Briefing paper

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Edging forward: How the UN's language on drugs has advanced since 1990

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Introduction

Diplomatic processes at the United Nations (UN) are notoriously slow and difficult, perhaps increasingly so in a modern world of multi-polar geopolitics and tensions. This is certainly no different for the highly charged and provocative issue of international drug control. After the latest high-level UN meeting on drug control – the UN General Assembly Special Session (UNGASS) on the 'world drug problem'[1] in New York in April 2016[2] – many stakeholders came away with mixed feelings at best.[3] Despite acknowledgements of the progress made in certain areas of the debate, and the rich content of some of the country and civil society statements, the UNGASS failed to deliver the 'wide-ranging and open debate that considers all options' that had been called for by the UN Secretary-General at the time, Ban Ki-Moon.[4]

In order to help digest and contextualise the UNGASS Outcome Document, it is useful to take a broader look at how the agreed UN language on drug control has evolved and developed over the last quarter of a century. To this end, this paper explores a selection of key themes by analysing the consensus-based language agreed by UN member states in:

- The '1990 Political Declaration and Global Programme of Action on international cooperation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances' – agreed at the first UNGASS on the topic of 'drug abuse'.[5]
- The 1993 General Assembly resolution entitled 'Measures to strengthen international cooperation against the illicit production, sale, demand, traffic and distribution of narcotic drugs and psychotropic substances and related

Adoption of the Outcome Document at the 2016 UNGASS, New York

Credit: Marie Nougier, IDPC

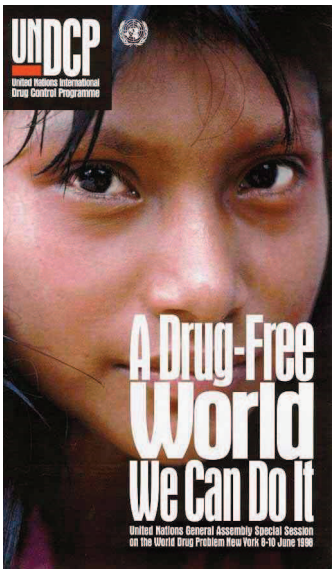
activities' – agreed at a high-level meeting of the General Assembly as a follow-up to the 1990 Political Declaration.[6]

- The 1998 Political Declaration – agreed at the 20th UNGASS on the 'world drug problem'[7] – and the accompanying 'Declaration on the Guiding Principles on Demand Reduction'.[8]
- The '2003 Joint Ministerial Statement and further measures to implement the action plans emanating from the twentieth special session of the General Assembly' – agreed at the 46th UN Commission on Narcotic Drugs (CND) after a mid-term review of the 1998 Political Declaration.[9]
- The '2009 Political Declaration and Plan of Action on international cooperation towards an integrated and balanced strategy to counter the world drug problem' – agreed at the high-level segment of the 52nd CND.[10]
- The '2014 Joint Ministerial Statement on the implementation by member states of the political declaration and plan of action on international cooperation towards an integrated and balanced strategy to counter the world drug problem' – agreed at the 57th CND after a mid-term review of the 2009 Political Declaration.[11]
- The 2016 Outcome Document (UN General Assembly Resolution S30/1) entitled 'Our joint commitment to effectively addressing and countering the world drug problem' – agreed at the 30th UNGASS last April.[12]

For each UN document, the authors also consulted the relevant *travaux préparatoires* and a variety of other background papers to understand the context behind any changes in agreed language over time.

Success or failure of drug control

Since 1990, the UN drug control system has set itself audacious goals to significantly reduce and even eradicate the global drug market, and has therefore faced a difficult dilemma – how to emphasise the ongoing priority of an escalating world drug problem, without openly acknowledging the inherent failure and ineffectiveness of existing policies and approaches.



In the 1990 Political Declaration, member states were 'Deeply alarmed by the magnitude of the rising trend in the illicit demand, production, supply, trafficking and distribution of narcotic drugs', and 'Deeply concerned about the violence and corruption' generated by illicit drug markets. Yet they failed to acknowledge any shortcoming of the international drug conventions, but rather re-stated the aspirations for 'an international society free of illicit drugs and drug abuse'. The 1993 General Assembly Resolution was also 'Profoundly alarmed by the magnitude of the rising trend in drug abuse', which 'should be accorded a higher priority by Governments, the United Nations and all other relevant national, regional and international organizations'. The document acknowledged that this dilemma 'requires the formulation of new strategies', but then proceeds to offer none – rather the operative paragraphs comprise language of 'reaffirming' and 'strengthening' while calling on member states to 'ratify and to implement fully all provisions' of the international drug control treaties.

The 1998 Political Declaration cites member states' 'unwavering determination and commitment to overcoming the world drug problem', and proceeds to recognise 'with satisfaction the progress achieved by States, both individually and working in concert' – without elaborating on what this progress might be. Member states set '2008 as a target date for States, with a view to eliminating or reducing significantly the illicit manufacture, marketing and trafficking of psychotropic substances' (the 1998 UNGASS itself was held under the slogan 'A Drug Free World – We Can Do It!'[13]) – yet makes no allusion to a similar goal being set in 1990 with no success. In fact, 'the language was of re-affirmation; the words "evaluate", "examine", "scientific review", "identify weakness", "appropriate adjustments" or "develop new strategies" failed to… make it

into the final resolution'.[14]

The target date for a drug-free world, 2008, saw member states engage in an evaluation process, informed by a break-through report from the Executive Director of the United Nations Office on Drugs and Crime (UNODC), entitled 'Making drug control fit for purpose: Building on the UNGASS decade'.[15] This paper stated, 'The benefit of hindsight is the insight it offers us to evaluate the present and enrich future policy. Looking back over the last century, we can see that the control system and its application have had several unintended consequences – they may or may not have been unexpected, but they were certainly unintended'. These 'unintended consequences' included the creation of the criminal black market and the stigmatisation of people who use drugs.

Yet the following year's Political Declaration, drafted by member states through consensus rather than by senior UNODC officials, reverted to form. It opens with an acknowledgement that 'the drug problem continues to pose a serious threat to the health, safety and well-being of all humanity', 'the unprecedented surge in illicit opium production', 'growing violence' from drug trafficking, and 'increasing links between drug trafficking, corruption and other forms of organized crime'. Yet it merely extends the deadline for a drug-free world to 2019, by which time member states should 'eliminate or reduce significantly and measurably' drug cultivation, demand, production, diversion and drug-related money-laundering.

Refreshingly, however, each sub-section of the accompanying Plan of Action opens with a relatively frank 'Problem' section – noting, for example, that the 'commitments made by Member States in 1998 to attain significant and measurable results in the area of drug demand reduction have been attained only to a limited extent, owing largely to the lack of a balanced and comprehensive approach', and that 'efforts have not led to a significant overall decrease in the global illicit cultivation of crops used for the production of narcotic drugs'. The numerous 'Problem' assessments in this document also cite: 'insufficient emphasis on human rights and dignity'; the use of interventions 'not based entirely on scientific evidence'; 'inadequately trained personnel'; 'increasing levels of harm and violence'; the 'special problem' posed by synthetic drugs; 'Disparities… among States with respect to legislative provisions'; and that 'Countries not previously targeted by traffickers are now used as areas of diversion'.

