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The International Narcotics Control System: A Proposal

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THE INTERNATIONAL NARCOTICS CONTROL SYSTEM: A PROPOSAL

M.C. BASSIOUNI*

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The author prepared this article in his capacity as Chairman of the World Peace Through Law Center Commission on International Control of Narcotics. In recognition

TABLE OF INTERNATIONAL NARCOTICS CONTROL AGREEMENTS

- International Opium Convention signed at The Hague on 23 January 1912.
- International Opium Convention signed at Geneva on 19 February 1925, as amended by the Protocol signed at Lake Success, New York, on 11 December 1946.
- Convention for limiting the manufacture and regulating the distribution of narcotic drugs, signed at Geneva on 13 July 1931, as amended by the Protocol signed at Lake Success, New York, on 11 December 1946.
- Agreement for the Control of Opium Smoking in the Far East, signed at Bangkok on 27 November 1931, as amended by the Protocol signed at Lake Success, New York, on 11 December 1946.
- Convention for the suppression of the illicit traffic in dangerous drugs, signed at Geneva on 26 June 1936, as amended by the Protocol signed at Lake Success, New York, on 11 December 1946.
- Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, signed at Lake Success, New York, 11 December 1946.
- Protocol signed at Paris on 19 November 1948 bringing under international control drugs outside the scope of the Convention of 13 July 1931 for limiting the manufacture and regulating the distribution of narcotic drugs, as amended by the Protocol signed at Lake Success, New York, on 11 December 1946.
- Protocol for limiting and regulating the cultivation of the poppy plant, the production of, international and wholesale trade in, and use of opium, signed at New York on 23 June 1953.
- Single Convention on Narcotic Drugs, signed at New York on 30 March 1961.
- Convention on Psychotropic Substances, signed at Vienna, 21 February 1971.
- Protocol Amending the 1961 Single Convention, signed at Geneva, 24 March 1972.

of the contributions made by the Board of World Experts, their names are appended. However, the views expressed herein are solely that of the author and do not necessarily represent those of the experts.

TABLE OF ABBREVIATIONS

FAO	Food and Agriculture Organization
INCB	International Narcotics Control Board
LSD/LSD 25	Lysergic Acid Diethylamide
PCOB	Permanent Control Opium Board
U.N.	United Nations
WHO	World Health Organization

INTRODUCTION

Any international scheme must ultimately rest, in the absence of an international coercive body, on the willful compliance and cooperation of member-states of the world community. World community proscriptions will therefore be as effective as world-community participants are desirous of implementing them. The *will* to participate in a global system of control is the only alternative to diehard imperatives of the old self-serving international politics. Such a commitment can only be attained after the type of activity and conduct sought to be regulated by world community proscriptions have attained a certain level of opprobrium in the common morality of mankind. Admittedly there will seldom be a uniform level or homogeneous sense of values amongst all people of the world, consequently a minimum common denominator must be found.

The dangers of drug dependence¹ and particularly dangerous drugs are too well recognized scientifically to be debated,² and their effect on the user and consequently on society is also well established. The 1970 Report of the International Narcotics Control Board stated, "Any assessment of the present degree of drug abuse throughout the world must conclude that the gravity of the situation has deepened during the

¹ It has been recommended that the terms "drug addict" and "drug abuse" are inadequate. "Addict" means that the individual is physically and psychologically dependent and is taking excessive amounts of a drug from which he will have both physical and psychological withdrawal symptoms. The term "abuser" simply connotes that the person is psychologically dependent, and that the drug he uses will produce psychological symptoms but no great physiological disorders when the drug is withdrawn. See 32 WORLD HEALTH ORGANIZATION BULL. 721, 722 (1965).

The World Health Organization's Expert Committee on Addiction-Producing Drugs defines the term "drug dependence" to include all types of compulsive, harmful drug-taking. See Brill, *Medical and Delinquent Addicts or Drug Abusers: A Medical Distinction of Legal Significance*, 19 HASTINGS L.J. 783 (1968).

² Inasmuch as some drugs such as cocaine only create psychological dependence while others such as opium may create both mental and physical dependence, any reference to compulsive, harmful drugtaking will hereinafter be referred to as "drug dependence."

year. Misuse of narcotic and other dangerous substances has escalated sharply in a number of countries and the outlook is profoundly disquieting."³ Such a commonly recognized individual and social harm constitutes, therefore, such a minimum common denominator warranting if not compelling cooperation between nation-states to combat this type of activity.

The obligations which derive from the existence of the contemporary situation of drug dependence are twofold: effective national controls and international cooperation to maximize national efforts. This type of international responsible participation in world community processes is by no means limited to those nation-states particularly affected by the consequences of the harmful activity but extends to all world community participants. A direct consequence of this concept is the development of an international obligation to combat such criminality in compliance with the maximum *aut dedere aut punire*.⁴

THE DEVELOPMENT OF AN INTERNATIONAL CONTROL SYSTEM

It should be stated at the outset of any study on narcotics that there is no definition of the term. Certainly there are numerous writings which provide a pharmacological or psychological classification of substances in terms of their effect on natural organism and behavior. This is the main reason why municipal legislation and international treaties refer to specific substances and drugs rather than attempt a broad definitional classification. The categories of narcotic substances and dangerous drugs covered by international agreements are:

1. *Opium* and its derivative morphine, produced from the poppy seed.
2. *Cocaine* produced from the coca bush.
3. *Cannabis Sativa*, or indian hemp, known as hashish, marijuana, and bhang and other names depending on its geographic location.
4. *Psychotropic substances*, which are chemically manufactured drugs and not agriculturally produced.

Not all of these categories have always been the subject of international control and even among these categories only a limited number were included in the original measures which were confined to opium and its derivatives. In 1931, a system of international legislation was established under which new narcotic drugs could be added by decision of an international organ, which would be binding upon all signatory states. This mandatory system applied originally only to certain deriva-

³ U.N. Doc. E/INCB/9 (1970).

⁴ See Bassiouni, *International Extradition and World Public Order*, 36 TENN. L. REV. 1 (1969).

tives of opium and of the coca leaf, but a protocol adopted on November 19, 1948, extended it to all narcotic drugs of whatever chemical structure, including drugs which are made synthetically; the cannabis sativa drugs were, however, not included.

The 1961 Single Convention took over these classifications and included cannabis sativa, but failed to cover psychotropic substances and that is the reason for the 1971 Convention on psychotropic substances.

The international control of narcotic drugs scheme is founded upon ten multilateral treaties concluded between 1912 and 1961, the last being the Single Convention of 1961, which came into effect on December 15, 1964.⁵ The operation of this system of international control rests on national controls to be established and supervised by individual states within their territorial jurisdiction and subject to their constitutional limitations. The narcotics treaties provide that the signatory states are to adopt appropriate legislation, introduce necessary administrative and enforcement measures, and cooperate with international control organs as well as with other countries in compliance with treaty provisions.

More than 100 countries are parties to one or more of the conventions, and are therefore participants in the international control system; and even countries and territories not bound by any or some of these treaties nonetheless abide by them (to some extent) in practice. As a result, universal acceptance of an international control system has been attained, even though the exercise of effective control measures still leaves much to be desired as witnessed by the large volume of illicit traffic. A sense of historic continuity in international cooperation has, however, been achieved and progress toward more effective controls is developing consistently. Each Narcotic Convention benefited from the experience of its predecessor and filled certain gaps while improving previously existing devices. The object of the system is not to eliminate narcotic substances and drugs, because of their medical and scientific importance, but to restrict their uses to these purposes. Thus the dilemma of control and difficulty of enforcement: to produce some of these substances and drugs which are necessary for medical and scientific purposes, but to control their production, limit their use, and curb their abuse.

The international control scheme is predicated on an indirect

⁵ See Waddell, *International Narcotics Control*, 64 AM. J. INT'L L. 310 (1970) [hereinafter Waddell]; see also U.N. Doc. E/CN.7/504, Annex 1, for a note by the Secretary-General which gives a list of treaties and signatories between 1912 and 1961; LOWES, *THE GENESIS OF INTERNATIONAL NARCOTICS CONTROL* (1966) [hereinafter LOWES].

method whereby each state exercises and administers its own control system without interference by an international agency. This is so far necessitated by the xenophobic attitudes of most nations toward the concept of direct international controls. In fact, because of such attitudes, only an indirect scheme of international control could have ever developed. This control scheme is predicated almost entirely on the co-operation of governments and has two essential characteristics:

1. It depends almost entirely on voluntary international cooperation, and,
2. It has no coercive powers, only the ability to denounce a violator to the international community and therefore produce a moral deterrent to insure compliance.

Although each international narcotic agreement will be discussed separately in this article, the ensuing remarks will encompass several of these agreements to illustrate the two above-mentioned characteristics of the control scheme.

A. The Estimate System

The system of estimates was introduced by the 1931 Convention and administered by the Permanent Central Opium Board and the Drug Supervisory Body which were merged by the 1961 Single Convention into the International Narcotics Control Board (INCB). They all provided for measures of quantitative control extending to signatory as well as non-signatory states. The estimate system is intended to limit the narcotics supplies of every country and territory in the world to the amounts needed for medical and scientific purposes. Every state, regardless of whether or not it is a party to any of these Conventions when they were in force (and presently under the 1961 Single Convention) is required to furnish its estimates of narcotics needed for the coming year. The estimate is based on four factors: The quantity of drugs to be consumed for medical and scientific purposes; the quantity of drugs to be utilized in the manufacture of other drugs, drug containing preparations, and other drugs not covered in the Single Convention; the quantity of drugs necessary for addition to the special stockpile of drugs held by a country to meet exceptional circumstances; and, any amount needed to bring the actual stocks on hand at 31 December of the preceeding year to meet the level to be held as of 31 December of the year to which the estimates relate. If a state fails to send such an estimate, the then competent international body may make the estimate and on that basis the maximum amount importable by that country is established.

Though the international body which examines the estimates submitted by governments never had the power to change them unilaterally, it may make inquiries with respect both to the estimates as a whole and to a particular drug. The record of these international bodies shows governments generally cooperate in furnishing the requested explanations. Shipments of drugs can be made to a state only within the limits of the estimates furnished by the importing country or made by the international body. The INCB (and its predecessor the Permanent Central Opium Board [PCOB]) can make a determination that the limit of shipments to any country has been reached, and recommend to parties that they stop either temporarily or permanently the import of drugs, the export of drugs, or both, from or into the country whose limit has been reached. The 1953 Protocol contained the strongest enforcement procedures of any of the international narcotic agreements. Its enforcement provision gave to PCOB the authority to impose a mandatory embargo upon any party failing to comply with the provisions of the agreement.

Both the PCOB and presently the INCB also control the quantities of narcotics supplied to countries by controlling stock piling. If the INCB finds that a dangerous quantity of drugs is accumulating in any country, it may recommend under the Single Convention that other states temporarily or permanently stop shipments of drugs to that country. It may also make this recommendation if, in comparing the estimates and the statistics furnished by governments, it finds that a country has violated its treaty provisions relating to the maximum amount of narcotic drugs which it may manufacture or import, computed on the basis of the estimates. Although no such recommendation was ever made by the PCOB or INCB, its authority to do so has nevertheless occasionally influenced governments to comply more fully with the relevant treaty provisions.

The 1961 Single Convention continues the practice of the PCOB to request any state, whether party or not party to the 1925 and 1931 Conventions, to explain a condition which, in the view of the Board, indicates an improper accumulation of narcotic drugs.

B. The Import-Export Certification System

The import certificate and export authorization system constitutes one of the most important institutions of international narcotics control. According to this system, no legitimate shipments can be sent from one country to another without an import authorization from the government of the receiving country and a corresponding export authorization

from the government of the sending country. Thus, by controlling the movement of legal drugs, this provision enables detection of any country's exceeding its import maximum.

