Identifying Common Ground on Public Health for UNGASS 2016:

What does a 'public health approach' to global drug policy mean in practice?

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Concept Note

As momentum builds towards the General Assembly's Special Session on the World Drug Problem, scheduled for early 2016 (UNGASS 2016), there are increasing calls for it to be used, as UNODC Executive Director Yuri Fedotov put in 2014, to "reaffirm the original spirit of the conventions, focusing on health".[1] In his opening statement at the annual meeting of the Commission on Narcotic Drugs (CND) in March 2015, International Narcotics Control Board (INCB) President Dr. Lochan Naidoo likewise stated that "the drug issue is first and foremost a matter of public and individual health and welfare. These are the key words in the preambles of all three drug control conventions…"[2]

But what does a 'public health approach' to global drug policy mean in practice? Member States, civil society actors, and increasingly also different actors within the global drug control regime's governance structures – such as CND, INCB and the World Health Organization (WHO) – seem to approach the question differently. This is leading both to areas of emerging consensus, and to stark differences of interpretation, emphasis and practice. With CND moving to prepare 'operational recommendations' for consideration at UNGASS 2016,[3] the central question is what 'operational recommendations' UNGASS 2016 could realistically make, given the politics of the issues concerned, that would strengthen the public health approach to global drug policy? This concept note identifies some areas where common ground might emerge, and asks what steps would need to be taken to make that happen.

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[1] USG Yuri Fedotov, Remarks at the opening of the High-level Review of the Implementation of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, UNODC, March 13, 2014.

[2] Statement by Dr. Lochan Naidoo, 58th Session of the Commission on Narcotic Drugs Special segment on preparations for the special session of the General Assembly on the world drug problem (UNGASS) to be held in 2016, Vienna, 9-17 March 2015.

[3] CND has indicated it will produce a set of operational recommendations to be adopted at UNGASS 2016. CND, *Draft Resolution submitted by Chair, Special session of the General Assembly on the world drug problem to be held in 2016*, E/CN.7/2015/L.11, 9 February 2015.

Access to controlled medicine

Debates at CND regarding health have tended to focus on illicit drug users (i.e., harm reduction and demand reduction). But the INCB highlighted in its 2014 annual report that some 5.5 billion people are without adequate access to 'medicines containing narcotic drugs'.[4] This suggests that a broader approach to assessing the public health impacts of current drug control and treatment policies may be needed, including consideration of 'access to controlled medicine'. The issue has received attention from such diverse countries as EU member states, Australia, Mexico and Nigeria. Access to medicine was also a focal issue for INCB both during the special segment on UNGASS 2016 in March 2015, and the regular session of the 58th Convening of CND.

Yet access to medicine clearly varies significantly from country to country. During the regular session of the 2015 CND, INCB President Dr. Naidoo called on governments to perform national level diagnostics regarding access to medicine.[5] INCB is updating its 2010 report *Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes*, but how this will be incorporated into the UNGASS process is not yet clear.

The recent debate over the scheduling of ketamine has also revealed that Member States have very different understandings of the role of public health expertise in shaping the interpretations of the drug control conventions. The WHO's Expert Committee on Drug Dependence (ECDD) is tasked with providing 'determinative' medical and scientific assessments to the CND regarding substances for scheduling. The WHO has conducted a scientific review of ketamine on three separate occasions and each time has advised against scheduling at the international level, on the grounds that the importance of ketamine for medical purposes outweighs the public health risks associated with non-medical use of ketamine. Yet CND tasked the UN Office of Legal Affairs (OLA) in New York to determine whether the CND can schedule a substance even if there is a recommendation from the WHO that the substance should not be placed under international control. OLA concluded that CND *can* schedule a substance against the expert advice of the WHO.[6] Many states raised concerns over this possibility at the February 2015 CND Intersessional and the 2015 special segment on UNGASS in March, while others argued that while the WHO's opinion must be factored in, CND is also mandated, by the Conventions, to consider *other* factors in scheduling decisions. While China asked for a postponement of the vote on its proposal to schedule ketamine, in order to gather more evidence, the underlying dispute over who makes final public health determinations, and their weight in convention decision-making, remains.

