

Response to the 2010 Annual Report of the International Narcotics Control Board

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Introduction

With Professor Hamid Ghodse once again President of the International Narcotics Control Board (INCB or Board) – his tenth time in the role since 1993 – and a return to the position after a two-year absence, it was always likely that the *Annual Report* of the INCB for 2010 would follow more or less the same line and tone as it has in previous years. The publication presents an impressive array of technical information on the state and operation of the international drug control system; a system constructed with the aim of managing the global licit market for narcotic and psychotropic substances for medical and research purposes while simultaneously suppressing the illicit market. Similarly, the predominantly descriptive content, a “snapshot of the current drug control situation throughout the world” (p. vi), is again periodically punctuated with references and comment on certain policy issues. These are mainly observations on what the Board perceives to be the strengths and weaknesses of the system as it relates to national level policies. However, as IDPC has highlighted in previous responses, examination of this year’s *Report* reveals the Board’s tendency to apply both a very narrow and a selective interpretation of the drug control conventions. Consequently, the *Report* for 2010 reveals not only the Board’s continuing habit of exceeding its mandate, but also an enthusiasm for censuring what it regards as moves towards the liberalization of policy practice while preferring to remain silent on other areas that are within its purview and merit attention. This year’s *Report* certainly reflects some positive changes in the Board’s outlook. Unfortunately, these are still outweighed by familiar negative practices and positions.

The INCB is the ‘independent and quasi-judicial’ control organ for the implementation of the drug control treaties. The Board was created under the 1961 Single Convention on Narcotic Drugs 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 Organization (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 the Economic and Social Council (ECOSOC) and can call upon the expert advice of the WHO.¹ In addition to producing a stream of correspondence and 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.

This response to the Board’s *Annual Report for 2010*² (INCB Annual Reports are usually published in the spring of the following year) and its accompanying supplementary report, *Availability of internationally controlled drugs: Ensuring adequate access for medical and scientific purposes*,³ is organized under 5 inter-related headings. These are: the INCB’s position on drugs and corruption; its ongoing tendency to operate beyond its mandate; the Board’s reluctance to engage with a number of issues of tension and ongoing concern (human rights, harm reduction and coca leaf chewing); its encouraging position (or more appropriately lack of critical position) on the decriminalization of drug possession for personal use; and the INCB’s assessment of ensuring adequate access to controlled drugs for medical and scientific needs.

Corruption and the international drug control regime

The opening chapter in this year's *Report* focuses on the problem of drug-related corruption. While one would expect corruption to be described as an intrinsic harm, the selection of the topic is framed within terms of such activity "undermining international efforts to *eliminate* problems related to controlled drugs" (President's Foreword, p. v, emphasis added). This is a somewhat impractical outlook within a policy environment where absolute terms like 'eliminate' are being replaced by more nuanced ones such as 'manage'. This choice of theme for Chapter 1 also demonstrates the Board's continuing pursuit of the kind of 'mission creep' that we have remarked upon in recent years.⁴ Within this context, the INCB acts beyond its mandate as laid out within the drug control conventions. The Transnational Institute's review of this latest *Report* refrains from engaging at all with the chapter on corruption, regarding it, with some justification, as lying beyond the remit or the expertise of the Board.⁵ While comment beyond its mandate is not new, this is the first time that the Board has chosen to comment upon issues which, although certainly of great relevance to drug control, fall more directly under the auspices of the UN Convention against Corruption and the UN Convention against Transnational Organized Crime.⁶ Nonetheless, as it forms an important element in the overall mix of this year's output and raises broader questions about the operation of the current control system, we intend to discuss its contents here.

In terms of structure, the chapter is divided into three sections, appended by a brief set of recommendations. The first section examines the nature of 'drug-related corruption', and explores its impact. The second section investigates corruption and drug control, and illustrates corruption in action, while the third looks at ways of combating the problem.

Introducing the problem in paragraph 1, the *Report* laments the far-reaching and corrosive influence of what it calls "drug-related"

corruption and intimidation. It is perhaps worth remarking at the outset that these are more properly conceptualized as *drug-policy*-related phenomena, for there is nothing intrinsic to drugs, as a commodity, which uniquely drives those who deal in them to engage in violence and corruption. In fact, the first paragraph of the chapter itself acknowledges that "violence and corruption are *integral parts of illicit drug markets*" (emphasis added). The Board repeatedly outlines the existence of corruption within governance and law enforcement structures, and underlines its pernicious effects, arguing that the problem "must be addressed more resolutely and more systematically" (Para. 7).

