



IDPC RESPONSE TO THE INCB ANNUAL REPORT FOR 2016

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Executive summary

The International Narcotics Control Board (INCB or Board) Annual Report for 2016 is, as usual, a mixed bag of high quality data and sometimes doubtful political views. It is the final Report of the Presidency of Mr. Werner Sipp, and as such represents a comparatively progressive text, in contrast to many previous Reports. Despite this, the general – if ambivalent – acceptance of medical uses of internationally controlled drugs is contrasted by the Board’s continuing defence of the conventions in their current form and their opposition to any non-medical use.

Key points

- The INCB Annual Report for 2016 is contextualised by that year’s United Nations Special Session of the General Assembly (UNGASS) on the ‘world drug problem’. As such, 2016 represents an unprecedented period of flux, as the drug control consensus that has lasted several decades continues to crack at the seams, and to reach new depths despite the surface unity.
- There are some important new or recent positions included in the Report. Amongst the most significant is the continuation of the INCB to encourage states that retain the death penalty for drug-related offences to abolish the practice.
- The Board also condemns outright the government of the Philippines for its implication in the extrajudicial killings of those involved in the country’s drugs trade, or those suspected of being so involved.

- This year’s thematic chapter features a discussion on the issue of women and drugs, an important issue that has long received little of the attention it requires. The chapter explores issues including the growing incarceration of women for drug offences, which is increasing more rapidly than that of men.
- The Annual Report is characterised by reticence when it comes to positive and progressive developments, a continuing trend in the INCB’s reports. For example, the concerns of the Board that controlled medicines are prone to diversion, rather than their vital therapeutic properties, tend to be given priority in terms of attention. Similarly, those countries having developed or scaled up harm reduction interventions are neither encouraged nor highlighted as models to be followed.
- A similar tendency may be discerned with respect to cannabis. Whether real or imagined, the negative elements of cannabis are emphasised at the expense of the possible benefits of the substance. Moreover, the potential contravention of the international treaties is stressed alongside the harmful health effects – ironic since public health is the driving force behind many countries’ movement toward regulated markets.
- For the first time, the INCB acknowledges that drug consumption rooms can be lawful under the international conventions, though to do so they must aim at effectively reducing the negative compact of drug use and lead to treatment and rehabilitation. Moreover, they must not condone or encourage drug use or trafficking.

Introduction

The INCB's Annual Report for 2016 deals with a highly significant year. Dominated as it was, either in terms of preparations or implications, by the UNGASS on the 'world drug problem', 2016 can be viewed as a fascinating snapshot of the state of international drug control during a period of significant – arguably unprecedented in the modern era – turmoil and flux. It is true that in an attempt to maintain the increasingly strained façade of unity, the UNGASS might have been perceived as little more than diplomatic theatre – a point confirmed by agreement of the Outcome Document at the very beginning of proceedings.¹ Yet both the fraught character of negotiations around that document and the subsequent manoeuvring concerning the final version's status relative to preceding high-level consensus-based declarations on global drug control provide an insight into not only the deepening fault lines within the system, but also the way states are choosing to deal with specific issues of contention.²

Indeed, while the rhetoric and related language within official documents emanating from international forums like the New York meeting last April and the more regular sessions of the Commission on Narcotic Drugs (CND) in Vienna become increasingly replete with generalised and widely applauded references concerning the centrality of public health and human rights to drug control, significant differences of perspective among states remain. Although these encompass a range of issues across a broad spectrum of often inter-related concerns, including drug treatment and harm reduction interventions, diverging views are brought into the sharpest of focus around the use of the death penalty for drug-related offences. That some states regard this policy choice as a fundamental matter of national sovereignty suggests that, despite widespread and vocal criticism from other nations and some international bodies, universal agreement against the practice will remain elusive. To be sure, the lack of mention of the need to abolish the use of the death penalty for drugs offences within the Outcome Document was regarded as a key weakness of the UNGASS process by many national delegations and most quarters of civil society alike.

While not as significant and certainly differing greatly regarding its relationship to the values and norms of the UN system beyond the Vienna-based

Box 1 The INCB: Role and composition

The INCB is the 'independent and quasi-judicial' control organ for the implementation of the 1961 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), the 1971 Convention on Psychotropic Substances and the precursor control regime under the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Board was created under the Single Convention and became operational in 1968. It is theoretically independent of governments, as well as of the UN, with its 13 individual members serving in their personal capacities. The World Health Organisation (WHO) nominates a list of candidates from which three members of the INCB are chosen, with the remaining 10 selected from a list proposed by member states. They are elected by the Economic and Social Council and can call upon the expert advice of the WHO. In addition to producing a stream of correspondence and detailed technical assessments arising from its country visits (all of which, like the minutes of INCB meetings, are never made publicly available), the INCB produces an annual report summarising its activities and views.

drug control framework, a similar and fundamental divergence of opinion now appears to exist around cannabis. More specifically, the adoption and planned implementation in some jurisdictions of legally regulated markets for the recreational use of the substance is a policy choice that by every reasonable analysis runs counter to the spirit and letter of the UN drug control conventions. It should be acknowledged that, unlike multilateral agreements on the issue, national policy choices can swiftly shift due to a complex mix of factors, dominant among them the inconsistencies of national politics. Nonetheless, it seems likely that the choice to legalise cannabis for non-medical and non-scientific purposes is here to stay in some form in one part of the world or another. In this instance, and no doubt due to not only displeasure from some member states but also the tensions generated between national policy and drug control treaty obligations, Uruguay, more awkwardly the USA, and more recently Canada have all chosen to maintain a low profile on the issue.

It is within the context of such an increasingly varied and nuanced policy environment, and the ever more complex and diverse global market to which authorities at a range of levels of governance are responding, that the INCB published its latest Annual Report, a publication that includes data up until 1 November 2016. As IDPC is always keen to highlight in its analysis of the Report, concerning scope the publication represents a notable accomplishment in terms of data collection, synthesis and structured presentation. Moreover, it contains a great deal of useful information on the state and functioning of the international drug control system; a multilateral framework built upon a suite of three UN drug control conventions and constructed with the aim of managing the global market for a range of substances for medical and scientific purposes while simultaneously suppressing – with the aim of ultimately eliminating – the illicit market for those substances. The *Annual Report for 2016* is informative in what it tells us about markets in plant-based drugs, synthetics and New Psychoactive Substances (NPS) as well as the illicit use of prescription drugs and associated policy responses over the previous year. The Report is also very useful in providing an overview of the global situation vis-à-vis production and, crucially, access to internationally controlled substances for medical and scientific purposes. On this issue and others, it provides instructive information concerning the progress of states' relative to CND resolutions and, in the post-UNGASS period, commitments agreed within the Outcome Document.

