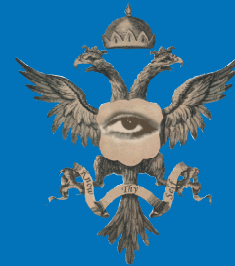


THE BECKLEY FOUNDATION  
DRUG POLICY PROGRAMME



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# THE INTERNATIONAL NARCOTICS CONTROL BOARD: WATCHDOG OR GUARDIAN OF THE UN DRUG CONTROL CONVENTIONS?

*Dave Bewley-Taylor and Mike Trace*

FEBRURY 2006

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REPORT SEVEN



# THE INTERNATIONAL NARCOTICS CONTROL BOARD: Watchdog or Guardian of the UN Drug Control Conventions?

*Dave Bewley-Taylor and Mike Trace. February 2006*

**The Beckley Foundation Drug Policy Programme (BFDPP) is a new initiative dedicated to providing a rigorous, independent review of the effectiveness of national and international drug policies. The aim of this programme of research and analysis is to assemble and disseminate material that supports the rational consideration of complex drug policy issues, and leads to a more effective management of the widespread use of psychoactive substances in the future.**

## SUMMARY

The current global system for the control of illegal drugs such as heroin, cocaine and cannabis is enshrined in three United Nations (UN) Conventions, respectively dated 1961, 1971 and 1988. Established in the 1961 Single Convention on Narcotic Drugs, the International Narcotics Control Board (INCB or Board) is the body charged with monitoring the implementation of the conventions, and of alerting member states and the international community to weaknesses in the system, or its implementation. While the Board's role in overseeing and quantifying the legal market in controlled drugs for medical and scientific uses is widely admired, there is growing discontent with the unbalanced nature of its contribution to the much more complex and sensitive debates surrounding the issue of illegal drug markets and how best to respond to them. Consequently, critics have pointed out that the Board has moved away from its intended mandate as the 'watchdog' of the conventions - describing the global situation, and bringing attention to challenges and dilemmas - to become more of a 'guardian' of the purity of the conventions - challenging any policy or activity that does not correspond with what it perceives as the original vision of the control system. By adopting such an uncompromising stance, the Board undermines its own authority, and runs the risk of being seen as irrelevant to the shifting challenges faced by national governments and municipal authorities in responding to the widespread use of illegal drugs.

## THE INCB AND ITS PLACE WITHIN THE INTERNATIONAL DRUG CONTROL SYSTEM

The Vienna based INCB is, according to its own literature, the independent and quasi-judicial monitoring body for the implementation of the prohibition oriented United Nations international drug control Conventions. These are the 1961 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs), the 1971 Convention on Psychotropic Substances, and the 1988 Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Established in 1968 in accordance with the 1961 Single Convention on Narcotic Drugs,<sup>1</sup> the Board is technically independent of Governments, as well as of the UN.

### *Membership*

Its thirteen members, principally pharmacologists, pharmacists, lawyers, police officers and medical doctors serve in their personal

capacities. According to Article nine of the Single Convention, they should be persons "who by their competence, impartiality and disinterestedness, will command general confidence." The members are elected in a secret ballot by the UN's Economic and Social Council (ECOSOC), serve for a period of five years and can be re-elected. When electing members ECOSOC must, with due regard to the "principle of equitable geographic representation," be mindful of including on the Board "persons possessing knowledge of the drug situation in the producing, manufacturing and consuming countries." Additionally, three members of the Board with medical, pharmacological or pharmaceutical experience must be taken from a list of persons nominated by the World Health Organization (WHO). The Board elects for one year terms its own President and other officers it considers necessary<sup>2</sup>, and meets in closed session twice a year; or more if it is considered necessary.

<sup>1</sup> While this is the case, the INCB had predecessor bodies dating back to the League of Nations.

<sup>2</sup> For example, First Vice-President, Second Vice President, Chairman of the Standing Committee on Estimates and Rapporteur.

## Current INCB Membership

| Name                            | Brief Member Biographies   | Country                     | Mandate<br>expiring<br>March 1 |
|---------------------------------|--|-----------------------------|--------------------------------|
| Joseph Bediako ASARE            | Born in 1942. Private Consultant and Psychiatrist. Medical Academy of Krakow, Poland (1965- 1971); postgraduate training at Graylands and Swanbourne Psychiatric Hospitals, Perth, Australia (1976-1977). Has held many senior posts in the UK and Ghana, including Chief Psychiatrist, Ghana Health Service and specialist in charge at Accra Psychiatric Hospital. Member of INCB since 2005.          | Ghana                       | 2010                           |
| Sevil ATASOY                    | Born in 1949. Director and Professor of Forensic Science, institute of Forensic Science, Istanbul University (since 1988); Professor of Biochemistry, Cerrahpasa School of Medicine, Istanbul University (since 1988). Has held many positions and senior posts in Europe and the US and been involved with EU and UN drug control activities. Member of the INCB since 2005.                            | Turkey                      | 2010                           |
| Madan Mohan BHATNAGAR           | Born in 1934. Bachelor of Law (1956) and Master of Arts in Political Science (1955). Has held various senior positions in narcotics control and administration in the Government of India and international law enforcement and drug control bodies. Member of the INCB since 2002.  | India                       | 2007                           |
| Elisaldo Luiz de ARAÚJO CARLINI | Born in 1930. Full Professor of Psychopharmacology, Federal University of São Paulo (since 1978); Director, Brazilian Centre for Information on Psychotropic Drugs (since 1988). Member of INCB since 2002.  | Brazil *                    | 2007                           |
| Tatyana Borisovna DMITRIEVA     | Born in 1951. Director, V. P. Serbsky State Research Centre for Social and Forensic Psychiatry (since 1998). Chief Expert Psychiatrist, Ministry of Health and Social Development of the Russian Federation (2005). Professor of Medicine (since 1993). Has held many senior positions within the Russian Federation, including Minister of Health (1996-1998). Member of the INCB since 2005.           | Russian Federation          | 2010                           |
| Philip O. EMAFO                 | Born in 1936. Former consultant to the Organization of African Unity, Addis Ababa, lecturer in Biochemistry, lecturer and Senior Lecturer, Pharmaceutical Microbiology and Biochemistry, Chief Pharmacist and Director, Pharmaceutical Services, Federal Ministry of Health of Nigeria, Chairman, Pharmacists Board of Nigeria. Member of the INCB since 2000. President of the Board (2002-2003).       | Nigeria*                    | 2010                           |
| Gilberto GERRA                  | Born in 1956. Coordinator of the Centre for Studies on Drug Addiction, Drug Addiction Service, Health Department of Parma, Italy. University lecturer (master's degree in neurology) on psychopharmacology, University of Parma. Member of the INCB since 2004.  | Italy 2007                  | 2007                           |
| Hamid GHODSE                    | Born in 1938. Professor of Psychiatry and of International Drug Policy, University of London (since 1987). Director, International Centre for Drug Policy, St. George's Hospital Medical School, London (since 2003); President, European Collaborating Centres for Addiction Studies (since 1992). Member of the INCB since 1992. President of the Board (1993, 1994, 1997, 1998, 2000, 2001 and 2004). | Iran (Islamic Republic of)* | 2007                           |
| Melvyn LEVITSKY                 | Born in 1938. Retired Ambassador in the United States Foreign Service; Professor of International Relations and Public Administration, Maxwell School of Citizenship and Public Affairs, Syracuse University. Former Assistant Secretary of State for International Narcotics Matters (1989-1993). Member of the Advisory Board, Drug Free America Foundation. Member of the INCB since 2003.            | USA                         | 2007                           |
| Robert LOUSBERG                 | Born in 1941. Former Head of the Netherlands regulatory office for narcotic drugs and psychotropic substances. Former associate and senior scientist, National Institute of Health, Bethesda, Maryland, United States. Senior scientist and lecturer, University of Utrecht, Netherlands. Long involvement with UN drug control system. Member of the INCB since 2002.                                   | Netherlands                 | 2007                           |

