

Chapter Two

Narcotics control regime under the United Nations

Following the Second World War, the United Nations took over the responsibilities of the global drug control. A protocol signed on 11 December 1946 (which entered into force on 10 October 1947) transferred to the United Nations the functions previously exercised by the League of Nations under the pre-World War II narcotics treaties. A number of protocols to improve the drug control system were established and signed in the post-war years, the most far reaching of which was the 1953 Opium Protocol. The other milestone treaties under the United Nations are¹

- (i) the Single Convention on Narcotic Drugs, 1953 (which was subsequently amended by a Protocol in 1972);
- (ii) the Convention on Psychotropic Substances, 1971; and
- (iii) the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988;

Each of these treaties were established to respond to the specific new or unresolved developments, and, add effective elements to the international drug control regime.

Initially, the drug control efforts were aimed at limiting the licit international trade in narcotic drugs to medical requirements. In fact, the international drug control system was based on this fundamental objective. But later, the controls were expanded to cover manufacture and production of drugs and, as of the late 1930s, to trafficking in drugs. The scope of controlled substances was gradually expanded from opium and morphine (Recommendations of the Shanghai Conference, 1909) to cocaine (The Hague Convention, 1912), cannabis (1925 Convention), synthetic opiates (1948 Protocol), psychotropic substances (Convention on Psychotropic Substances, 1971) and precursor chemicals (1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances). In addition, the 1988 Convention was designed to hit drug traffickers where it hurts them most, by depriving them of financial gains and freedom of movement, extending

¹ UN Treaty Series

the scope of the control measures to prevent money laundering and facilitate the tracing, freezing and confiscation of proceeds from drug trafficking. Moreover, it attempted to bar all havens to drug traffickers through its provisions for extradition of major drug traffickers and mutual legal assistance among the states.

The multilateral treaties signed in the following years after the establishment of the UN were designed to make the global drug control more effective and particularly the adoption of the Single Convention on Narcotic Drugs in 1961 modernized the international drug control system to cope with the current drug abuse situations. The Single Convention was subsequently widened and strengthened by the 1972 Protocol. When additional problems arose due to the introduction of new synthetic psychoactive drugs which were widely used for the effective treatment of mental illness but which were often accompanied by the development of dependence and abuse, the international community negotiated and adopted the Convention on Psychotropic Substances, 1971, which extended the international drug control system to cover some of these new drugs. The 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was introduced to prevent and effectively act against the scourge of illicit drug trafficking and deprive drug traffickers of their ill-gotten gains.²

At the first session of the United Nations, the Economic and Social Council created the *Commission on Narcotic Drugs* to replace the League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs. The Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, aimed at unifying the pre-existing multilateral treaties involving narcotics control and simplifying the international control machinery. The 1961 Convention merged the Permanent Central Opium Board and the Drug Supervisory Body into one body, the *International Narcotics Control Board*. In addition to the 1961 Convention, the other drug control conventions currently in force are the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

Increasing political tensions in the late 1930s clearly weakened international cooperation. During the war, the League became ineffective and ultimately dissolved. After World War II, the administration of the drug control regime was trans-

² Hamid Ghodse, "International Drug Control into the 21st Century", Ashgate Publishing, 2008, p.19

ferred from the defunct League of Nations to the United Nations by the Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs (Protocol of Lake Success) 1946³. The *Commission on Narcotic Drugs* (CND), which replaced the Opium Advisory Committee, was established by the ECOSOC at its first session. From then on it has been the main body advising ECOSOC on all drug-related matters. In 1948, the Paris Protocol⁴ supplemented the 1931 Convention and provided for bringing under international control drugs outside the scope of this Convention. This measure was much needed, because of the rise of *designer drugs* (in particular opiate derivatives with harmful effects, such as methadone or pethidine), which had been developed to evade international restrictions. Hence, the 1948 Paris Protocol was thought to eliminate loopholes by introducing the *similarity concept* into drug legislation, in order to prevent drug manufacturers from evading legislation by producing analogues of prohibited drugs. Art. 1 (1) Paris Protocol states that the Protocol applies to all drugs with similar harmful effects and abuse liabilities as the drugs specified in Art. 1 (2) 1931 Convention. A new opium protocol was signed in New York in 1953⁵. The intention behind the protocol was to eliminate the overproduction of opium by authorizing only seven States to produce opium for export (Bulgaria, India, Iran, Greece, Soviet Union; Turkey and Yugoslavia). However, because of the increasing complexity of the drug control system, the international community felt an increasing need to consolidate into one single treaty the numerous conventions which had been introduced since the initial Opium Convention of 1912. This led to the adoption of the Single Convention 1961. The Single Convention and the other two Conventions adopted in 1971 and 1988 became the foundation of today's drug control legal regime.

Following are the protocols and conventions signed under the auspices of the United Nations:-

³ .Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs, December 11, 1946 12 U.N.T.S. 179.

⁴ Protocol 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, November 19, 1948, 44 U.N.T.S. 277.

⁵ Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of , Opium, June 23, 1953, 456 U.N.T.S. 56

The _1946 Protocol_ Amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded earlier (The Lake Success Protocol, 1946)

This Protocol is the instrument that legally transferred, to the United Nations, the drug control functions previously exercised by the League of Nations. According to the preamble of this Protocol, the parties to the Protocol, considering that it would be appropriate for the performance of certain duties and functions relating to narcotic drugs with which the League had been invested, to be continued even after its dissolution, found it expedient that these duties and functions should be performed henceforth by the United Nations and the World Health Organization or its Interim Commission. The Protocol did not make any major change in the content of the previous narcotic treaties and agreements. Following the War II, the drug control bodies and functions of the League of Nations were folded into the newly formed United Nations. The UN Economic and Social Council (ECOSOC) took over primary responsibility through its Commission on Narcotic Drugs (CND), which replaced the Opium Advisory Commission (OAC) of the League. Under the CND, the Division of Narcotic Drugs (DND) was charged with the preparatory work for conferences. The Permanent Central Opium Board (PCOB) and the Drug Supervisory Body (DSB) continued under the CND in their respective roles of compiling statistics for national estimates and administering previous treaties. Canada's Sharman became the first Chairman of the CND who also held a seat on the DSB. All of these changes in responsibility and organization required amendments in all the existing international drug control treaties. Such amendments were made through the Protocol signed at Lake Success, New York, on 11 December 1946. This Protocol summarized the six existing international treaties together with the necessary corrections (e.g. transfer of responsibilities of the bodies of the League of Nations to the newly created United Nations bodies), without adding anything new.⁶

The _1948 Protocol_ Bringing Under International Control Drugs outside the Scope of the 1931 Convention

Due to progress in modern pharmacology and chemistry, several new synthetic drugs, capable of producing addiction, were discovered. These drugs were not covered under the 1931 Limitation Convention. With a view to bring under internatio-

⁶ World Drug Report, 2006.

nal control narcotic drugs not covered under existing conventions this Protocol was concluded at Paris in 1948.

The 1931 Convention had placed under international control compounds derived from natural raw materials, for example, natural alkaloids, such as morphine or cocaine, and semi-synthetic derivatives of opium alkaloids, such as heroin. Completely synthetic dependence-producing narcotic analgesics were marketed after the adoption of the 1931 Convention and, in the aftermath of the Second World War, it became evident that the problems connected with the use of these synthetic drugs (pethidine, methadone etc.) were identical with the consumption of natural opiates.

The 1948 Protocol was therefore intended to bring synthetic narcotic drugs under international control, but the extension of the scope of control was not limited to synthetic compounds. The Protocol applies to all drugs liable to the same kind of abuse and productive of the same kind of harmful effects as the drugs specified in article I, paragraph 2 of the 1931 Convention. This provision makes it possible to place under international control not only new synthetic drugs but also any addiction-forming drug, whether already discovered or to be discovered in the future. This provision can be considered as the birth of the similarity concept. It must be emphasized that prevention of the uncontrolled marketing (and eventual abuse) of new drugs constituted the basic philosophy of the Convention.⁷

In accordance with the Protocol, every State party to the Protocol is obligated to inform the Secretary-General of any drug used or capable of being used for medical or scientific purposes (and not falling within the scope of the 1931 Convention) which that party considers capable of abuse and of producing harmful effects. The Protocol authorized the Commission on Narcotic Drugs to place such a drug under provisional control. The provisional control measures might be altered in the light of the conclusions and decisions of WHO (and subsequently in the light of experience). The need for prompt action by the Commission, which resulted in the adoption of the 1948 Protocol, was confirmed by the Permanent Central Opium Board in 1951. In its report, the Board pointed out that the licit consumption of pethidine quantitatively exceeded morphine consumption; some national authorities reported that pethidine was abused in 28 per cent of addiction cases and that most morphine abusers had switched to methadone.

⁷ 1948 Protocol, Preamble

The _1953 Protocol_ Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium

This Protocol was aimed to fill the gap left by the previous narcotic agreements, protocols and conventions, in the limitation of the production of raw materials for the manufacture of narcotic drugs. Parties to the Protocol undertook to use opium exclusively for medicinal and scientific needs. For the purposes of control of drugs in the producing states this Protocol laid emphasis on the establishment of national agencies or other similar competent government authorities.

This Protocol required the governments to supply the Permanent Central Board with information on estimates of their requirements and statistics regarding the opium cultivation, consumption and use etc. It made a detailed provision regarding international supervision and enforcement measures.

The principle of limiting the manufacture and use of natural and semi-synthetic opium alkaloids was adopted and applied in the 1931 Convention, and extended to the synthetic narcotic analgesics by the 1948 Protocol, but there were no international agreements limiting the production and non-medical use of opium (except for the prohibition of opium smoking). The limitation of the production of raw materials had been considered by the League of Nations but follow up to the project was cut short by the war. The 1953 Protocol therefore specifically prohibited the non-medical use of opium, and it required each producing country to establish a monopoly to control the cultivation of the opium poppy and the production of opium⁸.

The practical merits of the 1953 Protocol cannot be evaluated on the basis of the treaty itself because it never became a vital international instrument. Rather, it must be considered as a forerunner of the provisions of the Single Convention on Narcotic Drugs dealing with the control of cultivation of "narcotic plants" and production of natural materials. The drafting and the adoption of the Single Convention on Narcotic Drugs was facilitated by the existence of the 1953 Protocol because some of the latter's provisions could be incorporated into the text of the Single Convention, and it was possible to avoid reopening discussions on such over ambitious and unrealistic proposals as the establishment of an

⁸ 1953 Protocol, Preamble

international opium monopoly or an international inspection system which were debated for several years during the development of the 1953 Protocol.

