

THE UNITED NATIONS REVIEW OF GLOBAL POLICY ON ILLEGAL DRUGS – AN ADVOCACY GUIDE FOR CIVIL SOCIETY

VERSION ONE – OCTOBER 2007

In the spring of 2009, the political representatives of all national governments will gather in Vienna to decide a way forward for the management of the international drug control system. The outcome of this meeting, and the process of review and preparation that precedes it, is at the moment uncertain, as many member states are questioning the value of a continuing reliance on law enforcement and supply reduction to resolve drug problems, and are pushing for a greater emphasis on policies and programmes that focus on the health and social consequences of drug markets and drug use.

Civil society organisations around the world are currently considering how best to get involved with this process, and influence its outcome. This advocacy guide has been produced by the International Drug Policy Consortium (www.idpc.info) to give NGOs information on how the process is unfolding, and ideas on how they can engage in effective advocacy. This version of the guide has been produced in September 2007. It gives a background to, and explanation of, the review process, and a brief introduction to the issues that we will be focussing on as the process develops. Updated versions will be produced at key stages of the process, and distributed to all interested NGOs. The second version of this guide will be distributed in December 2007, and will include a more detailed discussion of the emerging advocacy positions promoted by the IDPC, and details of the preparations for the 2008 Commission on Narcotic Drugs, to be held in March 2008 in Vienna.

The IDPC will also be hosting a series of workshops over the next 18 months, that will provide our partners with the opportunity to debate the issues, network with government officials, and decide on next steps in the process. The next in this series of meetings will be held in late January 2008.

HOW IS THE DRUG CONTROL SYSTEM ORGANISED?

The present system of worldwide drug control is based upon three international conventions. These are the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. These enjoy widespread adherence with, as of July 2007, 183 states being Parties to the first and second of the three conventions, and 182 to the third.

A number of agencies are involved in the functioning and oversight of the conventions. These include the Economic and Social Council (ECOSOC), the Commission on Narcotic Drugs (CND or Commission), the International Narcotics Control Board (INCB or Board) and the United Nations Office on Drugs and Crime (UNODC or Office).

ECOSOC serves as the central forum for discussing international economic and social issues, and for formulating policy recommendations addressed to Member States and the United Nations system. The UN Charter entrusts ECOSOC with international economic, social, cultural, educational, health and related matters. In order to perform these functions the Council established various functional commissions, including the Commission on Narcotic Drugs.

The CND is the central policy-making body for the UN drug control system. Its brief includes the conduct of ongoing analysis of the global drug situation and the development of proposals designed to combat drug-related problems and to reinforce the system of controls. As a formally constituted organization of the UN, the CND meets annually for a period not exceeding eight days. The Commission comprises 53 UN member States, elected by ECOSOC. Its functions are assigned to it by the drug control conventions. These provisions authorize the CND to consider all matters related to the objectives of the Conventions and to oversee their implementation. As a treaty organ under the 1961, 1971 and 1988 Conventions, on the basis of recommendations by the World Health Organization (WHO) or the INCB, the Commission decides the regulatory measures to be taken on narcotic and psychotropic drugs and precursor chemicals. The body therefore plays a pivotal role in all international drug policy making. The Commission relies on the UNODC for administrative and technical support.

The INCB is the “independent and quasi-judicial” control organ for the implementation of the drug control treaties. The Board was created under the Single Convention and was established in 1968. It is technically independent of Governments, as well as of the UN, with its 13 individual members serving in their personal capacities. The 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 governments. They are elected by ECOSOC and can call upon the expert advice of the WHO.

The Board has the authority to assess worldwide scientific and medical requirements for controlled substances based on estimates from member states and subsequently allocates quotas among Parties in an attempt to prevent leakage of drugs from licit sources into the illicit market. It also monitors compliance with the provisions of the drug control conventions. Areas of concern can be raised at different levels from individual state to the UN General Assembly. The INCB itself has no power to enforce the Conventions. However, when highlighting to the Parties, ECOSOC and the CND a perceived failure to carry out obligations under the 1961 and 1971 Conventions, the INCB can recommend to Parties that they stop the import of drugs, the export of drugs, or both, from or to the country or territory concerned. Such a sanction has never been applied and the Board has relied on the tactic of “naming and shaming” what it considers to be errant Parties in its Annual Report. Recent years have seen the INCB assume a wider role, reporting on trends in drug trafficking and illicit use, monitoring precursor chemicals in line with the provisions of the 1988 Convention, and commenting on policy developments among UN Member States.

