‘Unique in International Relations’?

A Comparison of the International Narcotics Control Board and the UN Human Rights Treaty Bodies

HR2 | Harm Reduction & Human Rights

A Programme of the International Harm Reduction Association

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The International Harm Reduction Association (IHRA) is one of the leading international non-governmental organisations promoting policies and practices that reduce the harms from all psychoactive substances, harms which include not only the increased vulnerability to HIV and hepatitis C infection among people who use drugs, but also the negative social, health, economic and criminal impacts of illicit drugs, alcohol and tobacco on individuals, communities and society. A key principle of IHRA's approach is to support the engagement of people and communities affected by drugs and alcohol around the world in policy-making processes, including the voices and perspectives of people who use illicit drugs.

In 2007, IHRA established HR2, the Harm Reduction and Human Rights Monitoring and Policy Analysis Programme. HR2 leads the organisation's programme of research and advocacy on the development of harm reduction programmes and human rights protections for people who use drugs in all regions of the world.

IHRA is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

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ISBN 978-0-9557754-1-3

This report was produced by HR2, the Harm Reduction and Human Rights Monitoring and Policy Analysis Programme of the International Harm Reduction Association.

Acknowledgements:
The author would like to thank Rick Lines, Professor Gerry Stimson and Catherine Cook from the International Harm Reduction Association for their input and advice. Thanks also to Dave Bewley-Taylor from the Beckley Foundation Drug Policy Programme for his advice and support.

Designed by Mark Joyce
Copy-edited by Jennifer Armstrong

Published by
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Contents

Executive summary		Page 5
1	Introduction	Page 7
1.1	The INCB, secrecy and controversy	Page 7
1.2	Civil society engagement: The INCB versus UN system norms	Page 9
1.3	'Unique in international relations'?	Page 11
2	Overview	Page 14
2.1	The INCB and the independent committee model in the UN human rights system	Page 14
2.2	Key characteristics of the model	Page 16
3	Structure, mandate and legal status	Page 18
3.1	Structure	Page 18
3.2	Mandate	Page 20
3.3	Legal status	Page 25
4	Activities and working methods	Page 30
4.1	Monitoring treaty implementation	Page 30
4.2	Quasi-judicial handling of violations	Page 33
4.3	Treaty interpretation	Page 35
4.4	Country visits/missions	Page 36
5	Conclusion	Page 38
6	Recommendations	Page 40
Annex I: A comparison of the INCB and the UN human rights treaty bodies		Page 42

'Our mandate is not with civil society…We have a mandate to discuss with governments. We do not go about seeking information from outside.'

Dr Philip Emafo, President, INCB[1]

'Partnership with civil society is not an option; it is a necessity.'

Kofi Annan, Former UN Secretary-General[2]

1 P. Emafo, Press Conference, New York (7 March 2007). Webcast available at http://157.150.195.10/webcast/pc2007.htm (date of last access: 7 November 2007).

2 Quoted in Office of the High Commissioner on Human Rights, Working with the OHCHR: A handbook for NGOs (2007), Doc. no. HR/PUB/06/10 ix.

Executive summary

The International Narcotics Control Board (INCB or the Board) plays an important role in the international drug control system, serving as an independent body monitoring states' implementation of their obligations under the international drug conventions. It has, however, been criticised for being one of the most secretive bodies in the UN system. It holds its meetings behind closed doors. No minutes are published. There is no opportunity for non-governmental organisations (NGOs) or civil society organisations to observe or make submissions.

The INCB has claimed that it is 'unique in international relations', and has used this allegedly unique status to justify its exclusion of civil society from its deliberations and its closed meetings. However, far from being unique, the INCB is instead an early example of the 'independent committee of experts' model that has been adopted and developed within the UN human rights system, and regional human rights systems, over the past four decades. It is a common model that continues to be used today. Yet in contrast to these similar bodies, the INCB has failed to modernise its processes, and retains working practices inherited from defunct monitoring bodies.

This report compares the INCB's structure, mandate, legal status, activities and working methods with those of the UN human rights treaty bodies. While the INCB does differ in certain ways from these independent, quasi-judicial bodies in the UN human rights system, this is an inevitable result of differences between the aims and objectives of the drug and human rights conventions that the various committees are mandated to oversee. These differences are procedural rather than structural or legal, and are far outweighed by the similarities. The basic model, far from being unique to the INCB, is in fact identical.

The INCB's 'uniqueness' stems not from its mandate, its activities or its legal status, but instead from the working methods the Board has adopted, methods that are out of step with those of similarly constituted UN bodies which have chosen to operate via open and inclusive processes.

The Board's claim of unique status is untrue, as is its contention that civil society must, by mandate or other official barrier, be excluded from its deliberations. The key issue is one of choice, rather than mandate or legal

barrier. The INCB has chosen secrecy, while the human rights treaty bodies have chosen open engagement. The INCB's choice is becoming an increasing worry for the international community. Rather than working behind closed doors, the INCB should instead learn from the methods used by the human rights treaty bodies to develop a dialogue with civil society. It can adapt those methods and apply them to its own work to ensure a more open and informed monitoring system for the international drug conventions. Opening up the INCB's activities in this way would bring its work into conformity with that of other similarly constituted UN bodies.

This report aims to highlight those aspects of the Board's working methods that must be addressed to achieve the inclusion of civil society as partners in the international drug control system, to ensure that the Board's mandate is fully understood and fulfilled and to allow the INCB to remain relevant in international affairs. Such an outcome requires a change of attitude by the INCB and a decision on its part to alter working practices. However, action at many levels of the UN may be needed to ensure that such a transformation occurs.

1 Introduction

1.1 The INCB, secrecy and controversy

The International Narcotics Control Board (INCB or the Board) is the self-described 'independent and quasi-judicial monitoring body for the implementation of the United Nations international drug control conventions'.[3] Its aims, generally, are to ensure that adequate supplies of controlled drugs are available for medical and scientific uses, to ensure that the diversion of drugs from licit sources to illicit channels does not occur and to identify and contribute to correcting weaknesses in national and international control.[4]

In ensuring that sufficient supplies of medical opiates are available worldwide, and acting as an independent monitor of state obligations under the international drug control conventions, the INCB plays an important role in the international drug control system. However, the Board's performance has been widely criticised.[5]

For example, the INCB is a body mandated to monitor the implementation of the narcotics control treaties, the primary international legal documents dealing with drugs, yet its members lack legal expertise and ignore the advice of the UN's legal experts.[6] Its work impacts heavily on international efforts to fight HIV/AIDS, yet its members lack HIV/AIDS experience.[7] Despite the fact that harm reduction is stated UN policy,[8] the Board is openly hostile

3 See INCB, 'Mandate and Functions', http://www.incb.org/incb/mandate.html (date of last access: 18 January 2008). The three conventions are: the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol (adopted 30 March 1961, entered into force 13 December 1964) UNTS vol. 520, no. 7515; the 1971 Convention on Psychotropic Substances (adopted 21 February 1971, entered into force 16 August 1976) UNTS vol. 1019, no. 14956; and the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (adopted 20 December 1988, entered into force 11 November 1990) UNTS vol. 1582, no. 27627.

4 INCB (n 3); see also Single Convention on Narcotic Drugs, 1961 (n 3) arts. 9–14.

5 The criticisms against the INCB have been set out in detail in J. Csete and D. Wolfe, Closed to Reason: The International Narcotics Control Board and HIV/AIDS, Canadian HIV/AIDS Legal Network/International Harm Reduction Development (2007) (hereafter Closed to Reason). See also D. Bewley-Taylor and M. Trace, The International Narcotics Control Board: Watchdog or Guardian of the UN Drug Control Conventions?, Beckley Foundation Drug Policy Programme Report no. 7 (February 2007) (hereafter Watchdog or Guardian).

6 Closed to Reason (n 5) 7, 9; Watchdog or Guardian (n 5) 7. Despite advice from the Legal Affairs Division of the United Nations International Drug Control Programme (UNDCP) in 2002, the INCB has maintained that safe injecting sites are contrary to the international drug conventions. INCB President Dr Philip Emafo reaffirmed the Board's position in March 2007, stating that 'the Board frowns seriously on rooms being established for the purposes of abusing drugs…in so doing governments are promoting the abuse of drugs' (n 1).

7 Closed to Reason (n 5) 7.

8 See, for example, World Health Organization/United Nations Office on Drugs and Crime/UNAIDS, Policy Brief: Provision of sterile injecting equipment to reduce HIV transmission (2004), Doc. no. WHO/HIV/2004.03; World Health Organization/United Nations Office on Drugs and Crime/Joint United Nations Programme on HIV/AIDS (UNAIDS),

to this approach, sometimes making erroneous statements of fact to justify its position.[9] The Board's hostility has also been directed towards some of the permanent missions of the various states parties[10] to the conventions, some of whom have described the Board's increasingly antagonistic and bullish approach, one which runs contrary to the INCB's mandate to develop a 'continuing dialogue' with states parties.[11]

Some commentators believe that the INCB has become a dangerous entity, overstepping its mandate as watchdog of the drug conventions, and its role of assisting governments with their implementation, to instead become the guardian of the conventions, promoting rigid interpretations of their many articles.[12] This rigid interpretation results in adherence to outdated procedures and, in the extreme, in developments to the conventions being ignored.[13] As a result, the Board is widely seen as a major international obstacle to the implementation of HIV prevention and harm reduction programmes such as needle and syringe exchange, opioid substitution treatment and safe injecting facilities.[14] For example, Stephen Lewis, former UN Special Envoy on HIV in Africa, recently stated that the INCB 'should be fought at every level' and that 'UN agencies should publicly stand up to their agenda, which is ultimately dangerous'.[15]

Substitution Maintenance Therapy in the Management of Opioid Dependence and HIV/AIDS Prevention (2004).