|                        |   |           |      |
|------------------------|---|-----------|------|
| Rainer Wolfgang SCHMID | Born in 1949. Associate Professor, Department of Medical and Chemical Laboratory Diagnostics, University Hospital of Vienna, Medical University of Vienna. Head of the Section on Biomedical and Toxicological Analysis. Member of the INCB since 2002.   | Austria   | 2007 |
| Camilo URIBE GRANJA    | Born in 1963. Medical Director, Hospital of San Martín (Meta); toxicologist, Marly and Palermo clinics; General Director, New Clinic Fray Bartolomé de las Casas; consultant, National Drug Council. Numerous university teaching posts in forensics and clinical toxicology and extensive involvement with international toxicology organizations. Member of INCB since 2005.  | Colombia  | 2010 |
| Brian WATTERS          | Born in 1935. Chairman, Australian National Council on Drugs (since 1998). Arts degree, majoring in medical sociology, University of Newcastle, Australia; trained in addiction counselling at University of Newcastle; qualified psychiatric chaplain. Major in the Salvation Army (1975-2000). President of the Network of Alcohol and Drug Agencies in New South Wales; member of New South Wales' Health Minister's Drug Advisory Council. Member of INCB since 2005. | Australia | 2010 |

\* Elected by ECOSOC from among nominees submitted by WHO.  
(For full biographies of INCB Members see <http://www.incb.org/incb/en/membership.html>)

The Board has a secretariat that assists in the exercise of its treaty related functions. The secretariat is an “administrative entity” of the UN Office on Drugs and Crime (UNODC), “but reports solely to the INCB on matters of substance” (INCB, 2005).

The INCB cooperates with other international bodies concerned with drug control, including not only ECOSOC and its Commission on Narcotic Drugs (CND), the central policy-making body within the UN system for dealing with drug related matters, but also the relevant specialized agencies of the UN. Key among these is the WHO. The Board also cooperates with bodies outside the UN system, especially the International Criminal Police Organization (Interpol) and the Customs Co-operation Council (also known as the World Customs Organization) (INCB, 2005).

### ***The dual role of the INCB***

In accordance with the functions laid down in the three UN treaties, the INCB essentially performs a dual role in that it is concerned with both licit and illicit drugs. Thus, with regard to the licit manufacture of, trade in and use of drugs, the INCB endeavours to ensure that adequate supplies of drugs are available for scientific and medical uses and that the diversion of drugs from licit sources to illicit channels does not occur. The Board also monitors Governments' control over chemicals used in the licit manufacture of drugs and advises them on preventing the diversion of those chemicals into the illicit traffic. As regards the illicit manufacture of, trafficking in and use of drugs, the Board “identifies weaknesses in national and international drug control systems and contributes to correcting such situations” (INCB, 2005). It is also responsible for assessing chemicals used in the illicit manufacture of drugs, in order to determine whether they should be placed under international control.

### ***In order to fulfil these responsibilities, the INCB:***

- Administers a system of estimates for narcotic drugs and a voluntary assessment system for psychotropic substances and monitors licit activities involving drugs through a statistical returns system with Governments, with a view to assisting them in achieving, among other things, a balance between supply and demand.
- Monitors and promotes measures taken by Governments to prevent the diversion of substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances and assesses such substances to see whether there is need for changes in the scope of control of the 1988 Convention.
- Analyses information provided by Governments, United Nations bodies, specialized agencies or other competent international organizations, with a view to ensuring that the provisions of the international drug control treaties are adequately carried out by Governments, and recommends remedial measures.
- Maintains a permanent dialogue with governments to assist them in complying with their obligations under the international drug control treaties and, to that end, recommends, where appropriate, technical or financial assistance to be provided. This dialogue process involves INCB missions to selected countries every year. (See <http://www.incb.org/e/index.htm>)

### ***The Formal Powers of the INCB***

While the INCB is tasked with monitoring national drug policies and assessing their relationship with the treaties, it is important to note that the Board has no police power to enforce the Conventions' provisions (De Ruyver et al, 2002). As will be discussed below, it is generally acknowledged that the INCB often relies on informal pressure in its attempts to encourage what it perceives to be treaty compliance. The effectiveness of this informal influence is to a

certain extent, however, dependent upon the Board's potential to invoke its formal powers. These have their origin in Article 14 of the Single Convention and constitute a range of actions that increase in severity depending upon the responses of national Governments to INCB requests and proposals.

Accordingly, if, under certain conditions, "the Board has objective reasons to believe the aims of this Convention are being seriously endangered by reason of the failure of any Party, country or territory to carry out the provisions of this Convention" the INCB has the legal right to propose confidential consultations with and request explanations from the Government concerned. Furthermore, if "without any failure in implementing the provisions of the Convention, a Party or a country or territory has become, or if there exists evidence of a serious risk that it may become, an important centre of illicit cultivation, production or manufacture of, or traffic in or consumption of drugs, the Board has the right to propose to the Government concerned the opening of consultations." Within this context, the Board may call upon the Government concerned to adopt "remedial measures" or propose that the Government undertake a study of the issue in question with a view to indicating and carrying out necessary remedial measures. If the Board concludes that the Government concerned has given unsatisfactory explanations, failed to adopt necessary remedial measures or that "there is a serious situation that needs co-operative action at the international level with a view to remedying" it may call the matter to the attention of the Parties of the Convention, ECOSOC and its CND. Under Article 14 failure to resolve a problem in any other way could, after considering the reports of the Board and of the CND if available, lead ECOSOC to draw the attention of the UN General Assembly to the matter<sup>3</sup>. The consultation process is a serious matter for nation states. For example, the Board is currently in consultations with Afghanistan on the drug control situation in the country having invoked Article 14 of the Single Convention in 2000. This fact is published within the INCB's annual reports and therefore well publicized.

