International Initiatives at Controlling the Illicit Transportation of Narcotic Drugs by Air

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I. INTRODUCTION

THROUGHOUT HISTORY, human society has used substances to alter moods and alleviate physical and mental suffering.1 These substances, although indispensable for the alleviation of pain and suffering, proved to be addictive and destructive when misused or abused.2 As a result, early societies created rules to allocate the use of these substances for medicinal or religious purposes and entrusted them to priests, leaders, and doctors.3

The abuse of drugs has proliferated as a societal corrosion from the mid-nineteenth century due to the increased availability of products, the expansion of connections, the necessities

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2 See id. at 5-6.

3 See id. at 6.
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brought about by changing socioeconomic factors, rapid urbanization, and changes in attitudes and values. ⁴ These factors have contributed to a rapid increase of criminal behavior in society, leading to the exploitation of society by criminal elements.

In response to this problem, the international community has introduced global control mechanisms, ⁵ one of which is a regulatory system for the control of illicit transport of narcotic drugs by air. Not only does illicit transportation of narcotics by air per se constitute an offense, but it also leads to other criminal acts related to terrorism, including the following: the destruction of airports by those involved in the carriage of narcotic drugs by air, destruction of property and aircraft resulting from attempts to transport narcotic drugs, and threats posed to traffic installations. This Article will discuss the enormity of the drug trafficking problem, analyze the evolution of the regulatory process related thereto, and evaluate its success.

II. HISTORY OF THE DRUG TRADE ⁶

The recognition of the need for an international drug control system began in 1909 when representatives of thirteen nation States met in Shanghai to discuss the proliferation of transportation of narcotics for non-medical consumption.⁷ The gathering was necessary because by the end of the nineteenth century, opium smoking was rampant in China,⁸ affecting a third of the adult male population. As early as 1729, Emperor Yong Cheng forbade opium smoking in China. However, this attempt to decrease drug trafficking was to little avail, as opium was being smuggled at that time into China through India by the Portuguese and later by the English.⁹ The amount of opium that had been smuggled into China had increased from thirteen metric tons in 1729 to sixty-four metric tons in 1767. By 1773, the East India Company of England had established a monopoly in the drug trade, thus inaugurating the first recorded enterprise in-

⁴ See id.
⁷ See R.K. Newman, Opium Smoking in Late Imperial China: A Reconsideration, 29 MODERN ASIAN STUD. 765 (1995); see also Taylor, supra note 5, at 86.
⁸ See id. See generally Peter Ward Fay, The Opium War 1840-1842, at 42-43 (1975); see also Jonathan D. Spence, The Search for Modern China 88 (1990).
volved in legal drug trafficking on a large scale.\textsuperscript{10} From 1820 to 1830, the quantity of drugs brought into China took an upward turn to 2500 metric tons. As a result, China had twenty million opium smokers in 1838.

With the failure of diplomatic efforts to curb the flow of opium into China, the Chinese authorities decided to act swiftly. They ordered all foreign merchants to surrender their stocks of opium for destruction. As a result, in excess of 1400 metric tons belonging to the British were seized and thrown into the river at Canton.\textsuperscript{11} The Chinese act was considered to be nothing short of treason by the British Mission, and on April 4, 1840, England declared war against China.\textsuperscript{12} This war became known as the First Opium War. The Chinese were defeated, as were their efforts to control the abuse and trafficking of opium. As a result of the (peace) Treaty of Nanking signed on August 29, 1842, the British received, inter alia, Hong Kong.\textsuperscript{13} They developed Hong Kong as a commercial center, making the best use of its location for importing opium from India and Iran and exporting it not only to China, but also to Japan, Macao, the Philippines, Indonesia, Australia, Peru, Chile, the United States, Canada, England, and France.

The First Opium War gave further momentum to the opium trade. Over 3300 metric tons were imported from India into China in 1850, and nearly 5000 metric tons were imported in 1855.\textsuperscript{14} The Chinese engaged in efforts to stem the tide once again, but these efforts ended in failure. The British and the French defeated the Chinese in the Second Opium War (1856-1858), and forced them to sign the Treaty of Tientsin, which legalized the opium trade on payment of a customs duty (thirty teals per picul\textsuperscript{15}).\textsuperscript{16} The Chefoo Convention (1876) further liberalized the trade. Arguably, this attempt at liberalization was the first example of a country to legalize drug trafficking and earn revenue by way of import duties. However, legalization did not stabilize the quantity of opium imported into China let alone reduce it. By 1880, the amount of opium imported into

\textsuperscript{10} See Bell, supra note 6, at 2.
\textsuperscript{11} See id. at 3.
\textsuperscript{12} See Spence, supra note 8, at 150-52.
\textsuperscript{13} See Bell, supra note 6, at 3.
\textsuperscript{14} See id.
\textsuperscript{15} Old unit of weight equal to 62.5 kilograms.
\textsuperscript{16} See Bell, supra note 6, at 3; see also Jean Chesneaux et al., China from the Opium Wars to the 1911 Revolution 78-80 (1976).
China rose to over 6000 metric tons.\textsuperscript{17} In addition, the political and administrative situation within China had deteriorated. The hold of central authority had weakened and the feudal and military lords became powerful in different regions. Within their strongholds they promoted the cultivation of the opium poppy as a means of amassing wealth. Their policy made China the biggest opium producing country in the world. In the four years from 1905 to 1908, China produced in excess of 100,000 metric tons of opium (23,500,000 kilograms were produced in 1905, 35,497,360 kilograms in 1906, 20,685,500 kilograms in 1907, and 22,953,125 kilograms in 1908).\textsuperscript{18}

This amount, combined with the quantities imported from India and Iran (about 3000 metric tons a year), virtually converted China into a country of opium smokers. Villagers, the bourgeois of the cities, shopkeepers, businessmen, civil servants, soldiers, palace eunuchs, imperial mistresses, men, women, and children of all ages and segments of society fell to the fatal charm of the bamboo pipe.\textsuperscript{19}

III. THE SHANGHAI COMMISSION

The period that followed can now be recognized as a conscious effort towards the regulation of opium trafficking. What the governments failed to accomplish was achieved by a public-spirited group of doctors, intellectuals, churchmen, and parliamentarians. In England, these professionals belonged to the Anti-Opium League, and through its organ, "The Friend of China," they raised their voices against the "immoral nature of the opium trade" and drew public attention to the ravages caused by opium smoking in China and elsewhere.\textsuperscript{20} The anti-opium movement influenced, to some extent, the Liberal Party government that came to power in England in 1906. A year later, the Liberal Party negotiated some measures with China to gradually reduce the opium trade from India to China.\textsuperscript{21}

China was not the only country with a drug problem. The United States was also concerned, as its colony in the Philippines, annexed in 1898, was rampant with opium smoking.\textsuperscript{22}

\textsuperscript{17} See Bell, supra note 6, at 3.
\textsuperscript{18} See id.
\textsuperscript{19} See id.; see also Newman, supra note 7, at 776-89.
\textsuperscript{20} See Bell, supra note 6, at 3.
\textsuperscript{22} See Bell, supra note 6, at 3.
There were 118,000 Americans of Chinese origin living in the United States at that time, almost half of whom were alleged to be opium smokers. Accordingly, a committee was set up to study in depth the problem of opium smoking in the Philippines. In pursuit of its work, this committee visited some other countries of the Far East and made useful observations.

One of its members, the Reverend Charles H. Brent, American Episcopal Bishop of the Philippines, was particularly touched by the extensive misery caused by opium smoking. He was also one of the first who recognized the international nature of this problem. In July 1906, he addressed a letter to Theodore Roosevelt . . . urging him to convene a diplomatic international meeting to discuss measures for solving the problem of opium smoking and trade.

The idea was well received. President Roosevelt proposed a meeting at the Palace Hotel of Shanghai in February 1909. This meeting was attended by the representatives of thirteen countries: Germany, Austria-Hungary, China, the United States, France, the United Kingdom, Italy, Japan, the Netherlands, Iran, Portugal, Russia, and Siam. Turkey, an important opium-producing country at the time, was invited but did not attend the meeting.

The meeting became known as the Shanghai Opium Commission. Its president observed that it devolved upon him to pronounce with emphasis that the meeting was in fact a commission. Although the idea of a conference had been suggested, it seemed wise to choose this particular form of action, because at that time, the members of the commission had not been sufficiently well informed and were not sufficiently unanimous in their attitude to have a conference with any great hope of immediate success.

The Commission passed nine resolutions. These resolutions today may seem to be nothing more than pious wishes, but in 1909 they represented a monumental achievement. Through them, the Opium Commission, comprising representatives of the 13 countries, recognized the right of China to eradicate the abuse and production of opium . . . . They also recommended the im-

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23 See id.
24 See Taylor, supra note 5, at 85.
25 Bell, supra note 6, at 3-4.
26 See id. at 4.
27 See id.
28 See id.
mediate closure of smoking dens . . . and the adoption of draconian measures for controlling [the] production, sale, and distribution of opium and its derivatives at [a] national level. In addition, [the Commission] identified the need for adopting reasonable measures in order to prevent the shipping of opium to the countries which had prohibited its importation.\(^{29}\)

Reverend Brent represented the United States and also chaired the Commission. Although he, along with the Chinese delegate, sought a more definite and drastic action against the abuse and trafficking of opium, the economic interests of some of the participating countries came into conflict with these sentiments, and the final resolutions emerged in a rather diluted form.\(^{30}\)

Although prior to 1949 China had been badly affected by drug problems, the founding of the People's Republic of China in 1949 marked the beginning of efforts to eliminate drugs completely. The Chinese government adopted a radical policy and issued a series of laws and provisions to combat drug abuse. The "Order on the Restriction of Opium Addiction," adopted by the State Council in 1950, stipulated that cultivation of the opium poppy was forbidden and that activities such as smuggling, producing and trafficking in drugs would be sanctioned by law. Offenders were to be severely punished; anyone in possession of opium-derived drugs had to surrender them to the authorities within a certain time and immediately cease smoking them.\(^{31}\)

Soon after the publication of that order, an operation was launched to counter the cultivation of opium poppies and the sale and consumption of opium; by 1952, the scourge had been eradicated. These decisions, which continue to apply, garner wide support from the Chinese people, and have been hailed by the international mass media. However, since the adoption of China's "open-door" policy, traffickers infiltrated China and used the country as a base for drugs in transit to other countries and other regions. In response, the Chinese police adopted stringent measures against trafficking activities in the border regions. Careful and thorough investigations enabled the Chinese to clear up cases of trafficking from outside China, and, by 1985, a significant quantity of opium had been seized at the border.

\(^{29}\) Id.

\(^{30}\) See generally Taylor, supra note 5, at 86-88.

Between 1981 and 1986, ninety-two kilograms of heroin and 223 kilograms of opium were seized in China; twenty cases involving heroin smuggled into mainland China were solved; and forty-three foreign traffickers were arrested. In 1986, two foreign nationals and a resident of Hong Kong were sentenced to death for drug trafficking.

China shared information with Southeast Asian countries and improved its surveillance and detection equipment at customs and police posts along its frontiers. It also sent drug law enforcement officers from the Chinese Narcotics Control Board (NCB) to the United States for training at the Drug Enforcement Administration. In April 1986, two drug seminars, attended by over 200 police officers, were organized in Beijing with the help of the French police. Representatives were also sent to international meetings on drug law enforcement, and experts from the United Nations Narcotics Control Board and Division of Narcotic Drugs were invited to China to speak about international drug trafficking trends and their potential countermeasures. China proposed several guidelines on arrests of unlawful drug trafficking based on its long-standing experience of drug prohibition and in view of the different tactics used in China.

Some believe that drug problems can never be solved merely by controlling drug trafficking; the real solution is a three-propped attack aimed at production, traffic, and consumption. A demand for drugs naturally gives rise to traffic, which in turn, stimulates production, and thus creates a vicious circle. Drug problems cannot be eradicated simply by breaking one of the links in the chain. Different countries are confronted with individual aspects of the problem (i.e., production, consumption, trafficking), while some countries experience all three aspects. Therefore, the measures applied have to be appropriate to each country's particular situation. Also, producing countries should concentrate mainly on finding alternatives to drug cultivation, endeavoring to limit production to within legal requirements. In the opium-poppy producing regions, growers should be encouraged to turn to other substitute crops, and should be guaranteed an income high enough for their daily needs. In countries where drug addiction is the main problem, the emphasis should be placed on treatment and awareness programs.

Data on file with author.
for young addicts and on the adoption of penal countermeasures aimed at the total suppression of drug consumption.\footnote{See generally United Nations, Global Outlook 2000: An Economic, Social, and Environmental Perspective 322-23 (1990).} It is not only important to examine the reasons and causes for the increased addiction among young people, but also it is important to find the appropriate solutions.\footnote{See id.} One of the most important proposals is that countries affected by drugs taken through in transit should adopt strict legal measures and more stringent control, detection, and interception at ports and at border posts. A significant observation is that the drug problem had such vast social ramifications and is so complex, it could not be dealt with by the police alone. Governments have to establish and mobilize the appropriate judicial and administrative departments and health and information services, each of which has a part to play in waging a major campaign against drug traffic, abuse, production, and cultivation. It is scarcely possible to solve the problem in any other way.

Also, because drug problems affect so many countries, far-reaching international cooperation is essential, and the following international guidelines have been recommended:

- Interpol should cooperate closely with other international organizations, such as the United Nations Division of Narcotic Drugs and Commission on Narcotic Drugs, on the preparation and implementation of joint projects;
- Interpol member states should unite in their efforts. In particular, neighboring countries should share information, assist one another and fight together against the common enemy. As far as China was concerned, cooperation with Interpol Bangkok, Hong Kong, and other NCBs was considered to be excellent;
- The General Secretariat's Drugs Sub-Division should serve as the link between member countries. It should carefully study the characteristics and trends of international drug-related crime and disseminate information to members immediately. The Sub-Division should also organize the sharing of information concerning specific investigations and provide any necessary assistance with coordination. Finally, it should ensure that different countries' experiences of drug detection methods are available to all.
Throughout 1994 and 1995, the production of heroin, cocaine, cannabis, and psychotropic substances was at a record high. The drug trade continued to be a profitable international business in which traffickers aggressively developed new markets for their products. Increased shipments of morphine and heroin were transported to Europe from source countries in Southwest Asia via land and sea routes, while Southeast Asian heroin continued to dominate the North American airports. Increased availability of cocaine was evident throughout 1994, with record seizures by drug law enforcement agencies against efforts by South, Central, and North American cartels to transit cocaine into the West European market, and West African nationals emerged as cocaine couriers from South America to Europe via West African airports. Cannabis supplies were in abundance in numerous countries. Multiton shipments of cannabis products were transported between continents in merchant vessels and inside container trucks intermingled with legitimate cargo. The popularity of cannabis coupled with enormous profits has encouraged entrepreneurs to embark on new techniques of cultivation, especially in the United States and the Netherlands.

In recent times, large quantities of amphetamines have been seized in several countries. Europe, the Netherlands, and Poland continue to be source countries for the European market. As in past years, methamphetamine continues to be manufactured in clandestine laboratories in the United States. In African countries, the abuse of stimulants continues to be a major problem. There is large-scale smuggling of methaqualone from India to African countries, and Indian law enforcement agencies have made record seizures at exit ports. In the Pacific Rim region, methamphetamine abuse is a major concern to the Japanese authorities. In other countries—South Korea, Thailand, the Philippines, and Australia—there are regular seizures of various psychotropic substances, indicating increasing abuse in the entire region.

56 See id. at 20-21.
57 See generally id. at 5-6.
During 1995, the Near East, Southwest Asia, Southeast Asia, Mexico, and Colombia remained the principal regions of illicit poppy cultivation. Despite eradication and crop substitution programs carried out in these regions, the total illegal production of opium is estimated to exceed 4000 tons. There was regular transnational opium trade between Afghanistan and Iran in Southwest Asia and between China and Myanmar in the Southeast Asian region. There were increasing reports of the conversion of opium into morphine and heroin in clandestine laboratories in and around the production areas. The principal source and transit countries reporting significant opium seizures were: Iran (38 tons), Pakistan (3.4 tons), India (2 tons), China (3 tons), Myanmar (2.2 tons), Thailand (1.1 ton), and Vietnam (1 ton).\textsuperscript{38} In the western hemisphere, Mexico and Colombia were the principal producers of opium. The Mexican authorities estimate the annual production at forty tons. Colombia's opium production in 1992 was an estimated 200 tons.\textsuperscript{39}

Illicit traffic in opiates escalated during 1994 and 1995. Information received by Interpol indicates that enormous quantities of opiates, produced in clandestine laboratories in the Afghanistan and Pakistan border region, were transported overland through Iran and Turkey and by sea from the Pakistani coast via the Suez Canal to Europe. The Iranian authorities intercepted over seven tons of opiates along the country's eastern borders with Afghanistan and Pakistan and on its western border with Turkey. The Turkish authorities made two major seizures of opiates totalling 3.5 tons. They seized 1.5 tons of opiates on the Turkish and Georgian border, an indication that drug traffickers are using this route through the central Asian republics to transport morphine base to Europe. In addition, the Turkish authorities intercepted a merchant vessel in the Mediterranean Sea transporting two tons of opiates that originated in Pakistan.\textsuperscript{40} These seizures are evidence that increased quantities of opiates are being transported to Europe, presumably for conversion into heroin in clandestine laboratories.

Also during this period, there was a significant increase in heroin production and its transnational transportation, despite the improved international law enforcement cooperation. Southwest Asian heroin production and traffic were more preva-
lent than in previous years. This was ostensibly to meet the great demand by consumers in Southwest Asia as well as in Europe and North America.

The heroin trail from Southwest Asia to the Western European market starts at the Afghanistani and Pakistani border and transits through Iran, entering collection centers in southeast Turkey for onward shipment to Istanbul.41 It is estimated that during 1994, between seventy and eighty percent of the seven tons of heroin seized in Europe transited along the Balkan route via Turkey. The heroin was mostly transported in secret compartments in trucks, buses, or private cars form Turkey to seven main recipient countries: Germany, Italy, the Netherlands, Belgium, Spain, France, and the United Kingdom. The war in Bosnia disrupted the traditional Balkan route, and drug trafficking groups are now transporting the drug in vehicles north through Hungary and the Czech Republic to Germany for onward shipment to other parts of Europe, and via Greek ports where the drug, concealed inside trucks, is ferried across to Italian ports.

The “opening up” of Central and Eastern European countries has proved advantageous to drug trafficking organizations that are utilizing the countries in the region for storage and transit.42 Turkish crime syndicates continue to be active in transporting heroin and working in close collaboration with organized crime groups based in several European countries. With the bulk of the heroin from Southwest Asia transiting along the Balkan route to Europe, there were fewer heroin seizures at European airports. Asian and African nationals were among the main groups arrested at European airports when seizures did occur.

In the Near East, Lebanon remained a major source country for illicit narcotics, despite efforts in the spring of 1992 by Lebanese and Syrian security forces to eradicate poppy and cannabis cultivation at some sites in the Bekaa Valley. Harsh winter weather probably destroyed much of the 1992 crop, and the eradication campaign destroyed what remained. Intelligence reports indicated that the Bekaa Valley continued to be the site of many operational hashish and heroin-processing laboratories. Lebanese trafficking groups have also forced alliances with South American traffickers, resulting in heroin and cocaine ex-

42 See generally Stares, supra note 35, at 20.
changes, as well as a proliferation of cocaine processing laboratories in Lebanon. Much of the cocaine appeared to be destined for the Middle East and European markets. During 1992, officials seized heroin, cocaine, and hashish at the Beirut International Airport as well as at sites in the Bekaa Valley.

In Southeast Asia, the heroin scene has not undergone any dramatic change over the past few years.\(^43\) Heroin processing has continued unabated in the border areas of Thailand, Myanmar, and Laos, popularly known as the Golden Triangle. Thailand, with its geographic location, modern transportation, developed coastline, and well-connected air and sea ports at Bangkok, is the principal transit country for these operations. Thailand also continues to be the main conduit for heroin shipments from the region to the international market. During 1994, the Thai authorities seized a total of 379 kilograms of heroin at Bangkok Airport, mainly found in the possession of East Asian and African nationals, travelling to Africa, Europe, and North America.\(^44\)

China has emerged as an alternative route for opium and heroin smuggled from Myanmar to Hong Kong.\(^45\) China's Yunnan Province is at the heart of the new trafficking route. During 1994, Chinese authorities seized four tons of heroin, the bulk of it in Yunnan Province.\(^46\) Because of its strategically located border in close proximity to mainland China, Hong Kong continues to be a staging area in the Far East region. China and Taiwan have emerged as major transit areas for heroin shipments bound for North America. Based on reports received from United States drug enforcement agencies, approximately fifty-six percent of the heroin seized in the United States originates from Southeast Asia.\(^47\) Countries such as Malaysia, Singapore, the Philippines, and Indonesia, where there is domestic heroin consumption, are also utilized as transit countries. Australia is also a major recipient of Southeast Asian heroin where organized criminal groups (of Chinese descent) play a major role in heroin trade.

\(^{43}\) See generally The New Heroin Corridor: Drug Trafficking in China: Joint Hearing Before the Committee on the Judiciary and the Caucus on International Narcotics Control of the United States Senate, 102d Cong. (1992) [hereinafter Hearing].

\(^{44}\) Data on file with the author.

\(^{45}\) See Hearing, supra note 43.

\(^{46}\) See id.

\(^{47}\) See id.
North America remains the world's principal heroin market. As noted above, heroin in the United States arrives mainly from Southeast Asian countries that have well-organized networks in the United States. Mexican heroin traffic to the United States is controlled by Mexican criminal groups. Colombian heroin is transported by Colombian nationals using commercial airlines that fly to New York and Miami. Intelligence reports suggest that South American cocaine cartels may be using existing cocaine smuggling networks to ship Colombian heroin to North America and Europe.  

According to drug seizure information reported to Interpol, four times as much cocaine as heroin was seized worldwide during 1992. Although much of this increased activity is attributed to aggressive anti-drug efforts, it is also the result of record high levels of cocaine production. Although there are no adequate means to measure the magnitude of the drug problem, a few figures illustrate the possible seriousness of the threat. According to international sources, during 1994, 400 metric tons of cocaine were seized globally, whereas the potential maximum coca yield was between one to two thousand metric tons.  

Nearly two-thirds of the world's cocaine supply comes from coca grown in Peru. Peru's estimated coca cultivation in 1992 was reported to range from 129,000 hectares to as high as 350,000 hectares. Although there is no consensus on the amount of coca grown in Peru, officials agree that coca cultivation is rising. While the government of Peru pursues a comprehensive program to eliminate cocaine production and provide alternative development, its efforts are limited by insurgent activity in coca producing regions.  

Colombia is the world's leading supplier of cocaine base (HCL). Most of the cocaine base is imported from Peru and Bolivia and processed into cocaine by Colombian traffickers. Official Colombian statistics indicate that cocaine HCL seizures have dropped to thirty-two metric tons from approximately seventy-seven metric. This change is largely the result of shifting  

49 Data on file with author.  
51 See generally Kelley, supra note 48.
enforcement resources to the destruction of the country's rapidly expanding opium poppy crop.

Bolivia is the world's second largest producer of coca leaf and cocoa derivatives, such as cocaine HCL. The Chaparer is Bolivia's primary coca leaf production region. Through the success of a number of interdiction operations, most notably the "Ghost Zone," traffickers have increased their activities in the Yungas region of Bolivia.\(^{52}\)

Brazil and Venezuela are major hubs for cocaine trafficking activities. Brazil is a significant transit country for cocaine destined for the United States and Europe, and it is a major producer of precursor and other essential chemicals. Venezuela is a transit country for Colombian cocaine. Information received by Interpol indicates that seizures of drugs transported through Venezuela totals more than thirty metric tons.

North America, specifically the United States, remains the principal market for cocaine. United States agencies seized approximately 120 tons of cocaine during 1992.\(^{53}\) Successful law enforcement operations against Cali Cartel bases, combined with the capture or surrender of several cartel leaders, disrupted the flow of cocaine, which led to a sharp price increase in the United States during the second quarter of 1994. Colombian groups continue to dominate the traffic and are expected to further consolidate their control.\(^{54}\) Cocaine is transported to the United States primarily along the southeastern seaboard, by aircraft using international air corridors over Cuba and land routes through Mexico. During 1992, Mexican authorities seized almost forty tons of South American cocaine destined for the United States.\(^{55}\)

Canada reported a record number of seizures of cocaine in 1992. South American cocaine cartels view Canada both as a new market and a transit point for cocaine bound for the United States. One of the most striking features in the area of Canadian related cocaine seizures is the increase in the number of seizures effected by foreign countries of cocaine destined for the Canadian market.

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\(^{52}\) See generally U.S. Narcotics Control Programs in Peru, Bolivia, Colombia, and Mexico: An Update (1989), microformed on CIS No. 89-H382(12) (Southern Methodist University Underwood Law Library) [hereinafter U.S. Narcotics Control Program].

