

VII. Penal provisions

85. The respect for human rights is a precondition for the development and implementation of effective drug control policy. In the outcome document of the thirtieth special session of the General Assembly, entitled “Our joint commitment to effectively addressing and countering the world drug problem”, Member States reaffirmed the need to support countries in the implementation of the international drug control treaties in full conformity with the purposes and the principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights and, *inter alia*, all human rights, fundamental freedoms and the inherent dignity of all individuals.

86. Both the 1961 Single Convention as amended and the 1971 Convention oblige States parties to take legislative and administrative measures to ensure that substances scheduled under those two conventions are being used exclusively for medical and scientific purposes. To combat drug trafficking and related conduct, States parties are required to take measures to establish certain drug-related activities as criminal offences to the extent that such measures are not inconsistent with a State party’s constitutional limitations. In addition, when drug users have committed such offences, States parties may provide, either as an alternative to conviction or punishment or in addition to punishment, that they undergo measures of treatment, education, aftercare, rehabilitation and social reintegration.

87. As with other international treaties, the choice of policy, legislative and administrative measures to implement them is left to the discretion of Governments within the limits set by the conventions, which do not specify what precise procedure or process each party should follow, or what penalty, sanction or alternative to apply to an offender in a particular case. Provided the aims and requirements of the conventions are met, States can generally use their own processes and procedures and apply the different penalties, sanctions and alternatives that they determine – according to their systems and the facts and circumstances of each case. Each State can apply more strict or severe

measures if it considers them desirable or necessary for the protection of public health and welfare or for the prevention and suppression of illicit traffic.

88. There are wide differences between countries and regions in the degree of social and legal tolerance and the perception of and response to drug-related activity, resulting in various national approaches to the drug problem. The differences in national approaches flow from the different legal systems of the States parties and reflect the contribution of each country’s culture and value system with respect to the concepts of crime, punishment, deterrence and rehabilitation.

89. Nevertheless, transposing the international drug control conventions into domestic law is subject to the internationally recognized principle of proportionality. This principle requires that a State’s response to any harmful behaviour be proportionate. In a criminal justice sense, the principle permits punishment as an acceptable response to crime provided that it is not disproportionate to the seriousness of the crime and to the individual circumstances of each case, including whether the person in question is a drug user.

90. Over the past six decades, some State parties in various parts of the world have implemented measures associated with militarized law enforcement, disregard for human rights, overincarceration, the denial of medically appropriate treatment and inhumane or disproportionate approaches as part of the national drug control response. Such policies adopted in the name of, or under the guise of, drug policy have regrettably led to undesirable results and have had negative repercussions with respect to the stigmatization and marginalization of persons affected by drug use, or the violation of human rights. The Board has reiterated that if drug control measures adopted by States violate internationally recognized human rights, they also violate the international drug control conventions.

91. Furthermore, extrajudicial responses to drug-related criminality can never be justified under the international

drug control conventions, which require that drug-related crime be addressed through formal criminal justice responses, an approach that is consistent with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which require adherence to internationally recognized standards for due process. Additionally, there are still States that retain capital punishment for drug-related offences.

92. Human rights are inalienable and can never be relinquished. The Board notes with great concern the continued reports of grave human rights violations perpetrated in the name of drug control. The conventions provide States with the possibility of applying alternative measures to conviction, punishment and incarceration, including education, rehabilitation and social reintegration. If the drug control measures adopted by States violate internationally recognized human rights standards, they also violate the international drug control conventions. INCB once again calls for a halt to extrajudicial responses to drug-related offences.

93. The Board continues to urge all States that retain the death penalty for drug-related offences to consider abolishing such penalties and to commute sentences already handed down, in recognition of developments within the international community to abolish capital punishment for drug-related offences.

94. On the other hand, especially 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 substance use disorder, and have adopted alternatives to conviction and punishment for drug-related offences of a lesser gravity, in line with the principle of proportionality and with article 36 of the 1961 Convention. This development has coincided with

a conceptual shift which recognizes drug dependence as a chronic relapsing condition that can be prevented and treated and for which an overreliance on punitive measures may have significant human costs even while yielding limited results.

95. The Board has highlighted that non-custodial responses may not only alleviate the burden of incarceration on national prison systems but may also contribute to a more effective and long-term rehabilitation of persons affected by drug dependence by affording treatment opportunities over punishment, allowing them to work towards a life free of drug dependence and without the social stigma associated with imprisonment.

96. Due respect for universal human rights and the rule of law is crucial for effective implementation of the international drug control conventions. Non-respect for these can prejudice the ability of the criminal justice system to enforce the law, can lead to discriminatory and disproportionate responses to drug offending and, ultimately, undermines the global efforts to effectively address the world drug problem.

97. The Board will continue to underline that, in order to achieve the fundamental goal of the three international drug conventions – to safeguard the health and welfare of humankind by ensuring the availability of narcotic drugs and psychotropic substances for medical and scientific purposes while preventing their diversion and abuse – States parties have an obligation to provide responses to suspected drug-related criminality that are humane and proportionate as well as grounded in respect for human dignity, the presumption of innocence and the rule of law. States parties are strongly urged to abide by these principles, which emanate from the international drug control conventions and the consensus embodied in them.