Such "name and shame" procedures are also bolstered by the possibility of a drugs embargo. What can be described as the "nuclear option" exists under both the 1961 Single Convention and the 1971 Convention<sup>4</sup>. Consequently, when highlighting to the Parties, ECOSOC and the CND a perceived failure to carry out obligations under the Conventions, the INCB can recommend to Parties that they "stop the import of drugs, the export of drugs, or both, from or to the country or territory concerned" for a designated period or until it is satisfied with the situation within the country or territory. As implied above, with reference to the 1988 Convention the INCB's powers are greatly reduced and no provision is made for the Board to take steps against what it regards as a defaulting Party. While such sanctions have never been applied, they are a persuasive mechanism for encouraging what the Board considers to be treaty adherence. For example, in the years since the Single Convention was ratified in 1968 the INCB has only threatened action against nations five times. Sanctions were avoided after each country

backed down. According to Herbert Schaepe, Secretary of the INCB between 1991-2004, "Ultimately the issue was solved because the pressure was such that the country did not want to be named at the Economic and Social Council as being in breach of the treaty" (Mann, 1999). While not formally moving to sanction Australia, the INCB also let it be known that the country could ultimately face an international embargo of its opiate exports if it did not reconsider its position on heroin injecting rooms in the late 1990s; a significant consideration bearing in mind the lucrative legal Tasmanian opium crop. The INCB's stance certainly created confusion at the national level, and consequently a delay in the implementation of the intervention. As Neil Boister notes, "Although these powers [regarding sanctions] have never been used, they do represent potentially powerful instruments for enforcing observation of the obligations in the early drug conventions." This is particularly the case since the INCB decision cannot be overturned by a higher body (Boister, 2001). Indeed, it is these powers that give the INCB both a prosecutorial and quasi-judicial role.

The Board clearly then occupies a central place within the international drug control system. It not only has the responsibility to monitor treaty compliance, but also the authority to report perceived infractions to influential bodies within the UN and consequently exert significant pressure upon nation states. In this respect it fulfills a similar role to other bodies connected to the Organization. For example, among its various functions, the International Atomic Energy Agency is the watchdog for international treaties aimed at containing the unauthorized spread or distribution of nuclear weapons or materials (Fasulo, 2004). It has the power to refer perceived violations to the UN Security Council. Given the seriousness of the issue area and the pivotal role played by the INCB within the field of drug control, it is imperative that the body therefore approaches its tasks in a sophisticated and balanced fashion within the framework laid out in the drug control Conventions.

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## INCB ANNUAL REPORTS

Based on the activities described above, the INCB publishes an annual report. These are passed to ECOSOC through the CND with the Parties to the Conventions permitting unrestricted distribution<sup>5</sup>.

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<sup>3</sup> A similar process is outlined in the 1971 Convention on Psychotropic Substances, although this does not include the opportunity to involve the General Assembly.

<sup>4</sup> Article 19 of the 1971 Convention follows the precedent set by the Single Convention, but in line with the focus of the treaty refers to "particular psychotropic substances" rather than "drugs."

<sup>5</sup> This is in accordance with Article 15 of the Single Convention. The annual report of the Board is supplemented by technical reports on narcotic drugs and psychotropic substances. These give a detailed account of estimates of annual legitimate requirements in each country as well as data on the licit production, manufacture, trade and consumption of these drugs worldwide. The annual report is also supplemented by the report to the CND on the implementation of Article 12 of the 1988 Convention. This contains an analysis of measures Governments have taken against the diversion of precursors and essential chemicals and trends in illicit trafficking in these substances worldwide (<http://www.incb.org/incb/en/annual-report.html>)

Released by the INCB every March, the reports provide the Board's assessment of the global situation during the previous year, incorporating data up to November of that year. This is to ensure that "Governments are aware of existing and potential situations that may endanger the objectives of the international drug control treaties." The reports draw the "attention of Governments to gaps and weaknesses in national control and in treaty compliance and makes suggestions and recommendations for improvements at both national and international levels." (INCB 2005) "As an impartial body" the INCB also tries to identify and predict dangerous trends and suggests necessary measures to be taken." (<http://www.incb.org/incb/en/mandate.html>)

Since 1992, the first chapter of the annual report has been devoted to a specific drug control issue on which the INCB presents its conclusions and recommendations "in order to contribute to policy-related discussions and decisions in national, regional and international drug control." In the report for 2002, for example, chapter one focused on Illicit Drugs and Economic Development and in 2003 the theme was Drugs Crime and Violence: The Microlevel Impact. Chapter one of the report for 2004 focused upon the interaction between supply and demand, emphasizing the need for a balanced and integrated approach. After the thematic first chapter the reports examine the operation of the international drug control system and provide a detailed continent-by-continent analysis of the world situation.

The reports are among the key documents published within the UN drug control system. In their in-depth analysis of the INCB, the authors of the 1975 *The Gentlemen's Club: International Control of Drugs and Alcohol* noted "The report is one of the media used by the Board to exert moral pressure, and therefore contains many appeals, declarations, and expressions of approval and disapproval, as the case may be" (Bruun, Pan & Rexed, 1975). Thirty-years on this remains unchanged. The reports still do much to set the tone for drug policy debate within the international community. The process of exerting moral pressure is also enhanced by the INCB's place within the UN system. As discussed elsewhere, it can be argued that the image of the UN as a benevolent organization is a crucial factor in the functioning of the international drug control regime. It is true that in recent years the UN has toned down rhetoric associated with drug control and dropped terms like "evil" and "scourge" from its vocabulary (Room, 1999). Nonetheless, the regime continues to exert considerable pressure on nations to conform to the established norms of behaviour through the continuing prominence of language stating that those drugs defined as illicit are a "danger to mankind" and that the UN's ideals consequently transcend the traditional concerns of the international community" (Bewley-Taylor, 2001). The potential reputational implications of open deviation from such norms are often important factors in determining how signatory nations to the UN drug control treaties formulate and apply domestic legislation

(Andreas 1999, Bewley-Taylor 2003). While technically independent, the annual report being separate from any other UN body, the INCB certainly derives a considerable degree of moral authority from its links to the Organization. It possesses a benevolent aura by association. A cursory glance of the press coverage around the release of the annual reports in March every year reinforces this view<sup>6</sup>. Indeed, President of the Board, Professor Hamid Ghodse, noted in 1998, that since the reports receive "...good coverage in the media, the associated publicity helps to bring about or accelerate changes that the Board would like to see in particular countries" (Ghodse, 1998). As such, even without invoking any of the formal "naming and shaming" clauses within Article 14 of the Single Convention, the Board is able to portray individual nations favourably or otherwise.

