

Application of principle of proportionality for drug-related offences

1. The application of the principle of proportionality in the context of drug offences is a key aspect of a sound and effective drug policy. Some States have made extensive use of incarceration of low-level drug offenders, despite the fact that this approach is not mandated by the international drug control treaties, and some have even applied extrajudicial responses to drug-related offences, notwithstanding the fact that such actions are contrary to the treaties. It is essential to distinguish between the criminal justice provisions contained within the three Drug Control Conventions¹²³, and the criminal justice policy measures which are been taken by Governments.

2. Implementation of the international treaties is subject to the internationally recognized principle of proportionality, which requires that a State's treatment of illegal behaviour to be proportionate and that a punishment in response to criminal offences should be proportionate to the seriousness of the crime.

3. The INCB has repeatedly called upon States to give due regard to the principle of proportionality in the elaboration and implementation of criminal justice policy in their efforts to address drug-related crime.

4. While the choice of legislative or policy measures to address drug-related crime, including the determination of sanctions is the prerogative of States, the international Drug Control Conventions require explicitly that these sanctions should be adequate and proportionate, taking into account the gravity of the offence and the degree of responsibility of the alleged offender⁴.

5. The Conventions do not automatically require the imposition of conviction and punishment for drug-related offences, including those involving the possession, purchase or cultivation of illicit drugs, in appropriate cases of minor nature or when committed by drug users. While "serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalties of deprivation of liberty", offences of a minor or lesser gravity need not necessarily be subject to harsh criminal sanctions, such as incarceration. In cases of minor nature, the Conventions afford discretion for Parties to provide, either as an alternative to conviction and punishment or in addition to conviction and punishment, that offenders undergo measures of treatment, education, after-care, rehabilitation and social reintegration. In this context, "treatment" is meant in a very large sense, including a wide range of non-punitive supportive measures⁵.

INCB is the independent, quasi-judicial body charged with promoting and monitoring Government compliance with the three international drug control conventions: the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

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¹ Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol (United Nations, *Treaty Series*, vol. 976, No. 14152).

² United Nations, *Treaty Series*, vol. 1019, No. 14956.

³ *Ibid.*, vol. 1582, No. 27627

⁴ Single Convention 1961: Art.36 paras 1a, 2a IV, 2b IV; Convention 1971: Art. 22 paras 1a; 2a IV; Convention 1988: Art. 3 paras 4a, b, c, 7.

⁵ Commentary of the Secretary General on the 1988 Convention, N° 3.107, 3.109