The 1953 Opium Protocol was finalized in New York and stated in Article 2 that Parties were required to limit the use of opium exclusively to medical and scientific needs. Various provisions were included to control the cultivation of the poppy as well as the production and distribution of opium. Article 6 restricted opium production to seven states (Bulgaria, Greece, India, Iran, Turkey, the Union of Soviet Socialist Republics and Yugoslavia). Other Parties could only import or export opium produced in one of these countries. The 1953 Opium Protocol comprised the most stringent international drug control provisions yet, but never gained the support. It did not receive sufficient ratifications to bring it into force until 1963, and by then it had been overtaken and terminated by the 1961 Single Convention.

The Single Convention on Narcotic Drugs 1961 replaced all the previous treaties and Protocols⁹. Today, international drug control efforts are grounded on the policy foundations laid by three United Nations treaties: the 1961 Single Convention on Narcotic Drugs, as amended by 1972 Protocol; the 1971 Convention on Psychotropic Substances; and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. More than 95% of U.N. member states, including the United States, are parties to these three international drug control treaties. In combination, these U.N. treaties limit the international production and trade of a defined set of narcotic drugs, psychotropic substances, and the precursor chemicals used to make these substances for primarily medical and scientific purposes. The treaties also establish international mechanisms to monitor treaty adherence, through the International Narcotics Control Board (INCB), and for the collection of data related to the illicit cultivation, production, and manufacture of proscribed drugs. The United Nations international drug control conventions are designed to ensure the safe use of potentially dangerous psychoactive substances. The treaties recognise that these substances often have legitimate scientific and medicinal uses that must be protected but that their abuse gives rise to public health, social and economic problems.

The Conventions list the controlled substances in different schedules with different levels of control, depending on the balance between therapeutic usefulness and the risk of abuse. Countries that become party to the Conventions are obliged

⁹ Preamble to the Single Convention, 1961

to adopt appropriate legislation, introduce necessary administrative and enforcement measures and cooperate with international drug control agencies and with other parties to the Conventions. Internationally devised measures are thus translated into the national controls by individual states within their own legal system.

The Single Convention on Narcotic Drugs, 1961

In the period following 1912 the narcotics control system grew rather haphazardly and by the late Fifties it became overly complicated. This led to the signing of 1961 Single Convention on Narcotic Drugs, which consolidated most of the existing rules at one place. The Convention, which entered into force on 13 December 1964 and was amended by 1972 Protocol¹⁰, is considered as a major achievement in the history of international efforts to control narcotics abuse. The main underlying objectives of the Single Convention, besides the codification into one multilateral treaty of the existing laws, were the streamlining of the control mechanisms and the extension of existing controls. The Single Convention was intended as a final and definitive document that supersedes all previous treaties, i.e. terminates and replaces them. Covered by the Single Convention are, inter alia, the definitions of the substances under control; the framework for the operations of the drug control bodies; reporting obligations of Member States regarding manufacture, trade and consumption of controlled substances; actions to be taken against illicit traffic and penal provisions. The scope of the Single Convention includes the classic plant based drugs, such as opium, heroin, cocaine, and cannabis. It consists of 51 articles and two schedules. Over 100 illicit substances are placed on the four schedules, with drugs being grouped according to their perceived dependence-creating properties.

The Preamble stipulates that _addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind_. Art. 4 (c), the central operational provision of the convention, manifests the prohibitionist approach by stipulating that _the Parties shall take such legislative and administrative measures to limit exclusively to medical and scientific purposes the production, manufacture, export, import distribution of, trade in, use and possession of drugs_. Article 2 of the Single Convention deals with control measures for the respective substances. The action of two agencies, the WHO

¹⁰ Protocol Amending the Single Convention of 1961, 1972 .

and the CND, is required to put a narcotic drug under control. Firstly, the WHO must make a finding as to whether a substance has the dangerous properties for a particular regime. Then the CND has the choice between acting in accordance with the recommendation of the WHO, or taking no action at all. Countries allowing the cultivation of coca bushes and opium poppies were required to establish national monopolies and to subsequently centralise and phase out the cultivation and production; the ultimate goal of these efforts being a full international prohibition of the non medical use of these substances. In regard to manufacturing, trade and distribution, and international trade of controlled narcotic drugs, a strict licensing system and extensive control measures are prescribed to the Parties. Under Art. 39, parties are allowed to adopt laws including more strict or severe measures of control than those provided by the Single Convention if they deem them desirable or necessary¹¹. The Single Convention of 1961 was amended in 1972 by a Protocol. Triggering the push for a protocol was the objective to further strengthen the international drug control system. This was to happen by, for example, introducing provisions on technical and financial assistance and on the establishment of regional centres for scientific research and education to combat illicit use and traffic in drugs. The newly established Art. 22 (2) provided for the seizure and destruction of illicitly cultivated opium poppies and cannabis. In addition to that, the 1972 Protocol modified the penal provisions by providing for extradition provisions similar to those in the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs.

The Single Convention puts strict controls on the cultivation of the opium poppy, coca bush and cannabis plant and their products, which, for the purpose of the Convention, are described as 'narcotics'.¹²

The extreme complexity of the provisions of the conventions, agreements and protocols on narcotic drugs was realized as early as 1948, when the Economic and Social Council invited the Secretary-General to prepare a single draft convention integrating the control systems of previous treaties. With the adoption of the 1953 Protocol, the number of treaties was increased to nine. Furthermore, in the 1950s,

¹¹ Article 39, Single Convention on Narcotic Drugs, 1961

¹² Article 2, Single Convention, 1961

there was an important change in the philosophy of the international community. Prior to the Second World War, opium smoking and the abuse of heroin, morphine and cocaine in the Far East were considered the main drug problems in the world, while problems connected with the abuse of cannabis resin were studied by the League of Nations. It was only after the War II, that discussions started on the possibilities of suppressing the traditional opium eating habit and cannabis consumption in Asia, and the coca chewing habit in South America. From a historical perspective, therefore, it can be concluded that in the 1950s no distinction was made between traditional use and abuse. This is reflected in the report of the Permanent Central Opium Board for 1955 on coca chewing, which states that, in 1954 a long-standing controversy had been brought to an end when it was agreed between the Governments concerned, WHO and the Commission on Narcotic Drugs that the habit constituted a form of drug addiction, even though it did not possess all of the characteristics of addiction, and that it should be suppressed. The new philosophy was translated into the respective provisions of the 1961 Convention, which led to the suppression of the opium eating habit and cannabis consumption in some Asian countries and, to some extent, a reduction in coca chewing in South America.

The Single Convention was not simply a synthesis of previous international instruments. It also extended the scope of control to other drugs (e.g. cannabis and coca leaf) and introduced a number of new control measures. Its main provisions are as follows:

- (a) It prohibits the production, trade and use for non-medical purposes of all narcotic drugs;
- (b) It extends the scope of control to cannabis and coca leaf;
- (c) It limits possession of narcotic drugs to medical and scientific purposes and to persons authorized to possess them;
- (d) It makes obligatory, for manufactured drugs, the limitation based on estimates introduced by the 1931 Convention (narcotic raw materials were excluded);
- (e) It incorporates the basic provisions of the 1953 Protocol (national opium monopoly, licensing of farmers etc.) and extends these provisions also to cannabis and coca leaf;
- (f) It extends the system of import certificates and export authorizations, introduced by the 1925 Convention, to poppy straw;
- (g) It completes the international system of statistical control by extending it over the entire range of transactions concerning all drugs covered by the Convention.

In addition, the Single Convention introduced new obligations for dealing with the medical treatment and rehabilitation of addicts and it divided drugs into four schedules so that greater or lesser degrees of control could be exercised in respect of the various substances and compounds.

Under the 1961 Convention, the Permanent Central Board and the Drug Supervisory Body were merged into one single body, the International Narcotics Control Board, and the tasks of the Board were substantially increased, mainly because the estimates and the statistical return systems were extended to all narcotic drugs. The responsibility of WHO was also increased. Scheduling decisions of the Commission were to be based on the recommendations of WHO which set up an expert committee for the study of the scientific and medical aspects connected with the use and abuse of new drugs.

The functioning and the provisions of the 1961 Convention (and of the other drug control treaties) were analysed by the International Narcotics Control Board and the United Nations International Drug Control Programme in reports submitted to the Commission on Narcotic Drugs which was requested by the General Assembly in 1994 to evaluate the functioning of the international drug control system. Without entering into the content of the reports on cannabis, coca leaf etc., it is necessary to draw attention to their main finding that the 1961 Convention had been successful in preventing the diversion of narcotic drugs from legal sources towards illicit channels so that black markets were no longer supplied by legally manufactured narcotic drugs. It should be emphasized that the provisions of the 1961 Convention were intended to prevent diversion but were not aimed at combating illicit traffic in clandestinely produced or manufactured drugs, which became a large-scale organized criminal activity after the adoption of the Convention. The Single Convention has played a central formative role in the creation of the modern prohibitionist international drug control system. It is a continuation and expansion of the legal infrastructure developed between 1909 and 1953. The States attending the

Conference to adopt the Single convention were divided into five distinct categories, according to their drug control stance and objectives:-

Organic states group: As producers of the organic raw materials for most of the global drug supply, these countries had been the traditional focus of international drug control efforts. They were open to socio-cultural organic drug use, having lived with it for centuries. While India, Turkey, Pakistan and Burma took the lead

role, the group also included the coca-producing states of Indonesia and the Andean region of South America, the opium- and cannabis-producing countries of South and Southeast Asia, and the cannabis-producing states in the Horn of Africa. They favoured weak controls because existing restrictions on production and export had directly affected large portions of their domestic population and industry. They supported national control efforts based on local conditions and were wary of strong international control bodies under the UN. Although essentially powerless to confront the prohibition philosophy, they effectively forced compromise in negotiations by working together to dilute the treaty language with exceptions, loopholes and deferrals. They also sought development aid to compensate for losses caused by strict controls.

Manufacturing states group: This group included primarily Western industrialized nations, with the key players being the U.S., Britain, Canada, Switzerland, the Netherlands, West Germany and Japan. Having no modern cultural affinity for organic drug use and being faced with the effects of drug abuse among their citizenry, they advocated very stringent controls on the production of organic raw materials and on illicit trafficking. As the principal manufacturers of synthetic psychotropics, and backed by a determined industry lobby, they forcefully opposed undue restrictions on medical research or the production and distribution of manufactured drugs. The group favoured strong supranational control bodies as long as they would continue to exercise *de facto* control over such bodies. Their strategy was essentially to "shift as much of the regulatory burden as possible to the raw material producing states while retaining as much of their own freedom as possible."

Strict control group: These were essentially non producing and non manufacturing states with no direct economic stake in the drug trade. The key actors were France, Sweden, Brazil and Nationalist China. Most of the states in this group were culturally opposed to drug use and suffered from abuse problems. They favoured restricting drug use exclusively to medical and scientific purposes and were willing to sacrifice a degree of national sovereignty to guarantee the effectiveness of supranational control bodies. They were forced to moderate their demands in order to assure the widest possible agreement.

