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Statement by Dr. Viroj Sumyai,
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at the fifth intersessional meeting of the sixty-second session of the
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Fostering a united approach to the effective implementation of
the three international drug control conventions

Your Excellencies, distinguished delegates, ladies and gentlemen,

In this, the 50th anniversary year of the establishment of the International Narcotics Control Board, I am pleased to have been invited to speak to you today about the implementation by States of the three international drug control conventions.

Occasions such as this allow us to consider everything that we have achieved together in our common mission to improve the health and welfare of the world’s people. They also call us to reflect on the challenges we continue to face, on the road that lies ahead and how we will travel it together.

The adoption of the drug control conventions was based on the understanding among the international community that the challenges posed by the world drug problem required a joint and coordinated response by States. Reflecting this, the three United Nations drug control conventions are today among the most widely ratified international instruments in existence.

The fundamental goal of the UN drug control conventions is 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.

To achieve this goal the drug control conventions set forth a series of general obligations to be implemented by State Parties including the obligations to:

- adopt administrative measures for the control of licit trade in narcotic drugs and psychotropic substances, and the precursors used in their illicit manufacture;

- facilitate the availability of controlled substances for legitimate medical use while preventing their diversion into illicit channels;

- elaborate strategies for the prevention of drug use and mechanisms to address dependence through treatment, rehabilitation, aftercare and social reintegration; and

- provide for State 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.

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.

While it is true that in some cases the results of State policies adopted in the name of, or under the guise of, drug control have regrettably led to undesirable results, this is a function of policy and legislative choices made by States rather than a reflection of the provisions of the conventions themselves. Thus, the three drug control conventions, negotiated, adopted and reaffirmed by States, have been incorrectly faulted with requiring States to adopt policies that have had negative repercussions on areas of drug control, including:

- those having led to deficiencies in the availability of and access to internationally controlled medicines for legitimate rational medical use;

- those which have fostered overincarceration and overly punitive responses to drug-related crime, including when committed by drug users;

- those which have led to the stigmatisation and marginalisation of persons affected by drug use; and

- those which have violated human rights.

Over time, this narrative has contributed to attempts to challenge the consensus embodied in the international drug conventions and attempts to undermine respect for their normative content. This narrative has been used by special interest groups and advocates promoting the legalisation of the non-medical use of drugs, particularly cannabis.

The criticism levied at the drug control conventions has been used by some as a means to deflect responsibility from failed approaches to drug control that were adopted at the national level. In other cases, it has been the result of a lack of understanding of the conventions - their main objectives, their normative content, and the margin of discretion they afford to States in their implementation choices - among governments but also among civil society groups.

The lack of availability of controlled narcotic drugs and psychotropic substances for legitimate medical use continues to represent a pressing public health problem in many regions of the world today, a situation which has often been falsely attributed to the control requirements adopted by States in implementation of the international drug control framework.

The preambles of both the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and the 1971 Convention on Psychotropic Substances mention the conventions' objective of fostering the health and welfare of humankind and contain an explicit recognition of the 'indispensable' nature of both categories of drugs as well as a stipulation that their availability for medical purposes should not be unduly restricted.

In order to foster access to and availability of narcotic drugs and psychotropic substances for medical use while preventing their diversion into illicit channels, the 1961 and 1971 conventions establish a system of administrative controls regulating production, manufacture, import and export of these substances whereby States themselves evaluate their domestic requirements and report them to INCB as they are required to do by the conventions.

In many States, the access to and availability of controlled medicines has been hindered by the lack of capacity and training of national regulatory officials who do not possess the necessary know-how to accurately evaluate the needs of the population. In others, the lack of availability has stemmed from regulatory frameworks which are inadequate and ill-suited to meet those needs. In these cases, the lack of access and availability is not, as some have suggested, attributable to 'over-regulation' mandated by the international regulatory framework, but rather to improper regulation. In fact, many States have managed to establish effective regulatory frameworks which allow them to meet the legitimate medical needs of their populations while, at the same time, limiting their diversion into illicit channels.

But of course, the main obstacle to access and availability of controlled medicines is the lack of capacity of and investment in health care systems in many countries. This includes most notably insufficient and insufficiently trained health care professionals and facilities particularly in, but not only, low- and middle-income countries.

Thus, Governments urgently need to address capacity and resource constraints in the health care field, which includes increasing availability and the know-how of health-care professionals (doctors, nurses, pharmacists and regulators).

States should not only allocate required resources to this area but should also provide a legal and regulatory framework in which medical practitioners can prescribe medicines to those who genuinely need them without fear of sanction or prosecution.

In a year which has sadly been marked by natural and man-made disasters, it should also be mentioned that, in emergency situations such as natural or humanitarian disasters, the conventions allow for simplified control procedures for the export, transportation, and provision of medicinal products containing controlled substances.

