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## The erratic crusade of the INCB

In his foreword to the 2002 annual report of the International Narcotics Control Board (INCB), the President of the Board, Dr. Philip O. Emafo from Nigeria, launches a strong attack against groups that advocate legalisation or decriminalisation of drug offences, as well as groups *"that favour a crusade"* focusing only on harm reduction. According to Emafo supporters of such policies pursue their goals through *"aggressive, well-funded campaigns and with missionary zeal"* against the UN Drug Conventions. Mr. Emafo's attack reflects how out of touch the president of the INCB is with current developments in international drug control. If anyone is involved in a 'crusade' with 'missionary zeal', it is Mr. Emafo himself, trying to turn back accepted best practices in countering the adverse effects of problematic drug use. Mr. Emafo gives a completely distorted picture of the political acceptance of the harm reduction concept.

Who are these harm reduction 'crusaders' Mr. Emafo talks about? The effectiveness of harm reduction strategies is not only recognized at European Union level –on the basis of the studies undertaken by the European Monitoring Centre for Drugs and Drug-Addiction (EMCDDA)– but even at the UN level. Mr. Emafo is probably unaware of, or does not agree with, recent UN resolutions and accepted guidelines. The Declaration of Commitment on HIV/AIDS adopted at the General Assembly 26th Special Session on HIV/AIDS in June 2001, specifically calls on nations to ensure, by 2005, expanded access to clean needles and to promote *"harm reduction efforts related to drug use"*<sup>1</sup> to counter the global AIDS drama. Moreover, in the Action Plan adopted in 1999 to implement the UNGASS Guiding Principles on Demand Reduction, countries committed themselves to offer *"the full spectrum of services, including reducing the adverse health and social consequences of drug abuse."*<sup>2</sup>

### Harm Reduction gaining ground

So far the UN drug control machinery –the Commission on Narcotics Drugs (CND), the UN Office on Drugs and Crime (UNODC), and the INCB– have consistently rejected the use of these terms as part of the policy debate. Avoiding an open discussion about the harm reduction concept at the level of is by now impossible and irresponsible, despite Mr. Emafo's attempt to demonise it. Instead of trying to turn back the clock, Mr. Emafo should listen to the Greek Foreign Minister George Papandreou – another example of what Mr. Emafo would consider a 'crusader'. Papandreou argued that *"all EU member states have ratified the UN treaties on the fight against drugs, but in everyday life countries deviate from the precepts contained therein. Deviations that are dictated by the requirements of practical policy."* Papandreou clearly argues for adjusting the UN Drug Conventions to the existing pragmatism, not the other way around.

In the United Kingdom, the House of Commons Home Affairs Select Committee in its report 'The Government's Drugs Policy: Is It Working?' recommended *"that a target is*

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1. A/RES/S-26/2. *Declaration of Commitment on HIV/AIDS*. General Assembly 26<sup>th</sup> Special Session on HIV/AIDS, June 2001; article 52.

2. A/RES/54/132. *Action Plan for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction*, annex to resolution, General Assembly 2 February 2000.

*added to the National Strategy explicitly aimed at harm reduction and public health.*" Summarising the report, the chairman of the Home Affairs Select Committee Chris Mullin, said that the Committee basically said no to legalisation and yes to a rational drugs policy based on harm reduction, opposing zero-tolerance prohibitionism. *"Attempts to combat illegal drugs by means of law enforcement have proved so manifestly unsuccessful that it is difficult to argue for the status quo"*, Mullin said. The Committee recommended that the UK Government should look carefully at harm reduction drug policies that have gained ground in The Netherlands and Switzerland (for instance, safe injecting houses for heroin users and heroin prescriptions for addicts).

