

COMMENTARY

The Function and Relevance of the Commission in Narcotic Drugs in the pursuit of Humane Drug Policy (or the ramblings of a bewildered diplomat)

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Introduction

I should say first and foremost that the opinions below are my own and do not necessarily represent the views held by my government.

There are a small but significant number of people who know and understand the fine details of the international drug conventions. I am not one of them, and this is not a comment in any way on their implementation. What follows instead is a personal account. Observations, opinions and, I dare say, not a few assumptions accumulated over seven years of close hand involvement with the UN Commission on Narcotic Drugs (CND) and other multilateral fora as a state representative charged with pursuing my government's objectives in these settings in matters of drugs and crime.

It is sometimes difficult to see what connections exist between the lives and circumstances of the majority of people in the world and international drug policy and human rights in the UN, and between the sometimes bizarre debates and subsequent decisions that take weeks or months to negotiate at the Commission. It is easy to become sceptical, or even cynical, about the relevance of these decisions and their impact on the world. There are indeed a number of systemic problems that make any true critical analysis difficult, and change extremely slow. However, I also believe that inflated expectations or misguided beliefs about what the CND can hope to achieve can lead to disappointment by analysts and experts on the issues.

It is my sincere belief that the work of the CND has the potential to be a force for good in the

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world of drug policy and, in a modest yet important way, help the many people in the world who are so grievously wounded by laws and practices that surround drug cultivation and use. This is why it is worth the considerable effort that so many people invest in it. In order to make the most of its influence, however, it is important to recognise what the Commission can and cannot do, and to focus attention on the possible rather than the impossibly aspirational (whilst bearing that in mind at all times).

What the Commission on Narcotic Drugs cannot do and why

1. Make Policy Decisions Based on Substance

There are fundamental differences between those who analyse and shape international drug policy in academic environments, and those who guide ‘policy’ in the CND boardroom. The first and most obvious is that when government representatives attend the Commission to discuss ‘drug control’, they are there to discuss how to counter transnational organised crime. The focus is on how to stop drugs being used, grown, transited or supplied, rather than viewing the problem through the prism of public health or understanding it as a part of societal functioning.

What is more, the objective of all governments in multilateral fora is to defend and promote their own national interests. As such, the notion of ‘common good’ to some extent takes a back seat.

The CND, while ostensibly a technical commission,¹ is not a body of experts there to deliberate and decide on global best practice. Governments are often represented in negotiations by officials from their departments of foreign affairs, whose expertise on drug policy is often, at best, limited to boardroom negotiations, and who may have very little in the way of practical experience of the issue being debated. Experts on substance are also often in attendance, but their influence will vary according to a number of other factors, including:

- a) *The wide range of interests at play at any given time.* In any one year there will usually be between fifteen and twenty resolutions at the CND. Governments will have particular issues that they want to highlight, and will gladly ‘horse trade’ on others that are of less importance to them in order to gain ground in the ones they consider to a priority.
- b) *Totally unrelated influences* that can alter a government’s decision about how forcefully

¹ CND is a Functional Commission of the UN Economic and Social Council.

to insist on certain language and/or concepts. These influences can include the current political environment (nationally and internationally), commercial interests, regional, ideological or political alliances or long term positions that replicate themselves in every international governing body.

Little wonder then that policy specialists and activists are frustrated and confused by what seems like counter-productive and contradictory decisions taken at CND, and decisions that seem to have little basis in fact despite the existence of a great deal of information and evidence upon which to rely.

2. Provide Adequate Direction to the UN Office on Drugs and Crime, or Guide Member States' Activities

All decisions that are taken at the Commission are the product of prolonged negotiation, and are taken by consensus. Therefore, they are by definition the lowest common denominator outcome of any discussion, and any one country can skew any decision significantly.

The obvious solution to this might seem to some to force the CND to vote on certain issues, which is certainly possible under the rules of procedure.² This would be a mixed blessing in my view. Certainly it would prevent a small minority of countries from blocking what seems to be consensus. But the reality is that on issues such as harm reduction and human rights it is entirely probable that those pushing these issues would lose the vote. This is not necessarily because a majority of countries oppose the actual concerns or propositions raised, but rather because block voting is common, for instance the G77,³ and a minority with strong views against may push the entire block in that direction. Forcing a vote would also require a Member State to break the so-called 'Spirit of Vienna', a myth in the UN which highlights the spirit of consensus in that UN venue. Doing so would create a great deal of bad feeling. It would also in all probability cause other Member States to vote in opposition to the Member State(s) proposing the vote, not just on that occasion but for some time to come. Everyone knows that Member States have long memories, which is why, despite coming very close on a number of occasions, the Commission has never voted on a resolution.

In addition, many countries use the opportunity of the CND to make strong statements on

² 'Rules of Procedure of the Functional Commissions of the Economic and Social Council', rule 58.1, http://www2.ohchr.org/english/bodies/hrcouncil/docs/ECOSOC.rules_En.pdf (accessed 10 January 2011).