9 Closed to Reason (n 5) 17. See also various statements from INCB President Dr Philip Emafo: 'distractions [from drug control]…come from groups that favour a crusade focusing only on "harm minimization" or "harm reduction". Contrary to all available evidence, such lobbyists have persisted in proclaiming that there are safe ways to abuse drugs', INCB, Report of the International Narcotics Control Board for 2002 (2002) UN Doc. no. E/INCB/2002/1, foreword (hereafter INCB Annual Report 2002); 'to promote drug use illicitly through the giving out of needles or through providing rooms for drug abusers to inject themselves without supervision of medical practitioners would, to me, amount to inciting people to abuse drugs, which would be contrary to the provisions of the conventions', 'Interview with Dr Philip O. Emafo, President of the International Narcotics Control Board', United Nations Office on Drugs and Crime Update (December 2002) 7. In its 2003 Annual Report (INCB, Report of the International Narcotics Control Board for 2003 (2003) UN Doc. no. E/INCB/2003/1), the Board did accept the need for certain harm reduction measures, namely needle exchange and opioid substitution treatment (paras. 221 and 222), but its statements were heavily reserved, stating that harm reduction should not promote drug use, and indeed often hostile, stating for example that 'some so-called "harm reduction" approaches are not what they seem to be in that they cause more harm than they purport to reduce' (foreword).

10 Countries that have ratified an international treaty are commonly referred to as 'states parties' to that treaty.

11 Due to the secretive nature of the Board's work and its communication with governments, information about the Board's approach comes largely from personal conversations and communications with certain permanent missions in Vienna. See, however, the Board's singling out of Bolivia in its 2006 Annual Report in relation to coca and Bolivia's recorded response in the report of the 50th session of the Commission on Narcotic Drugs (CND), INCB, Report of the International Narcotics Control Board for 2006 (27 March 2007) UN Doc. no. E/2007/28-E/CN.7/2007/16, para. 89.

12 See generally Watchdog or Guardian (n 5).

13 See Section 3.2 below. The Board appears to have refused to acknowledge the addition of NGOs as a source of information by the 1972 Protocol to the Single Convention on Narcotic Drugs, 1961.

14 Closed to Reason (n 5) 10–16.

15 'Drug Addicts Are Victims, Not Criminals', Inter Press Service (13 September 2007), available at http://

A central criticism of the INCB is that it is one of the most secretive bodies in the UN system. It holds its meetings behind closed doors. No minutes are published and there is no opportunity for NGOs or civil society organisations to observe or make submissions.[16] This criticism is nothing new. In 1972, Peter Beedle, chief British delegate to the plenipotentiary conference to consider amendments to the 1961 Single Convention on Narcotic Drugs, noted that despite the importance of the Board's reports 'the source of information remained a mystery', which he considered 'unsatisfactory and anomalous in a world where co-ordination and dialogue were the order of the day'.[17]

1.2 Civil society engagement: The INCB versus UN system norms

The INCB's secretive working methods place it at odds with other UN entities and specialised agencies that are moving towards more open and meaningful civil society engagement.[18] Today, some UN agencies such as UNAIDS and the World Health Organization (WHO) build civil society engagement into their governance, as well as into project design and implementation. Others have created NGO and civil society liaison offices to improve UN–NGO relations.[19] Civil society is able to engage at even the highest levels of policy making, observing at the General Assembly and gaining accreditation with the Economic and Social Council of the UN (ECOSOC). Indeed, such engagement is provided for specifically by Article 71 of the Charter of the United Nations.[20] Even the UN Security Council, which deals with international security – possibly the most politically charged and

allafrica.com/stories/200709131010.html (date of last access: 18 January 2008). Lewis has come under attack from the INCB for his support of safe injecting facilities.

16 Closed to Reason (n 5) 5.

17 See K. Bruun, L. Par and I. Rexed, The Gentlemen's Club: International Control of Drugs and Alcohol (University of Chicago Press, 1975) 75–76.

18 According to the Report of the Secretary-General on the Implementation of the Report of the Panel of Eminent Persons on United Nations–Civil Society Relations, 'expanding the UN's consultations with different constituencies and facilitating their input into relevant debates of global significance can only enhance the quality and depth of policy analysis and actionable outcomes', 'multi-stakeholder partnerships can help the UN devise innovative solutions to critical questions' and 'more effective engagement with NGOs…increases the likelihood that United Nations' decisions will be better understood and supported by a broad and diverse public' (13 September 2004) UN Doc. no. A/59/354, para. 4. See also Report of the Panel of Eminent Persons on United Nations–Civil Society Relations (11 June 2004) UN Doc. no. A/58/817.

19 In 2004, for example, the Office of the High Commissioner for Human Rights (OHCHR) created a new post of Civil Society Liaison Officer. This role has recently been expanded to establish a Civil Society Liaison Unit within the OHCHR.

20 'The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned', Charter of the United Nations (1945) 59 Stat 1031 TS 993, art. 71.

sensitive of issues, is considering revisions to allow greater openness.[21]

Encouraging the active participation of communities in the decision-making processes that will affect them is a principle recognised throughout the UN, and documented in UN conventions, declarations and guidelines.[22] The greater involvement of people living with HIV/AIDS, for example, is acknowledged as fundamental to the promotion and protection of human rights.[23] Although the INCB has noted the importance of community input relating to issues such as crop eradication, it will not engage with affected communities in its own work, and portrays people who use drugs as 'drug abusers', incapable of constructive participation.[24] Such stigmatising language is particularly troubling given the impact of the Board's work on the lives of people who use drugs, such as implementing measures to prevent the spread of HIV/AIDS and other blood-borne viruses.

Given the UN's almost complete reliance on information obtained from member states, civil society involvement offers an essential check and balance against the information provided by states and against their assertions relating to the implementation of treaty obligations. Indeed, civil society organisations and NGOs are important sources of information and advice, as well as a link to affected communities, within many UN agencies and processes. Civil society is also often best placed to fully assess and relay information from the field, something that remote UN monitoring and policy bodies are ill-equipped to do. This role is of particular importance to the work of the INCB, a body consisting of thirteen independent members who rely solely on information from states. Without the information provided by civil society organisations and NGOs, the INCB's ability to gain the insight needed to fulfil its mandate is limited,

21 See the Security Council section of the UN reform website, http://www.un.org/reform/civilsociety/sc.shtml (date of last access: 1 November 2007).

22 See, for example, Declaration of Commitment on HIV/AIDS (2 August 2001) UN Doc. no. A/RES/S-26/2, arts. 27 and 32; UN Declaration on the Rights of Indigenous Peoples (2 October 2007) UN Doc. no. A/RES/61/295, arts. 18 and 19; UN Convention on the Rights of Persons with Disabilities (2006 – not yet in force) preambular para. (m), art. 3(c).

23 See OHCHR/UNAIDS, International Guidelines on HIV and Human Rights (2006 Consolidated Version) (2006) UN Doc. no. HR/PUB/06/9; and UNAIDS, Policy Brief: Greater involvement of people living with HIV (GIPA) (March 2007).

24 See, for example, Closed to Reason (n 5) 14, quoting INCB member Herbert Okun claiming that 'drug addicts are unable to make free decisions for their future'. See also INCB Annual Report 2002 (n 9), foreword, 'The sight of unkempt drug abusers on street corners and in train stations, begging for money to finance their drug habits, cannot be ignored by responsible Governments. States have a moral and legal responsibility to protect drug abusers from further self-destruction' and 'drug abusers…violate the basic rights of their own family members and society'.

as is its understanding of the situation on the ground for service providers and people who use drugs.

1.3 'Unique in international relations'?

On 7 March 2007, INCB President Dr Philip Emafo and INCB Secretary Mr Koli Kouame were questioned by journalists at the UN about the Board's ongoing secrecy. Dr Emafo claimed that the drug conventions did not allow for the INCB to engage with civil society, and stated that it had a mandate only to 'discuss with governments'.[25] Mr Kouame attempted to defend the Board's position by highlighting what he described as its 'unique' status:

> [C]ountries sign the conventions… and they are supposed to implement the provisions of the conventions…[T]he international community decided that in addition to the governments they needed an independent body…made up of experts, who can…in an objective manner, assess what governments are doing in terms of their obligations vis-à-vis the conventions, so the INCB was created. In fact the International Narcotics Control Board is unique in international relations…it is very unique…that's what explains why our deliberations are closed.[26]

While there is little wrong with Mr Kouame's description of the creation of the INCB, significant problems arise in his attempt to frame the Board as unique in order to defend its secrecy.

Mr Kouame's description of the creation of the INCB could also be used to describe the creation and mandate of the seven existing independent UN human rights committees. These committees, known as the human rights treaty bodies, are the quasi-judicial committees of experts that monitor state party implementation of the core human rights conventions.[27] For example, compare Mr Kouame's statement above with the following comment from the Office of the High Commissioner for Human Rights (OHCHR) describing the UN human rights treaty body system:

> When the first treaty[28] was adopted,

25 See Section 3.2 below for an analysis of this argument.

26 K. Kouame, Press Conference, New York (7 March 2007). Webcast available at http://157.150.195.10/webcast/pc2007.htm (date of last access: 7 November 2007).

27 It is not intended to provide a detailed overview of the treaty bodies in this paper as that information is available elsewhere.

28 The first human rights treaty adopted was the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) adopted in 1965. The others are the International Covenant on Civil and Political Rights (ICCPR) 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984, the Convention on the Rights of the Child (CRC) 1989 and the International Convention on the Protection of the Rights of All Migrant Workers and Their Families

> it was recognised that States parties would require encouragement and assistance in meeting their international obligations…Each treaty therefore creates an international committee of independent experts to monitor, by various means, implementation of its provisions.[29]

Therefore the INCB is not as unique as it claims to be. It is, in fact, also a 'treaty body' – a committee of experts created by a treaty to monitor implementation of that treaty. Despite the differences between the aims and objectives of the human rights and drug control conventions, the model for monitoring implementation that has been adopted for both is identical.