C. The Disclosure and Dissemination of Information

Governments provide the international control organs with data and information on which the system depends. These governments maintain an import certificate and export authorization system for foreign trade, furnish annual reports and texts of laws and regulations enacted by them to implement the narcotics treaties, and report seizures of narcotic drugs from the illicit traffic and other relevant data. They notify the United Nations of newly developed substances with possible dependence-producing properties, and are pledged to place under control drugs which are found by international control organs to have such properties or to be convertible into drugs having such properties. The discovery of new chemicals such as LSD/LSD25 resulted in the 1971 Convention on Psychotropic Substances (discussed below). General compliance has always been the goal of the narcotics control system, for until all countries are bound by the conventions and implement them in good faith, illicit traffickers will operate from the territory of non-conforming states and thus prevent the effective operation of the real power behind international narcotics control, which is the power of public opinion. The most effective means of assuring compliance with international obligations according to the terms of the various narcotics treaties is therefore the weapon of publicity. Publicity in the realm of drug use and drug dependence is a double-edged sword. Overdramatization by the information and entertainment media of the supposedly glamorous cloak-and-dagger aspects of drug trafficking has certainly been harmful to the efforts of national and international control. Further, the euphoric "highs" attributed to drug use by well-known musical groups associated with the "acid rock" culture have greatly hampered efforts to educate the public with respect to the dangers of drug dependence. On the other hand, publicity given to the lack of cooperation of a government in this sphere generally has a salutary effect. Governments are extremely sensitive to any public outcry that they have failed to cooperate in such a sociohumanitarian activity. Such publicity is intended to be provided by published reports of the organs of international control based on information furnished by governments (annual reports, laws statistics, estimates, seizure reports) and by discussions in various United Nations bodies and dissemination of general information.

D. The Role of International Organizations

The League of Nations and the United Nations have been closely associated with these efforts and the administration of this system of indirect control.

The organs presently functioning under UN auspices are:

1. The Commission on Narcotic Drugs, and
2. The International Narcotics Control Board (INCB).

The Commission is a policy-making one which succeeded the League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs, which was then a general organ of control. The INCB was established by the 1961 Single Convention and replaced two specialized administrative organs: the Permanent Central Opium Board and the Drug Supervisory Body, charged particularly with the supervision of the provisions of the narcotics treaties dealing with measures of quantitative control (statistics and estimates).

The Economic and Social Council and the Commission on Narcotic Drugs formulate policies, coordinate activities, and supervise the implementation of international conventions and agreements. They make particular or general recommendations to governments on these matters from the World Health Organization.

The technical assistance programs of the United Nations and such specialized agencies as the World Health Organization (WHO) and the Food and Agriculture Organization (FAO) are made available to governments seeking to cope with their particular problems in this area.⁶

E. The Overall Concept

These observations reveal the degree of reliance of the international control system on the good will of cooperating states and its gradually developed structures attest to the patience and persistence of those who for years nurtured its acceptance by generally reluctant states. The inarticulate premise of the entire system which spans over half a century (from 1909 to this date) is to reach agreement by as many nations as possible on attainable objectives. This accounts for the gradual development of the system and also for some apparent loopholes and known weaknesses which still exist. And yet, in spite of the somewhat patchwork nature of the International Narcotics Control Scheme, much progress has been made. In reviewing the international control system in its 1970 report, the INCB stated, "[T]he Board is able to record that,

⁶ UNITED NATIONS, INTERNATIONAL CONTROL OF NARCOTIC DRUGS (1965).

in practical terms, control over the manufacture and distribution of the substances listed in the 1961 Convention is such that leakage from licit manufacture and trade into illicit channels during the year has been minimal."⁷ The conclusion to be drawn is that the process of international compromise is neither easy nor satisfactory, but ultimately it is far better than nothing.

II.

A CHRONOLOGY OF INTERNATIONAL EFFORTS TO CONTROL NARCOTICS

A. *Narcotics Control Prior to the League of Nations*

1. The Shanghai Opium Commission of 1909

The realization that some ten million Chinese were opium smokers and that the practice was extending to other Asian states generated the proper moral climate for the world's first undertaking to control opium. Efforts by world political and religious leaders set the stage for this international conference on narcotic drugs, which led to the signing of the first treaty three years later.⁸ Thirteen powers with interests in the Far East appointed an Opium Commission which met at Shanghai in 1909. The delegates to the Commission had no power to draw up or sign any treaty, the primary motive for convoking the Commission being to discuss the international ramifications of the Chinese opium problem. In spite of the regional character of the meeting, the members of the Commission were already well aware of the wide geographical scope and nature of the narcotics problem. Their work represents the first attempt to deal with the problem on a multilateral international scale.

The Commission passed nine resolutions dealing with various aspects of the opium problem. It urged gradual suppression of opium smoking and recommended measures intended to stop smuggling of narcotics, especially by prohibiting their export to territories which did not legally permit it. An appeal was also made to the governments controlling foreign concessions and settlements in China to take various measures to cooperate with the Government of China, and all concerned governments were strongly urged to take drastic steps to control the

⁷ U.N. Doc. E/INCB/9 (1970).

⁸ Until that period, trade in narcotics was legal and encouraged by England, but when by 1909 it was estimated that China had ten million opium smokers England, strongly pressured by the United States and religious groups, closed the opium trade between China and India. See House of Commons Resolution of May 30, 1906, 158 PARL. DEB., H.C. (— ser.) 494, 516 (1906). See also Renborg, *International Control of Narcotics*, 22 LAW & CONTEMP. PROB. 86 (1957).

manufacture and distribution of morphine and other derivatives of opium.

Although the Commission did not establish any binding obligations, it indicated the direction for future action.

2. The Hague Convention of 1912

The first international narcotics convention was concluded at The Hague in 1912.⁹ It established international cooperation in the control of narcotic drugs as a matter of international law. The principles laid down in the Hague Convention of 1912 have remained the basis of international narcotics control. The Convention stipulated that the production and distribution of raw opium were to be controlled by law; that opium smoking was to be gradually suppressed; and that the manufacture, sale and use of manufactured narcotic drugs (i.e., of morphine, other opiates and cocaine) were to be limited by law exclusively to medical and "legitimate" needs; manufacturers of and traders in such drugs were also subjected to a system of permits and recording.

B. Narcotics Control Under The League of Nations

Article 23 of the League of Nations covenant provided that the members of the League should "entrust the League with the general supervision over agreements with regard to . . . the traffic in opium and other dangerous drugs." The first League Assembly created an Advisory Committee on Traffic in Opium and Other Dangerous Drugs to assist and advise the League's Council in these tasks. Among other duties, the Committee initiated various international legislative actions under the auspices of the League.

1. The Geneva Convention of 1925

The Geneva Convention of February 19, 1925, was a great step forward in the control of narcotic drugs.¹⁰ Governments were required to submit to the newly created Permanent Central Opium Board annual statistics concerning production of opium and coca leaves, the manufacture, consumption and stocks of narcotic drugs and quarterly reports on the import and export of such drugs (including opium and coca leaves). It also established the system of import certificates and export authorizations requiring governmental approval of each import and export.

The Permanent Central Opium Board was established to supervise

⁹ International Opium Convention, signed January 23, 1912, 38 Stat. 1912 (1913), -- T.S. --, 8 L.N.T.S. 187.

¹⁰ International Convention Relating to Dangerous Drugs, signed February 19, 1925, 81 L.N.T.S. 317.

the statistical system introduced by the Convention. It was composed of eight independent experts serving in their personal capacity and not as representatives of their governments. The Board was authorized under certain conditions to recommend an embargo of drug exports to a country which threatened to become a center for illicit traffic, and thus a danger to other nations, even if that country was not a party to the Convention.

2. 1931 Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs

The aim of this Convention, signed at Geneva on July 13, 1931, is to limit world manufacture of drugs to medical and scientific needs.¹¹ It contains provisions to restrict the quantities of drugs available in each country and territory. Countries bind themselves not to exceed in their manufacture and imports certain maxima computed on the basis of estimates of their narcotics requirements. In the case of imports exceeding these maxima, the Board may impose an import embargo on the country or territory concerned. It may also recommend such a drug embargo against a party to the 1931 Convention which the Board, in comparing estimates and statistics, has found to have violated its treaty obligations regarding the maxima of narcotic drugs which it may manufacture and import. The annual analytical statement of estimates and statistics which the Board is required by the Convention to draw up and the annual report it is required to make to the Economic and Social Council under the terms of the 1925 Convention present for the year in question an over-all picture of the legal trade in narcotics.

Because the Drug Supervisory Body is authorized to make estimates for parties or non-parties if they fail to supply them and because the Board has the power to embargo imports which would exceed the estimates for the country concerned, the system of quantitative controls has nearly universal application—a necessary condition for its effective operation. The elements of control contained in the Conventions of 1925 and 1931, and in the 1948 Protocol (discussed below) are incorporated in the Single Convention of 1961 (discussed below).

3. The 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs

The Convention for the Suppression of Illicit Traffic in Dangerous Drugs was signed in Geneva on June 26, 1936, and came into effect in

¹¹ Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed July 13, 1931, 48 Stat. 1543 (1933), — T.S. 863, 139 L.N.T.S. 301; Wright, *The Narcotics Convention of 1931*, 28 AM. J. INT'L L. 475 (1934).

October 1939.¹² It was the last treaty on narcotics concluded under the auspices of the League of Nations. The parties undertook to enact measures to prevent offenders from escaping prosecution for technical reasons and to facilitate extradition for drug offenses. Perhaps the key provision of the 1936 Convention was the provision that required the Parties to severely punish "particularly by imprisonment or other penalties of deprivation of liberty," the offenses of illicit narcotic trafficking if such offenses are committed intentionally. This obligation assumed by each Signatory represented at that time the greatest single advance in the battle to control illicit drug traffic. Signatories were required to incorporate certain provisions in their final laws such as: the imposition of sentences having a deterring effect, and to impose prison terms rather than fines; punish conspiracy, attempts at, and preparatory acts; punish all traffickers within its jurisdiction, whether nationals or foreigners; and surrender fugitive offenders to extradition. Among opium-producing and consuming countries, the last to prohibit its unauthorized use were Macao (1946), Iran (1955) and Thailand (1959).

The terms of the Convention were deliberately somewhat vague and general, accompanied by escape clauses, in order to secure adherence by countries which would otherwise object to stipulations differing basically from their national standards. It is the only treaty which is not replaced by the Single Convention and has been left in force among the very few countries which have not ratified the Single Convention.

C. Narcotics Control Under the United Nations

The United Nations considered it an urgent task to take the initiative in a control system which had broken down during World War II. The initiative was taken when, at its first session in 1946, the Economic and Social Council created the Commission on Narcotic Drugs to carry out the functions entrusted to the League's Committee on Traffic in Opium and Other Dangerous Drugs. It was by the Protocol of 1946 that the functions previously exercised by the League under the various narcotics treaties concluded before the Second World War were transferred to the United Nations. The next steps were the Paris Protocol of 1948, which authorized the World Health Organization to place under international control any dependence-producing drug, and the Opium Protocol of 1953, which limited the use of and trade in opium to medical and scientific needs.

¹² 198 L.N.T.S. 229; Starke, *The Convention of 1936 for the Suppression of the Illegal Traffic in Dangerous Drugs*, 31 AM. J. INT'L L. 31 (1937).

1. The Geneva Protocol of 1946

A protocol signed on December 11, 1946, transferred to the United Nations the function previously exercised by the League under the various narcotics treaties concluded before the Second World War.¹³

The eight members of the Permanent Central Opium Board are now appointed by the United Nations Economic and Social Council. As for the Drug Supervisory Body, two of its members are appointed by the World Health Organization, one by the United Nations Commission on Narcotic Drugs and one by the Permanent Central Opium Board.

2. The Paris Protocol of 1948

The Commission on Narcotic Drugs, at its first session in November-December 1946, initiated a study of the procedures necessary for bringing new synthetic drugs under control.¹⁴ This resulted in the preparation of an instrument known as the Paris Protocol of 1948. The Protocol was signed at the Palais de Chaillot on November 19, 1948, and came into force on December 1, 1949. It authorizes the World Health Organization to place under full international control any new drug (including synthetic drugs) which could not be placed under such control by application of the relevant provisions (article 11) of the 1931 Convention and which it finds either to be addiction-producing or convertible into a dependence-producing drug.