"The stakes are high," (Para. 7) declares the Board. In this recognition, it is echoing the analysis of former UNODC Executive Director, Antonio Maria Costa, who described the illicit market as the foremost of a series of "unintended consequences" of the global drug control system.⁷ Here, the INCB is extending that analysis to include an acknowledgement that along with the illicit market come corruption and violence. A number of recommendations are made to assist governments in countering the corrupting influence of the wealthy organized crime groups that control the trafficking and production of illicit drugs. It is questionable, however, whether the *Report* goes far enough in its scrutiny of the question to shake off its reputation for somewhat entrenched and inflexible thinking. Despite growing calls from a diverse range of sources for a fundamental review of the present UN drug control system,⁸ the Board has been unwilling to discuss, or even to mention, the possibility that regulatory reforms (such as decriminalization or legalization) may reduce the problems associated with drug markets.⁹ This is despite its conviction that violence and corruption are built into illicit markets operating with the scale, sophistication and endurance of the market for illicit drugs.

The Board explains that its main interest in this chapter is to identify practical measures to prevent corruption in drug control, at both

national and international levels (Para. 8). Somewhat contentiously, the text claims it was the need to fight trafficking and the associated violence and corruption that led to the Board's formation in 1961. To make this claim arguably stretches the point – in fact, the Board was conceived as the successor to a previous agency, the Permanent Central Opium Board, which was originally established by the League of Nations and whose core mandate consisted predominantly in the regulation of the licit trade, in cooperation with national governments.¹⁰

The *Report* also observes that there “may not be universal agreement on a definition of corruption” (Para. 11). As a result, legal instruments such as the UN Convention against Corruption oblige signatory states to criminalize specific acts coming under that term's very broad umbrella, such as bribery, illicit enrichment, abuse of position, misappropriation of funds and so forth (Para. 13). The Board notes that there are cultural and historical differences of perception in what counts as corruption, with some societies regarding practices such as gift-giving, family-related reciprocities and so on as perfectly acceptable modes of social interaction and exchange. The Board makes an important point, but is again wary of examining some of the implications, which reveal the historical origins of the drug control treaties in the political projects and value systems of European and North American cultures. In a comment on the effects of new geopolitical borders in the opium-growing zones of Asia, Pierre-Arnaud Chouvy observes that, “for many merchants, activities suddenly termed smuggling or trafficking are nothing else than traditional trading turned illegal or traditional goods turned illegal; for instance what is now called smuggling was normal among the Pashtun nomads of eastern Afghanistan for many generations”.¹¹ The Board's pronouncement that, “such cultural differences should not be used to justify corruption” (Para. 14) does little to alter the real effects engendered by the imposition of the demarcations and legalities of modern

nation states upon complex traditional cultures organized around entirely different modes of social and economic relationships and alliances. The considerable difficulties arising from such clashes of cultural definition around the problem of corruption are invoked but not interrogated in sufficient depth by the Board.

The *Report* is surely right in claiming that “illicit drug markets are complex and constantly changing; they also tend to be quite resilient...” (Para. 16). This understates the point, as illicit drug markets have expanded exponentially and become greatly diversified over the last century of drug control. The Board allows that drug control mechanisms are themselves susceptible to corruption, but finds cause for congratulation in the case of *Operation Clean-up* in Mexico, in which several very senior policemen, some of whom headed their agencies, were convicted of corruption. “That is an example of how Governments are capable of fighting pervasive drug-related corruption at the highest level”, comments the text. Repeating a now familiar approach to some topics worthy of critical comment, the Board does not address broader systemic problems within Mexico and places the instance of *Operation Clean-up* in the context of the escalating violence of the government's “war” with illicit trafficking groups, and continuingly high levels of corruption and impunity. This provides another example within this year's *Report* of the INCB's “selective reticence”: a term used by IDPC to describe inconsistencies within the Annual Report and the associated habit of the Board to fail to engage with issues where its mandate would warrant critical comment or response.¹²

In detailing some of the many problems associated with obtaining knowledge of how far corruption has spread, and illustrating the vulnerability of diverse parts of the drug control system to it, the *Report* does provide a fair account. It notes that “there is a growing realization that police corruption is not always just an aberration”, but that it is often “systemic

and lasting" (Para. 33). Judicial, military and political levels are likewise susceptible to the corrupting influence of global organized crime networks; in severe cases, the structures of the state may be affected at every level, as is illustrated in the recent report on Afghanistan by the International Crisis Group.¹³ However, when it comes to policy prescription – what should be done about these problems – the *Report* is less constructive. For example, informing us that, "Dismantling the criminal organizations involved in drug trafficking or, at the very least, disrupting their activities is a prerequisite for successful drug control strategies" (Para. 51) is all very well as far as it goes, but it does not acknowledge the reality that the dismantling of one group invariably leads to the emergence of new groups and problems. To be fair, this and the subsequent paragraph do go on to recognize some of the difficulties involved in combating organized crime, and suggest recourse to recently developed enforcement measures such as controlled deliveries (where consignments of drugs are identified but allowed to proceed to their destination under surveillance),¹⁴ electronic surveillance techniques, infiltration, and international cooperation in order to interfere with criminal operations. The importance of identifying money-laundering and tracing illegally acquired assets are also highlighted.