The 2014 Joint Ministerial Statement states that '15 years after the commitments made at the twentieth special session of the General Assembly to address the world drug problem, notwithstanding the ever-increasing efforts and progress made by States, relevant international organizations and civil society, the drug problem continues to pose a serious threat to the health, safety and well-being of all humanity' (Paragraph 6). Tellingly, the document switches to language of containment and stability in spite of targets to eliminate and reduce: 'supply and demand of narcotic drugs… have remained largely stable during the past five years'. This mirrors a narrative in the UNODC World Drug Reports at the time – which for some 'should be seen as a purposive attempt to claim success and shore up the system',[16] but for others does represent a positive shift away from 'drug-free world' rhetoric. For the first time, the 2014 Joint Ministerial Statement also specifically referenced and recommitted to a target from the 2011 UN Political Declaration on HIV to reduce transmission of HIV among people who inject drugs by 50% by 2015.[17] This target was spectacularly missed – with HIV incidence actually increasing by a third over this same period[18] – and was unsurprisingly not mentioned again in the 2016 Outcome Document a few years later.

The closest that the 2016 Outcome Document came to acknowledging the failure of the international community to achieve its own targets was in the third preambular paragraph: 'We recognize that, while tangible progress has been achieved in some fields, the world drug problem continues to present challenges to the health, safety and wellbeing of all humanity, and we resolve to reinforce our national and international efforts and further increase international cooperation to face those challenges'. The reference to 'tangible progress' was contentious, and the original addition of 'measurable' was removed during the negotiations. Furthermore, while the submission from the United Nations Development Programme (UNDP) stated that there is 'widespread recognition from several quarters, including UN

member states and entities and civil society, of the collateral harms of current drug policies, and that new approaches are both urgent and necessary',[19] no such critique was included in the final document. Instead, and despite the target date being only three years ahead, the language of 'elimination' remained from the 2009 Political Declaration, and the 2016 Outcome Document also disappointingly reaffirmed 'our determination to… actively promote a society free of drug abuse' (although some stakeholders were keen to label this as an advance from previous language on a society free of drugs).

Harm reduction

The bottom line for many advocates is that the UN's drug control mechanisms have failed to explicitly refer to harm reduction in any consensus-based document. Outside of Vienna, the UN General Assembly has adopted a series of political declarations on HIV/AIDS that explicitly refer to harm reduction,[20] with the 2011 Political Declaration also committing member states 'to working towards reducing transmission of HIV among people who inject drugs by 50 per cent by 2015'.[21] The 2016 High Level Meeting on HIV/AIDS in New York similarly agreed a Political Declaration that notes 'that some countries and regions have made significant progress in expanding health-related risk and harm reduction programmes'.[22] The words 'harm reduction' are also widely and now routinely used by UNODC,[23] the World Health Organization (WHO), UNAIDS and other UN agencies – yet it remains contentious at the CND in Vienna, with a small number of member states continuing to block its inclusion in drug policy documents[24] despite the adoption of harm reduction in policy and/or practice by 100 countries and territories.[25]

The links between drug use and HIV/AIDS were being increasingly evidenced and recognised through the 1980s, and the 1990 Political Declaration stated that WHO 'shall be encouraged to continue to explore with Governments the development of health education programmes and policies for the reduction of risk and harm of drug abuse as a means of preventing the transmission by drug abusers of the human immunodeficiency virus (HIV)' (Paragraph 35). Although the 1993 General Assembly Resolution contained no such references, an intergovernmental advisory group convened by the UN Drug Control Programme in the mid-1990s recommended 'a more detailed study of the implications of decriminalisation and of harm reduction campaigns' (which was dismissed by one participant as 'the Trojan Horse of those factions championing the cause of legalisation').[26]

At the 1998 UNGASS, Greece,[27] the Netherlands[28] and Canada[29] and others presented and defended their domestic harm reduction programmes. Switzerland (represented by Ruth Dreifuss, the President at the time and now a member of the Global Commission on Drug Policy[30]) spoke of their heroin, morphine and intravenous methadone prescription programmes and needle and syringe programmes.[31] New Zealand also made the following statement:

> 'We are only now beginning to understand just how important this relatively simple and inexpensive [harm reduction] programme has been in terms of helping protect the public health of all New Zealanders. I note that there are those who vehemently oppose methadone or needle-exchange programmes. For me, the answer, "Well, it works", seems to be the best response to these critics, who I suspect would have us blindly march down the road towards a "war on drugs", a philosophy that many would consider has not worked'.[32]

Although the 1998 Political Declaration was devoid of any strong harm reduction references, the accompanying Guiding Principles document was a clear step forward – citing that programmes 'should reduce the adverse consequences of drug abuse for the individual and for society as a whole' (Paragraph 5), and that demand reduction should aim at 'reducing the adverse consequences of drug abuse' (Paragraph 8b). Two years later, a UN Action Plan for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction included as one of its specific outputs: 'Easily accessible drug demand reduction programmes, integrated into broader health and social programmes, covering where possible the full spectrum of services, including reducing the adverse health and social consequences of drug abuse'.[33] In some ways, the harm reduction debate within the UN has continued to suffer

from this classification as a sub-set of demand reduction rather than as a response in its own right – but this was possibly the compromise that was needed at the time in order to secure progressive language on the need to tackle drug-related harms, and not just drug use itself.

The 2003 Joint Ministerial Statement acknowledged that 'Many Governments have initiated special programmes targeting groups at risk, in particular drug-injecting abusers, in order to limit their exposure to infectious diseases'. It called for countries to further 'develop and implement comprehensive demand reduction policies, including risk reduction activities, that are in line with sound medical practice and the international drug control treaties and that reduce the adverse health and social consequences of drug abuse' and to provide 'a comprehensive range of services for preventing the transmission of HIV/AIDS and other infectious diseases associated with drug abuse'. Yet two leaked documents at around this time demonstrated how political these discussions had become. A 2002 memo from UNODC's legal experts to the International Narcotics Control Board (INCB) argued that most harm reduction measures are permissible under the international drug control conventions.[34] In 2004, a letter from the UNODC Executive Director to a senior US diplomat claimed that 'Under the guise of harm reduction, there are people working disingenuously to alter the world's opposition to drugs… this we cannot allow'[35] (the USA was UNODC's biggest donor and was staunchly opposed to harm reduction at the time).

Nonetheless, the harm reduction movement continued to grow in size and acceptance around the world, and the 2009 Political Declaration noted 'with great concern the alarming rise in the incidence of HIV/AIDS and other blood-borne diseases among injecting drug users', committed to 'work towards the goal of universal access to comprehensive prevention programmes and treatment, care and related support services', and cited the ground-breaking new WHO, UNODC, UNAIDS Technical Guide which explicitly outlined an evidence-based harm reduction package for the first time.[36] During the negotiations, there were strong calls for references to harm reduction, but no text was allowed unless there was complete consensus – which led to the diplomatic and heavily watered down compromise of 'related support services' throughout the document. Amidst tense negotiations, the Chair even called a straw poll at which 13 countries voted against a footnote on harm reduction, compared to 12 in favour.[37] This prompted Germany to submit an interpretive statement once the 2009 Political Declaration had been formally adopted. On behalf of 25 other countries,[38] they declared their interpretation of 'related support services' to mean harm reduction.[39] Interestingly, the 2009 Political Declaration also recommends 'a comprehensive treatment system' with 'opioid agonist and antagonist maintenance' – which includes key opioid substitution therapy (OST) medicines such as methadone and buprenorphine.