It is generally acknowledged that the Protocol has successfully forestalled any large-scale abuse of new addiction-producing drugs that have come into medical use since 1939.

In accordance with the Protocol, every party thereto is obliged to inform the Secretary-General of the United Nations of any drug used or capable of being used for medical or scientific purposes — and not coming within the scope of the 1931 Convention — which that party considers capable of producing addiction or convertible into an addiction-producing drug. The Secretary-General is required immediately to transmit this notification to the other states who are parties to the Protocol, as well as to the Commission on Narcotic Drugs and to the World Health Organization. The World Health Organization must then decide whether the drug in question is addiction-producing or

¹³ Protocol Amending the Agreements, Conventions and Protocols on Narcotic Drugs, *Open for Signature* December 11, 1946, 61 Stat. 2230 (1947) & 62 Stat. 1796 (1948), — T.I.A.S. 1671 & 1859, 12 U.N.T.S. 180. See also Gregg, *The United Nations and the Opium Problem*, 13 INT'L & COMP. L.Q. 96 (1964) [hereinafter Gregg].

¹⁴ Protocol Bringing under International Control Drugs Outside the Scope of the Convention of July 13, 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, — T.I.A.S. 2308, 44 U.N.T.S. 277.

capable of conversion into a dependence-producing substance. The Secretary-General is advised of the World Health Organization's decision. He then communicates this decision to all member states of the United Nations, to the non-member states parties to the Protocol, to the Commission on Narcotic Drugs and to the Permanent Central Opium Board. Upon being informed of a finding by the World Health Organization that the drug is addiction-producing or convertible into a dependence-producing drug, the states parties to the Protocol are bound to subject the substance to the appropriate measures of control.

The Protocol also stipulates that, on receipt of a communication from the Secretary-General about a new drug, the Commission on Narcotic Drugs may decide that the drug in question be put immediately under provisional control, pending notification of the conclusions of the World Health Organization.

This protocol received almost universal adherence, but in fact newly discovered dependence-producing drugs were not brought under effective international control. This is one of the reasons for the 1971 Convention on Psychotropic Substances.

3. The 1953 Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium

With the aim of limiting the production of opium to the quantities needed for medical and scientific purposes, the Commission on Narcotic Drugs endeavored to bring about an international opium monopoly, with quotas allocated to the various opium-producing countries and with a system of international inspection.

The principal opium-producing and drug-manufacturing countries, however, could not reach agreement on several important questions, such as the price of opium, international inspection, and so on. Consequently the Economic and Social Council turned to an alternative plan, proposed in the Commission by France, which formed the basis of a protocol adopted by the United Nations Opium Conference held in New York in May-June, 1953. This protocol came into force on March 8, 1963.¹⁵

The 1953 Protocol limits the use of opium and the international trade in it to medical and scientific needs and eliminates legal overproduction of opium through the indirect method of limiting the stock of the drug maintained by individual states. The Protocol provides for

¹⁵ U.N. Doc. E/N.T. (19 —); [19—] 14 U.S.T. 10, 18 T.I.A.S. 5273; *see also* LOWES, *supra* note 5; Gregg, *supra* note 13.

the licensing of poppy farmers in opium-producing countries and specifying the areas which may be cultivated. Producing states are under an obligation to set up an agency to which all the opium thus produced has to be delivered immediately after harvesting. The Protocol empowers the Permanent Central Opium Board to employ certain supervisory and enforcement measures — such as requests for information, proposals for remedial measures, and local inquiries, which can, however, be undertaken only with the consent of the government concerned. The two most forceful measures found in the 1953 Protocol are found in no other international narcotics control agreement. First, a closed list of only seven countries — Bulgaria, Greece, India, Iran, Turkey, the U.S.S.R. and Yugoslavia — are authorized to produce opium for export. Such restricted authorization was not included in the 1961 Single Convention. Second, article 12 gave the PCOB the authority not only to recommend but to impose a mandatory embargo on the import or export of opium or both from or to a country which failed to carry out the obligations under the Protocol.

In 1963, the position of the United States in reply to questions regarding the continued effectiveness of the opium Protocol was that it continued to be binding upon its parties notwithstanding the 1961 Single Convention and the Departmental State Position which will be discussed below.

4. The Single Convention on Narcotic Drugs, 1961

The Single Convention of 1961 went into effect 13 December 1964.¹⁶ This convention is a milestone in the history of international

¹⁶ U.N. Doc. E/Conf. 34/22 (1961); Single Convention on Narcotic Drugs, 1961, *open for signature* March 30, 1961, [19—] 18 U.S.T. 1407, T.I.A.S. 6298, 520 U.N.T.S. 204. For its background see Note, *Integration of International Legislation*, 45 AM. J. INT'L L. 770 (1951). For an analysis see Waddell, *supra* note 5; Gregg, *The Single Convention for Narcotic Drugs*, 16 FOOD, DRUG & COSM. L.J. 187 (1961); Lande, *The Single Convention*, 16 INT'L ORGANIZATION 776 (1962). For a U.S. position report by the U.S. Department of State see 61 AM. J. INT'L L. 802 (1967). For the Convention's effect on marijuana see Note, *Effects of the Single Convention on Narcotic Drugs upon the Regulation of Marijuana*, 19 HASTINGS L.J. 848 (1968). Parties to the Single Convention on Narcotic Drugs, 1961

Afghanistan	Ceylon	Fiji
Algeria	Chad	Finland
Argentina	Chile	France
Australia	China	Gabon
Barbados	Costa Rica	Gambia
Belgium	Cuba	Ghana
Botswana	Cyprus	Greece
Brazil	Czechoslovakia	Guatemala
Bulgaria	Dahomey	Guinea
Burma	Denmark	Guyana
Byelorussian S.S.R.	Ecuador	Holy See
Cameroon	Egypt	Hungary
Canada	Ethiopia	India

narcotics control. More than half the members of the UN ratified the Convention and a greater number apply its provisions.

The first objective of this Convention was the unified codification of existing multilateral treaties in this field, with the exception of most provisions of the 1936 Convention on illicit traffic which are to be continued. As among parties to the Single Convention, all the other eight treaties cease to exist, and even in the case of the 1936 Convention, its article 9, relating to extradition, is terminated as between parties to both conventions, and replaced by a provision in the Single Convention.

The new treaty simplified the international control machinery and changed the Permanent Central Opium Board and the Drug Supervisory Body into a single unit — the International Narcotics Control Board.

The Single Convention also extended its control system to the cultivation of plants grown as raw material for natural narcotic drugs. It continues most of the controls on the production of opium laid down in the 1953 Opium Protocol. The Convention for the first time subjects the harvesting of cannabis, cannabis resin and coca leaves to the same control requirements, as it does for opium. It should be noted that a recent case in the United States held that the identical criminal treatment of cannabis offenders and heroin offenders violates the equal protection clause of the 14th amendment of the United States of America inasmuch as the difference between the dependence-producing propensities of the two drugs is an established fact.¹⁷ In its penal provision, the Single Convention requires each party — subject to its constitutional limits — to designate as punishable offenses all intentional violations of its control provisions regarding cultivation, production,

Iraq	Nauru	Switzerland
Israel	Netherlands	Syria
Ivory Coast	New Zealand	Thailand
Jamaica	Niger	Togo
Japan	Nigeria	Tonga
Jordan	Norway	Trinidad and Tobago
Kenya	Pakistan	Tunisia
Korea	Panama	Turkey
Kuwait	Paraguay	Ukrainian S.S.R.
Lebanon	Peru	U.S.S.R.
Lesotho	Philippines	United Kingdom
Malawi	Poland	United States
Malaysia	Saudi Arabia	Upper Volta
Mali	Senegal	Venezuela
Mauritius	South Africa	Viet-Nam
Mexico	Spain	Yemen (Aden)
Monaco	Swaziland	Yugoslavia
Morocco	Sweden	Zambia

¹⁷ See *Robinson v. California*, 370 U.S. 660 (1962); *People v. McCabe*, — III. — , 275 N.E.2d 407 (1971); M. CHERIF BASSIOUNI, *CRIMINAL LAW AND ITS PROCESSES: THE LAW OF PUBLIC ORDER 150-51* (1969) [hereinafter BASSIOUNI].

manufacture, trade, distribution, etc., of drugs as laid down in the treaty. Each such offense is similarly to be considered a distinct offense and foreign convictions are to be taken into account by courts for the purpose of establishing extradition. Extradition is recommended in the case of offenses against the provisions of the Convention and if extradition is not practicable, a foreign offender is to be prosecuted in the country in which his offense was committed or in the country in which he was found.

The Single Convention is a flexible and generally accepted treaty representing the highest common denominator for the acceptance of international obligations by sovereign countries. There have been some misgivings expressed, however, that in certain respects, especially in its provisions for the controlling of opium production, it is not as strong as the earlier treaty it replaces (1953 Opium Protocol). The Commission on Narcotic Drugs and the Economic and Social Council, while recognizing a basis for such fears, considers safeguards to make any abuse at least impractical, if not impossible, for a state belonging to the community of nations. In its plenary meeting of 11 November 1970, the Economic and Social Council adopted a resolution requesting concerted UN action against drug dependence and establishment of a UN fund for drug dependence control.¹⁸ In its 1930th meeting, 15 December 1970, the General Assembly of the UN adopted a resolution calling upon member states and appealing to non-member states to consider seriously the possibility of enacting adequate legislation providing severe penalties for those engaged in illicit trade and trafficking of narcotic drugs.¹⁹

1. *The Functions of the Commission on Narcotic Drugs:* (1) Assists the Council in exercising such powers of supervision over the application of international conventions and agreements dealing with narcotic drugs as may be assumed by or conferred on the Council; (2) carries out such functions entrusted to the League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs by the international conventions on narcotic drugs as the Council has found necessary to assume and continue; (3) advises the Council on all matters pertaining to the control of narcotic drugs and prepares such draft international conventions as may be necessary; (4) considers what changes may be required in the existing machinery for the international control of narcotic drugs and submits proposals to the Council; (5) performs such other functions relating to narcotic drugs as the Council may direct.

¹⁸ U.N. Doc. E/Res. 1559(XLIX) (1970).

¹⁹ U.N. Doc. A/Res. 2720(XXV) (1971).

A division of the Secretariat of the United Nations, transferred in 1955 from New York to Geneva, it is in charge of administrative and research duties in the field of narcotics. It includes a laboratory, which is entrusted with scientific research and coordinates research carried on by scientists of individual countries. The Commission is composed of 24 members.

2. *The Functions of the INCB.* Unlike the Commission this is not a UN-created board but is a product of the narcotics treaties and its incumbents consist of 11 persons. It: (1) Enforces the provisions of the Convention; (2) secures estimates of drug requirements, existing stocks, production and consumption statistics and statistics on seizures of unlawfully held drugs and publishes results; (3) requests information, explanations and public declarations by governments; (4) recommends embargoes on imports and exports; (5) gathers and publishes texts of laws and regulations concerning narcotics from signatory states.

a. Weaknesses of the Single Convention*

These weaknesses can be summarized in the following areas:

1. It rests essentially upon faithful cooperation by all parties in the context of their national decisions rather than upon effective international measures.

2. The limited authority given the international control bodies — the Commission on Narcotic Drugs and the International Narcotics Control Board — is apparently inadequate to halt or even to slow down the increasing illicit traffic.

3. The Convention lacks a precise obligation, machinery and incentives for preventing over-production of drugs such as a mandatory embargo.

4. It fails to clearly prohibit production of certain medically and scientifically unnecessary substances and drugs.

5. It has no direct controls over the execution of any treaty provision, particularly with respect to production controls which are very indirect.

6. It has no assignment of production quotas or production ceilings.

7. It does not prevent countries from entering into the production market.

8. The denunciation of the Convention is rather facile and opera-

* See, however, the 1972 Geneva Protocol amending the 1961 Single Convention below which dealt with some of these weaknesses.

tion outside its ambit is possible (to wit: the People's Republic of China).

9. There is no international enforcement machinery (Interpol has no jurisdictional authority).

10. There are no international sanctions applicable to individual offenders. The Convention only requires each Party to punish an offender under its own law if it sees fit to do so. Each Party has the right to refuse to effect the arrest or grant extradition where it feels the offense is not "sufficiently serious."

