on the Rights of Indigenous Peoples, the prohibition of arbitrary arrest and detention, age-appropriate services, and mainstreaming a gender perspective. But in the absence of operational recommendations or targets, many of these run the risk of being empty rhetoric.

### A wasted opportunity?

Nevertheless, moving past these smaller gains, the Outcome Document overall fails to recognise

the lack of progress achieved by international drug control over the past 50 years, the numerous tensions and contradictions that exist, or the damage caused by current approaches. By failing to engage in meaningful critique, concrete actions or substantial new ideas, it is merely a sprawling 100 paragraph restatement of existing targets and commitments. Most disappointingly, the document reaffirms the archaic, delusional and dangerous goal of ‘a society free of drug abuse’ (language that was ultimately conceded by the more progressive member states in return for the harm reduction paragraphs). It even laughably cites the ‘tangible progress’ that has been achieved in drug control. Tellingly, the word ‘measurable’ was removed from this sentence during negotiations.

Despite submissions and recommendations from member states and others, the Outcome Document does not acknowledge that the 2015 target to reduce HIV transmission by 50 per cent among people who inject drugs has been spectacularly missed. It fails to even pay lip-service to the reality of cannabis regulation in some states, does not explicitly mention the term ‘harm reduction’ (despite this being previously agreed language for the UN General Assembly), and avoids any specific mention of decriminalisation. One of the greatest disappointments, as noted by some member states and agencies like the OHCHR in the special segment, was the inability, as in previous years, to even mention (let alone condemn) the death penalty for drug offenses – which was supposedly a ‘red line’ for the European Union and others – due to the lack of consensus. In the final CND plenary session, late on Tuesday evening, several countries made statements once the Outcome Document was adopted. Amongst these, the European Union (alongside countries such as Turkey, Switzerland, Canada, Costa Rica, Mexico, Colombia, Chile, Brazil, New Zealand, Australia and Norway) expressed their disappointment at the omission of the death penalty once again.<sup>45</sup> Indonesia, China, Pakistan, Egypt, Malaysia and others presented a counter-statement stating that the death penalty is not within the mandate of the CND, but is a criminal justice matter for sovereign states. This issue is perhaps one of the best demonstrations of the lack of consensus that exists in reality for international drug control.

Another notable and disappointing omission was a call for an Expert Working Group to be created as an

operational outcome of the UNGASS. Such a Group would be able to explore the key issues and tensions in relation to the UN drug conventions in time for the negotiation of a new Political Declaration on drugs in 2019.<sup>46</sup> While this idea was discussed within several member state forums, most notably the Cartagena group,<sup>47</sup> and called for by Colombia in its country statement,<sup>48</sup> the final Outcome Document completely overlooks these challenges and concerns, and lacks any genuine attempt to address them and modernise the system.

Even where positive language was negotiated into the Outcome Document, it was often watered down or heavily caveated with diplomatic get-outs such as ‘as appropriate’ (mentioned a staggering 46 times in the document), ‘where appropriate’ (10 mentions), ‘in accordance with [their] national legislation’ (14 mentions), and various others. This basically renders the document toothless, even when discussing issues that are universally applicable such as human rights. For example, the welcome paragraph calling for drug policies to be delivered ‘in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights’ is soiled by inappropriate qualifications such as ‘the sovereignty and territorial integrity of States’ and ‘the principle of non-intervention in the internal affairs of States’ and ‘mutual respect among States’.

## **UNODC budgetary and governance issues: Financial challenges remain**

As has been the case for many years, discussions around governance and budgetary issues revealed the pecuniary pressures faced by the UNODC. As was the case at the 2015 Commission, the leitmotif for discussions was the Office’s financial ‘vulnerability’. It soon became clear from presentations by UNODC personnel and the accompanying documentation,<sup>49</sup> how the decline in non-earmarked funding from member states persists and that this leaves UNODC in a difficult position in relation to the fulfilment of its tasking. More specifically, general-purpose income is predicted to fall to a ‘mere’ 1.7 per cent of the Office’s total income. In terms of overall figures, the final projection of the consolidated UNODC budget for biennium 2014-15 totalled \$760.1 million. Of this, 7.2 per cent came from regular budget and