These same debates continued during the nine-month negotiations for the 2014 Joint Ministerial Statement – similarly ending with the term harm reduction being omitted due to a lack of consensus despite strong support from some member states. Again, a verbose compromise was forged: 'measures aimed at minimizing the public health and social consequences of drug abuse, in accordance with national legislation and the three international drug control conventions'.[40] Crucially, the document notes that 'those States that have implemented the interventions outlined in the WHO, UNODC, UNAIDS Technical Guide… have remarkably reduced the number of HIV infections, with some countries approaching the elimination of injecting drug use-related transmission of HIV' – reflecting the discussions captured in the official CND report.[41]

This brings us to the 2016 UNGASS when some member states and other participants attempted again to overcome the ideological impasse around the words 'harm reduction'. At the Special Session, 46 countries spoke in favour of harm reduction (including a coordinated statement from the 28 EU member states), while just China and Singapore explicitly spoke against it.[42] Progressive harm reduction language had been proposed by member states, civil society and UN agencies[43] – including in the submissions from WHO, the Office of the United Nations High Commissioner for Human Rights (OHCHR), UNDP, UNODC and UNAIDS (who called for the UNGASS to 'commit to fully implement harm reduction and HIV services', including in prisons).[44] Yet the term was

once again omitted and replaced in Paragraph 1o, which eventually read:

> 'Invite relevant national authorities to consider, in accordance with their national legislation and the three international drug control conventions, including in national prevention, treatment, care, recovery, rehabilitation and social reintegration measures and programmes, in the context of comprehensive and balanced drug demand reduction efforts, effective measures aimed at minimizing the adverse public health and social consequences of drug abuse, including appropriate medication-assisted therapy programmes, injecting equipment programmes, as well as antiretroviral therapy and other relevant interventions that prevent the transmission of HIV, viral hepatitis and other blood-borne diseases associated with drug use, as well as consider ensuring access to such interventions, including in treatment and outreach services, prisons and other custodial settings, and promoting in that regard the use, as appropriate, of the technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users, issued by the World Health Organization, the United Nations Office on Drugs and Crime and the Joint United Nations Programme on HIV/AIDS'

This was clear progress compared to previous language from 1998 and 2009, but at great expense in terms of diplomatic energy and resources – and is arguably no better and less clear than the 1990 Political Declaration language of 'health education programmes and policies for the reduction of risk and harm of drug abuse'. Nonetheless, supportive government delegations emerged feeling a small sense of victory after securing the first explicit references to naloxone for reducing drug-related deaths (Paragraph 1j) and 'injecting equipment programmes' (Paragraph 1l). There was also a reference to 'medication-assisted therapy' in the same paragraph – which includes essential OST medicines such as methadone and buprenorphine, but can also include opiate antagonists and other medicines used in detoxification programmes (such as naltrexone).

Human rights

In 2008, the then UN Special Rapporteur on the right to health, Paul Hunt, described the international drug control and human rights systems as 'parallel universes'[45] – and, until recently, this was reflected in the high-level UN documents on drug control. For example, the 1990 Political Declaration makes limited reference to the issue of human rights – with any mention relating more to the 'grave and persistent threat' of illicit drug markets rather than the dignity and rights of the millions of people involved in the drug trade. Direct references to important UN human rights documents and obligations, such as the UN Charter, are only made regarding the principles of international law, particularly 'respect for the sovereignty and territorial integrity of states'.

Despite frequent discussion of the human rights implications of drug policy within the 1998 UNGASS plenary discussions – particularly from representatives of Finland,[46] Uruguay[47] and Denmark[48] – the 1998 Political Declaration adopts a similar, if slightly more progressive, stance to its predecessor. Reference is made to the UN Charter again in relation to state sovereignty and associated state rights. However, within the context of 'shared responsibility' and a 'balanced approach', states also commit themselves to respect 'all human rights and fundamental freedoms'. On the 50th anniversary year of the UN Declaration of Human Rights, human rights concepts were still being contested and simplified in relation to drug control – as demonstrated by the plenary comments of the Executive Director of the United Nations Drug Control Programme: 'we should not forget that the notion that drug use is a kind of human right is inherently immoral, as it suggests that human lives are not worth saving from the devastation of addiction'.[49]

The 2003 Joint Ministerial Statement did not include reference to human rights per se, but it did broaden the frame of reference by noting that, within the context of an integrated and balanced approach, action against the 'world drug problem' should be taken in 'full conformity with the purposes and principles of the Charter of the United Nations and international law' (Paragraph 2).

In 2008, however, Uruguay led on the first ever

CND resolution focused on human rights: Resolution 51/12 on 'Strengthening cooperation between the United Nations Office on Drugs and Crime and other United Nations entities for the promotion of human rights in the implementation of the international drug control treaties'.[50] The Uruguay delegation fought hard for this resolution to go through, marking the 60th anniversary of the Universal Declaration of Human Rights, and supported to varying degrees by Argentina, Belgium, Bolivia, Finland, France, Germany, Ireland, Italy, the Netherlands, Norway, Peru, Romania, Slovenia (on behalf of the European Union), Spain, Switzerland and the UK.[51] Yet it clearly 'touched a nerve' among other delegations: China stated that 'Discussion of political issues such as human rights are inappropriate at CND' and 'It is ridiculous to require [the CND] to work in accordance with human rights law', while Thailand was concerned that discussing human rights at the CND 'will disrupt the tradition of consensus'.[52] The final language was watered down during negotiations, with references to the death penalty and the UN Declaration on the Rights of Indigenous Peoples being removed, among others[53] – yet it still represented a major step forward for the human rights debate in Vienna.

The 2008 Resolution was also an important precursor for the following year's Political Declaration, which was clearly influenced by the increased levels of discussion around the intersection between human rights, wider state obligations and drug policy. Establishing itself as a 'fresh impetus to international drug control 10 years after 1998', the 2009 Political Declaration explicitly notes the importance of conducting drug policy in conformity with the Charter, international law and the Universal Declaration of Human Rights. Further, although state sovereignty remains an important concern, it is now bound up with concerns for 'the inherent dignity of all individuals'. Beyond this high-level comment, it is noteworthy that human rights also receives attention within Paragraph 24a on 'sustainable crop control strategies' (albeit again linked with states' rights) – as well as at numerous points within the accompanying 2009 Plan of Action.