In order to combat corruption amongst those tasked with the interdiction of illicit drug markets, the Board recommends that monitoring measures be put in place to oversee the law enforcement and justice sectors, and that deterrence is achieved through investigation, prosecution and the imposition of serious penalties. In an interesting and provocative response to the Board's *Report* for 2010,¹⁵ Harm Reduction International (HRI, formerly known as the International Harm Reduction Association) examines its recommendations and questions whether Board applies them to its own processes. For instance, does the INCB meet its own requirements in terms of transparency,

disclosure and accountability? Based on a scrutiny of the Board's mode of operation, HRI answers the question with a resounding "No". HRI is not, of course, suggesting that the INCB is corrupt, but is rather calling upon it to "practice what it preaches".

It would be inaccurate for us to dispute that some of the measures proposed by the INCB in this chapter would meet with some success, some of the time. Efficient, transparent and objective systems of recruitment into the police and customs services; the mapping, through experience, of particular nodes of vulnerability to corruption within the enforcement and criminal justice networks and circuits; the declaration and registration of economic assets; the monitoring of the discretionary practice of police officers and prosecutors – the combined effect of these and other measures listed in the *Report* would be likely to impede the efforts of organized crime networks to shape the landscape of policy and enforcement to suit its own objectives.

The fact remains, nonetheless, that there are some fundamental forces tending to undermine their effectiveness. Some of these are inherent in the logic of surveillance. Most of the measures proposed to counter corruption involve monitoring the agencies concerned more strenuously and closely. But there is an infinite regression in play here: who monitors the monitors? At a more empirical level, these types of criminal organizations have proven highly durable, establishing both crop cultivation and processed drug manufacturing capability from the 1930s onwards.¹⁶ Subverting the system has always been an essential element of their *modus operandi*, and they have always adapted to enforcement tactics used against them. In addition, there are new problems specific to the current situation. The high levels of use and the social "normalization" of recreational drug use amongst relatively large sections of the populations¹⁷ of developed countries seem likely to ensure that demand

for illicit drugs will remain with us in the near- and medium-term future. Where that demand exists, and a sophisticated, flexible and powerful illicit market continues to meet it, the problem of endemic and systemic corruption will remain. Attention has been drawn to this underlying dynamic on a number of occasions recently. For instance, the Latin American Commission on Drugs and Democracy, an initiative of former presidents Fernando Henrique Cardoso, from Brazil, César Gaviria, from Colombia and Ernesto Zedillo, from Mexico – countries that, by their own admission, have had some experience with drug related corruption – concluded that violence and corruption are the result of the current prohibitionist policies enshrined in the UN drug control system.¹⁸ Similarly, the Global Commission on Drug Policy, the successor of Latin American Commission, argues that “poorly designed drug law enforcement practices can actually increase the level of violence, intimidation and corruption associated with drug markets. Law enforcement agencies and drug trafficking organizations can become embroiled in a kind of ‘arms race’, in which greater enforcement efforts lead to a similar increase in the strength and violence of the traffickers. In this scenario, the conditions are created in which the most ruthless and violent trafficking organizations thrive. Unfortunately, this seems to be what we are currently witnessing in Mexico and many other parts of the world.”¹⁹

In this vein, measures to combat corruption will therefore need to move beyond the domain of tactical enforcement – at which the Board situates its present analysis and proposes its solutions – and extend into the political sphere where difficult and probably unpalatable choices await those with the political courage to broach them.

More mission creep

That the Board chose a topic beyond its remit as the focus of chapter 1 of this year's *Report* demonstrates what might be called a “perception gap” between the INCB's mandated role and the view of itself as *the* central treaty body within the international drug control system. Further evidence of this can be seen in the Board's position vis-à-vis the WHO; like the INCB, an important treaty body in its own right and one that is specifically mentioned within the 1961 and 1971 Conventions. The Board routinely sidelines the WHO, even in issue areas that clearly fall within the WHO's mandate. As discussed in the IDPC's Report of proceedings of the 2011 Commission on Narcotic Drugs (CND), this increasingly commonplace practice could be seen at this year's CND.²⁰ Displaying continuity of approach, it also remains evident within the Board's *Report* for 2010. As was the case in last year's *Report*, the INCB is still inclined to stray into the area of scheduling; a domain that, with the exception of advising on precursor chemicals listed in the Tables of the 1988 Convention, falls within the purview of the WHO and its Expert Committee on Drug Dependency (ECDD). To recap, according to Article 2 of the Single Convention and Article 3 of the 1971 Convention on Psychotropic Drugs, after deliberations of the ECDD it is the WHO that makes recommendations to the CND on scheduling a new substance, rescheduling a substance, or deleting a substance from the schedules altogether.