Weak control group: This group was led by the Soviet Union and often included its allies in Europe, Asia and Africa. They considered drug control a purely internal issue and were adamantly against any intrusion on national sovereignty, such as

independent inspections. With little interest in the drug trade and minimal domestic abuse problems, they were opposed to giving any supranational organ excessive power, especially over internal decision-making.

Neutral group: This was a diverse group including most of the African countries, Central America, sub-Andean South America, Luxembourg and the Vatican. They had no strong interest in the issue apart from being guaranteed access to sufficient drug supplies. Some voted with political blocs, others were willing to trade votes, and others were truly neutral and could go either way on the control issue depending on the persuasive power of the arguments presented. In general, they supported compromise towards maximum agreement.

The Single Convention was the result of all these competing interests that symbolized a compromise among them. The Single Convention clearly upheld and expanded existing controls and in its breadth was the most prohibitionist document yet concluded, but it was not as stringent as it might have been. Onerous aspects of the 1953 Opium Protocol were not included, such as the provision restricting opium production to the seven enumerated countries. The prohibitive framework of the Convention had been broadened to include tight control over coca and cannabis.

The principal foundations of the previous treaties remained in place in the Single Convention. Parties were still required to submit estimates of their drug requirements and statistical returns on the production, manufacture, use, consumption, import, export, and stock build-up of drugs. The import certification system created by the 1925 Geneva Convention continued, and Parties were required to license all manufacturers, traders and distributors, all transactions involving drugs had to be documented. The Single Convention built on the trend of requiring Parties to develop increasingly punitive domestic criminal legislation. Subject to their constitutional limitations, Parties were to adopt distinct criminal offences, punishable preferably by imprisonment, for each of the following drug-related activities in contravention of the Convention: cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation. Furthermore, the granting of extradition was considered "desireable".

The Convention classified substances within four schedules according to levels of control. Schedules I and IV were the most stringent and covered primarily raw

organic materials (opium, coca, cannabis) and their derivatives, such as heroin and cocaine. Schedules II and III were more lenient and contained primarily codeine based manufactured drugs. At the U.S.'s insistence, cannabis was placed under the strictest control regime in the Convention: Schedule IV. This regime included drugs such as heroin, for which any medical use was considered "obsolete" by the WHO. The argument for placing cannabis in this category was that it was widely abused. The WHO later found that cannabis could have medical applications after all, but the structure was already in place and no international action has since been taken to alter this anomaly.

The Single Convention pleased the U.S. by extending control to include cultivation of the opium poppy, coca bush and cannabis plant, though not nearly as forcefully as it had negotiated under the 1953 Opium Protocol. Articles 23 and 24 of the Convention set up national opium monopolies and put very strict limitations on the international trade in opium. Article 49 of the Convention required Parties to completely abolish, over a maximum period of 25 years from the coming into force of the Convention, all quasi-medical use of opium, opium smoking, coca leaf chewing, and non-medical cannabis use. All production and manufacture of these drugs was also to be abolished within the same time periods. Only Parties for which such uses were "traditional" could take advantage of the delayed implementation; for others, prohibition was immediate. As the maximum time period ended in 1989, these practices are today fully prohibited and the drugs may be used only for domestically regulated medical and scientific purposes. Apart from consolidating the previous treaties and expanding control provisions, the Single Convention also streamlined the UN drug related supervisory bodies. The PCOB and the DSB were combined into a newly created organ, the International Narcotics Control Board (INCB), designed to monitor application of the Convention and to administer the system of estimates and statistical returns submitted annually by Parties. It would consist of eleven members, three nominated by the WHO and eight by Parties to the Convention and UN members. Proof of the manufacturing lobby's effectiveness in negotiations was indicated by the prerequisite knowledge required for WHO nominees: "medical, pharmacological or pharmaceutical experience". The INCB was given a weak embargo power enabling it to recommend that Parties stop the international trade of drugs with any Party state not complying with the provisions of the Convention. The prohibition focus of the Convention was emphasized by

the minimal attention paid to drug abuse problems. Only Article 38 touched on the social, demand side of the drug problem by requiring Parties to "give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts"¹³. Furthermore, it was considered desirable that Parties establish adequate facilities for the effective treatment of drug addicts, but only if the country had a serious problem of drug addiction and its economic resources would permit. The minor recognition of demand reduction approaches, such as prevention through education, has been one of the key criticisms of the Single Convention, and international drug control treaties in general. The Single Convention effectively consolidated several decades worth of assorted drug control machinery into one key document administered by one principal body, the United Nations. The extreme complexity of the provisions of the conventions, agreements and protocols on narcotic drugs was realized as early as 1948, when the Economic and Social Council invited the Secretary-General to prepare a single draft convention integrating the control systems of previous treaties.

Convention on Psychotropic Substances (1971)

In the late 1960s, the technical advances in the manufacture of synthetic drugs led to an unregulated global market for psychotropic substances (such as amphetamines, barbiturates and hallucinogens). After careful analysis, the CND concluded that the existing drug control system was limited to narcotic drugs and that the Single Convention was not applicable to psychotropic substances. The international community felt that a control mechanism over those substances was urgently needed and the CND was called upon to draft a convention which would bring those substances under control. The 1971 Convention consists of 33 articles and four schedules. It is fair to say that it is based on the Single Convention and its general purpose is (similar to Art. 4 of the Single Convention in respect to narcotic drugs) that the manufacture, trade and use of psychotropic substances under control shall be limited to medical and scientific purposes. Any substance included in the schedules must be licensed by the government for manufacture, trade and distribution. However, compared with the strict controls imposed on plant-based drugs under the Single Convention, the 1971

¹³ Article 38, Single Convention, 1961.

Convention imposes a somewhat weaker control mechanism¹⁴. Similar to the control mechanism of the Single Convention, the WHO recommends whether a drug should be put under control. But, the CND is not bound by the recommendation of the WHO. It may (provided always that the WHO has made and communicated its findings on control measures) place the substance concerned under a control regime, change the control regime or free a substance from a control regime, contrary to the recommendations of the WHO. This obviously leads to much wider discretion of the CND under the 1971 Convention than under the Single Convention. Detailed provisions deal with licences, prescriptions, and warnings on packages and advertisements. Concerning prescriptions the main difference between the Single Convention and the 1971 Convention is that under the 1971 Convention a medical prescription is, in general, required for the use by an individual in regard to all psychotropic substances or preparations (under the Single Convention a medical prescription is only required for certain drugs in its Schedule I). According to Art. 10 of the 1971 Convention, directions for use, including cautions and warnings, need to be given only if they are necessary for the safety of the patients using them. What is necessary for the safety of the user is left to the judgment of the Party concerned. Advertisements to the general public for psychotropic substances shall be prohibited; this includes newspapers, television and radio, but not announcements in technical journals, e.g. published specifically for medical practitioners. In Art. 20 the 1971 Convention also addresses measures to be taken against the abuse of psychotropic substances, including treatment, education, rehabilitation and social reintegration. It is acknowledged that a system of penal sanctions and administrative control alone is not sufficient to keep drugs from victims and should therefore not form the sole subject of international cooperation against drug abuse¹⁵. However, the penal provisions are similar to those in the Single Convention (but without the extradition provisions which were added to the Single Convention by the 1972 Protocol).

The international control of synthetic opioids, introduced in 1948, was followed by the extension of the scope of control to other synthetic drugs only in 1971. The

¹⁴ Psychotropic Convention, 1971.

¹⁵ Article 20, Psychotropic Convention, 1971.

hesitation of some industrialized countries to acknowledge the necessity for control over the international trade in amphetamines and barbiturates contributed to the delay and to the adoption of inadequate control measures. The scope of international control was substantially increased by the Convention on Psychotropic Substances, with its extension to three drug classes: sedatives (at that time mainly barbiturates); amphetamine-type stimulants; and LSD-type hallucinogens.

For several decades, most Governments were of the opinion that national controls were sufficient for the prevention of the public health and social consequences of the abuse of barbiturates and amphetamines. Following reports on the increase in the non-medical use of both drug classes and the appearance of new forms of abuse (e.g. the intravenous administration of amphetamines in excessive doses assumed epidemic proportions in some countries), it was realized that national control measures must be complemented by international action. In addition, the abuse of LSD and some other hallucinogens suddenly emerged as a new problem; the rapid spread of the abuse of such new drugs, their clandestine manufacture and the increase in their illicit trafficking warranted immediate international intervention.

In theory, international control of those substances could have been solved through the amendment of the 1961 Convention but such proposals were constantly rejected by the majority of the members of the Commission on Narcotic Drugs because of their fear of the dilution of the narcotic control system by extending it to cover a huge number of pharmaceutical preparations. It must be noted that, in many countries, thousands of products were marketed which contained barbiturates in combination with other pharmaceuticals (including amphetamines) as compared to the current situation where most such combination products have disappeared from the market. Similarly, in 1971, in many countries, the number of pharmaceutical preparations containing amphetamines was substantial, in contrast to the present, when in most countries most of the amphetamines (and practically all of their combination products) have been withdrawn from the market.

It can be seen that the 1971 Convention is the combination of two completely different control regimes: one for the LSD-type hallucinogenic drugs (e.g. "street drugs" which are not used in medicine and are manufactured in clandestine laboratories) in Schedule I, and another for stimulants, hypnotics, sedatives and anxioly-

tics, which are products of the licit pharmaceutical industry, in Schedules II, III and IV. It must be noted that, owing to the spectacular decrease in the prescription and licit manufacture of amphetamine and methamphetamine, the black market in these drugs is today mainly supplied by clandestine laboratories.

The control regime for substances in Schedule I is stricter than that provided by the 1961 Convention for narcotic drugs, whereas the provisions for psychotropic substances in the other three Schedules of the 1971 Convention are mainly national control measures. Most of the international obligations (estimates, export-import authorizations etc.) were omitted from the new treaty.

The 1971 Convention was drawn up in conformity with the intentions of several industrialized countries which also wanted to limit the number of substances in Schedules II, III and IV. Unfortunately, this intention led to the elimination of some substantial elements of the preventive structure of the international drug treaty system:

(a) In order to avoid the control of all barbiturates, the "similarity concept" of previous treaties was replaced by new scheduling criteria. In consequence, it is impossible to put under control similar substances containing the same basic chemical structure (this possibility had existed since 1925). Thus, every new drug, including designer drugs, must be evaluated individually by a complicated and time consuming process;

(b) In order to limit the number of drugs in the Schedules, the possibility of the control of precursors (which existed in previous treaties since 1925) was also excluded. The consequence was a 17-year delay in the introduction of the international control of LSD and amphetamine precursors, through the adoption of a new treaty (in 1988).