The UNODC is the UN agency responsible for coordinating international drug control activities. It was established in 2002 and currently has around 500 staff members worldwide. Its headquarters are in Vienna and it has 21 field offices as well as a liaison office in New York. The UNODC was established by the UN Secretary-General to “enable the Organization to focus and enhance its capacity to address the interrelated issues of drug control, crime prevention and international terrorism in all its forms.” In fulfilling its mandate “to assist Member States in their struggle” against these issues the UNODC has a three pillar work programme. This consists of research and analytical work, normative work and field-based technical cooperation projects. To this end, the UNODC Drug Programme, formerly the United Nations International Drug Control Programme (UNDCP), runs alternative development projects, illicit crop monitoring and anti-money laundering programmes. As the lead agency for international drug control activities, the UNODC plays an important role in assisting Member States, particularly so-called “producer countries” and developing states, to effectively address a wide range of drug related problems. It also occupies a unique position for the compilation global data sets, to track and investigate international trends in drug production, manufacture, trafficking and use and to act as a central hub for the dissemination of best practice in the formulation and implementation of drug policy.

WHAT ARE THE STRUCTURAL WEAKNESSES OF THE SYSTEM?

Although to a certain extent inter-related, key weaknesses within the current UN drug control system can be identified within the following areas:

a) Institutional Structures

INCB - It is in relation to both the Boards “quasi-judicial” role and its role in scheduling substances where weaknesses exist in the way the *INCB* currently performs its duties. Within this context, four interconnected issue areas can be identified.

- Treaty interpretation – The *INCB* currently holds very limited, rigid legal and non-universal interpretations of the conventions. This frequently results in problematic statements and positions within *INCB* annual reports and in private letters to national Governments. In acting as a guardian rather than a watchdog of the conventions, (See http://www.internationaldrugpolicy.net/reports/BeckleyFoundation_Report_07.pdf) the *INCB* generates tensions with some member states and other parts of the international drug control system.
- Scheduling: Conflict between the *INCB* and WHO on scheduling decisions – recent years have seen the *INCB* overstepping its mandate to provide unsolicited scheduling advice to member states. This is particularly problematic because in all such cases the Board’s recommendations contradict those coming from the WHO; the body responsible for scheduling issues.
- Mandates: The Board’s Mission Creep – While the *INCB*’s mandate is clearly laid out within the conventions, it is currently exceeding its authority and has over recent years illegitimately extended its role within the international drug control system. Among other places, evidence of this can be found in the current attitude of the Board towards member states, with whom it apparently sees itself as at least an equal, and other parts of the UN system (for example, WHO) of which it apparently regards itself as superior.
- Culture of secrecy - An issue that complicates all the above mentioned matters is the cloud of secrecy under which the Board operates. For instance, all the Board’s missions, communications and letters (thousands each year) are confidential. Furthermore, there are no observers allowed at the *INCB* sessions and no minutes are available, even to member states. The result of such a culture of secrecy is that the *INCB* lacks any accountability procedure and has arguably become the least transparent and most secretive body within the UN.

UNODC – The *UNODC* itself states that “A comparative advantage for the *Office* is its very DNA as a multilateral entity, namely as an honest broker representing the interest of no single Member State.” However, in reality the issues of funding and diplomatic considerations have an enormous impact upon the implementation of this “guiding principle,” the type of projects that become operational, and ultimately the overall functioning of the *UNODC*. The *Office*’s consolidated Budget, consisting of the budgets of the drug and the crime programmes, generally relies upon voluntary contributions from donors for around 90% of its funding. The remaining 10% comes from the regular UN budget: that is to say, funds given to the UN as a whole to pay for staff, basic infrastructure and some activities. Recent years have seen a growing trend by donors to earmark their voluntary contributions to specific projects and activities. For instance, in the period 2006-2007 between 70-80% of voluntary contributions were earmarked. As such at any point in time, the *UNODC* is operating with an incomplete ‘jigsaw’ of funding, with a high proportion of planned activities waiting for funds to be raised, and a wide range of donors demanding that the office pursue their own, often conflicting, policy and programme priorities. Such a fiscal reality leads to an unhelpful politicization of *Office* activities and weakens its role within the system. The *UNODC* performs at its strongest when it is providing objective analysis and expertise to member states, and facilitating policy debate between conflicting positions. However, all too often, the *Office* has operated as a political actor in its own right, defending the effectiveness of existing policies and programmes.