11. The Convention does not apply to psychotropic substances.

12. It has no requirement to show where narcotic drugs are being cultivated and/or manufactured.

13. The limitations on the amounts of narcotic drugs that a country may stockpile are not as extensive as those in the 1953 Protocol.

14. The use of counterfoil books in the writing of prescriptions and the requirement that all written material referring to drugs carry the international non-proprietary name are not mandatory obligations.

Since a discussion of these areas cannot be effective without proposing an alternative, it will be dealt with in the conclusion of this article; however, the position of the United States concerning some of these weaknesses was presented in its working paper submitted to the Commission on Narcotic Drugs and is as follows:²⁰

First, the efforts made in the 1953 Protocol to limit the production of opium to seven named countries were rejected by the provisions of the Single Convention. Instead of continuing the international effort to limit the number of countries permitted to produce opium for export, the 1961 Convention permits any country to do so — with certain limitations. Instead of firm international commitments limiting the production of opium, the Convention leaves the determination of such matters to the individual parties. Important decisions, such as whether manufacture and trade in the most dangerous drugs, heroin for example, will be permitted, is left entirely to the opinion of each individual party. Whether a party will initiate the production of opium or increase its existing production is left to the discretion of that party subject to only very general guidelines regarding over-production.

Second, the powers of the international control bodies are essentially to make recommendations. Aside from the authority of the Commission to add new drugs to the Schedules annexed to the Convention or transfer a drug from one Schedule to another, the

²⁰ Working paper submitted by the United Nations to the Commission on Narcotic Drugs, U.N. Doc. E/CN — /341 (1970).

Commission may only *consider* matters pertaining to the aims of the Convention, call certain matters to the attention of the Board, make recommendations regarding the implementation of the Convention, and draw the attention of non-parties to decisions and recommendations made under the Convention.

The Board's authority is similarly limited. It may study, ask questions about, and make determinations with respect to estimates submitted on drug requirements and make recommendations thereon. It may make recommendations to the parties that they stop the import of drugs, the export of drugs, or both from a country or territory. It may also notify countries to stop exports to a country which has imported drugs exceeding its estimates. It is powerless, however, to conduct on-the-spot investigations unless invited to do so. Its sources of information rest almost completely upon governments. There are very limited possibilities for checking on the accuracy or completeness of information submitted.

Third, the Convention provides neither the effective machinery nor the incentive to prevent over-production which feeds the illicit traffic in opium and its derivatives. The requirements for reporting are such that except for imports and exports of drugs and poppy straw — which must be reported quarterly — at least a year elapses before the Board can be aware of an over-production of opium or of synthetic drugs having the same effects. Such over-production becomes a source and pressure for illicit traffic.

b. Suggested Amendments to the Single Convention: The American Position

Amendments to the Convention can be made by proposal of any one signatory state as long as there are not objections from other signatories or by a conference called ECOSOC (art. 47). The amendments being considered by the United States have two basic objectives: (1) to establish enforceable controls and control machinery to assure the necessary limitations, both on producers and manufacturers, and (2) to provide inducements to parties to faithfully perform all their treaty obligations, as well as assistance, so that they can take the necessary steps to limit the production of opium and operate effective domestic narcotic control systems. These objectives would be accomplished by the following measures:

1. A new Annex to the Single Convention would specify quotas not only for the cultivation of the opium poppy and the production of opium, but also for the manufacture and export of opium derivatives and synthetic substances having effects similar to opium or its derivatives;
2. The Commission would be authorized (a) to decide annually the quotas for the following opium year; (b) to collect and verify

information required for performing its functions, including the authority to send inspectors into a State or territory producing opium or manufacturing narcotic drugs to investigate conditions therein; (c) to adopt remedial measures if a State seriously exceeds an approved quota; (d) to administer a fund to provide significant assistance to governments desiring to limit opium production or to improve domestic control systems; and (e) to collaborate with and assist other international organizations and governments in the prevention of addiction and in therapeutic measures such as education, rehabilitation and social programs. It is recognized that an Implementation Assistance Fund under the Single Convention may not be necessary if the proposed Special United Nations Fund for Drug Control is established and becomes operative.

In a letter dated 18 March 1971, from the Permanent Representative of the USA to the UN, Mr. George Bush, addressed to the Secretary-General, it was proposed to convene a plenipotentiary conference early in 1972 to amend the Single Convention by strengthening the International Narcotics Control Board in five areas:²¹

1. *Access to information.* The Board can at present require States to provide only information relating to consumption of drugs, stocking of drugs, utilization of drugs for the manufacture of other drugs, and import and export of drugs. We propose, in amending articles 14, 19, and 20 to give it the important additional authority to inquire about the cultivation of the opium poppy and the production of opium in a State party to the Single Convention. This will allow the collection of information about the raw material of narcotics from which illicit diversion normally occurs.
2. *Opportunity to make use of all available information.* The Board may now base its actions only on information officially submitted by a Government under an article of the Single Convention or communicated to it by United Nations Organs. We propose, by amending article 14, to add to this authority so that the Board could act on the basis of all information that may become available to it by any means, not only information officially submitted but also other information, which it may obtain through public or private sources. This will be a particularly useful addition to its powers since the official information released by governments often does not and cannot provide data that is relevant to illicit diversion.
3. *Local inquiry.* The rapid spread of hard narcotics addiction has demonstrated the need to give the Board authority, in certain instances, to designate, with the agreement of the State concerned, an individual or a team to make on-the-spot inquiry

²¹ U.N. Doc. E/4971(L) (1971).

of drug-related activities. We propose to give the Board this authority by amending article 14.

4. *Power to modify estimates.* The Single Convention requires parties to furnish the Board estimates on consumption of drugs, stocking of drugs, and use of drugs to manufacture other drugs. These estimates are in turn linked to manufacture and importation of drugs. The Board now may only question these estimates; it may not change them. We propose that in addition to requiring estimates for the first time on cultivation of the opium poppy and production of opium, the areas where the threat of illicit diversion is greatest, the Board be given new authority to modify estimates submitted by States. This will permit the Board to control narcotics activity that is a real or potential source of illicit diversion and to conform that activity to world medical and scientific requirements as determined by experts. We propose, therefore, to amend articles 12, 19, and 24 and to insert a new article 21 *vis* entitled "Limitation of Production of Opium."
5. *Mandatory embargo.* The Board may now only recommend certain steps to States parties, including that they cease export and/or import of drugs to or from a particular country when the Board believes the aims of the Single Convention are being seriously endangered by reason of the failure of the country concerned to carry out the provisions of the Convention. We propose, by amending article 14, to give the Board the power to make such an embargo mandatory upon all parties in the above circumstances or when it determines that, regardless of intent or negligence, there is a danger that any country or territory is becoming a center of illicit traffic. As at present, the country concerned would continue to have the right to appeal to the Economic and Social Council as the political body primarily responsible for supervision of the Single Convention. If these amendments are adopted, the international community will be able for the first time to require, as a matter of right, full information on the cultivation of the opium poppy and the production of opium, to order reductions in cultivation or production where there is a significant danger of illicit diversion or where world needs are already being met, and to order worldwide remedial measures to be taken.

Additionally, the United States believes it would be desirable, by amending article 36, to strengthen the extradition provisions contained in the Single Convention along the same lines as the New Convention for Suppression of Unlawful Seizure of Aircraft recently adopted at The Hague. Narcotics offences already enumerated in the Single Convention would thus immediately become extradictable offences.

The United States has suggested further amendments to the Single

Convention. The recommendations suggest that the Board be empowered to recommend to UN authorities that financial and technical assistance be provided to a State in support of its efforts to fulfill its obligations under the Single Convention.

The membership of the Board should be increased from eleven to thirteen individuals so that better geographic representation may be achieved.

The Board should be empowered to approve the sale for export of opium seized in illegal traffic. Such approval would be made on a case by case basis.

Additional measures should be taken to control the coca leaf and its potentially dangerous products, including cocaine.

The United States was always at the forefront of international controls although some may doubt its altruism since it is the world's largest consuming nation of legal and illegal drugs. The real test for American credibility will be in two rather different areas. One will deal with rehabilitation and treatment of drug offenders which the Comprehensive Drug Abuse Prevention and Control Act of 1970 contemplates, but for which the United States still has insufficient facilities; the other will be in connection with the 1971 Convention on Psychotropic Substances. In this latter case the United States is the world's largest producing nation, and those nations which produced other substances had for years suffered the brunt of American criticism but today the shoe is on the other foot. The United States is keeping negotiations for amendments to the Single Convention separate from negotiations on the Psychotropic Convention. As to the former, its position, as discussed above, is for more controls, but as to the latter, it is not so much in favor of international controls, a position shared by other European industrial nations with strong chemical industries.

c. The 1961 Single Convention and the 1953 Opium Protocol

The Single Convention extends its control system to the cultivation of plants grown as raw material for natural narcotic drugs including the production of opium as laid down in the 1953 Opium Protocol. The view that the Single Convention replaces the 1953 Protocol is based upon the provisions of article 44 of the Single Convention which reads as follows:

The provisions of this Convention, upon its coming into force, shall, as between Parties hereto, terminate and replace the provisions of the following treaties:

. . . .

(i) Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at New York on 23 June 1953, should the Protocol have come into force.

The United States Department of State in 1963 held a different position to which it presumably still adheres to since it has not officially changed it so far.²² So as to avoid misunderstanding of this position, it is quoted in its entirety as follows:

As the 1953 Protocol entered into force on March 8, 1963, the entry into force of the Single Convention will require consideration of three categories of obligations between States parties to the Protocol, namely:

1. Obligations between parties to the Protocol that do not become parties to the Single Convention.
2. Obligations between parties to the Protocol that do not become parties to the Single Convention and Parties to the Protocol that become Parties to the Single Convention.
3. Obligations between parties to the Protocol that become parties to the Single Convention.

The obligations among the first group of parties to the Protocol, those that do not ratify the Single Convention, are not affected in any manner by the Single Convention. The intent of the Single Convention is to terminate and replace the Protocol only as between parties to the Convention.

The obligations in the second group, namely, those involved in relations between the parties to the Protocol that do not become parties to the Convention, on the one hand, and the parties to the Protocol that become parties to the Single Convention, on the other hand, are likewise unaffected by the provisions of the Single Convention. As long as at least one State remains a party to the Protocol without becoming a party to the Single Convention, that one State can demand that all the other parties to the Protocol, even though they have become parties to the Single Convention, must observe their obligations under the Protocol to that one State. It should again be noted that the Single Convention does not attempt to relieve parties to the Protocol that become parties to the Single Convention from their obligations to parties to the Protocol that have not become parties to the Single Convention.

In considering the third group of obligations, namely, those between States parties to the Protocol that become parties to the Single Convention, we are immediately faced with the language that the Convention shall replace and terminate the Protocol as between parties to the Convention. A question arises whether that language is binding upon any State that does not become a party

²² Office of the Legal Advisor, U.S. Dep't of State, *The Continued Application of the 1953 Opium Protocol*, 57 AM. J. INT'L L. 896 (1963).

to the Convention. For example, how can States parties to the Protocol be bound by that language in the Convention unless and until they become parties to the Convention? In view of the continuing treaty obligations between the parties to the Protocol that do not become parties to the Single Convention and the parties to the Protocol that become parties to the Single Convention, the latter group will be required, in their relations with each other, to continue to observe their obligations under the Protocol. The Protocol, like most of the earlier international instruments regarding narcotic drugs, is intended to be world-wide in its application. It is intended to impose obligations upon each party not only with respect to their relations with other parties to those instruments but also with respect to their relations with States that have not become parties.