Within this context, the IDPC Response to the *Report* for 2009 discussed in detail the INCB's focus upon ketamine which, despite the contrary position held by the ECDD, it regarded as a substance that should be brought under international control.²¹ Although not as explicit, the Board's ongoing interest in the control of ketamine is also evident this year in Recommendation 22. Here it calls upon governments to use the secure section of its website to review information concerning any restrictions on international trade in the

substance that may be in place in other countries and “to respect those restrictions”.

It is perhaps unsurprising, although certainly still a point of concern, that this year's *Report* sees the Board continue to explicitly pass judgment on the issue of scheduling, although this time in relation to other substances. This is the case within the “Special Topics” section on “plant material containing psychoactive substances”. While it is useful that the Board points out such inconsistencies in relation to the treatment of plants and their alkaloids under the current treaty system, the INCB exceeds its mandate in recommending that governments “should consider controlling such plant material at the national level where necessary” (Para. 287). Its position on one example of such plant material, khat (*Catha edulis*), also directly contradicts previous WHO findings that stricter controls on the substance are not necessary.²² Similarly, despite no ECDD discussion on the topic, under “Recently Identified ‘Designer Drugs’”, the Board notes “in view of the fact that mephedrone is abused in several regions and appears to be smuggled from region to region, Governments might consider notifying the Secretary-General of problems experienced with the abuse of mephedrone on their territory, *with a view to adding the substance to any of the Schedules of the 1971 Convention*” (Para. 273 Emphasis added). In effect, the Board is therefore inviting member states to initiate a process that is the responsibility of the WHO; a point alluded in the European Union’s statement on the INCB report at the 2011 CND meeting.²³

While such behavior has in many ways become normal in recent years, an added complication involves the status of the ECDD. It became evident at the CND in March 2011, that a lack of funding has meant that the Committee has been unable to meet to discuss substance evaluation since 2006.²⁴ This is a serious concern. Without ECDD meetings, there will be no authoritative recommendations on scheduling and, as a result, the Commission will not be able to make decisions on the issue. Moreover, as

others have observed, within this context and despite its lack of mandate, the INCB appears to be trying to “fill that void” and provide recommendations of its own.²⁵ It is somewhat disingenuous, therefore, that the Board calls on the WHO itself “to resume its activities to assess new substances as soon as possible” (Para. 274. Also see Recommendation 43). A more appropriate request would be to urge Parties to the 1961 and 1971 Conventions to address the funding shortfall and allow the system that they created to function as intended.

Still much selective reticence

Since, as with the practice of mission creep, selective reticence seems now to be very much part of the Board’s operating culture, it is no surprise to discover further examples of such timidity on a number of issues within this year’s *Report*.

- **Human rights** – Although the centrality of human rights within drug control is flagged up in Professor Ghodse’s Foreword (p. vii), there are a number of cases where the *Report* itself adopts an inappropriate tone and fails to apply any human rights scrutiny. For example, in respect to Singapore, the Board notes “where diversion and abuse of buprenorphine had been a problem, a significant decline in such illicit activities became evident in 2009, owing to new legislation enforced in 2009 and stricter penalties imposed by the Government for illicit activities involving that substance” (Para. 540). With regard to the Maldives, the Board goes further and “notes *with satisfaction* the continued efforts of the Government of Maldives to address the growing problem of drug abuse” (Para. 574, emphasis added). Such comments ignore the fact that, in both cases, legislation has serious human rights implications. As HRI has pointed out, practice in Singapore involves caning drug users, especially after relapse when long-term

incarceration fails.²⁶ (Singapore also retains the death penalty for drug offenses despite recent constitutional challenge; another human rights issue that, once again, the Board fails to address.²⁷) Meanwhile, the Maldives imposes a minimum five-year sentence for possession of up to 1 gram of any drug. More than this is considered as trafficking; an offense carrying a 12-year minimum sentence. The Maldives also operates a “use” offense with a mandatory 5-year minimum sentence. Thus, as HRI notes “someone found in possession of cannabis, and whose urine tested positive” can receive a 10-year prison sentence. This happens within a country where around 80 percent of those incarcerated are held on drug-related offenses and most drug users do not receive legal representation. Added to this, authorities operate a compulsory rehabilitation program that is linked to the criminal justice system and allows for judicial corporal punishment.²⁸

