

## Fifty Years of the 1961 Single Convention on Narcotic Drugs: A Reinterpretation

By David Bewley-Taylor and Martin Jelsma<sup>1</sup>

This year marks the 50<sup>th</sup> anniversary of the United Nations Single Convention on Narcotic Drugs, signed on 30 March 1961. 73 countries were represented at the conference that took place in New York from 24 January to 25 March 1961, which sought to lay a new solid foundation for drug control in the post-war United Nations era. The aim was to replace the multiple existing multilateral treaties in the field with a single instrument as well as to reduce the number of international treaty organs concerned with the control of narcotic drugs, and to make provisions for the control of the production of raw materials of narcotic drugs. The Single Convention entered into force on 13 December 1964, having met the requirement of forty state ratifications.

Couched with the lofty aim of concern for “the health and welfare of mankind,” the guiding principle of the treaty was to limit the use of drugs exclusively to medical and scientific purposes, because, as the preamble continues, “addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind.” At the same time, the Convention recognized “that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes”.

Fifty years on, it is time for a critical reflection on the validity of the Single Convention today: a reinterpretation of its histori-

### KEY POINTS

- Although retaining many of their features, the Single Convention marked a significant break with the commodity control focus of the earlier widely accepted drug control treaties.
- It shifted the focus of the multilateral drug control framework to incorporate a more prohibitionist approach to the non-medical and non-scientific use of certain substances.
- This change in perspective was particularly stark in relation to the plant-based substances cannabis, opium and the coca leaf.
- The Convention introduced widely accepted penal obligations for Parties to criminalize under their domestic law, unlicensed production and trade and extended the pre-existing control regime to the cultivation of plants
- It forced ‘developing countries’ to abolish all non-medical and non-scientific uses of the three plants that had for centuries been embedded in social, cultural and religious traditions.
- The treaty failed to serve one of its original purposes of becoming the ‘single’ convention on all drug related issues of international concern.
- Later instruments building upon the Convention increased inconsistencies and dissonance within the drug control system.
- The 50th anniversary of the Convention is an opportune moment to consider treaty reform.

cal significance and an assessment of its aims, its strengths and its weaknesses. Indeed, while there is often a tendency to interpret the treaty as part of an unbroken continuum dating back to the first decade of the last century,<sup>2</sup> the Single Convention must rather be seen as a significant change in way the international community approached drug control.

Furthermore, it should not be forgotten that the original ambition for the ‘Single’ Convention to become the ‘convention to end all conventions’ failed when the control regime developed further with conventions in 1971 and 1988 giving rise to new inconsistencies within the current global drug control treaty system. This policy briefing analyses the origins and negotiations of the Single Convention, examines the way it broke with the previous drug control system by introducing a more prohibitive ethos, penal obligations, controls on plants and abolition of traditional uses of plants like coca, and concludes that a revision of its outdated provisions is required.

## **THE FOUNDATIONAL PRE-1961 TREATIES**

In strictly technical terms, the lineage of the modern international drug control regime of which the Single Convention remains core dates back to The Hague in 1912. The International Opium Convention, the first of a series of legally binding multilateral agreements on the issue, was however a ‘step further on the road’<sup>3</sup> opened by the US initiated International Opium Commission three years earlier. Then, driven by a complex mix of moral, commercial and geopolitical considerations thirteen nations met in Shanghai amidst growing concerns about opium use in China. Often held up as a totemic example of early multilateral cooperation, the Commission in fact represented the barest minimum of a multi-state agreement. Participants resolved, but did not commit, to suppress opium smoking, limit its use to medical purposes and con-

trol its harmful derivatives. No attempt was made to regulate penal law.<sup>4</sup>

Nonetheless, echoes of Shanghai were to permeate the various binding instruments that were ultimately consolidated into the Single Convention in 1961. During what can be regarded as the regime’s foundational period, most states, for disparate reasons, displayed a general reluctance to penalise non-medical and non-scientific use of certain psychoactive substances. Indeed, between 1912 and the late 1940s, despite fierce debate, drug treaties were concerned predominantly with the regulation of the licit trade and the availability for medical purposes of a range of drugs. While, often at the behest of US delegations, the issue of non-medical and non-scientific use of certain substances became an increasingly central concern,<sup>5</sup> it was addressed primarily by legal mechanisms designed to limit production, manufacture and prevent the leakage of licit drugs into illicit channels.