A few years after the entry into force of the 1971 Convention, it became apparent that its provisions were insufficient to prevent the diversion of substances in Schedules II, III and IV. The provision for the prohibition or restriction of importation of specified psychotropic substances on an individual basis was not a substitute for monitoring. The Commission and the Economic and Social Council reacted to that situation by requesting parties to apply additional control measures on a voluntary basis. The adequacy of this action has been confirmed by the compliance of most countries with the requests.

Despite some major weaknesses and deficiencies, the 1971 Convention constitutes an important step in the development of the international drug control system.

One of its merits is the inclusion of demand reduction provisions, which means that the prevention of drug abuse through early identification, treatment, education, aftercare, rehabilitation and social reintegration etc. has become an obligation of Governments.

In the 1960s, following the signing of the Single Convention, drug use and abuse exploded around the world, most notably in developed Western nations. The increase was especially noticeable in the pervasive use and availability of synthetic, psychotropic substances created since World War II, such as amphetamines, barbiturates, and LSD. Certain substances became essentially consumer goods, resulting in many people becoming addicted. Most of these drugs were not subject to international control, and because national systems of regulation differed widely, trafficking and smuggling flourished. Throughout the 1960s, the CND and the WHO debated the issue of control of psychotropic drugs at regular meetings and made various recommendations to member states concerning the national control of particular substances, including stimulants, sedatives and LSD. In January 1970, the CND discussed a draft treaty prepared by the UN Division of Narcotic Drugs on the international control of psychotropic drugs. Following some modifications by the CND, this document became the basis for negotiations at the plenipotentiary conference convened in Vienna on 11 July 1971, the conference that resulted in the Psychotropics Convention.

The 1961 Single Convention had been used as a template for the draft Psychotropics Convention, and many of the former's features are found in the latter: CND/INCB administrative authority, schedules distinguishing levels of control for different drugs, mandatory transaction documentation and licencing, an import/export control system, illicit trafficking and penal provisions. Although a superficial reading may reveal little difference between the two Conventions, they are extremely different. The Psychotropics Convention imposes significantly weaker controls. The reason for this becomes evident when the positions of the negotiating stakeholders are revealed and selected parts of the two treaties are carefully compared. The overwhelming influence of the multinational pharmaceutical industry on the Psychotropics Convention was particularly noticeable.

The countries participating in the Vienna Conference for the adoption of the Psychotropic Substances Convention were divided into two distinct groups with conflicting positions. One group included mostly developed nations with powerful

pharmaceutical industries and active psychotropics markets, essentially the "manufacturing group." The other group consisted of developing states, supported by socialist countries, with few or no psychotropic manufacturing facilities, predominantly the "organic group." At these 1971 negotiations, however, the positions of the two groups were entirely reversed. The manufacturing group adopted the traditional arguments of the organic group: weak controls, national as opposed to international controls, national sovereignty taking precedence over a strong supranational UN body. The justification for these positions was that strict controls would be difficult to carry out and would cause financial loss. The organic group, on the other hand, pushed hard for strict controls similar to those they had been forced to accept under the Single Convention.

Beginning with a comparison of the Preambles of the two Conventions is appropriate and revealing. Although the Preamble is not legally binding, it is intended to provide an overview of the spirit of the instrument. In the Single Convention, addiction to narcotic drugs is described as "a serious evil for the individual fraught with social and economic danger to mankind". It is recognized, however, that "the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes"¹⁶. By contrast, the Psychotropics Convention makes no mention of the serious evil of addiction, but rather notes "with concern the public health and social problems resulting from the abuse of certain psychotropic substances." As well, it is recognized that "the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted." The general tone of the Psychotropics Convention Preamble is less harsh, and it is implied that "abuse of certain," not all, psychotropics, is not as serious a problem as "addiction to narcotic drugs" in general. The approach to organizing the drugs into schedules with varying levels of control also differed between the two Conventions. In the 1961 Single Convention negotiations, when the placement of a drug in a particular schedule was disputed, that drug almost always ended up in a schedule the organic group disagreed with, for example, the placement of cannabis in Schedule IV. The assumption acted upon by the

¹⁶ . Preamble to Single Convention, 1961.

manufacturing group in forcing such placements was that narcotic drugs should be considered hazardous unless and until proven not to be. This reasoning did not apply, however, when U.S. economic interests were at stake: in 1971, the U.S. delegation argued forcefully and often successfully that organic raw materials should be in the strictest schedules, while their manufactured derivatives should go in the weaker schedules.

The Psychotropics Convention also contains four schedules of control, although their nature and organization is substantively different from those of the Single Convention. For example, the most stringent schedule in the Single Convention is Schedule IV, which is equivalent to Schedule I in the Psychotropics Convention. In both cases, the drugs included are only available for limited use by authorized persons in government-operated medical/scientific institutions and their manufacture, import and export are strictly controlled. The weakest schedule in the Psychotropics Convention is Schedule IV, which contains tranquilizers. Certain manufacturing states tried to eliminate Schedule IV by arguing that such drugs were sufficiently regulated by national controls, rendering international control unnecessary. Schedule IV remained in the end, albeit with a much smaller number of drugs in it, but the underlying assumption used in 1961 regarding placement had been completely reversed, in particular by the U.S.: "unless there was substantial proof that a substance was harmful, it should remain uncontrolled."

Another key difference between the two Conventions is highlighted through a close comparison of the schedules. Previous drug control treaties, including the Single Convention, always included not just the base substances, but also extended control to include their salts, esters, ethers and isomers, i.e., their derivatives. However, derivatives were completely absent from the schedules of the Psychotropic Convention. The effect of this is that every substance that is to come within the treaty regime must be explicitly mentioned. In practical terms, it is impossible to do this as new derivatives are constantly being created, and they comprise 95 per cent of the substances created by pharmaceutical firms. A general inclusion of derivatives would have meant that new substances would be automatically included. It seems that the omission was the result of a deal made between political representatives when the technical experts were not present, the derivatives had to be sacrificed in order for the manufacturing states to agree to sign the treaty.

The system of estimates set out in Article 19 of the Single Convention requires Parties to report annually to the INCB how much of a particular substance controlled under the treaty they will need for the next year¹⁷. This system is one of the pillars of the international drug control regime and dates back to the second Geneva Conference, which led to the 1925 *International Opium Convention*. It was completely excluded in the Psychotropics Convention. As obvious, this omission was clearly in the interests of the manufacturing states, because without estimates of need it is impossible to calculate whether more of a substance than can legitimately be put to use is being fabricated. This allowed multinationals to manufacture unlimited quantities of psychotropic substances without being constrained by annual limits on production based on licit need. These omissions, derivatives and estimates, were largely corrected during the 1970s and 1980s by the DND and the INCB through quiet recourse to customary international law. The DND and INCB asked Parties to submit psychotropics information and statistics not required by the Convention. The initial positive responses from various organic group states were then used to convince others to follow. Similarly, the CND and WHO simply announced that derivatives would fall within the schedules. Some governments complied and others were eventually forced by international pressure to follow. Article 3 of the Single Convention gives the WHO the key role in determining whether, based upon a medical/scientific analysis, a new drug should be added to a schedule and thus placed under international control. The WHO's recommendation is presented to the CND, which makes the final decision. However, any Party may appeal the CND's decision to ECOSOC within 90 days. The ECOSOC decision is final. While a decision is being appealed, the CND may still require Parties to place control measures on the substance in question. Under the Psychotropics Convention the WHO continues to make control recommendations based upon medical and scientific criteria. However, Article 2(5) explicitly directs the CND to bear in mind "the economic, social, legal, administrative and other factors it may consider relevant" in coming to its decision. Furthermore, Article 17(2) states that the CND's decision is subject to approval by a two-thirds majority of CND members. The CND decision may still be appealed to ECOSOC, although

¹⁷ Article 19, Single Convention, 1961.

Parties have up to 180 days to bring the appeal.¹⁸ As well, the ECOSOC decision is not necessarily final, there is the possibility of continual appeals. Finally, while a decision is being appealed, Article 2(7) allows a Party to take "exceptional action" and exempt itself from certain control measures the CND may have ordered for the substance in question pending the outcome of the appeal. The cumulative effect of all of these additions to the Psychotropics Convention is that it can be much harder for the WHO to bring a new psychotropic drug within the control system than to add a new narcotic drug to the Single Convention.

The criteria for placing a new drug under control also differ between the two Conventions. According to Article 3 of the Single Convention, a narcotic drug will come within the control regime if it is "liable to similar abuse and productive of similar ill effects as the drugs" in the relevant schedule. The criteria required under Article 2(4) of the Psychotropics Convention are significantly and substantively more stringent. The WHO must find:

(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 hallucinations or disturbances 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.

Taking the lead for the manufacturing group on this point, the U.S. and Britain were the most adamant about including such highly restrictive criteria.

In terms of addressing the demand side of drug problems, the Psychotropics Convention is far ahead of the Single Convention. Article 20 of the 1971 treaty is somewhat of a milestone as it introduced the concepts of public education and abuse prevention into the international drug control legal infrastructure¹⁹. In parti-

¹⁸ Article 17, Psychotropic Convention, 1971.

¹⁹ . Article 20, Psychotropic Convention, 1971.

cular, Parties are to take all practical measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, aftercare, rehabilitation and social reintegration of the persons involved, and shall coordinate their efforts to these ends. Promoting the training of personnel to carry out these tasks is a requirement "as far as possible," and encouraging the study and public awareness of etiological issues related to abuse is also endorsed. Although the provisions leave considerable room for countries to avoid taking measures, they are a definite improvement over the Single Convention.

The penal provisions laid out in Article 22 of the Psychotropics Convention allow states to use treatment, education, after-care, rehabilitation and social reintegration instead of just conviction or punishment in dealing with abusers who commit offences under the Convention. While the acknowledgement of treatment and rehabilitation is an improvement over previous strictly penal provisions, it is intended to be used primarily in addition to, rather than as an alternative to, imprisonment. The overall outcome of the 1971 negotiations was a treaty that was significantly weaker than the Single Convention. Furthermore, any possibility of revisiting the provisions of the Psychotropics Convention was not realistic in the early 1970s as a new chapter in the U.S. "war on drugs" was beginning.

The international control of synthetic opioids, introduced in 1948, was followed by the extension of the scope of control to other synthetic drugs only in 1971. The hesitation of some industrialized countries to acknowledge the necessity for control over the international trade in amphetamines and barbiturates contributed to the delay and to the adoption of inadequate control measures.

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Protocol Amending the Single Convention, 1972

The Single Convention was further strengthened by the 1972 Protocol that was concluded to amend it. This Protocol underscores the necessity for increasing efforts to prevent illicit production of, traffic in, and use of narcotics. The 1972 Protocol amending the 1961 Convention can be considered the first response to the increased illicit cultivation of the opium poppy and the cannabis plant, the increased illicit production of cannabis, cannabis resin and opium, the increased illicit manufacture of heroin, and the increased illicit traffic in all of those drugs. It was expected that strengthening the respective obligations of parties and expanding the role of the Board would lead to a greater efficacy of national efforts in the suppression of such illicit activities and to better cooperation among national authorities, with the assistance of the Board in preventing the international expansion in trafficking. The provisions of the Protocol were, however, unable to counteract the further increase in the illicit cultivation, production and manufacturing trends. It was only in 1988 that the international community realized the necessity of undertaking more concentrated action and the importance of developing new methods of combating the activities of organized criminal cartels.