92.8 per cent from extra-budgetary resources. It is worth noting that previous figures suggested that the split would be 11.7 per cent and 83.3 per cent respectively.<sup>50</sup> Within this precarious funding environment UNODC continues with its existing funding model, which is based on the system of full cost recovery much discussed at 2015 session, in order to achieve ‘transparency and sustainability of programme delivery’.<sup>51</sup>

In working towards these aims, as well as improve overall functioning, UNODC was keen to stress the implementation of a number of new initiatives to strengthen the ‘accountability, transparency, effectiveness and efficiency of programme execution and the utilization of donor funding’.<sup>52</sup> These include a results-based management approach and efficiencies in anticipation of the ‘global service delivery model’. Moreover, November 2014 saw the adoption of Umoga (the United Nations Secretariat-wide enterprise resource planning system<sup>53</sup>). Indeed, as Aldo Lale-Demoz, UNODC Deputy Executive Director, noted in his comments on the general operation of the Office, ‘We have no higher objective than to be a transparent organisation, with predictable funding’. However, an ongoing decline in general purpose funds is understandably regarded by UNODC as hindering its ability to ‘strategically manage its operations, improve management processes, exercise effective corporate oversights and launch new initiatives and programmes’.<sup>54</sup> For instance, and somewhat paradoxically, it became clear from a range of statements on this issue, that a lack of general purpose funding – reported at one point as a net loss of \$2.4 million over the past year – has had a deleterious effect upon the financial reporting capability of UNODC, including in regard to earmarked monies. This is manifest in a temporary lack of feedback to member states on the status of their contributions; a situation that led Mr. Lale-Demoz to inform national delegations that ‘we reassure you that there is no intention to curtail the richness of reporting to donors’. Adopting a slightly defensive tone, the Deputy Executive Director stressed that UNODC continues to be relevant on every level and called on member states to increase general purpose fund contributions. This request echoed appeals made elsewhere that member states provide ‘UNODC with adequate, predictable and stable resources, including additional regional budget, to enable it to implement its mandated work in a sustainable manner’.<sup>55</sup>

Responding to the UNODC’s statements and accompanying documentation, a number of states commended the work of UNODC and noted their appreciation for the endeavours of the standing open-ended intergovernmental working group on improving the governance and financial situation of UNODC (WG-FinGov). As was to be expected there was also general concern for the Office’s financial situation, with related comments from China, Japan, Thailand and India on the centrality of the full cost recovery model, the need to increase efficiencies at UNOV and field offices and widen the donor base and the importance of implementing Umoga.

In terms of notable contributions to the debate, Sweden stressed that the UN must use an integrated approach and, interestingly, urged that the UNODC strategy be brought into line with the SDGs. As was the case last year, the Swedish delegate also used the opportunity to push for an improvement in gender balance since progress was currently deemed ‘far too slow’. Moreover, it was argued, there is still work to be done on the implementation of results based management, particularly in relation to evaluation at all phases of the cycle. The US delegate used this agenda item to highlight that over the last year it had provided \$45 million to UNODC and stressed, unsurprisingly, that the system is now needed more than ever and that it is essential that work remains within the boundaries of the drug conventions. The United States also encouraged further cost-saving efforts and stressed the importance of the Office’s self-evaluation efforts. On this point, the delegate went so far as to call on the Independent Evaluation Unit to become involved; a view that the IDPC endorses. Japan also noted its disappointment in the closure of the Profi budget management system and called for the urgent implementation of a replacement.

In response, UNODC noted, among other things, that the roll out of Umoga has been difficult, but that progress is being made. On the issue of diversity, there was an acknowledgement that this was essential for efficiency and that the Office was working hard with human resources to realise diversity in gender and geography. Finally, and in what can perhaps be interpreted as an insight into the current state of morale within the organisation, it was noted how the encouragement, confidence and faith in the ongoing relevance of UNODC displayed during the discussion would be fed back

to programme managers. While no doubt welcome, such platitudes do not compensate for a lack of resources.