As with last year's *Report* and beyond the thematic chapter 1, there is once again no critical commentary upon the tragic conditions surrounding the “war on drugs” in Mexico.²⁹ The Board notes “According to the Government, since 2006, more than 28,000 people have died in Mexico's campaign against drug trafficking organizations”. Yet, in applauding the “tremendous efforts... made by the Government of Mexico to combat drugs and disrupt the operation of major drug trafficking organizations” (Para. 83), the Board fails to comment upon the role of the authorities in generating such market violence (see Para. 396). This stands in stark contrast to other parts of the UN, notably the UN Human Rights Committee Review of Mexico in 2010 and the Committee on the Rights of the Child Review in 2011.³⁰

Lack of comment on the intersection between human rights and drug policy within these countries is illustrative of the disjuncture not only between comments within Professor Ghodse's Foreword and the main body of the

Report, but also the continuing disconnect between the Board's role as a purposive actor within the realm of drug control and the broader goals and principles of the UN system within which it operates.

- **Harm reduction** – The Board's treatment of the issue of harm reduction within the *Report* for 2010 can be seen in two ways. It is true that, as was the case in the previous *Report*, the INCB effectively side steps many of the more problematic aspects of earlier publications. For instance, once again the term harm reduction does not appear, inside scare quotes or otherwise, within the *Report*. Moreover, despite their operation in 7 other countries that were not mentioned,³¹ this year the Board was critical only of the operation of drug consumption rooms in Spain (Para. 123). As it did last year, the INCB also notes the operation of a multitude of Opioid Substitution Therapy (OST) programs, including both methadone and buprenorphine, throughout the document. Similarly, the objective manner in which the operation of diamorphine-based substitution treatment in Germany is mentioned (Para. 705) reflects continuing acknowledgement without criticism of the operation of this intervention by some states. Such a shift away from what has been a confrontational position on many aspects of harm reduction in the past can therefore be seen as the adoption of a more conciliatory stance.³²

Such an approach does not indicate the disappearance of reticence, or contradictory positions, on the issue of harm reduction, however. While mentioning OST, the Board continues to emphasize – if not privilege – its concern for diversion, particularly in the case of buprenorphine, over the expansion of treatment. Moreover, while noting in the supplement report, *Availability of Internationally Controlled Drugs*, that “adequate availability of medicines, including narcotic drugs and psychotropic substances, is an essential

part of [state] responsibility towards their populations” (Para. 130), it then notes without comment the adoption by the Russian Federation of its State Antidrug Policy Strategy 2010-2020 in its main *Report* (Para.708). As HRI notes, this Strategy actually prohibits the implementation of OST programs, thereby directly contravening the INCB’s call, but the Board fails to make any mention of this failure “of responsibility towards their populations”.³³ Despite acknowledging in 2003 that OST does not breach the drug control conventions, such a position reflects the Board’s ongoing reluctance to call to account countries that fail to make drug dependence treatment available to their citizens.³⁴

It remains telling that needle exchange programs (NSPs) retain an exceptionally low profile within the *Report*. More commonplace than OST, with 82 counties and territories engaging with the intervention compared to 73,³⁵ NSPs operate in states within most regions of the world. Yet, despite the mention of HIV/AIDS in relation to injecting drug use over 50 times, NSPs are only mentioned twice. These are in relation to Malaysia’s National Strategic Plan on HIV/AIDS for 2006-2010 (Para. 549) and Australian prisons (Para. 798), with the latter actually being incorrect. There are currently no needle exchange programs within prisons in Australia.³⁶ That the Board, caveats and contradictions aside, is willing to comment on OST but avoid any real, or accurate, comment upon NSPs indicates an ongoing and deliberately hesitant attitude towards the intervention. This remains the case despite being “widely regarded as the single most important factor in preventing HIV epidemics among IDUs”³⁷ and consequently an approach fully endorsed by other agencies within the UN system, including the WHO, the UNODC and UNAIDS. Ironically, the closest that the Board comes to endorsing the intervention is when, having noted that “the use of contaminated equipment for drug injection

was reported as the source of infection in over 50 per cent of the newly diagnosed HIV cases in Eastern Europe”, it highlights the “importance of providing assistance in drug abuse and HIV prevention, treatment and support among people who abuse drugs by injection...” within the region (Para. 756).