³ The 'Group of 77' consists of seventy-seven developing nations and was formed to promote the collective economic interests and strengthen the negotiating capacity of these UN Member States.

national priorities, filling hours of meeting time with facts and statistics carefully drafted to show how well that country is doing on the topic under consideration. Critical analysis of whether policies are working or not is rarely conducted unilaterally in public international settings.

As a consequence of the above, decisions and resolutions are by necessity ambiguous, vague and 'build on past success' rather than taking into account past failures or shortcomings. This leaves the UN Office on Drugs and Crime, the UN's programmatic agency on these issues, to make up its own mind about priorities and policy. These decisions are frequently at the mercy of funding availability, given that 93% of the activities of the Office are funded through voluntary contributions from States, most of it tightly earmarked. But that is a whole different article.

The problem with human rights

Although human rights is an issue that many agree is central to drug policy, as well as every other issue that pertains to UN functioning, it is a matter with which the distinguished delegates of the Commission rarely trouble themselves.

According to many countries, the only venue where it is appropriate to debate human rights within the UN is in the Human Rights Council in Geneva. There are many reasons why a government may take this view. Some may say that human rights should be integrated into everything, and therefore do not need to be highlighted in drug control resolutions. Others may say that the expertise to discuss specific instances of potential human rights violations, themes or concerns is not present in this Commission, and therefore it is not appropriate to discuss human rights within the CND.

In any event, there are risks associated with the introduction of human rights language in any resolution. These risks have to be weighed against the advantages of securing even a nominal commitment to protecting rights for drug users and others who are affected by the cultivation, use or sale of illicit substances.

One small piece of wisdom learned from negotiating resolutions through the last eight CNDs is that things can always get worse. As soon as an issue is raised or revisited, the risk exists that the outcome will be language that is weaker and less direct than that which already exists in other UN decisions. Since there is a convention that most recent text is the current 'agreed language', losing ground in the Commission on Narcotic Drugs could

potentially damage hard won language gained in previous CNDs or in other UN fora. An example of this was a draft resolution on human rights in 2008, which contained a call for the abolition of the death penalty for drug offences. Rather than risk weakened language from the historic General Assembly moratorium resolution adopted not long before,⁴ many Member States, though abolitionist and with strong positions against the death penalty, allowed the paragraph to be deleted based on objections from various CND Member States and the prospect of inevitably watered down language if the provision were to be debated.

On balance, I believe that it is useful to raise the issue intermittently, to ensure it stays on the agenda, and to remind Member States and the relevant international drug control organs that human rights are relevant and necessary for all people, in particular vulnerable groups in our society such as drug users and prisoners. The above mentioned human rights resolution in 2008 was, for example, finally adopted.⁵ This was a first for the Commission, and had the effect of compelling the Office on Drugs and Crime to consider human rights in the context of its operational activity, which may in future have an impact on the way the organisation does its business. As a result of this resolution, in 2010 the Office presented a conference room paper on human rights to both the CND and its other governing body, the Commission on Crime Prevention and Criminal Justice, that looked critically at its capacity gaps and the need for greater human rights scrutiny of its projects.⁶

Two little words

If there is one thing that characterises the division between those countries that support a pragmatic, humane approach to working with drug users and those that would rather 'make examples out of them', it is the long and vociferous debate over two words - 'harm reduction'. In plain English, the term could not be more innocuous. How could one possibly be against reducing the harm caused by drugs? Yet this term has yet to appear a single CND resolution, despite its inclusion in resolutions of other international political fora, including the General Assembly.⁷ Those who oppose it would say that in allowing a more tolerant and pragmatic view of drug use to become part of our thinking, the term represents 'legalisation by the back door'. This is absolutely in opposition to the 'war on drugs' ideology that has

4 UN General Assembly, 'Moratorium on the use of the death penalty' (26 February 2008) UN Doc. No. A/RES/62/149.

5 The resolution was finally adopted as CND resolution 51/12 'Strengthening cooperation between the UNODC and other United Nations entities for the promotion of human rights in the implementation of the drug control treaties', Report of the 51st Session of the UN Commission on Narcotic Drugs (March 2008) UN Doc. No. E/2008/28- E/CN.7/2008/15, p. 32.

6 UN Office on Drugs and Crime, 'Drug control, crime prevention and criminal justice: A Human Rights perspective: Note by the Executive Director' (3 March 2010) UN Doc. No. E/CN.7/2010/CRP.6-E/CN.15/2010/CRP.1.

7 See, for example, UN General Assembly, 'Political Declaration on HIV/AIDS' (2 June 2006) UN Doc. No. A/RES/60/262, para. 22. 'Reaffirm that the prevention of HIV infection must be the mainstay of national, regional and international responses to the pandemic, and therefore commit ourselves to intensifying efforts to ensure that a wide range of prevention programmes that take account of local circumstances, ethics and cultural values is available in all countries, particularly the most affected countries, including (...) expanded access to essential commodities, including male and female condoms and sterile injecting equipment; harm-reduction efforts related to drug use; (...)'

dominated global thinking on this issue for so long.