### ***"Impartiality" of the INCB***

It is essential to remember that as the monitoring body for the implementation of the drug control treaties, all INCB output, especially the annual reports, is written or stated within the context of the Board's own interpretation of those treaties. After all, as its Vice-President pointed out in 1971, the Board is not merely a body "for the mechanical recording of statistics; a computer could fulfil that role" (Bruun, Pan & Rexed, 1975). Due to the ambiguities and flexibility that exist within the drug control treaties, the INCB's perspective is by no means universal, however. Thus, although it is seen to be independent, refers to itself as "impartial" and the Single Convention gives it authority to act should, as noted above, it have "*objective reasons* (emphasis added) to believe the aims of this Convention are being seriously endangered," it is difficult for the Board ever to be a truly neutral body. Consequently, as will be shown, disagreements sometimes arise when the INCB makes what are in effect normative judgments on national circumstances vis-à-vis treaty compliance and recommends remedial measures when it considers them necessary. It is plausible to argue, therefore, that a certain amount of tension between nation states and the Board is inevitable within the UN drug control system. The continuingly rigid interpretive position taken by the Board in recent years, for example, has meant a sometimes strained relationship with some of those nations currently choosing to interpret the Conventions from a less prohibitive perspective than the 13-member body. Conversely, it seems likely that a more experimentalist view of the Conventions from the Board would generate disquiet among countries wishing to see a strong prohibitionist steer from the INCB. Fluctuations in the direction of drug policy within nation states thus combine with the Board's changing stance on the treaties to ensure that universal approval of all the contents and recommendations within the annual reports and other statements is unattainable.

### ***Weaknesses with recent annual reports.***

That said, the operation of the Board within the international drug control system is greatly dependant upon the overall quality of the annual reports. For the system to function as intended, what is ultimately a subjective assessment of treaty compliance needs to be supported by a uniformly accurate description of

<sup>6</sup> For example, "Germany OKs Drug Injection Rooms: Heroin Users can Shoot-Up off the Streets, unless the UN has its way," Salon, March 13, 2000 and Imogen Foulkes, "UN Drugs Body Slams Switzerland," Swissinfo/SRI, March, 4, 2004.

the contemporary global situation and a robust explanation for the INCB's interpretation of the Conventions. Examination of recent INCB reports reveals that they do in many ways provide an impressive account of a wide range of complex issues. Although dependant upon the quality of data received from member states, the reports in the main offer an accurate, full, and balanced record of the contemporary world situation as well as providing useful forecasts of future trends and potential problems relating to both illicit and licit drugs. Indeed, the reports reflect the success of the Boards efforts to monitor and assist in the regulation of the market for licit drugs. Structural and substantive content analysis, however, reveal that the undeniable strengths of the reports, especially with regard to managing the licit market, are accompanied by significant weaknesses; notably when the Board addresses the more subjective area of analysis of illicit drug policies. These deficiencies can be seen to cluster around four reoccurring and interconnected themes.

***(i) Inconsistent Positions on Policy Debates.***

As a watchdog for the implementation of the Conventions it is important for the Board to maintain a consistent and balanced position on policy debates and how emerging policies sit with the treaty obligations of national governments. In recent years such consistency has proved difficult to identify in relation, for example, to the emergence of what can be called the harm reduction paradigm and the application of specific harm reduction interventions in increasing numbers of states.

It is true that all discussions surrounding the concept of harm reduction are in many ways complicated by the varying interpretations of the term; a situation that certainly impacts the Board's position on the issue. For example, as long ago as 1993 the INCB stated its regard for harm reduction as a "tertiary strategy" for demand reduction purposes (INCB, 1993). In 2000 it went further and expressed regret that harm reduction had "diverted attention (and in some cases funds) of Governments from important demand reduction activities such as primary prevention or abstinence oriented treatment" (INCB 2000). Yet, three years later, in what could be construed as an attempt to appropriate the term, the Board stated, "the ultimate aim of the Conventions is to reduce harm" (INCB, 2003). While this is the case, even beyond dilemmas of definition the INCB's handling of specific harm reduction interventions also remains problematic.

In examining this it is instructive to look at the foreword of the INCB report for 2004. Reflecting increasing awareness of the significance and discussion of the phenomenon at national and international levels, the Board highlights the issue of HIV/AIDS infection among injecting drug "abusers." The President of the Board, Professor Hamid Ghodse, urges governments to address ignorance about HIV/AIDS and modes for its transmission and to find ways to limit the spread of HIV. However, he cautions that government policies "do not perpetuate the vicious circle of injecting drug abuse and HIV/AIDS" and that "Measures to prevent

the spread of infectious diseases must not be seen as facilitating or even promoting drug abuse, which is, after all, the root of the problem" (INCB, 2005.) This approach is revealing. An emphasis on governments heightening awareness and ensuring that policies do not perpetuate the link between injection drug use (IDU) and the spread of infectious diseases is a theme repeated at various places within the report itself. Although the report encourages governments to "find ways to limit the spread of HIV," the absence of any explicit reference to widespread practices like needle or syringe exchange in the Foreword, or anywhere in the publication, demonstrates the Board's continuing reluctance to engage directly with not only the principle of harm reduction, but also specific interventions.

Another example concerns substitution treatment. When commenting on the place of harm reduction within the report for 2004, the former President of the International Harm Reduction Association, Alex Wodak M.D., referred to the Board's attitude to this practice as "tepid" (Wodak, personal communication, 2004). Stating his concerns about the report in a letter to Hamid Ghodse, Robert Newman M.D., Professor of Epidemiology and Population Health and Psychiatry at the Albert Einstein College of Medicine, noted, "there is virtually no mention – and absolutely no endorsement! – of opiate agonist treatment." When referring to the situation in some countries of the former Soviet Union reluctant to engage with substitution treatment, Newman observes that the Report refers to the Single Convention and the amending Protocol "citing its 'guidance for the parties to establish... a system of administrative controls and penal sanctions *and in addition the prevention of drug abuse and the treatment of drug abusers* (original emphasis)." "Yet," he continues, "there's not a word of criticism in the INCB Report directed at any of these countries for failing to comply with the Convention's insistence on treatment availability" (Newman, 2005).