- **Coca leaf chewing** – Although less forthright than in previous years, the INCB continues to remind Parties of their obligation under article 49 of the Single Convention to abolish coca leaf chewing. In what has become a fixture of the *Annual Report*, the Board duly urges Bolivia (Para. 141), Peru (Para. 90), and for the first time Argentina (Para. 137), to ensure “full compliance” to the Convention. As the Transnational Institute notes, in strictly legal terms, the INCB is correct to remind countries of their obligations.³⁸ However, as IDPC has remarked on this issue, it is also within the Board’s mandate to highlight and urge resolution of the current inconsistencies and legal ambiguities within the system.³⁹ This is primarily the result of article 14 (2) of the 1988 Convention regarding “fundamental human rights’ and ‘traditional licit uses’”. In the case of Bolivia, the tension between the Single Convention and the 1988 Convention was deepened by a formal reservation to the latter stressing that its “legal system recognizes the ancestral nature of the licit use of the coca leaf”. While the issue of systemic inconsistency has been addressed by the Board in the past, for instance in its supplement to the 1994 *Annual Report, Effectiveness of the International Drug Control Treaties*,⁴⁰ it is surprising that of all its Reports this year followed the pattern of recent publications in focusing only on compliance. Mindful of the Board’s wide ranging commentary on a diverse array of issues, both within and beyond its mandate, its complete lack of mention of Bolivia’s ongoing moves to adjust its position relative to article 49 of the Single Convention, its own national Constitution and other legal commitments

(including the Universal Declaration of Human Rights and the UN Declaration on the Rights of Indigenous Peoples)⁴¹ was certainly more than an oversight. Maybe the legitimacy of Bolivia's moves within the legal parameters of the convention helps explain the INCB's silence on the issue. Whatever the explanation, the complete lack of comment is somewhat paradoxical since any move to reconcile coca related provisions of the 1961 and 1988 Conventions would do much for systemic coherence, a key issue of concern for the Board as a "watchdog" of the conventions.

A softening in approach: decriminalization

Much of the previous discussion has revisited the familiar and recurring themes of mission creep and selective reticence. Yet there are some positive developments within the Board's *Report*. Although a lack of negative comment upon harm reduction interventions should, as discussed above, be regarded as something of a double-edged sword, a similarly inert position in other areas can be seen in a more favorable light; particularly the Board's stance on the decriminalization of drug possession for personal use.

The Board does continue to maintain a critical standpoint on a number of cannabis related national policy choices and developments. For instance, it displays a rigid stance on the Dutch coffee shops (Para. 709), signals concern about medical cannabis schemes within the United States relative to the control requirements of the Single Convention (Para. 395) and welcomes the strong oppositional stance of the US Federal Government in relation to attempts to legalize cannabis under California's Proposition 19 (Para 394). Moreover, in relation to the defeat of Proposition 19 in November 2010, the Board makes the unsubstantiated claim that the "... result represents a recognition of the danger

of cannabis abuse and an affirmation of the international drug control conventions" (Para. 394). The notion that many voters within the Golden State had any idea of the existence of the UN drug control system seems farfetched.

Mindful of these hostile positions, it is noteworthy that the INCB chooses not to pass critical comment on the continuation of, or shifts towards, decriminalization of drug possession for personal use as it has in previous years. For example, last year Argentina, Brazil and Mexico were the focus of the Board's concern in this regard.⁴² This change in attitude is most clearly demonstrated in its reporting of the introduction of threshold quantities for the decriminalization of possession in the Czech Republic (Para. 699) and a similar approach is employed when noting proposals to amend legislation in New Zealand (Para. 770). While noting "The Board trusts that the Government will ensure that New Zealand fully complies with its obligations under the international drug control treaties when considering amendments to the national drug legislation", the *Report* tacitly acknowledges the legitimacy of such a legal approach within the current confines of the treaty system. Arguably, the INCB has little choice in the matter. With a steady stream of nation states considering or engaging with some form of decriminalization of possession for personal use, the Board's adoption of any other position would have made it look even more out of step with the realities of current policy trends. Erroneous interpretation of the conventions on this issue would have also done much to undermine its legitimate authority in other areas of concern.

The INCB and the availability of controlled medications

The 2010 *Report* includes a stand-alone supplement on the availability of internationally controlled drugs and the problems associated with ensuring adequate access to these substances

for medical and scientific needs.⁴³ This is an important aspect of the Board's dual function, and, as Hamid Ghodse's Foreword to the supplement mentions, the Board has "repeatedly voiced its concern about the disparate and inadequate access to controlled substances for medical and scientific purposes worldwide" (Supp. p. iii). This issue was flagged up by the INCB as early as 1989, and is indeed one area in which the work and public advocacy of the Board has provided some limited leadership and support for both human rights and developmental objectives. The enormous inequalities in access to pain relief between developed and developing countries amongst those suffering from the symptoms of serious health conditions represent a scandalous state of affairs, and any efforts to alleviate it are to be welcomed.