Realising the tensions with the UN Drug Conventions, the Committee said *"...we believe the time has come for the international treaties to be reconsidered"* and recommended that *"...the Government initiates a discussion within the Commission on Narcotic Drugs of alternative ways –including the possibility of legalisation and regulation– to tackle the global drugs dilemma."* In Canada, the Senate Special Committee on Illegal Drugs, in an exhaustive and comprehensive two-year study of public policy related to cannabis, found that the drug should be decriminalised by introducing a criminal exemption and regulatory scheme for the production, possession and distribution of cannabis. The 600-plus page Senate report was a result of rigorous research, analysis and extensive public hearings in Ottawa and communities throughout Canada with experts and citizens. The Committee also recommended that the Government of Canada should request an amendment to the conventions and treaties governing illegal drugs.

In Switzerland, the government is revising its drug policy and considering a similar legislation as proposed by the Committee in Canada, regulating cannabis production, possession and use. In Jamaica, the National Commission of Ganja, after a period of exhaustive consultation and inquiry, involving some four hundred persons from all walks of life, including professional and influential leaders of society, is recommending the decriminalisation of cannabis for personal, private use by adults and for use as a sacrament for religious purposes. To dismiss all these well-researched and carefully studied recommendations as a 'crusade with missionary zeal' is simply ridiculous.

The INCB is fully aware of the growing tension between theory and practice, but in its report simply refuses to consider the sound arguments made and tries to pressure governments to adjust their practice to the letter and spirit of the Conventions as interpreted by the Board. In so doing the INCB is rapidly losing its credibility and independent status as an expert committee that should try to address legitimate concerns about the current failures of international drug control. In fact, because of its political stands the Board is putting in jeopardy its stature of an impartial advisory body, which could play a role in the much-needed reform of the UN drug system and the current Conventions.

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

The INCB has a pivotal position in the United Nations drug control system. Over the years, this body of independent experts has assumed a political role maintaining a very strict interpretation of the UN Drug Conventions and regularly passing judgements on sovereign states whose policies take a slightly different direction, prompting the Board to exercise pressure to get them back in line. The INCB has taken advantage of the lack of political guidance on international drug control that formally lies with the member states in the Commission of Narcotic Drugs (CND). The Board has overstepped its role as the watchdog of the UN Conventions, commenting on matters that clearly lie within the competence of national governments. Instead of putting the INCB in its place, member states each year fear the next annual report and keep a low profile when the Board criticises them.

The Board, in co-operation with Governments, and subject to the terms of the Conventions, *"shall endeavour to limit the cultivation, production, manufacture and use of drugs*

*to an adequate amount required for medical and scientific purposes, to ensure their availability for such purposes and to prevent illicit cultivation, production and manufacture of, and illicit trafficking in and use of, drugs."*<sup>3</sup> The main role of the INCB is to ensure that the licit supply of controlled drugs matches the required demand through a system of individual governments estimating their need for these drugs for 'scientific and medical' purposes on an annual basis, and the Board authorising the growing of the plants in particular countries to supply this need. Supply is regulated in order to prevent over-production of drugs and their diversion onto the illegal market.

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 the sovereignty and autonomy of member states in constructing national drug policy. A clear example is the issue of personal consumption and possession of controlled drugs. 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. On the use of drugs as defined by the Single Convention of 1961, states are required *"to take steps to limit [drug use] exclusively to medical and scientific purposes."* States are not required to prohibit or 'not permit' use of these drugs and are not required to establish sanctions or punishments, criminal or otherwise, for use of these drugs. The *Commentary* of the 1988 Convention leaves no doubt on this issue: *"It will be noted that, as with the 1961 and 1971 Conventions, paragraph 2 does not require drug consumption as such to be established as a punishable offence."*<sup>4</sup>

While the Conventions do not call for use of illicit drugs to be considered an offence, the 1988 Convention –as a step towards tackling international drug trafficking– does identify possession for personal use to be regarded as such by member states, but this obligation is *"subject to its constitutional principles and the basic concepts of its legal system."* 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. The Conventions require that the drugs under international control must only be used for 'medical and scientific purposes'. But the Conventions do not define what is meant by these terms. What is, or is not, legitimate medical practice is neither defined by international treaties nor agreed upon across the worldwide medical profession. To take a stand on this issue is to take a political stand.