There are two other elements in the 1972 Protocol which should be mentioned: (a) The 1961 Convention was amended by demand reduction provisions which were patterned after the respective provisions of the 1971 Convention; (b) The provisions of the 1961 Convention, intended to limit the availability of narcotic drugs to medical and scientific purposes, were supplemented by the obligation of parties to ensure the availability of those drugs for such purposes.

Both amendments are very important. First, because they reflect the realization that without the reduction of illicit demand, supply reduction measures will bring temporary results only, and, second, one of the basic principles of international drug control is that reduction in the availability of drugs for non-medical purposes should not affect and limit their therapeutic use.

The Nixon administration in the United States took an initiative to start measures to strengthen the Single Convention. Forceful U.S. lobbying led to a UN plenary conference being convened in March 1972 to amend the Convention. The result of the conference was the Single Convention Protocol. The

main goal of the amendments was to expand the role of the INCB in the control of licit and illicit opium production and in illicit drug trafficking in general. The U.S. intended to revive aspects of the 1953 Opium Protocol by attempting to reduce licit opium production. However, in 1972, licit production was just meeting licit demand, and few countries were willing to risk a global shortage of opium for medical use. Thus, the U.S. proposals were significantly diluted.

The backbone of the Single Convention Protocol consists of provisions enhancing the powers of the INCB, especially in relation to illicit trafficking. In Article 2 of the Single Convention, the definition of the INCB's functions now includes an explicit reference to the prevention of "illicit cultivation, production and manufacture of, and illicit trafficking in and use of, drugs." Article 35 encourages Parties to supply the INCB and the CND with information on the illicit drug activity in their territory; as well, the INCB is empowered to advise Parties on their efforts to reduce their illicit drug trade. When Parties conclude extradition treaties among each other, such agreements are now deemed to automatically include the drug-related offences, including trafficking, set out in the Single Convention. In Article 22(2) of the Psychotropics Convention, it is simply "desireable" that such offences in relation to psychotropic substances be made extraditable between Parties. The Protocol amended the abuse prevention provisions of the Single Convention so they now look alike those in Article 20 of the Psychotropics Convention. The amended Single Convention also echoes the Psychotropics Convention by now allowing countries to use "treatment, education, after-care, rehabilitation and social reintegration" either as an alternative to or in addition to conviction or punishment.

Although not as stringent as originally intended by the U.S., the Single Convention Protocol continued the prohibitive tradition of the international drug control regime, especially against opium, and stepped up the increasingly intense war on illicit trafficking²⁰. The 1972 Protocol amending the 1961 Convention can be considered the first response to the increased illicit cultivation of the opium poppy and the cannabis plant, the increased illicit production of cannabis, cannabis resin and opium, the increased illicit manufacture of heroin, and the increased illicit traffic in all of those drugs. It was expected that

²⁰ 1972 Protocol Amending the Single Convention of 1961

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United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 is designed to hit drug traffickers where it hurts them most, by depriving them all ill-gotten financial gains and freedom of movement. One of the innovative provisions this Convention concerns the tracing, freezing and confiscation of proceeds and property derived from drug trafficking.

The international efforts to fight against the drug problems are based on two conflicting approaches centered on the supply and demand concepts. Some countries support a supply based approach and aim many of their drug programmes towards the eradication of narcotics trade at the source itself. Some other countries, however, advocate a demand oriented solution where the objective is to wipe out demand by rehabilitating drug users, thus eliminating the need for the supply. A third solution is now emerging, which focuses on another aspect of trafficking that controls both supply and demand, i.e., the flow of money. Thus

blocking or taking away the illegal profits of drug trafficking can be more effective than trying to regulate the source or the drug market. Although the international drug control system proved satisfactory concerning the licit production of narcotic drugs and psychotropic substances, the situation regarding illicit production did not noticeably improve. By the mid 1980's it was apparent that global drug abuse had reached unprecedented dimensions. Major concerns were the growing illegal opium production in Asia and the illegal cocaine production in Andean countries. Against this background the CND was requested by the General Assembly to prepare a draft convention against illicit traffic in narcotic drugs. Three years of deliberations in expert and review groups resulted in the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The main accomplishment of the 1988 Convention is that it extends controls to the entire market chain, including precursors at the beginning of the chain to anti-money laundering measures at the end of the chain. The Convention consists of 34 articles (together with an annex containing two lists of substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances) and aims at strengthening compliance with the established drug control system²¹. Member States are required to cooperate and to coordinate their efforts in preventing global drug trafficking. However, some States were worried that the Convention could be misused for other political objectives. Art. 2 (2) therefore clarifies that 'the Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States'. While under the Single Convention member States are obliged to make trafficking in drugs punishable offences, Art. 3 of the 1988 Convention goes a step further and obliges Parties to make them criminal offenses. According to Art. 3(2) this includes the possession, purchase or cultivation of drugs for personal consumption. Nevertheless, States are allowed to provide for alternatives to punishment (e.g. treatment, education or rehabilitation) in cases of a minor nature and personal consumption. Furthermore, States are called upon to introduce domestic legislation to prevent drug related money-laundering activities. Although money-laundering was in principle already a punishable offence under

²¹ . Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

the Single Convention, the provisions of the 1988 Convention are much more precise. Art. 3 (1) (b) establishes drug related money-laundering as a criminal offense, and, in targeting criminal proceeds, the Convention asks State Parties to confiscate proceeds from drug related offences and to empower courts to seize bank and financial records. As has already been mentioned, the establishment of a control system for precursor chemicals was a novelty to the drug control regime. According to Art. 12, the manufacture, transport or distribution of precursor chemicals should be deemed criminal offences. This is reflected in the extension of criminal offences for which extradition can be sought. They include the offences of drug related money-laundering and the manufacture, transport and distribution of equipment and precursor chemicals. Some confusion was created by Art. 14 (2), which stipulates that measures adopted to prevent illicit cultivation of narcotic plants shall respect fundamental human rights and take due account of traditional licit uses, where there is a historic evidence of such use. Some States tried to interpret this as an acknowledgement that traditional licit uses still existed and had to be taken into account. However, the Single Convention had already outlawed the traditional habits of cocoa chewing and opium smoking. The maximum transitional period granted by the Single Convention ended for opium in 1979 and for cannabis and the coca-leaf in 1989. Thus, it is clear that the drug conventions, including the 1988 Convention, do not provide for a production of these controlled drugs for a licit traditional use. Such a conclusion is underpinned by Art. 14 (1) of the 1988 Convention, which points out that any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances under the provisions of the 1961 Convention.

After the adoption of the 1961 Convention and the emergence of cannabis abuse in industrialized countries, it became evident that the provisions of that Convention, intended to eliminate the traditional use of cannabis, were inadequate to prevent the large-scale illicit traffic in cannabis which was a consequence of the increase in its new illicit demand. There are no reliable statistics on the number of new cannabis abusers in Western countries but the explosion in demand can be illustrated by the example of the United States where, prior to the decriminalization of the possession of marijuana for personal use, one million persons were arrested between 1970 and 1973 for marijuana-related crimes. The

propagation of the modern (e.g. non-traditional, non-medical, non-ceremonial) form of cannabis smoking in Western European countries in the 1970s created further large markets for illicit traffic in cannabis and cannabis resin.

The establishment of the international drug control system contributed to a large extent to the elimination of the world's greatest addiction epidemics, which were created in the nineteenth century and at the beginning of the twentieth century by the legalization of the opium trade and opium smoking and the free sale of morphine and heroin, and also to the prevention of new epidemics. In 1969, when the number of heroin addicts in the world was very low, the death of 224 American teenagers due to heroin overdose can be regarded as the first sign of the beginning of a new wave of heroin abuse. The interaction between the spread of heroin abuse and the propagation of new clandestine heroin laboratories led to the problem becoming global and the adoption of the 1972 Protocol amending the 1961 Convention could not stop the flow of illicit opium to clandestine laboratories and the increasing availability of illicit heroin.

Numerous national and regional drug control initiatives took off in the 1970s and 1980s. In Europe, the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs, commonly known as the "Pompidou Group", was created and facilitated drug-related discussions between the countries. As well, the Heads of National Law Enforcement Agencies (HONLEA) met regionally, in Asia and the Pacific in the 1970s and spreading to Africa, Latin America and Europe in the 1980s, to improve police and customs drug enforcement cooperation. INTERPOL expanded its operations and became "an important clearinghouse for information and a sponsor of local, regional, and global drug enforcement meetings." Amid such developments, concerns arose within the UN and among its main control-oriented members that the anti-trafficking efforts of the international drug control system were compromised by the fact that certain nations were not Parties to the Conventions and/or did not have domestic law enforcement systems adequate to combat illicit trafficking. In 1984, the UN General Assembly adopted Resolution 39/141, which requested ECOSOC to instruct the CND to "as a matter of priority" prepare a draft convention considering "the various aspects of the problem of illicit drug trafficking as a whole and, in particular, those not envisaged in existing international instruments." Thus, the goal was to add an additional "trafficking-specific" layer to the drug control system to complement the two existing Conventions. The draft treaty was finalized

during the 1987 UN Conference on Drug Abuse and Illicit Trafficking. Also during this Conference, a non-legally-binding Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (CMO) was adopted to encourage states to implement existing treaty obligations. The CMO focused on four areas: (1) prevention and reduction of illicit demand; (2) control of supply; (3) suppression of illicit trafficking; and (4) treatment and rehabilitation. Many of the targets set out in the CMO were reflected in the draft treaty. Between 25 November and 20 December 1988, 106 states met in Vienna to negotiate a final text. The result was the Trafficking Convention.

The international community was not prepared for the explosion in cocaine abuse in the 1980s, which was accompanied by the large-scale illicit manufacture of cocaine in some Latin American countries. The dramatic increase in cocaine abuse is illustrated by two reports submitted by the United States to the Secretary-General of the United Nations: in 1970, no cocaine abuse was reported, while in 1988, the number of cocaine abusers was estimated at 12,200,000, among them 1,242,000 daily abusers, and 1,696 cocaine-related deaths were registered²². It was, therefore, realized that the control methods of the existing international treaties, which had been successful against the diversion of narcotic drugs from legal sources to illicit channels, must be complemented by concentrated and coordinated international action and new, more efficient methods of combating organized illicit drug traffic. The adoption of the 1988 Convention should be considered a response to this new situation. The International Conference on Drug Abuse and Illicit Traffic, held in 1987, was the prelude to the 1988 Convention, with a consensus on the following issues relating to illicit traffic:

- (a) The time when the world was divided into producing countries and consuming countries was over. Drug abuse had become a global phenomenon and illicit cultivation, production and manufacture were no longer limited to a small number of countries;
- (b) Illicit traffic had become an international criminal activity and there were close links between illicit drug traffic and other organized criminal activities;

²² . Bulletin on Narcotics Abuse, 1988

(c) Illicit traffic generated large financial profits, thus enabling criminal organizations to penetrate and corrupt the structures of Governments, societies and legitimate commercial and financial business.

