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## International Law and Control of the Drug Traffic

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## International Law and Control of the Drug Traffic†

International control of the drug traffic is maintained through two types of agreements: bilateral agreements, between two sovereign states or between a United Nations agency and a sovereign state; and multilateral treaties, negotiated under U. N. auspices. All told, these add up to an impressive volume of paper. The contents, unfortunately, are less impressive, and the visible results even less so. A brief survey and analysis will explain why.

### I. Bilateral Agreements

#### *A. Agreements to which the United States is a party*

The United States has written agreements or understandings on control of drug traffic with thirty countries. All are informal executive agreements, requiring neither advice and consent to ratification or accession by the Senate. Many result from a "Narcotics Control Action Program," launched by the United States in 1971. Under the program, U.S. Missions in 59 capitals drew up blueprints for anti-drug campaigns in the host countries. These were reviewed by Washington, then submitted to the host governments for approval.

At first glance, this record seems encouraging. However, many of the countries with which the United States has signed agreements are not seriously involved in production or traffic. As to them, critics charge, the

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accords are merely window dressing, calculated to create for the general public the impression of a massive campaign.

Second, the overwhelming majority deal only with police matters, with the United States promising to provide law enforcement assistance and advice, and the host nation agreeing to accept it. Often they also provide for exchange of information and for extradition of offenders. But, with one exception, they are silent on the most important question of all: how to strike at the source of the problem by suppressing the cultivation of opium and other potentially dangerous crops.

The one exception has been Turkey, where, in 1971, the government bowed to years of American pressure and imposed a nationwide ban on the opium poppy. Until then, Turkey had been the leading exporter of opium to the United States. The agreement cost the United States \$35 million, the estimated sum needed to compensate Turkish farmers while a crop-substitution program is developed and implemented.

But even if the agreement is carried out, it will not solve America's problem, since other nations will quickly step into the gap—in particular, Afghanistan, Pakistan, and the "Golden Triangle" of Burma, Laos and Thailand. And the diplomatic success in Turkey will not be readily duplicated elsewhere. For one thing, Turkey is a staunch NATO ally, anxious to please the United States, from which she receives substantial military assistance. Also, she can enforce a ban because she has effective control of her territory, something which is rarely true of Asian governments.

And finally, the Turkish farmer, unlike his Asian counterpart, is only a producer of the opium poppy. He is not an addict. This means that he will probably be amendable to crop substitution, as long as he isn't hit in the pocketbook. But in Asia, where opium is the universal panacea for the assorted miseries of the people, compulsory crop substitution would almost certainly be met with armed resistance.

And thus, ironically, such substitution might work against the security interests of the United States—at least, as these security interests are presently perceived. Does the U. S. government really want to arouse the hill tribesmen of Thailand, driving them into the arms of Communist-led insurgents? Or precipitate civil war in Afghanistan, which shares a long border with the Soviet Union?

### *B. Agreements between United Nations agencies and sovereign states*

In 1971, at the behest of the United States, the United Nations created the Special Fund for Drug Control. Its mandate is "to finance an expanded

U. N. program for concerted action directed against the supply of drugs for the purpose of abuse, the demand for such purposes, and the illicit traffic." Since it does not have a line in the U. N. budget, all contributions are voluntary. To date, the United States has provided \$2 million of the nearly \$2,600,000 which the Fund has collected from various contributors. However, the U. S. expects to receive value for its substantial share of the stake. In particular, it hopes that various third-world producers—especially Burma—which refuse to sign agreements with the United States will be better disposed toward the U. N.

To date, the Fund has begun work on only one project, a five-year pilot program in two villages of Thailand. The villagers, of Meo stock, produce large quantities of opium, part of it for their own consumption, the rest for resale to middlemen who smuggle it out of the country. The Fund is attempting, through U. N. experts who work closely with local personnel, to transform the entire social and economic organization of the two tiny villages—by building a school, a dispensary, roads and perhaps even a village store; by promoting the cultivation of substitute products, such as raw silk and sheep; and by introducing a rehabilitation program which includes treatment, employment assistance, and follow-up reporting, together with a maintenance system for untreatables.