\(^{53}\) Data on file with author.

\(^{54}\) See generally U.S. Narcotics Control Program, supra note 52.

\(^{55}\) Data on file with author.
Central America and the Caribbean have observed an increase in cocaine trafficking by private aircraft and private and commercial vessels. While sizeable quantities of cocaine are air-dropped in the Caribbean to waiting vessels, drug traffickers are also making greater use of commercial maritime vessels to transport cocaine concealed within containerized cargo. Pleasure yachts and fishing boats in the Atlantic and Caribbean seas are also attractive to drug traffickers because they provide excellent cover for their illicit activities.

Europe is being flooded with cocaine in an effort to develop a market to help compensate for falling profits in the United States. During 1994, European law enforcement agencies seized nineteen tons of cocaine, with record seizures reported from France, Portugal, Spain, and the United Kingdom. The importation of cocaine into Europe is predominantly controlled by the Cali Cartel. While smaller in size than the more notorious Medellin Cartel, the Cali-based group has benefited from maintaining a low profile. South American cocaine cartels have forged alliances with organized crime groups in Europe, such as Galician smugglers in Spain and the Mafia in Italy, to transport cocaine to Europe.

Large shipments of cocaine, smuggled by sea from Colombia or Venezuela, are often transported via the Canary Islands, the Azores, Cape Verde, or Madeira; all are situated in strategic locations on the North Atlantic route from South America to western Europe. Large ports such as Rotterdam and Rostock are being used by drug traffickers to convey shipments of drugs inside legitimate cargo being sent to Europe.

Another alarming trend is the increase in the number of cocaine-processing laboratories in Europe. In 1992, Germany, Italy, and Spain reported dismantling illicit laboratories. Both France and the United Kingdom reported seizing cocaine base being shipped through Brazil for conversion in cocaine processing laboratories in Europe. Drug traffickers are also capitalizing on the revolutionary changes taking place throughout Europe from the collapse of communism to the emergence of a single European Market. For example, South American cocaine cartels are specifically targeting Eastern Europe as a drug transshipment point.

56 Data on file with author.
57 Data on file with author.
58 See generally RUGGERO & SOUTH, supra note 41.
Africa is a major transit region for cocaine intended for Europe. Africa’s strategic location and low standard of living has created an ideal climate for drug trafficking, especially in Nigeria. Cocaine comes into Lagos, Nigeria for re-export to Europe primarily by commercial air routes from Rio de Janeiro, Brazil. Nigerian and Ghanaian groups who control the Nigerian drug trafficking activities continue to find new routes, methods and couriers to evade arrest and detection.

The Middle East is also emerging as a transhipment point for cocaine from South America destined for Europe and the United States. Lebanese traffickers are collaborating with South American traffickers to exchange heroin for cocaine, resulting in the proliferation of cocaine processing laboratories in Lebanon. During 1994, the French authorities reported to Interpol the existence of a Lebanese and Brazilian cocaine connection based on several significant seizures involving Lebanese nationals and cocaine shipments confiscated in France.

Cocaine trafficking and consumption are also growing problems in Australia. South American cocaine traffickers have targeted Australia as a new market in addition to being a transit point for cocaine intended for the Asian market. Cocaine traffickers looking to expand their markets have been attracted by Japanese prosperity. This conclusion is supported by the increase in travel by known members of Colombian cartels to Japan, as well as the high number of Japanese nationals arrested for cocaine trafficking. The involvement of Japanese organized crime, the Yakuza, in domestic cocaine trafficking is expected to increase because the cocaine trade provides enormous profits.

As indicated by nearly every continent reporting seizures, increased trafficking in crack cocaine is a growing concern to drug law enforcement agencies. In 1992, Côte d’Ivoire reported its first seizure of crack. Crack is readily available in large metropolitan areas throughout the United Kingdom, Canada, and the United States, where distribution networks are believed to be supplied and controlled by Jamaican gangs.

During 1994, cannabis in its various forms was extensively cultivated and traded in various parts of the world. Cannabis reaps tremendous profits for both growers and traffickers. Indoor hy-

59 See generally Narcotics Review in Southeast/Southwest Asia, the Middle East, and Africa (1988), microformed on CIS No. 88 H381-74 (Southern Methodist University Underwood Law Library).
60 See id.
droponic operations are gaining popularity in the West, notably in the United States and the Netherlands. These indoor operations reportedly produce four full growing cycles per year, which quadruples the potential of production by other traditional methods. These indoor operations range from a few plants grown in a closet to hundreds or thousands of plants grown in subterranean greenhouses. Specially constructed sites are capable of producing millions of dollars worth of sinsemilla. A pound of sinsemilla is worth between $3000 and $9000 U.S. dollars.61

The bulk of cannabis is smuggled by land or by ship because of its weight. In 1994, transport by land accounted for sixty-five percent of the total seizures of cannabis in Europe, and transport by shipment accounted for twenty-eight percent. Worldwide, there was a significant increase in cannabis seizures between 1991 and 1992. In 1992, fifteen African countries seized 112 tons (fifty-three tons in 1991) of cannabis, including fifty tons from Morocco. In Europe, 402 tons were seized in 1992, as compared to 221 tons in 1991. Spain seized 122 tons, the Netherlands ninety-four tons, the United Kingdom forty-nine tons, and France forty-two tons of cannabis.62 These seizure figures are substantially higher than those reported in 1991. Other significant worldwide seizures were in Sri Lanka, forty-nine tons (ten tons in 1991); Pakistan, 188 tons; India, sixty tons (fifty-two tons in 1991); Thailand, 126 tons (fifty-five tons in 1991); Mexico, nineteen tons; Lebanon, twenty tons; and the United States, 346 tons.63

Some of the more significant 1992 worldwide seizures included:

• 7740 kilograms of cannabis in Barcelona, Spain, in March 1992. The drug arrived in Spain by sea from Lebanon. The drugs were hidden inside rubber wheels and packed in sacks.

• 6400 kilograms of cannabis in Istanbul in August 1992. The drugs were concealed in a truck using the Balkan Route for reaching various destinations in Western Europe, including the Netherlands.

• 3000 kilograms of cannabis resin originating from Afghanistan, in Sydney in August 1992. One yacht and a light private aircraft used in the smuggling were also seized.

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61 Data on file with author.
62 Data on file with author.
63 Data on file with author.
• 4040 kilograms of cannabis resin at the port of Casablanca, Morocco, in March 1992. The drugs were hidden in a Volvo truck on its way to the Netherlands.
• 2300 kilograms of cannabis in Maghria-Akid Lotfi, Algeria, in November 1992. The drugs were hidden in a camping car that was obtained in Morocco.
• 10,000 kilograms of cannabis resin in Dunkirk, France, in September 1992 from the ship “Rossinant” that was loaded in the port of Jiwani, Pakistan.64

A total of eleven tons of cannabis was seized in Russia between 1992 and 1994. Cannabis also grows wild in the five newly independent central Asian countries, formerly a part of the U.S.S.R. The strategic importance of this area in the context of cannabis traffic lies in its proximity to the well-recognized cannabis sources in Southwest Asia and its geopolitical and ethnic proximity to countries such as Turkey, China, Afghanistan, and Pakistan. Trafficking organizations are already exploiting the location of these countries to move hashish in sizable quantities to Russia and other destinations. This is confirmed by a record seizure of fourteen tons of Afghan hashish destined for the Netherlands in February 1993, and another seizure of thirteen tons in 1992 in Uzbekistan.65

Unlike other drugs, psychotropic substances have no “minimal criteria” concerning quantities when seizures are reported to the General Secretariat. Logically, it should follow that the General Secretariat’s database for psychotropic substances should accurately reflect what has occurred around the world concerning these substances. However, when the Drug Seizure Report (DRST) database is compared with national statistics on illicit drug production, traffic, and use, it is evident that the DRST database contains only a fraction of the total seizures made by individual countries.66

The overall picture shows that there were increases in the amounts of illicitly produced amphetamine and methamphetamine, Lyseraic Acid Diethylamide (LSD), Methylene Dioxy Amphetamine (MDA), and its analogue MDMA. The year 1994 saw the proliferation of a new MDA analogue, methylene dioxyethylamphetamine (MDEA), which was introduced into the market in 1992. With the exception of methaqualone, the pic-
ture was much the same in 1992 for other stimulants, depressants, and hallucinogens as it was in 1991. The reported number of clandestine laboratories that were dismantled increased to 876. The increase was caused largely by Polish authorities seizing 518 laboratories producing compote, a narcotic drug brewed from poppy straw.\(^{67}\)

Although no seizures of buprenorphine were reported during 1994 by way of the DRST, several European countries, such as the United Kingdom, have made some seizures. The same is true of Southeast Asia. In its annual statistical report, New Zealand reported seizing sixty-nine tablets of buprenorphine (Termgesic), together with small quantities of Paradeine and Doloxene. Thirteen countries reported seizing preparations containing codeine, morphine, and pethidine from 1992 to 1994.\(^{68}\)

Thirteen countries representing various regions of the world reported seizing 19,500 dosage units, 152 grams, and 2078 milliliters of methadone.\(^{69}\) The individual seizures were all very small quantities, but involved a large number of offenders. The European sources of the drug were mainly the Netherlands and Switzerland. In Southeast Asia, sources seemed to be mainly in Thailand and Vietnam. The majority of seizures took place in Germany, Switzerland, Greece, and Singapore. According to information received, butalbital, a barbiturate that can be used as both a hypnotic and a sedative, has been seized in only one country: Jordan. The Jordanian authorities removed over 35,000 dosage units from circulation in seven cases, all of which were from Syria. Four other countries reported seizing 77,400 other unidentified barbiturates, 5434 of which were located in Greece and 71,290 in the United States. The United States authorities seized 589,997 dosage units of unidentified tranquilizers.\(^{70}\)

The large family of benzodiazepines was introduced as a “safer” alternative to, for example, the barbiturates, because benzodiazepines have less potential for creating dependence. However, these drugs soon became popular on the illicit markets, particularly in West African countries. Diazepam, known most commonly as Valium, was seized in fourteen countries. In

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\(^{67}\) Data on file with author.

\(^{68}\) Data on file with author.

\(^{69}\) Data on file with author.

\(^{70}\) Data on file with author.
CONTROLLING NARCOTICS

all, 710,422 dosage units of Valium were seized, including 575,910 in the United States, 62,641 in Côte d'Ivoire, and 31,306 in Spain. Flunitrazepam (Rohypnol) proved to be the next most popular drug with 189,690 dosage units seized, 170,317 of them in Lebanon. Norway also made a large single seizure of 17,445 dosage units, which was smuggled from Thailand in champagne bottles and cosmetic boxes.71

There were seizures of smaller quantities of alprazolam, clonazepam, flurazepam, cloraepam, midazolam, nitrazepam (70,188 dosage units in Indonesia), oxazepam, temazepam (12,238 dosage units in the United Kingdom), and triazolam, in addition to another 54,300 dosage units of unidentified benzodiazepines.72 No geographical location has been left untouched by these drugs. Secobarbital, another drug that was once very popular among the West African drug-using population but has now been largely replaced by the benzodiazepines, was seized in three countries: Côte d'Ivoire (91,400 dosage units), Sudan (1,038 dosage units), and Saudi Arabia (1,361,776 dosage units). The tightening of control by drug producing countries seems to have had a considerable effect on the availability of this drug.73

In 1992, there were two reported seizures of phenobarbital concealed in barrels. One seizure was an unknown quantity found with heroin smuggled from one part of Pakistan; the other seizure was 100 kilograms sent by a British national working in a United Kingdom laboratory. Both barrels were destined for another part of Pakistan. In December 1992, Indian authorities and the General Secretariat held an international conference on the trafficking of methaqualone, a central nervous system depressant, in New Delhi, India. During 1992, India seized over 7.5 tons of methaqualone, the illicit production of which has had devastating effects on some eastern and southern Africa countries, so much that it replaced local currencies.74

During 1992, six African countries—Botswana, Kenya, Swaziland, Uganda, Zambia, and Zimbabwe—seized approximately 1.66 million dosage units of methaqualone. Another 15,384 and 149,238 dosage units were seized respectively by Greece and the United States. South Africa, which had observer status at the

71 Data on file with author.
72 Data on file with author.
73 Data on file with author.
74 Data on file with author.
New Delhi Meeting, informed delegates that authorities there had seized 2.8 million dosage units in 1992.\textsuperscript{75} The increase in the amount being produced, as indicated by seizure figures, continued into 1993 and 1994 with Indian authorities removing three tons of methaqualone from the illicit trade in one single case. This drug is mostly produced in India, though there is some production in South Africa and its neighboring countries.\textsuperscript{76}

In Poland, 518 laboratories producing compote were dismantled, resulting in 1,761,200 milliliters of compote seized. A methaqualone producing laboratory was seized in Luxembourg, together with thirty-five kilograms of the finished drug, fifty kilograms of anthranilic acid, and ninety liters of acetic anhydride.\textsuperscript{77} Interestingly, it was reported that the laboratory had been operating in a hotel room. The operator had been sending the drug to South Africa concealed in tins of five or ten liter capacity. The total picture for methamphetamine seizures in 1992 is not as clear, because some of the reports have included ephedrine as part of the overall seizure figure. For example, Taiwan reported a total of one ton, but this was the combined figure. Japan seized 163 kilograms, China 576 kilograms, in addition to ten laboratories and 2779 kilograms of ephedrine, and the Philippines 129 kilograms, twelve kilograms of which were “ice.”\textsuperscript{78} Ice is the crystallized, more potent form of methamphetamine. The United States also reported one seizure of twelve kilograms of “ice,” together with 47.5 million dosage units of methamphetamine and the dismantling of 287 laboratories.\textsuperscript{79}

Norway seized 280 grams of methamphetamine; while this figure may not seem important when compared with worldwide figures, it is significant because 200 grams of this drug was traced to Russia and is the first of its kind recorded in Norway. Russia reported having seized twelve kilograms of methamphetamine in 1992; however, it is possible that with the availability of precursor chemicals in that country, the Norwegian experience may prove to be an insight into what other European countries may expect in the future. For instance, in

\textsuperscript{75} Data on file with author.
\textsuperscript{76} Data on file with author.
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\textsuperscript{79} Data on file with author.
1992, Sweden dismantled one methamphetamine laboratory, and the United Kingdom dismantled three laboratories.\textsuperscript{80}

Fenetylline still proves to be a problem for Middle Eastern countries. In 1994, Qatar seized eighty-four dosage units; Jordan 33,553; and Turkey 560,000; all of which were destined for Saudi Arabia, where an additional 2.3 million tablets were seized.\textsuperscript{81}

Almost two tons of khat leaves, a mild stimulant classified under “other natural drugs,” was seized in Europe. In general, the traffickers included Danish, German, Netherlands, Norwegian, Swedish, and United Kingdom nationals engaged by Somali and Ethiopian users of this substance. The majority of these seizures took place in Sweden (1699 kilograms), with Switzerland, Italy, and Finland accounting for the remainder.\textsuperscript{82}

LSD is currently enjoying a new wave of popularity, particularly in Europe with the United Kingdom as the center of activity. In 1992, The United Kingdom seized 312,114 dosage units; France seized 128,359 dosage units; and the Netherlands, the principal source country for Europe, seized 50,002 dosage units.\textsuperscript{83} Another major source, the United States, seized 3.9 million dosage units. Despite the world seizure total of 4.5 million dosage units, only one laboratory in Germany was reported dismantled with 29,5000 units seized. LSD is trafficked in much the same way as all other drugs, with similar methods of concealment being used.\textsuperscript{84}

The postal services remain a favorite method of distribution due to the light weight of the product and the reduced risk of detection. In Europe, the “Strawberry” and “Om” designs are among those most often seized. During 1993, Australia seized 30,173 dosage units (four times as many as in 1991) and New Zealand seized 22,284 units.\textsuperscript{85} The drug is cheap and has a “cleaner” image than it had in the sixties. It is also less potent, with each dosage unit containing about forty to fifty micrograms of LSD. MDA and its analogues MDMA and MDEA have all been marketed to young people as “clean” drugs, in contrast to other “hard” drugs. Given the common street name of “Ecstasy,” they do not have a “dirty needle” image and are ex-

\textsuperscript{80} Data on file with author.
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\textsuperscript{84} Data on file with author.
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tremely popular with young people attending “acid” or “rave” parties. If the quantities seized indicate the amounts available, then this is cause for alarm.

Most of the seizures in 1992 took place in Europe and were recorded both by weight and by dosage units. Ten European countries reported seizing 406,000 dosage units of MDMA; 512,000 dosage units of MDEA; and 2,700,000 dosage units of MDA. In terms of weight, Germany reported the seizure of 3097 kilograms of Latvian-produced MDA in a single operation. The Netherlands also seized 776 kilograms of MDA. Gram quantities were seized by Finland (MDMA), Germany (MDMA and MDEA), Sweden (MDMA), and Australia (MDMA and MDA). MDA laboratories were dismantled by the United States (two), Germany (one), and the Netherlands (one). MDMA laboratories were dismantled by the United States (nine), the Netherlands (one), and the United Kingdom (two). MDEA laboratories were dismantled by Hungary (two) and the Netherlands (two). The Netherlands, the principal source country for Europe, seized 2.7 million dosage units. These figures prove that law enforcement is working hard to eliminate this problem. The United Kingdom is the second largest Ecstasy center in Europe; a combined total of just over 825,000 dosage units were seized there.

Small quantities of the hallucinogenic drug psilocybin were seized in Germany and the Netherlands. Only two countries mentioned phenylclidine (PCP): Germany, in connection with the dismantling of an amphetamine and MDA laboratory; and the United States, in connection with the dismantling of four laboratories and the seizure of 47,807 dosage units of PCP. Anabolic steroids are a growing problem in a number of countries and will continue to be so as long as people in sporting circles see them as a way to achieve fame and fortune. Reports of seizures of these substances have been received from Austria, Canada, Finland, and, in particular, Sweden, where many seizures were made during 1994. The source of anabolic steroids for European countries seems to be Russia and other Eastern European countries. The United States reported seizing

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86 Data on file with author.
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244,207 dosage units in the same period.\(^{89}\) The dangers of anabolic steroids are that they are often injected, thereby increasing the risk of spreading disease, and they are counterfeited in a number of southeast Asian centers. Consequently, the users are totally unaware of what they are taking.\(^{90}\)

There were very few reports of precursors and essential chemicals seized in 1992. In Europe, there were reports of small quantities of chemicals seized in connection with the dismantling of laboratories in Denmark, Germany, Spain, and the United Kingdom. There were only six reports of chemical seizures from countries in production or transit areas. These reports included seizures made by Argentina and Colombia (cocaine laboratory chemicals); Pakistan, Thailand, and Turkey (heroin-producing chemicals); and Taiwan (ephedrine for methamphetamine production).\(^{91}\)

V. UNITED NATIONS INITIATIVES

A. U.N. Resolution 40/120

In December 1985, the General Assembly of the United Nations requested the Economic and Social Council, in accordance with General Assembly Resolution 39/141 and Resolution 1 (XXXI) of the Commission on Narcotic Drugs, to instruct the Commission to recommend elements to be included in a convention against illicit traffic in narcotic drugs and psychotropic substances.\(^{92}\) The General Assembly also requested the Secretary-General to prepare a draft regarding those elements and to submit a progress report of completed elements of the draft to the Commission for further consideration.\(^{93}\)

The Assembly also requested that the Secretary-General submit to the International Conference on Drug Abuse and Illicit Trafficking in 1987 “a report on progress made towards completing a new convention against drug trafficking.”\(^{94}\) The Assembly emphasized “the importance of Resolution 2 adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, approved by the Gen-

\(^{89}\) Data on file with author.

\(^{90}\) See generally George F. Rengert, The Geography of Illegal Drugs (1996).

\(^{91}\) See generally Ruggiero & South, supra note 41, at 67-97.


\(^{93}\) See id.

\(^{94}\) Id.
eral Assembly in its Resolution 40/32 of 29 November 1985[.]” 95
In Resolution 2, the Congress urged that top priority be given to
preparing a new international instrument against illicit drug
traffic.96

The Congress also recommended that this instrument em-
brace the interests of all countries to ensure the effectiveness of
the instrument in the battle against illicit drug trafficking.97
The General Assembly further requested the Commission on
Narcotic Drugs “to report to the Economic and Social Council
at its first regular session of 1986 on the results achieved in this
respect during its ninth special session.”98

B. U.N. Resolution 40/121

In its Resolution 40/121, adopted December 13, 1985, the
United Nation’s General Assembly reaffirmed

that maximum priority must be given to the fight against the il-
licit production of, demand for and traffic in drugs and related
international criminal activities, such as the illegal arms trade
and terrorist practices, which also have an adverse effect not only
on the well-being of peoples but also on the stability of institu-
tions, as well as posing a threat to the sovereignty of States . . . .
[The Assembly acknowledged] the work of bodies of the United
Nations system, in particular the drug-control bodies, in assisting
efforts and initiatives designed to increase international co-opera-
tion, and recommend[ed] that this work be intensified; [and
encouraged] Member States and the relevant bodies of the
United Nations system to provide technical assistance to the de-
veloping countries most affected by the illicit production of, traf-
fic in and use of drugs and psychotropic substances, in order to
combat the problem. . . .99

The General Assembly approved the Secretary-General’s plan
to hold an interregional meeting of national drug law enforce-
ment leaders in Vienna pursuant to paragraph 10 of General
Assembly Resolution 39/143.100 The General Assembly recom-
manded to the Commission on Narcotic Drugs that it

95 Id.
96 See id.
97 See id.
98 Id.
99 International Campaign Against Traffic in Drugs, G.A. Res. 40/121, U.N.
(1985).
100 See id.
advise the interregional meeting to examine in depth the most important aspects of the problem, especially those that would enhance ongoing bilateral and multilateral efforts, in particular the preparation of a draft convention against illicit traffic in narcotic drugs and psychotropic substances and the proposed International Conference on Drug Abuse and Illicit Trafficking, to be convened by the Secretary-General at the ministerial level, and to recommend action on, *inter alia*:

(a) Extradition;

(b) Mechanisms that would enhance interregional co-ordination and co-operation on a permanent basis;

(c) Modalities of ensuring rapid and secure means of communication between law enforcement agencies at the national, regional and international levels;

(d) Techniques of controlled delivery;

(e) Measures to reduce the vulnerability of States affected by the transit of illicit drugs . . . .

The Assembly encouraged Member States to send representatives with decision-making authority to the interregional meeting. The Assembly also invited the active participation of bodies within the United Nations system, the International Criminal Police Organization, and the Customs Co-operation Council, and welcomed their technical expertise. The General Assembly requested the Secretary-General to submit to the General Assembly at its forty-first session an interim report containing the recommendations of the interregional meeting of heads of national drug law enforcement agencies and to submit a final report to the Economic and Social Council, through the Commission on Narcotic Drugs at its next session . . . .

[The Assembly also reiterated] its request to the Secretary-General to continue to make the necessary arrangements for holding, within the framework of advisory services, interregional seminars on the experience gained within the United Nations system in integrated rural development programs that include the substitution of illegal crops in affected areas, particularly in the Andean region . . . . Furthermore, the Assembly acknowledged] the vital role played by the United Nations Fund for Drug Abuse Control and call[ed] upon Member States to contribute or to continue contributing to the Fund; [and] call[ed] upon the specialized agencies and all relevant bodies of the United Nations system ac-

101 *Id.* at 236-37.
102 *See id.* at 237.
103 *See id.*
tively to implement the present resolution and requests the Secretary-General to report thereon to the General Assembly at its forty-first session. 104

The resolution itself was to be included in the provisional agenda for the forty-first session. 105

C. U.N. Resolution 40/122

In Resolution 40/122 of December 13, 1985, relating to the International Conference on Drug Abuse and Illicit Trafficking, the General Assembly expressed its deep concern over the damaging effects of drug abuse and illicit trafficking, and recognized its threat to the stability of nations, the well-being of mankind, the security and development of many countries. 106 In recognition of these dangers, the Assembly focused on the dangers faced by producers, consumers, and transit countries due to the illegal production of, trafficking in, and demand for drugs. 107

Recalling the earlier resolutions and decisions of the Economic and Social Council and the Commission on Narcotic Drugs in the international campaign against narcotic drugs and psychotropic substances, the Assembly recognized the "special responsibilities of the United Nations and the international community to seek viable solutions to the growing scourge of drug abuse and illicit trafficking[.]." 108

The Assembly appreciated the Secretary-General's statement made before the Economic and Social Council on May 24, 1985, which focused on the gravity, magnitude, and complexities of the international drug problem. 109 The Assembly recognized that the

interregional meeting of heads of national drug law enforcement agencies, to be convened at Vienna in 1986, could make a significant contribution to the deliberations of the conference at the ministerial level proposed by the Secretary-General, [and took] into account the various reviews of the activities of the United Na-

104 Id.
105 See id.
107 See id.
108 Id.
109 See id. (referred to in Council decision 1985/131 of May 28, 1985). The Secretary-General proposed a world-wide conference to consider the problem. See id.
tions agencies in the narcotics field that ha[d] already been un-
dertaken and noted with satisfaction the Secretary-General's
designation of the Under-Secretary-General for Political and
General Assembly Affairs as the overall co-ordinator of all United
Nations activities related to drug control. . . . [the Assembly
strongly urged] all States to summon the utmost political will to
combat drug abuse and illicit trafficking by generating increased
political, cultural and social awareness . . . . [It called upon the
United Nations], the specialized agencies and other organiza-
tions of the United Nations system to give the highest attention
and priority possible to international measures to combat illicit
production of, trafficking in and demand for drugs . . . .