Recognizing the growing interest in this situation amongst both NGOs and international agencies such as the WHO, the 53rd CND in 2010 called upon the Board to report on the availability of controlled drugs for medical requirements. This standalone supplement to the *Report* answers that CND resolution. It highlights that the availability of opioid analgesics – the preeminent class of controlled drugs featuring in this topic,⁴⁴ since they remain the most effective method of treating moderate to severe pain – has in fact increased in recent years, with global consumption expanding by a factor of seven between 1989 and 2009 (Supp. Para 52). However, the vast majority of this increase has taken place in those regions that already had relatively high levels of consumption, such as North America, Western Europe and Australia and New Zealand. This means that large numbers of people around the world remain without the health benefits to which they are entitled under the Universal Declaration of Human Rights⁴⁵. The INCB's *Supplement* seeks to provide a thorough analysis of the global situation, to identify obstacles to the adequate provision of pain relief, and to offer a set of practical recommendations on addressing the problem.

In its mapping of the present state of availability of controlled medications, the Board observes that there is currently no universally agreed level of adequacy of consumption. In view of this absence, "the Board has internally, for administrative purposes, set some minimum standards to use when examining estimates of annual requirements for narcotic drugs submitted by countries" (Supp. Para. 44). These minimum measures, however, appear insufficient and problematic (see below for more information). The *Report* uses these standards to construct a representation of the distribution of the consumption of controlled drugs for medical purposes. Unsurprisingly, there is a strong correlation between the consumption of controlled medications and the Human Development Index (HDI); a United Nations Development Program statistical frame of reference for both social and economic development.⁴⁶

The Board reiterates the key objective of the international drug control treaties, particularly the 1961 Single Convention, which is to achieve a balance between the suppression of illicit drug use and the adequate provision of controlled drugs for use in medicine and scientific research. It claims that most governments fail to achieve this balance, owing to a set of "regulatory, attitudinal, knowledge-related, economic and procurement-related problems that adversely affect availability" (Supp. Para. 97). According to the WHO, "the drug control conventions that established the dual obligation of ensuring adequate availability of controlled medications and of preventing their misuse have existed for almost 50 years. Yet the obligation to prevent abuse of controlled substances has received far more attention than the obligation to ensure their adequate availability for medical and scientific purposes, and this has resulted in countries adopting laws and regulations that consistently and severely impede accessibility of controlled medicines".⁴⁷ The Board has to recognize its own role in tackling this imbalance of priorities.

The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has likewise drawn attention to the lack of access to adequate pain medication, finding this and other drug-related human rights violations to be “traceable ultimately to a disproportionate focus on criminalization and law enforcement practices at the expense of the enjoyment of the right to health and reduction of harms associated with drugs”.⁴⁸ As IDPC and others have pointed out, there has historically been a clear tension between the INCB’s rigid interpretation of the drug control treaties, which tends to reinforce the “climate of fear” surrounding the application of controlled drugs in therapeutic practice, and the very worthwhile work it is doing in its advocacy of more reasoned approaches with regard to these substances.⁴⁹

In a practical step to address the global imbalance and the relative or entire absence of controlled drugs in palliative medicines in certain countries, the Board addresses the problematic task of specifying levels of consumption that might be taken to represent adequate access. Following a discussion of the difficulties involved, it concludes: “The Board considers all levels of consumption of narcotic drugs below 200 S-DDD per million inhabitants per day inadequate” (Supp. Para. 93).⁵⁰ It does go on to say that amounts above the 200 S-DDD levels are not necessarily adequate, as need depends upon the actual levels of morbidity in a country.

There is concern amongst some experts that the Board’s figure of 200 S-DDD represents a very low base, and whether it is in fact an appropriate level at which to benchmark adequacy of provision. If we examine an actual example of consumption data, the INCB’s rough adequacy level is provided with a context. For example, the S-DDD per million inhabitants per day for the United States (2007-2009) was 39,487; for Australia was 8,013; for Germany was 19,319; for the United Kingdom was 3,655; for Japan was 1,023; for South Africa was 600.

The great disparity between these actual levels of consumption in the developed world and the INCB’s rough measure of adequacy is clear. It is remarkable that South Africa was the single country on the African continent to exceed the Board’s adequacy figure of 200, with 6 countries having less than 1 defined daily dose per million inhabitants per day (Supp. Annex 1).