By 2014, the connection between drug control and international law had become even more explicit. Indeed, in addition to broad statements concerning the Charter and the Universal Declaration of Human Rights and building on the previous emphasis on individual rights, it is noted in the 2014 Joint Ministerial Statement that drug control efforts 'should continue to be addressed in a comprehensive, integrated and balanced manner, in full conformity with the three international drug control conventions and fully consistent with applicable international human rights obligations, on both the drug demand and supply reduction sides' (Paragraph 23). The 2014 Statement also notes several times the importance of human rights obligations at an operational level (such as Paragraphs 30 and 45). Again, however, it is clear from accompanying discussions within the CND that connotations of 'human rights' remained contested, especially in relation to use of the death penalty for drug-related offences.[54]

Unable to secure an explicit reference to the abolition of the death penalty in 2014, this became a clear point of division and a pinch point for the consensus between member states in Vienna.[55] After the Joint Ministerial Statement was approved, Greece (who held the Presidency of the European Union at the time) made a statement on behalf of 57 other governments[56] and 'deeply regretted that the Joint Ministerial Statement did not include language on the death penalty' while reiterating their 'strong and unequivocal opposition to the death penalty, in all circumstances'.[57] In retaliation, Iran's statement on behalf of 16 other countries[58] stated that every country has the sovereign right to decide on its own justice system.

Inevitably, the death penalty also became a significant point of contention at the 2016 UNGASS, where 66 member states spoke out against its use, while 16 countries defended their right to apply this sanction for drug offences.[59] Ultimately, however, the Outcome Document failed again to include any mention – let alone condemnation – of the death penalty, despite lengthy and fraught CND negotiations throughout 2015 and 2016.[60] Again, the adoption of the document was immediately followed by a series of statements lamenting the issues on which there was no consensus:[61] Switzerland, Brazil, Costa Rica, Norway, Uruguay and the European Union all spoke against the death penalty (the latter in a statement on behalf of 56 countries[62]), while Indonesia read a

counter-statement on behalf of 14 other countries.[63]

Aside from the death penalty, however, the 2016 Outcome Document does contain strong and explicit references to human rights at several points, from high-order commitments to operational recommendations – including an entire thematic chapter specifically incorporating human rights. Linked to this, the Human Rights Council had passed its first ever resolution on drugs and human rights in 2015[64] calling for OHCHR to submit a report[65] as part of the UNGASS preparations, and also held its first high-level panel on drug control in September 2015. Human rights commitments in the Outcome Document cover areas as wide as the rights of women and children, the right to health, and a human rights-based criminal justice approach. Paragraph 4l in particular has been lauded as an important 'win' with the strongest ever human rights provision within a UN drug control resolution – and does not include any of the usual caveats that diluted many of the other paragraphs of the Outcome Document:[66]

> 'Promote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings, including practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment and to eliminate impunity, in accordance with relevant and applicable international law and taking into account United Nations standards and norms on crime prevention and criminal justice, and ensure timely access to legal aid and the right to a fair trial'

Much less progress has been achieved in terms of indigenous rights in drug policy, in keeping with the 2007 UN Declaration on the Rights of Indigenous Peoples.[67] An attempt by Jamaica in 2016 to insert language on this issue received little support,[68] and the UN High Commissioner for Human Rights expressed strong disappointment about the Outcome Document: 'it would have been better if it would be clearly indicated that indigenous peoples should be allowed to use drugs in their traditional or religious practices where there is historical basis for this'.[69] The root of this problem is the 1961 Single Convention on Narcotic Drugs, which specifically obliges member states to abolish all traditional uses – even though the subsequent 1971 Conventions acknowledges traditional and religious uses of plants containing psychotropic substances. As for the 1988 Convention (which is quoted in this regard in the 2016 Outcome Document), it mentions that eradication measures 'shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use', yet also states that those measures 'shall not be less stringent' than the provisions of the 1961 Convention.[70] In this sense, the Outcome Document contains an inherent contradiction – calling on member states to 'respect fundamental human rights and take due account of traditional licit uses', in accordance with the 1961 obligation to abolish them. With regards to indigenous rights, there is therefore an undeniable conflict between international human rights obligations and the UN drug control treaties (perhaps best exemplified by Bolivia's decision to withdraw from the 1961 Convention in 2012, and then re-accede in 2013 with an exception for coca[71]) – and the General Assembly has failed to correct this.

Overall, however, there has been clear progress over time in the human rights language, understanding and commitments in the UN drug control system, though the intersection between drug policy and human rights very much remains contested territory, with different states adopting very different perspectives. Additionally, there continues to be a disconnect between general statements made by member states concerning human rights and drugs, and specific obligations being incorporated in the successive high-level documents on global drug policy. This may be an inevitable result of multilateral negotiations and diplomacy in both Vienna and New York, but it remains a grey area in terms of member states' obligations to ensure the protection of human rights in the framework of drug control.

Development

The first UN-supported crop substitution attempts can be traced back to the early 1970s, when development projects were initiated to

reduce opium poppy cultivation in Thailand and cannabis in Lebanon.[72] International recognition of a link between drugs and development was subsequently laid down in the 1988 Convention – which on the one hand obliges Parties to eradicate opium poppy, coca bush and cannabis plants, but also promotes international cooperation in support of 'integrated rural development leading to economically viable alternatives to illicit cultivation'.[73] The 1988 Convention also highlighted that 'factors such as access to markets, the availability of resources and prevailing socioeconomic conditions should be taken into account before such rural development programmes are implemented'.[74]

The 1990 Political Declaration recognised 'the links between the illicit demand, consumption, production, supply, trafficking and distribution of narcotic drugs and psychoactive substances and the economic, social and cultural conditions in the countries affected by them', and underscored the need to increase development cooperation, and to 'facilitate trade flows in support of viable alternative income schemes'. The lack of access to international markets was brought to the attention of the UNGASS by Colombian President Virgilio Barco, following the 1989 collapse of the International Coffee Agreement which prompted many bankrupted small Colombian coffee farmers to shift to illicit cultivation: 'We cannot afford to talk idealistically of crop substitution in the case of the coca leaf while sabotaging Colombian farmers' main cash crop [coffee] and the country's largest export', he told the General Assembly, adding that alternative development projects were welcome, 'but even more important is the adoption of commercial and trade measures which allow our economy greater access to markets in the industrialized countries and fair prices for our exports'.[75] A 1993 General Assembly resolution further called on the international community to consider 'ways to strengthen and enhance international anti-drug cooperation in programmes of alternative development in order to eliminate illicit drug production and trafficking within the framework of sustainable development, with a view to improving living conditions and contributing to the eradication of extreme poverty'.[76]

Yet it was at the 1998 UNGASS that alternative development became fully recognised as an important component of global drug policy. The Political Declaration was accompanied by an 'Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development', which stated the intention 'to promote lawful and sustainable socio-economic options for those communities and population groups that have resorted to illicit cultivation as their only viable means of obtaining a livelihood, contributing in an integrated way to the eradication of poverty'.[77] The Action Plan also included cautionary wording about the proper sequencing of development interventions and eradication measures: 'In cases of low-income production structures among peasants, alternative development is more sustainable and socially and economically more appropriate than forced eradication… the application of forced eradication might endanger the success of alternative development programmes'. The Political Declaration itself also emphasized 'the need for eradication programmes and law enforcement measures to counter illicit cultivation' (Paragraph 18), and established 2008 as the deadline for 'eliminating or reducing significantly the illicit cultivation of the coca bush, the cannabis plant and the opium poppy'.