Framed within the terms of ‘humanitarian endeavour,’<sup>6</sup> the essential character of The Hague Convention reflected this reality. Impelled by an ongoing fear among participating states that unencumbered trade in a range of substances, including heroin, morphine and cocaine, would lead to an increase in domestic drug use the treaty called upon signatories to licence manufacturers, regulate distribution and, in the case of opium, halt exports to those jurisdictions that prohibited its import. The approach was continued under new multilateral structures developed in the wake of the First World War. Having assumed responsibility for the issue, including supervision of the predominantly domestically focused 1912 Hague Convention, the League of Nations moved to strengthen transnational aspects of the emergent system and institute controls over a wider range of drugs.

The principal multilateral product of such endeavour was a new International Opium Convention signed at Geneva in 1925. Like

Main treaties preceding the Single Convention		
Date and Place Signed	Title	Date of Entry into Force
January 1912, The Hague, The Netherlands	International Opium Convention	June 1919
February 1925, Geneva, Switzerland	Agreement Concerning the Suppression of the Manufacture of, Internal Trade in, and Use of, Prepared Opium	July 1926
February 1925, Geneva, Switzerland	International Opium Convention	September 1928
July 1931, Geneva, Switzerland	Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs	July 1933
November 1931, Bangkok, Thailand	Agreement for the Control of Opium Smoking in the Far East	April 1937
June 1936, Geneva, Switzerland	Convention for the Suppression of the Illicit Traffic in Dangerous Drugs	October 1939
December 1946, New York, USA	Lake Success Protocol – Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at the Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925, and 13 July 1931, at Bangkok on 27 November 1931 and Geneva on 26 June 1936	1948
November 1948, Paris, France.	Paris Protocol – Protocol Bringing under International Control Drugs Outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as Amended by the Protocol signed at Lake Success	December 1949
June 1953, New York, USA	New York Opium Protocol – Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International Wholesale Trade in, and Use of, Opium.	March 1963

its immediate predecessor, this instrument also framed its task as primarily a ‘humanitarian effort.’<sup>7</sup> The Geneva Convention established a standardised import-export certification system designed to regulate drug movements between Parties, and included significantly for the first time cannabis (referred to then as Indian hemp).

All signatories had to compile statistics on drug transactions passing across their borders and keep records of the stocks within their countries in line with a uniform procedure. It also added to the growing international drug control bureaucracy by establishing the Permanent Central Opium Board (PCOB) to monitor and supervise the international drug trade. At the time, diversion of licit drug trade was the main source of supply for illicit markets. While the import control system, instituted in 1925, regulated traffic between signatory nations, the now familiar process of displacement limited its effectiveness. In this case, some of the trade, both in terms of traffic and manufacture, simply moved to non-signatory states.

In response, the League of Nations convened another conference in Geneva with the intention of placing restrictions on the manufacture of cocaine, heroin and morphine to amounts necessary for medical and scientific needs, as well as controlling their distribution. At the core of the resultant 1931 Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs was a proscriptive manufacturing limitation system. Parties were required to provide estimates of national drug requirements to a newly established organ, the Drug Supervisory Body (DSB or Body). Based on these estimates, the Body would calculate manufacturing limits for each country. The Convention also established a group, or schedule, scheme for the classification of different substances. Levels of control were thus based on “addictive propensity, as determined by governmental representatives with advice from medical experts, testimo-

ny from pharmaceutical companies, and input from the research community.”<sup>8</sup>