All of the above phenomena were drastically manifested in the South American countries that initiated the 1988 Convention, which introduced a number of new methods against illicit traffic, including, *inter alia*:

(a) Measures that enabled Governments to deprive persons engaged in illicit traffic of the proceeds of their criminal activities;

(b) A comprehensive legal framework for close collaboration;

(c) Monitoring of substances (including some precursors of some psychotropic substances), chemicals and solvents frequently used by clandestine drug laboratories. At the same time, implementation of the provisions of the 1961 and 1971 Conventions became a treaty obligation of parties to the 1988 Convention.

The provisions of the 1988 Convention contain practically all of the elements necessary to overcome constitutional and other obstacles hindering cooperation among national authorities with different legal and criminal jurisdiction systems. The possibilities for international police cooperation were widened by the Convention, including authorization of controlled delivery techniques. The success of the 1988 Convention now depends upon the determination of Governments to implement the complex and comprehensive provisions of this new international instrument.

The Trafficking Convention is essentially an instrument of international criminal law²³. The intent of the treaty is to harmonize national, drug-related criminal laws and enforcement actions around the world to attempt to decrease illicit drug trafficking through the use of criminalization and punishment. Under the Convention, Parties are obligated to create and implement very specific criminal laws aimed at suppressing illicit trafficking. These laws relate to such aspects of the problem as money laundering, confiscation of assets, extradition, mutual legal assistance, illicit cultivation, and trade in chemicals, materials and equipment used in the manufacture of controlled substances. As with the other two Conventions, the CND and the INCB are charged with administration of the Convention. Furthermore, the Trafficking Convention allows demand-side elements to be used

²³ 1988 Convention provides for stricter punishments for drug trafficking.

in addition to or, for minor offences , as an alternative to conviction or punishment.

The Preamble of the Convention describes illicit traffic as "an international criminal activity" and highlights the "links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States." Emphasis is put on the importance of strengthening and enhancing effective legal means for international cooperation in criminal matters for suppressing the international criminal activities of illicit traffic." Even the single reference in the Preamble to demand-side issues is couched in criminal law language: "Desiring to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic". The implication is that drug users are also to be considered criminals. The Preamble clearly reflects its prohibitionist roots, even explicitly as it reaffirms "the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances and the system of control which they embody". Accordingly, the cornerstone of the Trafficking Convention is Article 3: Offences and Sanctions. Here the treaty breaks new ground by requiring that Parties "legislate as necessary to establish a modern code of criminal offences relating to the various aspects of illicit trafficking and to ensure that such illicit activities are dealt with as serious offences by each State's judiciary and prosecutorial authorities". The mandatory offences are set out in Article 3(1), and include the following:²⁴

- The production, manufacture, distribution or sale of any narcotic drug or psychotropic substance contrary to the provisions of the Single Convention or the Psychotropics Convention;
- The cultivation of opium poppy, coca bush or cannabis plant contrary to those earlier Conventions;
- The possession or purchase of any narcotic drug or psychotropic substance for the purpose of illicit trafficking;

²⁴ Article 3, Trafficking Convention, 1988

- The manufacture, transport or distribution of materials, equipment and substances for the purpose of illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances; and
- The organization, management or financing of any of the above offences. Furthermore, Article 3(2) of the Trafficking Convention requires each Party, subject to its constitutional principles and the basic concepts of its legal system, to establish criminal offences for the intentional possession, purchase or cultivation of drugs for personal consumption. Several states have adapted their criminal enforcement systems to attempt to allow *de facto* possession of small amounts of certain "soft" drugs, such as cannabis and its derivatives, for personal consumption and still remain within the legal bounds of the Conventions. Although the Conventions do not allow for legalization or even decriminalization of such possession, these countries have circumvented these limitations by criminalizing the possession, as required by the treaties, but they do not strictly enforce the legislation, or they have effectively "depenalized" the offences by exempting them from punishment. Such approaches clearly go against the spirit of the Conventions, especially the Trafficking Convention, which seems to use the term "trafficking" very broadly to include demand-side activities within a supply-oriented control regime. Yet, there is a legal basis for these softer approaches because the treaties do not explicitly forbid them. The 34-article convention addresses the issues of tracing, freezing, and confiscating proceeds and property derived from drug trafficking. Courts may seize bank, financial, or commercial records, without the imposition of bank secrecy laws. The convention also provides for extradition of major drug traffickers, mutual legal assistance between states on drug-related investigations, and transfer of proceedings for criminal prosecution. The convention also commits states to eliminate or reduce illicit demand for narcotic drugs and psychotropic substances. One of the most important provisions of the treaty, Article 12, sets forth two tables of substances used to manufacture illicit drugs and agrees to implement controls on the manufacture and shipment of such substances. In essence, Article 12 imposed the same controls on the chemicals used to manufacture illicit drugs as are imposed on the raw materials like opium and cocaine. These substances controlled by the convention includedephedrine,

ergometrine, ergotamine, lysergic acid, 1-phenyl-2-propanone, pseudoephedrine, acetic anhydride, acetone, anthranilic acid, ethyl ether, phenylacetic acid, and piperidine.

Criticisms of the hardcore criminal law approach adopted by the international drug control system have arisen in the human rights context. Some hold that the strict imprisonment penalties encouraged by the treaties are disproportionate to the crime when imposed in relation to "soft" drug offences, such as possession of a small amount of cannabis for personal consumption. It is argued that imprisonment in such circumstances is disproportionate to the offence and therefore violates the inherent dignity of persons, the right to be free from cruel and degrading punishment, and the right to liberty, as set out in such instruments as the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. It has also been argued that drug use is a human right and should be recognized as such in the *Universal Declaration of Human Rights*.

The Trafficking Convention is the only one of the three Conventions that makes any mention of human rights.²⁵ Article 14(2) of the Trafficking Convention explicitly obligates Parties "to respect fundamental human rights" when they take measures to prevent and eradicate the illicit cultivation of plants containing narcotic or psychotropic substances, such as opium, cannabis and coca. The same provision also requires states to take into account traditional licit uses, where there is historic evidence of such use, and protection of the environment. Despite human rights-based criticisms and suggestions, and the fact that several states have pursued "softer" approaches within their own jurisdictions, it is unlikely that the international drug control regime will undergo any fundamental changes of philosophy or approach in the near future. The Trafficking Convention came into force in record time, just under two years, and throughout the 1990s the war on drugs continued in full force to target primarily control at the source, especially through U.S. initiatives in Latin America.

²⁵ Article 14, Trafficking Convention, 1988

Organizational Framework of the United Nations System for Drug Control

When the United Nations assumed the responsibilities of drug abuse control in 1946, previously carried out by the League of Nations, the functions of League's *Advisory Committee* were transferred to the United Nations *Commission on Narcotic Drugs* that was established in 1946 as a functional commission of the Economic and Social Council (ECOSOC). The Commission on Narcotic Drugs, is the first of several commissions within the United Nations system to be given a permanent status by the ECOSOC and is the central policy making body of the United Nations System for dealing in depth with all questions relating to the global efforts of drug abuse control. The Economic and Social Council is responsible for formulating United Nations policies coordinating drug control activities, supervising the implementation of international conventions and making relevant recommendations to the governments.

The main bodies to control drug abuse under the League of Nations included the *Advisory Committee on the Traffic on Opium and Other Dangerous Drugs*, usually referred to as the *Opium Advisory Committee (OAC)*, which can be seen as a forerunner of today's *Commission on Narcotic Drugs (CND)*. In addition the League designated an *Opium and Social Questions Section* within its secretariat for administrative and executive support. The *League Health Committee* (forerunner to the World Health Organisation) was responsible for advising on medical matters. In 1925 the *Permanent Central Opium Board (PCOB)* was set up to administer statistical information sent by member states to the league of nations, and, in 1931, the *Drug Supervisory Body (DSB)* was formed and charged with providing comprehensive assessments of global drug requirements. Following the Second World War the functions of the League of Nations *Opium Advisory Committee* were transferred to the United Nations *Commission on Narcotic Drugs (CND)*, established in 1946 as a functional commission of the Economic and Social Council (ECOSOC). The functions of the previous *Opium Section* were taken over by the *Division on Narcotic Drugs (DND)*. In order to improve technical assistance for lower income countries, the *United Nations Fund for Drug Abuse Control (UNFDAC)* was created in 1972. Its main task was to raise funds to implement technical assistance activities.

The *Permanent Central Board* and the *Drug Supervisory Body*, were authorized to continue performing their functions under the aegis of the United Nations after World War II. Following the 1961 Convention these entities were merged and re-named as the *International Narcotics Control Board* (INCB). In 1979 the international drug control bodies, DND, UNFDAC and INCB moved to their new, and present, headquarters in Vienna, Austria. A decade later (1991), the three drug control bodies, DND, UNFDAC and INCB Secretariat, were incorporated under the umbrella of the newly named *United Nations International Drug Control Programme* (UNDCP). This created important synergies and prevented costly redundancy and overlap in activities. UNDCP served as a secretariat for both the Commission on Narcotic Drugs (CND) and the INCB. The INCB continued to operate as an independent and quasi-judicial control and regulatory body charged with monitoring the implementation of the United Nations drug control conventions. An effective division of labour emerged over the years with the INCB primarily regulating legal drug markets in order to prevent diversions from licit to illicit channels, and UNDCP concentrating its work on the illicit drug markets, assisting governments in the areas of alternative development, police co-operation, forensic assistance, demand reduction, and anti-money laundering (in order to reduce the profitability and size of the illegal drug markets). The secretariats of the *United Nations International Drug Control Programme* (UNDCP) and of the *Centre for International Crime Prevention* (CICP) were unified in 1997. This was done in recognition of the inextricable relationship between crime, drugs and terrorism, notably in areas of drug trafficking, organized crime and corruption. In 2002, the new office was renamed the *United Nations Office on Drugs and Crime* (UNODC).

The INCB is an important body for drug abuse control within the United Nations system which was created by the Single Convention, 1961. It was created to carry out the functions assigned to it by the Convention for the international drug control. Previously these functions were carried out by the Permanent Central Opium Control Board (PCOCB) and the Drugs Supervisory Body (DSB) which were later combined and renamed under the Single Convention as International Narcotics Control Board.