At the 45th session of the CND in 2002, Resolution 45/14 commissioned 'a rigorous and comprehensive thematic evaluation… for determining best practices… by assessing the impact of alternative development'.[78] The resulting report – 'Alternative development: A global thematic evaluation' – concluded that 'The elimination of illicit crops should be conditional on improvements in the lives and livelihoods of households. It should not be a prerequisite for development assistance. Illicit crops should be eradicated only when viable alternatives exist for households participating in alternative development. Successful alternative development requires proper sequencing'.[79]

In the negotiations for the 2009 Political Declaration, no consensus could be reached on the issue of conditionality, but on the sequencing issue – after long debates – the following important clause was agreed: 'Ensure, when considering taking eradication measures, that small-farmer households have adopted viable and sustainable livelihoods so that the measures may be properly sequenced in a sustainable fashion and

appropriately coordinated' (Paragraph 47g). Unfortunately, the 2013 'UN Guiding principles on alternative development' slightly weakened that language by replacing 'have adopted' by 'have opportunities', but did include references to human development indicators and the Millennium Development Goals.[80] The Guidelines also called for efforts 'to build and maintain confidence, dialogue and cooperation with and between stakeholders, from people at the community level and local authorities to leaders at the national and regional levels', so as to ensure 'local ownership and participation of the involved parties in the design, implementation, monitoring and evaluation of alternative development programmes and projects'.[81]

In 2016, the Outcome Document further strengthened this language, and was the first UN drug policy declaration to tackle the drugs and development issue in a section of its own, separated from eradication and law enforcement.[82] It refers to 'ensuring the empowerment, ownership and responsibility of affected local communities, including farmers and their cooperatives', and also mentions cooperation with UNODC, UNDP, the Food and Agriculture Organization (FAO), the International Labour Organization (ILO) and other relevant organisations 'with a view to contributing to the building of peaceful, inclusive and just societies, consistent with the Sustainable Development Goals' (Paragraph 7b). The 2016 Outcome Document also includes sub-sections on socioeconomic issues and development-oriented drug policies, and recommends targeting illicit cultivation 'by implementing comprehensive strategies aimed at alleviating poverty and strengthening the rule of law… and by promoting sustainable development aimed at enhancing the welfare of the affected and vulnerable population through licit alternatives' (Paragraph 7a). However, one paragraph in the development chapter still locks alternative development together with eradication and law enforcement, by calling for 'strengthening sustainable crop control strategies that may include, inter alia, alternative development, eradication and law enforcement measures, for the purpose of preventing and reducing significantly and measurably the illicit cultivation of crops' (Paragraph 7c), while omitting any cautionary reference to proper sequencing or avoiding drug control conditionality. Finally, and perhaps most innovatively, the 2016 Outcome Document extends the scope of alternative development to the urban environment, encouraging 'the development of sustainable urban development initiatives for those affected by illicit drug-related activities' (Paragraph 7k).

Civil society engagement

UN language around civil society involvement has been slowly evolving over time, growing in strength and breadth but at the same time becoming increasingly caveated in order to maintain consensus. This no doubt is a reflection of civil society participation in UN events on drugs – which, although much improved in the past few years, remains severely limited as compared to other UN forums such as the the UN Commission on Sustainable Development, the UN Environment Programme (UNEP), UNAIDS and the Human Rights Council.[85]

The 1990 Political Declaration includes just one mention of the participation of non-governmental organisations (NGOs), in Paragraph 12 which focuses exclusively on their role in drug prevention and education. Three years later, the 1993 General Assembly resolution expanded NGO involvement beyond demand reduction by incorporating language on the 'Promotion and encouragement of the active involvement of non-governmental organizations and the private sector in the various aspects of the drug problem' (Paragraph 10j). However, both the 1990 and 1993 documents make it clear that this engagement should aim at eliminating the illicit drug market.

This objective was even more prominent in the 1998 Political Declaration, in which the only paragraph mentioning civil society called upon 'non-governmental organizations and the media worldwide actively to promote a society free of drug abuse' (Paragraph 12). At the time, only a few NGOs actively participated in the 1998 UNGASS, but several member states – including the Presidents of Portugal and Costa Rica – already started to highlight the positive role played by civil society in implementing programmes on the ground. In his opening remarks, Hennadiy Udovenko (then President of the General Assembly) also stated that 'Forging a new partnership

with nongovernmental organizations, the private sector, labour unions, local communities and individual families is a prerequisite of long-term success'.[86]

Meanwhile, a modern and more coordinated civil society movement in support of drug policy reform emerged after the frustrations and experiences of the 1998 UNGASS – calling for an overhaul of the outdated drug control regime, while also advocating for step-by-step pragmatic reforms of the most problematic aspects of the regime. This included closer collaboration with a blossoming harm reduction movement, which had generally been ignoring (and ignored by) the Vienna-based UN discussions up to this point. Over the years, this resulted in the emergence of a core group of civil society organisations committed to being closely engaged in the UN debates – including the 2003, 2009, 2014 and 2016 meetings – and, in 2006, fed into the formation of the International Drug Policy Consortium (IDPC) itself.

A noteworthy step forward was achieved in the 2003 Joint Ministerial Statement, when the 'close cooperation' between civil society and governments was promoted, not only in efforts to reduce demand, but also to 'deal with the problems related to the transmission of' HIV and other infectious diseases (Paragraph 17). This helped to pave the way for the innovative 'Beyond 2008' project – a global consultation of civil society organisations from all sides of the debate coordinated by the Vienna NGO Committee on Drugs, in order to generate recommendations and a civil society declaration for the 2009 High-Level Meeting in Vienna.[87] More than 200 NGOs attended the event itself, and at least 11 NGO representatives were included in government delegations.[88] Many of the 'Beyond 2008' recommendations were eventually overlooked by member states, as there was no mechanism in place to integrate these recommendations into the formal negotiation of the 2009 Political Declaration. Nevertheless, the Political Declaration gave more visibility to the issue of civil society participation than ever before – highlighting it in six paragraphs, including in Paragraph 10:

> 'Welcome the important role played by civil society, in particular non-governmental organizations, in addressing the world drug problem, note with appreciation their important contribution to the review process, and note that representatives of affected populations and civil society entities, where appropriate, should be enabled to play a participatory role in the formulation and implementation of drug demand and supply reduction policy'

For the first time in Vienna, member states had agreed to take note of the role of 'affected populations' in drug policy design and implementation – and this has since been reiterated word-for-word in the 2014 Joint Ministerial Statement, and also echoed in the 2016 Outcome Document. NGO participation continued to go from strength to strength at the 2014 High-Level Meeting, where the first Informal Civil Society Hearing was held between civil society, governments and UN agencies, with conclusions presented at the plenary. But here again, there was no process established to incorporate the civil society recommendations into the 2014 Joint Ministerial Statement, and NGOs were not invited to observe the informal negotiations of the document.[89]

A Civil Society Task Force (CSTF) was formed at the end of 2014 to serve as the official liaison between the United Nations and civil society in preparation for the 2016 UNGASS.[90] The CSTF is a structured and representative group of civil society representatives from nine regions, as well as representatives of affected populations and key thematic areas. The Task Force played a key role in coordinating and driving NGO participation and visibility at the UNGASS itself, which was attended by hundreds of NGO representatives working on a wide array of issues such as harm reduction, human rights, drug prevention, criminal justice, gender, palliative care and development. Civil society representatives were included in all five UNGASS panel discussions, and representatives also made interventions from the floor throughout. An Informal Interactive Stakeholder Consultation, convened by the President of the General Assembly, also took place in New York a few months before the UNGASS, and resulted in a forward-looking summary that was formally submitted to the CND as part of the preparatory process.[91] All of these efforts, like 'Beyond 2008', were designed to engage, represent and bring together the broad and conflicting perspectives

held within civil society, which is far from a unitary actor in drug policy, and to build upon common ground where it could be found.