Heretofore, except for certain provisions of the 1912 Narcotics Convention being replaced by the 1925 Convention, and certain depositary provisions being changed by the 1946 Protocol, each of the international narcotics agreements that has been brought into force has simply added to, rather than changed, existing obligations. None of the narcotics agreements concluded prior to the Single Convention of 1961 has in any manner relaxed controls previously established; they have added to and strengthened the existing controls. The Single Convention of 1961, has, however, omitted several of the controls embodied in the 1953 Protocol, for example, the closed list of producers of opium for export, and the provisions on limitations on stocks. In view of this, along with the intended world-wide application of the Protocol, the States that remain parties to the Protocol but do not ratify the Single Convention have a perfect right under international law to insist that all States parties to the Protocol continue to observe, with respect to every other State, the restrictions imposed by the Protocol, even though some of those states become parties to the Single Convention.

The provisions of article 44 of the Single Convention, relating to the replacement of the Protocol as between States parties to the Single Convention, cannot apply in certain respects, for the simple reason that those provisions do not relieve those States of their obligations vis-à-vis the parties to the Protocol that are not parties to the Single Convention. It may be true that States parties to the Single Convention can, as between themselves, give effect to certain provisions thereof, but only to the extent that the rights and obligations involved are of concern solely to them and do not affect in any way the rights and obligations under the Protocol of States that, being parties to the Protocol, have not become parties to the Single Convention. If any action by States parties to the Single Convention is contrary to the terms of the Protocol, even though entirely in accord with the terms of the Single Convention, any State a party to the Protocol and not to the Single Convention will have a right to protest against violation of the terms of the Protocol,

particularly if its rights under the Protocol are being contravened. To put it another way, States parties to the Single Convention cannot appropriately do anything under the terms of that Convention if what is done is contrary to any of the terms of the Protocol as applied to States that are parties to the Protocol and not to the Single Convention.

Accordingly, the entry into force of the Single Convention will not relieve States parties to that Convention from any of the obligations they entered into under the Protocol. The same principle applies to all the other existing international agreements on narcotics. In the case of those other instruments, parties can now withdraw on one year's notice or less, but notice of termination of the Protocol can be given only after five years have elapsed from March 8, 1963, the date of its entry into force.

Established principles of international law indicate that the position taken by the United States has considerable validity. A commonly understood principle in the international law of treaty interpretation states that a treaty can only be terminated by a unanimous decision of the parties to the agreement. Lord McNair stated,

the parties who concluded a treaty can lawfully terminate it by agreement, express or implied. This statement presupposes that they alone are interested in the continued existence and that no third party has acquired an interest in its preservation.²³

It would appear that since some parties to the 1953 Protocol have not signed the 1961 Single Convention which attempted to terminate the 1953 agreement, those parties would have an interest in its preservation. The principle of projecting genuine expectations would give such parties a justified right to have the provisions of the 1953 Protocol recognized and enforced.²⁴ The 1969 Vienna Convention on the Law of Treaties states in article 30,

Subject to Article 103 of the United Nations Charter the rights and obligations of States parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs:

. . . 4 (b) As between a State party to both treaties and a State party only to the earlier treaty, the earlier treaty governs their mutual rights and obligations.²⁵

From the foregoing it may be forcefully argued that some parties to the 1953 Protocol have acquired and retained enforceable rights under this

²³ L. McNAIR, *THE LAW OF TREATIES* 506 (1961) (footnotes omitted).

²⁴ See M. McDUGAL, H. LASSWELL, J. MILLER, *THE INTERPRETATION OF AGREEMENTS AND WORLD ORDER: PRINCIPLES OF CONTENT AND PROCEDURE* 156-86 (1967).

²⁵ U.N. Doc. A/Conf 39/27 (1969).

document. International law requires all states, whether signatories to the Single Convention or not, to honor the rights of such parties. The following hypothetical example will provide an illustration of the problem at hand. Under the 1953 Protocol only seven countries are permitted to export opium. No such limitation is contained in the Single Convention. If country A (party to 1953 and 1961 agreements) sells opium to country B (party to 1953 and 1961 agreements) country A would be in violation of international law with respect to country C (party to 1953 Protocol), assuming country A is not one of the seven countries authorized to sell opium under the 1953 Protocol.

From the foregoing analysis it appears that the 1953 Protocol and all other international narcotics control agreements are still valid international law to the extent enforcement of the provisions of the Single Convention infringes upon the rights of states parties to the prior agreements but not parties to the Single Convention.

5. Convention on Psychotropic Substances, 1971

Strict international controls over LSD, mescaline and similar substances — including regulations more rigorous than existing controls for other drugs such as morphine, for example — are provided for in this new international agreement adopted by a United Nations Conference in Vienna, 19 February 1971.²⁶

The agreement, known as the Draft Protocol on the Control of Psychotropic Drugs Outside the Scope of the Single Convention on Narcotic Drugs of 1961, covers 32 substances having hallucinogenic effects on the human organism including "pep pills" which stimulate the central nervous system, barbiturate-type sleeping pills and tranquilizers which are depressants.

The substances are listed in four schedules annexed to the Convention, which provides for varying degrees of control over the substance in each schedule. They are: Schedule I — DET, DMHP, DMT, lysergide, LSD, LSD-25, Mescaline, Parahexyl, Psilocine, Psilotsin, Silocybine, STP, DOM, Tetrahydrocannabinols, and all Isomers. The items listed in Schedule I are subject to a special provision (article 7) which prohibits all use except for scientific and very limited medical purposes. Schedule II — Amphetamine, Desamphetamine, Methamphetamine, Methylphenidate, Phencyclidine, Phenmetrazine. Schedule

²⁶ E/Conf. 58/6 19 Feb. 1971; see for its history the records of the Commission which, at its 23d session, 13 Jan. 1969, adopted a draft protocol thereafter submitted to governments for comment by June 30, 1969. For text of draft, see U.N. Doc. E/4606/Rev. 1, Annex IV (May 1969), also in 8 Int'l Leg. Materials 769, July 1969.

III — Amobarbital, Cyclobarbital, Glutethimide, Pentobarbital, Secobarbital. Schedule IV — Amfepramone, Barbitol, Ethchlorvynol, Ethinamate, Meprobamate, Methaqualone, Methylphenobarbital, Methprylon, Phenobarbital, Pipradrol and SPA.

This convention as its title suggests deals with Psychotropic or synthetic substances and the term "synthetic" narcotics is generally applied to a number of dependence-creating substances which came on the market in 1939, when a German periodical reported the discovery of a synthetic drug, later called pethidine, with strong analgesic properties. There is a difference in the basic raw material used in "natural" and "synthetic" drugs on the basis of the original ingredients used or what by-products or derivative materials it comes from. This difference is not always significant since it is possible to manufacture "synthetic" narcotics from vegetable or animal products, and even poppy straw might be used as a raw material for production of some chemicals that could be used in making a synthetic narcotic. That is why the prohibited substances are specifically listed by schedule in the Convention and are likely to be changed as discoveries develop.

The new synthetic products raise new control problems resulting from their growing number, lack of experience with their use and from the fact that they can be made from materials widely used in industry and easily accessible even to amateur chemists.

The mushrooming development of various new synthetic drugs and their appearance on the market, sometimes under false or misleading claims that they do not produce dependence, have led the Commission on Narcotic Drugs to issue repeated warnings to governments to apply measures of control on these substances, pending the definite establishment of their effects by WHO. The Commission has taken the view held by scientists and law enforcement agencies that commercial interests must yield to overriding considerations of public health and be subjected to greater controls. In this connection, it has also been suggested, without encroaching upon the freedom of the press, that a way should be sought to prohibit misleading publicity and advertising of properties of newly developed drugs but this suggestion has yet to be adopted in most countries. Greater controls over the manufacturing, labelling, advertising and sale of drugs with stimulant-depressant effects and with dependence-creating properties should be exercised. In the United States, the Food and Drug Administration exercises mild supervision, while the Federal Trade Commission and Health and Commerce Commissions exercise at best benign or nominal supervision.

Control mechanisms should be instituted through identification of

packages containing such drugs, the use of non-proprietary names, the control of intermediary products, limitation of the number of narcotics in circulation and dissemination of information to the medical and allied professions on matters connected with these drugs, but few if any of these ideas have been effectively put in force.

Scientific data is also lacking as to the effects of these drugs even though since 1953 a research program has been undertaken by WHO on certain basic problems arising from the development of synthetic narcotics. Results of this study have appeared in a series of reports entitled *Synthetic Substances with Morphine-like Effects*, but the WHO lacks the resources to pursue its work effectively. Furthermore, few nations allocate much resources to such research and even when scientific data is compiled, its international dissemination is limited and seldom, if ever, is it presented to the public in an informational or educational manner.

Among the many problems to be resolved is that of the make-shift laboratory which is perfectly capable of producing most of these substances. One solution to most of the problems is to treat dependence and thus curb the demand as well as attempt to control the supply.

These considerations were most prevalent in the mind of the drafters of this Convention, but as in all previous treaties, the divergent interests of government, private industry and other interested groups were not likely to permit a more effective treaty to be drafted, let alone to be signed and ratified. Thus, once more a treaty is borne out of a spirit of pragmatism wherein the desire to have at least some control system prevailed over those who advocated none or an unattainable system in the present context of *Realpolitik*.

a. Analysis of the Provisions of the Convention and a Brief Comparison with the 1961 Single Convention

The Convention relies on the same scheme contemplated by the 1961 Single Convention and in fact its provisions are almost alike. It relies on the element of notice by a party that a substance previously uncontrolled should be subject to:

- (i) require licenses for manufacture, trade and distribution as provided in article 8 for substances in Schedule II;
- (ii) require medical prescriptions for supply or dispensing as provided in article 9 for substances in Schedule II;
- (iii) comply with the obligations relating to export and import provided in article 12, except in respect to another Party having given such notice for substance in question; (art. 7(a)).

It makes, however, more use of the expertise of WHO particularly

if the World Health Organization finds:

- (a) That the substance has the capacity to produce
 - (i) (1) a state of dependence, and
 - (2) central nervous system stimulation or depression, resulting in hallucination or disturbance in motor function or thinking or behaviour or perception or mood,
or
 - (ii) similar abuse and similar ill effects as a substance in Schedule I, II, III or IV, and
- (b) that there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control, the World Health Organization shall communicate to the Commission an assessment of the substance, including the extent or likelihood of abuse, the degree of seriousness of the public health and social problem and the degree of usefulness of the substance in medical therapy; together with recommendations on control measures, if any, that would be appropriate in the light of its assessment. (art. 2-4)

Providing for special means of controlling such preparations, the Convention relies on the same indirect method of the previous narcotics treaties, but some of the escape clauses are, however, quite noticeable. One such clause is article 3-2 which exempts countries from certain requirements under articles 8, 11, 13, 15, 16 and 22 whenever the:

preparation containing a psychotropic substance other than a substance in Schedule I is compounded in such a way that it presents no, or a negligible, risk of abuse and the substance cannot be recovered by readily applicable means in a quantity liable to abuse, so that the preparation does not give rise to a public health and social problem. . . .

Such a finding is made unilaterally by a party seeking the exemption for one or more of the measures of control. Such a party shall notify the Secretary-General of any such decision, of the name and composition of the exempt preparation, and of the measures of control from which it is exempted. The Secretary-General shall transmit the notification to the other Parties, to the World Health Organization and to the Board, who may, however, make a different finding and advise the Secretary-General and the Commission shall decide if the substance should be controlled.

The method of recordkeeping and control, from manufacture to consumption, via distribution, warehousing, and shipment is left to each signatory without international control and is, therefore, likely to prove

inexistent or at best ineffective. The Commission and the Board undertake essentially the same functions as they do with respect to the 1961 Single Convention. Secretary of State William Rogers, in his letter of submission to the President transmitted to the Senate with the request that the Convention be ratified by the United States, stated:

There are a number of significant differences between the two Conventions, including the following. The new Convention does not undertake to control the cultivation of plants from which psychotropic substances may be derived as in the case of the Single Convention with respect to narcotic drugs. Provision is made in the new Convention that assessments by the World Health Organization are determinative as to medical and scientific matters with respect to psychotropic substances. Decisions by the United Nations Commission on Narcotic Drugs to place a new psychotropic substance under control or to change existing controls over a substance must be by a two-thirds majority of members. With respect to controls over narcotic drugs under the Single Convention they are binding immediately upon receipt by the parties of notification thereof. Corresponding decisions under the new Convention regarding psychotropic substances are not binding until 180 days after their receipt; a party may take an exception to such a decision and apply a lower category of controls to the substance. The manufacture, export, import and use of substances in Schedule I of the new Convention is more restricted than drugs in the comparable Schedule of the Single Convention. No annual estimates of quantities of psychotropic substances are necessary under the new Convention as in the case of narcotic drugs under the Single Convention. Under the Single Convention preparations containing a drug under control are subject to all the controls to which the drug itself is subject except where lesser controls may be applied after the preparation has been included in Schedule III to that Convention, but under the new controls to a preparation if the party exempts the preparations, such exemption is subject to replacement by a decision of the Commission to terminate the exemption of the preparation from any or all control measures.