Moreover, when examined as a whole, the *Annual Report for 2016* is instructive in providing an insight into how the Board (the watchdog of the drug control conventions, see Box 1) perceives this increasingly fluid landscape – especially within the context of the 2016 UNGASS and the fast approaching 2019 high-level review of the implementation of the 2009 Political Declaration and Plan of Action. While international drug policy has long been characterised by a plurality of approaches, we are currently witnessing ever widening gulfs in outlook and growing tensions with international legal commitments at a number of levels. As has been the case in the previous few years, the content, and more tellingly regarding the Board's current outlook, key areas of focus and overall tone of the Report are more or less in line what was to be expected. In a pleasing continuation of an approach that is more appropriate to its mandate and role within the international drug control system, the Board is far less defensive in stance and once again openly condemns the

use of the death penalty for drug-related offences and extra-judicial acts of violence. Furthermore, in a somewhat surprising but very welcome move, it also introduces a significant shift of stance on drug consumption rooms. That said, while examples of the once systemic problem of mission creep³ are few and far between, the Board is still wanting in some instances on selective reticence, an unwillingness to report and comment on important issues that appear to be within its purview. This is particularly so in relation to issues of public health and human rights.

In an effort to explore these issues, this response to the INCB *Annual Report for 2016* is organised under five inter-connected headings. It begins with an analysis of the President's Foreword, the last of Mr. Sipp's presidency, before moving onto discussion of the thematic chapter, which this year focuses on the topic of women and drugs. From here it examines the INCB's approach to human rights as well as harm reduction and public health. As has been the case in previous years, it also includes an analysis of the Board's reaction to the shifting policy landscape – a discussion that for obvious reasons focuses on cannabis.

Foreword to the Report: Exit President Sipp

The INCB's Annual Report for 2016 features what represented the final Foreword by Mr. Werner Sipp, whose presidency of the Board ended on 14 May 2017. Mr. Sipp's term was marked by a broadly progressive tone, such as the explicit opposition to the use of the death penalty in drug-related offences, a major step forward for the INCB.

However, the Foreword retains an ambivalent analysis, as has typified even the more progressive discourses emanating from the INCB. Mr. Sipp celebrates the work of the drug control regime in producing the Outcome Document of the 2016 UNGASS. In addition, he remarks on the underscoring of the role of the three international drug control conventions in ensuring availability of narcotic and psychotropic substances for medical and scientific use, for the prevention of drug crop cultivation and production, and in addressing 'drug trafficking and abuse' (p. iii).

While the 2016 UNGASS reaffirmed the international drug control conventions, the Foreword notes that 'some actors will continue to talk about

a need to “modernize” the treaties and their provisions; INCB is of the view that the international drug control system continues to provide a modern and flexible structure that can meet the world’s drug control needs of today and tomorrow’ (p. iii). This is a claim that is certainly questionable; it can be argued, on the contrary, that the key problems associated with drug use (and supply) are linked to consumption outside the parameters of medicine and science. After all, the numerous citizens who are determined to use drugs for pleasure and entertainment pose the key problem for the conventions in their present form. Moreover, the traditional uses of cannabis, coca and several other substances in Africa, Asia, Latin America, the Caribbean, and the Pacific islands have been largely ignored. Despite the Board’s progress within the limits of the present framework, it lacks suggestions for engaging with these drug-using populations except for those whose use is sufficiently problematic to warrant treatment. Since it is only a minority of people who use drugs that is considered ‘problem’ users,⁴ the Board’s engagement remains inadequate. Similarly, the various moves towards establishing legally regulated markets for certain substances clearly underscore the inadequacy of the global drug control regime to respond to current realities. It can be contended that the INCB’s mandate of monitoring the international conventions prevents it from any critique of the current regime; however, as it defends that regime from critical voices, it should be prepared to consider different perspectives, especially as they relate to other international legal commitments.

The Foreword is laudable in its emphasis on scientific evidence as the basis for policy discussions, and its statement that protection of the health and welfare of humankind lies at the heart of the conventions. To that end, the thematic chapter on women and drugs is welcome, having long been an excluded area of drug policy. It is also a positive development that, alongside epidemiological issues affecting women, the social and economic context is taken into account. The Foreword states that the INCB ‘believes that this year’s thematic chapter can change perceptions and remind people, particularly policymakers, of the importance of protecting the rights of women who use drugs...and of...the rights of their families’ (p. iv).

Mr. Sipp also chooses to reflect on last year’s Foreword, in which he discussed the ‘spirit of the conventions’, calling on member states to enhance public health and human rights in their operation-

alising of the conventions. ‘Criminal justice responses’, he writes, ‘must be tempered by respect for due process and acknowledgement that the conventions foresee humane and proportionate responses to substance abuse and drug-related crimes’ (p. iv). He adds – in unambiguous terms – that the death penalty for drug-related offences should not be retained. Moreover, he continues, it is society’s most vulnerable that often bear the brunt of ‘unjust, inappropriate or disproportionate law enforcement measures and criminal justice sanctions’ (p. iv). It is largely this compassionate tone that lent its progressive character to Mr. Sipp’s Presidency, despite its continued theoretical support for the conventions in their current form.

The new President of the INCB is Professor Viroj Sumyai, a Thai citizen, who was elected for a term of one year.⁵ While Professor Sumyai no doubt possesses the necessary technical knowledge for the position, some of his past views have been questionable. He was noted for his insistence on the INCB’s ‘neutrality’ in relation to the death penalty for drugs offences. For example, in the *Bangkok Post* of 29 February 2012, Professor Sumyai was quoted in an article that discussed the death penalty for drugs offenders, stating: ‘We are an impartial body and respect the rule of law and jurisdiction of countries.’⁶ However, the broader changes reflected in the INCB have seen Professor Sumyai refer to extrajudicial killings as not only against the conventions but as ‘a serious breach of human rights and an affront to the most basic standards of human dignity. The Board strongly, categorically and unequivocally condemns extrajudicial targeting of people suspected of illicit drug-related activity.’⁷ In view of such statements, it seems unlikely that the Board will revert to its ‘dinosaur’ of drug control status in the future.

Thematic chapter: Women and drugs

This year’s annual report contains a thematic chapter on the topic of women and drugs. Here the INCB remarks on the growing awareness of the need to incorporate gender perspectives into drug policies and programmes. It sums up the support for enhanced gender understanding within the UN drug control agencies and in the outcome documents of high-level meetings, particularly over the last decade.

The Board points out that the topic of women and drugs is a highly complex and diverse one, and that

as a result the Report's thematic chapter is limited to 'some salient aspects': drug-related harms, special populations, prevention and treatment, and rehabilitation for drug dependence. It also notes that women dependent on drugs may be subject to exceptionally high levels of stigmatisation.