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[4] INCB, 2014 Annual Report, March 2015, p. 3.
[5] Statement by Dr. Lochan Naidoo, President, International Narcotics Control Board, at the fifty-eighth session of the Commission on Narcotic Drugs (Vienna, 9 to 17 March 2015) Agenda Item 6 (d) International cooperation to ensure the availability of narcotic drugs and psychotropic substances for medical and scientific purposes while preventing their diversion. INCB, March 2015.
[6] Legal opinion from the Office of Legal Affairs of the Secretariat, CND, E/CN.7/2015/14, February 20, 2015.

Key questions for discussion:

- Will Member States use UNGASS 2016 to promote access to controlled medicine? How?
- How could UNGASS 2016 address and help alleviate the central **blockages** to access to controlled medicine? Through promoting international capacity-building efforts? Through the creation of a **trust-fund**, or action on prices of medicines? Or some other creative mechanism?
- Can and should UNGASS 2016 promote efforts to strengthen and clarify the **role of objective scientific assessment** in determining the interpretation of the Conventions?
- How can UN entities promote **system-wide coherence** in drug policy implementation? Should UNGASS promote system-wide coherence?

Harm reduction and treatment

In many parts of the world, there is an increasing focus on ensuring that drug policies incorporate effective harm reduction and treatment strategies. Some 90 countries, ranging from Iran to Switzerland, and from Morocco to Malaysia, now implement some range of harm reduction measures for drug users. At the March 2015 CND special segment on UNGASS 2016, the UNODC's Scientific Consultation Working Group on Drug Policy, Health and Human Rights stated that addiction should be treated as an illness, and called upon member states to eliminate roadblocks to treatment such as criminal sanctions, stigmatization and discrimination.[7] At the same meeting, the Africa Group called for an integrated approach that is not simply punitive, advocating improvements to treatment centres, rehabilitation programs and preventative strategies, while the Asia-Pacific group highlighted the importance of drug addiction prevention measures.

But the apparently growing consensus around 'balancing' supply reduction measures with public-health oriented approaches masks key differences. The content of national policies on harm reduction and treatment differ significantly. Many countries lack the evidence base to develop effective treatment programmes. Treatment arrangements in some countries have raised serious human rights concerns, with signs that in some places, confinement in government-run treatment facilities takes place without appropriate legal procedures, amounting in some cases to illegal forced detention. In some countries, privately-run treatment centres carry out drug treatment without government oversight to ensure effective treatment and prevent abusive practices. As in the case of West Africa, the inadequate funding of treatment facilities and lack of skilled personnel derives in part from a "glaring absence of drug treatment policies, standards and monitoring systems" but also

[7] Statement by Nora Volkow, Scientific Consultation Working Group on Drug Policy, Health and Human Rights of the UNODC. Interactive Discussion on Demand Reduction, Committee on Narcotic Drugs, Special Segment on UNGASS 2016, March 10, 2015.

from a lack of public expenditure due to the stigmatization of drug dependence.[8] The UNODC's 2014 World Drug Report claims that while one in five problem drug users receives treatment in Western Europe, only approximately one in 18 receives treatment in Africa.[9] UNODC is working to draft international standards on drug dependence treatment, with the intention of presenting them at the 59th Convening of CND.[10]

Key questions for discussion:

- What 'operational recommendations' could UNGASS 2016 consider to promote evidence-based prevention, harm reduction and drug dependence treatment at the national or international levels?
- Can and should UNGASS 2016 strengthen the **normative framework** governing harm reduction and treatment at the national level?
- Is there a need for **harmonization** or strengthened international capacity-building efforts in these areas? Should UNGASS 2016 promote the adoption of 'best practices' in drug addiction treatment?
- Given the **human rights** considerations raised by drug treatment, how can UN entities promote **system-wide coherence** in drug policy implementation? Should UNGASS promote system-wide coherence in this area?