Simultaneously, the government is being pressed to enact new legislation. One projected law would reform the land tenure system; another would allow the six-month detention of addicts who volunteer for treatment.

The program is only three months old, and all that has been done so far is the appointment of part of the staff. If it succeeds, similar projects will be started in other villages.

The Fund has also reached an agreement with Lebanon, though no work has begun yet. A Fund mission was dispatched to Afghanistan in October, and has prepared a draft agreement for submission to the Afghanistan government. Another mission may call upon Burma in the near future. Many of these programs are or will be undertaken in collaboration with other U. N. agencies: the World Health Organization, the Food and Agricultural Organization.

## **II. Multilateral Agreements**

At present there is only one treaty in force which pertains to narcotic substances: the Single Convention on Narcotic Drugs, signed in New York in 1961. The Convention supersedes nine previous treaties, some of which

predate the League of Nations.<sup>1</sup> Its purpose was not to create international enforcement machinery, but to establish more or less uniform guidelines for adoption by the individual states.

Even by the usual mealy U. N. standards, the treaty was a weak one, and the United States expressed its displeasure by waiting six years to ratify it. In March, 1972, the U. S. finally persuaded an international conference to accept an amending protocol which strengthens the Convention somewhat—to the extent, that is, that this can be accomplished under the existing nation-state system. The protocol will take effect when forty nations ratify or accede to it.<sup>2</sup> To date, only two have done so: the United States and Panama.

Meanwhile, new substances, hitherto unknown, were coming into the market; psychotropic, “mind-bending” drugs such as LSD, amphetamines and meprobamate. Many are synthetic compounds which, unlike morphine and opium, have little or no scientific or therapeutic value. The United States was not especially exercised over the international traffic, since—again, unlike opium or morphine—most of the psychotropics which are consumed in this country are produced domestically.

But other countries were fearful of being flooded with American exports, and pressed for international controls. In February, 1971, a Convention on Psychotropic Substances was signed in Vienna. This Convention was America's *quid pro quo* for the amendments to the narcotics treaty. It too will go into force when forty states ratify or accede. Only Chile, Egypt, Venezuela and Paraguay have ratified so far. Bulgaria, Panama and South Africa have acceded.

Each of these instruments will be examined separately.

#### *A. The Single Convention on Narcotic Drugs*

The Convention has been ratified or acceded to by 95 countries. Among the more conspicuous absentees are some of the most notorious producers and traffickers: Bolivia, Columbia, Laos, Nepal and Singapore. It applies to such familiar substances as cannabis, coca leaf and cocaine, and opium and its derivatives: morphine and heroin. It also covers a variety of synthetic compounds.

The Convention proceeds from the premise that some production of these substances must continue in the interests of science and medicine.

<sup>1</sup>A portion of one older treaty—the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs—is still in force. The United States never signed or acceded to this treaty, presumably because its provision for criminal prosecution of offenders clashed with the Constitution.

<sup>2</sup>A country ratifies by formally accepting a treaty which its representatives have already signed. It accedes by formally accepting a treaty to which it is not a signatory.

Accordingly it seeks, not to ban them altogether, but to restrict their use to these purposes alone.

To accomplish this, the substances are broken down into four separate schedules, according to degree of danger and medical and scientific value. Each of these schedules is subjected to slightly different sets of controls.

The term "controls," however, is misleading, if not downright laughable. True, the parties do undertake, with varying degrees of clarity, to prohibit illicit production of the substances. They also provide for the licensing and monitoring of imports and exports in a manner which, while it will not inhibit smuggling, should at least prevent licit substances from falling into the wrong hands. But there is no enforcement mechanism, other than the shadowy force of world opinion, to keep a reluctant party to its word.