To be sure, following a now well-established pattern within its reports and statements, the Board generally only highlights harm reduction interventions when criticising nations for implementing policies that it deems to be contrary to the UN conventions. This is particularly so regarding "rooms for drug injection, consumption and/or inhalation or other facilities where illicit drugs are administered" (INCB 2005). The report for 2004 subsequently saw "member states of the European Union" and, as in previous reports, Australia singled out for particular criticism while "countries with drug control policies as diverse as Denmark and Portugal" were strongly supported in their decisions to opt against the establishment of drug consumption rooms. The Board reiterated, "drug injection rooms are against the central principle embodied in the international drug control treaties, namely that the use of drugs should be limited to medical and scientific purposes only" (INCB, 2005).



While inconsistent and unbalanced, such a view can be understood when viewed in terms of the INCB's own inflexible stance on treaty interpretation. Further difficulties with the Board's position arise, however, when it is assessed in the wider context of the international framework within which it operates. As is now well-documented, significant policy conflict exists on the principle of harm reduction within the UN drug control system (Jelsma & Metaal, 2004, Wolfe & Malinowska-Sempruch, 2004). What has been called the core triangle of the United Nations International Drug Control Programme (UNDCP), the CND and the INCB in the main follow a path that contradicts that pursued by WHO, UNAIDS and the United Nations Development Programme<sup>7</sup>. The latter bodies use the harm/risk reduction concept as a matter of course (TNI, 2003a). Such systemic inconsistencies do little, therefore, to legitimate the legal authority held by the INCB when commenting on the policy choices of other actors within the international system: sovereign states. Furthermore, the Board's interpretative position on drug consumption rooms arguably became harder to justify after September 2002 and the emergence of a restricted document prepared by the Legal Affairs Section of the UNDCP. *Flexibility of Treaty Provisions as Regards Harm Reduction Approaches* was the response to a request from the INCB during its 74th session and provides a succinct overview of the issue. In so doing, it holds that most harm reduction measures, including "Substitution and Maintenance Treatment", "Needle or Syringe Exchange" and "Drug-injection rooms," can be regarded as legally acceptable<sup>8</sup>. The document also noted that the existence of new threats like the "growing rates of intravenous HIV transmission of serious illnesses" require that "governments come up with new strategies to cope." "It could even be argued" it continues "that the drug control treaties, as they stand, have been rendered out of synch with reality, since at the time they came into force they could not have possibly foreseen these new threats." "The Board," it concluded "has a broad enough mandate under the Conventions to review these [national and local harm reduction policies] and their implementation, and in cases in which *irrefutable* (emphasis added) breaches to the Conventions are found, to act on its findings and seek out a remedy for the problem" (INCB, 2002a). Thus, when read alongside the opinion of the UNDCP Legal Affairs Section, the Board's position on drug injection rooms, as stated in recent annual reports, appears hard to justify.

### **(ii) Selective use of the available evidence base**

From a methodological perspective, it is difficult for a document of the interdisciplinary scope of an INCB report to incorporate a truly comprehensive range of references to relevant published

research. Yet, mindful of the INCB's influential role within the UN drug control system, it seems reasonable that assertions made

by the Board should be supported by not only appropriate legal positions but also relevant research findings. From time to time, however, key statements lack corroborating evidence.

In the report for 2003, for example, "The Board calls on Governments that intend to include 'harm reduction' measures in their demand reduction strategies to carefully analyse the overall impact of such measures..." The Board notes that these "may sometimes be positive for an individual or for a local community while having far-reaching negative consequences at the national and international levels. (INCB 2003). Similarly, the Foreword of the report notes "some so-called 'harm reduction' approaches are not what they seem to be in that they cause more harm than they purport to reduce" (INCB, 2003). Cognizant of the contentious place of harm reduction within the UN drug control system, it is unfortunate that these statements, including clauses on both the positive effects and negative consequences of harm reduction measures, are not accompanied by references to the latest research on the issue.

Other sections of the report for 2003 are arguably even more problematic with regard to the presentation and assessment of some harm reduction measures. The report shines a critical light on those countries it regards to be in violation of the Conventions because of the existence of drug consumption rooms within their borders. Germany is singled out for particular criticism, with the Board noting that "according to the data collected by the Government, there is little evidence that drug injection rooms actually serve to ensure that the drug dependent persons undergo treatment and that their existence contributes to a reduction in drug-related deaths" (INCB, 2003, p. 78). While this may be the case in this instance, it is misleading to present findings from the German data in a way that suggests universality. Indeed, a study on drug consumption rooms by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) released around the same time as the INCB report assesses the intervention in very different terms. *The European Report on Drug Consumption Rooms* concludes among other things that:

*They reach a population of long-term problem drug users with various health and social problems. They provide a hygienic environment for drug use and, for regular attenders at least, decrease exposure to risks of infectious diseases. They contribute to a reduction in levels of risk-taking among their clients and increase access for specific 'hard-to reach' target populations of drug users to health, welfare and drug treatment services. They provide immediate emergency help in case of overdose, and can make a contribution to the reduction of overdose deaths at community level. (EMCDDA, 2004)*

<sup>7</sup> It has also been noted that confusion concerning abstinence based approaches, needle exchange programmes and substitution treatment exists within the INCB report for 2003 (Hallam, 2004)

<sup>8</sup> The exception being "drug quality control," i.e. pill testing. This is seen to be more problematic with reference to the spirit of the Conventions.

It is significant to note that the conclusions of the 2004 EMCDDA report echoed and expand upon much of the evidence cited in the organization's 2002 annual report (EMCDDA, 2002).

Similarly, selective use of the available evidence base can be seen in relation to the Board's position on what it considers to be another controversial issue; the policy of the Government of the Netherlands on cannabis. For example, in recent reports the Board has boldly stated that the "separation of markets" is a "failed policy" (INCB, 1995) and criticized a German regional government for "claiming incorrectly that the experience of the coffee-shop policy in the Netherlands had been positive" (INCB, 1996). While of course permitted to hold a critical view of the liberal drug policies in the Netherlands, it is again unfortunate that in these instances, the Board chooses not to engage with available research in order to justify its position. These examples are not unique.