When viewed together, the 1925 Geneva Convention and the 1931 Limitation Convention reveal some important characteristics of the emerging international control framework. The regime at this point was based upon a number of key tenets.<sup>9</sup> First, supply control was dominant, with a reduction in the illicit market sought via the ‘drying up’ of excess capacity. Second, nation states retained control over their internal affairs, ensuring that the powers of supra-national regulatory bodies, like the PCOB and DSB, were circumscribed. Third and closely related to concerns of national sovereignty, the regime relied predominantly upon indirect control. As such, governments agreed to report estimates of need, actual usage, imports, exports and reserve stocks to international agencies, but those agencies received no power to approve transactions ahead of time. The 1931 Limitation Convention gave the PCOB the authority to place an embargo on the export of drugs to nations exceeding their estimates.<sup>10</sup> This, however, did not represent a form of direct control since the mechanism reacted to state behaviour rather than constrained it in the first instance. Fourth, the regime “favored free trade over substantive limitations on manufacture and/or agricultural production.” This, as the historian William McAllister explains, is why attempts to institute quotas for production, manufacture and/or consumption consistently failed.<sup>11</sup> Finally, drug control within the system was guided by schedules relating to perceptions of the addictive potential of a substance relative to its medicinal utility.<sup>12</sup> As we shall see, many of these features were retained with the passage of the Single Convention.

Such regulation of the licit trade, however, represents only part of the story. In creating a control system for and thus delineating the legal trade in drugs, the early conventions inevitably led to the development of an illegal market. In response, the interna-

tional community convened a conference, again in Geneva, to address the realm of what was now proscribed activity. A resultant strengthening of the existing transnational legal framework was sought via the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs – generally known as the 1936 Trafficking Convention. Its complexity and encroachment upon legal areas, considered by many states as sovereign, meant it failed to receive widespread acceptance with only thirteen countries signing and ratifying the instrument.<sup>13</sup>

Nonetheless, the Trafficking Convention represented a turning point for the drug control regime. Whereas all previous treaties had dealt primarily with the regulation of ‘legitimate’ drug activities, the Convention made trafficking-related activities an international crime subject to penal sanctions.<sup>14</sup> The approach was perfectly logical inasmuch as “the definition of licit behaviour is,” as an expert in penal aspects of the conventions Neil Boister stresses, “an absolute precondition for the definition of illicit behaviour.”<sup>15</sup>

Following the Second World War, the functions and drug control apparatus of the League were transferred to the newly formed United Nations. The resultant restructuring required amendments to the existing conventions, all of which were concluded in 1947 in what became known as the Lake Success Protocol. A year later, this first UN instrument on the issue of drug control was supplemented by the Paris Protocol. This extended existing controls to new, predominantly synthetic, drugs outside the scope of the 1931 Convention. Further efforts to extend the scope of the system, however, took place in parallel with work to draw together the increasingly unwieldy and confusing array of conventions that had been developing piecemeal since 1912. Indeed, the Single Convention rapidly superseded the stringent 1953 New York Opium Protocol, which as discussed below focused on the

limitation of opium production, when it came into force in 1964.

## **THE SINGLE CONVENTION ON NARCOTIC DRUGS**

Work on some form of ‘single’ or ‘unified’ treaty had begun in 1948 when the recently formed Economic and Social Council adopted a resolution from the equally new Commission on Narcotic Drugs (CND). This requested the UN Secretary General to prepare a draft convention to replace the full list of existing treaties that had been agreed since The Hague Convention of 1912 (see Table 1). The treaty was to have three core objectives; to limit the production of raw materials, to codify the existing conventions into one convention and to simplify the existing drug control machinery. Between 1950 and 1958, the nascent document went through three drafts until the CND convened a plenary conference in New York. Meeting from 24 January to 25 March 1961, this was attended by the representatives of 73 states and a range of international organisations and bodies with sometimes divergent interests.