The heart of the Convention is the estimate system. Each nation submits to the International Narcotics Control Board, a U.N. agency, annual written estimates of the quantities of drugs needed for medical, scientific or "special" purposes. This estimate constitutes its quota of domestic manufacturers and imports for the forthcoming year. Supplementary estimates may be filed as new needs assert themselves. If a country exceeds its estimate, the excess is to be deducted from its quota for the following year.

However, the document reeks with too-tender solicitude for the sensibilities of the sovereign states. For example: the Board is urged to confirm the estimates "as expeditiously as possible"—but it may not amend them "except with the consent of the government concerned." Nor is it clear how the Board can go about confirming or refuting them in any event, since the Board has no independent inspection powers, and therefore no source of information other than whatever information the country itself may provide.

Of course, it may rely upon "information submitted by (other) Governments" or "information communicated by United Nations organs." But since these Governments and organs have no independent inspection powers either, except to the extent that the host country chooses to permit, they can furnish little in the way of supplementary data.

And supposing, somehow, the Board finds out that a party is shirking its obligations? It may "ask for an explanation" from the government concerned, treating all communications in strict confidence, at least for the time being. Then, it may "call upon the Government concerned to adopt . . . remedial measures," and, if it "finds that the Government concerned has failed to give a satisfactory response," it may "call the attention of the Parties, the Council and the Commission to the matter."<sup>3</sup> In its

<sup>3</sup>The "Council" is the United Nations Economic and Social Council; the "Commission" is the Council's Commission on Narcotic Drugs.

complaint, the Board may "recommend" that the parties adopt a drug embargo against the offending nation. No such embargo has ever been proposed, much less implemented.

In addition, the Board has the authority to issue to the Council, for distribution to all parties, a formal report, detailing the transgressions of the offender. In this report, however, it must scrupulously extend to the opposition all the courtesies of an American corporate proxy battle under the Securities and Exchange Commission Act. The report must contain the rebuttal of the government concerned, if that government wishes to submit one. And, if the Board is less than unanimous in its condemnation, the minority viewpoint must be stated. No such report has ever been issued during the life of the treaty.

And what can the Commission and Council do with the information, once it has been brought to their attention through a complaint or formal report? On this point, which the uninitiated might look upon as mildly crucial, the Convention maintains a discreet diplomatic silence. For there is nothing whatever in fact, that the Commission or the Council can do about the matter, other than disseminate it for the purpose of creating bad publicity. The inefficacy of bad publicity as a weapon for accomplishing anything at all is manifest throughout the entire history of the U. N.

The criminal provisions of the treaty are interesting, if only because of their ambiguity. In particular, it is unclear whether a State party has the right to decriminalize the use of marijuana.<sup>4</sup>

Article 33 states that "The Parties shall not permit the possession of drugs except under legal authority." It is not clear whether this means that none of the listed substances may be possessed except under special license, or whether a party may legalize one or more of them for over-the-counter public consumption under official supervision. Article 36 further requires the parties to adopt criminal sanctions against the possession or distribution of "drugs contrary to the provisions of this Convention," but the phrase begs the question: are the "drugs contrary to this Convention" the ones listed in the schedules, or those designated by the parties?

Finally, Article 49 provides that a party may, at the time of signature, ratification or accession, reserve the right to permit non-medical or scientific use of specified substances—including cannabis—for periods of up to 25 years. This implies that all non-reserving nations must restrict these substances to the specified purposes forthwith. But it does not necessarily imply that the restriction be accomplished through punishment of users.

<sup>4</sup>Since treaties are part of domestic law, the Convention might even prohibit individual states from legalizing marijuana—something which the federal government would be powerless to accomplish in the absence of treaty authority.

The U. S. government takes the position that the amending protocol, once in force, will render this question moot, since Article 36 would then permit the parties to adopt various non-penal measures, including education, in lieu of punishment. True, the amendment speaks of the enforced education of abusers, rather than education of the public generally. But the government evidently believes that the language would sustain a more liberal interpretation.