As the INCB is not unique in international relations in terms of legal status and mandate, it cannot legitimately use this as a basis to justify its secrecy and the exclusion of civil society from its work. The Board cannot claim that civil society, people living with HIV and people who use drugs are, by mandate or other legal barrier, excluded from its deliberations when other similarly constituted UN bodies operate in an open and inclusive environment in which these and other groups are invited to participate. In fact, the INCB's unwillingness to include civil society in its work represents a weakness in its procedures, as it closes the door to improved monitoring of the international drug conventions by a diversity of national and international actors.

This report examines the INCB's claim to unique status in international relations by comparing the Board with the UN human rights treaty bodies.[30] It challenges this claim of unique status, questions the INCB's rigid interpretation of its mandate and contrasts the Board's secrecy with the open and constructive dialogue with governments and civil society undertaken by the various human rights committees. In doing so, it illustrates how the Board's working methods have fallen far behind those of similar bodies in the UN system.

Human rights treaty bodies have been chosen for this comparison as they are the bodies in the UN system that are constituted in the same fashion as the INCB. While other

(ICRMW) 1990.

29 OHCHR, The United Nations Human Rights Treaty System: An introduction to the core human rights treaties and the treaty bodies (undated), Fact Sheet no. 30, 15, available at http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf (date of last access: 18 January 2008).

30 For the sake of brevity, the seven UN human rights committees will be treated as one due to their similarity. Significant differences between them will be noted as they arise.

treaties, such as the Convention on Biodiversity and the Nuclear Non-Proliferation Treaty, also have monitoring systems, none shares the similarities found when comparing the human rights committees and the INCB.

Chapter 2 of this report provides a brief overview of the INCB and the UN treaty bodies, as well as a brief history of the use of the independent committee model for treaty monitoring in the UN and regional human rights systems. Chapter 3 examines the structure, mandate and legal status of the various committees. Chapter 4 reviews their respective activities and working methods. The final chapters draw some conclusions and make key recommendations.

2 Overview

2.1 The INCB and the independent committee model in the UN human rights system

The INCB was established in 1968, pursuant to the 1961 Single Convention on Narcotic Drugs.[31] It is an independent committee of experts originally created to monitor the implementation of the Single Convention. Its role has since expanded, and it now monitors all three international drug conventions.

The INCB comprises thirteen independent experts acting in their personal capacities. Although ostensibly independent, the Board is very much part of the UN system.[32] It was created by a UN convention. It reports to the Economic and Social Council of the UN (ECOSOC) through the Commission on Narcotic Drugs (CND).[33] It is supported with secretariat services from the United Nations Office on Drugs and Crime (UNODC) and is funded entirely from the core UN budget.

For a very brief period the INCB was, indeed, unique in the UN system. However in 1969, the year following the Board's establishment, the first of the human rights treaty bodies was created. The UN Committee on the Elimination of Racial Discrimination (CERD) was established following the entry into force of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination. Like the INCB, CERD is an independent committee of experts mandated to monitor state compliance with the treaty that created it.

The creation of CERD was followed by that of the Human Rights Committee, established in 1976 to monitor state compliance with the International Covenant on Civil and Political Rights. The Human Rights Committee again followed the same model as that adopted for CERD and the INCB. Also in 1976, the International Covenant on Economic, Social and Cultural Rights entered into force. This Covenant was

31 The INCB's predecessors (e.g. the Permanent Central Narcotics Board) date back to the League of Nations. However, the Board's mandate, structure and activities are all created by the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol (see n 3).

32 The Board's 'independence is called "technical" to indicate that it refers only to the performance of its functions, which are mainly of a technical nature. It depends for its election and budget on organs of the United Nations', 'Commentary on the Single Convention on Narcotic Drugs, 1961' (3 August 1962) prepared by the Secretary-General in accordance with ECOSOC Res. 914 (D) (XXXIV), art. 9, para. 2, commentary 1.

33 CND is a subsidiary of ECOSOC known as a 'Functional Commission'. See http://www.un.org/ecosoc/about/subsidiary.shtml (date of last access: 18 January 2008).

anomalous in that it did not directly create an independent committee. However in 1985, the Committee on Economic, Social and Cultural Rights was established by an ECOSOC resolution.[34] It is the only human rights treaty body to be created in such a manner, and is identical in structure to CERD and the Human Rights Committee.[35]

In 1982, the Committee on the Elimination of Discrimination Against Women was created to oversee the UN Convention on the Elimination of All Forms of Discrimination Against Women. In 1984, the Committee Against Torture was established, followed by the Committee on the Rights of the Child in 1990. The seventh human rights treat body was the Committee on the Rights of Migrant Workers, which was established in 2004 when the International Convention on the Rights of All Migrant Workers and Their Families entered into force. All these independent committees were struck to monitor the implementation of the international human rights treaty to which their name applies.

All seven treaty bodies follow the same legal model, share the same general mandate (to ensure treaty adherence) and have the same primary monitoring mechanism (a periodic reporting process). As will be examined in Chapter 4, this periodic reporting mechanism, and others utilised by the treaty bodies, are remarkably similar to the activities of the INCB.

Regional human rights systems also utilise the independent committee model. In 1961, the same year as the adoption of the Single Convention on Narcotic Drugs, the Council of Europe adopted the European Social Charter, a sister convention to the European Convention on Human Rights and Fundamental Freedoms. The European Social Charter created the European Committee on Social Rights, composed of independent experts and mandated to monitor the Charter's implementation.[36] The European Committee on Social Rights was established and had its first session in 1961, seven years before the INCB was created. The European Committee for the Prevention of Torture also follows this model.[37]

34 'Review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (28 May 1985) UN Doc. no. E/RES/1985/17.

35 Discussions are underway at the Human Rights Council, however, to rectify the legal status of the Committee on Economic, Social and Cultural Rights so that it too will report to the General Assembly. See 'Report of the Office of the High Commissioner for Human Rights on the Rectification of the Legal Status of the Committee on Economic, Social and Cultural Rights' (7 November 2007) UN Doc. no. A/HRC/6/21.

36 European Social Charter (1961) ETS no. 035, Council of Europe, 18.X.1961.

37 The Committee oversees the terms of the European Convention on the Prevention of Torture

In Africa, the African Charter on the Rights and Welfare of the Child is monitored by the African Committee of Experts on the Rights and Welfare of the Child, modelled closely on the UN Committee on the Rights of the Child.[38] The African Charter on Human and Peoples' Rights is overseen by the African Commission on Human and Peoples' Rights.[39]

In the Americas, the Inter-American Commission on Human Rights monitors implementation of the American Convention on Human Rights.[40]

The independent committee model continues to be utilised at UN level today. Two more independent treaty bodies will be created once the UN Convention on the Rights of Persons with Disabilities (2006) and the UN Convention Against Enforced Disappearances (2007) enter into force.[41]

and Cruel and Inhuman or Degrading Treatment or Punishment (26 November 1987) ETS no. 126. The entire Convention deals with the operation of the Committee, but see in particular Articles 1 and 4.

38 African Charter on the Rights and Welfare of the Child (entered into force 29 November 1999) OAU Doc. CAB/LEG/24.9/49, chap. II.

39 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) arts. 30 and 31.

40 American Convention on Human Rights (entered into force 18 July 1978) OAS Treaty Series no. 36 1144 UNTS 123 reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System OEA/Ser.L.V/II.82 doc. 6, rev. 1, chap. VII (1992).

41 For the texts of the conventions see http://www2.ohchr.org/english/law/index.htm#core (date of last access: 21 January 2008).

2.2 Key characteristics of the model

The structure and functioning of the independent committee model in the UN human rights system have a number of basic characteristics. For example, the human rights treaty bodies:

- Are independent of states parties
- Report annually to the General Assembly (with the exception of the Committee on Economic, Social and Cultural Rights, which reports to ECOSOC)
- Were created by the treaty they oversee (with the exception of the Committee on Economic, Social and Cultural Rights, which was created by an ECOSOC resolution)
- Are formed of independent experts acting in their personal capacities
- Are funded from UN core costs
- Are provided with secretariat services from the UN Office of the High Commissioner for Human Rights (itself a department of the UN Secretariat) (with the exception of the Committee on the Elimination of Discrimination Against Women, which receives its support from the Division for the Advancement of Women)

- Receive periodic reports on treaty compliance from states parties
- May make recommendations to states parties on their treaty compliance
- Make decisions and recommendations that are not legally binding
- Engage in a relationship with states parties based upon 'constructive dialogue' rather than confrontation
- Develop their own working procedures
- Engage in dialogue with civil society and allow 'shadow' or 'alternative' reporting by NGOs.

The INCB reports to ECOSOC through the Commission on Narcotic Drugs. Unlike the human rights treaty bodies, its secretariat is housed within the UNODC rather than the OHCHR. However, both organisations are sited within the UN Secretariat. Apart from these small exceptions, and the key issue of civil society engagement, all of the above characteristics of the treaty bodies are true of the INCB. The independent committee model is therefore not in any way unusual. Yet despite the existence of the numerous similar international bodies noted above, the INCB claims to be unique in international relations. From a conceptual standpoint, this is incorrect. The INCB is simply an early example of the independent committee model that has been utilised for forty years in the UN, as well as in the regional human rights systems. As will be explored in Chapter 3, there is also little in the INCB's legal status, structure or mandate to support its claim to unique status. Little, that is, other than its secrecy and unwillingness to engage with civil society in its work.

3 Structure, mandate and legal status

3.1 Structure

The seven human rights treaty bodies and the INCB are all independent in nature, and are each made up of independent experts acting in their personal capacities.[42] There is absolutely no difference between them in this regard.