The continued and heightened engagement, professionalism and expertise from civil society was clearly reflected in the 2016 Outcome Document – where the role of civil society is highlighted in nine paragraphs relating to various elements of drug control and policy. These include sections on prevention and treatment (Paragraph 1q), development (Paragraphs 7b and 7l) and, for the first time, gender: Paragraph 4g includes strong language on the promotion of a 'gender perspective' and ensuring 'the involvement of women in all stages of the development, implementation, monitoring and evaluation of drug policies and programmes', without any diplomatic caveats. The Outcome Document also expands the role of civil society to include the provision of 'scientific evidence' in support of the 'evaluation of drug control policies and programmes'. The final paragraph also states:

> 'We resolve to take the necessary steps to implement the above-listed operational recommendations, in close partnership with the United Nations and other intergovernmental organizations and civil society...'

Criminal justice responses and the flexibilities within the conventions

The 1990 UNGASS took place two years after the passage of the 1988 Convention,[92] which sought to suppress violent, wealthy and powerful trafficking organisations that had grown in prominence during the 1980s. As such, the UNGASS discussions sought to provide impetus to the new Convention.[93] This involved strengthening the UN drug control system itself by intensifying criminal justice measures surrounding extradition, money laundering, judicial cooperation, precursor control, and so on – albeit within the principles of national sovereignty and the non-interference in the internal affairs of states (see, for example, Preambular Paragraph 5). This same messaging has remained relatively intact over time in the various UN high-level documents on drugs. Nevertheless, even as early as the 1990 Political Declaration, there has always been a degree of room for alternative, health-oriented measures and an acknowledgement that such measures are permitted within all three international drug conventions. If these alternatives had been properly utilised and adopted by governments from the start, they would have fundamentally altered the way in which the drug control treaties were implemented – but in reality the uptake of such alternative measures has generally been poor.

Preparations for the 1998 UNGASS on drugs reflected the perceived need to further maintain, and even increase, the use of criminal sanctions: the president of Tajikistan referred to a 'growing understanding of the need to fight against illegal drug trafficking – the plague of the twentieth century'.[94] Likewise, Interpol declared itself to be 'adamantly opposed to any form of legalization of drugs, which would confer the status of legitimacy to illicit drugs or their abuse' – although they did support alternatives to punishment 'to wean the drug users away from crime, disease and misery'.[95]

As a result of debates at the 2002 CND and the interventions of the INCB,[96] legal reforms relating to cannabis arose as a prominent topic during the 2003 Joint Ministerial Statement discussions – as noted in the official CND report: 'Several speakers voiced their concern about lenient policies concerning cannabis, a substance controlled under the 1961 Convention. Cannabis was a harmful drug and it was argued that there were no good arguments for a more liberal policy towards it. It was noted that no Government had yet presented any evidence to WHO showing that cannabis should be legalized'.[97] This has remained the elephant in the room in many UN drugs debates right up until the present day – despite being a clear challenge to the criminal justice approach enshrined in the international drug conventions, and to the limits of any room for manoeuvre that is allowed within the conventions.[98]

In the official foreword to the 2009 Political Declaration (and building on his 2008 report 'Making drug control "fit for purpose"'[99]), the then-UNODC Executive Director Antonio Maria Costa stated: 'We should invest in the solid middle ground between: (a) criminalization of drug users and (b) legalization of its use, by framing our collective efforts against drugs less like a war, and more like an effort to cure a social disease'. Yet the 2009

Political Declaration itself highlights that 'There are limited alternatives to prosecution and imprisonment for drug-using offenders, and treatment services within the criminal justice system are frequently inadequate' (Paragraph 15). The document goes on to state that criminal justice staff should be better educated to deal with people who use drugs, and that member states should 'Provide appropriate training so that criminal justice and/or prison staff carry out drug demand reduction measures that are based on scientific evidence and are ethical and so that their attitudes are respectful, non-judgemental and non-stigmatizing' (Paragraph 16d).

The 2016 Outcome Document represents a high point in these debates to date, calling on member states to strengthen 'the capacity of health, social and law enforcement and other criminal justice authorities to cooperate… in the implementation of comprehensive, integrated and balanced responses' (Paragraph 1l). In the chapter on 'drugs and human rights, youth, children, women and communities', under a sub-heading of 'Proportionate and effective policies and responses…', the Outcome Document also requests governments to: 'Encourage the development, adoption and implementation… of alternative or additional measures with regard to conviction or punishment in cases of an appropriate nature' (Paragraph 4j); and to consider sharing 'best practices on the design, implementation and results of national criminal justice policies, including, as appropriate, domestic practices on proportional sentencing' (Paragraph 4k). The 2016 UNGASS was also the first time that the explicit notion of 'flexibility' made it into a UN document of this import (Preambular Paragraph 13):

> 'We recognize that there are persistent, new and evolving challenges that should be addressed in conformity with the three international drug control conventions, which allow for sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs, consistent with the principle of common and shared responsibility and applicable international law'

This direct reference to the principle of flexibility was prompted by global drug policy developments – and especially the adoption in several jurisdictions of legally regulated cannabis cultivation, distribution and consumption. William Brownfield, the Assistant Secretary of State for the US Bureau of International Narcotic and Law Enforcement Affairs, opined in 2014 that 'Things have changed… We must have enough flexibility to allow us to incorporate those changes into our policies... to tolerate different national drug policies, to accept the fact that some countries will have very strict drug approaches; other countries will legalize entire categories of drugs'.[100] This argument reflects the concept that international conventions are living documents, the interpretation of which can adapt to meet changing contexts and circumstances.[101] But there are limits to how far such flexibility can reach:[102] while the INCB made useful and supportive references to decriminalisation, proportionality of sentencing and alternatives to punishment,[103] Brownfield and others saw that the US Government's stance on regulated cannabis markets in several states fell within this flexibility (which it does not). In response to the issue of regulated markets for cannabis, the then-INCB President, Werner Sipp, stated that 'flexibility has limits; it does not extend to any non-medical use of drugs. Recent legislative developments in some countries that permit and regulate the non-medical use of controlled substances, in particular cannabis, are in clear contravention of the conventions. They defy the international consensus upon which international cooperation depends. You – the States Parties to the conventions – have a responsibility to address this challenge'.[104] As an example of this, Bolivia decided to withdraw from the 1961 Convention and then re-accede a year later with a reservation in order to establish a national regulated coca market based on indigenous and cultural use (a move unsuccessfully opposed at the time by the USA among others).[105]

The use of the term 'sufficient flexibility' in the preambular of the 2016 Outcome Document was a compromise between those seeking reforms, and those wishing to protect the integrity of the drug conventions: with the word 'sufficient' potentially serving to shut down attempts to revise or question the treaties themselves, or to promote policies and responses outside of those allowed by the conventions. A small group of countries opposed this language, but to no avail.[106] This particular debate may be relatively new in

UN drug policy terms, but may well continue to be a key battleground for future documents and meetings.

