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

Sixtieth session of the Commission on Narcotic Drugs

INCB Side Event on “The need for proportionality: State responses to drug-related offences”

16 March 2017, Vienna, Austria

Excellencies, ladies and gentlemen,

1. The international community is presently faced with a number of challenges unfolding all across the world. One of these challenges is the question how States should respond to drug related offences. The role and the mandate of the INCB is to explain how this challenge can be met in the light of the three drug control conventions. This side event is designed to tackle this important aspect of drug control and to recall the principles which must form the foundation of drug-policies in this respect.

2. Extensive use of incarceration for low-level drug offenders can still be found in many States. Additionally, and more worryingly, some States have applied extra-judicial responses to suspected or purported drug-related offences, even in situations where the imputed offence would be a minor one, and even for drug-related actions that would not constitute a drug-related offence, as for instance drug use as such. Such courses of action are clearly in contravention of the treaties.

3. The INCB has repeatedly called upon States to give due regard to the principle of proportionality in the implementation of criminal justice policy in their efforts to address drug-related crime. In 2007, we dedicated the [thematic chapter of our Annual Report to the topic of proportionality](#).¹ Already then, in 2007, the Board underlined that *"disproportionate responses undermine the aims of the conventions and undermine the rule of law"*. And the Board called on Governments *"to comprehensively review the responses by their legislative, judicial and executive arms of government to drug-related offences, in order to ensure that they are proportionate"*.

4. The principle of proportionality, in the context of drug-related offences, is a key aspect of a sound and effective drug policy. In the context of criminal justice, the principle requires States to respond to illicit activity in a manner that does not exceed the gravity of the offence. Punishment for criminal offences has to be adequate and

¹ E/INCB/2007/1, INCB Annual Report 2007 Chapter I : The principle of proportionality and drug-related offences: "The international drug control conventions encourage and facilitate proportionate responses by States to drug-related offences and offenders. Disproportionate responses undermine the aims of the conventions and undermine the rule of law. While many countries have made progress since the Board last addressed proportionality issues in its report for 1996, more remains to be done, particularly in targeting and dismantling major drug trafficking organizations. In several countries, there is a need to better balance law enforcement efforts, so that lower level offenders do not bear the brunt of justice while higher-level offenders are not brought to trial. [...] In the light of the recommendations made in its report for 1996 and the recommendations above, the Board calls on Governments to comprehensively review the responses by their legislative, judicial and executive arms of government to drug-related offences, in order to ensure that they are proportionate, and to make appropriate changes to correct any shortcomings. The Board would appreciate receiving feedback from States on any such changes."

directly proportionate to the seriousness of the crime. While the choice of legislative and policy measures to address drug-related crime, including the determination of sanctions, remain the prerogative of States, the international drug control treaties require that these sanctions should take into account the gravity of the offence and the culpability of the offender. This requirement is contained in all three of the international drug conventions.²

5. Of course, the treaties provide for criminal responses to drug-related offences such as imprisonment and other deprivations of liberty, but these do not constitute the only measures available to States in addressing and redressing drug-related offences. Under the treaties, only "serious" offences should be liable to the penalty of incarceration, deprivation of liberty, pecuniary sanctions or confiscation. Offences of a "minor" nature or lesser gravity need not necessarily be subject to punitive criminal sanctions. In appropriate cases of minor nature, States can provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration. When the offender is affected by drug abuse or drug dependence,³ they should provide treatment and aftercare. In cases of the possession, cultivation or purchase of drugs for personal consumption, the conventions afford even a wider discretion to Parties.

6. Non-custodial responses do not only alleviate the burden of incarceration on national prison systems. They also contribute to a more effective and long-term rehabilitation of persons affected by drug abuse and drug dependence by affording treatment opportunities over punishment, allowing them to work towards a life void of drug dependence and rid of the social stigma associated with imprisonment.

7. In recent years, many States have reassessed their criminal justice responses to drug-related offences, in particular with regard to offences of lesser gravity and those committed by persons affected by drug abuse and dependence. This development has coincided with a conceptual shift which recognises that drug dependency is a disease that needs to be treated and for which an over-reliance on punitive measures may have significant human costs while yielding limited results.

8. On the other hand, there are still States that retain capital punishment for drug-related offences. The Board urges these States to consider the abolition of the death penalty for drug-related offences because in our view this kind of punishment is not/never proportionate.

9. Moreover, the Board reiterates that the extrajudicial targeting of suspected drug-related criminality constitutes a serious breach of the legal obligations to which the States are held by the drug control treaties and by the corpus of international legal instruments to which they have adhered. The treaties require criminal justice responses to drug-related criminality, which include internationally-recognized due process standards and which reject extrajudicial sanctions of whatever nature. We call upon all Governments concerned to put an immediate stop to such actions.

10. Efforts to place offenders who abuse drugs or are drug dependent within the purview of the relevant authorities responsible for the health and social welfare of the country instead of putting them into prison would contribute to create an environment of support for those afflicted with drug dependence and to cultivate an attitude of understanding of drug abuse. In turn, such an approach should act as an effective prevention tool, particularly among young people.

² Specifically Article 36 of the 1961 Convention as amended by the 1972 Protocol; Article 22 of the 1971 Convention; and Article 3(4) of the 1988 Convention.

³ The three drug control conventions use the term "abuser" in the context of criminal justice treatment of offenders affected by drug abuse and/or drug dependence and the provision of demand reduction services (see 1961 Convention, article 36, para. 1(b), and article 38, para.2; 1971 Convention, article 20, para. 2 and article 22, para. 1(b), and 1988 Convention, article 3, para. 4(c)); in this text, drug abuse and drug dependence have been used instead.

11. The conventions do not limit the provision of treatment measures to drug abusers. Such measures may go beyond the context of medical and social problems of drug abusers. They may be seen in the wider context of measures of treatment of offenders in general, designed to reduce the likelihood of their offending again⁴. In this respect, proportionate responses play a pivotal role since incarceration on its own does not automatically reduce recidivism in offenders.

12. An effective drug control policy must rely on a balanced, comprehensive and integrated approach, where health and welfare are at the core of drug control policy, where human rights are promoted and the principle of proportionality is applied.

13. The Board wishes to reiterate its continued support of 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 offences of a lesser gravity, such as possession for personal use and other minor offences, States are simply availing themselves of the discretion they have under the conventions, subject to some key principles which they themselves have negotiated.

Thank you.

⁴ Commentary of the Secretary General on the 1988 Convention, N° 3.107,3.109