An examination of its position on the so-called Swiss heroin trials of the late-1990s provides a useful insight into what is arguably a fundamental problem with the Board's use of the evidence base in the construction of its reports. Over a number of years INCB reports have understandably commented upon Swiss experiments with heroin prescription. The tense relationship between this practice and the prohibitive ethos of the Conventions has ensured that, while implicitly acknowledging its legality within international law, the Board has consistently adopted a cautious position towards it. For example, the report for 1999 highlighted problems with the Swiss studies of the trials (INCB 1999). This is a point also explored by a number of drug policy analysts. For instance, in *Drug War Heresies*, Robert MacCoun and Peter Reuter provide an overview of studies undertaken at the time and discuss the problems of evaluating any possible benefits of the practice due to poor trial design (MacCoun & Reuter, 2001). However, in assessing the international reaction to the Swiss heroin trials in general, MacCoun and Reuter accurately summarize the INCB's attitude. They note, "Rather than enthusiasm about the promising findings of the trials, the undoubted weaknesses of the evaluation were seized on for accusations of irresponsibility. *There was no recognition that current policies, in particular the tough enforcement of prohibition, have a much thinner research base supporting them (emphasis added)*" (MacCoun & Reuter, 2001).

Indeed, as a reading of recent reports reveals, while the INCB consistently requests scientific justification from governments pursuing strategies that deviate from prohibition oriented policies (for example on the medical use of cannabis in Canada and the Netherlands, INCB, 2005), it seldom acknowledges the existence of research that may question the effectiveness of policies dominated by law enforcement. The Board admits that criminal justice strategies need to be integrated with other programmes aimed at reducing demand. Yet, it does not reflect reality by acknowledging potential weaknesses with the approach. Furthermore, in much the same way that the annual reports

sometimes ignore evidence on policies like drug consumption rooms, they employ an asymmetric use of the evidence base with regard to law enforcement<sup>9</sup>. For instance, statements in the report for 2004 that "Interdiction efforts are most effective if they focus on disrupting illicit drug markets and source of supply" sit somewhat uncomfortably with available evidence concerning the effectiveness of interdiction and supply-side policies (For example, Boyum and Reuter, 2005).

### *(iii) Selective Focus of Subject Matter*

The Board describes its annual report as a "comprehensive survey of the drug control situation in various parts of the world" (<http://www.incb.org/incb/en/mandate.html>). As noted earlier, their reports are in the main wide-ranging and balanced. As one would expect, the changing state of the global environment means that some issues, like the situation in Afghanistan in 2004, receive relatively more space than others. It can be argued, however, that problems sometimes arise due to the manner in which the INCB chooses to emphasize, or indeed avoid, certain issues. This is particularly so concerning the issue of dispute.

In the foreword to the 2002 annual report, the then President of the Board, Dr. Philip O. Emafo, launches what has been called "a strong attack" (TNI, 2003b) against groups "that advocate legalization or decriminalization of drug offences" and "favour a crusade focusing only on 'harm minimization' or 'harm reduction.'" Dr. Emafo claims that supporters of such policies "pursue their goals through aggressive, well-funded campaigns and with missionary zeal" (INCB, 2003). This is a point discussed by some of the groups to which Dr. Emafo is presumably referring. The Drugs and Democracy Programme of the Amsterdam based NGO, the Transnational Institute (TNI), legitimately asks, who are these harm reduction "crusaders"? The effectiveness of harm reduction strategies like drug consumption rooms is, as discussed above, not only recognized at European Union level on the basis of studies undertaken by the EMCDDA, but also by some agencies of the UN itself (TNI, 2003b.) The theme of dissent within the INCB reports is also discussed by the UK based drugs charity, Release. When contextualizing the statements within the 2003 report, Release refers back to chapter one of the report for 1997, "Preventing Drug Abuse in an environment of illicit drug promotion," It concludes that "the Board took a dim view of those proposing heterodox types of response towards unauthorized drug use" (Hallam, 2004). To be sure, Professor Ghodse admitted that the Board "blasted" what it perceived as "a growing 'culture-of drug friendliness'" in the report for 1997 (Ghodse, 1998). This attitude led an ex-UN drug control official to believe that members of the INCB were "imagining themselves as Delphic social commentators" (White, personal communication, May 2002).

<sup>9</sup> It is also interesting to note that the report for 2002 saw the INCB cite controversial research on ecstasy and urge governments to use it in their "drug abuse prevention activities." (INCB, 2002)

In these and other cases, it could be argued that the Board was merely fulfilling its mandate in describing the global situation. However, a lack of clarity and the use of deliberately emotive language where criticism of the treaty system is concerned arguably do little to support the Board's claims of impartiality. This is particularly the case when the issue in question is given prominence within the foreword of a report. Indeed, such structural unevenness of the reports is compounded by the manner in which the INCB portrays examples of support for the extant control system. In the foreword for the report for 2003, for example, Dr. Emafo states "The support that the international drug control treaties enjoy among members of civil society became evident in April 2003, when more than 1.3 million signatures of *ordinary citizens* (emphasis added) from 60 countries were presented to the Executive Director of the United Nations Office on Drugs and Crime and the Chairperson of the Commission on Narcotic Drugs" (INCB, 2003). While there is little dispute concerning the figures cited, it is interesting to note the use of neutral language and the failure to mention, in a similarly matter-of-fact tone, campaigns that question some aspects of the Conventions. In much the same way, the report for 2003 notes, "In April 2003, the European Parliament rejected a report that contained a proposal to amend the international drug control treaties. Instead, the European Parliament called for the full implementation of the treaties and reaffirmed the central role of preventing drug abuse (INCB, 2003, paragraph 520). At no point does the Board indicate that the proposal was only narrowly defeated.

It is also perhaps instructive to compare such an approach with the way the reports deal with policies that are controversial and widely criticised, but do not challenge the prohibitive culture of the Conventions. For example, despite international concern regarding what appeared to some to be officially sanctioned violence and killings (Human Rights Watch, 2004), the so-called Thai "war on drugs" received little critical attention within the report for 2003. The INCB noted that "...while the Government states that the campaign was successful in curbing the drug problem, its unintended side effects have been widely criticized. The Board has requested the Government to be informed of the results of the campaign, which, it is hoped, would be sustainable (INCB 2003). Following an INCB mission to Thailand in May 2004, the report for that year noted that it "appreciates" the efforts of the Thai authorities to investigate killings "and trusts that the Government will continue to provide information regarding the progress of those investigations" (INCB, 2005). Considering the intensity of criticisms leveled at nation states for their operation of heroin maintenance programmes (MacCoun & Reuter, 2001) or drug consumption rooms and liberal cannabis policies the INCB's position on the Thai situation seems surprisingly indifferent. It may be possible to contend that in restraining its remarks the Board was respecting Thai national sovereignty. This explanation is problematic, however, when viewed in the context

of the Board's comments on other issues that arguably encroach into the internal affairs of sovereign states; something that will be discussed in more detail below. A similar state of affairs exists with regard to the increasingly controversial policy of aerial spraying in Latin America. The Board mentions the practice as part of its annual narrative on the region, but never sees fit to call attention to possible negative side effects or "collateral damage." For example, recent research suggests the fumigation strategy in Colombia is not merely ineffective, but also counterproductive in terms of human rights. The policy has destroyed the livelihoods of thousands of peasant farmers who lack viable economic alternatives to producing illicit crops, endangering their health and the environment (Ramírez Lemus, Stanton and Walsh, 2005).