In addition to the important functional bodies (Commission on Narcotic Drugs, ECOSOC, and INCB) the organizational framework of the United Nations for drug control, also comprises the following:-

- General Assembly
- United Nations Division on Narcotic Drug
- UN Fund for Drug Abuse Control
- United Nations International Drug Control Programme
- Centre for Social Development and Humanitarian Affairs (CSDHA)
- United Nations Office on Drugs and Crime (UNODC)
- United Nations International Crime and Justice Research Institute(UNICRI)
- International Labour Organization (ILO)
- World Health Organization (WHO)
- United Nations_ Educational Scientific and Cultural Organization (UNESCO)
- International Maritime Organization (IMO)
- International Civil Aviation Organization (ICAO).

Other United Nations agencies, like the Universal Postal Union (UPU), the Food and Agricultural Organization (FAO), and the United Nations Industrial Development Organization (UNIDO) have also been adopting various measures to fight the drug trafficking. The United Nations Programmes, like the UNDP, UNICEF and the World Food Programme (WFP), have expressed a serious concern over the problems of drug abuse and trafficking and they work in closer relation with other United Nations agencies to ensure the development of effective drug control policy. Other international organizations which cooperate in international drug control tasks are Customs Cooperation Council (CCC) and International Criminal Police Organization (INTERPOL).

The United Nations maintains a close relation with many inter-regional, inter-governmental and international organizations which are not themselves the part of the United Nations system but are effectively involved in drug abuse control programmes.

In order to complete the overview of the functioning of the admittedly complex control regime, some remarks are warranted on the agencies co-ordinating and developing international drug policies. Compliance with the drug control system is managed (rather than enforced) by the United Nations. Three bodies carry out the United Nations' main activities in this area: the CND, the INCB and

UNODC. Other UN related agencies are also involved, on the periphery, in administering the global drug control effort, most notably the WHO and UNESCO.

Commission on Narcotic Drugs (CND)

The *Commission on Narcotic Drugs* is the central drug policy-making body within the United Nations system. Its predecessor, the Advisory Committee on the Traffic in Opium and Other Dangerous Drugs, was established by the first Assembly of the League of Nations on December 15, 1920. The Advisory Committee held its first meeting from May 2 to May 5, 1921, and continued its activities until 1940. The Commission on Narcotic Drugs was established by the UN Economic and Social Council in 1946. The Commission has important functions under the drug control treaties in force today. Most notably, it can amend the Schedules of controlled substances. The CND is a functional commission of ECOSOC and the central policy-making body concerning all drug related matters in the UN. It was created by ECOSOC at its first session in 1946 and, although initially composed of 15 States, membership increased over time to 53. According to Para. 2 Resolution 9(I), the CND's tasks include:

- (a) to assist ECOSOC in exercising powers of supervision over the application of international conventions and agreements dealing with narcotic drugs;
- (b) to carry out functions formerly entrusted to the League of Nations Advisory Committee in Traffic on Opium and Other Dangerous Drugs;
- (c) to advise ECOSOC on all matters pertaining to the control of narcotic drugs and prepare such draft international conventions as may be necessary;
- (d) to consider what changes may be necessary in the existing machinery for the international control of narcotic drugs and submit proposals thereon to ECOSOC; and
- (e) to perform such other functions relating to narcotic drugs as ECOSOC may direct.

To sum up, the main task of the CND is to analyse the global situation on drug control and, when necessary, advise ECOSOC on changes to enhance the drug control system. In this context, the CND acts as guardian of the three international drug conventions. For example, according to Art. 8 Single Convention, the CND is authorized to consider all matters pertaining to the aims of the Single Convention. Similar blanket clauses can be found in Art. 17 of the Convention on Psychotropic Substances and Art. 21 of the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Furthermore, special functions

are assigned to the CND under the drug control conventions. Most important in the catalogue of competencies is the CND's supervision of the classification of controlled substances. Its authority to decide, on the basis of recommendations by the WHO, whether a drug is listed on, deleted from, or transferred to the schedules, is important. Similarly the CND decides pursuant to the 1988 Convention on the recommendation of the INCB, on placing precursor chemicals on the convention's list of controlled substances. Whereas general decisions of the CND, as those of any other functional commission of the UN system, remain subject to approval by the ECOSOC or the General Assembly, this is not the case when the CND decides on amending the schedules annexed to the conventions. Although a decision on amending the schedules is not subject to an initial review by ECOSOC or the General Assembly, the CND's powers are restricted by the right of any party to file an appeal against such a decision. ECOSOC may then confirm, alter or reverse the decision of the CND. Recently the position of the CND has been strengthened by the mandate to receive reports on States' efforts to meet the goals agreed upon at the UNGASS.

The Commission on Narcotic Drugs is the central policy making body within the United Nations system for dealing with all questions related to global drug control efforts. Its Members are elected by the ECOSOC from the representatives of the States (currently 53 States). The annual meetings of the Commission are also attended by observers from other governments, other United Nations organs, and from agencies and organizations with an interest in drug control.

In addition to planning and developing general strategies against drug abuse, a central function of the Commission is to advise on changes in the current system of international drug control, making proposals for new conventions and drug control instruments. More specifically, the Commission makes decisions on bringing new substances under control of the conventions and decides what level of control is required. To this end, it receives information and recommendations from WHO on the scheduling of narcotic drugs and psychotropic substances (1961 and 1971 Conventions), and from INCB on precursor chemicals (1988 Convention), which it may accept or reject, or some times amend, in the light of economic, social, legal and administrative factors that are considered relevant.

The drug control treaties divide power between the Commission and the International Narcotics Control Board. The Commission has power to influence

drug control policy by advising other bodies and deciding how various substances will be controlled. However, enforcement power is reserved to the Board.

Under Article 8 of the Single Convention on Narcotic Drugs, the Commission's powers are to:

- Amend the Schedules;
- Call the attention of the International Narcotics Control Board to any matters which may be relevant to the functions of the Board;
- Make recommendations for the implementation of the aims and provisions of the Single Convention, including programmes of scientific research and the exchange of information of a scientific or technical nature; and
- Draw the attention of non-parties to decisions and recommendations which it adopts under the Single Convention, with a view to their considering taking action in accordance therewith.

Under Article 17 of the Convention on Psychotropic Substances, the Commission has power to amend the Schedules by a two-thirds vote and "may consider all matters pertaining to the aims of this Convention and to the implementation of its provisions, and may make recommendations relating thereto." The United Nations General Assembly has power to modify the Commission's decisions, with the exception of scheduling decisions.

Subsidiary bodies of the Commission coordinate the Commission's work at the regional level. These subsidiary bodies, organized by region, are: the *Sub-commission on Illicit Traffick and the Related Matters in the Near and Middle East* and the meetings of *Heads of National Drug Law Enforcement Agencies (HONLEA)* for Africa, Asia and the Pacific, Latin America and the Caribbean, and Europe. They meet regularly to address the most pressing drug Trafficking issues in the region. The Commission on Narcotic Drugs deals with all issues pertaining to international drug abuse control. It analyzes the world drug abuse situation and develops proposals to strengthen international efforts. In addition, it prepares such draft of international conventions as may be necessary; 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; and considers what changes may be required in the existing machinery for the international control of narcotic drugs and submits proposals thereon to the council. In addition, the commission has special functions under the 1961 Single Convention on Narcotic Drugs such as placing drugs under international control

and making recommendations for the implementation of the aims and provisions of the convention, including programs of scientific research and the exchange of scientific or technical information. The commission also reviews implementation of the Global Programme of Action, provides policy guidance to UNDCP, and monitors its activities. It meets annually in regular or special sessions.

International Narcotics Control Board (INCB)

The International Narcotics Control Board (INCB) is the independent and the quasi judicial organ for the implementation of the United Nations drug control conventions. It plays an important role in monitoring enforcement of restrictions on narcotics and psychotropics and in deciding which precursors should be regulated. The INCB differs from the CND and UNODC in that it is an independent treaty body rather than a UN agency. Notably, it is not purely an inter-governmental body as the members are elected by ECOSOC from candidates proposed by governments and the WHO. However, they do not represent governments, but act in their personal capacity as experts on drug related matters. The INCB was established as the monitoring body for the implementation of the Single Convention. Today it monitors the implementation of all three drug conventions and is concerned with the monitoring and screening of the production, trade and use of licit and illicit drugs. To this end it works closely with national governments to ensure that adequate supplies of drugs are available for medical and scientific uses, and that weaknesses in national approaches to combating the production, trafficking and use of illicit drugs are identified. The INCB collects and administers the statistical data for drug production, trade and consumption; a measure aimed at helping governments to establish a balance between licit supply and demand. The main task of INCB in this regard is the administration of the estimates and statistical returns systems. States have an obligation to report their statistical data within specified period, and, if they fail to submit estimates, the INCB might establish the estimates for them. If the INCB has objective reason to believe that the aims of the convention are being seriously endangered by a party (e.g. if a State is under the risk of becoming a centre of the illicit cultivation or production of narcotic drugs) it may request the State to explain the condition and it may propose the opening of consultations or the initiation of a study. The mandate of the INCB includes entering into a continuing dialogue with governments relating to their obligations under the drug control conventions and ultimately, if all measures of cooperation with the respective government fail, the

INCB may recommend that other States stop the import and export of drugs to and from a country that fails to explain properly its activities. However, the authority of INCB is much weaker than that of its predecessor, the Permanent Central Board, which actually could impose sanctions on States. Although the INCB does not have the power to administer sanctions, it may well censure States which it judges not to be in compliance; such censure may have a positive effect in itself on compliance with the control regime.

The International Narcotics Control Board is an independent body created by the Single Convention, 1961, by merging the two predecessors of the Board, the Permanent Central Opium Board, and the Drug Supervisory Body (created by Conventions adopted in 1925 and 1931, during the time of League of Nations). The Board reports to the ECOSOC through the Commission on Narcotic Drugs. It consists of 13 members who are elected by the Economic and Social Council for a period of five years. Ten members of the board are elected from a list drawn up by governments whereas the remaining three are elected from a list drawn by the WHO with nominees that possess medical, pharmacological or pharmaceutical experience. Once on the Board, the members serve independently and impartially in their personal capacities and must not accept instructions from governments. The International Narcotics Control Board is responsible for promoting compliance with the provisions of drug control treaties. The members of the board are not government representatives but experts acting in their private, individual capacities. The board has important functions to perform under the treaties. It watches over statistics of drug production, manufacture, trade, and consumption and also over the estimates needed for the coming year that states are required to furnish to it; if a state does not send estimates, the board makes them itself. The board may request any state to explain a condition that in its view indicates an improper accumulation of narcotic drugs. It may even recommend, in case of difficulties created by a country for the international control, that other states stop the shipment of drugs to that country. A most effective means of ensuring compliance is publicity: the reports of the board (and of other international bodies) ensure that the public is made aware of any situation that may contribute to the spread of drug abuse.