Further, the General Assembly called upon all States to ratify
the Single Convention of Narcotic Drugs of 1961, the 1972 Pro-
tocol Amending the Single Convention on Narcotic Drugs of
1961, and the Convention on Psychotropic Substances of 1971,
and to comply with their provisions in the interim.

The General Assembly decided to convene a ministerial-level
meeting entitled the International Conference on Drug Abuse
and Illicit Trafficking in 1987

as an expression of the political will of nations to combat the
drug menace, with the mandate to generate universal action to
combat the drug problem in all its forms at the national, regional
and international levels and to adopt a comprehensive multidis-
ciplinary outline of future activities which focuses on concrete
and substantive issues directly relevant to the problems of drug
abuse and illicit trafficking, inter alia:

(a) To consider whether existing mechanisms, whereby exper-
ences, methodologies and other information in law en-
fforcement, preventive education, treatment and
rehabilitation, research and development of manpower rel-
tating to the prevention and control of drug abuse can be
exchanged, should be improved or, if necessary, comple-
mented by new mechanisms;

(b) To intensify concerted efforts by governmental, intergov-
ernmental and non-governmental organizations to combat
all forms of drug abuse, illicit trafficking and related crimi-
nal activities leading to the further development of na-
tional strategies that could be a basis for international
action;

(c) To create heightened national and international awareness
and sensitivity concerning the pernicious effects of the

110 Id. at 237-38.
111 See id. at 238.
abuse of narcotic drugs and psychotropic substances, paying due attention to the demand dimension of the drug problem and to the role of the mass media, non-governmental organizations and other channels of dissemination of information about all aspects of the drug problem, especially in the prevention of drug abuse;

(d) To achieve as much harmonization as possible and to reinforce national legislation, bilateral treaties, regional arrangements and other international legal instruments, especially as they relate to enforcement and penalties against those involved in all aspects of illicit trafficking, including forfeiture of illegally acquired assets and extradition, and to develop co-operation in dealing with drug abusers, including their treatment and rehabilitation;

(e) To make further progress towards eradicating the sources of raw materials for illicit drugs through a comprehensive programme of integrated rural development, the development of alternative means of livelihood and retraining, law enforcement and, where appropriate, crop substitution;

(f) To control more effectively the production, distribution and consumption of narcotic drugs and psychotropic substances with a view to limiting their use exclusively to medical and scientific purposes, in accordance with existing conventions, and, in this connection, to underline the central role of the International Narcotics Control Board;

(g) To strengthen the United Nations co-ordination of drug abuse control activities by, inter alia, increasing support for the United Nations Fund for Drug Abuse Control and to reinforce regional and other co-operation between Member States; [and]

(h) To support strongly current high-priority initiatives and [programs] of the United Nations, including the elaboration of a convention against illicit traffic in narcotic drugs and psychotropic substances which considers, in particular, those aspects of the problem not envisaged in existing international instruments . . . .

To this end, the Assembly requested the Secretary-General to "facilitate co-ordination and interaction between Member States and the specialized agencies and other organizations of the United Nations system and, in this regard, to appoint a Secretary-General of the International Conference on Drug Abuse and Illicit Trafficking at the earliest possible time." The As-
The Assembly also requested the Economic and Social Council, to invite the Commission on Narcotic Drugs to coordinate the Conference.\textsuperscript{114} The Commission was asked to submit its report to the Council at its first regular session of 1986.\textsuperscript{115}

The Assembly reaffirmed the central role of the Commission on Narcotic Drugs and summoned all United Nations bodies to cooperate with preparations for the Conference.\textsuperscript{116} The resolution requested that the Secretary-General absorb as much cost as possible within the regular budget for the biennium 1986-87 without hampering ongoing initiatives, programs, and work of the United Nations in the field of drugs, and to facilitate consideration of the financial implications of the present resolution through established procedures.\textsuperscript{117} The General Assembly requested progress reports on the financial arrangements and preparations for the conference by the Commission on Narcotic Drugs, to the Economic and Social Council at its first regular session of 1986.\textsuperscript{118}

\subsection*{D. U.N. Resolution 40/129}

The General Assembly also took the step of addressing strategy and policies for drug control in its Resolution 40/129. The Assembly recalled two resolutions: (1) Resolution 32/124 of December 16, 1977, requesting the Commission on Narcotic Drugs to study the possibility of starting an international program on drug abuse control strategies and policies; and (2) Resolution 36/168 of December 16, 1981, adopting the International Drug Abuse Control Strategy and a five-year program proposed by the Commission on Narcotic Drugs in its Resolution 1 (XXIX) of February 11, 1981. Pursuant to these resolutions, the Commission on Narcotic Drugs would constitute the task force to monitor and coordinate the implementation of the International Drug Abuse Control Strategy and the five-year program.\textsuperscript{119} The Assembly approved the program of action for 1986, the fifth

\begin{footnotesize}
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\item[114] See id. The Conference would be open to the States and would extend the ninth special session of the Commission at Vienna in February 1986 by one week to consider the agenda and the organizational arrangements for the Conference. See id.
\item[115] See id.
\item[116] See id.
\item[117] See id.
\item[118] See id.
\end{footnotes}
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year of the five-year program that was to be reviewed by the Commission on Narcotic Drugs at its thirty-first session.\textsuperscript{120}

E. U.N. Resolution 41/125

In a separate exercise, the General Assembly

[took] \textit{into consideration} that in response to the threat posed by the drug problem, the international community had adopted numerous declarations and initiatives, interregional and regional, multilateral and bilateral, in order to condemn and combat the problem and to achieve its total eradication. . . . [The Assembly commended] the valuable contributions of the Secretary-General of the United Nations and the Secretary-General of the International Conference on Drug Abuse and Illicit Trafficking to the preparatory work for the Conference and noted the continuing efforts of the Commission on Narcotic Drugs, the United Nations Fund for Drug Abuse Control, the International Narcotics Control Board, the Division of Narcotic Drugs of the Secretariat, intergovernmental and non-governmental organizations and the regional commissions. . . .\textsuperscript{121}

\textsuperscript{120} See id. at 242.


- The Inter-American Programme of Action against the Illicit Use and Production of Narcotic Drugs and Psychotropic Substances and Traffic Therein, adopted by the Inter-American Specialized Conference on Traffic in Narcotic Drugs, held at Rio de Janeiro, Brazil . . . [Apr. 22-26, 1986];
- The Tokyo Declaration entitled "Looking Forward to a Better Future," issued at the Tokyo Economic Summit, held from May 4-6, 1986 (see A/41/354, annex I, para. 5);
- The nineteenth Ministerial Meeting of the Association of South-East Asian Nations, held at Manila [June 23-24, 1986];
- The recommendations of the first Interregional Meeting of Heads of National Drug Law Enforcement Agencies, held at Vienna [July 28-Aug. 1, 1986] (see A/41/559, para. 10);
- The Economic Declaration of the Eighth Conference of Heads of State or Government of Non-Aligned Countries, held at Harare [Sept. 1-6, 1986]. . . . The tenth meeting of senior officials of the States members of the Southeast Asian Nations on drugs, held at Manila [Sept. 30-Oct. 2, 1986];
- The Puerto Vallarta Declaration, adopted at the Regional Meeting of Ministers of Justice and Attorneys-General, held at Puerto Vallarta, Mexico, [Oct. 8-10, 1986] (A/C.3/41/5, annex);
- The Meeting of Ministers of Interior and Justice of the 12 member States of the European Community, held at London [Oct. 20, 1986];
- The recommendations of the Interregional Conference on the Involvement of Non-Governmental Organizations in Prevention and
The Assembly embraced the Secretary-General's commitment to cover the cost of the Conference through the regular budget for the 1986-87 biennium, without hindering ongoing initiatives and programs of the United Nations in the field of drug control.\textsuperscript{122}

The Assembly, after considering the Secretary-General's report on the status of preparations for the Conference:

1. *Request[ed]* all States, in reaffirmation of the commitment of the international community and as an expression of their political will to combat the threat posed by drug abuse and illicit trafficking, to give the highest priority to the holding of the International Conference on Drug Abuse and Illicit Trafficking at Vienna in 1987 and to participate actively in the Conference in order to stimulate comprehensive world-wide co-operative action to combat the drug problem in all it forms at the national, regional and international levels;

2. *[Took] note with satisfaction* of the report of the Commission on Narcotic Drugs acting as the preparatory body for the International Conference on Drug Abuse and Illicit Trafficking on its first session, and of the recommendations contained in that report, adopted by the Economic and Social Council in its decision 1986/128, in which it decided, *inter alia*, that the preparatory body for the Conference should convene for its second session immediately following the thirty-second regular session of the Commission on Narcotic Drugs;

3. *Request[ed]* the preparatory body for the Conference to complete its work [in] Vienna, in February 1987, particularly the drafting of the comprehensive multidisciplinary outline of future activities relevant to the problems of drug abuse and illicit trafficking, based on comments and modifications proposed by Governments, so that the Conference may consider it for adoption;

4. *Further request[ed]* the preparatory body for the Conference to report on its work to the Economic and Social Council at its first regular session of 1987;

5. *Reaffirm[ed]* the importance of the contribution of the Commission on Narcotic Drugs and request[ed] all States and all United Nations organs and organizations, as well as non-governmental organizations, to co-operate fully with the Commission and with the Secretary-General of the Conference in

\textsuperscript{122} See *Id.* at 183.
order to ensure effective preparations for the Conference and its success;

6. Request[ed] the Secretary-General to report to the General Assembly at its forty-second session on the implementation of the present resolution, particularly with regard to the results of the International Conference on Drug Abuse and Illicit Trafficking, for consideration under the relevant agenda item.\(^{123}\)

F. U.N. Resolution 41/126

In its preparation of the Draft Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the General Assembly at its ninety-seventh plenary meeting in December 1986 adopted Resolution 41/126, expressing its appreciation to the Secretary-General for his effective response to the request made in paragraph four of Commission on Narcotic Drugs resolution 1 (S-IX).\(^{124}\)

The Assembly also

[1.] Expresse[d] its appreciation to the Member States that responded to the request contained in paragraph 5 of Commission on Narcotic Drugs resolution 1 (S-IX), in which they were invited to submit their comments on and/or proposed textual changes to the draft, and urge[d] all Member States that [had] not yet done so to comply with this request as soon as possible;

[2.] Request[ed] the Commission on Narcotic Drugs, through the Economic and Social Council, to continue at its thirty-second regular session its work on the preparation of a draft convention against illicit traffic in narcotic drugs and psychotropic substances in the most expeditious manner, so that it may be effective, and widely acceptable, and enter into force at the earliest possible time.

[3.] Request[ed] the Secretary-General to submit to the International Conference on Drug Abuse and Illicit Drug Trafficking, to be held in 1987, a report on progress achieved in the preparation of a new convention against illicit drug trafficking;

\(^{123}\) Id. (citing U.N. GAOR, 41st Sess., U.N. Doc. A/41/665 and addendum pt. 1 (1986)).

\(^{124}\) See Preparation of a Draft Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, G.A. Res. 41/126, U.N. GAOR, 41st Sess., Supp. No. 53, 97th plen. mtg., at 184, U.N. Doc. A/41/126 (1986). The request was for a draft of the “Guidance on the Drafting of an International Convention To Combat Drug Trafficking” to be prepared. The draft contained the elements specified in paragraph three of that resolution and was to be available to members of the Commission and other interested governments.

[5.] Request[ed] the Secretary-General to report to the General Assembly at its forty-second session on the implementation of the present resolution.\textsuperscript{125}

G. U.N. RESOLUTION 41/127

Simultaneously, the General Assembly inaugurated its International Campaign Against Traffic in Drugs in Resolution 41/127 by noting:

the common concern that exists among peoples of the world regarding the devastating effects of drug abuse and illicit trafficking, which jeopardize the stability of democratic institutions and the well-being of mankind and which therefore constitute a grave threat to the security and an obstacle to the development of many countries. . . .

[The Assembly took] into consideration that the problem of illicit drug traffic negatively affects all producer, consumer and transit countries, and that there is an urgent need to take joint measures to combat it, including all aspects relating to illicit supply of, demand for and traffic in drugs. . . .

[The Assembly recalled] its Resolutions 39/142 of 14 December 1984 and 40/121 of 13 December 1985 and other relevant resolutions and decisions of the Economic and Social Council and of the Commission on Narcotic Drugs adopted to advance the international campaign against traffic in and abuse of narcotic drugs and psychotropic substances . . . .

[The Assembly considered] that, despite the efforts made, the situation continues to deteriorate, owing, \textit{inter alia}, to the growing interrelationship between drug trafficking and transnational criminal organizations that are responsible for much of the drug traffic and abuse of narcotic drugs and psychotropic substances and for the increase in violence, corruption and injury to society . . . .\textsuperscript{126}

The Assembly again acknowledged that the elimination of the drug trade called for shared responsibility in simultaneously attacking the problems of illicit demand, production, distribution,
and marketing, and that the attack should be accompanied by economic and social development programs.\textsuperscript{127} The Assembly recognized that "transit routes used by international drug traffickers are constantly shifting, and that an increasing number of countries in all regions of the world, and even entire areas because of their strategic geographical location and other considerations, are particularly vulnerable to the illicit transit traffic."\textsuperscript{128}

Considering that cooperative regional and international action was required to reduce States' vulnerability to the illicit drug trafficking and to provide support and assistance, the Assembly commended the work of the Commission on Narcotic Drugs, the International Narcotics Control Board, the Division of Narcotic Drugs of the Secretariat, and the United Nations Fund for Drug Abuse Control.\textsuperscript{129}

The Assembly acknowledged the need for States to consider the recommendations of the first Interregional Meeting of Heads of National Drug Law Enforcement Agencies, held in Vienna from July 28 to August 1, 1986, convened pursuant to General Assembly Resolution 39/143 of December 14, 1984, and examined the most important aspects of drug trafficking, including proposals for the preparation of a draft convention against illicit drug trafficking.\textsuperscript{130} Once again, the Assembly recognized the importance of adherence to existing international legal instruments, including the Single Convention on Narcotic Drugs of 1961, and the need to encourage Member States to ratify and implement these instruments.\textsuperscript{131}

While expressing appreciation for the efforts undertaken by States to implement U.N. Resolution 40/122 of December 13, 1985, on the convening of an International Conference on Drug Abuse and Illicit Trafficking in 1987, the Assembly condemned drug trafficking in each of its illicit forms—production, processing, marketing and consumption—as a criminal activity and requested that all States pledge to a universal struggle to achieve its elimination.\textsuperscript{132} The Assembly urged States to acknowledge their share of responsibility for combating the problem and to encourage mutual collaboration in the struggle against drug

\textsuperscript{127} See id. at 185.

\textsuperscript{128} Id.

\textsuperscript{129} See id.

\textsuperscript{130} See id. (citing U.N. GAOR, 41st Sess., U.N. Doc. A/41/559 (1987)).

\textsuperscript{131} See id.

\textsuperscript{132} See id.
trafficking, in accordance with the relevant international and national norms. Another measure adopted by the Assembly was to call upon all States to "adopt appropriate preventive and/or punitive measures of a political, legal, economic and cultural nature so as to bring about social awareness of the pernicious effects of illicit drug use, and individual and collective rejection of all kinds of practices that facilitate such illegal use . . . ." The Assembly invited States to use all possible means to discourage domestic and foreign practices that promoted production and consumption of drugs. The Assembly urged countries facing problems of drug abuse, especially those most affected, to give priority to programs that encourage health, fitness, and the well-being of society, while providing information about drug abuse, its harms, and ways to fight it for all members of the community.

The Assembly also:

[1.] Recommended that concerted efforts be made to promote co-operation and co-ordination among States, particularly in the areas of communications and training, with a view to alleviating the problems associated with illicit transit traffic in narcotic drugs and psychotropic substances;

[2.] Recommended that the Economic and Social Council request the Commission on Narcotic Drugs to consider convening, within available resources, a sessional working group to facilitate the exchange of information on experience gained by States in combating the illicit transit traffic in narcotic drugs and psychotropic substances;

[3.] Encouraged Member States and the relevant bodies of the United Nations system, subject to observance of the principles of national sovereignty and jurisdiction, to provide economic assistance and technical co-operation to the developing countries most affected by the illicit production of, traffic in and use of narcotic drugs and psychotropic substances, in order to combat this problem; [and]

[4.] Express[ed] its appreciation to the Secretary-General of the United Nations and to the Secretary-General of the International Conference on Drug Abuse and Illicit Trafficking for their valuable efforts in implementing General Assembly resolution 40/122 . . . .

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133 See id.
134 Id.
135 See id.
136 See id.
137 Id.
While acknowledging the work done by the United Nations committees, particularly the drug-control bodies, in designing initiatives to increase international cooperation, the Assembly noted the first Interregional Meeting of Heads of National Drug Law Enforcement Agencies' recommendations and requested that they be considered by the Commission on Narcotic Drugs at its thirty-second session. The Assembly hoped that the specific measures required for their implementation could be identified with a view to their inclusion, for possible adoption, in the report to be submitted to the Economic and Social Council at its next session. The Assembly repeated its request to the Secretary-General to continue making arrangements for interregional seminars on the experience gained by the United Nations on integrated rural development programs, including the substitution of surplus and illegal crops in affected areas. Furthermore, the Assembly:

[1.] Invited all States that have not already done so to become parties to the Single Convention on Narcotic Drugs of 1961, the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961 and the Convention of Psychotropic Substances of 1971 and, in the mean time, to endeavor to comply with the provisions of these instruments; [and]

[2.] Acknowledged the vital role played by the United Nations Fund for Drug Abuse Control and called upon Member States to contribute and/or increase their contributions to the Fund.

H. U.N. RESOLUTION 42/111

It is notable that the General Assembly, in its consideration of Resolution 42/111 of December 7, 1987, on the preparation of a draft Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, "expressed its appreciation to and commend[ed] the Secretary-General for the report submitted to the International Conference on Drug Abuse and Illicit Trafficking on progress achieved in the preparation of a new convention against illicit traffic in drugs." The Assembly emphasized "the importance of the appeal made in paragraph 3
of its Declaration" of the International Conference on Drug Abuse and Illicit Trafficking, in which the Conference "called for the urgent but careful preparation and finalization, taking into account the various aspects of illicit trafficking, of the draft convention against illicit traffic in narcotic drugs and psychotropic substances to ensure its entry into force at the earliest possible date as a complement to existing international instruments." As a progressive measure in this field, the Assembly welcomed the Intergovernmental Expert Group's report of the meeting on the preparation of the draft convention, that was drawn up in accordance with Commission on Narcotic Drugs Resolution 1 (XXXII) of February 10, 1987, which requested States to submit their observations on the draft revised by the Expert Group. The Assembly also requested that the Secretary-General consider the possibility of convening the Intergovernmental Expert Group for the two weeks preceding the tenth special session of the Commission on Narcotic Drugs to further revise the working paper on the draft convention against illicit trafficking and to reach agreement on the convention if possible. It also invited the Commission on Narcotic Drugs to "consider and, if possible, approve at its tenth special session the draft convention against illicit traffic in narcotic drugs and psychotropic substances, and to prepare recommendations on the next measures to be taken with a view to concluding the preparation of the convention, including the possibility of convening a plenipotentiary conference in 1988 for it adoption."

The Assembly asked the Secretary-General to make arrangements for any agreed plenipotentiary conference convened in 1988, for the signing of the convention against illicit traffic in narcotic drugs and psychotropic substances. As was traditional, the Assembly once again urged all States to ratify or to accede to the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961 and the Convention on Psycho-

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144 See id.
145 Id.
146 See id.
tropic Substances of 1971. Finally, the Assembly requested the Secretary-General to report on the implementation of the present resolution at the Assembly's forty-third session.\footnote{147}

I. U.N. Resolution 42/112

As another measure taken to ensure the success of the International Conference on Drug Abuse and Illicit Trafficking, the General Assembly adopted Resolution 42/112 in December 1987.\footnote{148} The Assembly recalled its Resolution 40/122 of December 13, 1985, by which it decided to convene an International Conference on Drug Abuse and Illicit Trafficking at the ministerial level, at Vienna in 1987, to generate universal action and combat the international drug problem in all its forms.\footnote{149} The Assembly also recalled Resolution 41/125 of December 4, 1986. The Assembly referred to the Economic and Social Council decision 1987/127 of May 26, 1987, and the Secretary-General's report on the International Conference on Drug Abuse and Illicit Trafficking, and determined "to strengthen action and cooperation at the national, regional, and international levels towards the goal of an international society free of drug abuse."\footnote{150}

The Assembly noted the need for an assessment of the follow-up activities to the Conference and thanked the Government of Bolivia for offering to act as host for the second international conference.\footnote{151} The Assembly also:

1. [Took] note of the report of the International Conference on Drug Abuse and Illicit Trafficking,\footnote{152} and welcome[d] the successful conclusion of the Conference, in particular the adoption of the Declaration\footnote{153} and the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control;\footnote{154}

2. Affirm[ed] its commitment to the Declaration of the International Conference on Drug Abuse and Illicit Trafficking as an expression of the political will of nations to combat the drug menace;

\footnote{147}{See id.}
\footnote{149}{See G.A. Res. 41/125, supra note 121, at 211.}
\footnote{150}{Id.}
\footnote{151}{See id.}
\footnote{152}{U.N. Sales No. E.87.I.18, supra note 142.}
\footnote{153}{Id.}
\footnote{154}{Id. ch. I, § A.}
3. **Urge[d]** Governments and organizations, in formulating programmes, to take due account of the framework provided by the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control as a repertory of recommendations setting forth practical measures that can contribute to the fight against drug abuse and illicit trafficking;

4. **Request[ed]** the Secretary-General to make available, within existing resources, an adequate number of copies of the Declaration and the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control;

5. **Decide[d]** to observe 26 June each year as the International Day against Drug abuse and Illicit Trafficking;

6. **Appeal[ed]** to Member States to provide additional resources to the United Nations Fund for Drug Abuse Control as a priority goal in the follow-up activities to the Conference to enable it to strengthen its co-operation with the developing countries in their efforts to implement drug control programs; and,

7. **Request[ed]** the Commission on Narcotic Drugs, as the principal United Nations policy-making body on drug control, to identify suitable measures for follow-up to the International Conference on Drug Abuse and Illicit Trafficking and, in this context, to give appropriate consideration to the report of the Secretary-General on the Conference ... 155

The Assembly also requested the Secretary-General to report on the implementation of the present resolution to the Assembly at its forty-third session. 156

**J. U.N. Resolution 42/113**

At this stage, the General Assembly was acutely conscious of the adverse effects of the global drug abuse problem, including: the effects on individuals, both physical and psychological; limitations on creativity and development of human potential; and the effect on States, with the threat to national security and prejudice to their democratic institutions, economic, social, legal, and cultural structures. 157 It also noted as a result of the growing interrelationship between drug trafficking and the transnational criminal organizations, those most responsible for much of the drug traffic, abuse of narcotic drugs and psychotropic

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156 See id.
substances, and the increase in violence and corruption which injure society the situation continues to deteriorate.\textsuperscript{158}

The Assembly further recognized and considered the following factors:

\textit{Recognize\[d\] the collective responsibility of States for providing appropriate resources for the elimination of illicit production and trafficking and of the abuse of drugs and psychotropic substances,}

\textit{Recognize\[d\] also that measures to prevent and control supply and to combat illicit trafficking can be effective only if they take into consideration the close link between illicit production, transit and the abuse of drugs and the social, economic and cultural conditions in the States affected, and that they must be formulated and implemented in the context of the social and economic policy of States, taking due account of community traditions, harmonious development and conservation of the environment,}

\textit{Recognize\[d\] once again that transit routes used by drug traffickers are constantly shifting and that an increasing number of countries in all regions of the world and even entire areas, because of their geographical location and other considerations, are particularly vulnerable to the illicit transit traffic,}

\textit{Consider\[ed\] that regional and international co-operation is required in order to reduce the vulnerability of States and regions to the illicit transit traffic and to provide necessary support and assistance, particularly to countries hitherto unaffected,}