Women and girls are estimated to represent a third of people who use drugs globally. The Board gives relatively little thought as to why this might be the case, though what attention it does devote is made up largely of biological factors: 'Women may face unique issues when it comes to substance use, in part influenced by differences based on biology and distinctions related to gender norms. Research has determined that women's experience of drugs and the ability to recover from drug use can be impacted by hormones, the menstrual cycle, fertility, pregnancy, breast-feeding and menopause' (Para. 13).

While social and environmental issues leading to drug use are acknowledged in the INCB's analysis, they are both familiar and equally applicable to males. They include unemployment and low social and economic status, which can cause stresses resulting in mental health problems. Individuals are seen as self-medicating with illicit drugs to alleviate stress. Richer conceptions of 'the environment' and socio-cultural context are discussed below, alongside its impact on women and drugs.

Drug-related harms are listed as including HIV infection, overdose and mental illness, while the chapter quotes estimates that globally, one in three women has experienced physical and sexual violence. In addition, the numbers of women suffering imprisonment has increased disproportionately in relation to those of men (Paras. 16-24). In the last 30 years, the numbers of men incarcerated for drug-related offences in the USA has increased by 300%; for women, the equivalent figure is 800%. IDPC, the Washington Office on Latin America and others have found that women incarcerated constitute the fastest-growing prison population – a trend that is mainly driven by repressive drug policies. Latin America is particularly affected, with women incarcerated representing 60 to 80% of the female prison population in several countries of the region. These women are often from very poor backgrounds, heads of households and responsible for several children, elderly or disabled family members, with little formal education and few employment prospects in the licit economy. Their incarceration has a severe impact on their lives, but also on that of their

children and other dependents.⁸ Perhaps to reflect this situation, female prisoners and their children represent one of the special populations addressed in the thematic chapter; others include sex workers and pregnant women (Para. 23).

The thematic chapter concludes with discussions of prevention, barriers in accessing treatment, and treatment outcomes. The final passages compose a set of recommendations centred on the collection of data, increased funding, gender-conscious treatment programmes that protect safety and privacy, freedom from non-consensual treatment, programmes to address the needs of special populations, adherence to the UN 'Bangkok rules',⁹ and the INCB's encouragement for all of the above.

Although the thematic chapter is well-intentioned and useful, it fails to engage with the core social and cultural issues that specifically affect women who use drugs. The biological status of women who use drugs, interpreted through the grid of culture, renders them subject to an acute form of stigmatisation and marginalisation. The duties of family and its associated nurturing role, alongside the capacity to give birth, are seen as directly transgressed by drug use in a way that male drug use is not. This view has been very much engrained in cultural representations of women who use drugs across the world – reaching from the 'girl junkies' of mid-1950s America¹⁰ and the 'crack mommas of the 1990s to the 'zombie women' of the UK newspaper The Daily Mail in 2017.¹¹ In concrete terms, a woman using drugs, especially in pregnancy or motherhood, is judged more seriously simply by being a woman, and may be deterred from seeking social support by fear of losing custody of their children.¹² Historically, drug use by women is only considered as linked to a notion of biological vulnerability, a view that is replicated in the thematic chapter of this year's Annual Report, and which continues to haunt the overall analytical work of the INCB.

Human rights: Progress on the death penalty but still some omissions

The death penalty

In a positive reiteration of its now unambiguous position on the issue, the Report for 2016 is clear on the Board's opposition to states' use of the death penalty for drug-related offences. This is flagged up at a number of places throughout the text, includ-

ing the President's Foreword and its 'Special topics' section. Here the Board highlights the issue of 'Proportionality and alternatives to conviction or punishment'; a theme to which it has devoted considerable attention over the years, especially since its dedicated thematic chapter in 2007.¹³ It is noted in general terms how 'Disproportionate responses to drug-related offences undermine both the aims of the conventions and the rule of law' and that 'Accordingly, the international drug control treaties require proportionate responses by States to drug related offences and to the treatment of offenders' (Para. 310). Acknowledging a fundamental tension within the UN system – the relationship between nations' sovereign rights and their international obligations – the Board then goes on to state that:

'Although the determination of sanctions applicable to drug-related offences remains the prerogative of States parties to the conventions, the Board has continued to encourage States that retain capital punishment for that category of offence to commute death sentences that have already been handed down and to consider the abolition of the death penalty for drug-related offences, in view of the relevant international conventions and protocols and resolutions of the General Assembly, the Economic and Social Council and other United Nations bodies on the application of the death penalty' (Para. 315).

This stance is also reiterated and given prominence in Chapter IV, 'Recommendations to Governments, the United Nations and other relevant international and national organisations' (Para. 809, Recommendation 5).

It is also noteworthy that, in moving beyond general condemnation of the practice as in previous years, the Report for 2016 also calls on specific countries to abolish the death penalty for drug-related offences.¹⁴ This move is also to be applauded. In addition, appeals to the governments of Malaysia and Singapore (Paras. 217 & 282) refer explicitly to the 'Evaluation of the implementation by Governments of recommendations made by the Board following its country missions', the INCB having visited both countries in 2013. That said, while perhaps understandable in terms of process, this means that other states retaining the death penalty for drug-related offences, but that have not hosted a mission from the Board in recent years (specifically since it changed its position on the issue in 2014), avoid specific mention. It is true that the Board notes 'A number of countries in East and South-East Asia

continue to apply the death penalty for drug-related offences' and subsequently calls for its abolition (Para. 579). Yet, such a statement still offers an unsatisfactory degree of anonymity. This is in stark contrast to the lack of anonymity given to states, or territories within, either engaging with or planning the implementation of regulated cannabis markets for recreational use.

Furthermore, mindful of the fact that the INCB undertook country missions to Oman (April 2016) and China (October 2016), both states that still either employ the death penalty for drug-related offences or retain it within the penal code,¹⁵ it was interesting to see if the Board maintained a consistent approach with regards to the death penalty. Disappointingly, in its summary of the missions to both states the Board chose not to highlight the issue. Indeed, in relation to China, it elects to express 'its appreciation to the Government of China for the country's active participation in various INCB initiatives, and its wish to continue that cooperation in the future' and recognises 'the substantial efforts made by the Government of China with regard to the strict control of scheduled substances and the progress it has achieved in that regard' (Para. 227). It is IDPC's hope that the Board will, at the very least, use its mission evaluation procedures to bring some pressure to bear on these countries in subsequent annual reports.

Extrajudicial killings

Within the context of such reticence, it is also pleasing to see the Board openly condemn the government of the Philippines in relation to its complicity in extrajudicial measures, including sanctioned killings of individuals involved – or suspected of being involved – with the illicit drug market within the country. While this is the case, it is unfortunate that what is probably the influence of diplomatic protocol means that specific mention of the Philippines is buried deep in the Report rather than in the 'Special topics' section under the heading 'State responses to drug related offences' and the sub-heading 'Extrajudicial treatment of suspected drug-related criminality'. Here, having provided a few paragraphs of background information, including conflicts with 'due process norms' and international human rights standards (Paras. 316 & 317) it is stressed in a general fashion how 'The Board wishes to reiterate, in the strongest possible terms, its categorical and unequivocal condemnation of those acts, wherever and whenever they may occur'. The Report also goes on, still in general terms, to:

[call] upon all Governments concerned to put an immediate stop to such actions and to publicly commit to and undertake investigations into any person suspected of having committed, participated in, aided and abetted, encouraged, counselled or incited any such extrajudicial actions, in full observance of due legal process and the rule of law, and their prosecution and sanction, as warranted' (Para. 318).