As a consolidating treaty, the Single Convention unsurprisingly retained many of the features of its predecessors. In this respect, it recognized that “the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering”<sup>16</sup> and sustained the indirect approach of earlier treaties, in that it placed obligations on the Parties and then monitored “the execution of that obligation.”<sup>17</sup> In relation to control of drug manufacturing, the Convention adopted the measures incorporated in earlier treaties, including the licensing and manufacturing system used by the 1931 Convention. Parties consequently remain obligated to submit estimates of their drug requirements and statistical returns on the production, manufacture, use, consumption, import, export and stock of drugs.<sup>18</sup> The import certification of the 1925 Geneva Convention also continued, with Parties required to licence all manufactur-

ers, traders and distributors. In line with the objective of streamlining the existing drug control apparatus, the Convention retained the functions of the PCOB and the DSB, but merged them into one body; the International Narcotics Control Board (INCB).

Several of the foundational treaties' more general characteristics were also carried across into the new instrument. First, as suggested by the objective to limit the production of raw materials, the Convention maintained the regime's enduring focus on drug supply. It is true that Article 38 broke new ground by stating, "The Parties shall give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts." Nonetheless, this was little more than a passing nod in the direction of the demand side of the drug issue; even, as we shall see, after changes rendered by the 1972 Amending Protocol. The treaty, both original and amended, reflected the long-standing habit of the international community to privilege supply-side approaches in the belief that this would eliminate non-medical and non-scientific drug use. As McAllister has noted, "Problems of addicts and addiction" often did not feature "prominently in international deliberations."<sup>19</sup> Moreover, where it was discussed, the debates focused predominantly upon compulsory treatment in 'closed institutions.' It was only after prolonged negotiations that such an approach was not written into the final document. Despite interventions by a number of nations, including the US, it was agreed instead that the type of treatment deployed should be at the discretion of national authorities. This was, however, a decision based largely on concerns for cost rather than for the welfare of individual drug users.<sup>20</sup>

Second, the Convention was framed within terminology redolent of the 1912 and 1925 treaties. Reflecting the desire of the UN Secretary-General, Trygve Lie, during the early drafting stages to emphasise the same

principles,<sup>21</sup> it opens by noting the concern of Parties with the "health and welfare of mankind." This important phrase within the context-setting preamble suggests that the international community viewed its drug control work as a humanitarian endeavour that was above the interests of individual states. The use of this language in the preamble is not insignificant. As Mr Bittencourt of Brazil observed of the preamble in the sixth plenary meeting in New York in 1961, it was "not a mere formal introduction, but rather dealt with the substance of a treaty; it was a statement of purposes and a justification of the aims of the negotiation; and because it helped to understand the intentions of the negotiators it had a juridical force for the purposes of interpretation."<sup>22</sup>

It is therefore also significant how the preamble hints at the Single Convention's departure from the path of its predecessors. Tellingly it presents "addiction" to narcotic drugs as a "serious evil for the individual" that is "fraught with social and economic danger to mankind." It goes on to state that Parties are "Conscious of their duty to prevent and combat this evil." Similar terminology had been apparent during the negotiations for earlier treaties (see text box) and for the Single Convention itself, but this was the first time that the emotive term 'evil' had made it through to the final document. Such a change was arguably reflective of a growing concern among participating member states, and perhaps the secretariat involved in drafting the preamble, for the non-medical and non-scientific use of drugs.<sup>23</sup> Indeed, despite the development and ongoing operation of an international system to control the production, manufacture of and trade in drugs, many states were still experiencing high levels of non-medical drug use; a phenomena involving both plant-based and synthetic drugs that would proliferate as such behaviour became an integral part of the counter-cultural movements of the 1960s. Consequently, while many of the charac-

## US Drug Diplomacy, 1909-1961: Success, Frustration and Paradox

The shape and focus of the UN treaty system, including the prohibition oriented Single Convention at its core, must be understood as the result of a confluence of perceptions, interests and moral notions among dominant sectors of the international community's more powerful states.