\textit{[Took] into account the need to reaffirm the effectiveness of human, moral and spiritual values for preventing the consumption of narcotic drugs, at the national and international levels, through information, guidance and educational activities,}

\textit{Consider\[ed\] the importance of the United Nations Fund for Drug Abuse Control in its role as a catalyst in the United Nations system, and that it has become one of the major sources of multilateral financing for technical co-operation \[programs\] in the context of the international campaign against abuse of and illicit trafficking in drugs and psychotropic substances,}

\textit{Recognize\[d\] that the policy adopted by the Fund for the formulation of so-called master plans takes into account the principal social, economic and cultural factors of countries, as well as their national and regional \[programs\], and that in those plans both donor countries and recipients of technical assistance are actively

\textsuperscript{158} See \textit{id.} at 211-12.
involved in concerted action with a view to combating the problem at all stages . . . . 159

The Assembly took note of the close link between governments, public institutions, the Fund, and the United Nations Development Program, in coordination with other organizations of the United Nations system concerned with controlling abuse of drugs and psychotropic substances. The Assembly recalled several of its resolutions, including Resolution 41/127 of December 4, 1986, and those of the Commission on Narcotic Drugs and of the Economic and Social Council that advanced the international campaign against abuse of and illicit traffic in drugs and psychotropic substances.160

The following measures were taken by the Assembly:

1. [Unequivocally condemned] once again drug trafficking in all its forms—illicit production, processing, marketing and consumption—as a criminal activity, [and] request[ed] all States to pledge their political will in a concerted and universal struggle to achieve its complete and final elimination;

2. Urge[d] States to acknowledge that they share responsibility for combating the problem of illicit consumption, production, transit and trafficking and therefore to encourage international co-operation in the struggle to eliminate illicit production and trafficking and abuse of drugs and psychotropic substances, in accordance with the relevant international and national norms;

3. [Acknowledged] the constant and determined efforts of Governments at the national, regional and international levels to cope with the increase in drug abuse and illicit drug trafficking and its increasingly close links with other forms of organized international criminal activities;

4. [Noted] with appreciation the unanimous adoption of the Declaration161 and the adoption by consensus of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control162 by the International Conference on Drug Abuse and Illicit Trafficking, and [the urging of] States to carry out the recommendations contained in those documents in a determined and sustained manner;

5. [Took] note of the First Meeting of Heads of National Drug Law Enforcement Agencies, African Region, held at Addis Ababa from 30 March to 3 April 1987, the First Meeting of

159 Id. at 212.
160 See id.
161 U.N. Sales No. E.87.I.18, supra note 142, ch. I, § B.
162 Id. ch. I, § A.
Heads of National Drug Law Enforcement Agencies, Latin American and Caribbean Region, held at Santiago from 28 September to 2 October 1987, and the Meeting of the Heads of National Drug Law Enforcement Agencies, Asia and the Pacific Region, held at Tokyo from 30 November to 4 December 1987, and request[ed] the Commission on Narcotic Drugs to consider their recommendations at its tenth special session, in order to determine the specific measures required for implementation thereof, for possible adoption by the Economic and Social Council at its next session;

6. *Encourag[ed]* States to use the meetings of the working group of the Commission on Narcotic Drugs for the purpose of exchanging experiences in their struggle against the illicit transit of drugs and psychotropic substances and to increase regional and interregional co-operation on this aspect;

7. *Reiterat[ed] once again its request* to the Secretary-General to continue to make the necessary arrangements for holding, within the framework of advisory services, interregional seminars on the experience gained within the United Nations system in integrated rural development [programs] that include the substitution of illegal crops in affected areas, including the Andean region;

8. *[Commended]* the United Nations Fund for Drug Abuse Control for the productive work that it has done as one of the main bodies of the United Nations system providing technical co-operation in the field of drug abuse control, and encourage[d] it to continue its activities, paying particular attention to requests from developing countries;

9. *Call[ed] upon* all States to continue and increase their political support of and financial contributions to the Fund, and encourage[d] its Executive Director to continue systematically and consistently strengthening the activities of the Fund in affected countries and regions, so as to enable them to combat all aspects of the problem effectively;


11. *Request[ed] that* the Secretary-General . . . take steps to ensure that the Department of Public Information of the Secretariat includes in its publications information designed to prevent the abuse of narcotic drugs, especially by young people;

12. *Call[ed] upon* the Governments of countries facing problems of drug abuse, particularly those most seriously affected, as part of their national strategy, to take the necessary measures to reduce significantly the illicit demand for drugs and
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psychotropic substances with the aim of creating in society a deep respect for its own health, fitness and well-being and to provide appropriate information and advice for all sectors of their communities with regard to drug abuse, its harmful effects and the way in which appropriate community action can be promoted;

13. Request[ed that] the Secretary-General . . . take steps to provide, within existing resources, appropriate support for strengthening the Division of Narcotic Drugs and the International Narcotics Control Board, including through redeployment;

14. Request[ed that] the Secretary-General . . . report to the General Assembly at its forty-third session on the implementation of the present resolution and decid[ed] to include in the provisional agenda . . . the item entitled “International campaign against traffic in drugs.”

K. U.N. RESOLUTION 43/120

In December 1988, the General Assembly, as a further measure towards developing its preparation of a draft convention against illicit traffic in narcotics drugs and psychotropic substances, considered document A/43/678 prepared by the Secretary-General on progress achieved in the preparation of the draft convention. The Assembly also took the following actions:

[1.] Welcome[d] with appreciation Economic and Social Council resolution 1988/8, in which it decided to convene the Review Group in mid-June 1988 at Vienna, with the mandate of continuing the preparation of the draft convention and preparing the organizational aspects of the Conference of plenipotentiaries for the adoption of a convention against illicit traffic in narcotic drugs and psychotropic substances;

[2.] [Took] note with satisfaction . . . the report of the Secretary-General, and the report of the Commission on Narcotic Drugs on its tenth special session and the recommendations therein, approved by the Economic and Social Council in its resolution 1988/8 and decisions 1988/118 and 1988/120 of 25 May 1988 and 1988/159 of 26 July 1988, in which it decided, inter alia, to convene the Conference of plenipotentiaries to adopt the con-

vention, and to extend to ten working days the thirty-third session of the Commission on Narcotic Drugs in order to allow it to consider suitable measures to be taken prior to the entry into force of the convention; . . .

[3.] Request[ed] the Commission on Narcotic Drugs, as the principal United Nations policy-making body on drug abuse control, to identify suitable measures to be taken prior to the entry into force of the convention; . . .

[4.] Urge[d] all States to adopt a constructive approach with a view to resolving any outstanding differences over the text of the convention;

[5.] Request[ed] all States, while reaffirming their commitment to the Declaration of the International Conference on Drug Abuse and Illicit Trafficking\textsuperscript{166} as an expression of the political will of nations to combat the drug problem, to assign the highest priority to the Conference of plenipotentiaries and to participate actively in it, at the highest possible level, for the adoption of the convention;

[6.] Expresse[d] its appreciation to the Secretary-General, the Commission on Narcotic Drugs and all related organs established by the Commission, for their effectiveness in responding to its request to prepare the draft convention;


[8.] Request[ed] the Secretary-General to report to the General Assembly at its forty-fourth session on the implementation of the present resolution, particularly on the conclusions of the Conference of plenipotentiaries for the adoption of a convention against illicit traffic in narcotic drugs and psychotropic substances.\textsuperscript{167}

VI. THE USE OF CHILDREN IN NARCOTIC DRUG TRAFFICKING

The international regulatory regime on narcotic drug trafficking took an interesting turn with Resolution 43/121\textsuperscript{168} on the use of children in the illicit traffic of narcotic drugs and rehabilitation of drug-addicted minors. Here, the General Assembly re-

\textsuperscript{166} See U.N. Sales No. E.87.I.18, supra note 142, ch. I, § B.

\textsuperscript{167} G.A. Res. 43/120, supra note 164, at 197-98.

called resolutions 41/127 of December 4, 1986, 42/113 of December 7, 1987, and the relevant resolutions of the Commission on Narcotic Drugs and the Economic and Social Council regarding the implementation of the international campaign against drug abuse and illicit trafficking.\textsuperscript{169} The Assembly focused on the provisions of the Declaration of the International Conference on Drug Abuse and Illicit Trafficking and the guidelines contained in the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control.\textsuperscript{170} The Assembly was alarmed by the fact that drug-dealing organizations were using children in their illicit production and trafficking of drugs, as well as the increase in the number of drug-addicted children.\textsuperscript{171}

The Assembly was conscious of the physical and psychological damage inflicted on children by the illicit use of narcotic drugs, and its effects on children’s development and relationship with family and society.\textsuperscript{172} Keeping in mind the Declaration of the Rights of the Child, the Assembly reaffirmed its resolution 42/101 of December 7, 1987, stating that children’s rights require special protection and continuous improvement in their situation, development, and education.\textsuperscript{173} While articulating this premise, the Assembly took the following actions:

1. \textit{Strongly condemn[ed]} drug trafficking in all its forms, particularly those criminal activities which involve children in the use, production and illicit sale of narcotic drugs and psychotropic substances;

2. \textit{Urge[ed]} all States to join together in order to establish national and international [programs] to protect children from the illicit consumption of drugs and psychotropic substances and from involvement in illicit production and trafficking;

3. \textit{Invite[d]} the [g]overnments of those Member States which are most affected by drug use among their child population to adopt urgent additional measures, as part of their national strategies, to prevent, reduce and eliminate drug use by children, with the aim of ensuring for children a social and family environment that will preserve their health, physical fitness and well-being;

\textsuperscript{169} See id.


\textsuperscript{171} See G.A. Res. 43/121, \textit{supra} note 168.

\textsuperscript{172} See id.

\textsuperscript{173} See id.
4. *Called* upon all States to promote the adoption, by their competent legislative organs, of measures providing for suitably severe punishment of drug-trafficking crimes that involve children;

5. *Urged* all governments, competent international organizations and non-governmental organizations to give high priority, in their campaigns to prevent drug addiction among children and to rehabilitate children so addicted, to the dissemination of necessary information and the provision of appropriate advice for all sectors of their communities with regard to the serious effects of the illicit use of drugs among children, as well as to the promotion of appropriate community action;

6. *Appealed* to the competent international agencies and the United Nations Fund for Drug Abuse Control to assign high priority to financial support for prevention campaigns and [programs] to rehabilitate drug-addicted minors conducted by government bodies dealing with such matters, and also appealed to all competent international and national agencies to provide all possible support to the non-governmental organizations engaged in such action;

7. *Requested* the Secretary-General to ensure that the Department of Public Information of the Secretariat includes in its publications, as a matter of priority, information designed to prevent the use of narcotic drugs and psychotropic substances among children.  

VII. INTERNATIONAL CAMPAIGN AGAINST DRUG ABUSE AND ILLICIT TRAFFICKING

A. U.N. RESOLUTION 43/122

The General Assembly followed the above work with some recommendations. The Assembly recalled Resolutions 40/122 of December 13, 1985; 41/125 of December 4, 1986; 42/112 and 42/113 of December 7, 1986; and the relevant resolutions of the Commission on Narcotic Drugs and the Economic and Social Council adopted to implement the international campaign against drug abuse and illicit trafficking.  

The Assembly was satisfied with the successful conclusion of the International Conference on Drug Abuse and Illicit Trafficking, especially with its adoption of the Declaration “as an expression of the

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174 Id.
political will of nations to combat the drug menace, and the Comprehensive Multidisciplinary Outline of Future Activities in Drug abuse Control [as] a compendium of recommendations for implementation."176 The Assembly also recognized that the global problem of illicit trafficking and illicit production and abuse of narcotic drugs and psychotropic substances is a global problem that continues to have devastating effects on individuals and nation States.177

The Assembly emphasized that the connections between drug trafficking and international criminal organizations, and the violence and corruption associated with them, as being highly detrimental to democratic institutions, national security and economic, social and cultural structures of States.178 Thus, a compelling need exists to ensure the implementation of the courses of action recommended in the Comprehensive Multidisciplinary Outline, particularly in the areas of education and public information with regard to the abuse of narcotic drugs and psychotropic substances. In this context, the Assembly noted that all countries had the collective responsibility for the international campaign against drug abuse and illicit trafficking, as highlighted in the Declaration.179 The Assembly recognized that measures used to prevent and control the supply and used to combat illicit trafficking can be effective only if the measures take into consideration the close link between this illicit traffic, including illicit production and abuse, and the social, economic and cultural conditions in the States affected.180 Such measures must be formulated and implemented in the context of the social and economic policies of States, taking into account community traditions and developments in the conservation of the environment.181 The transit routes used by drug traffickers are constantly changing, and an increasing number of countries are particularly vulnerable because of their geographic location and other considerations.182 The Assembly emphasized that in order to stop the illicit traffic, regional and interregional cooperation, action, support, and assistance are required to strengthen the

176 Id. (referring to U.N. Sales No. E.87.I.18, supra note 142, ch. I, §§ A, B).
177 See G.A. Res. 43/122, supra note 175, at 198.
178 See id.
179 See id.
180 See id.
181 See id. at 198-99.
182 See id.
capability of nation States. The Assembly further noted that the new convention against illicit traffic in narcotic drugs and psychotropic substances would greatly enhance the international campaign against drug abuse and illicit trafficking.

The Assembly took note of the Commission on Narcotic Drugs' Resolution 4 (S-X) of February 12, 1988, concerning the financial and human resources available to the Division of Narcotic Drugs of the Secretariat and the secretariat of the International Narcotics Control Board. The Assembly also considered the importance of the United Nations Fund for Drug Abuse Control as a major source of multilateral funding and expertise for the drug abuse control efforts of the developing countries, as well as the Fund's success in fund raising and its improved operations.

Recalling its decision to observe June 26th each year as the International Day Against Drug Abuse and Illicit Trafficking, the Assembly took the following actions:


2. Reiterate[d] its condemnation of international drug trafficking as a criminal activity, and encourage[d] all States to continue to demonstrate the political will to enhance international co-operation to stop illicit trafficking in narcotic drugs and psychotropic substances, including illicit production and consumption;

3. Urge[d] all States to take appropriate action in regard to drug abuse control, in accordance with international drug control instruments, recognizing the collective responsibility of States, to provide appropriate resources for the elimination of illicit production, trafficking and drug abuse, as set forth in the Declaration of the International Conference on Drug Abuse and Illicit Trafficking;

4. Acknowledge[d] that, despite serious economic constraints, particularly in developing countries, Governments continue to make determined efforts to cope with the increasing abuse of and illicit traffic in narcotic drugs and psychotropic substances, especially with the destructive activities of international criminal organizations;

5. Note[d] with satisfaction the valuable work of the meetings of Heads of National Drug Law Enforcement Agencies, in par-

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183 See id.
184 See id.
185 See id. at 199.
186 See id.
ticular the Second Meeting of Heads of National Drug Law Enforcement Agencies, African Region, held at Dakar from 18 to 22 April 1988, the Second Meeting of Heads of National Drug Law Enforcement Agencies, Latin American and Caribbean Region, held at Lima from 12 to 16 September 1988, and the Fourteenth Meeting of Heads of National Drug Law Enforcement Agencies, Asia and the Pacific Region, held at Bangkok from 3 to 7 October 1988;

6. Request[ed] that consideration be given to the convening of regional meetings of heads of national drug law enforcement agencies in regions where they have not yet been held;

7. Note[d] with satisfaction that the Second Interregional Meeting of Heads of National Drug Law Enforcement Agencies is to be held in 1989 and encourage[d] it to consider the reports and achievements of all the regional meetings;

8. Urge[d] the Interregional Meeting to discuss ways and means of enhancing law enforcement training, especially in those areas that would require new knowledge and skills for the implementation of the provisions of the new convention against illicit traffic in narcotic drugs and psychotropic substances;

9. Encourage[d] States to use the meetings of the working group of the Commission on Narcotic Drugs and other forums for the purpose of exchanging experiences in the fight against the illicit transit of drugs and psychotropic substances and to increase regional and interregional co-operation on this aspect of the drug problem;

10. Reiterate[d] once again its request to the Secretary-General to continue to make the necessary arrangements for holding, within the framework of advisory services, interregional seminars on the experience gained within the United Nations system in integrated rural development [programs] that include the substitution of illegal crops in affected areas, including the Andean region;

11. Endorse[d] the Commission on Narcotic Drugs resolution 4 (S-X), the implementation of which is essential for the adequate functioning of the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board;

12. Commend[ed] the United Nations Fund for Drug Abuse Control for the productive work that it has done as one of the main bodies of the United Nations system providing technical co-operation and funding in the field of drug abuse control;

13. Appeal[ed] to Member States to continue to provide additional resources to the Fund to enable it to continue its ac-
activities, giving particular attention to requests for assistance from developing countries;

14. *Once again called upon* the [g]overnments of countries facing problems of drug abuse, particularly those most seriously affected, as part of their national strategies, to take the necessary measures to reduce significantly the illicit demand for narcotic drugs and psychotropic substances with the aim of creating societies that deeply respect health, fitness and well-being, and to provide appropriate information and advice on the harmful effects of drug abuse, through adequate community action, to all sectors of their communities;

15. *Requested* the Secretary-General to take steps to ensure that the Department of Public Information of the Secretariat includes in its publications information designed to prevent the abuse of narcotic drugs and psychotropic substances, especially by young people.\(^{187}\)

The Assembly also took note of the report of the Secretary-General in document A/43/679 and urged governments and organizations to adhere to the principles set forth in the Declaration of the International Conference on Drug Abuse and Illicit Trafficking,\(^{188}\) and to utilize the recommendations of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control\(^{189}\) regarding developing national and regional strategies, particularly by promoting bilateral, regional and international co-operative arrangements.\(^{190}\) The Assembly further recommended that in implementing the guiding principles of these agreements, the United Nations intergovernmental organizations should emphasize the activities identified in the annex to Economic and Social Council Resolution 1988/9 of May 25, 1988.\(^{191}\)

A request was made of the Secretary-General to use available resources in reviewing current information systems in the United Nations drug control units and in developing an information strategy with relevant financial implications, and to submit it to the Commission on Narcotic Drugs at its thirty-third session.\(^{192}\) The Commission was to advise on the creation of an information system that would integrate inputs from national,

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\(^{187}\) *Id.* at 199.

\(^{188}\) *See* U.N. Sales No. E.87.I.18, *supra* note 142, ch. I § B.

\(^{189}\) *See id.* ch. I, § A.

\(^{190}\) *See G.A. Res. 43/122, supra* note 175, at 200.

\(^{191}\) *See id.*

\(^{192}\) *See id.*
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regional, and international sources to facilitate the linkage, retrieval, and dissemination of information dealing with all aspects of narcotic drugs, psychotropic substances, and chemicals used in their illicit processing and manufacturing.193

The Assembly invited the Secretary-General to support and coordinate the United Nations' efforts.194 The Assembly also requested that the Secretary-General ensure continued inter-agency coordination in drug abuse control activities, in particular by rotating the venue of inter-agency meetings on coordination to enhance the Commission's efforts to implement follow-up activities to the Conference.195 The Assembly asked the Commission to continue to review the action taken with respect to the Declaration and the Comprehensive Multidisciplinary Outline.196 Finally, the Assembly requested the Secretary-General to report to the Assembly at its forty-fourth session on the implementation of the resolution.197

B. U.N. Resolution 44/16

At its forty-third plenary meeting in November 1989, the United Nations summoned a special session of the General Assembly to consider the question of international cooperation against illicit production, supply, demand, trafficking, and distribution of narcotic drugs; and to expand the scope and effectiveness of such cooperation.198 The Assembly reiterated its concern about the serious problem of narcotic drugs and their devastating effect on individuals and society.199 The Assembly noted the Colombian President's statements delivered to the Assembly in the forty-fourth session plenary meeting on September 29, 1989,200 which specifically called for a special session of the Assembly.201 The Assembly decided to hold a special session, at a high political level, to consider the urgent question of

193 See id.
194 See id.
195 See id.
196 See id.
197 See id.
199 See id.
201 See G.A. Res. 44/16, supra note 198, at 25.
international cooperation against illicit dealings of narcotic drugs. The Assembly requested the Secretary-General to make the necessary administrative arrangements for the convening of that special session.

C. U.N. Resolution 44/140

In December 1989, at its eighty-second plenary meeting, the General Assembly, on the subject of implementation of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, expressed its appreciation for the Secretary-General's report on the conclusions of the conference of plenipotentiaries that adopted the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in Vienna. The Assembly thanked the States that participated in the preparation and adoption of the Convention and urged those that had not yet ratified it to do so rapidly so that it could enter into force as early as possible. The Assembly urged States to establish legislative and administrative measures compatible with the spirit and scope of the Convention, and to apply provisionally the measures enumerated in the Convention, pending adoption by each State.

The Assembly requested the Secretary-General to modify the section on the implementation of international treaties and to review the steps taken by States to ratify the Convention. Furthermore, the Assembly invited the Commission on Narcotic Drugs, the principal United Nations policy-making body on the subject, to identify measures that should be taken prior to the Convention's entry into force. The Assembly further requested the Secretary-General to assign appropriate priority to provide the Division of Narcotic Drugs of the Secretariat and the Secretariat of the International Narcotics Control Board with the necessary resources to carry out the additional responsibilities under the Convention for the biennium 1990-91.

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202 See id.
203 See id.
205 See id.
206 See id.
207 See id.
208 See id.
209 See id.
The Assembly urged the Secretary-General to assist States in establishing the legislative and administrative measures necessary to implement the Convention. All States were asked to ratify or accede to the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961 and the Convention on Psychotropic Substances of 1971.

The Assembly further requested that the Secretary-General use existing resources, especially the funds available to the Department of Public Information of the Secretariat, “to provide for, facilitate and encourage public information activities relating to the Convention and also to disseminate the text of the Convention in the official languages of the United Nations.” The Assembly requested the Secretary-General to report at its forty-fifth session on the implementation of this resolution.

D. U.N. Resolution 44/141

The Assembly next considered its global program against illicit narcotic drugs and expressed alarm due to the increase in drug abuse, production, and trafficking. The Assembly noted that this growth increased the threat to the health and well-being of millions of people, especially the youth of the world.

The concern of the Assembly was that “the evolving drug problem [was] assuming new dimensions and [was] threatening the economic, social and political structures of affected countries, through acts of violence perpetrated against their democratic institutions and the extensive economic power of illicit drug organizations.”

The Assembly commended the efforts of Colombia to stop drug trafficking and recognized the importance of support for such efforts from the international community. The Assembly welcomed the increasing international attention to these issues and the commitment of the high level heads of government

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210 See id.
211 See id.
212 Id.
213 See id.
215 See id.
216 Id.
217 See id.
to increase their efforts and resources to coordinate the international fight against narcotic drugs.\textsuperscript{218} The Assembly further recognized that the collective responsibility of States to campaign against the demand for, production of, and trafficking in illicit drugs required intensified international cooperation and joint action, including the necessary support and assistance to help States deal with the problem in all its aspects.\textsuperscript{219} The Assembly expressed appreciation for the work done by the United Nations and recognized that valuable knowledge, experience, and important contributions had been made to the international campaign against drug abuse and illicit trafficking, especially by the Declaration adopted by the International Conference on Drug Abuse and Illicit Trafficking in Vienna in June 1987.\textsuperscript{220} The Assembly was concerned that, because of the lack of resources, the United Nations organs were not able to execute several of the important steps and measures mandated for the biennium 1988-89.\textsuperscript{221}

The Assembly acknowledged that

the recommendations made by the Administrative Committee on Co-ordination and the Committee for Programme and Co-ordination at their twenty-fourth series of Joint Meetings, at which they concluded, \textit{inter alia}, that the Administrative Committee on Co-ordination should prepare a system-wide action plan leading to specific activities to be undertaken by organizations of the United Nations system, individually and collectively, and that consideration could be given to the need for the establishment of additional mechanisms to enhance the effectiveness of the United Nations system in the field of drug abuse control, [while recognizing] that the new dimensions taken on by the drug menace will necessitate a more comprehensive approach to international drug control and a more efficient and co-ordinated structure in this field in order to enable the United Nations to play the central and greatly increased role necessary for countering this threat.\textsuperscript{222}

\textsuperscript{218} See \textit{id.}.

\textsuperscript{219} See \textit{id.} at 219-20.


\textsuperscript{221} See G.A. Res. 44/141, \textit{supra} note 214, at 220.