Similar language is used within Report's overall recommendations where the Board 'urges all Governments concerned to put an immediate stop to extrajudicial acts of violence and reprisal against persons suspected of illicit drug related activity...' (Para. 810, Recommendation 6).

Although most readers will be aware of the immediate source of such concern, it is only within the Board's analysis of 'national legislation, policy and action' in East and South-East Asia, that the Philippines receive specific attention. At this point it is noted that 'Reports of acts of violence and murder in the Philippines committed against individuals suspected of involvement in the illicit drug trade or of drug abuse, which may have been encouraged or condoned by members of the Government since July 2016, came to the Board's attention'. In fact, in early August 2016 IDPC engaged in a sustained campaign to pressurise the Board to speak out against the killings in the Philippines, with an open letter¹⁶ signed by over 370 NGOs sent to the President of the INCB and the Executive Director of the UNODC. Within 24 hours, the letter – which was picked up by various prominent media outlets – resulted in strong statements by the previously silent INCB¹⁷ and UNODC¹⁸ condemning the killings. The Report informs us that:

'The Board issued a statement calling on the Government of the Philippines to issue an immediate and unequivocal condemnation and denunciation of extrajudicial actions against individuals suspected of involvement in the illicit drug trade or of drug abuse, to put an immediate stop to such actions, and to ensure that the perpetrators of such acts are brought to justice in full observance of due process and the rule of law' (Para. 578).

With that, and perhaps in an attempt to counter any claims that such action can be legitimatised by the current multilateral drug control framework, the Board then moves from the specific back to the general noting that it

'wishes to bring once again to the attention of all Governments that extrajudicial action, purportedly taken in pursuit of drug control objectives, is fundamentally contrary to the provisions and objectives of the three international drug control conventions, under which all actions must be undertaken within the due process of law' (Para. 578).

Considering its longstanding concern for the issue of proportionality and increasing willingness to highlight the importance of norms and obligations within the UN system more broadly, it would have been difficult for the Board to ignore the ongoing human rights violations in the Philippines under the administration of President Duterte.¹⁹ Yet, as with its position on the death penalty, considering its previously sustained reluctance to engage with human rights issues, the Report's attention is welcome and much needed.

Forced crop eradication

As the above discussion suggests, that the Board's willingness to comment on tensions between states' human rights obligations and drug policy has altered in recent years is clearly a positive development. Nonetheless, as will be explored in more detail below, in a somewhat paradoxical way, an increased emphasis on some areas highlights lack of engagement in others. These include those that, while perhaps not as obvious as the death penalty and extrajudicial killings, still involve a human rights dimension. At this point, for example, it is worth mentioning the INCB's position on the use of chemicals for crop eradication in Colombia; a policy choice that IDPC has flagged up in the past in relation to conflicts with indigenous rights.²⁰ Crop eradication has also had serious effects on local communities; for example, the WHO found that glyphosate is 'probably carcinogenic to humans'.²¹ Spraying brought about a number of health and environmental problems, and social and economic impacts such as increased poverty for farmers.²² The complex situation within that country – including in relation to the peace process where the INCB welcomes the chapter in the peace agreement titled 'Solution to the Illicit Drug Problem' (Paras. 170 & 510) – is mentioned at several points within the Report. Indeed, while it is not always clear why some countries are selected over others, it is discussed in some detail within the section on 'Evaluation of overall treaty compliance in selected countries' (Paras. 168-171); an additional mechanism through which the Board can shine a light on specific countries.

Despite such attention, however, the spraying of glyphosate is only mentioned twice, in relation to the cessation of the practice being linked to increases in coca bush cultivation (Para. 540) and to the resumption of the chemical's use by manual eradication crews in 2016 (Para. 546). It is argued by local communities that manual crop eradication in Colombia is the most corrosive of human rights, which brings farmers into armed conflict with police and military anti-narcotics forces, and leads to incarceration and impoverishment. This too is given minimal attention in the Annual Report.²³

While the drivers behind the increase in coca cultivation are complex and are likely to involve shifting eradication strategies, it can be argued that the Report missed an opportunity to note, if not explicitly commend, that the Colombian government's decision to halt aerial eradication had been in line with international human rights law and norms. Further, in fulfilling its role to report policy developments within the country, it is not unreasonable to argue that the Board also missed the chance to mention that President Santos' administration has quietly introduced ground-based spraying, or 'fogging', with glyphosate.²⁴

This was announced in May 2016 and thus well before the cut-off date for information to be included within the Annual Report for 2016. Similarly, and once again an issue highlighted by IDPC in recent years, despite the unavoidable and numerous (37) mentions of Mexico in the Report, there is no reference to the human rights implications of the Mexican government's current drug policy, including growing evidence of human rights abuses by security forces.²⁵ According to the Report, this is the case despite mention of the country's transition from the traditional inquisitorial criminal justice system, changes that are 'expected to increase transparency, strengthen efforts to protect human rights and civil liberties and reduce corruption in criminal cases' (Para. 454). Arguably, however, the problem lies not with the country's criminal justice system *per se*, but rather with the manner in which it is implemented.

Public health: Mixed progress

Reflecting the increased attention given to public health within the formulation and implementation of drug policies by a growing number of member states in recent years, the Report for 2016 offers some interesting contextual statements and noteworthy changes of interpretive stance.

Alternatives to punishment for drug use

Once again under the 'Special topics' heading relating to state responses to drug-related offences, the Board notes that in many states 'policies to address drug-related offences, including possession for personal use, have continued to be rooted primarily in punitive criminal justice responses, which include prosecution and incarceration and as part of which *alternative measures such as treatment, rehabilitation and social integration remain underutilized*' (emphasis added) (Para. 307). The report goes on to say that, 'While drug trafficking and the diversion of drugs into illicit channels may require the use of interdiction efforts, criminal prosecution and the imposition of criminal sanctions, in some States, approaches to dealing with criminal behaviour committed by persons affected by drug use and addiction have become more differentiated in recent years.' 'This', the INCB points out, 'is a result of an *evolution* in those States that have come to recognize drug use and dependency as a public health concern requiring responses that are health-centred and less reliant on punitive sanctions' (emphasis added) (Para. 308). Crucially, the Board then stresses that it 'welcomes' this 'development as entirely consistent with what is foreseen in the international drug control framework.' 'Prevention of drug abuse, especially among young people', it is noted, 'must be the primary objective of drug control policy, and a comprehensive drug demand reduction strategy' (Para. 309). This should include, the INCB points out, 'the reduction of the adverse health and social consequences associated with drug abuse' (Para. 309) – one of the linguistic proxies often used in Vienna for the harm reduction approach.