Access to controlled medicines

Access to controlled drugs for medical and scientific purposes is one of the core objectives of the drug control regime enshrined in the three international drug conventions. Yet the 1990 Political Declaration was strongly focused on drug trafficking and crime instead, with little reference to access to controlled medicines. The accompanying Plan of Action, states that 'information on the rational prescribing and use' should be included in medical training (Paragraph 23), and that 'WHO, in collaboration with UN drug control bodies', NGOs and others are 'encouraged to assist national educational authorities in developing training courses and conducting training courses to ensure that medical practitioners and other health personnel are well trained in rational prescribing and use of narcotic drugs and psychotropic substances' (Paragraph 24). Paragraphs 40 and 41 also call for a balance between supply and demand of raw materials, including for medical and scientific purposes, and for international action to help states meet their legitimate needs for opiates. Eight years later, however, the 1998 Political Declaration made no reference to these issues.

The 2003 Joint Ministerial Statement reiterated calls for member states to balance supply and demand for opiate raw materials for medical and scientific purposes, linked to the necessity to avoid a proliferation of sources of production. The 2009 Political Declaration supplemented this idea of balance with a call for 'continued cooperation between Member States, the INCB and WHO to ensure the adequate availability of narcotic drugs and psychotropic substances under international control, including opiates, for medical and scientific purposes' (Paragraph 19).

At the 2014 High-Level Meeting, there was more visibility and discussion on access to medicines than ever before, driven in part by increased attention to this issue and the role of the INCB from some civil society actors. The Joint Ministerial Statement again reiterated the need for adequate supplies of controlled drugs, and this time added its 'concern that the availability of internationally controlled drugs for medical and scientific purposes, particularly for the relief of pain and for palliative care, remains low to non-existent in many countries of the world' (Paragraph 14). It further called for WHO and the UN drug control bodies 'to address that situation by promoting measures to ensure their availability and accessibility for medical and scientific purposes'. It is notable that these references to ensuring access to control drugs for medical and scientific purposes were, between 2009 and 2014, appended routinely with the stipulation 'while simultaneously preventing their diversion, abuse and trafficking'.

Also in 2014, the debate around ketamine resurfaced and placed access to medicines firmly on the agenda. Through CND Resolution 57/10 on 'Preventing the diversion of ketamine from legal sources, while ensuring availability for medical use', Thailand, Egypt, China, India and others sought to encourage member states to increase controls over this essential medicine[107] – thus undermining the WHO's Expert Committee on Drug Dependence (ECDD) which had recommended against the scheduling of ketamine in order to avoid a 'public health crisis' due to its crucial role in emergency surgery in resource-poor settings.[108] At the 2015 CND, China formally tabled the proposal to schedule ketamine against the ECDD's advice – but eventually withdrew the proposal pending further evidence and review from the ECDD (following a strong campaign by civil society, clinicians and supportive member states).[109]

These developments, and improvements in the collaboration between WHO and the INCB,[110] helped to frame the preparations for the 2016 Outcome Document – which contains the most comprehensive language to date on access to controlled drugs. The Outcome Document acknowledged the 'low to non-existent' supplies of controlled drugs for medical and scientific purposes around the world, and dedicates an entire thematic chapter to this issue, for the first time containing a series of 'operational recommendations' (Paragraph 2). The first of these deals with existing barriers to access, 'including those related to legislation, regulatory systems, healthcare systems, affordability, the training of health-

care professionals, education, awareness-raising, estimates, assessment and reporting, benchmarks for consumption of substances under control, and international cooperation and coordination'. The 2016 Outcome Document also calls on member states to, inter alia: 'consider reviewing… domestic legislation and regulatory and administrative mechanisms'; streamline and simplify distribution channels; remove current impediments; improve import and export certification; and address the costs of medicines. WHO and UNODC are also requested to engage in capacity building for national authorities, develop national supply systems, and regularly update the Model List of Essential Medicines.[111] Even in the separate chapter addressing new psychoactive substances, the Outcome Document cites the need to review the 'potential uses of new psychoactive substances for medical and scientific purposes' (Paragraph 5d).

UN system-wide coherence

Despite the cross-cutting nature of the 'world drug problem', the Vienna-based institutions (i.e. the CND, UNODC and the INCB) have historically excluded or marginalised other UN bodies from their deliberations. This has been particularly troubling with regards to WHO, despite their treaty-mandated role in drug policy. The absence of cross-UN engagement has resulted in a lack of UN system-wide coherence between drug control and other branches of the UN – not least public health, human rights and development,[112] and this has been clearly reflected in the high-level UN documents that are the focus of this paper.

Yet the 1990 Political Declaration was one of the strongest high-level documents in terms of encouraging UN coherence. It called for the participation of a wide range of UN institutions in drug policy governance – including the ILO, UNICEF, UNDP, UNEP and WHO. The document also explicitly emphasized the need for UN system-wide coherence on drugs, albeit with generic language on the role that other agencies could play.

The 1993 General Assembly Resolution was significantly weaker in this regard – omitting any specific reference to other UN agencies, although it does mention the UN System-Wide Action Plan (SWAP) on Drug Abuse Control. The SWAP, in many ways a high watermark in cross-UN coordination efforts on drugs, was requested in 1989 by the General Assembly with the aim of enhancing 'effectiveness of the United Nations system in the field of drug abuse control'.[113] Yet any mention of wider UN system engagement had disappeared by the time the 1998 Political Declaration was adopted.

In 2001, the roles of the SWAP were transferred to UNODC, with a negative impact on UN system-wide coherence on drugs.[114] References to wider UN engagement returned in the 2003 Joint Ministerial Statement: 'We call upon the relevant United Nations agencies and entities, other international organizations and international financial institutions, including regional development banks, to mainstream drug control issues into their programmes' (Paragraph 16). However, the document fell short of mentioning any specific UN agency and approaches coherence as a one-way street – disregarding the problematic absence of health, human rights, development or environmental concerns within drug control policies themselves.

The tide began to turn with the 2009 Political Declaration: Paragraph 2e of the Plan of Action encouraged the creation of dialogue between UNODC and the INCB with UNAIDS, UNDP and WHO in order to 'strengthen inter-agency cooperation'. However, this still fell short of the 1990 Political Declaration language – lacking precision and failing to describe how this inter-agency cooperation was to be achieved. For example, Section D of the Plan of Action on alternative development reiterated the importance of the Millennium Development Goals[115] – but failed to promote greater cooperation with UNDP.