\textsuperscript{222} Id.
The Assembly recalled its decision in Resolution 44/16\(^{223}\) of November 1, 1989, to hold a special session to consider international cooperation against narcotic drugs, stressing the importance of Member States to make the fullest possible contributions to its preparatory work. The Assembly:

1. *Resolved* that action against drug abuse and illicit production and trafficking in narcotics should, as a collective responsibility, be accorded the highest possible priority by the international community and that the United Nations should be the main focus for concerted action against illicit drugs;

2. *Agreed* to strengthen the capability of the United Nations in order to achieve more efficient and co-ordinated co-operation at the international, regional and national levels against the threats posed by illicit narcotic drugs and psychotropic substances;

3. *Requested* the Secretary-General, in his capacity as Chairman of the Administrative Committee on Co-ordination, to co-ordinate at the inter-agency level, the development of a United Nations system-wide action plan on drug abuse control aimed at the full implementation of all existing mandates and subsequent decisions of intergovernmental bodies throughout the United Nations system, using as a guide the Declaration of the International Conference on Drug Abuse and Illicit Trafficking and the recommendations in the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control and for the attainment of this purpose:

   (a) *Called* upon the Division of Narcotic Drugs of the Secretariat, the International Narcotics Control Board and its secretariat, as well as the United Nations Fund for Drug Abuse Control, to consult closely with and contribute their expertise to the other agencies represented on the Administrative Committee on Co-ordination in developing the action plan;

   (b) *Requested* the Administrative Committee on Co-ordination to include in the action plan, *inter alia*:

   (i) A statement of purposes that defines the overall goal and denotes specific objectives;

   (ii) An outline of concrete activities that each agency should undertake, within its mandate, ensuring that there is no duplication or overlap;

   (iii) A reasonable time-frame for implementation of each portion of the action plan;

   (iv) A realistic cost estimate for implementing the action plan, being mindful that resources are limited

\(^{223}\) G.A. Res. 44/16, *supra* note 198.
and that it would be necessary for agencies to focus priorities, review deployment of resources or obtain, if necessary, from their governing bodies the authority needed to fulfil their part of the plan;

(c) Request[ed] the Administrative Committee on Co-ordination to present the action plan to all Member States no later than 31 March 1990, in order to permit discussion by the Committee for Programme and Co-ordination at its thirtieth session and by the Economic and Social Council at its next regular session of 1990;

(d) Request[ed] that the executive heads of United Nations bodies report annually to the Administrative Committee on Co-ordination on the progress made in implementing the action plan and that the Administrative Committee include the same information in its annual report, so as to enable the Committee for Programme and Co-ordination and the Economic and Social Council to consider it, within their respective mandates, and to make appropriate recommendations to the General Assembly;

(e) Request[ed] the Administrative Committee on Co-ordination to make the necessary adjustments to the action plan annually and to ensure that each agency brings up to date and revises its related activities annually in order to meet changing circumstances;

4. Request[ed] the Secretary-General to select a limited number of experts from developed and developing countries to advise and assist him for a maximum period of one year, in full co-operation with United Nations officials, in order to enhance the efficiency of the United Nations structure for drug abuse control, taking into account the ability of the United Nations to perform its increasing tasks in the light of existing mandates and of decisions adopted by the General Assembly at its special session, and to report to the Assembly at its forty-fifth session;

5. Request[ed] States, without prejudice to the basic criteria that the General Assembly shall adopt at its special session, to consider in the preparatory work for that session, inter alia, the following areas, with the purpose of ensuring that all aspects of the problem are adequately addressed in the elaboration of a global programme of action against illicit narcotic drugs for adoption at the special session:

(a) Giving increased attention to curbing the rising demand for narcotic drugs by intensified rehabilitative, legal and preventive measures, including public information and education;

(b) The possibility of declaring a United Nations decade against drug abuse, with the purpose of raising public
awareness through a world-wide campaign against drug abuse;
(c) The expansion of the scope of international co-operation in support of rural development programmes and other economic development and technical assistance programmes aimed at reducing illicit production and drug trafficking through the strengthening of economic, judicial and legal systems;
(d) The full involvement of international, regional and national financial institutions within their respective areas of competence in the elaboration of measures to counteract the negative economic and social consequences of the drug problem in all its aspects, paying special attention to the characteristics and magnitude of the conversion and transference of drug-related monies in the economic systems of countries;
(e) The development of mechanisms to prevent the use of the banking system and other financial institutions for the processing or laundering of drug-related money;
(f) An examination of recommendations to enhance the efficiency of the United Nations structure for drug abuse control in the most appropriate way to enable the United Nations to perform its increasing tasks in the most effective and co-ordinated manner;
(g) The development of recommendations for generating increased financial resources to the United Nations drug effort and for ensuring sufficient regular budget resources for the United Nations drug bodies to carry out their mandates;
(h) The co-ordination of an expanded programme of training for national narcotics agents in investigative methods, interdiction and narcotics intelligence;
(i) The feasibility of establishing a reserve pool of experienced narcotics agents and experts pledged by other States, whose services States may request for specified periods of time;
(j) The establishment under the United Nations of a facility to gather and collate information on the financial flow from drug-related funds, to be made available to States at their request;
(k) The feasibility of a United Nations capability that, at the request of States, would provide training and equipment for the anti-drug operations of the States to inhibit the use, interdict the supply and eliminate the illicit trafficking of drugs;
(l) The elaboration of any other appropriate measures whereby the United Nations can contribute further to
concerted international action against illicit narcotic drugs.\textsuperscript{224}

The Assembly invited States to request that the Secretary-General appoint experts in the various aspects of the drug problem to further develop the global program.\textsuperscript{225} The Assembly then requested the Secretary-General to give priority to narcotics control activities in his proposals for the medium-term plan beginning in 1992.\textsuperscript{226}

The Assembly urged States to contribute to the United Nations Fund for Drug Abuse Control or give other support to enhance and promote a truly comprehensive global program of action.\textsuperscript{227} The Assembly lastly requested that the Secretary-General “transmit the present resolution to the Preparatory Committee of the Whole for the Seventeenth Special Session of the General Assembly, which the Assembly established by its decision 44/410 of 14 November 1989.”\textsuperscript{228}

E. U.N. Resolution 44/142

The General Assembly expressed deep concern that “the illicit demand for, production of, traffic in and use of narcotic drugs and psychotropic substances has become one of the most serious dangers to the health and welfare of populations, adversely affecting the political, economic, social, and cultural structure of all societies.”\textsuperscript{229} The Assembly recognized that drug trafficking destabilizes economies, adversely affects the development of countries, and threatens stability, national security, and sovereignty of States.\textsuperscript{230} The international community’s alarm over the situation led the Assembly to reaffirm the growing connection between drug trafficking and terrorism, as well as to reiterate the existence of a collective responsibility from the

\textsuperscript{224} G.A. Res. 44/141, \textit{supra} note 214, at 220-21.

\textsuperscript{225} See \textit{id.} at 221.

\textsuperscript{226} See \textit{id.}.

\textsuperscript{227} See \textit{id.}.

\textsuperscript{228} Id. (referring to \textit{Organization of the Special Session of the General Assembly to Consider the Question of International Co-Operation Against Illicit Production, Supply, Demand, Trafficking, and Distribution of Narcotic Drugs with a View to Expanding the Scope and Increasing the Effectiveness of Such Co-Operation}, G.A. Dec. 44/410, U.N. GAOR, 44th Sess., Supp. No. 49, 55th plen. mtg., at 323, U.N. Doc. A/44/49 (1990)).


\textsuperscript{230} See \textit{id.}.
international community to combat drug trafficking.\textsuperscript{231} On numerous occasions, the Assembly recognized the serious efforts of governments through programs for crop substitution, integrated rural development, and interdiction.\textsuperscript{232} Nonetheless, the Assembly concluded that international economic and technical co-operation has so far proved inadequate to the task at hand and therefore should be substantially stepped up[, and considered] that the necessary steps must be taken to preclude the illicit cultivation of plants containing narcotic drugs and psychotropic substances, such as the opium poppy, coca bush and cannabis plant, together with the manufacture of psychotropic substances not used for industrial, scientific or traditional purposes.\textsuperscript{233}

The Assembly also emphasized the importance of the International Conference on Drug Abuse and Illicit Trafficking unanimously adopting the Declaration\textsuperscript{234} and the comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control,\textsuperscript{235} which represent the proper framework for international co-operation in drug control. Moreover, it “welcom[ed] the efforts made by those countries that produce narcotic drugs for scientific, medicinal and therapeutic uses to prevent the channelling of such substances to illicit markets and to maintain production at a level consistent with licit demand.”\textsuperscript{236} The Assembly recognized that two important deterrents to drug trafficking are the constantly changing transit routes used by drug traffickers and the growing number of countries around the world who are particularly vulnerable to illicit transit traffic because of their geographic location.\textsuperscript{237} The Assembly also recognized the need for greater international co-operation which would facilitate the marketing of crop substitution products and the control of chemical substances used to process illicit drugs and psychotropic substances, as well as the impact of the social and economic consequences of drug-money transfers and conversion, which have an adverse effect on national economic systems[. We also recognize] the commendable work carried out by the

\textsuperscript{231} See id.
\textsuperscript{232} See id.
\textsuperscript{233} Id.
\textsuperscript{234} See U.N. Sales No. E.87.I.18, supra note 142, ch. I, § B.
\textsuperscript{235} Id. ch. I, § A.
\textsuperscript{236} Id.
\textsuperscript{237} See G.A. Res. 44/142, supra note 229, at 221.
United Nations in controlling narcotic drugs and psychotropic substances, which is being seriously impeded by a lack of human and financial resources.\textsuperscript{238}

In December 1989, the Assembly recalled its Resolution 43/122 of December 8, 1988, and Resolution 3 of the United Nations conference for the Adoption of a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, held in Vienna from November 25 to December 20, 1988, which recognized the urgent need for additional resources, both human and financial, for the Division of Narcotic Drugs of the Secretariat and the Secretariat of the International Narcotics Control Board.\textsuperscript{239} The Assembly reiterated the need for significant contribution to curb the problem of narcotic drug traffickers.\textsuperscript{240} The Assembly also recognized the importance of its Resolution 43/121 of December 8, 1988, which condemned the criminal activities involving children in drug dealings.\textsuperscript{241} The Assembly appealed to the “competent international agencies and the United Nations Fund for Drug Abuse Control to assign high priority to the study of proposals designed to tackle the problem.”\textsuperscript{242}

Referring to its Resolution 44/16 of November 1, 1989, which decided to convene a special session to discuss closer international cooperation to combat drug abuse and illicit trafficking, the Assembly voted to:

1. \textit{Strongly condemn} the crime of drug trafficking in all its forms and [urge] all States to remain steadfast in their political commitment to the concerted international struggle to put an end to it;

2. \textit{Endorse} Economic and Social Council resolution 1989/20 of 22 May 1989 and [urge] Governments and organizations to adhere to the principles set forth in the Declaration of the International Conference on Drug Abuse and Illicit Trafficking and to apply, as appropriate, the recommendations of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control;

3. \textit{Emphasize} that the international struggle against drug trafficking and the abuse and sale of, and illicit traffic in, narcotic drugs and psychotropic substances is a collective

\textsuperscript{238} Id. at 221-22.
\textsuperscript{239} See id. at 222 (referring to G.A. Res. 40/122, supra note 106, at 222).
\textsuperscript{240} See id.
\textsuperscript{241} See id. (referring to G.A. Res. 43/121, supra note 168, at 198).
\textsuperscript{242} Id.
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responsibility and that the eradication of the problem requires efficient and co-ordinated international co-operation, in keeping with the principle of respect for national sovereignty and the cultural identity of States;

4. Emphasize the connection between the illicit production and supply of, demand for, sale of and traffic in narcotic drugs and psychotropic substances, and the economic, social and cultural conditions of the countries affected;

5. Recognize that the international community, in seeking solutions to the problem of illicit production of, demand for and trade, transit or traffic in narcotic drugs and psychotropic substances, must take into account the differences and diversity of the problem in each country;

6. Call upon the international community to provide increased international economic and technical co-operation to Governments, at their request, in support of program[s] for the substitution of illicit crops by means of integrated rural development program[s] that respect fully the jurisdiction and sovereignty of countries and the cultural traditions of peoples;

7. Recognize the importance of international co-operation in facilitating trade flows in support of integrated rural development program[s] leading to economically viable alternatives to illicit cultivation, taking into account factors such as access to markets for crop substitution products;

8. Request countries that produce the chemical substances necessary for the manufacture of narcotic drugs and psychotropic substances to take the initiative in adopting measures which ensure effective control of the export of such substances;

9. Request the Secretary-General to undertake as soon as possible, with the assistance of a group of intergovernmental experts, a study on the economic and social consequences of illicit traffic in drugs, with a view to analysing, inter alia, the following elements:

(a) The magnitude and characteristics of economic transactions related to drug trafficking in all its stages, including production of, traffic in and distribution of illicit drugs, in order to determine the impact of drug-related money transfers and conversion on national economic systems; [and]

(b) Mechanisms which would prevent the use of the banking system and the international financial system in this activity;

10. Also request the Secretary-General to ask Member States for their views on the scope and context of such a study, taking into account the elements set forth in paragraph 9 of the
present resolution, and to transmit such views to the group of experts;

11. **Consider** that a system should be established to identify the methods and routes used for the illicit transit traffic in narcotic drugs and psychotropic substances, to enhance the interdiction capability of those States along such routes;

12. **Strongly condemn** the illicit arms trade that is arming drug traffickers, causing political destabilization and loss of human lives;

13. **Call** upon all States, particularly those with high rates of use of narcotic drugs and psychotropic substances, to take prevention and rehabilitation measures and also increasingly stringent political and legal measures to eliminate the demand for narcotic drugs and psychotropic substances, and [call] upon the United Nations and other relevant international organizations to devote greater attention to this aspect of the problem;

14. **Take note with satisfaction** of the proposal by the Government of the United Kingdom of Great Britain and Northern Ireland to convene an international conference on drug demand reduction;

15. **Recognize** that the publication and dissemination of materials which encourage or stimulate the production of and demand for narcotic drugs and psychotropic substances do not contribute positively to the international action to combat drug abuse and illicit trafficking;

16. **Request** the Secretary-General to report to the General Assembly at its forty-fifth session on the implementation of its resolution 43/121 and of Economic and Social Council decision 1989/123 of 22 May 1989;

17. **Call** upon Member States substantially to increase their contributions to the United Nations Fund for Drug Abuse Control, so that it can expand its programmes;

18. **Endorse** Economic and Social Council resolution 1989/18 of 22 May 1989;

19. **Express its serious concern** at the considerable reduction in the budget and staff of the Division of Narcotic Drugs of the Secretariat and the secretariat of the International Narcotics Control Board, which threatens their ability to carry out adequately any additional responsibilities deriving from the activities which the United Nations must undertake to tackle the new dimension of the problem of drug abuse and illicit trafficking;

20. **Recommend** that the Secretary-General take urgent steps to ensure the increase of allocations to the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board;

22. *Take note of* the reports of the Secretary-General and request[s] him to report to the General Assembly at its forty-fifth session on the implementation of the present resolution and also to prepare on a yearly basis a detailed report on international drug-control activities reflecting the work done by the United Nations system to implement the recommendations of the comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control; [and]

23. *Decide* to include in the provisional agenda of its forty-fifth session an item entitled "International action to combat drug abuse and illicit trafficking."243

**F. U.N. Resolution 44/29**

In December 1989, the Assembly considered measures to prevent international terrorism that endangered or took innocent human lives and jeopardized fundamental freedoms and to study the underlying causes of terrorism and acts of violence, which often lie in misery, frustration, grievance, and despair, thus causing some people to sacrifice human lives, including their own, in an attempt to effect radical changes.244

The Assembly was convinced that a policy of firmness and effective measures should be taken in accordance with international law to ensure the end of all acts, methods, and practices of international terrorism.245 In this context, the Assembly noted the International Civil Aviation Organization’s (ICAO) ongoing research on the detection of plastic or sheet explosives and the devising of an international regime for the marking of such explosives for the purposes of detection.246 The Assembly took note of Security Council Resolution 635 of June 14, 1989, and expressed its confidence that the ICAO work would significantly help curb acts of unlawful interference with civil aviation.247

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245 See *id.*

246 See *id.*

247 See *id.*
G. U.N. Resolution 46/51

The Assembly was concerned about the "world-wide persistence of acts of international terrorism in all its forms, including those in which States are directly or indirectly involved, which endanger or take innocent lives, have a deleterious effect on international relations and may jeopardize the territorial integrity and security of States." The Assembly pointed out the growing connection between terrorist groups and drug traffickers and stressed the importance of States' obligations to ensure that appropriate law-enforcement measures are taken in response to the offenses addressed in relevant international conventions.

The Assembly was convinced that "international co-operation in combating and preventing terrorism will contribute to the strengthening of confidence among States, reduce tensions and create a better climate among them[, and was m]indful of the need to enhance the role of the United Nations and the relevant specialized agencies in combating international terrorism."

"[T]he necessity of maintaining and protecting the basic rights of, and guarantees for, the individual in accordance with the relevant international human rights instruments and generally accepted international standards" was recognized to the extent that the Assembly reaffirmed "the principle of self-determination of peoples as enshrined in the Charter of the United Nations."

The Assembly noted the efforts and important achievements of the ICAO and the International Maritime Organization for "promoting the security of international air and sea transport against acts of terrorism," and recognized that "the effectiveness of the struggle against terrorism could be enhanced by the establishment of a generally agreed definition of international terrorism." The Assembly condemned all acts, methods, and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including acts that jeopardize

249 See id. The Assembly also noted the importance of expanding and improving international cooperation among States, on various levels, including on a bilateral, regional, and multilateral basis. See id.
250 Id.
251 Id.
252 Id.
friendly relations among States and their security. The Assembly asked States “to fulfil their obligations under international law to refrain from organizing, instigating, assisting or participating in terrorist acts in other States, or acquiescing in or encouraging activities within their territory directed towards the commission of such acts.”

The Assembly also urged States to fulfil their obligations under international law by taking effective and resolute measures to quickly eliminate international terrorism and prevent the preparation and organization of terrorist activities in their territories. The Assembly urged States to ensure the apprehension, prosecution, or extradition of terrorists.

The Assembly stated that it was vital for States to cooperate with each other in exchanging information concerning the prevention and combating of terrorism, to implement the international conventions, and to harmonize State legislation with U.N. conventions. The Assembly appealed to all States to adopt the international conventions relating to terrorism and urge[d] all States, unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violation of human rights and fundamental freedoms and those involving alien domination and foreign occupation, that may give rise to international terrorism and may endanger international peace and security.

The Assembly concluded by firmly calling for the “immediate and safe release of all hostages and abducted persons, wherever and by whomever they are being held.”

H. U.N. Resolution 39/141/Annex

In December 1984, the United Nations suggested a Draft Convention Against Traffic in Narcotic Drugs and Psychotropic Substances.
stances and Related Activities. The Preamble to the Convention reflects the concern of all the States Parties to the Convention that

illicit traffic in and use of narcotic drugs and psychotropic substances transcend the sphere of the physical and moral well-being of mankind and are detrimental to the identity and integration of peoples, since they constitute a factor of dependence and corruption which undermines their spiritual, cultural, social and economic values.

A further concern was that these problems must be dealt with in the international and cooperative global geopolitics, because drugs weaken the economies of countries and undermine their sovereignty, impeding their development. Parties agreeing to the Convention declare that illicit traffic in narcotic drugs and psychotropic substances is a grievous crime against all humanity under international law, considering:

1. . . . illicit traffic in and use of such substances are detrimental to the integrity and identity of our peoples since they undermine their spiritual, historical and social values, and, as a result of technical advances in the communications media, unprecedented expansion in untoward cross-cultural influences, increase in organized crime and other factors, have reached proportions too great to be dealt with through the isolated demands and actions of States,

2. . . . there is clear evidence that illicit trafficking is closely linked to the designs and actions of some aimed at subverting the legal order and social peace in our countries in pursuit of their despicable commercial aims, and that it constitutes a factor of dependence for developing peoples and impedes economic integration in keeping with their common interests,

3. . . . it is clearly established that illicit trafficking operates by corrupting the political and administrative structures of producing and consuming countries and undermines the security and defence of peoples by sapping their military strength and affecting their sovereignty,

4. . . . there is a need for international legislation that would provide a basis for effective action to combat the illicit trafficking in and use of . . . and for punishing those responsible wherever they may be,

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261 Id.

262 See id.
5. . . . the volume, magnitude and extent of illicit drug trafficking and use represent a challenge to society as a whole and constitute activities threatening the very existence and future development of human beings and especially affect youth, a key factor for the development of the peoples of the world,
6. . . . drug addiction is detrimental to health, one of the basic assets and inalienable rights of every human being, and whereas without individual health there is no public health, a fact which in turn bears upon and determines the economic development of peoples,
7. . . . the repeated use of narcotic drugs and psychotropic substances affects the individual and that, through its biological, psychological and social effects, damages the personality and creates problems for the family, society and the State,
8. . . . the illicit use of narcotic drugs and psychotropic substances is taking a very serious and often irreversible toll on youth, which is the noblest part of the human resources of the world’s peoples, and weakens their capacity for cultural and material progress.  

Article 2 of the Draft Convention states that “[t]rafficking in narcotic drugs or psychotropic substances is a grave international crime against humanity.” Illicit activities are defined by Article 3 as “trafficking, distribution, supply, manufacture, elaboration, refining, processing, extraction, preparation, production, cultivation, preservation, transport and storage and the management, organization, financing or facilitating of the traffic in any of the substances or their raw materials referred to in the present Convention.” Article 4 states that it will be an “aggravating circumstance” if a violator is someone who performs a public function of any kind. Article 5 of the Convention stipulates that the illicit activities discussed shall not be considered political crimes, for the purpose of extradition.

Article 6 states that the crimes enumerated in the Convention are imprescriptible and will be investigated, irrespective of when the acts were committed. “[I]ndividuals against whom there exists sufficient evidence of having committed such crimes shall be sought, arrested, charged and, if found guilty, punished.”

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263 Id. at 229-30.
264 Id. at 230 (parties to the Convention undertake the task to suppress trafficking).
265 Id.
266 See id.
267 See id.
268 See id.
269 Id.
Article 6 of the Convention stipulates that the parties adopt, in accordance with their respective laws, any measures necessary to ensure that no limitations will apply to the prosecution and punishment of the crimes referred to in Article 3 and part A, paragraph 2, of Article 10 of the Convention.\textsuperscript{270}

Article 7 provides that States will adopt the legislative measures necessary to ensure implementation of the Convention and provide for stringent criminal penalties against individuals responsible for the activities.\textsuperscript{271} The duties of international organizations are specified in Article 8, which requires that the State or international organizations seek to have the “United Nations or . . . other regional organization take such action as they deem appropriate, in accordance with the international instruments governing them, to prevent and suppress the illicit activities enumerated in the . . . Convention.”\textsuperscript{272}

International cooperation is a critical element of the implementation of the Convention. States must “cooperate on a bilateral and multilateral basis to prevent and suppress the illicit activities . . . [and must] take all necessary measures towards that end.”\textsuperscript{273} Accordingly, Article 9 requires States to effect the following:

(a) Ensure that, at the national level, there is co-ordination of preventive and repressive action against illicit trafficking in narcotic drugs and psychotropic substances. They may assign responsibility for such co-ordination to an appropriate agency;

(b) Provide mutual assistance in combating illicit trafficking and co-operate with each other in identifying, arresting and taking legal action against those suspected of engaging in such illicit activities and their accomplices or abettors and also in seizing and destroying such substances;

(c) Co-operate closely with each other and with competent international organizations of which they are members in a co-ordinated effort to combat illicit trafficking, particularly by collecting information and documents relevant to investigation with the aim of facilitating the prosecution of the persons referred to in the preceding paragraph, and exchange such information;

(d) See to it that international co-operation between the relevant agencies is expeditiously carried out;

\textsuperscript{270} See id. (where limitations do exist, they shall be abolished).
\textsuperscript{271} See id.
\textsuperscript{272} Id.
\textsuperscript{273} Id.
(e) Ensure that writs for judicial action are transmitted between countries directly and expeditiously to the organs designated by the States Parties. This provision shall not prevent any State party from exercising its right to require that such writs be transmitted to it through the diplomatic channel or from Government to Government;

(f) Provide information on illicit activities within their territories that involve narcotic drugs and psychotropic substances, including information on the cultivation, production and manufacture of, trafficking in and use of such substances;

(g) Refrain from enacting legislative provisions or taking measures of any other kind which might be prejudicial to the international obligations which they have assumed with respect to the identification, arrest, extradition and punishment of individuals guilty of the crimes enumerated in the present Convention.\(^{274}\)

Penal provisions are addressed in Article 10, which provides that the crimes enumerated in the Convention, whether committed by one or more individuals in one or more countries, would be considered a distinct offense.\(^{275}\) Foreign convictions relating to such crimes will be taken into account to determine whether the accused is a habitual offender.\(^{276}\)

Crimes committed by both nationals and aliens shall be tried by the State Party in whose territory the crime was committed, or by the State Party in whose territory the offender is present if extradition is not authorized under the law of the State Party to which a request for extradition is made and if the offender has not yet been tried and sentenced for one of the crimes enumerated in the present Convention.\(^{277}\)

All of the crimes listed in Articles 3 and 10, are included among the extraditable offenses covered by any past or future extradition treaty.\(^{278}\) If a State,

which makes extradition contingent on the existence of a treaty receives a request for extradition from another State Party with which it has no treaty, it may, should is so choose, consider the present Convention as the necessary legal basis for extradition in

\(^{274}\) Id.