Drug consumption rooms: A positive shift

Perhaps such an explicit shift in emphasis and interpretive perspective helps explain the Board's welcome, and long overdue, change in position on drug consumption rooms (DCRs). As regular readers of the Board's Annual Report will be aware, for many years the INCB has maintained the rigid position that the operation of DCRs were contrary to the provisions of the UN drug control treaties. It is true that, while maintaining this position, the Annual Report for 2015 adopted a softer and more low-key reaction to the intervention than in previous years.²⁶ This year, however, the Board goes one significant step further in attitude and tone.²⁷ Rather than condemning them outright, it massages

its long-held view by stating that the 'Board wishes to reiterate its frequently expressed concern that, in order for the operation of such facilities to be consistent with the international drug conventions, certain conditions must be fulfilled'. 'Chief among those conditions', it continues, 'is that the ultimate objective of these measures is to reduce the adverse consequences of drug abuse through treatment, rehabilitation and reintegration measures, without condoning or increasing drug abuse or encouraging drug trafficking'. Consequently, the Board concludes, "Drug consumption rooms" must be operated within a framework that offers treatment and rehabilitation services as well as social reintegration measures, either directly or by active referral for access, and must not be a substitute for demand reduction programmes, in particular prevention and treatment activities' (Para. 720, also see Para. 174). With this in mind, the Report merely describes the situation in some states vis-à-vis engagement with this health-oriented intervention, rather than highlighting that such states are, according to the Board's interpretation, operating in contravention of the drug control treaties. At one point, the Report even includes a succinct description of the rationale and history of DCRs in Europe:

'Supervised "drug consumption facilities", where drugs can be used for non-medical purposes under the supervision of medically trained staff, have been operating in Western Europe for the last three decades. The primary aim of the facilities is to reduce the acute risks of disease transmission through unhygienic injecting, prevent drug-related overdose deaths and connect high-risk drug users with addiction treatment and other health and social services. By February 2016, there were a total of 74 official "drug consumption facilities" operating in Denmark, Germany, Luxembourg, the Netherlands, Norway, Spain and Switzerland' (Para. 718).

Elsewhere, we are informed of the Board's ongoing dialogue with Denmark on the issue in relation to a change in the law in 2014, which entered into force in July 2016 (Para. 172). The Report does express 'reservations' about the acquisition of substances prior to entering the 'facilities' (Para. 175) and requests information on the findings of a 2015 evaluation (Para. 176). Nonetheless, the previous reflex hostility is no longer evident. A similar position is taken regarding the situation in Canada, specifically the January 2016 approval of a second DCR in Vancouver and applications and public consultations in other parts of the country (Para. 462) and the March

2016 approval by the French government for DCRs on a trial basis (Para. 719).

NSPs and OST: Ongoing reticence

The Report, however, still contains a curious position on other harm reduction interventions. As has been the case in recent years, the Board notes in a matter-of-fact fashion the general existence of national shifts involving harm reduction services or policies. For instance, this year the situation regarding harm reduction and policy change in both Israel and Ecuador is highlighted (Paras. 231 & 529). On its mission to Israel, for example, the Board noted that the country had implemented treatment and rehabilitation measures, in particular involving harm reduction. Similar measures were put in place in Ecuador. At a more specific level, the Report also acknowledges the existence of opioid substitution therapy (OST) in several states or regions, for example in relation to Senegal (Para. 401), Canada (Para. 460), Bhutan (Para. 613), the European Union (Para. 757), Oman (Para. 238), Vietnam (Para. 253), in Spanish prisons (Para. 193) and, regarding feasibility studies and pilot sites, in Egypt (Para. 405). Furthermore, the Report notes the intention of Health Canada to 'allow doctors to use diacetylmorphine-assisted treatment to support patients with opioid dependence who had not responded to other treatment options and allowed for the consideration of applications for the sale of diacetylmorphine for purposes of emergency treatment under the programme' (Para. 473).

Yet, there is once again surprisingly little reference to good practice around dealing with injecting drug use, including needle and syringe programmes (NSPs).²⁸ On this issue, comment is limited to acknowledging the availability of 'syringe distribution services' within prisons in Spain (Para. 193) and in relation to kits containing, among other things, sterile syringes used by innovative mobile outreach teams in Dakar, Senegal (Para. 401). Such a lack of attention is puzzling for several reasons. First, as Harm Reduction International's *Global State of Harm Reduction 2016* notes, while no new country has introduced NSPs since 2014, 17 countries scaled up services between then and 2016.²⁹ Consequently, in terms of the Annual Report's role to simply describe changes in the international drug policy landscape, advances within such countries, especially Taiwan where change has been the most dramatic, and with NSPs being radically scaled up in response to the growth of HIV, were worthy of mention. Despite this, the Annual Report fails to reference this important

shift. Second, as the Board notes at numerous points within the Report, patterns of injecting drug use, and the associated risks concerning the spread of blood-borne diseases including HIV and hepatitis C through the sharing of needles, are changing. While traditional patterns remain, including in countries like the Russian Federation and Ukraine where HIV prevalence among people who inject drugs is estimated to be more than 22% (Para. 772), the Board notes that many states are witnessing increasing synthetic injection. This is a practice that increases potential risk due to a higher frequency of injections relative to opiates. While it is not an entirely new phenomenon, the Report notes in some detail the rise of injection of amphetamine-type stimulants, especially methamphetamine, in Cambodia (Para. 609) and Saudi Arabia (Para. 698). Moreover, observing what appears to be an emerging trend relating to a restructuring of the contemporary drug market, the Report notes the worrying emergence of NPS injection. The Board notes specifically, for example, that in Spain ‘there is evidence to suggest that small groups of high-risk drug users who used to inject heroin have switched to injecting new psychoactive substances’ (Para. 191).

Similar observations are made regarding European Union countries more generally where we are informed that high-risk opioid users who previously injected heroin and amphetamines have ‘started experimenting with injecting new psychoactive substances, such as synthetic cathinones’ (Para. 758). Mindful of the Board’s increased emphasis on the centrality of public health to drug policy, as well as calls on ‘stakeholders’ to ‘place science and evidence-based approaches at the centre of drug control discussion’ (President’s Foreword, p. iii), one might have expected explicit recommendations regarding the adoption of scientifically proven effectiveness of NSPs as part of comprehensive treatment programmes including OST. Within the context of discussion of high levels of drug injection and HIV prevalence among people who inject drugs in East and South-East Asia, IDPC welcomes the Board’s call that ‘Relevant interventions and treatment therefore should be expanded and made accessible to target groups, particularly in Cambodia, Indonesia, Myanmar and the Philippines’ (Para. 611). In future Reports, more statements of this type, including perhaps reference, if not to harm reduction or NSPs, then ‘the reduction of the adverse health and social consequences associated’ with drug use would be welcome.³⁰ An INCB call for research into treatment and harm reduction approaches for ATS would also be positive.