Criteria for membership are very similar between the INCB and the treaty bodies. The 1961 Single Convention requires that '[m]embers of the Board shall be persons who, by their competence, impartiality and disinterestedness, will command general confidence'.[43] The human rights treaties, adopting very similar wording in each case, require people of 'high moral standing and acknowledged impartiality' in the area covered by the convention.[44]

All the committees require a diverse geographical distribution of members.

The only substantial structural difference is the number of members on each independent committee. The INCB is composed of thirteen members while the treaty bodies have memberships ranging from ten to twenty-three.[45]

The INCB is required to hold at least two sessions each year, but may sit in as many sessions as it deems necessary.[46] In practice it tends to sit in three sessions, amounting to approximately five weeks cumulatively. These meetings are held in the UN Office in Vienna. Most human rights treaty bodies sit for three sessions of three weeks every year,[47] these meetings being held in the UN Office in Geneva.[48]

The INCB and the treaty bodies also follow similar processes when it

42 Single Convention on Narcotic Drugs, 1961 (n 3) art. 9. See also, for example, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art. 28(3); International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 art. 8.1.

43 Single Convention on Narcotic Drugs, 1961 (n 3) art. 9.2.

44 This reference is from International Convention on the Elimination of All Forms of Racial Discrimination art. 8.1. Some treaties adopt slightly different wording, for example Article 43(2) of the Convention on the Rights of the Child requires 'high moral standing and recognised competence'.

45 Only the Committee on the Elimination of Discrimination Against Women (CEDAW) has twenty-three members; the others have either ten or eighteen.

46 Single Convention on Narcotic Drugs, 1961 (n 3) art. 11.2.

47 See http://www.ohchr.org/english/bodies/index.htm for the sessions of each treaty body (date of last access: 1 November 2007).

48 One exception is the Committee on the Elimination of Discrimination Against Women, which sits in New York.

comes to the election of members. Apart from three direct nominations to the INCB allotted to the WHO,[49] for which there is no equivalent mechanism in the UN human rights system, members of the INCB are nominated by states parties to the treaties and are elected by ECOSOC.[50] The human rights treaty body members are nominated by states parties and elected at a meeting of the states parties to the relevant convention convened by the UN Secretary-General.[51] The terms of service vary depending on the committee, but all may be re-elected.[52] The INCB is headed by a President elected by its members,[53] and treaty bodies are headed by a Chair elected by their committee members.[54]

INCB members receive a nominal payment of one dollar per year, but their expenses are covered by UN core costs as determined by the General Assembly.[55] Human rights treaty body members are unpaid, but their expenses are also paid from core costs as determined by the General Assembly.[56]

Secretariat services for the INCB are provided for by the UNODC. Secretariat services for the treaty bodies are provided by the OHCHR.[57] Both are full departments of the UN Secretariat and directly comparable.

The INCB reports annually on its work and findings to ECOSOC through the Commission on Narcotic Drugs. The treaty bodies report annually to the UN General Assembly, and also submit information to the Human Rights Council, a subsidiary of the General Assembly.

For all practical purposes, therefore, the structures of the INCB and the human rights treaty bodies are identical.

49 Single Convention on Narcotic Drugs, 1961 (n 3) art. 9.1(a).

50 Ibid. art. 9.1.

51 See, for example, International Covenant on Civil and Political Rights (n 42) art. 30.4; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 9 December 1975, entered into force 26 June 1987) UNGA Res. 39/46 UN Doc. A/39/51 (1984) art. 17(3); Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art. 43(5).

52 See Single Convention on Narcotic Drugs, 1961 (n 3) art. 10.1. Most of the human rights treaties specifically state this, for example Convention on the Rights of the Child (n 51) art. 43(6) and Convention Against Torture (n 51) art. 18(1); ICERD (n 42), however, does not. In practice, however, members may be re-elected.

53 Single Convention on Narcotic Drugs, 1961 (n 3) art. 11.1.

54 This provision is not contained in the conventions but forms part of the rules of procedure of the committees. See, for example, Human Rights Committee, 'Rules of Procedure of the Human Rights Committee' (22 September 2005) UN Doc. no. CCPR/C/3/Rev.8, rule 17 and Committee on the Rights of the Child, 'Provisional Rules of Procedure' (25 April 2005) UN Doc. no. CRC/C/4/Rev.1, rule 16.

55 Single Convention on Narcotic Drugs, 1961 (n 3) art. 10.6.

56 See, for example, Convention on the Rights of the Child (n 51) art. 43.12 and International Covenant on Civil and Political Rights (n 42) art. 35.

57 With the exception of CEDAW, which receives the bulk of its support from the Division on the Advancement of Women. The OHCHR, however, also has a significant role to play.

3.2 Mandate

3.2.1 General mandate

The primary mandate of the INCB is to monitor implementation of the three international drug conventions. A similar mandate is held by each of the independent human rights committees in relation to one of the seven human rights treaties. The content of the conventions, in this regard, is essentially irrelevant. Whether it is ensuring the prohibition of torture or access to medical opiates, monitoring the implementation of treaty provisions by states parties is the key element of their responsibilities, rather than the subject matter. Nothing in this regard sets the INCB apart from the human rights treaty bodies.

3.2.2 Sensitivity

It might be argued that the INCB deals with issues of particular sensitivity, necessitating that its work take place behind closed doors. However, such a suggestion does not stand up to scrutiny, as the INCB is not the only independent monitoring body that deals with information and subject matter of a detailed, sensitive or controversial nature. For example:

- The INCB deals with estimates of need for medical opiates in each state party. The Committee on Economic, Social and Cultural Rights monitors expenditure on health, social services and education and matches that expenditure to the identified needs of the most vulnerable populations in the country.
- The INCB addresses situations where states parties are not abiding by their obligations under the drug conventions, which may involve receiving information from law enforcement agencies. The Committee Against Torture handles allegations of torture and also investigates 'grave and systematic' violations of the torture convention.
- The INCB plays a role in relation to reducing trafficking in illicit drugs. The Committee on the Rights of the Child assesses state compliance relating to the ban on child pornography, the sale of children and child trafficking.[58]

58 It may also be argued that because licit drug supply relates to world trade and economic issues, this necessitates the Board acting in secrecy. If this was the case, the World Trade Organization (WTO) would be as secretive as the INCB. Yet all official documents of the WTO, including dispute settlements, are available online. In addition, the WTO General Council adopted guidelines on NGO relations more than ten years ago. See General Council of the World Trade Organization, 'Guidelines for arrangements on relations with Non-Governmental Organizations' (23 July 1996) Doc. no. WT/L/162.

3.2.3 'Continuing dialogue'

The INCB is mandated to enter into a 'continuing dialogue' with governments relating to their obligations under the conventions. Again, this is almost identical to the human rights committees. While the 1961 Single Convention refers to a process of 'continuing dialogue' with governments,[59] the periodic reporting process[60] of the human rights treaty bodies is conceptualised as one of 'constructive dialogue'.[61] There are, however, two distinct differences:

- In order for 'constructive dialogue' to take place, the human rights treaty bodies have recognised the need for meaningful engagement with all levels of society. Only when all relevant information is available from a diversity of perspectives can the committees gain a true picture of the situation on the ground in the country and undertake an honest dialogue with the government delegation. In this process, civil society and NGOs act as a check and balance on the government information. The INCB does not operate in this fashion, instead choosing to accept only the information provided by governments.
- The Board has, over the years, reportedly become more and more antagonistic and bullish in its approach to states parties.[62] This may be contrasted with the open and constructive discussions that take place between the human rights committees and the country delegations during their periodic meetings. The stated policy of the UN human rights system is to have constructive, co-operative and non-adversarial dialogue with states.[63] The INCB's approach in this regard is reinforced by its secrecy, which allows states parties no way to share their experiences and hold the Board to account.

59 Single Convention on Narcotic Drugs, 1961 (n 3) art. 9.5.

60 See Chapter 4 below for a discussion of the working methods of the treaty bodies.

61 See, for example, Committee on the Rights of the Child, 'Guidelines regarding the form and content of periodic reports' (29 November 2005) UN Doc. no. CRC/C/58/Rev.1, para. 4: 'The periodic report should provide the Committee with a basis for constructive dialogue with the State party about the implementation of the Convention and the enjoyment of human rights by children in the State party'. See also working methods of the Committee Against Torture, http://www2.ohchr.org/english/bodies/cat/workingmethods.htm (date of last access: 21 January 2008).

62 See n 11.

63 See, for example, Bruun et al. (n 17). This policy extends to the Human Rights Council, established in 2006. See Human Rights Council (15 March 2006) UNGA Res. 60/251 UN Doc. no. A/RES/60/251.

3.2.4 Civil society engagement

As mentioned above, INCB President Dr Philip Emafo has stated that the Board is mandated only to 'discuss with governments', and that its mandate is 'not with civil society'.[64] When quizzed by a journalist on this point in March 2007, Dr Emafo said that it is necessary to read all of the drug conventions to find support for his assertion.[65]

This claim is false.

The 1961 Single Convention on Narcotic Drugs, which created the INCB, specifically mentions NGOs.[66] According to the 1961 Convention, as amended by the 1972 Protocol, the INCB may act upon information it has received from NGOs in order to begin 'consultations' with defaulting governments. Article 14.1(a) states:

> **If, on the basis of its examination of information submitted by** Governments to the Board under the provisions of this Convention, or of information communicated by United Nations organs or by specialized agencies or, provided that they are approved by the Commission on the Board's recommendation, by either, other intergovernmental organizations or international **non-governmental organizations which have direct competence in the subject matter and which are in consultative status with the Economic and Social Council under Article 71 of the Charter of the United Nations or which enjoy a similar status by special agreement with the Council, the Board has objective reasons to believe that 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 Board shall have the right to propose to the Government concerned the opening of consultations or to request it to furnish explanations. (emphasis added)

Therefore, the 1961 Single Convention specifically identifies NGOs as one of several legitimate sources of information on which the INCB should draw.

