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

Fifty-ninth session of the Commission on Narcotic Drugs

Side event: "*Proportionate Responses: Alternatives to Imprisonment for Drug Offences*"

15 March 2016

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

On behalf on the International Narcotics Control Board, I would like to thank the organisers for their invitation to participate in this event. The application of the principle of proportionality in the context of drug offences is of fundamental importance in the elaboration of a sound and effective drug policy and is an essential component in the development of a balanced approach for dealing with the complex and multidimensional world drug problem.

In carrying out its mandate under the international drug control conventions, the Board has repeatedly called upon States to give due regard to the principle of proportionality in the elaboration of criminal justice policy in their efforts to address drug-related crime. Indeed, in 2007, INCB dedicated the thematic chapter of its Annual Report to the principle of proportionality in the development of State responses to drug-related crime. More recently, the 2015 INCB Annual Report released earlier this month once again encourages States to develop and apply responses to drug offences which are measured and proportionate.

Indeed, it is important to recall that, under the legal framework established by the international drug control conventions, 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 repeatedly state that those sanctions should be adequate and proportionate, taking into account the gravity of the offence¹.

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 development has 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.

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 mankind 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

¹ Art. 3 para 4 (a) of the Convention 1988

the discretion they have, and always had, under the conventions, subject to some key principles which they themselves have negotiated.

Chief among these principles is the basic obligation contained within the 1961 and 1971 conventions for States to limit the possession of drugs exclusively to medical and scientific purposes² and to allow the possession of drugs only under legal authority³. In accordance with these provisions, all kinds of drug use which is not medical or scientific in nature is inconsistent with the conventions. The limitation of use of controlled narcotic drugs and psychotropic substances to medical and scientific purposes is one of the cornerstones of the international drug control framework and it is a rule to which no exception or derogation is possible.

Furthermore, the conventions state that subject to the constitutional limitations of the State Party, each party shall adopt such measures as will ensure that a variety of acts which are contrary to the provisions of the conventions, including cultivation, production, possession, and distribution of drugs, shall be punishable offences when committed intentionally. Serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty⁴.

In the implementation of this obligation, States benefit from a certain degree of flexibility. First, the obligation is generally subject to each State's constitutional limitations. Furthermore, 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. Third, 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.

Moreover, States benefit from a wide degree of discretion in the determination of alternative measures applicable to drug users having committed drug offences. The conventions are explicit that - notwithstanding the obligation for State Parties to ensure that certain acts are made 'punishable offences' - they may, in cases where these acts are committed by drug users *"provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that [such individuals] undergo measures of treatment, education, after-care, rehabilitation and social integration"*.

The provisions of the drug control conventions clearly allow States in these cases to refrain from punishment and to adopt non-punitive or non-custodial responses to drug offences of lesser gravity. It is therefore not necessary to amend the conventions to allow flexibility in this regard, but only to implement them properly in a manner consistent with each State's needs and specificities.

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 conventions.

In the lead-up to UNGASS and beyond, the Board will, as it has done before, continue to advocate the adoption of measures by States which constitute proportionate and balanced responses to the important challenges posed by drug-related crime.

Thank you.

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

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

⁴ Art. 36 para 1 (a) of the Convention 1961