That said, the role of a varied array of US protagonists in shaping the regime according to their preferred norms and values should not be underestimated. The final form of the Single Convention, itself an initiative launched by the long-time head of the US delegation, Harry J. Anslinger, owed much to the work of American diplomats both in the years before and at the plenipotentiary conference in 1961.<sup>24</sup>

As a US representative at the New York conference, Mr Giordano, noted in somewhat of an understatement "For more than half a century, the United States has been advocating the control of narcotic drugs."<sup>25</sup> Indeed, the system's ongoing supply-side and law enforcement focus in general and among other things the organisation of its monitoring apparatus, the creation of schedules and inclusion of manufacturing quotas in particular reflected the successful internationalisation of US conceptions of the issue. Nonetheless, that the Single Convention itself was not as strict as some in Washington had hoped reflected the inability of US delegations always to successfully cajole other states into fully supporting their prohibitionist perspectives. Examples of this geopolitical reality were evident throughout the regime's foundational period.

For instance, having instigated the Shanghai Commission in 1909, US efforts to introduce a restrictive definition of legitimate use were largely fruitless. Resistance from other nations, particularly European Colonial states, meant representatives could only consent that "the use of opium in any form otherwise than for medicinal purposes is

held by *almost* any participating country to be a matter of prohibition or careful regulation"<sup>26</sup> (emphasis added). American delegates found it "impossible to get general agreement that the use for other than medical purposes was evil and immoral."<sup>27</sup> Similarly, article 20 of the 1912 Convention was all that remained of a US initiative to secure uniform penal responses to drug related infringements. It stated, "The Contracting Parties *shall examine the possibility* of enacting laws or regulations making it a penal offence to be in illegal possession of raw opium, prepared opium, morphine, cocaine, and their respective salts, unless laws or regulations on the subject are already in existence"<sup>28</sup> (emphasis added). While weaker than hoped for, such provisions were acceptable to the US delegation.

This was not the case during negotiations in Geneva in 1925. Then, armed with rigid instructions from Congress that "the representatives of the US shall sign no agreement which does not fulfil the conditions necessary for the suppression of the habit forming narcotics drug traffic" the US delegation withdrew from proceedings altogether.<sup>29</sup> Utterly disillusioned with the international system in Geneva, the head of the US delegation declared "if when I get back to America anybody says League of Nations to me he ought to say it conveniently near a hospital!"<sup>30</sup>

Memories of the US withdrawal, however, tempered the State Department's reaction to the final form of the last drug control treaty before the Second World War. While other states were reluctant to sign the 1936 Trafficking Convention because it was deemed too complex and an infringement upon national sovereignty, the US remained at the negotiations but refused to sign the final document in the belief that it failed to strengthen the system. American diplomats

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wished to criminalize all non-medical production and distribution and “perhaps individual use as well.”<sup>31</sup>

Similar dissatisfaction initially greeted the passage of the Single Convention. Paradoxically, while the Convention was very much a creature of US enterprise, Anslinger – heavily influenced by the ‘holy grail’ of control at source – favoured the more stringent 1953 Opium Protocol. This was the case even though the instrument was to be superseded when the Single Convention came into force. A lack of widespread enthusiasm for the incorporation of the Protocol’s strict provisions into the 1961 legislation resulted in their omission from the treaty’s third draft.

Indeed, as the UK representative noted on numerous occasions during the New York conference, it was generally felt preferable to leave out even desirous provisions desirous provisions if they were likely to prove unacceptable to a substantial number of states.<sup>32</sup>

Yet even though it contained the compromises necessary to guarantee widespread acceptance, the Single Convention represented an important normative shift from its predecessors. Further, as in other areas of UN activity during this period, it greatly reflected the aspirations and goals of the United States; now a superpower on the world stage and the undisputed driving force of international drug control.

teristics of the regime based upon the 1925 and 1931 Conventions remained, certain aspects of the Single Convention represented a move away from reliance upon simply ‘drying up’ excess capacity; including focusing attention on individual drug users.<sup>33</sup>