We have also seen the devastating effects on our populations, particularly in North America, of irresponsible prescription practices for controlled substances. These can be traced back to ineffective regulation and monitoring over the full supply chain (producers, manufacturers, distributors, retailers, prescribers and dispensers) and aggressive marketing in disregard of the health and welfare of our communities, which are the ultimate objectives of the drug control treaties.

The fact that, in 2018, so many people lack access to the medicines they need, while in other parts of the world, the oversupply, aggressive marketing and excessive prescription practices has led to a fatal opioid overdose crisis is one of the major paradoxes we face. We must find ways of doing better.

Turning to the issue of respect for human rights. Over the years, many gross human rights violations have been committed in the name of or under the guise of drug control. These human rights violations have occurred not because of the drug control conventions but in spite of them.

On behalf of the Board, I wish to reiterate in the clearest possible terms that if drug-control measures adopted by States violate internationally-recognised human rights, they also violate the international drug control conventions. Human rights are inalienable. The health and welfare of humankind, the goal of the international drug control conventions, is one that can only be interpreted as including the full enjoyment of human rights. Any State action which violates human rights in the name of drug control policy, whatever its objective may be, is fundamentally inconsistent with the international drug control conventions.

In addition, 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 consistent with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which require adherence to internationally-recognized due process standards.

In addressing suspected drug-related crime, States are required by the conventions to be proportionate in their responses and in their treatment of suspected offenders.

The obligation under the international drug control conventions to establish certain types of conduct as ‘punishable offences’ (i.e. not necessarily as ‘criminal offences’) and to ensure that serious offences are liable to adequate punishment is subject to the constitutional principles of States and to the principle of proportionality. According to the principle of proportionality, enshrined in the drug control conventions, offences of lesser relative gravity do not require

States to subject those who have committed them to criminal sanction or punishment, including incarceration. Instead, the international drug control conventions provide States with the possibility to apply measures such as education, rehabilitation or social reintegration, in particular for persons affected by drugs.

While it is undeniable that criminal justice policy has, in some countries, led to high rates of incarceration for drug-related offences, including those which may be considered of a minor nature, this development has been the result of national policy choices. In many countries, Governments have chosen not to use the various alternatives to conviction, punishment and incarceration provided to them in the drug control conventions. Similarly, the fact that certain groups may have been disproportionately affected by national criminal justice policies and by issues of systemic discrimination, while a fundamental issue needing to be addressed, cannot be traced to the international drug control conventions.

On the issue of capital punishment, though the conventions remain silent on the issue of the application of the death penalty for drug-related offences, the Board feels itself compelled as part of the greater United Nations family to draw the attention of State Parties to the drug control conventions to developments within the UN system towards the abolition of capital punishment for this category of offence. Accordingly, the Board continues to encourage all States that retain the death penalty for drug-related offences to commute death sentences that have already been handed down and to consider the abolition of the death penalty for drug-related offences.

Another area in which the implementation of the conventions by States has not been fully realised is the provision of prevention and treatment.

The drug control conventions require States to *"give special attention to and to take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved..."*. They also call upon States to ensure *"as far as possible"* the training of personnel involved in the delivery of those services.

These provisions do not mandate a specific approach, leaving States to determine which is most suitable to their situation. However, States should look at the approaches that are most successful and avoid those that have no demonstrated effectiveness.

In many parts of the world, prevention initiatives are inexistent or lacking, the provision of treatment is poor, and insufficient mechanisms exist to combat stigma and foster social reintegration. Women - the backbone of our communities - and children, our collective future, are particularly affected. Stigma is also reinforced by a disproportionate and often unnecessary recourse to criminal law approaches to deal with drug users, which is inconsistent with the requirement for proportionality.

An underlying problem remains the lack of epidemiological data on drug abuse and treatment that is necessary to support the elaboration of evidence-based drug policy and the effective distribution and utilisation of resources.

Finally, the drug control conventions, as they were negotiated and agreed by the international community, *"limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs"*. This limitation is defined as a general obligation within the 1961 and 1971 conventions and leaves no room for derogation of any nature.

In the past few years, the restriction of use to medical and scientific purposes has been challenged through the adoption by two States of legal frameworks for the legalization and regulation of cannabis for non-medical use. As the body responsible for monitoring compliance

with the three international drug control conventions, INCB has cautioned that these measures are fundamentally inconsistent with the obligations of State Parties to the drug control conventions and constitute a serious violation of the conventions.

Irrespective of the justifications advanced by the States in question, of their expressed commitment to the ‘general objectives’ of the drug control conventions, and of whether these initiatives are characterised as “experiments”, it remains that the legalization and regulation of controlled substances for non-medical purposes is a clear violation of the international drug control legal framework and undermines respect for the agreed international legal order. Were it to turn a blind eye to this, the Board would not be fulfilling its mandate, which is to monitor the compliance of States Parties with their international legal obligations under the conventions as they are written.

In doing this, the Board is committed to continue to work with all States to ensure that the potential of the drug control conventions is fully realised.

Thank you.