In concluding on this point, it is perhaps poignant to refer to comments on the 1971 INCB report. It has been said that its language revealed "a certain insularity; a failure to see things in their proper proportions. One's own area of concern is seen as the all-important one, claiming more attention than can reasonably be assigned. Its seriousness is played up in terms which go beyond the immediate circumstances in a way which is likely to distort judgment." (Bruun, Pan and Rexed, 1975). These comments can be applied to the Board's current tendency to selectively focus only on those 'weaknesses in the global drug control system' that arise from more tolerant policies.

#### **(iv) Exceeding mandate**

That the Board operates within the terms of the mandate given to it in the Conventions is important to its role as a monitor of national compliance with those Conventions. Comment beyond its mandate can undermine legitimate observations and recommendations and has the potential to bring the INCB into conflict with core values of the UN.

It was noted earlier that in its report for 2004 the Board commended Denmark in its decision not to establish drug injection rooms. It has been suggested that this policy option was chosen after INCB criticism of the proposal (Mann, 1999, Wolfe & Malinowska-Sempruch, 2004). Since drug injection rooms are not in irrefutable breach of the Conventions, it is reasonable to argue that in influencing domestic policy on this issue the Board exceeded its mandate in relation to respect for national sovereignty (Bewley-Taylor, 2005). Indeed, as the TNI's 2003 report, *The Erratic Crusade of the INCB*, points out, "While the Board stresses the limitations the Conventions impose on states on the one hand, it ignores the limitations in the Conventions as regards interference with sovereignty and autonomy of member states in constructing national drug policy" (TNI 2003b). The TNI report lucidly examines the Board's position on the issue of personal consumption and possession of controlled drugs and its relationship to national sovereignty. It is argued, "The INCB in its annual reports deliberately confuses the issues of possession and use and lectures governments that decriminalize use and

possession for use within their legal system repeatedly each year.” The authors continue,

*“The Board is misinterpreting the Conventions and oversteps its mandate when it tries to influence or control the internal policies of governments as regards the use of controlled drugs, particularly when a government takes a different view from the Board, or individual Board members, in matters of public health policy, crime prevention, clinical practice or reduction of demand for illicit drugs. The Board frequently condemns the policies of sovereign states in these areas, even when it is unqualified to comment” (TNI, 2003b. Also see Fazey, 2002).*

Another instance of the Board exceeding its mandate within its annual report involves the medical use of cannabis. In its report for 2003, the Board notes that the Conventions leave the definition of the term “medical and scientific purposes” up to the parties (INCB, 2003) Yet, as noted above, despite its own selective use of the evidence base, in the same report INCB places the onus on governments “not to allow its medical use unless conclusive results of research are available indicating its medical usefulness” (INCB, 2003). As the TNI point out, “It is not up to the Board to decide whether scientific results are ‘conclusive’ nor whether cannabis has medical usefulness. It is neither within their mandate nor their competence.” To take a position on the term “medical and scientific purposes,” as used in the Conventions, “is to take a political stand” (Fazey, 2002 & TNI, 2003b).

## THE BOARD AS THE GUARDIAN OF THE CONVENTIONS?

The weaknesses discussed here certainly do little for the integrity of the INCB’s annual reports. This is unfortunate because the deficiencies detract from the many strengths contained within the documents. More significantly, however, since the INCB reports are said to provide a “valuable insight into the values and beliefs which underlie the Board’s approach to the problem with which it deals,” (Bruun, Pan & Rexed, 1975) it is reasonable to suggest that the deficiencies within recent reports are indicative of shortcomings in the operation of the Board itself.

As long ago as the early 1970s, it was noted that the INCB was becoming more willing to “take stands on matters of policy.” *The authors of The Gentlemen’s Club* observed that the Board’s 1972 report was “a good example of the recent readiness to venture opinions on the circumstances and social consequences of drug use” (Bruun, Pan & Rexed, 1975).

Nonetheless, the evidence examined here indicates that in recent years the Board has gone beyond simply venturing opinions. On some issues, particularly some aspects of harm reduction, the

INCB can be seen to have overstepped its role. That recent annual reports are for the most part comprehensive and accurate strongly suggests that on occasions the Board is deliberately distorting reality in order to legitimize its own interpretation of the treaties. When assessed in tandem with inappropriate moves within the reports to encourage sovereign states to adhere to these interpretations, a strong case can be made that the INCB is currently often acting as a guardian and not a watchdog of the Conventions<sup>10</sup>. As a watchdog of the treaties the Board should be the monitor of the world drug situation and highlight any existing and emerging tensions between national drug policy and the Conventions. The INCB should not be acting as a guardian by using its annual reports to actively defend the extant condition of the Conventions through an inconsistent, skewed or incomplete portrayal of reality nor via the inappropriate politicization of its role. That the Board sometimes acts as a guardian not a watchdog can also be seen in the tone and content of other INCB documents and statements on national policy developments. Indeed, criticism of the UK Government’s 2003 decision to reclassify cannabis arguably went beyond acceptable comment. As Under Secretary of State Bob Ainsworth noted in a letter to the Secretary of the INCB, the Board used alarmist language, omitted any reference to scientific evidence on which the decision to classify was based and presented the decision in a misleading way to the media (Ainsworth, 2003, Travis 2003).