\(^{275}\) See id. Offenses will include participation, association, or the attempt to commit, conspire, or instigate any such crime, as well as the preparation to engage in such crimes. See id.

\(^{276}\) See id.

\(^{277}\) Id.

\(^{278}\) See id. at 230-31.
respect of the crimes enumerated in article 3 and in part A, paragraph 2, of the present article.\textsuperscript{279}

Extradition will also be subject to other conditions established by laws of the State in which the application is made.\textsuperscript{280} States not making extradition contingent on the existence of a treaty shall recognize the crimes enumerated . . . as extraditable offenses as between them, subject to any conditions laid down by the law of the State Party to which the application for extradition is made."\textsuperscript{281} Article 10 does not affect the principle that crimes must be prosecuted and punished according to individual State law.\textsuperscript{282}

The Convention next addresses the issue of judicial jurisdiction of these cases. Article 11 provides that "[a]nyone involved in any of the activities enumerated in the present Convention may be tried by a competent tribunal in any of the States in whose territory an act or acts . . . was or were committed, or by such international criminal tribunal as may have jurisdiction."\textsuperscript{283}

The Convention requires a fund to be established to help developing countries affected by the illicit traffic to overcome the causes of illicit drug activity and to provide them with the adequate means to combat such activities.\textsuperscript{284} The States agreed "to entrust the task of overseeing the activities and obligations set out in the . . . Convention to the Commission on Narcotic Drugs and the International Narcotics Control Board of the Economic and Social Council of the United Nations."\textsuperscript{285} Article 15 of the Convention requires that any disputes relating to the Convention be submitted to the International Court of Justice, at the request of either State's Parties.\textsuperscript{286}

According to Article 16, the Convention is open for adoption by all States, whether members of the United Nations or not,
and without any limitation as to time.\textsuperscript{287} Ratification instruments must be deposited with the Secretary-General of the United Nations and will become effective on the tenth day, following the date on which the twentieth instrument is deposited.\textsuperscript{288} The Convention will then remain in effect for fifty years.\textsuperscript{289}

I. **U.N. Resolution 39/142/Annex**

The Annex to the Convention contained a Declaration on the Control of Drug Trafficking and Drug Abuse that focused on the "purposes and principles of the Charter of the United Nations reaffirm faith in the dignity and worth of the human person and promote social progress and better standards of life in larger freedom and international co-operation in solving problems of an economic, social, cultural or humanitarian character," and took note that "Member States have undertaken in the Universal Declaration of Human Rights to promote social progress and better standards of life for the peoples of the world."\textsuperscript{290}

The Resolution declares that

the international community has expressed grave concern at the fact that trafficking in narcotics and drug abuse constitute an obstacle to the physical and moral well-being of peoples and of youth in particular, [thus reflecting] . . . the awareness of the international community of the urgency of preventing and punishing the illicit demand for, abuse of and illicit production of and traffic in drugs . . . .\textsuperscript{291}

The Assembly drew attention to the Commission on Narcotic Drugs, the International Narcotics Control Board, and the United Nations Fund for Drug Abuse Control, for their valuable contributions against drug trafficking and abuse.\textsuperscript{292} The Assembly urged States to adhere to the recommendations of these bodies and then declared:

\textsuperscript{287} See id.

\textsuperscript{288} See id. (referring to Articles 16 and 17).

\textsuperscript{289} See id. (referring to Article 18).


\textsuperscript{291} G.A. Res. 39/142/Annex, supra note 290.

\textsuperscript{292} See id.
1. Drug trafficking and drug abuse are extremely serious problems which, owing to their magnitude, scope and widespread pernicious effects, have become an international criminal activity demanding urgent attention and maximum priority.

2. The illegal production of, illicit demand for, abuse of and illicit trafficking in drugs impede economic and social progress, constitute a grave threat to the security and development of many countries and peoples and should be combated by all moral, legal and institutional means, at the national, regional and international levels.

3. The eradication of trafficking in narcotic drugs is the collective responsibility of all States, especially those affected by problems relating to illicit production, trafficking or abuse.

4. States Members shall utilize the legal instruments against the illicit production of and demand for, abuse of and illicit traffic in drugs and adopt additional measures to counter new manifestations of this shameful and heinous crime.

5. States Members undertake to intensify efforts and to coordinate strategies aimed at the control and eradication of the complex problem of drug trafficking and drug abuse through [programs] including economic, social and cultural alternatives.\textsuperscript{293}

VIII. THE UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

On December 19, 1988, the United Nations adopted the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ("Convention").\textsuperscript{294} The Convention expressed concern for "the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the

\textsuperscript{293} Id. at 231-32.

economic, cultural and political foundations of society." The Parties adopting the Convention (the "Parties") were also concerned about the steadily increasing presence of illicit traffic in narcotic drugs and psychotropic substances, and the incalculable degree of danger caused by the fact that children continued to be used as illicit drug consumers, producers, distributors, and traders of narcotic drugs and psychotropic substances.

The Convention recognized "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," and that "illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority."

Article 2 of the Convention provided that its purpose was to promote cooperation among the Parties to more effectively combat illicit drug trafficking on an international level. To carry out their obligations under the Convention, the Parties were required to "take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their perspective domestic legislative systems."

Article 3 of the Convention enumerated the following offenses and sanctions, providing that each Party would adopt measures necessary to establish these acts as criminal offenses under the domestic law of the Party's individual state:

(a) (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substances contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

(ii) The cultivation of opium poppy, coca bush, or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

296 See id.
297 Id.
298 See id. at 22.
299 Id.
(iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;

(iv) The manufacture, transport, or distribution of [certain] equipment, materials or of substances . . ., knowing that they are to be used in or for the illicit cultivation, production, or manufacture of narcotic drugs or psychotropic substances;

(v) The organization, management, or financing of any of the offences enumerated in (i), (ii), (iii), or (iv) above;

(b) (i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences.

. . .

(c) Subject to its constitutional principles and the basic concepts of its legal system:

(i) The acquisition, possession, or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences . . .

(ii) The possession of equipment or materials or substances listed in [the Convention], knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances. . .

Those who publicly incite or induce others, by any means, to commit any of the offenses discussed or to use narcotic drugs or psychotropic substances illicitly; or who attempt to or actually do participate in, associate, or conspire to commit, abet, facilitate, and counsel the commission of such offenses, will be guilty of an offense under the Convention.301

300 Id. at 25-26.
301 See id. at 26.
Subject to its State constitutional principles and legal system, each Party was required to adopt the measures necessary to establish as a criminal offense, the possession, purchase, or cultivation of narcotic drugs and psychotropic substances for personal consumption.\textsuperscript{302} Each Party was further required to add sanctions, in the form of deprivation of liberty, pecuniary sanctions, and confiscation, for the commission of any offenses established under Article 3 paragraph 1.\textsuperscript{303}

In addition to conviction or punishment, States may also require an offender to undergo treatment, education, rehabilitation, or social reintegration.\textsuperscript{304} In minor cases, instead of a conviction or punishment, states may provide for other measures, including education, rehabilitation, social reintegration, and treatment for drug abuse.\textsuperscript{305}

In its discussion of jurisdiction, the Convention requires States to ensure that their courts and other competent authorities with jurisdiction could take into account aggravating factual circumstances that would make the offense particularly serious, including:

(a) The involvement in the offence of an organized criminal group to which the offender belongs;
(b) The involvement of the offender in other international organized criminal activities;
(c) The involvement of the offender in other illegal activities facilitated by commission of the offence;
(d) The use of violence of arms by the offender;
(e) The fact that the offender holds a public office and that the offence is connected with the office in question;
(f) [T]he victimization or use of minors;
(g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports, and social activities;
(h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.\textsuperscript{306}

\textsuperscript{302} See id. Knowledge, intent, or purpose, as required for an offense under Article 3, paragraph 1, may be inferred from objective factual circumstances. See id.

\textsuperscript{303} See id.

\textsuperscript{304} See id.

\textsuperscript{305} See id. at 27.

\textsuperscript{306} Id.
The Convention further stipulated that the Parties should ensure that their domestic laws relating to the offenses established in the Convention are enforced so as to maximize their effectiveness as a deterrent. The Parties should encourage their courts and other authorities to consider the serious nature of the offenses and other circumstances when considering the early release or parole of convicted persons.

Each Party was required to “establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with [the Convention], and a longer period where the alleged offender has evaded the administration of justice.” Each Party was further required to take appropriate legal measures to ensure that a person charged with or convicted of an offense established by the Convention and who is found within the State’s territory is present at the criminal proceedings. To further cooperation among the Parties,

offences established in accordance with [the Convention] . . . shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties. . . . [The Convention] shall [not] affect the principle that the description of the offences to which it refers and of legal defenses thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

Article 4 of the Convention further discussed the issue of jurisdiction, requiring that each Party take the measures necessary to establish jurisdiction over the offenses when:

(i) The offence is committed in its territory;
(ii) The offence is committed on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offence is committed . . . .

Parties may take any necessary measures to establish their jurisdiction over the offenses codified in accordance with the Convention when:

307 See id.
308 See id.
309 Id. at 28.
310 See id.
311 Id.
312 Id. at 35.
(i) The offence is committed by one of its nationals or by a person who has his habitual residence in its territory;

(ii) The offence is committed on board a vessel concerning which that Party has been authorized to take appropriate action . . . provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to [in the Convention];

(iii) The offence is one of those established in accordance with [the Convention] and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with the [Convention].

Each Party was also required to take the measures necessary to establish jurisdiction over a person committing the established offenses when the alleged offender is present in its territory and is not extradited to another state, on the ground:

(i) That the offence has been committed in its territory or on board a vessel flying its flag or an aircraft which was registered under its law at the time the offence was committed; or

(ii) That the offence has been committed by one of its nationals . . .

Article 5 of the Convention addressed the issue of confiscation, providing that each Party must adopt measures that are necessary to allow confiscation of proceeds, or property corresponding to the proceeds, narcotic drugs, psychotropic substances, materials, equipment, or other instrumentalities used in or intended for use in any manner in the offenses established by the Convention.

Article 5 further provided that “[e]ach Party shall [also] adopt such measures as may be necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things[, . . . ] for the purpose of eventual confiscation.” In order to carry out the measures referred to in Article 5, each Party was required to “empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.”

313 Id.
314 Id.
315 See id. at 39.
316 Id.
317 Id.
Article 6 of the Convention stipulated that each of the offenses under the Convention was "deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties [shall] undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them."\textsuperscript{318}

Furthermore, "[if] a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider [the] Convention as the legal basis for extradition . . . ."\textsuperscript{319} The Parties that require some form of legislation in order to be able to use this Convention as a legal basis for extradition should consider enacting appropriate legislation.\textsuperscript{320}

If the Parties do not make extradition conditional on the existence of a treaty, then they should recognize these offenses as extraditable between themselves.\textsuperscript{321} Extradition is subject to the "conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition."\textsuperscript{322} In considering extradition requests, the State to which the request was submitted may refuse to comply when there are "substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment [of] any person on account of his race, religion, nationality or political opinions," or when such factors would influence the decision made.\textsuperscript{323} The Parties were further required to expedite extradition procedures and simplify their evidentiary requirements relating to the established offenses.\textsuperscript{324}

Subject to state law and extradition treaties and if the circumstances urgently warrant, the requesting Party may take a person in its territory whose extradition is sought or take other appropriate measures to ensure such person's presence at extradition proceedings.\textsuperscript{325} Also, if the State does not extradite the offender according to the provisions of the Convention, it must submit the case to its authorities for the purpose of prosecution, unless

\textsuperscript{318} Id. at 49.
\textsuperscript{319} Id.
\textsuperscript{320} See id.
\textsuperscript{321} See id.
\textsuperscript{322} Id.
\textsuperscript{323} Id.
\textsuperscript{324} See id.
\textsuperscript{325} See id.
such action is prejudicial to the criminal jurisdiction or as otherwise agreed with the requesting Party.\textsuperscript{326} If the Party that received the request refuses extradition because the person sought is a national, then it should “consider the enforcement of the sentence which has been imposed under the law of the requesting Party . . . .”\textsuperscript{327}

The Parties may wish to enter “bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.”\textsuperscript{328} They may also enter agreements based on a general or case-by-case basis regarding the return of sentenced offenders back into the state in which they were originally sentenced so they may complete their sentences there.\textsuperscript{329}

\section*{IX. ICAO INITIATIVES}

On February 25, 1957, the Air Navigation Commission (the “Commission”) in its twenty-fourth session considered ICAO’s invitation for comments from States about the transportation of opiates and derivatives in first-aid kits in aircrafts on international flights.\textsuperscript{330} The ICAO specifically requested comments on the following issues:

\begin{enumerate}
\item[(a)] Is it believed necessary to carry opiates or drugs containing opiates and their [respective] derivatives in the first-aid kits of aircraft for use in case of emergency . . . or in the kits carried by airlines for the relief of passengers suffering from certain diseases?\textsuperscript{331}
\item[(b)] Do the regulations in a country prohibit the carriage of drugs containing opiates or their derivatives in limited quantities in first-aid kits on board aircraft on international flights? If so, under what safeguards would you allow such drugs to be carried?
\item[(c)] Do the regulations of that country prohibit a qualified crew member from administering subcutaneous or intravenous injections in case of emergency on international flights?\textsuperscript{331}
\end{enumerate}

Substantive replies were received from twenty-eight contracting States, plus the Belgian Congo and Netherlands Antil-

\begin{footnotesize}
\textsuperscript{326} See id. at 49-50.
\textsuperscript{327} Id. at 50.
\textsuperscript{328} Id.
\textsuperscript{329} See id.
\textsuperscript{331} Id. at 1-2.
\end{footnotesize}
In addition, three States (Burma, Guatemala, and Mexico) either acknowledged receipt or had no comments about the ICAO State Letter. Recommendations were also received from the United Nations European Office, Division on Narcotic Drugs, International Federation of Airline Pilots Association (IFALPA), the Aero Medical Association, and the Air Transport Association (ATA) through the United States government.

A. Basic Principles of International Narcotic Control

In 1957, the Commission noted that any use, carriage, or transportation of narcotics was subject to international laws. The Economic and Social Council (ECOSOC) Division of Narcotic Drugs, referring to the ICAO State Letter, had indicated that ICAO’s discussions, decisions, or regulations would be important to the Commission in connection with their preparation of a new Single Convention to codify all international treaties relating to narcotic drugs.

The Commission also noted that:

The international regulations on narcotic drugs consist of a complex system of nine Conventions under... the supervision of ECOSOC and its Committee on Narcotic Drugs. They [were] directed at establishing international control of all drugs causing addiction and the application of certain principles as regards the manufacture, prescription, sale, and traffic of narcotic drugs. These [had] generally been introduced into national regulations to prevent any abuse and illicit traffic... There [was] nevertheless some lack of uniformity in the detailed application as not all States are parties to all Conventions. [It was believed that the] codification of all existing treaties into a single Convention, planned by ECOSOC, in the near future, [would] promote uniformity. In principle, there [was] no intent in the international regulations to restrict the legitimate use of opiates or narcotic drugs for medical purposes and in case of emergencies. A number of States [had] adopted specific legal provisions for the carriage of such drugs in aircraft first-aid kits... Other States believe[d] that effective control of their contents [was] difficult so as to prevent any possibility of abuse.
The Commission believed that opiates and other restricted substances carried on board were generally subject to the laws of the State of Registry. For example, substances can only be obtained for legitimate, medical, or scientific purposes and in controlled, limited quantities, by medical prescription, or from an authorized source. A record must be kept to record use and replacement of the drugs. In order to prevent misuse, first-aid kits should be locked; opiates or similar drugs should be kept in a sealed container within the first-aid kit; and a record should be kept detailing the quantity, name of product, manufacturer, date of prescription, dispensing agency, and signature of the person responsible for the drug's use and control.

One of the significant achievements of the Commission was its conclusion that the phrases “opiates and derivatives,” “narcotics,” and “narcotic drug” should include “opium, coca leaves, their alkaloids and preparations or derivatives therefrom, whether prepared from substances of vegetable origin or by means of synthesis, or their combinations, and other synthetic drugs liable to produce addiction and controlled by international narcotic regulation.”

The Commission concluded that the difficulties reported by some countries might have been caused by “a lack of uniformity of national laws and practices [that] developed under a complex system of international narcotic Conventions . . . . The Commission further concluded that it would be possible to eliminate the existing differences and difficulties if the States could agree to some certain principles for effective control and safeguards against abuse.

The ICAO Council adopted the recommendations of the Air Navigation Commission and decided:

(a) States should be informed of the Commission’s study regarding the transportation of opiates and derivatives in first-aid kits aboard international flights. The “Recommendation in 6.2 (a) of Annex 6 continues to be satisfactory and . . . the carriage of opiates and derivatives in aircraft first-aid kits is considered desirable;”

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338 See id.
339 See id.
340 See id.
341 See id.
342 Id. at 6.
343 Id.
344 See id.
(b) Foreign carriers should be permitted to carry first-aid kits with contents as described in Annex 6 “on international flights, under control, according to international narcotic laws and subject to satisfactory safeguards against abuse,” and to notify ICAO when they do not permit this. The Council invited ECOSOC and the World Health Organization (WHO) to study the related “medical and legal problems, in particular the application of efficient safeguards against abuse and of uniform principles under which opiates or other drugs might be used and carried in first-aid kits on board aircraft, in an effort to promote uniformity under existing laws and to avoid difficulties.” It was also agreed that the studies should consider any factors affecting international civil aviation, including the safety of persons on board and relief in the case of flight emergencies or accidents.

The Air Navigation Commission recognized that there were three points to consider in deciding whether the carriage of opiates in first-aid kits was desirable. The first question was: Is the carriage of opiates in aircraft first-aid kits desirable? The Commission concluded that it was desirable. The second question was: Should carriage of the substances be permitted? From the Commission’s standpoint, the answer was yes; however, the Commission recognized that the issue was complicated by the fact that the international movement of drugs was subject to international narcotics control. The Commission felt that all it could do at the time was to inform contracting States of the present study, especially about the implication in Annex 6 allowing foreign operators to carry the substances in their first-aid kits, and to request States to notify the Organization of any differences between their state laws and Annex 6. To further promote uniformity, the Commission also invited States, ECOSOC, and WHO to study the related legal and medical problems, especially the issues dealing with safeguards, abuses, and uniform principles for carriage of first-aid kits on board air-

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345 Id. (citing ICAO, First-Aid Kits to be Carried in Aircraft, Working Paper No. AN-WP/1984, at 1 (Dec. 18, 1958) [hereinafter ICAO, First-Aid Kits I]).
346 Id.
347 See id.
348 See ICAO, First-Aid Kits to be Carried in Aircraft, Working Paper No. AN-WP/1604, at 2-4 (Feb. 18, 1957) [hereinafter ICAO, First-Aid Kits II].
349 See id.
350 See id.
351 See id.
The third question asked whether qualified crew members should be allowed to administer narcotic drugs in emergencies. State regulations and practices differed; thus, the Commission concluded that States should be asked to adopt the practice of the State of Registry of the aircraft.353

The Council's 1957 Annual Report to the Assembly advised that in the light of States' replies to ICAO's letter inviting comments on the carriage of opiates and derivatives in first-aid kits on board aircraft on international flights, indicated that Annex 6 (suggesting that first-aid kits should contain analgesics and narcotics) was acceptable; however, more uniformity in its practical application was still needed.354

The ICAO considered what action it could take on a number of other medical and health problems in aviation, including the carriage of sick persons, pregnant women, live animals, and dead bodies; pollution of food and drinking water on board; and removal of refuse from aircraft.355 A majority of Council members concluded that these problems were better left to other organizations, particularly WHO and the International Air Transport Association (IATA).356 The Secretary-General was asked to monitor developments with those organizations to ensure that their actions would not unnecessarily interfere with ICAO's Facilitation Program.357

The Air Navigation Commission of ICAO later noted that in 1958, ECOSOC had recommended to governments to "take all necessary measures to prevent the misuse and diversion" for illicit purposes of narcotics drugs carried on board aircraft, particularly "by ensuring that such drugs were kept in sealed or locked containers accessible only to authorized persons and that adequate records of supply and use, and of stocks, of narcotic drugs would be maintained by the carriers concerned," and that "such records and stocks would be subject to regular inspection."358 In turn, the ECOSOC requested the Secretary-General to invite the views of the International Criminal Police Organiza-

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352 See id.
353 See id.
355 See id.
356 See id.
357 See id.
tion (Interpol) about what safeguards should be taken to prevent the diversion of illicit drugs and asked the Commission on Narcotic Drugs to advise ECOSOC about whether further measures should be recommended to governments.\textsuperscript{359}

The Air Navigation Commission first dealt with the subject of carriage of opiates in first-aid kits when it considered how to overcome the difficulties experienced by States in the application of Annex 6.\textsuperscript{360} It was these discussions, when reported to the Council, that resulted in the Council’s invitation to the ECOSOC and WHO to study various aspects of the drug problem.

As noted above, in Resolution 689F, adopted at its twenty-sixth session in July 1958, ECOSOC had requested the Secretary-General to invite the views of the Interpol about what safeguards should be taken to prevent diversion of illicit drugs.\textsuperscript{361} If the WHO’s study supported the carriage of narcotic drugs in first-aid kits on aircraft engaged in international flights, the Secretary-General was asked to report on the legal problems involved.\textsuperscript{362}

Pursuant to this request, the WHO, with the assistance of a consultant with wide experience in aviation medicine and air carrier problems, concluded that it was desirable to carry a limited amount of narcotics in aircraft first-aid kits.\textsuperscript{363} The WHO commented on a number of medical aspects that might be taken into consideration to prevent abuse. The United Nations Legal Office also verified that although drugs carried in first-aid kits were not exempted from narcotic treaties, the import certificate and export authorization system did not apply to drugs carried under appropriate safeguards in first-aid kits for emergency cases, as long as they did not cross the customs lines at points of transit or destination.\textsuperscript{364}

The WHO report, the U.N. Secretariat’s legal opinion, and the administrative measures proposed by Interpol to prevent diversion of drugs for illicit purposes were all considered by the United Nations Commission on Narcotic Drugs at its fourteenth


\textsuperscript{360} See ICAO, First-Aid Kits II, supra note 345, at 1.

\textsuperscript{361} See ICAO, First-Aid Kits I, supra note 348, at 7.

\textsuperscript{362} See id. This report was to be prepared in consultation with the Secretariats of the ICAO and the WHO. See id.

\textsuperscript{363} See 1959 U.N.Y.B. 264, U.N. Sales No. 60.I.I.

\textsuperscript{364} See 1960 U.N.Y.B. 396, U.N. Sales No. 61.I.I.
On the basis of the Narcotic Commission's recommendation, the ECOSOC, at its twenty-eighth session in July 1959, unanimously adopted Resolution 730G (XXVIII). In the Resolution, the U.N. Secretary-General was invited in co-operation with [ICAO] and [WHO], and in consultation with [Interpol], to prepare and to distribute to Governments in sufficient time for consideration at the fifteenth session of the Commission on Narcotic Drugs, a set of requirements essential to ensure proper use of narcotic drugs and to prevent their abuse and diversion for illicit purposes, such requirements to be recommended to Governments as a basis for the control of the carriage of narcotic drugs in first-aid kits on board aircraft engaged in international flight.

Accordingly, a joint Secretariat Working Group of the U.N. Division of Narcotic Drugs, WHO, ICAO, and Interpol met in Geneva in January 1960 to prepare a set of requirements under which opiates or similar drugs may be carried in aircraft first-aid kits on international flights for use in emergencies.

The U.N. Commission on Narcotic Drugs later discussed and approved the Inter-Secretariat report at its fifteenth session in May 1960. Thereafter, the ECOSOC at its thirtieth session in July 1960 unanimously adopted Resolution 770E (XXX), as recommended by the Commission on Narcotic Drugs. The Resolution included recommendations to States about the carriage of narcotic drugs in first-aid kits of aircraft engaged in international flights and suggested safeguards to prevent abuse.

In view of the ECOSOC recommendations aimed at eliminating the difficulties experienced by States, the Air Navigation Commission of ICAO considered whether any further action by ICAO was necessary or whether the subject should be deleted from its Work Program.