(b) System Cohesion

While there is a considerable degree of substantive agreement on drug policy between UN agencies, significant inconsistencies do remain. These exist within both the immediate confines of drug control framework, and between this framework and the wider activities and goals of the UN. The degree of inconsistency is fluid

as both the politics and science surrounding drug policy issues alter over time. Nonetheless, it is possible for example to identify ongoing differences in approach between, on the one hand, the law enforcement orientation of the UNODC and the INCB's rigidly zero-tolerance interpretation of the conventions and, on the other hand, the health and development orientation and wider interpretation of the conventions of other bodies such as UNAIDS, the United Nations Development Programme, WHO, World Bank and the United Nations Population Fund. Furthermore, law enforcement dominated strategies demonstrate a lack of cohesion between some sections of the international drug control system and broader UN principles on Human Rights, as laid out in instruments like the UN Charter and more recently the UN Millennium Goals.

(c) *CND Mechanism*

One of the negative effects of the lack of system cohesion is that member state delegates to the main UN forum for discussion and decision-making on drug policy are overwhelmingly drawn from the foreign affairs and law enforcement disciplines. This reinforces the primacy of law enforcement perspectives on an issue that has much wider social, health and human rights implications.

There are also procedural difficulties - for many years, all disputes within the CND have been settled by consensus. As one analyst notes, "This means that every decision usually comes down to the lowest common denominator – the one that is the least offensive to the largest number." Such an operating process also means that it is easy for one member of the Commission to block a resolution. As a result "face-saving" solutions are often sought which leads to the vague wording of resolutions. Furthermore, the structure and final wording of resolutions is also often subject to "horse-trading" between CND members, with factors external to the issue drug control sometimes influencing policy positions within the Commission.

As a result, the annual gathering of member states to discuss drug policy invests an inordinate amount of time and energy in receiving long and self-congratulatory statements from member states, and rarely engages meaningfully in discussion of the true dilemmas inherent in the system, as member states avoid the diplomatic risks of raising difficult issues.

Finally, the entire process takes place with very little involvement of Civil Society, and in particular of those (such as drug users or growers representatives) who are most affected by the issue. In other areas of UN activity, NGOs are much more integrated into the policy making process (for example UNAIDS, where NGOs actually sit on the Programme Co-ordinating Board). However, in the drug control system, NGOs have too often been seen as a threat to the quality of discussion, rather than the expert resource that they are. Representatives of user groups or growers, for example, can bring detailed insight to the governmental discussions.

WHAT IS THE SIGNIFICANCE OF THIS REVIEW?

In June 1998, the UN General Assembly met in a Special Session (UNGASS) to address the global response to illegal drugs. This 1998 UNGASS culminated in the adoption of a declaration committing member states to the achievement of significant and measurable results in reduction of illicit supply and demand for drugs by the year 2008. A review of progress against these objectives has been initiated, and will be delivered to the 2008 CND. Doubts have already been expressed regarding the objectivity and credibility of this review – it is relying almost entirely on data officially submitted by governments to the UNODC, and will not be addressing some of the key policy dilemmas that are related to drug use and drug markets, such as the prevention of HIV infection. Despite these limitations, the review is sure to show that the hoped for significant reductions in supply and demand have not been achieved – it is how member states react to this reality that will dictate the next 10 years of international drug policy.