Similarly, and again as discussed in previous IDPC analyses,³¹ the Board could have gone further in highlighting accepted international standards relating to drug treatment. If, as with the death penalty discussed above, specific states will only be called out on the use of compulsory treatment in the post-mission review process, then it is hoped that both China and Vietnam (Paras. 226 & 253) will receive attention in due course. Overall more people die because of inadequate treatment or reluctance to implement scientifically proven effective harm reduction measures than there are victims of the death penalty. The failure of states to provide effective services might amount to be considered as a ‘unofficial’ death penalty and requires more attention of the Board.

Access to substances for medical and scientific purposes

In a welcome continuation of the Board’s recent efforts to raise the profile of availability of and access to controlled medicines for medical and scientific purposes, especially under the presidency of Werner Sipp, the Report for 2016 devotes considerable space to the issue both within the Report proper and in the overall Recommendations. While, as noted within the foreword and throughout the text, the Board remains occupied with the subject of diversion of controlled substances for licit purposes into illicit channels, it is possible to identify a slight shift in tone from previous years. As has been noted elsewhere, despite its mandate, a strong case can be made that, ‘the INCB itself has been as much a part of the problem as its solution, often saluting restrictive drug control regimes imposed by governments without paying sufficient attention to the consequences of those regimes on access to medicines.’³² Indeed, IDPC has noted in its analyses of earlier Annual Reports how the Board has often commended states that privilege the restrictive rather than enabling components of the treaty system.³³

However, a reading of the Report for 2016 in its entirety reveals a more balanced, if still asymmetric, approach. As is the norm, and perhaps unsurprisingly given the treaty system within which it operates, the Report is peppered with concerns for diversion, including in relation to the 2016 UNGASS where an operational recommendation of the Outcome Document includes the provision of ‘capacity-building and training to ensure the availability of and access to controlled substances exclusively for medical and scientific purposes, while prevent-

ing their diversion (Para. 157). As such, concerns for diversion within the Report appear more tempered with statements regarding appropriate availability and access set within, among other things, generalised discussion on the need to improve state engagement with the system of estimates (e.g. Paras. 83, 148 & 149), new projects to help educate member states (Paras. 103 & 154-156), and necessary improvements in consumption data (Para. 138). Moreover, at a more specific level, and once again within the context of post-mission evaluation, the Report highlights the need for improvements in Kenya and Malaysia (Paras. 267 & 270). It is also pleasing to see the Board celebrating ‘measures to improve the availability of opioid analgesics for medical use’ in Panama and encouraging authorities in the country ‘to continue to identify and address obstacles in that area, particularly those obstacles relating to capacity-building and the training of health-care professionals, as required’ (Para. 274).

The ‘coordinated delivery of resources and technical resources to countries in need of assistance’ (Para. 811, Recommendation 8) is included in the operationalising of the recommendations included in the UNGASS Outcome Document (Para. 811, Recommendation 7). These also call upon WHO, UNODC, UNAIDS and UNDP, in addition to donors and civil society to do the same. This may be seen as a more proactive position on the part of the INCB. That is not to say, however, that the Board has more work to do in explicitly encouraging states to improve their positions on availability and access.

Reactions to the shifting policy landscape

Although to a large extent side-stepped by member states within recent international deliberations, including at the 2016 UNGASS, the Board has continued to chart a predominantly steady, consistent and in the main commendable course regarding the changes to the drug policy landscape – changes that have been dominated by different views of how to deal with cannabis.

Medical cannabis

Continuing with its appropriate stance (relative to its mandate) on increasing engagement with a diverse range of medical cannabis policies and programmes by several states, the Report for 2016 offers a fair and non-judgmental account of policy developments around the world. This includes a description of the situation, including where ap-

propriate the legal processes, in Colombia (Para. 168 & 528), Israel (Para. 232), Australia (Paras. 161-165 & 780), Canada (Paras. 465-466), Chile (Para. 527), Mexico (Para. 464) and the USA (Paras. 445 & 467). It is worth noting that in outlining the US Food and Drug Administration’s rejection of petitions to reschedule cannabis for medical use in treatment in the USA (Para. 471), the Board resisted the temptation to commend the decision as it may have done in the past. Indeed, where raising concerns, and although framed within the context of fears about ‘abuse and diversion’, these are justifiably related to the need for administration and monitoring programmes and structures under the provisions of the 1961 Single Convention on Narcotic Drugs (Para. 468, 536 & Para. 817, Recommendation 13).³⁴

Decriminalisation of drug use

With the decriminalisation of drug possession for personal use becoming more widely accepted within the international system, including by some UN agencies, this year’s publication includes limited discussion on the topic, unlike the Report for 2015. In fact, it is only mentioned three times, once in relation to the Government of the Lao People’s Democratic Republic ‘effectively decriminalizing drug use’ (Para. 583) and also in relation to actual and contemplated policy shifts within Canada and Chile respectively (Paras. 223 & 527). Reflecting acceptance that the practice falls comfortably within the boundaries of the international treaty framework, no judgment is made in any of these cases.

Cannabis social clubs

The same cannot be said for the INCB’s discussion and legal analysis of ‘cannabis consumption clubs’ in Spain (Paras. 187-190). As in its previous Annual Report, the Board stresses the view that the clubs are

‘not consistent with article 4, paragraph (c), of the 1961 Convention, pursuant to which States parties are obliged to limit exclusively to medical and scientific purposes the production, manufacture, export, import and distribution of, trade in and use and possession of drugs, or with article 3, subparagraph 1 (a), of the 1988 Convention, which requires States to adopt such measures as may be necessary to establish as criminal offences under its domestic law the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage,

dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug contrary to the provisions of the 1961 Convention' (Para. 188).

Consequently it, 'encourages the Government of Spain to continue to take all practical actions to control cannabis in accordance with the requirements of international drug control treaties...' (Para. 190). As discussed elsewhere,³⁵ due to the latitude within the conventions to both possession and cultivation for personal use, this interpretation is legally dubious and one wonders the extent to which discussions around fully regulated markets have drawn the Board's attention to an issue that it largely ignored for many years.