At its thirty-ninth session, the General Assembly adopted Resolution 39/143 on International Campaign Against Traffic in

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366 See id. at 264.
367 Id. at 268.
369 See id. at 393.
370 See id. at 396-98.
371 The ECOSOC in U.N. Resolution 770E (XXX) made certain recommendations to governments about safeguards to prevent abuse as a result of the carriage of narcotic drugs in first-aid kits of aircraft engaged in international flights. See 1960 U.N.Y.B., supra note 396, at 393.
Drugs, which called upon the specialized agencies to actively participate in its implementation. In December 1984, the Secretary-General addressed a letter to the Executive Heads of specialized agencies and requested their cooperation to control the abuse and illicit trafficking of narcotic drugs. Because of the large percentage of illicit narcotic drugs and psychotropic substances believed to be carried by air, the United Nations Division of Narcotic Drugs further requested the cooperation of the ICAO in this field.

The ICAO's activities in narcotics control became significant in November 1984 when a representative of ICAO attended the eleventh meeting of Operational Heads of National Narcotics Law Enforcement Agencies, Far East Region (HONLEA). In February and September 1985, an ICAO observer attended the third and fourth sessions of the Enforcement Committee of the Customs Cooperation Council (CCC) to discuss matters of narcotics law enforcement, and the United Nations Ad Hoc Inter-agency meetings on coordination in matters of international drug abuse control.

At the CCC's informal meeting on June 11, 1985, the Council gave preliminary consideration to the ICAO's constitutional mandate on the suppression of illicit air transportation of narcotic drugs and psychotropic substances. The meeting was significant because of the ICAO's obligations under the 1948 agreement between the U.N. and ICAO. According to the agreement, the Organization is obliged to help establish effective coordination of the activities of specialized agencies and those of the U.N. Specifically, the ICAO agreed to consider formal recommendations made by the U.N. and to provide the U.N. with all required information. Also, Resolution 39/143 ("International Campaign Against Traffic in Drugs") called

373 See id.
374 See id.
375 See id.
376 The CCC is now known as the World Customs Organization.
377 See id.
378 See id.
379 See id. at 2 (referring to ICAO, Agreement Between the United Nations and the International Civil Aviation Organization, Doc. No. 7970 (May 13, 1947)).
380 See ICAO, Role of ICAO, supra note 372, at 2.
381 See id.
upon the specialized agencies of the U.N. to actively implement the Resolution.\textsuperscript{382} ICAO is required to study the problem of suppression of illicit transport of narcotic drugs and psychotropic substances.\textsuperscript{383}

The Chicago Convention contained six provisions regarding international air law that may be relevant for the control and suppression of drug trafficking.\textsuperscript{384}

1. \textit{Article 10}—If all aircraft coming from abroad land only at designated customs airports and depart only from such airports, the control of illicit transport would be greatly facilitated.

2. \textit{Article 13}—Clearance and departure of cargo are subject to the regulations of the contracting States whose territories are involved; the movement of any specific cargo is subject to the legal regulations and effective control of the States concerned.

3. \textit{Article 16}—The contracting States have the right to search aircraft of other contracting States on landing or departure; obviously, the same right is applicable for the search of aircraft of their own registry.

4. \textit{Article 23}—The customs and immigration procedures affecting international air navigation should be in accordance with the practices established or recommended from time to time pursuant to the Convention; that clearly is reflected in the procedures established in Annex 9 to the Convention; however, the predominant provisions in this field are enacted by States through their immigration and customs legislation, the latter being co-ordinated internationally through the Customs Co-operation Council. Annex 9 deals with customs and immigration procedures but mainly in order to ensure that the procedures used are efficient and do not interfere with the speedy clearance of aircraft and their loads.

5. \textit{Article 35 (b)}—Each contracting State has the right, for reasons of public order and safety, to prohibit the carriage in or above its territory of certain articles; it is within the legislative power of the contracting States to adopt an unconditional interdiction on the carriage of narcotic drugs and psychotropic substances into or over their territory and to establish measures for enforcing such legislation.

6. \textit{Article 37 (j)}—It is within the legislative function of the ICAO Council to adopt standards, recommended practices and

\textsuperscript{382} See \textit{id.} at 1.

\textsuperscript{383} See \textit{id.} at 2.

\textsuperscript{384} See \textit{id.}
procedures dealing with customs and immigration, import and export of specific articles.\textsuperscript{385}

These Chicago Convention articles should be read in conjunction with Article 22 of the Convention, under which each contracting State agreed to "adopt all practical measures to facilitate and expedite air navigation and to prevent unnecessary delays to aircraft, crews, passengers and cargo. These requirements are further specified in Annex 9."\textsuperscript{386}

A proposal that Annex 9 contain provisions urging aeronautical authorities to extend all possible assistance to the suppression of drug trafficking would be out of context with the character of Annex 9.\textsuperscript{387} Annex 9's objective should be preserved, not diluted by inclusion of provisions that seem to run counter to it.\textsuperscript{388} Nonetheless, recognition of ICAO's cooperation with drug trafficking control could be made by including text in the Annex to:

1. [p]rovide that any special inspection procedures required in the control of narcotics traffic be accomplished speedily, with efficient equipment, without inconvenience to passengers and in such a way as to ensure the timely clearance of aircraft and their loads on arrival and departure[;]
2. [p]oint out that most seizures of narcotics and related substances in illicit traffic result from police and drug enforcement intelligence rather than from routine inspection and consequently that sampling rather than exhaustive methods of inspection are to be preferred.\textsuperscript{389}

Two other international organizations, Interpol and the CCC, have a direct responsibility in the suppression of illicit traffic in narcotic drugs.\textsuperscript{390} Interpol influences national legislation and

\textsuperscript{386} Id. at 3.
\textsuperscript{387} See id. Annex 9 aims at overcoming obstacles to the rapid clearance of aircraft and their loads.
\textsuperscript{388} See id.
\textsuperscript{389} Id. On June 17, 1985, the CCC recognized that "the proper balance between the needs of customs enforcement and the facilitation of legitimate trade and travel can best be achieved if customs enforcement is selective and intelligence based and that it is therefore essential that every effort be made to develop and exploit the best possible intelligence." Id. at 3 n.1. Another ICAO program that could be affected by ICAO activities related to "illicit trafficking in narcotic drugs and psychotropic substances is Aviation Security (Annex 17 and the Security Manual Doc 8973); however the protected interest in the aviation security program is aviation itself." Id. at 3.
\textsuperscript{390} See id. at 4.
coordinates the work of police world-wide to eradicate sources of raw material, processing and refining facilities, and aides in the apprehension and prosecution of offenders.\textsuperscript{391}

The [CCC] has, for many years, been concerned with the suppression of smuggling narcotics and psychotropic substances within its general competence to deal with customs matters. Its main instrument in this field is the International Convention on mutual administrative assistance for the prevention, investigation and repression of customs offences, signed in Nairobi in 1977. The “Nairobi Convention,” as it is called, contains specific references to illicit traffic and an Annex (Annex X) dealing with assistance in action against the smuggling of narcotic drugs and psychotropic substances. These provisions are designed to complement those of [prevailing treaties on narcotic drugs.] The CCC is also developing with the International Air Transport Association a Memorandum of Understanding between the two organizations containing guidelines for both customs authorities and airlines to follow to help prevent illicit traffic of drugs on board aircraft.\textsuperscript{392}

The word “smuggling,” as defined by the Nairobi Convention, applies to all modes of transport. The information exchanged by customs administrations pursuant to the Convention extends to all forms of transport involved with the smuggling of narcotic drugs or psychotropic substances.\textsuperscript{393} Surveillance assistance covers vehicles, ships, aircraft, and other means of transport reasonably believed to be used for smuggling into the territory of the requesting state.\textsuperscript{394}

The CCC's main deliberative organ in these matters is its Committee on Customs Enforcement. The current work [program] of this Committee in the area of narcotics smuggling includes exchanges of information on [couriers], their routes and pertinent traffic trends, development of catalogues of enforcement aids and places of concealment (in co-operation with INTERPOL and the U.N. Division of Narcotic Drugs), investigative techniques (undercover work), seminars and training [programs] and action to monitor and pre-empt financial transactions relating to narcotics smuggling. A recent recommendation of the CCC adopted on the proposal of its Enforcement Committee seeks “to secure the fullest co-operation of airline and shipping companies and others involved in the international transport

\textsuperscript{391} See id.
\textsuperscript{392} Id.
\textsuperscript{393} See id.
\textsuperscript{394} See id.
and travel industries to assist the international Customs community in suppression [of] the illicit traffic in narcotic drugs and psychotropic substances.  

In light of the above, it appears that the ICAO can at least play the following role:

(a) Monitor the preparation of the draft convention against the illicit traffic in narcotic drugs and psychotropic substances in order to ensure *inter alia* that international civil aviation interests are not penalized by objective liability or responsibility unless there is a specific criminal involvement of the carrier or his staff;

(b) Formulate and adopt as required technical specifications related to civil flight operations;

(c) Develop as required guidance materials;

(d) Co-operate with the United Nations Division of Narcotic Drugs and other international organizations through consultation and attendance at meetings;

(e) Ensure that facilitation measures and measures directed to control the illicit traffic of drugs do not have an unnecessarily negative impact on each other so as to maintain the separate thrusts of these [programs].

Another important area that requires discussion is the “Facilitation Aspects of Narcotics Control.” World organizations have addressed this important area of concern. In 1985, the ICAO Council, at its 18th meeting of the 116th session, considered the role of ICAO in the suppression of illicit transport of narcotic drugs by air. The Council requested that the Air Transport Committee study the need for guidance material to ensure that facilitation measures and measures for control of the illicit trafficking do not unnecessarily impact each other or hamper progress in the implementation of the programs.

ICAO’s facilitation program aims at the rapid and efficient clearance of aircraft and their loads and the simplification, standardization, and improvement of all formalities and paperwork required for border control. There are two questions at issue: whether the measures for controlling illicit trafficking might conflict with the provisions of Annex 9 and hamper facilitation progress; and conversely, whether Annex 9

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395 *Id.*
396 *Id.* at 5-6.
might unnecessarily interfere with measures directed to control the illicit trafficking.

From the ICAO's perspective, the main international instruments for controlling narcotics and trafficking are the Single Convention on Narcotic Drugs, New York 1961, as amended by the 1972 Protocol; the Convention on Psychotropic Substances—Vienna 1971; and Annex X to the Nairobi Convention.399 The first two conventions recognize the competence of the United Nations in the international control of drugs, by entrusting the Commission on Narcotic Drugs of the ECOSOC and the International Narcotics Control Board with specific functions.

The conventions prohibit the production, manufacture, export, import, trade, possession, and use of all listed drugs, except in quantities necessary for medical use and scientific study. The drugs referred to are listed in a series of schedules that may be amended from time to time by the Commission on Narcotic Drugs, subject to review by the ECOSOC, at the request of a contracting State or the WHO. The Board monitors the production, movement, and use of narcotic drugs, using a system of licensing associated with estimates and statistical reports that allow it to quickly discover any illicit trading. Participating states adopt appropriate penal provisions, make arrangements for the seizure and confiscation of drugs in illicit traffic, and cooperate on the international level to campaign against illicit trafficking.

State authorities concerned with the suppression of trafficking recognize that it is impractical to do exhaustive searches and control all movements of passengers and cargo. Instead, they also perform random checks of passengers, baggage, and cargo, as well as thorough examinations and searches of specific targets on the basis of intelligence reports and observations. Authorities consider this strategy to be the most cost-effective approach. The majority of seizures result from intelligence reports rather than routine inspections. In 1985, the CCC urged that customs enforcement and facilitation of legitimate trade and travel was best balanced by keeping customs enforcement selective and intelligence based; therefore, every effort should be made to develop the best possible intelligence.400

400 See ICAO, Role of ICAO, supra note 372, at 3 n.1.
Random searches rarely cause facilitation problems. Annex 9 recommends this practice in a number of provisions dealing with passengers;\(^401\) with cargo;\(^402\) and with transit traffic.\(^403\) The other pertinent provisions of Annex 9 deal with the use of effective search and screening equipment.\(^404\)

Similar provisions of the World Customs Organization (WCO) Kyoto Convention also support the above Annex 9 provisions.\(^405\) The WCO has supported the development of procedures which demonstrate its concern for facilitation requirements, notably through the dual-channel baggage clearance system;\(^406\) and through Recommended Practice 10 and Appendix I to Annex F.3 to the Kyoto Convention. The Kyoto Convention's Annex F.3 specifies that Customs Authorities shall normally apply Customs control of travellers only on a selective or sampling basis (Standard 7);\(^407\) that personal searches “shall be carried out only in exceptional cases and when there are reasonable grounds to suspect smuggling or other offenses” (Standard 8);\(^408\) that unaccompanied baggage “shall be cleared under the procedure applicable to accompanied baggage or under another simplified Customs procedure” (Standard 16); that the Customs formalities for departing travellers “shall be as simple as possible and eliminated when this is feasible” (Standard 40); and that “transit passengers who do not leave the transit area shall not be required to pass through any Customs control,” except when a customs offense is suspected (Standard 46).\(^409\)

The question that arises is whether the actions of Customs and other authorities concerned with the suppression of narcotics trafficking could interfere with facilitation requirements

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\(^{402}\) See id. ¶¶ 4.12, 4.13, 4.22, 4.28, 4.46.


\(^{404}\) See Annex 9, supra note 401, ¶ 6.15, 6.16.


\(^{406}\) See Annex 9, supra note 401, ¶ 3.17.1, app. 5. See also Kyoto Convention, supra note 405; ICAO, Role of ICAO, supra note 372, at 10.

\(^{407}\) See Kyoto Convention, supra note 405.

\(^{408}\) Id.

\(^{409}\) Id.
when their actions are based on intelligence searches rather than on routine sample inspections. For passenger searches, authorities must keep lists of names of persons closely or remotely connected with narcotics trafficking, smuggler personality profiles, origins, destinations, itineraries, routes, carriers, places of concealment, and methods of smuggling.\textsuperscript{410}

Enforcement authorities should match the names of travellers with lists of suspected persons and may sometimes demand passenger manifests, which are no longer a requirement for aircraft clearance.\textsuperscript{411} Authorities’ efforts to require the manifests as a control document have been successfully countered by pointing out the limitations of the manifests; for example, passenger manifests show only family names, resulting in a number of unrelated people with the same family name travelling on the same aircraft. Inaccuracies also exist due to spelling errors, last minute changes, last minute boardings, and the fact that smugglers rarely travel under their real names. These limitations have been recognized by the WCO in Recommended Practice 13 of Annex F.3 to the Kyoto Convention, which provides that “[r]egardless of the mode of transport used, a list of travellers or a list of their accompanying baggage should not be required for Customs purposes.”\textsuperscript{412} Accordingly, the need for passenger lists will be more satisfactorily met by the examination of Embarkation/Disembarkation (E/D) cards and passports, and by the use of machine readable passports. The latter offers strong discouragement against passport alteration, forgery, or counterfeiting, as it will allow efficient and rapid matching of passenger data with lists of suspects.

The control methods used with cargo searches involve the cataloguing of suspect shippers and consignees; the identification of controlled or prohibited substances; the detection of unusual or improbable trade relationships (such as the shipment of chemical substances by industrial equipment or parts manufacturers); and the detection of tampering with aircraft or shipments.

Methods used by customs and other drug enforcement authorities to control cargo movements may lead to a demand for cargo manifests, baggage lists, stores lists and detailed mail lists, the use of which has either been eliminated or discouraged in

\textsuperscript{410} See id.
\textsuperscript{411} See Annex 9, supra note 401, ¶¶ 2.6, 2.6.1, 2.3, 2.4.2.
\textsuperscript{412} Kyoto Convention, supra note 405.
various provisions of Annex 9. Again, the authorities' requirements will be better met by an examination of commercial invoices, export declarations, and air waybills, which contain all the information required in original and accurate form. The issue dealing with mail is discussed in Annex F.4 to the Kyoto Convention; possible amendments would have to be agreed upon by the customs authorities and the Universal Postal Union.

Control has generally become more difficult by the diversion of listed drugs, precursors, and essential chemicals from international commerce. Most of these substances have various industrial applications for which there is a legitimate trade, as in the pharmaceutical industry, for manufacture of pigments, for lubricants and plastics, and for processing waxes, oils, scents, gums and alkaloids. However, they can also be used to manufacture narcotic drugs. They tend to have complex names that are not readily meaningful to customs officers and, as a rule, they have no obvious identifying characteristics, often taking the form of a colorless and odorless liquid or powder. A reasonably comprehensive list of the substances concerned contains up to one hundred complex scientific names, in addition to more than one hundred substances that are listed in the schedules to the New York and the Vienna Conventions.

Another problem for the control authorities is the “designer drugs” that only require slight manipulations of the chemical structure of listed narcotics. The formulae can be varied at will and because the modified substances are not formally listed or described in the conventions, this complicates the task of prosecuting traffickers.

These new substances are increasing the pressure on enforcement authorities to require carriers to produce advance documentation giving detailed information on all shipments. In the December 1985 meeting in Vienna, the United Nations Expert Group on Countermeasures Against Drug Smuggling by Air and Sea recommended that governments be encouraged to ensure the provision of cargo manifests as far in advance as possible of

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413 See Annex 9, supra note 401, ¶¶ 2.7, 2.8, 2.8.1, 2.9, 2.10, 2.11.
414 See id. ¶¶ 4.8, 4.9, 4.11, 4.15, 4.16, 4.17, 4.18, 4.19, 4.23, 4.24.
415 See Kyoto Convention, supra note 405.
416 A precursor is a product used as a nucleus, reagent or solvent, which can be used for producing drugs covered by the Single Convention on Narcotic Drugs, New York, 1961, and the Convention on Psychotropic Substances, Vienna 1971. Examples of precursors and essential chemicals are acetic anhydride, which is used in the production of heroin, and ethyl ether, which is used for cocaine.
the arrival of any aircraft or vessel at its port of destination, especially with respect to container traffic.

In surface transport, particularly in shipping, advance documentation does not present a particular problem because the shipping documents usually arrive well ahead of the consignments. However, because of the speed of air transport, advance shipment documentation can only be arranged through the use of electronic data processing.\footnote{See Annex 9, supra note 401, ¶ 4.4, 4.5, 4.5.1, 4.6, 4.7.}

To cope efficiently with growing volumes of freight traffic, airlines have developed improved methods of handling, processing, and customs clearance. These methods involve the use of computer and communication networks linking freight forwarders and brokers with airlines and customs offices, thereby ensuring immediate transmission of essential information and replacing obsolete documents with machine readable evidence.\footnote{As reported to the Committee in connection with the triennial review of the implementation of Annex 9, recent studies by UNCITRAL have confirmed the acceptability of machine readable data as evidence in legal proceedings. See ICAO, 1985 Review, supra note 403, at 13.}

The World Customs Organization (WCO) is presently engaged in a joint project with IATA to develop an interface between airline and customs computers. The objective is to establish a communications system with instantaneous notification to the customs office of the destination airport from when a shipment departs for that airport. The customs office at the destination airport can then plan and arrange for rapid and efficient clearance of the cargo following its arrival.

A related development that will assist drug enforcement authorities to meet their objectives without hindering the clearance of aircraft and their cargo is the completion of the CCC’s work on classification. A new commodity description and coding system has been developed by the CCC, harmonizing the Brussels Nomenclature (1950) with the Standard International Trade Classification (SITC) and other less utilized but important nomenclatures. An International Convention on the Harmonized Commodity Description and Coding System developed by the CCC was to be applied from January 1, 1987. The new system will facilitate the proposed interface between airline and customs computers. In order to accelerate the process, IATA
will merge its own Commodity Classification System (used for rate-making purposes) with the Harmonized System.

The remaining question is what are drug enforcement authorities expected to do in circumstances of high volume operations where the amount of suspected smuggling is such that the authorities cannot rely on random or sampling checks, thereby necessitating exhaustive inspections. A related problem is the inspection of cargo in containers. Recent information reveals that there is an increasing use of regular and volume cargo shipments for the smuggling of narcotics, as well as the use of perishable and refrigerated goods as a decoy, such as flowers, vegetables, frozen meat, and fish, which are given priority and minimum formalities for customs clearance. In the case of these container loads, the inspection of one or more containers may cause major clearance delays; inspection of particular consignments or unit loads within the containers also presents similar problems.

The only effective methods for the systematic inspection of high volume passenger and cargo operations (apart from the use of trained dogs) requires the use of modern, sophisticated techniques, including machine readable passports; X-ray baggage scanners; bar-code baggage tag scanners (for matching passengers with their baggage); and advanced methods of detecting weapons and narcotics, such as mass spectroscopy, chemiluminescence, and low-energy neutron bombardment. Some of these methods are very expensive and will tax the resources of even the most advanced States. For instance, a cargo container examination system based on mass spectroscopy has already been developed to rapidly determine the presence of weapons or narcotics in a container only by sampling the air within the container, which can be examined from a sealable window. Other methods (e.g., digital X-ray images, dual-energy radiography, nuclear magnetic resonance, various tuned-frequency laser beams, and advanced biotechnology techniques) are still in the experimental stages.

B. ICAO Assembly Resolution A 27-12

At its twenty-seventh session, held in September and October 1989, the ICAO Assembly adopted Resolution A 27-12, recognizing the enormity of drug abuse and illicit trafficking. The Resolution urged the ICAO Council to give the highest priority

\[^{419}\text{See Assembly Resolutions in Force, ICAO Doc. 9662, at I-36 (Oct. 4, 1995).}\]
to adopt concrete measures to prevent and eliminate the use of illicit drugs by international civil aviation staff. The Resolution also urged the Council to continue its work to prevent illicit transport of narcotic drugs and psychotropic substances. A fortiori, the Assembly called upon contracting States to continue their efforts to prevent the illicit trafficking of drugs by air and to take appropriate legislative measures to ensure that the crime of illicit transportation of narcotic drugs by air is punishable by severe penalties. Contracting States were also urged by this Resolution to become parties to the United Nations Convention of 1988.

X. OTHER RECENT EFFORTS OF THE UNITED NATIONS

One of the General Assembly’s most significant steps in the international campaign against drug trafficking was its proclamation in December 1984, where the Assembly recalled Resolutions 36/132 of December 14, 1981, and 38/93 of December 16, 1983, which acknowledged economic and technical constraints impeding developing countries from combating the production and trafficking of illicit drugs. The Assembly recognized the need for greater efforts to reduce trafficking. The Assembly also considered “the activities of the Commission on Narcotic Drugs and the International Narcotic Control Board,” and appreciated “the action being taken by the United Nations Fund for Drug Abuse Control in providing financial resources and support for integrated development [programs], including the replacement of illicit crops in affected areas.” The Assembly reaffirmed the need to improve and maintain regional and interregional cooperation and coordination, especially in law enforcement, to eliminate drug trafficking and abuse.

There was concern that despite the significant national efforts deployed to stop trafficking, especially by the Latin American, Caribbean, and Asian countries, the illicit trafficking had actu-
ally noticeably increased. The Assembly was "[a]ware of the serious impact on the life and health of peoples and on the stability of democratic institutions resulting from the illicit production, marketing, distribution and use of drugs," and recognized that, "to root out this evil, integrated action was required for simultaneously reducing and controlling illicit demand production, distribution and marketing." The Assembly further noted that action to eliminate the illegal cultivation and trafficking of drugs must be accompanied by economic and social development programs to replace illegal crops in a manner to conserve and improve the environment and quality of life.

The Assembly recognized the "dilemma of transit States which are seriously affected, both domestically and internationally, by drug trafficking, stimulated by demand for and production and use of illicit drugs and psychotropic substances in other countries." The Assembly was aware of the need for a coordinated strategy at the national, regional, and international levels to cover countries with illegal users, producers, and transporters in the world-wide distribution and marketing circuit to eliminate drug trafficking and drug abuse.

The Assembly recognized the importance of ratifying international drug control treaties, and it:

1. [Took] note of the report of the Secretary-General;
2. Reiterated that urgent attention and highest priority should be given to the struggle against the illicit production of, demand for, use of and traffic in drugs;
3. Called upon Member States . . . to ratify the international drug control treaties and . . . make serious efforts to comply with the provisions thereof;
4. Reiterated the importance of integrated action, co-ordinated at the regional and international levels, and . . . to step up efforts and initiatives designed to establish, on a continuing basis, co-ordinating machinery for law enforcement in regions where this does not yet exist;
5. Recommended that the highest priority be given to the preparation of specific technical and economic co-operation [programs] for the countries most affected by the illicit production of and traffic in drugs and drug abuse;

See id.  
Id.  
See id.  
Id.  
See id.
6. Also recommend[ed] that appropriate priority be given to the adoption of measures designed to solve the specific problems of transit States through joint regional and inter-regional efforts;

7. Urge[d] Member States with available resources and experience to increase their contributions for combating the illegal production of and illicit traffic in drugs and drug abuse, in particular in the countries most affected and where the problem is most serious;

8. Encourage[d] Member States to contribute or to continue contributing to the United Nations Fund for Drug Abuse Control so as to enable it to increase its support of drug abuse control [programs];

9. Request[ed] the Economic and Social Council . . . to consider the legal, institutional and social elements . . . of combating drug trafficking, including the possibility of convening a specialized conference;

10. Request[ed] the Secretary-General to ensure that appropriate steps are taken to implement paragraph 5 (c) of resolution 37/198 and that a meeting of heads of national drug law enforcement agencies is convened in 1986;

11. Also request[ed] the Secretary-General to . . . [arrange] interregional seminars to study the . . . United Nations system, in particular by the United Nations Fund for Drug Abuse Control, and by Member States in integrated rural development [programs] for replacing illegal crops;

12. Call[ed] upon the specialized agencies and all other relevant bodies of the United Nations system to participate actively in the implementation of the present resolution;

13. Request[ed] the Secretary-General to report to the General Assembly at its fortieth session on the implementation of the present resolution;

14. Decide[d] to include in the provisional agenda of its fortieth session the item entitled “International campaign against traffic in drugs.”