At the 2007 meeting of the CND, delegates agreed that following the 2008 CND meeting, a period of global reflection will begin that will lead into the political meeting at the 2009 CND to draw conclusions and plan for the future. This 2008/09 process is a significant opportunity for civil society to engage with issues surrounding the current international drugs control regime, and advocate for essential reforms, particularly in the areas of HIV/AIDS and human rights.

There is increasing evidence that current approaches pursued within the international drug control regime undermine efforts to promote both an effective response to HIV by undermining official support for harm reduction interventions at both the domestic and international levels. At the same time, the current international approach to drugs has the effect of encouraging and justifying the treatment of at least 200 million drug users as criminals, which in many countries can lead to human rights abuses carried out against people who use drugs under the guise of law enforcement, supply reduction or treatment programmes (including mass incarceration, extra-judicial killings, coercive drug treatment, and the use of the death penalty for drug offences).

The determination of the UN system to stem the production of cocaine and heroin has also led to the pursuit of policies in source countries that, while not achieving their aim of reducing production, have contributed to the environmental, social and economic problems experienced in drug producing areas. Meanwhile, the power and reach of the criminal organisations that profit from the illegal drugs trade continues to grow.

The 2008/09 review process therefore presents a significant opportunity to address these policy challenges – it is no longer sufficient for the UNODC and member states to simply reaffirm existing programmes. Civil society has a significant contribution to make in this regard, by promoting constructive ideas for improving the international drug control system, and ensuring that government representatives to the 2009 meeting seriously reflect experience and public opinion from their own countries.

WHAT ARE THE KEY ISSUES FOR THE REVIEW?

While Civil Society organisations around the world will have a wide range of perspectives and priorities for the review, the IDPC has proposed a focus on four key issues where it is felt that current policies and programmes could realistically be improved through this process:

STRUCTURAL REFORM – At a national and local level, the structures for creating, implementing and reviewing drug policy have become increasingly cross-departmental, as administrations realise the interconnections between the law enforcement, health and social aspects of the problem. Most countries have now enacted national strategies that are overseen by co-ordinating bodies with representation from all relevant branches of government. No such mechanism exists within the United Nations programme. In the absence of a system-wide strategic mechanism, the UNODC and CND focuses on its own crime and control agenda to promote a law enforcement perspective. This perspective is reinforced by the INCB's rigid interpretation of the conventions. Meanwhile, the much larger UN agencies that deal with the consequences of the drug market (For example, WHO, UNAIDS, UNDP and the Human Rights bodies) play only a marginal role in drug policy formulation and programme implementation. This needs to change to a system where a co-ordinated strategy, that reflects a balance between the concerns and standards of all the relevant UN agencies, is developed in a truly collaborative fashion.

A related challenge is to refocus the role of both the UNODC and INCB. These agencies should be objective and independent centres of expertise that support member states in analysing the complexity of the drug problems in their territories, and the development of effective responses. All too often in practice, the leadership of both bodies have assumed a political role, championing a particular policy perspective, even in the face of clearly divergent views amongst member states, or amongst different UN agencies. The opportunity of this 10-year review should be used to adjust the role of these two bodies. In the case of the UNODC, this would mean expanding its research and analysis role, and its dissemination of advice and guidance to member states based on the evidence base it has collated. In the case of the INCB, this would mean returning to its original mandate of identifying functional weaknesses in member states' adherence to the drug control system, rather than getting involved in matters that should remain the preserve of national policymaking.

IDPC Position Paper 5 (<http://www.idpc.info/php-bin/documents.pl?ID=1000069>) goes into these issues in more detail, and we aim to bring forward constructive recommendations in the coming months for how a functional structure for drug control can be created through the current UN reform agenda, that member states can see as an improvement on current arrangements.

