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**Statement by Mr. Werner Sipp, President,
International Narcotics Control Board (INCB)**

Special session of the General Assembly on the world drug problem

Side event on:

**Towards evidence-based public health policy: successful Czech model of
decriminalization**

20 April 2016, 16.00 – 17.00 hrs.

CR 11

Distinguished co-panellists, dear colleagues, ladies and gentlemen,

On behalf of the International Narcotics Control Board, I would like to thank the organisers for their invitation to participate in this event.

The subject of this side event on "Alternatives" and "Decriminalization" is at the centre of the debate on a sound and effective drug policy within the existing drug control framework. It is closely linked to the issue of the **flexibility** granted by the conventions.

The question about flexibility is: What is the latitude given by the conventions and where are the limits of the flexibility they afford. I want to address this question from a purely legal perspective based on the provisions of the three international drug control conventions.

There are 3 elements of flexibility in the conventions:

- 1) The conventions allow for providing alternatives to punishment and conviction in specific cases
- 2) The obligation to establish non-medical use as a punishable offence is subject to certain limitations
- 3) The principle of proportionality is inherent to the treaties and constitutes an essential component in the development of a balanced approach.

On the other hand, the flexibility of the treaties is **not unlimited**: There are treaty obligations which do not allow for flexibility: for example the basic obligation contained within the 1961 and 1971 conventions to limit the possession of drugs exclusively to medical and scientific purposes¹ and to only permit the possession of drugs under legal authority². Under these provisions, all drug use which is not medical or scientific in nature is inconsistent with the conventions. The limitation of the use of controlled substances to medical and scientific purposes - which is one of the cornerstones of the international drug control framework - is a rule to which no exception or derogation is possible.

Let us now have a closer look on the flexibility granted by the treaties.

¹ Art. 4 para 1(c) of the Convention 1961; art. 5 para 2 of the Convention 1971

² Art. 33 of the Convention 1961; art. 5 para 3 of the Convention 1971

(1) States benefit from a degree of discretion in applying **alternative** measures to drug offenders. The three conventions are explicit that - notwithstanding the obligation for State Parties to ensure that certain acts are made 'punishable offences',- they may "*provide, either as an **alternative to conviction or punishment** or in addition thereto, that [drug offenders] undergo measures of treatment, education, after-care, rehabilitation and social integration*"³. Those alternative measures can be applied primarily - but not exclusively - in cases where these offences are committed by drug users.⁴

The provisions of the drug control conventions allow States in these cases to refrain from punishment and conviction (not only from incarceration!) and to adopt non-punitive or non-custodial responses to drug offences of lesser gravity. These responses can encompass a wide range of measures - not only treatment in a medical sense, but also education, assistance, after-care and help, as well as measures designed to reduce the likelihood of their offending again⁵.

(2) Furthermore, State's obligation to ensure that acts which are contrary to the provisions of the conventions shall be punishable offences when committed intentionally, is **subject to the constitutional limitations of the State Party**. And when it comes to the possession for personal use, the response of the State is subject not only to its constitutional principles but also to the basic concepts of its legal system.

Under these safeguard clauses, States benefit from a certain degree of flexibility. This means that States have a certain discretion to determine - within their legal framework - the nature and the degree of punishment which permits them to apply non-criminal or non-punitive responses to minor offences, **if the Constitution or the legal principles of the State Party so require**.

(3) The principle of **proportionality** in the context of drug offences is of fundamental importance in the implementation of a sound and effective drug policy.

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.

It is important to recall that the choice of legislative or policy measures to address drug-related crime, including the determination of sanctions, is the prerogative of States. At the same time, the conventions state that those sanctions should be adequate and proportionate, taking into account the gravity of the offence⁶. While "*serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalties of deprivation of liberty*"⁷, offences of a minor or lesser gravity need not necessarily be subject to harsh criminal sanctions⁸.

Over the past few years, many members of the international community have reappraised their criminal justice responses to drug offences, in particular those of lesser gravity, and those committed by persons affected by drug abuse and dependence. This

³ Article 36 para 1 (b) Single Convention; article 22 para 1 (b) Convention 1977.

⁴ Article 3 para 4 (b) (c) and (d) Convention 1988 do not limit the application of additional or alternative treatment and care measures to drug abusers, cf. Commentary of the Secretary General on the 1988 Convention: N°3.107.

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

⁶ Art. 3 para 4 (a) of the Convention 1988

⁷ Art. 36 para 1 (a) of the Convention 1961

⁸ cf. Commentary of the Secretary General on the Single Convention, Article 4 N° 19: "*Parties ... may undoubtedly choose not to provide for imprisonment of persons found in such possession, but to impose only minor penalties such as fines or even censure. Possession of a small quantity of drugs for personal consumption may be held not to be a 'serious' offence under article 36 para 1, and only a 'serious' offence is liable to 'adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.'*" Commentary Article 4 N° 23: "*There can be no doubt that Governments may refrain from imposing imprisonment in cases of possession of drugs held for personal consumption without legal authority.*"

development has as coincided with a gradual conceptual shift which recognises drug abuse and dependency as a disease which needs to be treated and for which an over-reliance on punitive measures may have significant human costs while yielding limited results.

In fact, the diversity of measures adopted by States to address drug-related delinquency is significant. This is a function not only of various considerations such as the characteristics of each legal system, different policy priorities, the resources at their disposal, cultural factors, etc., but also demonstrates how a plurality of approaches can coexist within the broad and flexible legal framework provided by the drug control conventions⁹.

As I tried to explain, there is some flexibility in the treaties. It is therefore not necessary to amend or change the conventions to allow flexibility in this regard. They rather should be implemented properly in a manner consistent with each State's needs and specificities.

The Board continues to support any efforts by States, within the framework established by the conventions, to develop drug policies which contribute to furthering the health and welfare of humanity through the adoption of humane and proportionate drug policy. These developments do not occur in violation or in spite of the conventions but in application thereof. In adopting alternatives to conviction and punishment for drug-related crimes of a lesser gravity, such as possession for personal use, States are simply availing themselves of the discretion they have - and always had - under the conventions.

Thank you.

⁹ Commentary of the Secretary General on the 1988 Convention: N°3.96: "*In determining an implementation strategy in respect of the range of offences relating to personal use enumerated in article 3 para 2, it may be worth examining the practice followed by many States, in which such offences are distinguished from those of a more serious nature by reference to stipulated threshold requirements in terms , for example, of weight. This could be particularly useful in the context of possession for personal consumption.*"