Public health as a basis for alternatives to incarceration

Many countries, especially from the EU and the Americas, are promoting health-based policies for dealing with drug use, and even for dealing with minor offenses associated with the drug trade. The WHO has called legal reforms such as decriminalizing drug use "critical enablers that can change a hostile environment for key populations to a supportive environment," highlighting the fact that barriers caused by criminalizing behaviour may prevent people from seeking healthcare for fear of legal consequences.[11] This impacts people with communicable diseases such as HIV/AIDS and Hepatitis C, as well as those with substance abuse problems. Prisoners are often not provided with harm reduction services, increasing health risks for injecting drug users who share needles in prison settings. The effects extend beyond the imprisoned, with evidence that children of incarcerated parents experience a range of emotional and behavioural issues as a result of the trauma associated with parental imprisonment.[12]

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[8] West Africa Commission on Drugs, *Not Just in Transit: Drugs, the State, and Society in West Africa*, June 2014, pp. 47-8.
[9] UNODC, 2014 World Drug Report, p. 3.
[10] CND, *Activities of the United Nations Office on Drugs and Crime: Report of the Executive Director*. E/CN.7/2015/129. December 2015, p. 13.
[11] WHO, *Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations*, 2014, p. 90.
[12] Nancy G. La Vigne, Elizabeth Davies, and Diana Brazzell. *Broken Bonds, Understanding and Addressing the Needs of Children with Incarcerated Parents*, Urban Institute Justice Policy Center. February 2008.

The United States submitted a resolution that was adopted at the 58th CND which calls for states to consider alternatives to incarceration for drug-related offences of a minor nature, promote collaboration between health and justice departments, and promote rehabilitation and reintegration efforts. GRULAC countries, such as Argentina and Ecuador, are taking steps towards proportional sentencing and alternatives to incarceration for minor non-violent offences, including drug use. Many countries throughout the European Union have policies that address drug use within the health sector or from a health-based perspective. Some states, such as Finland and Switzerland, have joint initiatives that focus on strengthening cooperation between health, law enforcement and judicial agencies, among others, to support a public-health approach to illicit drug-related activity.

Key questions for discussion:

- What 'operational recommendations' might be considered at UNGASS 2016 to develop closer policy linkages between drug-related incarceration and public health?
- In what ways might Member States use UNGASS 2016 to promote **alternatives to incarceration** through a health lens? Strengthening programmatic links between health and law enforcement programs? How would that be achieved at UNGASS 2016?
- Can and should UNGASS 2016 strengthen the **normative framework** governing alternatives to incarceration at the national level? Is there a need for **harmonization**, or strengthened international **capacity-building** efforts in these areas?

Assessing the public health impacts of drug policies: metrics, goals and audits

Many threads weave together to produce a public health approach to drug policy, and drug control measures can have unintended negative consequences on public health. A more systematic and comprehensive approach to accounting for the public health impacts of different drug policies might help Member States to identify approaches to implementing the drug control regime that best promote 'the health and welfare of mankind'. Beyond the specific issues considered above, the central question remains how UNGASS 2016 will promote comprehensive assessment of the complex public health effects of drug policy.

Key questions for discussion:

- What additional 'operational recommendations' might UNGASS 2016 consider that would promote efforts to assess the public health impacts of different drug policies?
- Should UNGASS 2016 consider setting global (or national) public health **goals** for global drug policy interventions?
- Should UNGASS 2016 promote harmonization of how public health issues are considered in national-level drug policy processes, for example through

promoting a common approach to **public health impact assessment** at the national level?

- What role should international bodies have in overseeing national-level public health impact assessments of drug policies?
- Should UNGASS consider initiating a process to develop improved public health assessments of drug policies, between 2016 and the 2019 review of the 2009 *Political Declaration*?

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