HARM REDUCTION - This phrase has been mainly associated over the last 20 years with the delivery of public health measures to drug users that help them avoid HIV and other infections, but also overdoses and other negative health consequences that arise from their use of drugs. It has also become somewhat of a 'political football' in drug policy circles, as this range of activities represents the clearest and most widespread departure from a policy of zero tolerance that focuses effort entirely on activities that seek to minimise or eradicate drug use and drug markets. The concept of harm reduction, therefore, has a much wider implication for drug policy and programmes, particularly as the UNODC itself now no longer talks about a goal of eradicating drug use, but of the goal of containment of the market at current levels. The IDPC, while sceptical of the claims that containment is being achieved, consider that this change of discourse allows for a shift of focus of international efforts towards responding to the consequences of drug use. This would mean greater efforts to respond to the health risks of drug use, but also to the social consequences such as addiction, the impact on family and community life, and drug related crime. Even within the law enforcement arena, such a realignment of focus would mean moving away from the obsession with eradication of crops, seizing drugs and arresting users, to measuring success for example in terms of minimising the power and profits of organised crime, or of the extent of drug related corruption.

Such a shift of focus would not require any change to Conventions or national legislation, but would have an enormous impact on the design of UN programmes – very little attention has been paid over the years at UN level to the social and community consequences of drug use, and the UN drug control agencies have at times acted as a brake, for example, on the scaling up of HIV prevention measures amongst drug users. A more productive future strategy would involve a clear commitment of the UN agencies to tackling the consequences of drug use and drug markets, and the expansion of programmes that support demand reduction, crime reduction, and HIV prevention efforts. IDPC Position Paper 2 (<http://www.idpc.info/php-bin/documents.pl?ID=1000059>) goes into this issue in more detail, and we intend to work with member states in the coming months to promote the adoption of these concepts through the review process.

SOURCE COUNTRY ISSUES – In recent years, global production of opium has become more concentrated in Afghanistan. Similarly, the majority of global cultivation of coca is concentrated in Colombia, Bolivia and Peru. The predominant response of the authorities has been to attempt to forcibly eradicate these crops, or deter farmers from cultivating them through harsh law enforcement strategies. These efforts have led to limited success, and have serious consequences for legitimate economic and social development, and the human rights of affected communities. Most farmers grow crops used in illicit drug production as a means of basic subsistence. Eradicating their often only source of income prior to the establishment of alternative livelihoods results in a downward spiral of poverty for those affected, and ensures that they will replant, leading to the geographical expansion of such crops. The continued promotion of forced eradication programmes in the Andes and Afghanistan cannot be justified either in terms of the prospects for success in reducing overall drug supply, or of their impact on the local situation. Forced eradication programmes are often counter-productive, generating social conflict and political violence and undermining government legitimacy. Aerial eradication programmes under 'Plan Colombia' have been implemented at the cost of billions of dollars since 2002 – but in the 5 years since, the amount of cocaine production in Colombia has risen by 20%. Western troops have been present in Afghanistan since 2001 – but the levels of opium production in the last two years have been higher than ever. It could be argued that these campaigns need more time, and that eventually they will produce results, but the evidence from countries where cultivation has declined suggests that the development of realistic alternative livelihoods and legitimate social structures is much more effective in undermining the power of organised crime in these areas.

The aid and development agendas promoted by, for example, the UNDP and the World Bank represent a much more realistic solution to the poverty and lawlessness of current areas of drug cultivation, than the continuation of eradication programmes that are mainly directed at poor peasant farmers. Many member states support this development-led approach, but others continue to promote forced eradication programmes – the UN review should re-assess the prospects for success in pursuing enforced eradication, and set out a future strategy that prioritises the rights and needs of the citizens in areas of cultivation.

IDPC Position Paper 3 (<http://www.idpc.info/php-bin/documents.pl?ID=1000064>) goes into these issues into further detail, and we intend to bring forward proposals for the priorities and principles that should be incorporated into future strategies for international action in areas where crops used in the production of illegal drugs are cultivated.

HUMAN RIGHTS – It is becoming increasingly clear that there are many aspects of the implementation of the global drug control system that potentially contradict the human rights and judicial standards that are promoted in other parts of the UN system. For example:

- More than 30 member states still retain the death penalty for drug law offences, and several have continued the practice of public execution of drug users and dealers to ‘celebrate’ international anti-drugs day on June 26th.
- Police and military action that is purportedly aimed at tackling drug markets can involve extrajudicial killings, torture and detention without charge or trial.
- Campaigns of eradication against specific crops, or against the use of specific substances, can result in attacks on the human rights of certain groups.
- Law enforcement efforts to identify, arrest and punish drug users can lead to the breach of rights to privacy, of normal standards of criminal justice process, and of proportionality in sentencing.