Another hot issue is the medical use of cannabis. If a government is convinced of the medical value of cannabis it has every right under the Conventions to authorise its use for 'medical and scientific purposes', provided it takes care that cannabis for medical use is not diverted for illicit purposes. Nonetheless, the Board opposes the authorisation of medical use of cannabis and calls on governments *"not to allow its medical use unless conclusive results of research are available indicating its medical usefulness."* 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. The argument of conclusive results of research is also used in an inconsistent and unbalanced way. In its 2002 report the Board says *"recent research indicates that the abuse of MDMA (Ecstasy) may cause irreversible brain damage."*<sup>5</sup> The scientific research the

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3. Single Convention on Narcotic Drugs, 1961, as Amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, Article 9, par. 4.

4. *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Done at Vienna on 20 December 1988*, New York: United Nations, 1998. E/CN.7/590: par. 3.95 (p. 82).

5. Report of the International Narcotics Control Board for 2002, New York: United Nations, 2003, par. 477 (p. 67).

Board is referring to is highly controversial, and by no means conclusive.<sup>6</sup> While demanding 'conclusive results' in order to allow the medical use of cannabis, the Board urges governments to use controversial and very inconclusive results of scientific research as information in their prevention campaigns towards its citizens.

The Board abuses results of research at will. Repeatedly, the Board chooses to quote scientific research only when it serves the Board's purpose to push for strict adherence to the Conventions as defined by the Board itself. Another example is the opposition of the Board to harm reduction measures such as needle-exchange programmes to try to counter the spread of HIV/AIDS, the medical prescription of heroin or allowing for user rooms, which according to the Board are against "*sound medical practice*" without explaining the basis for such an assumption. In this case, the Board not only oversteps its mandate, but furthermore is in clear contravention of more recent UN resolutions and accepted guidelines countering the spread of HIV/AIDS and demand reduction.

### Recognizing Harm Reduction as an effective policy

Instead of trying to deny the growing tension with the Conventions, member states that have recognised harm reduction as an effective policy, should use that tension as the main argument to defend the need for a modification of the treaties. Countries should become more assertive about their achievements in practice and demand adjustments of the global legal framework that enable them to continue on the path they have democratically chosen for at national and local levels. Harm reduction –or risk reduction– as a concept and policy objective should become a normal and accepted part of the debate on the UN level. Where the INCB identifies tensions with the conventions, modifications of the treaties should be adopted to solve ambiguities, prevent legal inconsistencies and to facilitate implementation and further experimentation with pragmatic approaches that have proven to be effective in terms of reducing drug-related harms to users and to society at large.

Member states can simply refer to principles already recommended by an Expert Committee of the World Health Organisation (WHO) in 1992 that states that the "*primary goal of national demand reduction programmes should be to minimize the harm associated with the use of alcohol, tobacco and other psychoactive drugs.*"<sup>7</sup> That must sound familiar to Mr. Emafo, as he was one of the members of this Expert Committee. At the upcoming mid-term review of the 1998 United Nations General Assembly Special Session on Drugs (UNGASS) in April 2003, member states should use the opportunity to have the harm reduction approach accepted as a legitimate policy alternative. The European Union Strategy on Drugs (2000-2004) states one of its targets as being to "*reduce substantially over five years the incidence of drug-related health damage (HIV, hepatitis B and C, TBC, etc.) and the number of drug-related deaths.*" That sounds a lot more realistic than the target of "*eliminating or significantly reducing the illicit cultivation of the coca bush, the cannabis plant and the opium poppy in 2008*" that was adopted at the 1998 UNGASS.

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6. See for instance: *On Ecstasy, Consensus Is Elusive*, The Washington Post, September 30, 2002.

7. World Health Organization, *WHO Expert Committee on Drug Dependence: Twenty-eighth Report*, Geneva: WHO Technical Report Series No. 836, 1993, p. 35-36.