## Conclusion: Still in search of a 'wide-ranging and open debate'

Mindful of the expectations attached to the 2016 CND, it was difficult not to come away from Vienna with a sense of disappointment. Although as in most years there was a mix of themes – some progressive and others reactionary and determinedly protective of the status quo – assessment of the event overall is coloured by the final shape of the UNGASS Outcome Document.

Beyond this, however, a number of noteworthy developments lent some semblance of forward movement to the event. Regulatory frameworks for cannabis control have been installed, and further instances are approaching; however, the United States and Uruguay remain in denial of the breach their actions constitute for the international drug control conventions. Was this to be squarely faced and debated within the structures of the regime, some type of reform would surely be inevitable. The statements made by the President of the INCB are interesting in this regard, indicating as they do the continued role of the Board in the monitoring of and engagement with the drug control apparatus, even were this to be modified and re-shaped by the agreements of member states. The significant statement issued by the new administration in Canada, and greeted with a rapturous chorus of applause by some sections of civil society in the plenary, is certain to multiply the pressures currently being exerted on the regime. At the subnational level, the likelihood of California taking the same policy direction is increasing, a move that will also have profound implications for not only other US states but also Mexico.

On the other hand, led chiefly by the Russian Federation, the conservative bloc of states demonstrated its increasing organisation this year, and used the symbolism of drugs to defend the repressive social order that prevails in Russia and in the jurisdictions of its supporters such as Cuba, Pakistan, Egypt, China and their political fellow travellers. A growing polarisation was apparent between these states and the liberal democracies, crystallising around the issue of drug control but connecting with much deeper social fault lines.

The discussion surrounding access to controlled medicines was a positive one, and was reflected in the Outlook Document. On a related point, the role of public health and human rights was prominent in discourse, though, as observed above, the problem of the slipperiness of resolutions and the ambiguity of terms, with countries' views often differing fundamentally, render the concrete impact of this prominence uncertain. Despite its avowed support for public health, for example, China continued to work toward the imposition of international controls on ketamine.

The most significant of this year's discussions were, more than ever, concentrated in 'informal' settings, reducing the transparency of the proceedings and denying access to civil society, certain UN agencies and those countries without a presence in Vienna. This problem of a lack of transparency was particularly acute with respect to the construction of the Outcome Document, which took place almost entirely behind locked doors.

Although they were held away from the gaze of the public and its representatives, IDPC understands that the protracted Outcome Document negotiations were heated and frustrating, and the toughest in recent memory. But most delegations – both progressive and those favouring the status quo – seem to have come away feeling some satisfaction over the gains that had been made. Some reform-minded delegations even judge that there has been sufficient progress on which to build towards the evaluation of the 1998 UNGASS at the High Level Segment in 2019. But when taking a step back from the detail and looking at the document overall, it is clearly a world away from a 'wide-ranging and open debate that considers all options', as originally called for by the UN Secretary General Ban Ki-moon.<sup>56</sup> The numerous smaller 'wins' in terms of progress on specific language cannot mask the failure of the document, and the overall process, to represent a realistic or forward-looking reflection of the current drug policy environment. Instead, the Outcome Document dedicates much of its focus to a blinkered reaffirmation of the status quo – and even the preposterous targets set out in the 2009 Political Declaration 'to eliminate or reduce significantly and measurably' drug-related cultivation, demand, manufacture, trafficking and money-laundering.

Nonetheless, it is arguable that the process was dictated by political realities and was perhaps the best that could be expected under the circumstances. It is not an easy matter, even for those member states that broadly share the vision of IDPC, to push events forward at the pace we would like to see. On the other hand, in the torpor of the Vienna 'consensus' it is perhaps too easy for states to become comfortable. The next major date in the international drug control calendar will be the High Level Meeting in 2019, and civil society continues to cling to the hope that, on that occasion, states will at last lift the lid on the pseudo-consensus and allow the fresh air and the light to penetrate.

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This report aims to provide an overview of what was discussed during the Special Segment on UNGASS preparations and the regular segment of the 59th session of the CND, including during the various side events and NGO dialogues. Going beyond a functional narrative account, it attempts to offer some analysis of prominent debates and discussions, as well as highlight emerging issues of concern and recurring themes.

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