In December 1993, at its eighty-fifth plenary meeting, the Assembly presented its global program of action titled *International Action to Combat Drug Abuse and Illicit Production and Trafficking*. The Assembly expressed concern over the increasing illicit demand for, production of, and traffic in narcotic drugs and psychotropic substances that continued to seriously threaten the economies and societies of the world.

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433 Id.
socio-economic and political systems, stability, national security, and sovereignty of an increasing number of nations.435

The Assembly was

[f]ully aware that the international community is confronted with the dramatic problem of drug abuse and the illicit cultivation, production, demand, processing, distribution and trafficking of narcotic drugs and psychotropic substances and that States need to work at the international and national levels to deal with this scourge, which has a strong potential to undermine development, economic and political stability and democratic institutions.436

The Assembly emphasized that the problems of drug abuse and trafficking had to be considered within the broader economic and social context.437 There was a great need for an analysis of transit routes used by drug traffickers, which were changing and expanding to include a growing number of countries and regions in all parts of the world.438 The Assembly was alarmed by the “growing connection between drug trafficking and terrorism in various parts of the world,” despite the efforts of countries that produce narcotic drugs for scientific, medicinal and therapeutic uses to prevent the channelling of such substances to illicit markets.439 The Assembly stressed the important role of the United Nations in supporting concerted action in the fight against drug abuse at all international levels, and the role of the Commission on Narcotic Drugs, as the principal United Nations policy-making body on drug control issues.440

The Assembly deemed the United Nations International Drug Control Program the main focus for concerted international action for drug abuse control and commended the program for its performance of the functions entrusted to it.441 The Assembly also affirmed the proposals in the United Nations System-Wide Action Plan on Drug Abuse Control, recognizing that further efforts were needed to implement it, update it, and increase U.N. agencies’ progress in incorporating the proposals into their programs and activities dealing with drug-related

435 See id.
436 Id.
437 See id.
438 See id.
439 Id.
440 See id.
441 See id.
problems. On the subject of "[r]espect for the principles enshrined in the Charter of the United Nations and international law in the fight against drug abuse and illicit trafficking," the Assembly:

1. Reaffirm[ed] that the fight against drug abuse and illicit trafficking should continue to be based on strict respect for the principles enshrined in the Charter of the United Nations and international law, particularly respect for the sovereignty and territorial integrity of States and non-use of force or the threat of force in international relations;

2. Call[ed] upon all States to intensify their actions to promote effective co-operation in the efforts to combat drug abuse and illicit trafficking, so as to contribute to a climate conducive to achieving this end, and to refrain from using the issue for political purposes;

3. Reaffirm[ed] that the international fight against drug trafficking should not in any way justify violation of the principles enshrined in the Charter of the United Nations and international law;  

With regard to international action to combat drug abuse and illicit trafficking, the Assembly:

1. Reiterated[ed] its condemnation of the crime of drug trafficking in all its forms, and urge[d] continued and effective international action to combat it, in keeping with the principle of shared responsibility;

2. Support[ed] the focus on national and regional strategies for drug abuse control, particularly the master-plan approach, and urge[d] the United Nations International Drug Control [Program] to keep in mind that these should be complemented with effective interregional strategies;

3. Request[ed] the Secretary-General to report on the arrangements made by the [Program] to promote and monitor the United Nations Decade Against Drug Abuse, 1991-2000, under the theme, "A global response to a global challenge," and on the progress made in attaining the objectives of the Decade by Member States, the [Program] and the United Nations system;

Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;

5. Request[ed] the [Program] to include in its report to the Commission on Narcotic Drugs on the implementation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances a section on experience gained to date in implementing the Convention, which should contain recommendations and strategies for its further implementation, and invite[d] Member States to co-operate with the [Program] in this regard;

6. Encourage[d] all countries to take action to prevent the illicit arms trade by which weapons are provided to drug traffickers;

7. Express[ed] its satisfaction with the efforts of the Commission on Narcotic Drugs to improve the functioning and impact of the meetings of heads of national drug law enforcement agencies;

8. Request[ed] the [Program] in its report on illicit traffic in drugs to analyze world-wide trends in illicit traffic and transit in narcotic drugs and psychotropic substances, including methods and routes used, and to recommend ways and means for improving the capacity of States along those routes to deal with all aspects of the drug problem;

9. Emphasize[d] the link between the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances and the economic and social conditions in the affected countries and the differences and diversity of the problems in each country;

10. Call[ed] upon the international community to provide increased economic and technical support to Governments that request it in support of [programs] of alternative development that take fully into account the cultural traditions of peoples;

11. [Took] note of the initiative of the [Program] to study the concept of swapping debt for alternative development in the area of international drug abuse control and request[ed] the Executive Director of the [Program] to inform the Commission on Narcotic Drugs of any progress made in this area;

12. Encourage[d] Governments to nominate experts for the roster maintained by the [Program], to ensure that the [Program] and the Commission on Narcotic Drugs may draw from the widest pool of expertise and experience in implementing its policies and [programs];

13. Stress[e]d the need for effective action to prevent the diversion for illicit purposes of precursors and essential chemi-
cals, materials and equipment frequently used in the illicit manufacture of narcotic drugs and psychotropic substances;

14. Commend[ed] the International Narcotics Control Board for its valuable work in monitoring production and distribution of narcotic drugs and psychotropic substances so as to limit their use to medical and scientific purposes, and for the effective manner in which it has implemented its additional responsibilities, under article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, concerning the control of precursors and essential chemicals;

15. Expresse[d] its satisfaction with efforts being made by the [Program] and other United Nations bodies to obtain reliable data on drug abuse and illicit trafficking, including the development of the International Drug Abuse Assessment System;

16. Recommend[ed] to the Commission on Narcotic Drugs that it consider, at its thirty-seventh session, the world-wide research study on the economic and social consequences of drug abuse and illicit trafficking prepared by the United Nations Research Institute for Social Development in conjunction with the report of the Executive Director of the [Program] on the economic and social consequences of drug abuse and illicit trafficking, and that it consider including this issue as an item on its agenda;444

The Assembly next discussed its global program of action and took the following action:

1. Reaffirm[ed] the importance of the Global [Program] of Action as a framework for national, regional and international action to combat the illicit production of, demand for and trafficking in narcotic drugs and psychotropic substances, and its commitment to implementing the mandates and recommendations contained therein;

2. Call[ed] upon States individually and in cooperation with other States to promote the Global [Program] of Action and to implement its mandates and recommendations with a view to translating it into practical action for drug abuse control;

3. Call[ed] upon the relevant bodies of the United Nations, the specialized agencies, the international financial institutions and other concerned intergovernmental and non-governmental organizations to cooperate with and assist States in their efforts to promote and implement the Global [Program] of Action;

444 See id.
4. Request[ed] the Commission on Narcotic Drugs, in discharging its mandate, to monitor the Global [Program] of Action, to take into account the recommendations contained in the report of the Secretary-General on the implementation by Member States of the Global [Program] of Action;

5. Request[ed] the Commission on Narcotic Drugs and the United Nations International Drug Control [Program] to consider ways and means to facilitate reporting by Governments on the implementation of the Global [Program] of Action, so as to increase the level of responses;\textsuperscript{445}

The Assembly asked States to cooperate in the implementation of the United Nations System-Wide Action Plan on Drug Abuse Control, stating that the Assembly:

1. Reaffirm[ed] the role of the Executive Director of the United Nations International Drug Control [Program] to coordinate and provide effective leadership for all United Nations drug control activities, in order to ensure coherence of actions within the [Program] as well as coordination, complementarity and non-duplication of such activities across the United Nations system;

2. Call[ed] for the completion of the updated United Nations System-Wide Action Plan on Drug Abuse Control, as was requested in [its resolutions], in full cooperation with the Administrative Committee on Coordination, in time for the review and recommendation of the Commission on Narcotic Drugs at its thirty-seventh session and for the consideration of the Economic and Social Council at its substantive session of 1994 and of the General Assembly at its forty-ninth session;

3. Reiterate[d] that the following should be included in the updated System-Wide Action Plan:
   (a) An annex containing agency-specific implementing plans;
   (b) A reference to the important role of the international financial institutions, as noted in chapter II of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control,\textsuperscript{446} and the ability of such institutions to promote economic stability and undermine the drug industry;

4. Call[ed] upon all relevant United Nations agencies to complete their agency-specific implementation plans for inclusion in the updated System-Wide Action Plan and to

\textsuperscript{445} Id. (citations omitted).

\textsuperscript{446} See Declaration, supra note 1, at 31-51.
incorporate fully into their [programs] all the mandates and activities contained in the Action Plan and its annex;

5. Request[ed] the Commission on Narcotic Drugs to pay particular attention to reviewing the agency-specific implementation plans of the System-Wide Action Plan for consideration by the Economic and Social Council at its coordination segment in 1994;

6. Request[ed] the Economic and Social Council, at its coordination segment, to pay due attention to the role of the international financial institutions in supporting international drug control efforts, particularly in the field of alternative development;

7. Call[ed] upon the governing bodies of all United Nations agencies associated with the System-Wide Action Plan to include the issue of drug control in their agendas with a view to examining the need for a mandate on drug control assessing the activities taken to comply with the Action Plan and, as appropriate, reporting on how the issue of drug control is taken into account in the relevant programs;

8. Request[ed] the United Nations International Drug Control [Program], in cooperation with the relevant agencies, particularly the United Nations Children's Fund, to report on the efforts to study the impact of drug abuse and related crime on children and to recommend measures that may be taken to address this problem;

9. Recommend[ed] that the United Nations International Drug Control [Program] cooperate and coordinate with the Crime Prevention and Criminal Justice Branch [of the Center for Social Development and Humanitarian Affairs of the Secretariat] on activities to counter drug-related criminality, including money-laundering, to ensure complementarity and non-duplication of efforts;

10. Request[ed] that the System-Wide Action Plan be reviewed and updated on a biennial basis . . . .447

Finally, the General Assembly called for the implementation of the United Nations International Drug Control Program. The Assembly welcomed the United Nations International Drug Control Program efforts to implement the Assembly’s mandates within the framework of various international drug control treaties, the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control, the Global Program of Action, and other relevant consensus documents; the Assembly then

447 G.A. Res. 48/112, supra note 434.
urged all states to provide the fullest possible financial and political support to the program.\textsuperscript{448}

The Assembly thanked the United Nations International Drug Control Program for its efforts to comply with the Drug Control Program's format, budget, and methodology, especially in regard to the resolutions of the Commission on Narcotic Drugs.\textsuperscript{449} The Assembly encouraged the Executive Director of the United Nations International Drug Control Program to continue his efforts to improve the presentation of the budget of the Fund.\textsuperscript{450} The Assembly also noted the Secretary-General's reports entitled "International drug control," requesting the Secretary-General to report again to the Assembly about the implementation of the present resolution.\textsuperscript{451}

\section*{XI. CONCLUSION}

The foregoing discussion brings to light the concerted efforts of the international community both through the United Nations Organization (through its General Assembly) and through the International Civil Aviation Organization, towards controlling the problem of narcotic drug trafficking. A third force—the carriers themselves—has also had considerable success with anti-narcotic drug programs. One of the best examples of carrier action is reflected in the 1984 United States Customs Carrier Initiative Agreement Program, a purely voluntary arrangement between governments and carriers in which the government allows each airline to create a security program as approved by Customs. The Carrier Initiative Agreement Programs are aimed at both prevention and interdiction, and cover areas of training, prevention, and cooperation.

The enormous volume of trafficking by air leads to hijackings, destruction of aircraft, interception of aircraft, and several other offenses that have lead to the loss of life and the destruction of property. In the overall perspective, the offenses could be called "misuse of civil aviation."\textsuperscript{452}

The problems of the "misuse of civil aviation," "improper use of civil aviation," "undue use of civil aviation," and "criminal use

\textsuperscript{448} See id.
\textsuperscript{449} See id.
\textsuperscript{450} See id. The U.N. General Assembly Working Paper, No. A/43/678, is on file with the author.
\textsuperscript{451} See id.
of civil aviation” was raised by several delegations at the twenty-fifth session (Extraordinary) of the ICAO Assembly in April/May 1984, as well as by several Council Representatives during discussions on the proposed amendment of Annex 2 to the Chicago Convention. In that context, several Representatives expressed concern that necessary procedures must be foreseen to prevent the use of civil aviation for unlawful purposes, in particular, for drug trafficking, which is a serious crimes against humanity. The problem is how to reconcile the protections of civil aircraft in situations of interception with the protection of the law and order of States. The scope of the problem encompasses whether Article 3 bis of the Chicago Convention and the amended Annex 2 leave sufficient safeguards for States to prevent, prosecute, punish, and deliberate on the use of civil aircraft for unlawful purposes.

Article 3 bis provides that “every State must refrain from resorting to the use of weapons against civil aircraft in flight...” The phrase “refrain from” does not provide the necessary strength to the provision, as it does not explicitly prohibit the use of weapons against aircraft in flight.

A. Article 4 of the Chicago Convention

Article 4 of the Chicago Convention is the only provision from the Convention to explicitly use the words “misuse of civil aviation,” but even there, it is only in the heading, not in the substantive text of the article. The first paragraph of the Preamble to the Convention refers to “abuse” of international civil aviation without ever defining the term.

Article 4 of the Convention has never been involved with or discussed by the Assembly or Council. Therefore, Article 4 is not relevant to the problem because it refers only to the obligations and acts of States. The drafting history of this article indicates that the representatives intended to prevent State’s use of civil aviation for purposes threatened the security of another State. The intent of Article 4 originated in the Canadian “Preliminary Draft,” which stated that one purpose of ICAO (or PI-CAO, as was then envisaged) was “to avert the possibility of the

454 Assembly Resolutions in Force, at 1-10-11, ICAO Doc. 9443 (May 10, 1984) [hereinafter Article 3 bis].
455 See Chicago Convention, supra note 452, 15 U.N.T.S. at 298.
456 See id. at 296.
misuse of civil aviation creating a threat to the security of nations and to make the most effective contribution to the establishment and maintenance of a permanent system of general security." In a subsequent draft ("Tripartite Proposal" presented to the Conference by the Delegations of the United States, United Kingdom, and Canada), the wording was changed to read: "Each member State rejects the use of civil air transport as an instrument of national policy in international relations." This language repeated the text of the Kellog-Briand Pact, which renounced war between nations "as an instrument of national policy in their relations with one another." The words "purpose inconsistent with the aims of this Convention" in Article 4, therefore, essentially mean threats to the general security. In sum, Article 4 does not offer any solution to the problem of "misuse of civil aviation" as it relates to the status of an aircraft which is used for criminal purposes or other unlawful purposes.

B. OTHER PROVISIONS OF THE CHICAGO CONVENTION

The Chicago Convention, in general, does not contain any provisions that foresee specific situations in which an aircraft is used for or involved in criminal and other activities that violate the law and public order of a State. However, while other Convention provisions offer effective safeguards to States, while observing their applicable laws and public order. With respect to aircraft of its own registry, the State concerned has unrestricted jurisdiction. Articles 11-13 of the Convention confirm the rule of international law that foreign aircraft, its crew, passengers, and cargo do not enjoy any "extraterritorial" status while in the airspace or on the ground of another State; such aircraft are fully subject to the applicable laws of the State concerned. Under the Convention, a State may require the landing of a foreign aircraft involved in non-scheduled flight, prohibit or restrict foreign aircraft from flying over certain parts of its territory or over the whole territory, require landing of for-

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457 Historical document on file with author.
458 Id.
460 Chicago Convention, supra note 452, 15 U.N.T.S. at 298.
461 See id. arts. 11-13.
462 See id. art. 5.
463 See id. art. 9.
eign aircraft at a designated customs airport, search the for-
eign aircraft, and regulate or prohibit the carriage of certain
articles in or above its territory.

Under the Convention, all States possess full jurisdiction in
the application of their respective laws to prevent or prohibit
the use of civil aircraft for unlawful purposes. The practical
problem, therefore, is not the applicability of particular laws;
rather, the problem relates to the enforcement of such laws with
respect to aircraft, particularly aircraft in flight.

C. Enforcement of Legal Obligations in General

When dealing with criminal acts, enforcement involves legal
procedure, including the arrest and taking into custody of the
suspected offender, collection and presentation of pertinent evi-
dence, judicial evaluation of the evidence and defense, judicial
conviction, sentencing, and execution of the judgement. All as-
pects of these legal procedure are governed by lex fori, the do-
meric law of the court seized of the case. Lex fori determines
what degree of force (including the possible use of weapons)
may be legally employed in the arrest of suspects. Generally, the
level of force should be proportionate and adequate to the level
of public danger created by the suspect, as well as the level of
force used by the suspect.

The applicable legal procedure is determined by each individ-
ual state and “the general principles of law recognized by civi-
lized nations” as reflected in Article 38 (1)(c) of the Statute of the
International Court of Justice. Principles of modern general in-
ternational law require procedural process in the enforcement
of laws.

D. Article 3 bis

The problems of interception and enforcement measures of
civil aircraft in flight are addressed in Article 3 bis, adopted by
unanimous consensus on May 10, 1984 by the Twenty-Fifth Ses-
sion (Extraordinary) of the ICAO Assembly. The drafting his-
tory of this Article supports the conclusion that Article 3 bis is

464 See id. art. 10.
465 See id. art. 16.
466 See id. art. 35(b).
467 Statute of International Court of Justice, June 26, 1945, art. 38(1)(c), 59
Stat. 1055, 1066.
468 See Article 3 bis, supra note 454.
declaratory of existing general international law, with respect to the following elements:

(a) Obligation of States to refrain from using weapons against civil aircraft while in flight;

(b) In case of interception, the obligation not to endanger the lives and safety of persons on board and of the aircraft;

(c) States's rights to require the landing of a civil aircraft in its territory without authority or if reasonably believed to be acting inconsistently with the aims of the Chicago Convention.469

While Article 3 \textit{bis} uses the terminology "for any purpose inconsistent with the aims of the Convention" as it is used in Article 4 of the Convention, the drafting history indicates that the scope of the phrase in Article 3 \textit{bis} is different than in Article 4. At the Assembly's twenty-fifth session (Extraordinary), this phrase was meant to cover not only violations of the "aims" of the Chicago Convention as spelled out in the Preamble and Article 44 (which deals with the aims and objectives of the Organization rather than the Convention), but also any violations of State law and public order. The Assembly discussions referred to the transportation of illicit drugs, contraband, gun running, illegal transport of persons and any other common crimes. The scope of Article 3 \textit{bis} is subject to significant restrictions; it is only applicable to:

(a) "civil aircraft"; consequently, "state aircraft" would not enjoy the same protection; and

(b) civil aircraft "in flight;" while the Convention does not define the concept "in flight," it is likely that this phrase will be interpreted in harmony with Article 1 of the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface of 1952470 and Article 1 of the Tokyo Convention of 1963.471 An aircraft shall be deemed to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends. Consequently, aircraft which

469 See ICAO Docs. 9437, 9438, \textit{supra} note 453.
are not “in flight” do not enjoy the special protection of Article 3 bis.\footnote{472}

Article 3 bis originally was reserved to “foreign” aircraft and did not include aircraft of the state’s own registration. After discussions in the Executive Committee of the Assembly, the reference to aircraft “of the other contracting State” was dropped because the protection was to be mandatory with respect to aircraft, whether the aircraft belonged to a contracting or non-contracting state. At no point during the deliberations and drafting did the Assembly contemplate regulation of the status of an aircraft in relation to the state of its own registration; such regulation would have exceeded the scope of the Convention, which dealt with international civil aviation. Thus, the purpose of the Chicago Convention is to establish conventional rules of conduct between sovereign states, but not to govern matters in the States’ exclusive domestic jurisdiction. Consequently, Article 3 bis will not apply to the treatment of aircraft by the states of their registration. This conclusion does not imply that a state is free to treat aircraft of its own registration without regard to international law; other sources of international law, such as the International Covenants on Human Rights, may be relevant (protection of the right to life, requirement of due legal process, and presumption of innocence).

When requiring the landing of a civil aircraft flying above its territory or when issuing other instructions to the aircraft to put an end to a “violation,” contracting States may resort to any appropriate means consistent with relevant rules of international law, including the Chicago Convention and Article 3 bis. Consequently, Article 3 bis does not exclude enforcement against foreign aircraft in flight, does not rule out the use of adequate and proportionate force, and does not rule out interception as such. Any act of interception or enforcement not involving the use of weapons against civil aircraft in flight and not endangering the lives of persons on board and the safety of flight is legitimate and acceptable. Any interception procedures consistent with the applicable Standards and Recommended Practices adopted by the Council of ICAO pursuant to Articles 37, 54(1) and 90 of the Chicago Convention would be “consistent with relevant rules of international law.”\footnote{473}

\footnote{472}{See Chicago Convention, supra note 452, art. 3.}

\footnote{473}{Article 3 bis, supra note 454, at I-11.}
Two additional provisions of Article 3 *bis* are likely to deter the "misuse of civil aviation." First, civil aircraft are unconditionally obliged to comply with an order to land or other instruction; and contracting States are obliged to "establish all necessary provisions in their national law or regulations to make such compliance mandatory for . . . aircraft registered in that State or operated by a person having his principal place of business or permanent residence in that State." Additionally, contracting States are obliged to make any "violation of such . . . laws or regulations punishable by severe penalties and [to submit the case to [their] competent authorities . . . ." This provision offers the safeguard that no violators will go unpunished, even if they escaped from the state where they committed the unlawful act; they will be prosecuted and punished by the state where the aircraft is registered. In practical application, existing or future arrangements for the extradition of offenders may reinforce this provision.

In Article 3 *bis*, all contracting states agree to accept an unconditional obligation to take appropriate measures to prohibit any deliberate "misuse" of any civil aircraft registered or operated by a person having his principal place of business or permanent residence in that State. Legislative implementation of such a prohibition will no doubt be accompanied by appropriate penalties.

### E. Other Legal Aspects

States can exercise criminal jurisdiction over foreign aircraft in flight over their territory, over the territory not subject to that State (e.g., the high seas), and under conditions set forth in the Tokyo Convention. Article 4 of the Tokyo Convention permits interference with an aircraft in flight to exercise criminal jurisdiction over an offense committed on board in the following cases:

- (a) the offence has effect on the territory of such State;
- (b) the offence has been committed by or against a national or permanent resident of such State;
- (c) the offence is against the security of such State;

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474 *Id.*
475 *Id.*
476 *See* Tokyo Convention, *supra* note 471.
(d) the offence consists of a breach of any rules or regulations relating to the flight or maneuver of aircraft in force in such State;
(e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.\(^477\)

Since the Tokyo Convention has been accepted by many of ICAO’s contracting states, this provision in Article 4 represents an important clarification to Article 3 \textit{bis} of the Chicago Convention, with respect to the interpretation of the term “any purpose inconsistent with the aims of this Convention.” Any offense foreseen in Article 4 of the Tokyo Convention gives the State concerned the right to “interfere,” including requiring landing, giving the aircraft other instructions, and resorting to proportionate and adequate use of force against such aircraft.

The study of the problem of “misuse” of civil aviation and of its consequences for law enforcement with respect to civil aircraft in flight leads to the following conclusions:

(a) Although the term “misuse of civil aviation” is a legally imprecise term which has no firm basis in the Chicago Convention on International Civil Aviation it still reflects the overall threat posed by unlawful interference with civil aviation.
(b) Historically, the phrase “any purpose inconsistent with the aims of this Convention” had a different meaning in Article 4 of the Convention than in Article 3 \textit{bis}.
(c) The concept of “misuse of civil aircraft” is best referred to as “deliberate use of civil aircraft for unlawful purposes.”
(d) The Chicago Convention contains effective provisions that safeguard the jurisdiction of states to enable them to prevent or prohibit the use of foreign aircraft for unlawful purposes in their territory.

The above conclusions, used in conjunction with the relevant provisions of the Chicago Convention, can be a basis for formulating other legal documents that would more stringently enforce controls over the misuse of civil aviation.