In this regard, a key provision of the Convention is found under General Obligations in article 4. This reads: “The parties shall take such legislative and administrative measures...(c) Subject to the provisions of this Convention to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, *use and possession of drugs*” (emphasis added). Similar clauses were included in the 1912 Hague Convention, the 1925 International Opium Convention and what was in effect the stillborn 1953 Opium Protocol.<sup>34</sup> Its inclusion within the Single Convention as a “General Obligation” is, nevertheless, significant for a number of reasons. First, we must question why it was felt the Convention required an article referring to ‘general obligations’ at all. As with any treaty, Parties are expected to interpret the instrument as a whole and ascertain easily their obligations. With this

in mind, the legal expert S. K. Chatterjee suggests, “[P]erhaps, owing to the not-so successful accomplishment of the previous drug conventions, the authors of the Single Convention wished to emphasize the obligations in a novel way. It is from this point of view that the ‘general obligations’ in the Single Convention may be taken as ‘special obligations.’”<sup>35</sup>

Secondly, and mindful of limited mention within all but the 1936 Trafficking Convention,<sup>36</sup> the penal provisions within the Single Convention do much to enhance the prominence and extraordinary or ‘special’ character of article 4 (c). Article 36, paragraph 1 (a) states:

Subject to its constitutional limitations each party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention...shall be punishable offences when committed intentionally, and that serious offences

shall be liable to adequate punishment particularly imprisonment or other penalties of deprivation of liberty.

Such provisions were not as harsh as they had been in the widely contested preparatory drafts of the Convention. In line with the compromises necessary for the conclusion of any international agreement, the final version was ultimately devised to avoid conflict with the different legal systems of the Parties. In fact, while largely modelled on language within the 1936 Trafficking Convention, the relatively moderate nature of the provisions led to an agreement that they would not replace the earlier 1936 treaty for the small number of states that chose to apply its stronger provisions.<sup>37</sup>

Nonetheless, while weaker than the clauses within the 1936 instrument, article 36 of the Single Convention is significant because it was the first time that penal provisions were included within, and indeed sat at the heart of, a *widely accepted* international drug control treaty. A few caveats regarding its application must be applied. Nonetheless, as will be shown, these do not detract from the importance of the article in contributing to a normative shift within the drug control regime.

As has been discussed in detail elsewhere, Parties to the Single Convention retain a degree of flexibility in the application of its penal provisions. For instance, the lack of clear definition of ‘medical and scientific’ purposes, a hangover from the 1925 Convention,<sup>38</sup> provides considerable room for manoeuvre. Similarly, the non-self executing nature of the Convention leaves the offences and penalties to be applied up to the Parties themselves.

It is also important to highlight that, while mentioned in the non-penal article 4, the *use* of drugs is not specifically mentioned in article 36. Rather, as was the case with the 1936 Trafficking Convention, possession here relates to drugs intended for distribu-

tion.<sup>39</sup> Article 33 of the Single Convention deals with possession for personal consumption succinctly stating, “The Parties shall not permit the possession of drugs except under legal authority.” As the *Commentary to the Single Convention* points out, governments may interpret this in different ways and are not necessarily required to punish unauthorised possession as a ‘serious offence.’ They can impose administrative penalties, such as fines or censure, or choose to avoid penalties altogether providing they “use their best endeavours to prevent this possession by all those administrative controls of production, manufacture, trade and distribution which are required by the Single Convention.”<sup>40</sup>

Overall then, as the United Nations Office on Drugs and Crime has noted, the Single Convention does indeed permit a “high degree of flexibility” for states dealing with domestic drug use:<sup>41</sup> providing that they remain committed to the general obligation laid out in Article 4 (c). Yet, when read in combination with both the use of the term ‘evil’ within the preamble and article 36, this ‘special’ obligation clearly set the normative tone of the document and moves away from the predominant commodity focus of its widely accepted predecessors. Moreover, while the Single Convention contains a number of lacunae between the obligations presented in article 4 and the specificity of the penal provisions in article 36, it was undoubtedly the intention of the authors to create a scheme ‘without holes.’ By Boister’s reckoning, “...if the Convention regulated any particular form of conduct the Convention was designed to get the Parties to criminalize any failure to comply with that regulation.”<sup>42</sup>