The difference between the two Conventions arise basically from the fact that the world community has had over half a century of experience in the application of international controls to narcotic drugs beginning with The Hague Convention of 1912, and has had no such experience with respect to the psychotropic substances; the production of narcotic drugs is of far more economic and social significance to countries that cultivate the opium poppy and the coca bush than the manufacture of the psychotropic substances is to the manufacturing countries; there are a great many more kinds of psychotropic substances than there are of narcotic

drugs, and the quantities of psychotropics manufactured are much greater than the quantities of narcotics manufactured.²⁷

The distinctions between the two Conventions are not limited to those cited in Secretary Rogers' letter. The Psychotropic Convention permits international travelers to carry small amounts of substances for personal use provided such substances were lawfully obtained. The Single Convention makes no such allowance. All manufacturing, trade and distribution of psychotropic drugs must be licensed under the new Convention unless a Party applies for an exemption because of exceptional circumstances. The Single Convention requires no form of licensing for the manufacture, trade or distribution of narcotic drugs if said activities are conducted by government enterprise. The new convention requires the Parties to set up a system of inspection regarding the manufacture, trade, distribution or medical or scientific use of any psychotropic substance. No such requirement is imposed by the Single Convention. The provisions with respect to actions to be taken against illicit traffic are identical except for the additional requirement in the 1971 Convention that any Party discovering an instance of illicit trafficking shall immediately report such incident to any other Party directly concerned. The 1971 Convention contains no explicit provision allowing for the seizure and confiscation of illicit drugs as does the 1961 Single Convention.

b. The Penal Provisions and Sanctions Approach in the Convention on Psychotropic Substances and the Single Convention

The territorial principle of jurisdiction is invoked in both Conventions as it is throughout all of the narcotics treaties, but concurrently, signatories are urged to prosecute or alternatively extradite individual violators on the additional theory of "universality" because violation of the narcotics treaties constitute an "international crime." Article 22 of the Convention on Psychotropic Substances and article 36 of the Single Convention relate to the penal provisions of their respective Convention. Both articles are identical and state:

Subject to the constitutional limitations of a Party's legal system and domestic law:

- (a) (i) if a series of related actions constituting offences under paragraph I has been committed in different countries, each of them shall be treated as a distinct offence;

²⁷ Message from the President of the United States transmitting copy of the Convention on Psychotropic Substances, signed at Vienna 21 Feb. 1971, to the Senate, 92d Cong. 1st Sess., June 29, 1971 G.P.O. 65/118, Vol VII.

- (ii) intentional participation in, conspiracy to commit and attempts to commit, any of such offences, and preparatory acts and financial operations in connection with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;
 - (iii) foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism; and
 - (iv) serious offences heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offences were committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such offender has not already been prosecuted and judgment given.
- (b) It is desirable that the offences referred to in paragraph 1 and paragraph 2 (a) (ii) be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the Parties, and, as between any of the Parties which do not make extradition conditional on the existence of a treaty or on reciprocity, be recognized as extradition crimes; provided that extradition shall be granted in conformity with the law of the Party to which application is made, and that the Party shall have the right to refuse to effect the arrest or grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.

The two provisions are identical even in their paragraph and subparagraph numbering. They impose a duty upon the signatory state to punish violations of this Convention by making such violations a crime under municipal law, but do not disallow multiple prosecutions and repeated punishment in every territory or state in violation of the principle of double jeopardy (*NE BIS IN IDEM*).²⁸ Significantly, they make conspiracy a crime even though that type of offense is peculiar only to the Anglo-American legal system and those countries which have been inspired by the common law. The penal provisions further provide for a partial recognition of foreign judgments with respect to recidivists without regard for the rights of the offender in such cases and fail to set forth the basis for such cooperation between states with respect to the recognition and consequences of foreign penal convictions. The most astonishing observation is that these penal provisions do not require states to include the offense of illicit narcotic traffic (cultivation, manufacturing, sale, transportation and their derivative operations) in their extradition treaties or reciprocal practices. Even when a state agrees to extradite such offenders, the provisions have an astounding

²⁸ See however Art. 36, § 2a, iv; see also BASSIOUNI, *supra* note 17, at 127-37.

escape clause which is that if in the opinion of the state of refuge the offense is "not sufficiently serious," it does not have to extradite the accused offender. Recognizing the principle "universality" by allowing any state wherein the offender may be found to prosecute for the offense as an alternative to extradition, it nonetheless only suggests the "desirability" to make it an extraditable offense. No wonder so few treaties contain such violations in their list of extraditable offenses.²⁰ This defect was cured in the 1972 Amending Protocol discussed below.

A particularly laudable feature which appears in the Psychotropic Convention is its concern with treatment of drug-dependent persons, even though the premise is likely to remain hollow and its implementation very doubtful in the case of many signatories.

Article 22-1

(b) Notwithstanding the preceding sub-paragraph when abusers of psychotropic substances have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to punishment, that such abusers undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of article 20.

Article 20 deals with measures against the abuse of psychotropic substances and requires that:

1. The Parties shall take all practicable measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved and shall co-ordinate their efforts to these ends;
2. The Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of psychotropic substances;
3. The Parties shall assist persons whose work so requires to gain an understanding of the problems of abuse of psychotropic substances and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of such substances will become widespread.

Such humane understanding has not been prevalent in other treaties, but suggests that over-emphasis on punitive and retributive conceptions of narcotics control are giving way to a more scientific and humanitarian approach. This is a major difference in the sanctions orientation of both treaties since the provision dealing with treatment of drug-dependent persons in the single convention states, article 38:

²⁰ For a list of U.S. Treaties see Bassiouni, *supra* note 4, at 3.

1. The Party shall give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts.
2. If a Party has a serious problem of drug addiction and its economic resources permit, it is desirable that it establish adequate facilities for the effective treatment of drug addicts.

The approach is recommendatory as in the advisability clause on extradition mentioned above and not mandatory. In a decade there has been no change in the language of the penal provisions and its extradition clause, but the concern over drug dependence took a more positive tone.

It should be noted that WHO has suggested since the fifties that the term "addiction" and "habituation" be replaced by that of "dependence" and has since sponsored many studies on this subject. It has also initiated the use of the term "abuser" instead of "addict." This new terminology was not used in the 1961 Single Convention, but appears in the Convention on Psychotropic Substances and it is not clear if the reason for it was dictated by the differences between the types of drugs covered in the 1961 Single Convention as distinguished from Psychotropic Substances or because of popular acceptance of the conceptual significance of both terms.

The results of scientific tests and pharmacological distinctions between cannabis sativa drugs, opium-morphine and cocaine are not reflected in either of these Conventions (other than in the schedules) which are primarily penal sanctions oriented and only secondarily treatment-rehabilitation conscious. In this respect the Psychotropic Convention is more attuned to contemporary scientific research findings than its 1961 predecessor. One reason may well be the decade of scientific research that separates both of these conventions.

c. The 1972 Geneva Protocol Amending the 1961 Single Convention on Narcotic Drugs³⁰

On May 20, 1971, ECOSOC called a plenipotentiary conference to consider proposed amendments to the 1961 Single Convention. All signatories were eligible to participate, as well as all members of the United Nations and its specialized agencies. The conference was convened at Geneva and 97 participants were registered, of which 3 were observers.

The amendment process had been initiated by the United States in March, 1971 (as discussed earlier in the text), and in October, 1971,

³⁰ U.N. Doc. E/Conf 63/8 (1972).

France, Peru and Sweden proposed additional amendments. The amendments proposed were revised and sponsored by 19 nations³¹ but shortly before the conference convened, an additional 11 nations³² became sponsors.

The conference adopted the Amending Protocol by a vote of 71 in favor, none against and 12 abstentions and is now open for signatures to all parties to the Single Convention (or parties adhering thereto) and will enter into force upon adhesions by 40 nations. To date 36 have adhered.³³

The Amending Protocol continues to rely on the indirect scheme of control depending too significantly on governmental cooperation without direct enforcement sanction or even independent fact-finding machinery. Nonetheless, it did make certain notable improvements in the present system. They are:

1. *Increased competence of the Board:* heretofore the Board's authority extended primarily to licit cultivation, production, manufacture, trade and use of narcotic drugs. The Board is now enlisted in the efforts to control illicit traffic and, therefore, in being so charged, is given increased competence and broader responsibilities.

2. *Reorganization of the Board:* The Board is to be enlarged, made more representative, insured of continuity by staggering the terms of its members, strengthened by the appointment of its secretary by the Secretary-General and made more independent through the choice of its administrative personnel to be supplied by the General-Secretariat.

3. *The Estimate System:* is to be tightened by requiring more and new information on forms provided by the Board who will devise a

³¹ Argentina, Costa Rica, Cyprus, Denmark, Federal Republic of Germany, Finland, France, Ghana, Greece, Haiti, Iran, Italy, Laos, Norway, Panama, Sweden, the United Kingdom, the United States and Uruguay.

³² Brazil, Cambodia, Colombia, El Salvador, Guatemala, Indonesia, Ireland, Nicaragua, Pakistan, Thailand, and Venezuela.

³³ *Amending Protocol of Geneva Has Been Signed Subject to Ratification by Following Countries, as of March 27, 1972:*

Argentina	Guatemala	Monaco
Belgium	Haiti	Nicaragua
Brazil	Holy See	Norway
Chile	Indonesia	Philippines
Costa Rica	Iran	South Africa
Cyprus	Israel	Spain
Denmark	Italy	Sweden
Ecuador	Ivory Coast	Togo
Egypt	Jordan	Turkey
Federal Republic of Germany	Cambodia	United Kingdom
France	Liberia	United States
Ghana	Liechtenstein	Venezuela
Greece	Luxembourg	Viet-Nam
	Madagascar	Yugoslavia

method of checks to insure compliance and determine with greater accuracy ascertainable areas of cultivation.

4. *Informational Input*: It will receive information from a wider range of sources, including the United Nations and its Specialized Agencies and certain inter-governmental and accredited non-governmental organizations with competence in drug matters. Signatories must also, in addition to the new estimate procedure, furnish information on all forms of illicit drug activity from cultivation to usage.

5. *Informational Output*: The Board has the right to establish, communicate and publish its own estimates, even if governments disagree. It can also make studies and reports, propose remedial action to governments and use the vehicle of referring matters to the Commission on Narcotic Drugs, ECOSOC and the General Assembly as a device to insure compliance with the terms of the Convention. (This is probably the closest form to a direct enforcement scheme that international cooperation has ever achieved so far).

6. *Control and Sanctions*: The estimate system and all informational measures are designed to accomplish the objective of control and indirect sanction. In addition the Amending Protocol established other devices:

(A) If the Board has reason to believe that the aims of the Single Convention are seriously endangered by the failure of a country to carry out its obligations or if there is evidence that a country has become or is in danger of becoming an important center of illicit cultivation, production, manufacture or consumption of narcotics, the Board will be able to ask the government in question for explanations, or consultations, or take the initiative in proposing an on-the-spot study of the situation designed to develop remedial measures where those appear necessary; (non-governmental informational input described in #3 above will be significant in setting this device in motion).

(B) If a country fails to provide satisfactory explanations or to adopt remedial measures when requested to do so, or if the Board believes a serious situation exists which requires cooperative remedial action, it may call this to the attention of all other parties, ECOSOC and the United Nations Commission on Narcotic Drugs, with appropriate recommendations and with potential submission of the matter to the General Assembly. It is significant that for the first time in history parties to an international narcotics treaty consider the drug situation to be so serious and so universal that it may merit the attention of the most representative United Nations' political organ.