The reference to NGOs was added by the 1972 Protocol amending the 1961 Single Convention.[67] The commentaries to that Protocol

64 Emafo (n 1).

65 Ibid.

66 The 1988 Convention does mention NGOs, but only in relation to measures based on the 'Comprehensive Multidisciplinary Outline adopted by the International Conference on Drug Abuse and Illicit Trafficking, held in 1987, as it pertains to governmental and non-governmental agencies and private efforts in the fields of prevention'. It is not specific to the Board, nor does it have any substantive value for NGOs. UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (n 3) art. 14.4.

67 Protocol amending the Single Convention on Narcotic Drugs, 1961 (25 March 1972) UNTS vol. 2206, no. 14151, art. 6.

specifically state that it 'adds as sources of information which the Board may use: specialized agencies, and certain other intergovernmental organizations and some international non-governmental organizations'.[68]

The commentaries further describe the NGOs that may provide information, noting that:

a. They must be 'international';
b. They must have 'direct competence in the subject-matter'. That requirement does not mean that the international non-governmental organizations concerned must work specifically in the field of narcotic drugs; organizations having experience on one or more of the manifold aspects of the problem of drug abuse could be chosen by the Board and the Commission, such as organizations concerned with problems of alcoholism and drug addiction, medicine, chemistry, pharmacy, social defence, international transport by air, sea, railway, motor cars or other vehicles, or customs or other border control;
c. They must enjoy consultative status with the Council under Article 71 of the Charter of the United Nations or a similar status by special agreement with the Council and;
d. They must be approved by the Commission on the Board's recommendation.[69]

Although the treaty articulates a narrow avenue for NGO engagement, it is simply false to claim, as does Dr Emafo, that the INCB has no mandate to engage with non-governmental organisations. On the contrary, the 1961 Single Convention, as amended, provides the Board with a specific mandate to do so. Yet in its rigid interpretation of the conventions and its adherence to outmoded methods of working, the Board has ignored this significant development.

The participation of NGOs is, in fact, reinforced by the INCB's own information about its activities. It states that in the course of its monitoring work, the Board analyses information 'provided by Governments, United Nations bodies, specialised agencies or **other competent international organisations'**[70] (emphasis added). This wording mirrors almost exactly that found in the Convention on the Rights of the Child, Article 45 of which identifies 'other competent bodies' as sources of information for the periodic reporting process. While within the human rights

68 United Nations, Commentary on the Protocol amending the Single Convention on Narcotic Drugs, 1961 (New York, 1976) art. 14, commentary 3.

69 Ibid. commentary 6.

70 INCB (n 3).

system this term has always been understood to include NGOs, the INCB's interpretation appears to be limited to organisations such as WHO, UNODC and Interpol.[71] This interpretation is further undermined by the General Assembly's repeated resolutions recognising the need for co-operation with civil society and NGOs in relation to international drug control.[72]

Although civil society and NGOs are not mentioned in the 1961 Single Convention other than under Article 14.1(a), and are not mentioned in the other two drug conventions, it is equally true that nothing within any of the drug conventions precludes such engagement.[73] This situation is identical to that of the human rights conventions. For example, the Convention on the Rights of the Child is the only UN human rights treaty to mention NGOs, and even then only once.[74] The remaining human rights treaties make no reference to NGOs, although, as is the case with the drug conventions, they also do not preclude such engagement.

From an early stage, the human rights treaty bodies recognised the importance of civil society engagement in their work, despite the fact that such involvement is not specifically required by the human rights conventions themselves.[75] Over the years, the treaty bodies have developed an open dialogue with NGOs and civil society throughout their work, strengthening their recommendations and engagement

71 These organisations were among those listed by Dr Emafo when quizzed on this point by journalists in New York (n 1).

72 See, for example, 'International cooperation against the world drug problem' (13 March 2007) UNGA Res. 61/183 UN Doc. no. A/RES/61/183, preamble and 'International cooperation against the world drug problem' (22 March 2006) UNGA Res. 60/178 UN Doc. no. A/RES/60/178, para. 24.

73 The only restrictive note on sources of information is a commentary to Article 13 of the Single Convention on Narcotic Drugs, 1961 relating to the administration of the statistical returns system. It states that although the Board may use a range of information, including information the government has made public as well as information from other governments (including states not party to the conventions), 'information from private sources…may not be used'. This statement requires clarification, particularly in the light of the addition of NGOs into Article 14 of the Single Convention on Narcotic Drugs, 1961 by the 1972 Protocol. Does private sources mean privately researched, or can publicly available information be submitted by a non-governmental entity? It is interesting also that this statement does not appear in relation to Article 12 and the administration of the estimates system. 'Commentary on the Single Convention on Narcotic Drugs, 1961' (n 32) art. 13. On the board's meetings, see page 32.

74 Article 2 of the Optional Protocol to CEDAW does note that individual or group complaints may be taken 'on behalf of' those who have suffered gender-based discrimination, implying that third parties such as NGOs may bring the case. However, it is not as specific as the CRC. The new Disability Convention also refers to 'other competent bodies' in this context, but it has yet to enter into force.

75 'The Committee on Economic, Social and Cultural Rights attaches great importance to cooperation with all non-governmental organizations (NGOs) active in the field of economic, social and cultural rights – local, national and international, those in consultative status with the Economic and Social Council and those without such status. The Committee constantly encourages their participation in its activities', Committee on Economic, Social and Cultural Rights, 'Participation of non-governmental organizations in the Committee on Economic, Social and Cultural Rights' (7 July 2000) UN Doc. no. E/C.12/2000/6.

with governments in the process. This development is not based upon treaty requirements to involve NGOs, but is a result of the human rights treaty bodies' recognition that in order to fulfil their mandate to monitor the implementation of the treaties, the engagement of civil society is essential. As noted by the Office of the High Commissioner for Human Rights, which serves as secretariat to the treaty bodies, 'Civil society, in particular non-governmental organizations (NGOs), enhance the international human rights system through a multiplicity of roles and provide a valuable link from the grassroots to the national and international levels'.[76]

The OHCHR and the treaty bodies are supported in their approach by the Charter of the United Nations, which specifically refers to non-governmental organisations, recognising, from the very inception of the UN, the importance of civil society to its aims.[77] The added value that civil society participation brings to the monitoring of international treaties has apparently escaped the notice of the INCB.

The mandate of the Board is no different from that of the human rights treaty bodies in terms of the organisations with whom it may engage. What sets the INCB apart is not that it cannot engage with civil society, but rather that it chooses not to do so.

3.3 Legal status

3.3.1 Legal status of the international drug control and human rights treaties

The three international drug conventions and the seven UN human rights conventions occupy an identical status in law. All are international treaties drafted, agreed and ratified by states parties and deposited with the Secretary-General of the UN. All satisfy the requirements of the 1969 Vienna Convention on the Law of Treaties, which sets out the rules relating to international treaties.[78] All create binding international obligations and all are essentially contracts between states.

From a legal perspective, there is absolutely nothing to set each drug convention apart from each human rights treaty. States parties' obligations are as legally binding

76 OHCHR, 'Strengthening partnerships with civil society/NGOs', http://www.ohchr.org/EN/AboutUs/Pages/NgoPartnerships.aspx (date of last access: 21 January 2008).

77 See Charter of the United Nations (n 20) art. 71.

78 For a definition see Vienna Convention on the Law of Treaties (23 May 1969, entered into force 27 January 1980) UNTS vol. 1155, p. 331, art. 2.1(a).

under the 1961 Single Convention, for example, as they are under the Convention on the Rights of the Child or the Covenant on Economic, Social and Cultural Rights. That one provision might be more prescriptive, such as the obligation to criminalise possession of illicit drugs in the 1988 Convention,[79] and another relatively vague, such as the protection of the right to freedom of expression in the International Covenant on Civil and Political Rights,[80] is irrelevant. Until there is a conflict between the two (see Section 3.3.3 below), their legal status is the same.

International treaties such as the drug and human rights conventions are best conceptualised as contracts between states, with the treaty provisions setting out the terms of the agreement. Treaty obligations are owed by each state party to the other states parties that have ratified the treaty in question. This can be confusing in relation to human rights law, where provisions set out obligations towards individuals rather than countries. Legally speaking, however, when a state violates an individual's rights under an international treaty, it is in fact breaching its contract with other states to protect that person's rights.[81] This is an international obligation owed to the other states parties via the individual in question, not to the UN or any independent body.

3.3.2 Legal status of the INCB and the human rights treaty bodies

The reason that states owe their treaty obligations to each other is that only states are subjects of international law. The individual is merely the subject of the agreement, and the independent committee a monitoring mechanism created within the treaty. The INCB and the human rights treaty bodies are not international legal subjects, nor are they parties to the conventions. Instead, as part of the drug conventions and the human rights treaties, states parties have agreed not only to implement the treaty provisions but also to engage with various independent committees to facilitate their implementation and to adhere to any reporting procedures that might be prescribed. This is a treaty obligation like any other. It is part of the contract.

Unlike court decisions, none of

79 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (n 3) art. 3(a)(iii).

80 ICCPR (n 42) art. 19.

81 See Human Rights Committee, 'General Comment No. 31: The nature of the general legal obligation imposed on States parties to the Covenant' (26 May 2004) UN Doc. no. CCPR/C/21/Rev.1/Add.13, para. 2.

the recommendations of either the INCB or of the human rights treaty bodies are legally binding. There are no direct enforcement mechanisms per se. The INCB has the power under Article 14 of the 1961 Single Convention[82] to call for sanctions against defaulting states parties in the form of an embargo on imports and exports of certain substances. However, this power is much weaker than that of the predecessor to the INCB, which had the power to actually impose such sanctions.[83] The INCB may only recommend sanctions to ECOSOC through the Commission on Narcotic Drugs. In practice, it has never done so. The human rights treaty bodies also have certain powers akin to enforcement, such as calling for emergency measures to ensure further violations of human rights do not take place pending the outcome of an individual complaint,[84] or ordering that compensation be paid to victims of human rights abuses.[85] The Human Rights Committee and the Committee on the Elimination of Racial Discrimination, for example, may also hear cases brought by one state party against another, although again this has never been used. In each case, however, neither the INCB nor the committees are courts of law, and cannot enforce their decisions. Instead, the political weight of the treaties is their strongest asset, as all states have agreed the same terms.