To see progress, one must consider the many euphemisms that have been used to express the concepts behind harm reduction. Descriptions of demand reduction services have moved from 'Education, treatment, care, rehabilitation and social reintegration'⁸ to 'Early intervention, rehabilitation and social reintegration'⁹ to finally 'Comprehensive prevention programmes and treatment, care and related support services.'¹⁰ The significance is that, finally, there is acknowledgement that drug users can be supported whilst still actively using narcotics, and not necessarily be pushed towards abstinence programmes in the first instance. In addition, the practices of needle and syringe programmes and opiate substitution therapies such as methadone are now endorsed unequivocally by the UN system.¹¹ This endorsement is limited to the context of HIV prevention, but nonetheless it is something that was unthinkable five years ago.

Why bother? It's only words

So, given the strength of the opposition, the glacial rate of progress, the incoherent and at times nonsensical resolutions and the lack of knowledge and understanding displayed by some representatives of Member States on the evidence and facts around drug policy, is it still worth the huge effort to get and stay involved?

My view is that it is absolutely worthwhile.

The CND is important simply for the process that one goes through in order to take decisions. As many have said before me, if the UN did not exist, it would have to be invented. Drug policy, as we know, is influenced in the national and international environments by culture, history, dogma, ideology, prejudice and perceived public opinion, all of which take a very long time to shift. Evidence, to a greater or lesser extent, takes a back seat. The CND is an opportunity to listen to other views, and to try to understand these positions and what drives them. It is also still possible to share thinking on what works and what does not, even if some countries are sceptical.

8 Commission on Narcotic Drugs, 'Prevention of HIV among drug users' (March 2004) Report of the 47th Commission on Narcotic Drugs, UN Doc. No. E/2004/28 - E/CN.7/2004/13, res.47/2, p. 22.

9 Commission on Narcotic Drugs, 'Strengthening international cooperation in drug demand reduction' (March 2005) Report of the 48th Session of the UN Commission on Narcotic Drugs, UN Doc. No. E/2005/28-E/CN.7/2005/11, res. 48/10, p. 26.

10 Commission on Narcotic Drugs, 'Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem' (March 2009) Report of the 52nd Session of the UN Commission on Narcotic Drugs, UN Doc. No.E/2009/28-E/CN.7/2009/12, p. 37.

11 UN Office on Drugs and Crime, World Health Organization & UNAIDS, *Technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users*, 2009. For further UN technical papers and resolutions see also International Harm Reduction Association & Human Rights Watch, *Building Consensus: A Reference Guide to Human Rights and Drug Policy*, March 2009.

For this reason, it is important to continue to table resolutions that we know may lead to difficult and contentious discussions, as doing so gives us an opportunity to present the evidence, debate the facts and allow the many other countries who may not be speaking, but are certainly listening to the debate, to make up their own minds. This is important, particularly for countries which may not have sophisticated and well established legal systems or laws in this area, as they will look to the UN for guidance.

In the seven years I have been attending CND meetings, civil society organisations have heightened their presence and increased their influence exponentially. Seven years ago, their representation was patchy at best. Their interests were diverse and their impact minimal. Since that time, however, this has changed. For example, powerful side events have been held by non-governmental organisations during CND sessions, some highlighting the plight of individuals who have been victims of the drug war, others clearly demonstrating human rights abuses and others again giving sound policy advice based on best available evidence.

Given the fact that most of the countries attending such events are already convinced of the arguments, it is easy to assume that we are preaching to the converted. However, every year a handful of sceptics attend, and every year some are persuaded. In recent years, my experience has been that civil society has found a voice because it is better co-ordinated, more focused and works more effectively than ever before with 'friendly' governments to pursue common objectives.

Given that appalling practices continue to take place in the name of drug policy, it is easy to become disheartened about international processes. Our inability to introduce the words 'harm reduction', the backlash against any clear human rights agenda and the emphasis on crime, for example, can create scepticism or apathy about the CND. But without continuous pressure and participation, things could indeed be worse. Part of the work of those campaigning for humane and pragmatic drug policy is not just to advocate for progress, but also to prevent recession, a task which requires considerable energy.

Although progress is difficult to determine at a single CND session, if viewed over a number of years it is clear that things have changed for the better and certain norms have been established. A few words in a resolution, a compelling paper circulated at an opportune moment, a useful contact made between officials or between a civil society expert and a sceptical government official do make a real difference to people's lives in the end. We need patience, persistence, understanding and tolerance, even in the face of utter intransigence and prejudice, to continue to shape the face of international drug policy,

virtues that many people that I have had the honour to work with in the past seven years, representing governments and civil society alike, hold in abundance, and which has made my work here in Vienna an absolute pleasure.