Research suggests that since its creation the INCB’s willingness to engage in policy debates has fluctuated over time (Interview Bayer, October 2005). Indeed, under the Presidency of Sir Harry Greenfield (1968-1973)<sup>11</sup> the INCB’s stance has been described as “the judicious pursuit of ‘quiet diplomacy’” (McAllister, 2000). It appears that the Board’s crucial shift from monitor to custodian has taken place over the course of the last ten years or so. It is perhaps no coincidence that this is a period when the original vision behind the Conventions has increasingly been questioned. In support of this assertion, we need to look back to the thematic chapter of the report for 1994, “Overview: Evaluation of the Effectiveness of the International Drug Control Treaties.” This contains a subsection titled “Possible future adjustments in the international drug control treaties.” As the subtitle suggests, while no substantial amendments were discussed, the Board noting that this was the case “at this stage,” the INCB was at this time willing to consider alterations to the treaty system. It is true that most points of discussion focused on strengthening the prohibitive framework of the Conventions. However, the Board did recommend that conflict between the provisions of the Single Convention and “the views and legislation of countries where the use of the coca leaf is legal should be solved.” It stated, “There is a need to undertake a scientific review to assess

<sup>10</sup> Use of this terminology is based upon the observations of Neil Boister who has argued that the CND, the UNDCP and the INCB have the collective role of implementing the international drug control system. “They are not considered as guardians but as monitors.” (Boister, 2001)

<sup>11</sup> Greenfield was the President of the Permanent Central Opium Board, the INCB’s predecessor body, from 1953. The quote above thus refers to the period 1953 to 1973.

the coca-chewing habit and the drinking of coca tea” (INCB, 1994). Yet, in its role as a monitor of the treaties, the INCB does not push for the prohibition of coca consumption. The Board’s willingness to assess significant ambiguities and where necessary suggest alterations to the Conventions is also apparent within a supplement to the INCB report for 1994. Again there is discussion, here in more depth, of the areas “where clarifications are needed,” including “a need to clarify ambiguities” concerning the coca leaf. (INCB, 1994a, also see Bayer, 2004).

Yet, only three years later, the INCB report contained emotive language regarding crusaders with “missionary zeal;” a defensive tone that has arguably characterized the Board’s critical attitude towards any perceived deviation from its interpretation of the letter or spirit of the Conventions. This was very much in contrast to the open-minded views on possible revisions to the international drug control system expressed in the UNDCP’s 1997 *World Drug Report*. While that report did not take into account the political dimensions of initiating changes to treaties (see Bewley-Taylor 2003a), it noted, “Laws – even the international Conventions – are not written in stone; they can be changed when the democratic will of nations so wishes it” (UNDCP, 1997). Additionally, as discussed above, by 2002 the UNDCP’s Legal Affairs Division was suggesting that the treaties might be “out of synch with reality.” All of which leads to a significant question. Why has the INCB been so inflexible in the face of increasingly problematic tensions between some aspects of the Conventions and the reality of national drug policy in many parts of the world?

### ***Possible Explanations for the INCB’s transition from watchdog to guardian***

The sensitive nature of the Board’s work, particularly in relation to helping to regulate the licit drugs market, makes a certain level of secrecy necessary and expected. Unfortunately, as noted elsewhere, this secrecy and the closed nature of the meetings does make analysis of its operation difficult (Bruun Pan and Rexed, 1975). For example, records of the Board’s meetings or communications with national governments are not open to public scrutiny. Nonetheless, even with a paucity of evidence, it is possible to suggest a number of interrelated factors that might help explain why the Board currently often sees itself as a custodian rather than a monitor of the drug control treaties. These include the strength of particular personalities within the 13-member body, the influence of prohibition oriented states via individual members (and despite the requirement for members to serve in their personal capacities), the age composition of the body and some form of “Groupthink” which affects the decision making process of the Board. While any, or more likely a combination, of these factors could play a causal role, it seems likely that the key variable is actually the INCB’s relationship with the CND.

It has been argued that over the years member states within the CND have failed to address contentious issues of policy, preferring in the main non-confrontational annual meetings (Interviews with

Bayer, October 2005 and White, January, 2006). For example, it is only recently that the issue of harm reduction has become a major point of discussion for the delegates at the CND sessions in Vienna. The result of this lack of guidance from the CND can be interpreted in a number of ways. It could be said that the Board has effectively been put into the position where it is forced to defend the Conventions since nation states themselves have made no effort to address longstanding or emerging inconsistencies and tensions. Not underestimating the political complexities inherent within the functioning of the Commission, had CND clarified the extent of the flexibility within the Conventions, defined harm reduction or even moved to expand policy space at the national level, the INCB would arguably be in a better position to simply monitor treaty compliance. From this perspective then, the INCB is passively caught between the action of governments at the national level, and the inaction of those same governments at the international forum of the CND. Alternatively, as some have argued, rather than stepping into the void left by the CND, the INCB may have deliberately been seeking to expand its influence within the UN drug control system. For example, it has been noted, “Clearly over the years, the Board has tried to expand its role beyond that strictly laid down in the Conventions, even to the extent of usurping the role of the Commission on Narcotic Drugs.” The INCB has deliberately and systematically “talked up its role over many years, beyond any authority it has ever been given” (Fazey, 2002). It has even been said that in meetings during the 1990s, members of the Board sometimes referred to themselves as guardians of the Conventions (Telephone Interview, Professor Cindy Fazey, January 2006). This behaviour is far removed from the early years of the Board. Then, when presenting the report to the annual meetings of the CND, the INCB President Paul Reuter would always conclude, “Gentlemen, you are the judges” (Interview, Bayer, October 2005). It is plausible to suggest that the true nature of the relationship between these key bodies is a combination of both hypotheses.

## **CONCLUSION**

However one chooses to explain the INCB’s current viewpoint, the expansion of the Board’s powers to that of a guardian of the Conventions can be seen to be potentially damaging at a number of levels.

- i) Since it does much to set the tone of policy discussion within the international environment and influence policy debates within nation states, it can be argued that the INCB is hindering the expansion of what is, within the terms of the Conventions, legitimate policy experimentation. This remains the case even though the growing evidence base suggests the effectiveness of a range of government approaches not foreseen at the time the Conventions were drafted.
- ii) In preferring to resolutely defend the extant Conventions in their entirety rather than highlighting areas of tension as a watch-

dog, the Board is stifling the evolution of the drug control treaties and thus threatening their relevance within the contemporary world. In so doing it is also arguably generating further tensions between those nations wishing to utilize the flexibility within the Conventions, parts of the UN drug control system and the Conventions themselves.

iii) The Board's defence of all aspects of the Conventions as it perceives them actually does much to undermine its own important role within the UN drug control system. There is a danger that the opinions of the Board will appear irrelevant if it continues to venture into policy debates and maintains its position as a rigid custodian of the treaties since the treaties themselves seem increasingly discordant with reality. Such a potential loss of credibility is closely related to the rise of illicit drugs as an issue of concern for increasing numbers of governments and the commensurate shift of the INCB as a relatively obscure "UN body" to one with a good media profile which can impact the shape of national drug policies. This situation is likely to be compounded as some of the Board's pronouncements are assessed and contested in an increasingly sophisticated and well-informed manner by both national governments and sections of Civil Society. This would be unfortunate due to the important role that the INCB plays, especially with regard to monitoring licit drugs and identifying emerging patterns of illicit drug use. Paradoxically then, in filling the vacuum left by the CND the Board is arguably undermining its own credentials by defending what appears to some to be the indefensible.

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