Legally regulated markets

It should come as no surprise, however, that comment on the legal regulation of cannabis in Canada is part of the Board's very full discussion of the legalisation and regulation of 'access to cannabis for non-medical use'. This is so not just for Canada, where a regulated market is yet to be implemented, but also, at the state level and national levels respectively, in the USA and Uruguay where new legal systems are to varying degrees already in place. Moreover, reflecting the increasing levels of discussion and legislative adjustments on the issue in the Caribbean, the Board was also moved to stress the limits of the current treaty framework in relation to the work of the Regional Commission on Marijuana established by the secretariat of the Caribbean Community (Para. 411) and interim regulations for the Cannabis Licensing Authority in Jamaica (Para. 415).

Indeed, having reaffirmed its stance on the limits of treaty flexibility in the President's Foreword, the Report devotes significant attention to the issue, including within the 'Special topics' section (Paras. 319-326), and in relation to Uruguay, Canada and the USA specifically at various points within the text. In this regard, the approach is uniform with a detailed overview of policy developments within each nation followed by a reiteration of the Board's position that regulated markets for the non-medical use of cannabis are contrary to the provisions of the international drug control conventions; particularly the measures set out in article 4, paragraph c and article 36 of the Single Convention and article 3, subparagraph (1) (a) of the 1988 Convention.

Discussion of the state of play in Uruguay (for ex-

ample Paras. 202, 203 & 534-536) also notes that the Board continues its dialogue with the government and undertook a mission in November 2015. On this point, it is noted that the INCB 'requested', not unreasonably, for 'the Government to keep it informed of all relevant developments in that area to be provided with information on the public health consequences of the implementation of Law No. 19.172' (Para. 251). Similarly, the situation in Canada is also given expected levels of attention (for example, Paras. 222, 223 & 448), including note of an October 2016 mission and ongoing dialogue. The complicated and fluid state of affairs within the USA is also covered at various places across the publication, including within the 'Highlights' section prefacing Chapter three of the Report, 'Analysis of the World Situation'. Despite the 1 November cut-off date for inclusion of data within the Report for 2016, the Report consequently gives extra prominence to approval of ballot measures in California, Maine, Massachusetts and Nevada (as well as those relating to medical cannabis in other states). Within the detailed discussion of the situation within the country (see, for example, Paras. 197-200, 445 & 472), the Board again notes the active dialogue with the US government in relation to policy shifts within state jurisdictions (Para. 196).

While such attention is appropriate, there is once again a tendency within the Report to emphasise the negative consequences, real or potential, of these democratically mandated shifts to regulated cannabis markets. The intention to pursue such an approach is flagged up as early in the publication as the President's Foreword where Mr. Sipp explains that, within the context of regulated markets being in contravention of the treaties, the Report will 'explore the possible effects of legislation in several jurisdictions that permits the non-medical use of cannabis.' (p. iii). As promised, this is expanded upon in the 'Special topics' section where, with the caveat '*While it is difficult to predict* the effects of the legislative measures making cannabis available for nonmedical use' (emphasis added), the Report stresses a clear sense of disapproval concerning the policy shifts, stating that 'it is certain that the abuse of cannabis potentially carries serious health consequences, as acknowledged by WHO' (Para. 324). This is somewhat ironic bearing in mind the fact that the negative health consequences of cannabis use are precisely why many jurisdictions have adopted, or are considering the adoption, of regulated markets. This aside, the following discussions concerning THC content, the ingestion by children of food products containing cannabis, rates of

'abuse' among young people (Para. 324) and, specifically in relation to the USA, cannabis-related emergency room visits, hospitalisations, traffic accidents and related deaths (Para. 503) are all legitimate and important domains of enquiry. However, as IDPC noted in its response to the Annual Report for 2015, one wonders how keen the Board will be to report on any positive outcomes that may become apparent, including in relation to crime rates,³⁶ as more jurisdictions implement regulated markets and, as the Board recommends (Para. 508), capture and report market data. Although data and analysis are only now beginning to emerge, one thing that really is certain is complexity. Indeed, as the INCB itself notes within the Report in relation to discussions of cannabis use among young people in the USA (Paras. 504, 505 & 507) 'the data and their analysis in the various reports are varied' (Para. 504). Any temptation to simplify the intricacies of market dynamics, both in terms of positive and negative outcomes, would do much to undermine the Board's legitimate concerns, including those relating to spill-over between jurisdictions (Para. 325).

As is to be expected, the Report highlights its concerns over regulated cannabis markets within its overall Recommendations in Chapter IV (Para. 815, Recommendation 11), including in a not so subtle reference to the US Federal government's predicament. Here it points out states' legal obligations 'throughout their entire territories'. However, in a sign of just how far the Board has adjusted its interpretation of the treaties in recent years, especially since the policy shifts in Portugal in 2001, it also actively encourages states to exploit the flexibility in the conventions and use of non-penal sanctions to address the disproportionate representation in the criminal justice and prison systems of people who use drugs belonging to minority groups (see Para. 816 and Recommendation 12, also see Para. 326). While longitudinal analyses of the Board's Annual Reports reveal how its attitudes and interpretation of the conventions have been changing for some time, it appears as if the emergence of regulated cannabis markets in some parts of the world, particularly Canada (Para. 223), have acted as a catalyst for the explicit, and welcome, encouragement of the use of non-penal sanctions and decriminalisation of minor drug-related offences.

Conclusions

When viewed as the latest in a long series of publications rather than in isolation, this year's Annual Report can be seen as the continuation of the Board's

gradual, but much-welcomed, adjustment in outlook. The ongoing, although in some ways reduced, levels of secrecy concerning its operation – including the annual reports' drafting process – make it difficult to know exactly what lies behind such a change in approach.³⁷ It seems fair to argue, however, that it owes something to the leadership of Mr. Werner Sipp and Dr Lochan Naidoo before him. In this regard, it will be interesting to see to what extent Professor Viroj Sumyai retains the course set by his predecessors.

Acting in a fashion more appropriate to its mandate under the conventions, the *Annual Report of 2016* reflects the INCB's relatively recent shift towards its authentic role as a watchdog and monitor rather than an ardent defender and staunch guardian of the drug control treaties. Moreover, as has been discussed in the preceding pages, this year's report demonstrates the Board's ability to shift its interpretative stance and in many ways – over time and to a point – accept states' own shifting policy responses to the increasing complexity of domestic drug markets, particularly regarding public health-oriented policies. While this is the case, the way the INCB presents the changes in some authorities' perspective is somewhat disingenuous. It is true that a shift away from punitive sanctions towards a public health approach to 'drug use and dependency' can be seen, as noted above, as the 'result of an evolution' in some states' thinking (Para. 308); an important point to which we will return. However, it is possible to argue that far from inspiring and leading a normative shift towards better protecting the 'health and welfare' of humankind and exploiting flexibility within the conventions as is suggested at various points, including in the President's Foreword, the Board's traditional privileging of law enforcement over public health may have actually stymied achievement of that underpinning goal. In many instances, the Board has in reality been following the lead of progressive states. Not the other way around. Although it is to be commended on its significant change in stance, the Board's position on drug consumption rooms is a case in point.