In this way, the 'quasi-judicial' nature of the INCB and the human rights treaty bodies is by far the less dominant of their mandates. It is, without doubt, the constructive and continuing dialogue with states parties in a co-operative and non-confrontational manner to promote implementation of the treaties that takes centre stage in the operation of these committees.[86] The INCB, however, has, over the years, focused disproportionately on its quasi-judicial responsibilities.

Lacking any enforcement powers, the independent committees in both systems rely on the good faith of states to comply with their recommendations.[87] The INCB's

82 Article 19 of the Single Convention on Narcotic Drugs, 1961 (n 3) contains a very similar provision.

83 Article 14.2 of the Commentary on the Single Convention on Narcotic Drugs, 1961 (n 32) states that 'The Single Convention does not take over the provision of the 1953 Protocol 3 authorizing the Permanent Central Board to impose, with binding effect on Parties, an embargo of the import of opium or the export of opium, or both, upon any country or territory which has failed in a serious manner to comply with provisions of that Protocol'.

84 See, for example, the case of AT v Hungary before the Committee on the Elimination of Discrimination Against Women, where a mother sought interim measures to protect her from her husband as she feared for her life (25 January 2005) Comm no. 2/2003.

85 Ibid. The victim was awarded compensation.

86 See Chapter 4 below.

87 A universally recognised principle in international law known as Pacta Sunt Servanda,

secrecy in this context may cause further problems in relation to its mandate. In order for one party to a contract to monitor the progress of the other parties, and for political weight to take effect, it is essential that they have all the relevant information to hand.

The INCB's practice of conducting its business in secret in fact limits the effective monitoring of the conventions. The human rights committees, on the other hand, publicise all information, allowing all states parties to see how and whether other states with which they have contracted are living up to their treaty obligations. Only in this way can the full strength of the conventions be realised through political and moral weight.

Finally, as an independent committee established by international treaty to monitor implementation of that treaty by states parties, the INCB is itself a treaty body. (In this report, the term is applied only to the human rights committees merely to distinguish them from the INCB.) The legal status of the INCB and of the human rights treaty bodies is therefore the same.

'Every treaty in force is binding upon the parties to it and must be performed by them in good faith', Vienna Convention on the Law of Treaties (n 78) art. 26.

3.3.3 Conflicts between the drug control and human rights systems: Primacy of the Charter of the United Nations

What happens, however, when the two legal systems come into conflict? This issue is particularly important when considering UN system-wide coherence.

The issue of conflicts between international legal systems can be extremely technical and complicated.[88] There are, however, some clear hierarchies. One of these is of particular relevance – the primacy of the Charter of the United Nations as a legal instrument.[89]

Article 103 of the Charter states specifically that when there is a conflict between the Charter and another international treaty, the Charter shall take precedence.[90] Articles 1 and 55(c) further state that the United Nations shall promote respect for fundamental human rights.

Human rights are referred to seven times in the Charter of the United Nations, from the preamble through

88 See International Law Commission, 'Fragmentation of international law: difficulties arising from the diversification and expansion of international law: Report of the Study Group of the International Law Commission' (18 July 2006) UN Doc. no. A/CN.4/L.702.

89 Ibid. paras 34-36.

90 Ibid. para. 34.

to the aims of the UN and the mandates of the General Assembly and ECOSOC. Human rights, in short, permeate the entire document. In 1948, the Universal Declaration of Human Rights was drafted and adopted to 'give expression' to the human rights requirements of the Charter.[91] The human rights conventions add further content to these requirements, and bind states parties to the implementation of the rights they contain.

It is interesting to note that while the 1919 Covenant of the League of Nations specifically mentioned drug control,[92] the later Charter of the United Nations excludes all mention of drugs. Instead, the member states at the San Francisco Conference that drafted the Charter made it clear that drug control came within the definition of 'international economic, social, health and related problems' contained in Article 55.[93] Drug control was seen as merely a subset of these overarching aims. The status of drug control therefore pales in comparison to the 'primacy of human rights in the Charter of the United Nations'.[94]

91 'In larger freedom: towards development, security and human rights for all, report of the Secretary-General' (21 March 2005) UN Doc. no. A/59/2005/Add.1, para. 7.

92 Part I of the Treaty of Versailles (Covenant of the League of Nations) (1919) art. 23c.

93 See 'Commentary on the Single Convention on Narcotic Drugs, 1961' (n 32) art. 5, commentary 1; 'Fifth report of the Drafting Committee of the San Francisco Conference' (25 May 1945) Doc. no. WD 40 11/3/A/5, art. 55.

94 'In larger freedom' (n 91) para. 183.

The scope of the rule relating to the higher status of the Charter over other international agreements extends to decisions of the Principal Organs of the United Nations, and clarifies the primacy of human rights over drug control.[95] Every year the General Assembly adopts a resolution that states clearly that international drug control must be carried out in full conformity with the Charter of the United Nations and in particular with full respect for fundamental human rights.[96]

If there is a conflict between human rights and drug control as bodies of law, human rights law must take precedence. This is clear from the Charter and confirmed by the highest policy-making body in the UN.

95 'Fragmentation of international law' (n 88) para. 35.

96 UNGA Res. 61/183 (13 March 2007) UN Doc. A/RES/61/183; UNGA Res. 60/178 (22 March 2006) UN Doc. A/RES/60/178. See also UNGA Res. 46/101 (16 December 1991) UN Doc. A/RES/46/101; UNGA Res. 47/98 (16 December 1992) UN Doc. A/RES/47/98; UNGA Res. 48/112 (11 March 1994) UN Doc. A/RES/48/112; UNGA Res. 49/168 (24 February 1995) UN Doc. A/RES/49/168; UNGA Res. 50/148 (9 February 1996) UN Doc. A/RES/50/148; UNGA Res. 51/64 (28 January 1997) UN Doc. A/RES/51/64; UNGA Res. 53/115 (1 February 1999) UN Doc. A/RES/53/115; UNGA Res. 54/132 (7 February 2000) UN Doc. A/RES/54/132; UNGA Res. 55/65 (26 January 2001) UN Doc. A/RES/55/65; UNGA Res. 56/124 (24 January 2002) UN Doc. A/RES/56/124; UNGA Res. 58/141 (10 February 2003) UN Doc. A/RES/58/141; UNGA Res. 59/153 (8 February 2005) UN Doc. A/RES/59/153.

4 Activities and working methods

The activities of the INCB do differ in some ways from the human rights treaty bodies. This is inevitable due to the aims and objectives of the relevant treaties. There is no need under the human rights conventions, for example, for a system of estimates such as that under the 1961 Single Convention. Similarly, there is no need under the drug conventions for a system of individual complaints. Despite the very different nature of the drug conventions and the human rights treaties, however, there are many similarities in the activities of these bodies.

4.1 Monitoring treaty implementation

According to its own information, 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.
>
> Analyses information provided by Governments, United Nations bodies, specialised agencies or other competent international organisations, 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. [97]

There is nothing unique about these activities. Taken together, they describe very closely the 'periodic reporting' process that forms the primary mechanism for monitoring implementation of the human rights treaties, a process overseen by the independent human rights committees. While the system of estimates overseen by the INCB is different in subject matter and format to the reports relating to human rights obligations, the aim of both, as well as the monitoring activities themselves, are identical. That one relates to a balance between drug supply and demand, and the other to the progressive realisation of human rights, is entirely irrelevant. The aim is to monitor national progress towards fulfilling international legal obligations.

Depending on the human rights

97 See INCB (n 3).

treaty in question, every two to five years states parties to the treaty must submit a report to the relevant committee detailing its progress in implementing the convention's provisions. The committee meets with a government delegation in what is known as the 'plenary session' to discuss the state's report. Following this meeting, the committee publishes 'concluding observations' in which it highlights positive developments, areas of concern and key recommendations. Included in these recommendations are often suggestions relating to technical and financial assistance from UN specialised agencies. All of the UN human rights committees have this mechanism.

NGOs are of fundamental importance to the periodic reporting process, and may submit an 'alternative report' to the relevant committee. In practice, this is strongly encouraged by the treaty bodies. NGOs may also attend a 'pre-sessional working group' meeting with the committee to discuss the issues raised in their alternative report. Based in part on the information the committee receives from NGOs, it sends a 'list of issues' to the government requesting further information not contained in the state's report. The government must then make available 'written replies' to those questions. All of the information received, from the state report to NGO submissions and written replies, will frame the plenary session between the government delegation and the committee. NGOs may sit in on this meeting as observers. 'Summary Records' of this meeting are produced and publicised as minutes.

The exact working of this basic system can vary from committee to committee. The Committee on Economic, Social and Cultural Rights, for example, allows for further NGO engagement at the plenary session stage through additional NGO hearings prior to the committee's meetings with government delegations. It also allows separate NGO reports to be submitted at the pre-session and plenary session stages. The Committee on the Rights of the Child, while not allowing for NGO hearings at the plenary stage, provides for longer sessions with NGOs on specific countries at the pre-sessional working group meetings. In all cases, the concluding observations are produced as the final outcome of the reporting process. All documentation is made public on the website of the Office of the UN High Commissioner for Human Rights.[98]

98 See http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx (date of last access: 9

In contrast to the human rights system, the INCB conducts all meetings behind closed doors and no minutes are published. There is no opportunity for civil society involvement at any stage. Even when asked about its activities directly, the Board is evasive.[99]

This closed process is a legacy of the Permanent Central Board, a predecessor of the INCB. It is noted in the commentaries to the 1961 Single Convention that '[s]everal procedural practices of the International Narcotics Control Board, which follow the practices of its predecessor, the Permanent Central Board, may be indicated' including that, with certain exceptions, '[i]ts meetings are held in private'.[100] This statement does not, however, justify the Board's secrecy today, nor its failure to modernise its workings in accordance with UN standards.