United Nations Office on Drugs and Crime (UNODC)

The set-up of the apparatus carrying out United Nations programmes and initiatives on drug control has changed frequently over recent decades. In 1991 the secretariat of the INCB (but not the Board itself) and the functions of the Division

of Narcotic Drugs (DND) and the UN Fund for Drug Abuse Control (UNFDAC) were integrated into the *UN Drug Control Programme* (UNDCP). A further streamlining took place in 1997, when UNDCP was merged with the *Centre for International Crime Prevention* to form the *UN Office for Drug Control and Crime Prevention* (UNODCCP). This agency finally became the *UN Office on Drugs and Crime* (UNODC) in 2002. With a staff of about 500 worldwide, UNODC is a rather small office, but carries out important activities. Besides providing secretarial services for the other drug control bodies, UNODC is also responsible for the coordination of the UN anti-drug programmes. Its mission involves close cooperation and assistance to national governments on the domestic and regional level. A variety of programmes, chiefly in developing and transitional countries, are executed under the supervision of UNODC. One of the most prominent initiatives is the Global Programme on Monitoring Illicit Crops, which covers the cultivation of illegal crops in the most troubled countries, such as Myanmar, Laos and Afghanistan in Asia, or Bolivia, Colombia and Peru in South America. In pursuing its mandate UNODC follows a twofold approach: on the one side research and awareness raising by publishing material on global trends in drug cultivation and trafficking (eg the annual World Drug Report, which is the most cited document on the state of the global drug problem), on the other side programmes on drug abuse prevention and drug dependence treatment/rehabilitation.

Division on Narcotic Drugs

Within the United Nations Secretariat, the *Division of Narcotic Drugs* was set up and entrusted with the monitoring of the implementation of decisions made at policy level for the control of narcotic drugs. The Division was subsequently integrated into the *United Nations International Drug Control Programme*.

World Health Organization

The important tasks performed by the *Health Committee* of the League of Nations and by the *Office International d'hygiene Publique* were continued by the World Health Organization (WHO). The responsibility of WHO in the field of narcotic drugs was substantially increased by the 1948 Protocol. Many States made a proposal to deal with drug abuse through public health approaches, including psychological treatment, dispensary clinics and educational programs. Although control

remained principally with ECOSOC, the World Health Organization (WHO), in particular its Drug Dependence Expert Committee, became responsible for deciding what substances should be placed under control. This authority was given to the WHO under the international Protocol signed in Paris in 1948. Article 1 stated that if the WHO found a drug to be "capable of producing addiction or of conversion into a product capable of producing addiction," it would decide how to classify it within the international drug control structure. The Protocol also brought under international control specific synthetic opiates not covered by previous treaties.

The *World Health Organization (WHO)* carries out activities related to drug dependence and other drug control activities assigned to it by international drug control treaties. WHO plays an integral role in determining which substances should be placed under international control, in accordance with the provisions of the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances. WHO's Global Programme on Drug Dependence cooperates with member states in the prevention, treatment, and management of drug addiction. WHO also develops guidelines and manuals for teachers and health professionals.

In 1991, the UN drug control apparatus was reorganized. The DND and UNFDAC were integrated into the United Nations Drug Control Program (UNDCP), which also now acts as the secretariat to the CND and the INCB, both of which remain unchanged. The UNDCP reports directly to the Secretary-General. Although the restructuring helped to consolidate roles and activities in one body (the UNDCP), the inherent difficulties in administering such a hugely ambitious international drug control machine have not lessened. One of the greatest problems has been attempting to reconcile the contradiction created between the meticulously managed drug economy created by the three Conventions, and the liberal nature of international trade agreements intended to promote the free flow of all commodities. In a world of increasing trade, the UN and the international drug control system may be about to face their greatest challenge yet. U.N. policymaking on drug-related matters take place through the U.N. Commission on Narcotic Drugs, which is a functional commission of the U.N. Economic and Social Council. The U.N. Commission on Narcotic Drugs monitors global drug trends, develops strategies for international drug control, and recommends measures to combat the world drug problem. To support U.N. Member States in combating drugs, the UNODC conducts field-based technical

assistance projects internationally and conducts research and analysis on current drug market trends.

The Global Programme of Action Against Drug Abuse

In November 1989, the General Assembly expressed its alarm at the slow pace of accessions holding up the entry into force of the 1988 convention. To consolidate international efforts, the General Assembly held a four-day special session in February 1990 to adopt a *Political Declaration* affirming the determination of the international community to band together to fight drug trafficking. In its declaration the General Assembly recognized the links between drug trafficking and the economic and social conditions of the countries producing drugs. It also voiced its concern about the link between drug trafficking and international terrorism, and the threat posed by transnational crime organizations that corrupted elected governments. The member states resolved to "protect mankind from the scourge of drug abuse and illicit trafficking in narcotic drugs and psychotropic substances." They reaffirmed their commitment to support the international efforts to eradicate drug trafficking both financially and by bringing national laws into line with the various United Nations treaties on narcotics control. The document also noted that international cooperation in restraining drug trafficking should be conducted in accordance with the principles of national sovereignty embodied in the United Nations charter. The General Assembly concluded the document by adopting a *Global Programme of Action* and declaring the period 1991-2000 the *United Nations Decade Against Drug Abuse*. The 100-paragraph *Global Programme of Action* contained proposals for world wide cooperation to stem the rising tide of drug abuse. Some of its provisions were based on the Multidisciplinary Outline, and included:

- Raising national priorities for drug abuse prevention and reduction programs;
- Commissioning an analysis of the social causes generating drug demand;
- Providing UN financial support to prevent drug abuse by children, and the use of children in the drug trade in developing countries;
- Having the UN act as a global information clearinghouse on treatment and rehabilitation of drug addicts;
- Using high resolution satellite imagery and aerial photography (with the agreement of producing countries) to identify illegal narcotic cultivation;
- Convening an international conference to elaborate ways to prevent the diversion of the chemicals and substances used to process the raw materials of illicit drugs;

- Developing international mechanisms should be developed to prevent drug money laundering and to confiscate funds and property acquired with drug money;
- Promoting through the UN the exchange of information among states on the flows of drug money; coordinating anti-drug operation training.

UNGASS Declaration and Action Plans (1998)

Although during the 1990s, law enforcement measures based on the international drug control system had been successfully employed in the dismantling of some of the most notorious drug cartels (eg the Cali and Medellin cartels), global drug abuse did not, as had been hoped for, decrease. A remarkable initiative to refocus international attention on the global drug problem was therefore taken by the UN General Assembly in 1998 when a *Special Session* (UNGASS) was convened. UNGASS focused on a number of measures to enhance international cooperation and the UN General Assembly adopted a *Declaration on the Guiding Principles of Drug Demand Reduction*, a Political Declaration and various action plans to this end.

The Political Declaration is notable for various reasons, but particularly so for linking for the first time the illicit production and trafficking of drugs with terrorism and arms trafficking. States were called upon to consider the documents agreed on at UNGASS when formulating national drug strategies. Moreover, they were encouraged to report biennially to the CND on their efforts to meet the goals of the action plans. However, in contrast to the three drug conventions, the Political Declaration does not set up a system for monitoring compliance with the declaration and the accompanying action plans. Art. 20 of the Political Declaration solely declares that the CND will analyse the reports that it obtains from member States and use them for the enhancement of cooperation, but there is no formal sanction system foreseen in the Political Declaration. It thus remains a soft instrument. At the time, UNGASS was a necessary step to encourage countries to renew and strengthen their commitment to international drug control. The year 2008 was envisaged as a target date by which measurable results of the implementation of the action plans were to be achieved, and indeed, considerable success was achieved in reducing the cultivation of coca in South America and opium in some regions of South-East Asia. But these achievements were overshadowed by the rapid expansion of opium production in Afghanistan. Overall the problem of global drug abuse did not improve significantly during the UNGASS period. Based on the review, the

CND at its 52nd session in 2009 considered further action and adopted a new political declaration and action plan. The new action plan addresses novel trends in drug trafficking, such as the use of information technology, and calls for better regulation of online-pharmacies and enhanced intelligence exchange and judicial cooperation among states.

Other United Nations Bodies

The *United Nations Interregional Crime and Justice Research Institute (UNICRI)* was formerly known as the *United Nations Social Defence Research Institute*. UNICRI carried out a four-year research study funded by UNDCP on the interaction between criminal behavior and drug abuse and on control measures adopted in individual countries. It conducts research, surveys, and workshops on the criminal aspects of drug abuse for UNDCP.

The *International Labour Organisation (ILO)* carries out activities on drug-related problems in the workplace and on the vocational rehabilitation of recovering drug addicts. WHO and UNDCP prepared a multi-media resource kit to assist enterprises in developing solutions to those problems. The *United Nations Educational, Scientific and Cultural Organization (UNESCO)* focuses on the prevention of drug abuse through public education and awareness. UNESCO works with media organizations in producing radio and television programmes. With the support of UNDCP, UNESCO is carrying out research projects on drug use and prevention in Africa, Asia and the Pacific, and Latin America and the Caribbean.

The *International Maritime Organization (IMO)* is concerned with the transportation of illicit drugs by ships. IMO has compiled guidelines on the prevention of drug smuggling on ships engaged in international traffic. The guidelines set out security precautions, methods of concealments, actions to be taken when drugs are discovered, identification of addicts, and cooperation with customs.

The *International Civil Aviation Organization (ICAO)* seeks to counteract the shipment of illicit drugs by air. It develops technical specifications and guidance material for civil flights, and suggests measures to ensure that commercial carriers are not used to transport illicit drugs.

The *Universal Postal Union (UPU)* has carried out studies to establish international measures covering the shipment of illicit drugs through the mails.

The *Food and Agriculture Organization of the United Nations (FAO)* manages several multidisciplinary programs financed by UNDCP. FAO covers the agricultural aspects of the drug crisis. Its programs are aimed at raising the income level of farmers, and thereby reducing the incentive to cultivate narcotic crops. It has participated in UNDCP-financed projects in Bolivia, Myanmar, and Pakistan. FAO and UNDCP are studying the potential of remote sensing techniques and satellite imagery (already in use by FAO to predict droughts and other international crop statistics) in the detection of illicit crops.

The *United Nations Development Programme (UNDP)* incorporates drug abuse control programs into its development projects in Asia and the Pacific, and Latin America and the Caribbean. UNDP's resident coordinators and resident representatives work closely with the UNDCP in countries where serious drug problems exist.

The *United Nations Children Fund (UNICEF)* focuses on the world's 100 million street children, who are often drug abusers and/or drug sellers. UNICEF has programs in Latin America and the Caribbean to strengthen families and provide services to children in need.

UNAIDS works with countries to help prevent the spread of HIV and help those already afflicted with the virus. The virus can infect drug abusers who share syringe needles.