(C) The Board is furthermore required to refer to ECOSOC if the

aims of the convention are endangered and the matter has not been satisfactorily resolved.

(D) If in any country producing licit opium there is evidence of diversion into illicit traffic, the Board may, 90 days after notifying the government concerned, require that country to reduce its production in the following year.

7. *Extradition*: Although a control device, extradition in this case is used indirectly as such. The Amending Protocol fills a notorious gap in this area. Extradition of violators of the 1961 Single Convention as amended by this protocol is mandatory. These offenses must be included in treaties and extradition must be granted in the absence of a treaty. It still requires another positive step on the part of signatories which is to amend their extradition treaties in accordance with this new provision. This provision was patterned along the 1970 Hague Convention amending the 1963 Tokyo Convention on Aircraft Hijacking. The Amending Protocol, however, has an exception in cases where the narcotics offense is not deemed sufficiently serious in which case extradition is no longer mandatory. The caveat that states can make reservation on this clause weakens it.

8. *Technical Assistance*: The Board will be authorized to recommend to competent United Nations organs and Specialized Agencies that technical and financial assistance be provided to governments in support of their efforts to carry out their obligations under the Single Convention as amended.

9. *Treatment and Rehabilitation*: All parties to the Single Convention as amended will be committed to give special attention to the prevention of drug abuse, to the treatment, education, rehabilitation and social reintegration of persons affected by drugs. Consistent with this is the provision for making available to abusers of narcotic drugs, either as an alternative to conviction or punishment or in addition to punishment, measures of treatment, education, after-care, rehabilitation and social reintegration.

10. *Preventive Measures*: Realizing the importance of curbing user-demand, the Amending Protocol relied on the rehabilitative approach mentioned in #9 and also proposed that governments undertake such programs as drug education and other measures to prevent drug abuse.

The accomplishments of the Geneva Conference were noteworthy even if many provisions of the Amending Protocol are couched in terms of a "best efforts" clause. The indirect scheme has progressed in the

direction of a more effective international control scheme, particularly in view of the prevailing difficulties to achieve harmonious cooperative undertakings at the international level.

III

THE SUPPRESSION OF ILLICIT TRAFFIC IN DANGEROUS DRUGS AND NARCOTICS UNDER THE PRESENT SCHEME OF INTERNATIONAL CONTROL

The illicit traffic in drugs and the criminal activities of smugglers are of concern to the world community without distinction. The top organizers of the international illicit traffic do not in most cases physically handle any drugs themselves, but instigate, finance and direct these operations which are carried out by underlings and then diffused to the users by pushers who perpetuate and disseminate these drugs as part of an organized snowballing system.

The international nature of the offense ideally requires the application of the principle of universality of jurisdiction in national crime legislation and calls for punishment of violators irrespective of their nationality or the place of their crime. Thus, where international traffickers cannot be prosecuted in the country in which they are found, they should be extradited to a country which is willing to try them, but this is not accomplished by a "desirability" clause in narcotics treaties, but by a mandatory clause coupled with a multilateral extradition treaty as part of the international control system.

The 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs introduced the optional principle of universality for adoption by municipal penal legislation to ensure that illicit traffickers would not escape prosecution because of lack of criminal jurisdiction. The adoption of municipal uniform penal sanctions, however, is a very difficult task because of ideological and political divergences and different cultural traditions on which this type of legal control ultimately depends. The 1936 Convention limited itself to the formulation of rather vague provisions accompanied by escape clauses, in order to secure adherence by countries which would otherwise never accept stipulations basically different from their national standards. The 1961 Single Convention expresses only the *desirability* of making narcotic crimes subject to extradition (a provision it takes over from the 1936 treaty), but if the Amending Protocol enters into force it would be mandatory. The Parties to it are to take action against the illicit traffic and to provide for the punishment of narcotic offences but it does not distinguish between international traffickers, local pushers, dealers,

users and addicts. It requires that parties should make arrangements at the national level for co-ordinating preventive and repressive action against illicit traffic by setting up special agencies for such co-ordination and for assisting each other in fighting the illicit traffic by exchanging information and legal papers for the purpose of prosecuting offenders. The way these obligations are worded they are no more than a "best efforts" clause. Governments are required to furnish the Secretary-General particulars of each important case of illicit traffic, the source from which drugs are obtained for such illicit traffic and the methods employed by illicit traffickers. This type of data report is wholly ineffective in practice even though in theory perfectly laudable. The 1972 proposed amendments are intended to remedy this shortcoming, but it is doubtful that they will do more than improve the dissemination of information.

Governments have recognized after decades of narcotics treaties that, in order to be effective, penalties imposed on traffickers must have a deterring effect in which the penalty outweighs, in the eyes of the potential offender, the benefits of the prohibited activity. Only recently, however, have all countries enacted prison terms rather than fines for such violations. Some countries have even introduced capital punishment for certain crimes in the illicit traffic of narcotic drugs, especially when minors are exploited or led into addiction. But these measures have largely proven to be ineffective as the number of narcotics users and abusers is on the increase throughout the world.

Prevention and enforcement of narcotics violations is still the most cloak-and-dagger undercover activity in existence. It is often the result of years of work involving many persons, some of whom need to maintain their secret identity. Such an activity is, therefore, not likely to be printed in the United Nations Secretary-General Report on "the last catch," and invaluable cooperation which should be institutionalized is relegated to personal exchanges of confidences between agents or agencies who have developed some form of working relationship.

The Commission on Narcotic Drugs reviews annually the general problem of illicit trade in individual drugs as well as the situation of the international traffic on a country-by-country basis. This review is based on information supplied by governments and such other sources as INTERPOL. Although the seizure reports furnished by governments may show here and there a decrease in the quantity of drugs seized in illicit trade as indicating effective control, the recent surveys of the Commission indicate that, on the whole, the illicit traffic remains at a high level and remains well organized.

The most important drugs in the illicit traffic (both international and local) are still opium and the opiates (principally morphine and heroin) which continue to present the greatest problem to national and international authorities. Opium originates mainly in the Middle East, in a well-defined triangular area in South East Asia along the borders of Burma, Thailand, and Laos and in the Peoples' Democratic Republic of China which is producing and exporting an unknown quantity of drugs, since it is outside the international control scheme. In the Middle East, some opium seems to escape local control where it is licitly cultivated, but most of it comes from illicit cultivation. The 1970 report of the International Narcotics Control Board stated the problem, ". . . even if leakage from licit production could be virtually extinguished smugglers would still be able to have recourse to opium which is produced illegally or beyond government control. There are now extensive areas of such production and it is essential that, side by side with reinforcing monopoly controls over licit production, major efforts should be made to eliminate poppy cultivation in these areas. . . . The regions chiefly involved are situated in Afghanistan, Burma, Laos and Thailand; and there is also some production in parts of Latin America."³⁴ The profit is so great in the area of illicit production that it will be impossible for these countries to be wholly successful in containing such activity. Adding to it the volume of individual travelers makes attempts at control at best haphazard. There is no system of international customs cooperation or data bank for international exchange of information. INTERPOL, however, maintains a reference operation and signals individuals to customs or police officials, but their activity is naturally limited.

Opium, as is well known, is used in clandestine factories for the manufacture of morphine, which is then converted into heroin. Morphine and particularly heroin are much more potent than opium and much less bulky, thus much easier to smuggle to countries such as the United States, Canada, Thailand, and Vietnam, where drug dependence especially to heroin has become a serious problem as it has also in other countries such as in Iran and Hong Kong. The United States, for example, has an estimated addiction population of half a million drug-dependent persons, but its breakdown as to typology of drug users is very uncertain. An estimated 3.5 billion dollars is spent on illicit drugs in the United States annually. Smuggling heroin is very profitable and not easily detectable. At a time when world trade expansion requires the reduction of administrative and customs controls and the volume of

³⁴ U.N. Doc. E/INCB/9 (1970).

international trade is so great, the task of customs detection is extraordinary. On June 30, 1971, Prime Minister Erim of Turkey declared:

We cannot allow Turkey's supreme interests and the prestige of our nation to be further shaken. Our government has decided to apply a clear and firm solution. It forbids completely the planting of poppies . . .

Poppies will not be planted in Turkey beginning next year. . .

This laudable step is not likely to completely prevent illicit production since wherever cultivation was permitted it had always been government controlled. Some illicit cultivation is still expected to take place until modern techniques such as aerial and ground inspection can be used as well as the maintenance of a permanent governmental control structure. Hopefully, Turkey will continue to be vigilant even if the decree abolishing any licit cultivation is likely to take the heat off its public agencies. It is also noteworthy that Thailand started a pilot program of crop substitution to curtail the extent of traditionally legal opium growing. Unfortunately, Iran decided in 1969 to resume poppy cultivation to the extent necessary to satisfy its own internal demand. The INCB has expressed grave concern over reports that poppy cultivation in Iran is to be markedly increased in the near future.

Cannabis sativa in its various forms, such as marijuana and hashish, continues to be in quantitative terms the biggest narcotic substance in the international illicit traffic; financially heroin is still the largest money producer. *Cannabis*-type plants grow in many parts of the world with great ease and represent, therefore, a particularly difficult problem to enforcement agencies. In the Middle East, Asia, Africa and Latin America this drug crosses frontiers in bulk, although in some countries it is mainly a domestic problem. Cocaine from coca leaves grown mainly in Latin America appears in the international traffic on a smaller scale than opium and heroin, but the traffic in this drug seems to be spreading through Latin America and to other parts of the world. The reason is that it is in much less demand which confirms the idea that priority should be given to curtailing demand and curbing the profit motive. Analysts of these problems tend to look at them more in terms of law enforcement than of user-demand. This is why the international concern as well as that of most states is with repressive penal sanctions rather than curtailing user-demand by scientific means and developing a method of direct control over production and manufacturing of all such drugs and curbing the profit incentive of those engaged in this type of illicit activity.

It is true by and large that the illicit traffic is unable to obtain any significant supplies of drugs from legally-manufactured channels except for synthetic drugs wherein seizures have been seriously increasing in recent years and are often retraceable to licit channels of manufacturing, particularly amphetamines and other stimulants and depressants stolen in the course of trade.

The recent increase in illicit narcotics traffic has been attributed to four factors: more raw narcotic materials are being processed closer to the place of cultivation; the tremendous increase in non-syndicate drug traffickers; the new interest of the youth of the Western countries in the cultures of the Eastern part of the world; and the greater speed and facility of transport available to drug traffickers. The means of transportation in the international illicit traffic are not limited to ships and their crew members as governments' seizure reports point to a growing use of commercial and private aircraft by traffickers. In 1952, the Economic and Social Council recommended that the Secretary-General compile and bring up to date at regular intervals a list of merchant seafarers and members of the civil air crews who have been convicted of narcotic offences on or after January 1, 1953. Such crew members are to be blacklisted and not employed again onboard ships or aircraft, as the case may be, but little ever came of that device. Another method of transportation is the ordinary tourist and the unwary courier. The extraordinary increase in tourism and business travel makes thorough individual customs inspection a practical impossibility. Customs agencies are on the horns of a dilemma: should they ease their inspections to make the tourist feel welcome or be thorough and catch the smuggler? Economic realism makes most countries opt for the former measure. Another channel must not be discounted and that is the regular shipment of goods in international trade. Most narcotic drugs are easily concealable and can be shipped with goods and merchandise without too much fear of discovery in customs. The only reason it is not used frequently is fear that intermediate handlers of the legitimate merchandise may find it and take it, not fear of customs seizure.

Valuable help in combating illicit traffic and activities of traffickers is rendered by INTERPOL, which acts as a clearing house for national law enforcement agencies. The organization, whose headquarters is in Paris, provides information on illicit traffic to the organs of international and national narcotics control and usually participates, through an observer, in the Commission's meetings. It organizes conferences and seminars for national police forces and other services such as customs.

INTERPOL remains, however, an agency without supranational power and is not, as the name suggests, a true international police.