In any case, the privacy of meetings is an issue of procedure, rather than one of mandate. As noted in Section 3.2.4 above, nothing in the three drug conventions precludes civil society engagement or more open working methods. In fact, under Article 11 of the 1961 Single Convention, the Board may develop its own rules of procedure. Its current procedure is therefore not binding, and is open to change. Again, the Board has chosen not to modernise its working methods in this regard.

It is also useful to note that even with the Board excluding civil society and states parties from its meetings, it is not prevented from acting on information received from NGOs, publishing relevant documentation and releasing its minutes in abridged form, as the human rights treaty bodies do following their sessions with country delegations.[101]

The INCB and the human rights committees may develop their own rules of procedure and working methods in relation to their monitoring activities. As noted in Articles 12 and 13 of the 1961 Single Convention, for example, the INCB may 'determine the manner' in which estimates and statistical returns shall be furnished. Furthermore, the 1961 Single Convention allows for information to be received not only from the government in question,

January 2008).

99 See Closed to Reason (n 5) 5. Four INCB members were asked for information about their activities by the Canadian HIV/AIDS Legal Network. None replied. The INCB secretariat instead directed researchers to the INCB website.

100 'Commentary on the Single Convention on Narcotic Drugs, 1961' (n 32) art. 11, commentary 3.

101 The summary records of such meetings are abridged minutes. However, NGOs may attend to take more detailed notes.

but also from intergovernmental organisations such as WHO, as well as from other states parties to the conventions.[102] This again points away from the secret working practices the Board has adopted, practices that extend beyond civil society to include also other states parties to the conventions.

The INCB chooses to exclude civil society, while the human rights treaty bodies do not. There is no reason why the methods used by the human rights treaty bodies could not be adopted and adapted by the INCB to assist with monitoring the drug conventions.

4.2 Quasi-judicial handling of violations

As noted in Section 3.3.2 above, the quasi-judicial operation of the independent committees is by far the less dominant aspect of the work of the INCB and the human rights treaty bodies. The handling of potential treaty violations is, nonetheless, another activity shared by these bodies. However, they follow markedly different working methods. Again, while the other treaty bodies have adopted an open and transparent process, the INCB has chosen a secretive one.

Articles 14 of the 1961 Single Convention, 19 of the 1971 Convention on Psychotropic Substances and 22 of the 1988 Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances are the primary provisions dealing with the INCB's handling of violations of the treaties. They are also the only articles to refer specifically to an obligation of confidentiality on the part of the Board.[103]

Under Article 14 of the 1961 Single Convention, in situations where the Board has received information (including from NGOs[104]) that a state party is defaulting on its obligations, the INCB may begin 'consultations' whereby the Board requests an explanation from the relevant government, and may possibly propose further discussions based on the state's response. In such circumstances, Article 14.1(a) states that 'the Board shall treat as confidential a request for information and an explanation by a Government'. This confidentiality may extend

102 'Commentary on the Single Convention on Narcotic Drugs, 1961' (n 32) art. 12, para. 4, commentary 3.

103 Article 16.5 of the 1971 Convention also provides for limited confidentiality in relation to reports furnished to the Board. It is not noted above as it is at the discretion of the government, not the INCB.

104 See Section 3.2.4 above.

further to the actual 'consultations' held with the government. While it is therefore legitimate for the INCB to handle this procedure in confidence, it is a very limited provision.

Under Article 14.1(a), if the INCB feels that the government in question has failed to provide satisfactory explanations to allay its concerns, it has the power to call the matter to the attention of the other states parties to the convention and to the Commission on Narcotic Drugs.[105] Confidentiality, therefore, relates only to those situations where the Board is satisfied with the state's response to its queries. Article 14.3 confirms this interpretation, stating that 'The Board shall have the right to publish a report on any matter dealt with under the provisions of this article'. The commentaries to the 1972 Protocol amending the 1961 Single Convention further reinforce this interpretation.[106]

Furthermore, this specific power of the INCB does not require the exclusion of civil society even if it decides to act in confidence, as NGOs may still submit the information that sets the process in motion under Article 14.1(a).

The 1971 and 1988 Conventions are remarkably similar in this regard. Article 19 of the 1971 Convention is almost identical in wording to Article 14 of the 1961 Single Convention, although it does not mention NGOs. Article 22 of the 1988 Convention, though arguably stronger in terms of confidentiality than its 1961 and 1971 counterparts, retains the ability to call the matter to the attention of the other states parties, ECOSOC and the Commission on Narcotic Drugs.[107] The only specific mentions of a requirement of confidentiality in the three drug conventions are therefore extremely limited and subject to considerable discretion on the part of the Board. Again, this situation is not unique to the INCB. Article 20.2 of the Convention Against Torture, for example, allows for an urgent

105 Single Convention on Narcotic Drugs, 1961 (n 3) art. 14.1(d).

106 Commentary on the Protocol amending the Single Convention on Narcotic Drugs, 1961 (n 68) art. 14, commentary 22: 'As long as the Board is not authorized under subparagraph (d) to call the attention of the Parties, the Council and the Commission to the matter and actually does not do so, it is bound to treat as confidential communications made under subparagraph (a), including its own requests for explanations or proposals of consultations, as well as the replies of Governments and the course and contents of consultations. The Board is however not precluded from publishing in a report made pursuant to article 15, paragraph 1 that part of the information supplied by Governments under subparagraph (a) which has also come to its notice from other communications which it is not required to treat as confidential'.

107 Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (n 3) art. 22.1(b): '(ii) Prior to taking action under iii) below, the Board shall treat as confidential its communications with the Party concerned under the preceding subparagraphs; (iii) If the Board finds that the Party concerned has not taken remedial measures which it has been called upon to take under this subparagraph, it may call the attention of the Parties, the Council and the Commission to the matter'.

confidential inquiry to be carried out by one committee member if the committee has received information that torture is taking place in a state party. This information may come from NGOs. Once again, the difference in working methods between the INCB and the human rights treaty bodies is driven by choice rather than mandate.

Most of the human rights treaty bodies are also empowered to receive individual complaints.[108] The aim of the individual complaints system is to call attention to human rights violations and to propose remedial measures, including compensation. In some circumstances, individual complaints may be submitted by NGOs on behalf of victims (similarly the INCB may act on information received from NGOs under Article 14 of the 1961 Single Convention[109]). In serious cases, the human rights committees may recommend that emergency action be taken by the government pending the hearing of the case.

Though necessarily different in design, the objectives of the mechanisms relating to violations in both systems are therefore identical – to remedy the violation. The key difference is that the human rights treaty bodies are willing to act on information from NGOs bringing violations to their attention, while the INCB is not, despite its specific mandate to do so within the 1961 Single Convention, as amended by the 1972 Protocol.

4.3 Treaty interpretation

Another activity in which the INCB is involved is treaty interpretation. It has stated publicly, for example, that safe injecting sites would violate the terms of the conventions, despite advice to the contrary from the UN's own legal experts.[110] It is interesting to note, however, that treaty interpretation is not specifically part of the Board's mandate under the drug conventions. The INCB's approach in this regard contrasts sharply with its claim to be unable to interact with NGOs without a specific mandate to do so, even though such engagement is clearly relevant to its functions. That said, few would deny that treaty interpretation is necessary for the Board's fulfilment of its mandate.[111]

108 Only the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights cannot. An optional protocol creating this power for CESCR is currently being debated.

109 The mechanism itself, however, is very different from that of the human rights treaty bodies which, once the complaint has been received, act more as quasi-courts, receiving submissions from both sides, assessing the facts and making a decision. In this way it is the human rights treaty bodies rather than the INCB which may be more accurately described as 'quasi-judicial'.

110 See n 6.

111 Note also that the 1971 Convention creates

However, interpreting treaties is not a function unique to the INCB, as the human rights committees also do so, albeit often in a more open and consultative fashion. Both the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, for example, hold 'days of general discussion' around specific issues within the conventions. These are open meetings to which anyone may make submissions or attend. The outcome of such meetings is often a 'general comment', an authoritative statement clarifying the meaning of certain convention rights that is intended to assist states parties in their understanding of their obligations. Although such statements may be, and often are, developed without consultation, notifications are released informing civil society that deliberations are underway and all general comments are made public once complete.

no system of estimates for psychotropic substances comparable to that provided for narcotic drugs in the 1961 Convention, yet over the years the INCB convinced states to provide such estimates, even though this is strictly speaking outside the scope of the conventions. This is again contrary to the Board's insistence on strict interpretation of the treaties. See J. Sinha, 'The history and development of the leading international drug control conventions' (21 February 2001), prepared for the Senate Special Committee on Illegal Drugs (Canada), 27–28.

4.4 Country visits/missions

The INCB undertakes approximately twenty country visits or missions each year. These are not announced publicly in advance, and NGOs or civil society organisations are not consulted as part of the information-gathering process. Again, this is not an activity unique to the Board, although the lack of civil society involvement certainly is.

Some human rights treaty bodies may also undertake 'inquiries' into 'grave and systematic' violations of the relevant conventions. Such inquiries involve a fact-finding mission to the country in question.[112] During such visits, the committees regularly engage with NGOs. Indeed all of the inquiries that have been undertaken to date have been initiated on the basis of information provided by NGOs.[113]

112 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (15 October 1999) UNGA Res. A/RES/54/4, art. 8; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (n 51) art. 20; International Convention on the Elimination of All Forms of Racial Discrimination (n 42) art 22.; In relation to the latter two provisions, states parties must make a declaration recognising the competence of the relevant committee to undertake such inquiries.