As the process of UN reform is increasingly calling for cohesion between the policies and programmes of the various UN agencies, we should at the very least expect that the drug control agencies clearly condemn any activities undertaken in the pursuit of drug control, that contravene international human rights and judicial standards. The IDPC is planning to produce a paper in early 2008 that examines these tensions, and that makes recommendations for greater consistency of UN action between the two areas

HOW CAN NGOS GET INVOLVED?

The opportunities for NGO involvement in UN drug policy processes have in the past been very limited, but there are promising signs for greater engagement this time around. NGOs that are interested in contributing to these debates, and influencing the outcome, have the following options for engagement:

THE ‘BEYOND 2008’ INITIATIVE – The Vienna NGO Committee has been allocated funding to organise a series of consultation seminars for NGOs in each region of the world. These seminars will take place between September 2007 and March 2008, and will provide a platform for NGOs to debate the impact that the global drug control system has had in their country or region over the last 10 years. The dates and venues for the seminars in your area can be found on the VNGOC website (www.vngoc.org). The emerging themes from these consultations will be reviewed at a global NGO conference to be held in Vienna in July 2008, the conclusions from which will be circulated to member states, and formally presented at the 2009 political meeting. The VNGOC website also contains a downloadable questionnaire that NGOs can complete and return – the information from these questionnaires will be collated and presented to policymakers.

THE IDPC PROGRAMME – IDPC members are developing an advocacy plan for the UN review. This plan will be based on the 5 principles for drug policy that have already been agreed by IDPC members (<http://www.idpc.info/php-bin/documents.pl?ID=1000043>), but there are no constraints on NGOs who are not current members of the IDPC becoming involved in this work. If your organisation supports these principles, and wishes to work through the IDPC to promote them through the review process, you can help our work in any of the following ways:

- Helping to develop advocacy ideas and materials. We held an initial meeting in Lisbon in September 2007 to discuss the key issues to be pursued over the next 18 months, and identify the appropriate materials and advocacy approaches. Interested parties will thereafter be involved in refining positions and processes through a series of meetings and regular email exchanges.
- Expanding channels of communication with policymakers. As decisions on the future shape of drug control will be made by national governments, it is crucial that we maximise the number and quality of our contacts with responsible officials and politicians, who will represent their country at the

review. NGOs involved in this process should therefore seek to identify the relevant individuals in their governments, establish contact to publicise the IDPC positions, and assess the level of support or resistance.

- Engaging the interest of NGOs and government agencies in related fields, such as health, development and human rights. As mentioned above, the impact of drug control policies on these policy areas has so far received too little attention, and there is a lack of co-ordination at UN level between the responsible agencies. NGOs involved in this process can help to identify key actors, and seek to get them involved.
- Mobilising political and public opinion. Most previous UN gatherings to discuss drug policy have had very little media or parliamentary scrutiny - despite the importance of the issue, few commentators relate the UN process to domestic drug policy issues. NGOs involved in this process should therefore seek to create interest in this process amongst the media and politicians in their own country, by identifying interested journalists in key media outlets, placing articles and editorials reflecting our advocacy positions, disseminating information to politicians, and stimulating political debate during the preparation of the government position on the review.

INDEPENDENT ADVOCACY

Of course, any individual NGO (or group of NGOs) may have their own ideas on the issues to be covered, or the advocacy approaches to take, that will not be possible to pursue through the two structures described above. You may therefore prefer to develop your own advocacy plans and tactics. A multiplicity of positions and approaches will be a sign of a healthy debate, and the IDPC would be keen to continue to share information with any groups working in a constructive manner to influence the review.

WHAT HAPPENS NEXT?

The IDPC will continue to develop constructive proposals for member states to pursue through the review process, and to provide information and support to its members and other NGOs as they pursue their advocacy activities. Updated versions of this advocacy guide will be produced and disseminated as the review process unfolds, and regular meetings will be organised for NGOs to discuss the emerging agenda, and agree advocacy plans. The first of these was held in Lisbon in September 2007, and the next is planned for the end of January 2008.