*B. The Protocol Amending the Single Convention on Narcotic Drugs (1972)*

In addition to the change just discussed, the most significant proposals are probably the ones which seek to strengthen the estimate system. The Board would be permitted to revise the estimate of a reporting party even without that party's consent. In seeking information with which to evaluate the estimate, it could rely not only upon other governments and U. N. organs, but upon certain intergovernmental and non-governmental international organizations. In addition to the dubious power of publicity, the Council would henceforward have the authority to bring violations to the attention of the General Assembly.

Absent the power of inspection, however, it is questionable whether these measures would accomplish their purposes. And even the inspection power is not the final answer, since many opium-producing areas are so remote as to be difficult to police, or are not under the effective control of their *de jure* governments.

*C. The Convention on Psychotropic Substances (1971)*

There are some strong similarities between the Psychotropic Substances Treaty and the Single Convention on Narcotic Drugs. One is the scheduling system. Another is the remedies—or absence of remedies—against non-cooperation by a participating State.

But the differences are even more striking. The Single Convention, it will be recalled, presupposed a substantial medical and scientific need for even the most virulent of the regulated substances, and accordingly worked only to prevent spill-over of the drugs into prohibited uses. The Psychotropic Convention proceeds at least in part from an opposite premise: that, with rare exceptions, all uses of substances in Schedule I (which includes, *inter alia*, LSD and mescaline) are harmful.

For this reason, all use of such substances is prohibited “except for scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of

the government.” Critics fear that the stringent rule may inhibit important research.

Producers and distributors of substances in the other schedules must be licensed, and users must have prescriptions. In the case of exports and imports, each transaction must be separately authorized by both governments involved. (A similar provision exists in the Single Convention on Narcotic Drugs.)

There is no estimate system. There are no quotas. Since the substances are all synthetic, there is no attempt to regulate crop production. Attention is focused entirely on the strict supervision of manufacture, distribution and use.

One interesting provision pertains to future scheduling. If the World Health Organization (WHO) finds that a new compound has the capacity to produce dependence, hallucination or disturbances in thought, behavior, mood or motor function, it is required to report its findings to the Commission on Narcotic Drugs.

While WHO’s assessments “shall be determinative as to medical and scientific matters,” the Commission may consider “economic, social, legal, administrative and other factors” in deciding whether to add it to one of the schedules. Since the Commissioners serve as government representatives, rather than as individuals, it is easy to see how political considerations could come to outweigh medical ones. The possibility is perhaps lessened by the fact that, right now, most of the representatives are health professionals.

## **Conclusion**

The treaties now in force can be strengthened in several significant ways.

- Multilateral treaties should invest international authorities with meaningful powers of investigation and inspection.
- Penalties should be instituted for non-compliance by participating states. Since, as a practical matter, nations seem unwilling to enforce an embargo, perhaps a system of fines, levied by the Commission with appeals to the Council and the International Court of Justice, would serve the same purpose. Granted, few if any sanctions could be applied against countries which simply refused to pay. But the tendency even among sovereign states is to obey the law when the duty is clear and the consequences are not too onerous.
- Bilateral accommodations might place less emphasis on law enforcement, and more on equipping the host nation with the political power to control its territory and the financial means to subsidize substitute crops.

Given these, adequate law enforcement should readily follow. On the other hand, however, this could involve us so intimately in another country's domestic affairs as to risk another Vietnam—a step which runs counter to the thrust of our present foreign policy.

But even if all this is done, it will be difficult to attain meaningful results through international, as opposed to purely domestic, controls, regardless of whether the medium is the bilateral treaty or the multilateral one. Their common flaw lies, not in their own internal weaknesses, but in the nation-state system itself. No significant progress can be made through international controls as long as individual sovereignties are free to assert their own short-run interests against the health of an increasingly interdependent and threatened planet.