The Division of Narcotic Drugs of the United Nations Secretariat carries out research in its laboratory in Geneva, and national laboratories and individual scientists in various parts of the world also participate in the United Nations program of drug research. The laboratory helped to co-ordinate opium research that was carried out by scientists throughout the world and arranged for the distribution of opium samples for this work. Some of the laboratory research is on the analysis of government authenticated samples of opium which originated or were discovered in that country. Several scientific methods have been developed and after extensive testing are now conclusively applied to determine the geographical origin of samples of opium seized in illicit traffic and thus help to pinpoint its illicit origin.

The United Nations, cognizant of the importance of curbing user-demand for illicit drugs, instituted a program of drug abuse control in March 1971. In an *Aide-Memoire* released by the Secretary-General it was stated:

. . . .

3. The demand for drugs comes from large numbers of addicts and habitual abusers in many parts of the world, and it stimulates both production and the illicit traffic. To diminish demand, addicts and abusers must be treated and reintegrated as productive members of society. This treatment and reintegration cannot follow a wholly uniform pattern everywhere, but must be based on studies which take full account of social and economic conditions, cultural traditions, etc., in each country or region. Moreover, demand must also be reduced by preventive measures, which include education, particularly of young people in the dangers of drug-taking and addiction. In developing countries, measures to reduce the demand require the help of developed countries. If such help is not forthcoming, there is a serious risk that addiction will spread from new sources of contagion, and that new centres for the illicit traffic will come into being.

4. The repression of the illicit traffic requires the strengthening of enforcement action in many countries of the world. No country can defend itself against the illicit traffic without the co-operation of other countries, and common efforts will have to be undertaken on the international level to deal with this aspect.

5. The purpose of the United Nations Fund for Drug Abuse Control will be to develop short-term and long-term plans and programmes along the lines indicated above, and to provide assistance in the execution of those plans and programmes. During the initial

stages of the Fund, pending the completion and submission of a proposed long-term policy and plan of action which would deal with all aspects of the problems related to drug abuse control, the voluntary contributions to the Fund will be used for specific projects to be included in a short-term programme without prejudice to ongoing projects. The short-term programme will consist of projects to expand the research and information facilities of United Nations drug-control bodies; to plan and implement programmes of technical assistance in pilot projects for crop substitution purposes, the establishment and improvement of national drug-control administrations and enforcement machinery, the training of personnel, and in setting up or expanding research and training centres which could serve national or regional needs; to enlarge the capabilities and extend the operations of United Nations drug-control bodies and their secretariats; to promote facilities for the treatment, rehabilitation and social reintegration of drug addicts; and to develop educational material and programmes suitable for use on high-risk populations.³⁵

The Fund shall be financed through voluntary national contributions and after one year of interim administration, it will be placed under the direction of the Division of Narcotic Drugs.

IV.

CONCLUSIONS AND A PROPOSAL OF AN ALTERNATIVE PLAN

The indirect method of control bears its endemic weakness in that its control scheme relies on the willingness and effectiveness of multiple participants in a process in which not all share the same degree of concern and interest. These weaknesses, discussed throughout this article, are only some of those which persons concerned with the problem have identified over the years. The general scheme of the alternative proposed is as follows:

1. A direct control scheme whereby an international agency would have in the case of the opiates the monopoly of production, distribution, warehousing and sale; in the cases of cocaine and cannabis sativa drugs, the powers of indirect supervision; and in the case of psychotropic substances, local controls devices; and

2. Minimum standards of treatment of drug-dependent persons applicable indirectly by each state, but subject to the international agency's supervision with an international financial subsidy scheme wherever needed.

The *Direct Control Scheme* would be administered by an entirely restructured International Narcotics Control Board, to be known as the

³⁵ U.N. Doc. SG/SM/1442 Sox/NAR/.104 (1971).

International Narcotics Control Agency, composed of six functional boards (see organizational chart below). The International Narcotics Control Agency would consist of twelve members elected for terms of four years each by the General Assembly of the UN. The Secretary-General of the UN would appoint a thirteenth member to act as Chairman of the Agency. Each of the six boards under the Agency would be chaired by one member of the Agency to be elected by the Agency for a term of two years.

The Functional Boards

1. The Central Board for the International Regulation of Drug Traffic.

This body would serve as a forceful regulatory force primarily established to create and administer an international monopoly for the growing of opium and the manufacture of morphine. It would select one or more locations in the world for growing opium and manufacturing morphine. The Board would subsidize countries presently growing poppies and supervise the transition to alternative crops to be grown by individuals who would be economically injured by the scheme. In countries like Peru, which are presently considering a program of general agrarian reform, this transitional process could be instituted quite easily. This body would continue the estimate and import-export certification systems. Only individuals, governments or organizations licensed and supervised by this Board would be permitted to engage in the production, manufacture, trade and/or distribution of opium and its derivatives. Any drug traffic outside the auspices of this Board would be illicit and subject to international penal sanctions.

This Board would be divided into regional sub-boards located throughout the world wherever drug activity is prevalent. The Board would consist of six members plus the Chairman, each to be appointed by the International Narcotics Control Agency for a renewable term of two years each.

2. Central Drug Control Board

This body would constitute the enforcement arm for the direct control scheme. It would function in three areas. Within a particular state, the Central Drug Control Board would have the authority to direct and supervise arrests, seizures and investigations carried out by local officials. Although this police force would not have the authority to make arrests itself, it would be present and supervise law enforcement activities with respect to internal narcotics control in a particular state.

This force would also have the responsibility of enforcing the monopoly structure. It would have the right of direct inspection with respect to facilities operated by the monopoly and the right to impose a mandatory embargo where a state did not conform to its obligations under the monopoly.

Third, the force would serve as a central clearinghouse for information and statistics pertaining to the status of illicit drug trafficking in the world. It would serve as a central data bank for such information as the identity of present offenders and the location of suspected illicit growing of poppies.

Inasmuch as this Board would function in all areas of the world, regional sub-boards would be established in key geographic locations. Similarly, the membership on this Board should reflect a true international representation. Suggested members would include: Secretary-General of INTERPOL, Chief of the Division of Criminal Affairs of the Council of Europe, Director of the Bureau of Narcotics Control of the Arab League, a representative of the Organization of American States, and a representative of the Asian-Pacific Council. Each of these regional members would supervise the activities of the regional office located in his area. The International Narcotics Police would be staffed by the nationals in the country in which it would function. To insure close cooperation between the International Drug Control Board and the local authorities, each country would be required to establish a Bureau of Narcotics Information and Control if it has not done so already to act as liaison between the international and local authorities.

3. Arbitration Board for the Resolution of Drug-Related Disputes

This body would serve as a convenient and rapid facility for the resolution of disputes involving drug activity. Along with the Chairman, the members of this Board would include the Chief Justice of I.C.J., Deputy Secretary-General for Legal Affairs in the UN and the Chairman of the International Law Commission. These individuals would be instrumental in setting up regional forums for arbitration when a dispute arises. The parties would choose one member of the Board to act as umpire and each party would choose an arbitrator to form a tribunal. Decisions of the tribunal would be binding upon the parties but reviewable by the International Court of Justice. Significantly, individuals and organizations of any sort would have standing before any tribunal set up by this Board.

4. Clearing House Commission

This body would act as an open market for the purchase and sale of drug substances. It would be available to individuals and organizations as well as states. Hopefully, this body would serve as a means to funnel-off drugs from the channels of illicit drug traffic. Upon receipt of a quantity of drugs the Commission could then resell them for medical or scientific purposes through the structure of the monopoly.

In addition to the Chairman, two members would be appointed to the Commission and would be authorized to set price levels and establish regional offices in strategic locations throughout the world.

5. Central Board for the Treatment and Study of Drug-Dependence

This Board would assume the responsibility of establishing *Minimum Standards of Treatment of Drug-Dependent Persons*. Its activities would attempt to locate treatment centers throughout the world through direct activities where a country is unable to establish its own treatment centers. The Board would operate a central facility devoted to the study and research of the aspect of drug dependence. This central facility would freely supply information regarding drug dependence to interested parties. The expertise of WHO and FAO would be utilized in the administration of these programs.

Some of the minimal standards of treatment of drug-dependent persons would include:

- (a) Recognition that drug dependence is a disease and that as such is better controlled by treatment than by imprisonment.
- (b) Recognition of a distinction between the dependence-creating properties of the three main categories of drugs, *i.e.*, opium and its derivatives and cocaine, psychotropic substances and cannabis sativa and its derivatives.

The Board would seek to establish standards for:

- (a) what constitutes dependence.
- (b) how should treatment be given for each type of drug dependence.
- (c) what are the harmful physiological and/or psychological effects resulting from the use of specific drug substances.

The Board would consist of five members besides the Chairman and each would be appointed by the Chairman, perhaps from the personnel in the WHO or the FAO, for terms of two years each.

6. Central Legislative Board

This body consisting of seven members appointed by the Chairman, would assume the responsibility of establishing a proposed model statute concerning the prevention of drug-related offenses and the enforcement of such legislation. Such legislation should be based on clearly drawn distinctions among the three categories of drugs listed above, and should recognize the relationship between the social harm of the offense and the penalty imposed. Distinctions should also be made between: (a) international traffickers, (b) local pushers and dealers, (c) casual users, and (d) drug-dependent persons. Each category should be treated differently for purposes of prevention, enforcement, repression and treatment-rehabilitation legislation. Legislation should give the WHO the authority to add or remove any drug or substance from international control. Any model treaty-statute should include the following:

- (a) The classification of the crime of international drug trafficking as an "international crime" with offenders subject to universal jurisdiction.
- (b) Provisions for mandatory extradition with the right of review before the International Court of Justice with equal standing for individual recourses as well as states and International Narcotics Control Agency.³⁶
- (c) A clear prohibition on the production of opium upon countries not authorized to grow under the monopoly.
- (d) Provisions allowing direct inspection in producing countries to insure that all drugs remain in licit channels.
- (e) Provision that all substances containing drugs shall carry an international designation of such, not just the proprietary name.
- (f) Provisions allowing for the complete restructuring of the international control scheme as outlined above with the emphasis upon direct controls and the establishment of minimal standards of treatment of drug-dependent persons.
- (g) Provisions allowing for the "decriminalization" of the use of cannabis sativa products. Penalties for possession would be abolished. Selected manufacturers would be selected and licensed to produce and distribute limited quantities of marijuana products. This proposal would be based on several assumptions:
 1. that the health hazards in a purified, limited and carefully processed dosage of cannabis sativa will be reduced to the level of tobacco cigarettes.

³⁶ This proposal was made by the author to the Xth International Law Congress of Rome in 1969 in the American National Report; Bassiouni, *International Extradition: A Summary of the Contemporary American Practice and a Proposed Formula*, 39 REVUE INTERNATIONALE DE DROIT PENAL 494 (1968), reprinted in 15 WAYNE L. REV. 733 (1969).

2. that the use of cannabis sativa does not create a physiological dependence and that the degree of psychological dependence which it purportedly creates is doubtful.
3. that the systems of criminal justice in the world will be freed from the heavy burden of enforcing the restrictions against petty cannabis sativa.
4. that the sale of cannabis sativa could be regulated by location and age of user.
5. that such a program would give a flexibility in which more serious penal sanctions could be imposed if science proves the use of cannabis sativa to be more harmful than at present and similarly that controls could be liberalized if the opposite proves to be true.
6. that each country could capably control the licensing procedures, with standards for such licensing set by an international agency.

By necessity, such a treaty-statute could only become obligatory upon the countries of the world by their voluntary acceptance of such.

It is the opinion of this writer that the present international scheme served its purpose so far but must give way to a direct international control system; that there is no alternative to a concurrent program of curtailing user-demand and curbing the profit incentive in illicit traffic and trade. The President's Commission on Marijuana released some of its findings which support a form of decriminalization for users. The proposal outlined above may hopefully trigger an interest in the development of an alternative international control scheme to the present one which proved so ineffective judging by the increased rate of drug dependence everywhere in the world, even though that system was achieved arduously and over the span of half a century. It remains nonetheless, as it always was, one step behind the needs it was to serve.