To be sure, legacies of the Board's long-held preference for a prohibition-oriented approach, siloed thinking in relation to the broader UN system and associated rigid and narrow treaty interpretations are evident within the 2016 publication. Consequently, while certainly maintaining a positive direction of travel, the Report remains problematic in places. This is the case in relation to an ongoing lack of engagement with NSPs and to a lesser ex-

tent positive encouragement regarding access to controlled medicines. For the former, the almost complete absence of reference – let alone proactive language – towards this evidence-based health-oriented approach is puzzling. On the latter, concerns for diversion often appear to trump those for accessibility; an example of the repressive character of the conventions being prioritised over their enabling elements. While in both cases the tendency of the Board to ‘urge’ states to engage in law enforcement-oriented approaches was far less evident than in the Report for 2015, there is still room for the Board to be less reticent in calling to improve performance – in line with not just the UNGASS Outcome Document but also states’ broader international human rights obligations. Mindful of the Board’s commitment to human rights considerations, it is also reasonable to wonder if the time is right to include a specific recommendation on health-oriented approaches within Chapter IV. On a related point, the INCB must be commended for its strident stance on both the death penalty and extrajudicial killings, particularly for their inclusion in the overall Recommendations. However, once again, the Board’s potential to ‘name and shame’ would have been enhanced had the circumstances within specific states been given more prominence. On this point, recalculations regarding diplomatic protocols appear necessary. All that said, and despite some flaws in analysis, the Board should certainly be given credit for not only dedicating the thematic chapter to the complex and increasingly pertinent topic of women and drugs, but also for including a number of specific points regarding the need for gender-based approaches within the overall Recommendations.

It is also important to highlight that, among other things, the recommendations on the issue of women and drugs specifically encourages governments to collect ‘gender-disaggregated data on drug abuse and treatment participation’ (Para. 807, Recommendation 1). The welcome emphasis on what remains a lacuna in most states’ data collection is one facet of an important theme running throughout the Report. As has been the case in recent years, the Board quite justifiably calls for all states, but specifically those in Africa, Asia, and Oceania (see for example, Para. 825, Recommendation 22), to improve data collection and reporting mechanisms; a sentiment which IDPC fully supports. The Board’s concerns include improvements in information regarding both the illicit market and those relating to licit medical and scientific use, for example imports, exports, stocks and need. On the latter, IDPC

also endorses the INCB’s invitation to governments to continue providing the Board with financial and political support (Para. 356). Mindful of the INCB’s increasing, though vague, referencing of other international treaty obligations, it is appropriate to suggest that it starts using its Annual Report to encourage states to consider non-traditional data and indicators in their assessment of policy impacts; an increasingly relevant issue considering reference within the Outcome Document to both human rights and the Sustainable Development Goals as well as the approach of what former President Sipp refers to as the next review ‘milestone’; the 2019 meeting to assess the implementation of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem (p. iv).

Finally, as evidenced within the Report for 2016, it seems certain that in this post-UNGASS/pre-2019 period, one of the Board’s key predicaments will be how to deal with the issue of regulated markets for the recreational use of cannabis and their operation beyond the confines of the current treaty framework. As the INCB alluded in this year’s publication with regard to policy discussion in South America (Para. 509), those states, or sub-national territories thereof, currently implementing or building up to the implementation of the policy may not stay alone for long. It is clear that not all states concur with the President of the Board’s view that there is no need to modernise the treaties and their provisions, and that the existing system continues to provide a modern and flexible structure sufficient to meet the world’s drug control needs of today and tomorrow. Ironically within the context of the Board’s description of an evolution of states’ views relative to a health-oriented approach, there is a growing mood among some governments that the treaties or their relationship to some aspects of the treaties must also evolve. With this being the case, the Board’s challenge remains how to best manage such a process. It is clearly constructive that the Board maintains a dialogue with what currently remain policy outliers.³⁸ Yet, despite the constraints placed upon it due to its own place within the international control framework, it is increasingly pressing for the INCB to apply its considerable technical expertise in assisting these states to reconcile their various obligations; a complex nexus incorporating tensions between not only domestic policy choices and the drug control treaties but also commitments under those very treaties and other international legal structures and norms relating to human rights and public health. Paradoxically, in so doing the

Board would help guarantee the integrity of the international drug control system and better integrate it into the wider-UN system of which it is a small, but disproportionately impactful, part.

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30. Such an omission sits particularly uncomfortably with mention of the outlining by the Russian Federation's Minister of Health at the UN High-Level meeting on ending AIDS (held in New York in June 2016) of the government's strategy for combatting HIV/AIDS. While it is noted that 'Among the measures proposed were encouraging drug users to abstain from the use of narcotic drugs and providing access to modern rehabilitation centres' (Para. 771), both OST and NSPs remain prohibited under Russian law
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34. This includes in relation to cultivation by private individuals under the Colombian legal and regulatory framework (Para. 169).
35. See: Bewley-Taylor, D. & Jelsma, M. (2012), *The UN drug control conventions: The Limits of latitude*, Series on Legislative Reform of Drug Policies (Transnational Institute & International Drug Policy Consortium), p. 9, <https://www.tni.org/files/download/dlr18.pdf>; Bewley-Taylor, D., Blickman, T. & Jelsma, M. (2014), *The rise and decline of cannabis prohibition: The history of cannabis in the UN drug control system and options for reform*, (Transnational Institute & Global Drug Policy Observatory), p. 47; Marks, A. (2015), *A preliminary sketch of the legal landscape for cannabis social clubs in Spain* (Observatorio Civil De Drogas), <http://www.law.qmul.ac.uk/media/law/docs/research/148791.pdf>
36. International Drug Policy Consortium (2016), *IDPC Response to the INCB Annual Report for 2015*, pp. 14-15, <http://idpc.net/publications/2016/09/idpc-response-to-the-2015-annual-report-of-the-international-narcotics-control-board>; also see, for example, discussions in: Caulkins, J.D., Kilmer, B. & Kleiman, M. (2016), *Marijuana legalization: What everyone needs to know* (Oxford University Press)
37. See: Bewley-Taylor, D. (2012), *International drug control: Consensus fractured* (Cambridge University Press), pp. 219-278
38. That this includes Bolivia and Uruguay, states that have both adjusted their relationship to the Conventions in the face of INCB hostility, demonstrates how the Board is capable of continuing dialogue within a 'reformed' or 'modernized' treaty framework (See for example paras. 217-221 & 524.)

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This response to the **INCB Annual Report for 2016** begins with an analysis of the President's Foreword, the last of Mr. Sipp's presidency, before moving onto discussion of the thematic chapter, which this year focuses on women and drugs. From here it examines the INCB's approach to human rights, harm reduction and public health, and ends with an analysis of the Board's reaction to the shifting policy landscape.