113 Committee on the Elimination of Discrimination Against Women, 'Report on Mexico' (27 January 2005) UN Doc. no. CEDAW/C/2005/OP.8/MEXICO, para. 3; Committee Against Torture, 'Report of the Committee Against Torture' (2002) UN Doc. no. A/57/44, para. 125; Committee Against Torture, 'Report of the Committee Against Torture' (2000) UN Doc. no. A/55/44, para. 220; Committee Against

As part of the periodic reporting process, human rights committee members are also often invited by NGOs to visit countries personally in order to see the human rights situation for themselves prior to the session with the government. While the INCB has on rare occasions met with NGOs during country visits, this is not the Board's standard practice.[114] This stands in stark contrast to the approach of the treaty bodies, which regularly meet NGOs and affected communities during such visits in order to gain a clearer insight into the situation on the ground.[115] The INCB, through its exclusion of civil society, therefore severely limits its ability to gain this insight.

Torture, 'Activities of the Committee Against Torture pursuant to article 20 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Turkey' (15 November 1993) UN Doc. no. A/48/44/Add.1, para. 3; Committee Against Torture, 'Report on Mexico produced by the Committee under Article 20 of the Convention, and Reply from the Government of Mexico' (26 May 2003) UN Doc. no. CAT/C/75, para. 3; Committee Against Torture, 'Report of the Committee Against Torture' (1996) UN Doc. no. A/51/44, para. 182.

114 For an overview of INCB country missions see INCB, 'Activities', http://www.incb.org/incb/en/activities.html (date of last access: 21 January 2008).

115 See, for example, CEDAW (n 113) para. 17.

5 Conclusion

The INCB has claimed that it is 'unique in international relations', and has used this allegedly unique status to justify the secrecy of its deliberations and the exclusion of civil society from its work. The Board has claimed that the international drug control conventions do not allow engagement with civil society or the seeking of information from outside sources.

These claims do not stand up to scrutiny.

Far from being unique, the INCB is an example of a model of international treaty monitoring that has been adopted and developed over the last forty years in the UN and regional human rights systems. Nothing in its structure, legal status, mandate or activities sets it apart from the many other independent expert committees created to monitor international human rights conventions.

Yet despite the fact that the INCB and the human rights treaty bodies engage in many of the same activities, the working methods each has adopted could not be more different. Of vital importance is that the 1961 Single Convention allows the INCB to develop its own rules of procedure.[116] No specific modalities for undertaking its activities are prescribed. In this respect it is identical to the human rights treaty bodies, yet the INCB remains secretive, clinging on to outdated procedures, while the treaty bodies have modernised in line with UN processes, becoming more and more transparent, open and inclusive over the years.

The key issue therefore is one of choice, not of mandate or legal status – and certainly not one of 'uniqueness'. The INCB has chosen secrecy, while the treaty bodies have chosen open engagement.

Indeed all of the human rights treaty bodies have developed various modalities for NGO interaction, including submitting alternative/shadow reports, attending pre-sessional working group meetings, observing plenary sessions with government delegations, submitting communications, inviting country visits by committee members and making suggestions on issues to form new 'general comments'. Two human rights committees, the Committee

116 Single Convention on Narcotic Drugs, 1961 (n 3) art. 11.1. See also, for example, ICCPR (n 42) art. 37.2.

on the Rights of the Child and the Committee on Economic, Social and Cultural Rights, have adopted official guidelines specific to NGO engagement.[117]

The INCB's current secretive and closed working methods weaken the political weight that forms the backbone of the drug conventions, damage the ability of the Board to fulfil its mandate, render it incapable of forming a complete picture of the situation on the ground in each country and may create an antagonistic environment that damages the good will of states parties to engage with it. In short, this approach appears to be entirely counter-productive to the Board's functions within the international drug control system.

The fact that the INCB shares the same legal status and model of treaty monitoring as so many other committees should be seen as an opportunity for positive change. The Board can learn from the working methods adopted by the UN human rights treaty bodies, methods that have increased civil society engagement in monitoring states' compliance with their international obligations. For the INCB to change its working practices does not require an amendment to the drug conventions, or a resolution of the Commission on Narcotic Drugs. It requires no more than a change of attitude by the INCB itself, and action on the Board's part to involve civil society.

The INCB has stated that 'resolving the world drug problem depends on responsible action by all of us',[118] that NGOs have a role to play[119] and that 'all must work together'[120]. It does not, however, apply these calls to action to its own work. Until it does, the only thing that does indeed make the INCB unique in international relations is its decision to work behind closed doors and to the complete exclusion of civil society, a working practice entirely out of step with the UN system as a whole.

117 See, for example, Committee on the Rights of the Child, 'Overview of the working methods of the Committee on the Rights of the Child', http://www2.ohchr.org/english/bodies/crc/workingmethods.htm annex VIII (date of last access: 22 January 2008).

118 Report of the International Narcotics Control Board for 2006 (n 11) foreword.

119 Report of the International Narcotics Control Board for 2003 (n 9) foreword.

120 Ibid.

6 Recommendations

Despite the controversy surrounding the INCB and its working methods, the Board has an important role to play in international drug policy, and in particular in ensuring sufficient access to controlled substances for medical and scientific purposes. However, there is a need to promote a more open and transparent INCB that conforms to UN standards and norms and there are many avenues for change at various levels of the UN in this regard.

Commission on Narcotic Drugs

- Clarify, by way of a resolution, the scope of the INCB's mandate under the international drug control conventions.
- Recommend, by way of a resolution, that the INCB review its working methods and rules of procedure to include greater civil society and NGO engagement. Guidance may be sought from the working methods and rules of procedure of the UN human rights treaty bodies in this regard.

International Narcotics Control Board

- Revise its working methods to promote transparency, reduce secrecy and end the exclusion of civil society from its deliberations.
- Make publicly available all documentation relating to its work, except where confidentiality is specifically required by the Conventions (i.e. the limited circumstances relating to 'consultations' discussed in Section 4.2 above).
- Make publicly available the minutes of all meetings.
- Seek the assistance of the OHCHR for training on the operation of the human rights treaty body system and on how to engage with civil society.
- Develop specific modalities for receiving information from, and consulting with, NGOs and other civil society organisations throughout its work.
- Prior to and during country visits, consult with NGOs, people living with HIV and people who use drugs.
- Seek the assistance of UNAIDS and WHO to develop guidelines for working with people living with HIV and people who use drugs.

UN Office on Drugs and Crime

- Appoint a civil society liaison officer within the INCB secretariat.
- Conduct training and capacity building for the INCB secretariat on broader UN obligations so that the secretariat may fully and accurately advise the Board and support its activities.

World Health Organization

- Criteria for nomination of the three INCB members through WHO should include awareness of and support for the full range of WHO HIV/AIDS prevention efforts and its stated positions and policies on harm reduction[121] and civil society engagement.

Economic and Social Council of the UN

- Criteria for nominations of INCB members through ECOSOC should include awareness of and respect for the broader aims and principles of the United Nations, including, in particular, fundamental respect for human rights[122] and the importance of civil society engagement.[123]

121 See n 8.

122 Human rights are noted seven times in the Charter of the United Nations (n 20). See in particular Articles 1 and 55 on the aims of the UN and Article 62.2 on the mandate of ECOSOC.

123 Under Article 71 of the Charter (n 20), ECOSOC assumes responsibility for co-ordinating NGO co-operation with the United Nations through the accreditation system.

Annex I: A comparison of the INCB and the UN human rights treaty bodies

	INCB	HUMAN RIGHTS TREATY BODIES
LEGAL STATUS		
Established under convention/treaty	Yes (1961 Single Convention)	Yes, each individual human rights treaty creates a separate committee (CESCR is an anomaly as it was created by ECOSOC)
Quasi-judicial	Yes	Yes
Direct enforcement powers	No	No
Decisions legally binding	No	No
STRUCTURE		
Members independent/act in personal capacity	Yes	Yes
Remuneration	As General Assembly deems appropriate (in practice $1 US per year plus expenses)	Travel and subsistence as General Assembly deems appropriate
Year established	1968	1969–2004 (CERD first and Committee on the Rights of Migrant Workers last)
Elected	Yes (nominated by WHO and states parties and elected by ECOSOC)	Yes (nominated and elected by states parties)
Members	13	10–23
Membership criteria	'competence, impartiality and disinterestedness'	High moral standing, recognised competence, acknowledged impartiality
Secretariat	Part of UNODC (UN Secretariat)	Part of OHCHR (UN Secretariat). Except for CEDAW – secretariat support through DAW
Sessions	At least 2 but as many as required. In practice, 3 sessions. Meets in Vienna	Most meet for 3 weeks, 3 times a year in Geneva
MANDATE		
Oversees implementation of the treaty/ies by states parties	Yes (3 drug conventions)	Yes (each committee for one convention and any optional protocols)
Makes recommendations	Yes	Yes
Dialogue with governments	Yes	Yes
ACTIVITIES		
Monitors treaty implementation	Yes	Yes
Deals with violations	Yes	Yes
Undertakes visits/missions	Yes	Some, not all (depends on terms of treaty/optional protocols)
Receives complaints	No, but can receive information about state non-compliance (Article 14.1, 1961 Single Convention)	Most, not all (depends on terms of treaty/optional protocols)
Annual report to principle organ of UN	Yes, to ECOSOC through CND	Yes, to General Assembly. Apart from CESCR which reports through ECOSOC
Treaty interpretation	Yes, without consultation	Yes, both without consultation and, more and more frequently, following public 'general discussion days'
Receives reports/input from civil society/NGOs	No	Yes
Publicises all relevant documentation	No	Yes

INTERNATIONAL HARM REDUCTION ASSOCIATION