A recent research paper sets out to address the lack of a method of assessing the total population need for pain medications to deal with moderate to severe pain at national, regional and global levels. This is attempted via the development of an “Adequacy of Consumption Measure (ACM)”.⁵¹ Using three major sources of pain-producing morbidity – cancer, HIV and injury – the researchers determined per capita requirements of controlled pain medications for 188 countries. Their calculations were based on an adequacy level derived from the top twenty countries of the HDI on the assumption that these countries would most likely have “an opioid analgesics consumption that is more or less adequate to their need”. The study generates some startling figures. For example, Botswana is the country with the highest per capita need, requiring, by these authors’ calculations, 8,858 kilograms per annum, a sum which translates into 13,040,000 S-DDD per day. This figure represents 65,200 times the INCB’s minimum of 200 S-DDD.⁵² If we move beyond the details of specific countries to examine the global picture, the dimension of unmet need is similarly dramatic. “In 2006, the world used a total of 231 tons of morphine equivalents. If all countries increased their consumption to adequate levels, the required amount would be 1,292 tons, or almost 6 times higher”.⁵³ The study also shows that 83% of the global population – some 5.5 billion people – live with low to non-existent access to medication capable of treating moderate to severe pain.

In addition to the problems surrounding certain aspects of the Board’s analysis, there is again some selective reticence regarding the

question of access to controlled drugs for drug treatment purposes, which is only mentioned in passing. Despite being listed as essential medicines by the WHO, the Russian authorities are, as noted earlier, hostile to medications such as methadone, widely used elsewhere for substitution therapy in the treatment of addiction. It is disappointing that this issue is not raised by the *Supplement* on access to controlled medications, particularly as Russian influence appears to be growing within the UN drug control system.

Conclusions

The Board's *Report* is an impressive and important document notwithstanding the issues of concern discussed above. This is also true of this year's supplement. When acting within its mandate as laid out within the conventions and as originally intended by national delegations that drafted and agreed them, the INCB has a central role within the global drug control framework, particularly as the treaty system enters a pronounced period of change and transformation.⁵⁴ Significant numbers of Parties to the conventions are also choosing to move away from a predominantly punitive law enforcement oriented approach inherently favored by these instruments. While remaining in what they regard to be the legal parameters of the treaties, such states are engaging with nation specific policies focusing on public health, human rights and the activities of traffickers rather than individual drug users. Within this fluid policy environment, it is imperative that the Board [re]-embrace its mandated role as a watchdog of the conventions. As such, it should, within the spirit of dialogue and cooperation outlined in the Single Convention,⁵⁵ describe the global situation and bring to the attention of nation states emerging challenges and dilemmas, rather than act as an inflexible guardian erroneously viewing them as immutable objects to be defended at all costs.⁵⁶

This is particularly the case as other parts of the UN system become increasingly critical of the operation of the extant treaty framework. Prominent among these is the UN Special Rapporteur on the right to health, Anand Grover.⁵⁷ In his 2010 report, Grover notes "The current international system of drug control has focused on creating a drug free world, almost exclusively through use of law enforcement policies and criminal sanctions. Mounting evidence, however, suggests this approach has failed, primarily because it does not acknowledge the realities of drug use and dependence. While drugs may have a pernicious effect on individual lives and society, this excessively punitive regime has not achieved its stated public health goals, and has resulted in countless human rights violations." In going beyond a general critique of the intersection between the international drug control system and health to highlight ongoing issues of system-wide coherence, the Special Rapporteur also specifically mentions the Board's unwarranted critical position on decriminalization.⁵⁸

In this context, it is encouraging that this year the Board chose not to adopt a negative stance on the decriminalization of possession for personal use and, aware of the caveats discussed above, continued to pursue a less confrontational stance on harm reduction. However, while the lack of comment within the *Report* could be seen as an acceptance of the legitimate actions of a Party to the conventions, the Board's more recent pronouncements on the actions of Bolivia to adjust its position vis-à-vis article 49 of the Single Convention reveal that its silence was nothing more than a holding position. On 5 July 2011, a UN press release announced "The Board is of the opinion that while this step by Bolivia may be in line with the letter of the Convention, such action is contrary to the Convention's spirit".⁵⁹ In condemning Bolivia's withdrawal from the Convention in June 2011 with the intention to re-accede with a reservation to article 49,⁶⁰ the Board has shown that ultimately it continues to perceive its role as the defender

of what it views to be the purity and infallibility of the current system; a system that has developed incrementally since 1961 and contains serious flaws and inconsistencies.⁶¹ Paradoxically, while arguably exceeding its mandate on this occasion and in the other instances discussed here, the Board's efforts to defend the treaties actually risks undermining its legitimate and central authority in other key issues of concern. It is IDPC's hope that the Board itself reflects upon its future operation within both the spirit and the letter of the conventions and assists Parties in their pursuit of national policies that not only remain within the legal confines of the UN drug control system but are also consistent with their obligations under other UN legal frameworks.

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

Endnotes

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