Preparations for the 2016 UNGASS were marked by a more structured inclusion of the UN agencies based in New York and Geneva: through the UN Task Force on Transnational Organized Crime and Drug Trafficking.[116] The Task Force invited all agencies to participate and make submissions ahead of the meeting itself. Their submissions were broadly progressive in their support of harm reduction, decriminalisation of drug use, etc.[117] The UN Women submission, for example, states that:

> 'UN Women shares the main messages of the task force and the UN system's approach to the world drug problem: that an emphasis on security, criminal justice, and law enforcement have only yielded mixed results at substantial human security and financial cost; that a greater emphasis on the public health dimensions and the socioeconomic consequences of the problem is preferable; that member states should avoid militarizing counter-trafficking measures and criminalizing the most vulnerable in the chain of drug production and drug trafficking, including the possibility of decriminalizing drug use and low-level, non-violent drug offenses; that eradication efforts will not succeed without alternative economic incentives for affected populations; that the world drug problem needs to be addressed, in sum, in a more balanced and humane way, prioritizing evidence-based, health-centered approaches focused on prevention, treatment, and social rehabilitation and integration, and addressing both supply and demand'.[118]

As well as the formal submissions,[119] UN agencies were also vocal and visible in the thematic debates before and at the UNGASS itself – and such unprecedented cross-UN inputs are widely regarded as one of the major 'wins' from the UNGASS.[120] It is therefore no coincidence that the 2016 Outcome Document represents a significant improvement over previous documents in relation to cross-UN engagement. It puts forward the strongest support of WHO's role to date, and the preamble emphasizes the need to strengthen cooperation between drug control institutions and 'other UN entities within their respective mandates'. With regards to alternative development, Paragraph 7d considers elaborating programmes alongside FAO, ILO and UNDP in the context of achieving the Sustainable Development Goals (which themselves 'can only be realized with a strong commitment to global partnership and cooperation'[121]). However, the Outcome Document goes beyond merely mentioning branches of the UN: Paragraph 4 outlines a wide range of other UN conventions and guidelines that are relevant to making drug policy respectful of human rights and public health. Since the UNGASS, this commitment to increased UN system-wide engagement has been maintained – with the heightened visibility of several UN agencies at CND discussions (including the presence of the then-WHO Executive Director, Margaret Chan, on the podium at the 60th CND in March 2017[122]), and the signature of a new Memorandum of Understanding between UNODC and WHO.[123]

Box 1. Documenting agreed UN language in a 'Book of Authorities'

To support the development of the 2009 Political Declaration, Harm Reduction International and Human Rights Watch collaborated to compile existing agreed UN language – from CND, the General Assembly and other fora – on key topics such as harm reduction, development and human rights.[124] Such agreed language is crucial for member states during tense negotiations, and is very often much easier for member states to coalesce around than new text on a topic.

In 2015, focused on the upcoming UNGASS and Outcome Document, the resource was updated and relaunched as an online tool and database by IDPC, Harm Reduction International and the Transnational Institute – with funding from UNODC.[125] The 'Book of Authorities' catalogues agreed UN language on human rights, harm reduction, the death penalty, access to controlled medicines, cultivation and alternative development, the Sustainable Development Goals, alternatives to punishment, and proportionality of sentencing. In doing so, it aims to demonstrate the extent of existing international support for more progressive drug policies, and to directly support member states in the negotiations behind high-level UN documents and declarations such as those analysed in this paper.

Conclusion

> 'The consensus-driven functioning of the UN drug control machinery has led to strange results… In private, ''most authorities agree that it is unrealistic to expect to eradicate drugs'' and that the present regime is ineffective. But as soon as they sit down in the conference halls in Vienna and New York, they shift into consensus mode and the

majority of officials are swept along in a ritual of rhetoric while the minority prefers to keep as low a profile as possible'.[126]

In many respects, the increasingly long and tense diplomatic negotiations underpinning each of the high-level UN documents compared in this paper[127] can be criticised for their disconnect from the reality on the ground that they purport to represent – as well as the existing divide between progressive statements made by member states and consensus-based UN documents. But the language agreed by the UN drug control structures can be an effective force in driving policy change at the national and regional levels. Even though the pace may be glacial, shifts over time in the agreed language are important, and are integral to the normative role played by UN agencies such as UNODC.

This paper has identified some areas for which the 2016 UNGASS and its Outcome Document represent clear progress in terms of the UN discourse, the consensus-based language and the general debates: such as human rights, development approaches, civil society engagement, flexibilities in the international drug conventions, access to controlled medicines, and cross-UN engagement. That is not to say that further progress is not still needed in all of these areas, but some of the trends identified in this report serve as an important proxy for overall shifts in drug control debates and approaches around the world. Key elements of this progress include the more systematic engagement of both civil society and UN agencies in the preparations and discussions, the relatively coordinated work of groups of like-minded countries, and the adoption of a more comprehensive document structure – utilising seven chapters (including public health, alternative development, access to medicines and human rights) rather than the previous three (demand reduction, supply reduction and international cooperation). If progress is to continue and hopefully accelerate for 2019 and beyond, these are all elements of the preparations that need to be protected and strengthened further.

Interestingly, at the same time, there are still a number of issues that remain insufficiently acknowledged by the UN drug control system, or for which the best agreed language comes from previous decades and not from 2016. Each one of the high-level UN documents analysed in this paper have struggled with the lack of tangible progress being made by current drug policies – yet this issue was perhaps most honestly dealt with in the 2009 Plan of Action. The refreshingly frank 'Problem' statements that opened every sub-section in that document should be repeated for 2019 to avoid continued accusations of denialism and delusion.

Then there is the long-term tension and controversy over harm reduction. The fact that member states have still been unable to agree on this term is unjustifiable and damaging to the credibility of the entire UN drug control system – not least because other parts of the UN, including all of the relevant UN agencies and even the UN General Assembly itself when discussing the HIV response, have overcome this – including at the High Level Meeting on HIV/AIDS which took place only two months after the 2016 UNGASS on drugs. Although the latest UNGASS did present us with the strongest language to date on specific harm reduction interventions, arguably the most straight-forward language on the broader principle of harm reduction can still be found in the 1990 Political Declaration: 'health education programmes and policies for the reduction of risk and harm of drug abuse'.

Finally, even where progress has been made, it is the role of civil society to continue pushing for more, and to ensure that shifting narratives are translated into changes on the ground and not confined to laudable but rhetorical exchanges in UN meeting rooms. 'Reformers looking towards a new era of humane and evidence-informed drug policy must know how to look beyond rhetorical commitments to public health to implementation of effective programs'.[128] This paper demonstrates the progress that has been made in several areas of UN drug control discussions. This remains important in the current drug policy debates, as was seen at the 2017 CND where there was a clear tension between member states who wanted to revert to language and tone from the 2009 Political Declaration (which targets remain active and due for realisation in 2019), and those who wanted to emphasise the importance of the more progressive and more recent 2016 Outcome Document.[129] There remains much work to be done to deliver an international

drug policy that is truly and meaningfully based on public health, development and human rights. However, there is much progress contained within the 2016 Outcome Document that needs to be consolidated, repeated and further developed in 2019 and beyond.

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Endnotes

1 Interestingly, the term 'world drug problem' itself has never been clearly defined in any of the UN texts – yet remains widely used

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About this Briefing Paper

In an effort to help digest and contextualise the UNGASS Outcome Document, this IDPC briefing paper explores a selection of key themes by analysing the consensus-based language agreed by UN member states during high-level meetings over the last quarter of a century. The briefing studies the evolution in agreed language on: the success/failure of drug control, harm reduction, human rights, development, civil society engagement, criminal justice responses and flexibilities in the conventions, access to controlled medicines and UN system-wide coherence.

About IDPC

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

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