Within this context, further evidence that the Convention should be seen as a break with the past can be found in relation to its reach. The “scope of control of the Single Convention is much wider than that of any previous drug convention” in that it brought together various clauses within earlier treaties for placing additional drugs under

international control.<sup>43</sup> Further, rather than simply codifying provisions of the previous treaties, it extended existing controls in a number of areas, including both production and consumption. For instance, the Single Convention broadened the purview of the regime to include the cultivation of plants grown as raw material for the production of natural narcotic drugs. In so doing, it not only continued to keep a tight rein on the production of opium but also “extended international controls on the production of poppy straw, coca leaf and cannabis” with the Single Convention becoming the “first multilateral convention to make prohibitory provisions concerning the cultivation of the coca bush.”<sup>44</sup>

While maintaining the schedule system established by the 1931 Convention, the Single Convention expanded them from two to four categories. One important outcome of this process was the categorisation of cannabis within the strictest schedules alongside heroin. Consequently, cannabis, cannabis resin, extracts and tinctures of cannabis are in Schedule I among substances whose properties might give rise to dependence and which present a serious risk of abuse and so are subject to all control measures envisaged by the Convention.

Cannabis and cannabis resin are also listed in Schedule IV, alongside another fifteen substances that are already listed in Schedule I and are deemed particularly dangerous by virtue of what are regarded to be their harmful characteristics, risk of abuse and extremely limited therapeutic value. This so-called ‘composite classification,’ observe analysts from the European Monitoring Centre for Drugs and Drug Addiction, “reflects the concern about the abuse of cannabis and the desire of the convention promoters to advise countries to design, under national legislation, the most stringent control on cannabis.”<sup>45</sup> As we shall see, cannabis was not the only plant-based drug subject to new and stringent controls.

## **PLANTS, CULTIVATION AND TRADITIONAL USE**

The new-found proscriptive tenor is also abundantly evident in article 49; a section of the Convention that in many ways revealed more than other parts the prohibitive expectations of its authors. The Single Convention introduced for the first time the explicit objective to end all ‘quasi-medical’ and traditional uses of three plants. The widespread practices of opium smoking and eating, coca-leaf chewing as well as the smoking and other uses of cannabis resin and cannabis herb in the so-called ‘developing countries’ where these plants were cultivated, all had to be terminated. Although article 49 permitted countries to make reservations in relation to such practices, these were defined as nothing more than transitional periods from when the Convention came into force. As such, the treaty required the abolition of the ‘quasi-medical’ use and smoking of opium within fifteen years and that both coca-leaf chewing and non-medical and non-scientific cannabis use be abolished within twenty-five years. Since the 1961 Convention entered into force in December 1964, the 15-year phase-out scheme for opium ended in 1979 as did the 25-year scheme for coca and cannabis in 1989.

In relation to this point, Herbert May, a key player in the development of international drug control and involved in the drafting of the Single Convention, wrote in 1955:

Limitation of the use of dangerous drugs to medical and scientific needs is the guiding rule of the present system of international control. However, opium (other than medicinal opium), coca leaves, and cannabis (Indian hemp) as well as the resin of *Cannabis sativa* L. (Indian hemp plant), although subject to some measures of international control, are not subject to this basic rule. This represents a serious gap which the Commission set out to close when it undertook to elaborate the Draft Single

Convention. The Commission, therefore, did not allow for any exceptions to this rule when deciding to include it among the permanent rules on the Draft Single Convention. But serious difficulties arise in some countries or territories where it has been impracticable to suppress immediately such undesirable practices as opium eating and smoking, coca leaf chewing and the non-medical use of cannabis and cannabis resin.<sup>46</sup>

The introduction of transitional measures, necessary to get key countries like India, Pakistan, Burma, Peru and Bolivia on board, was modelled on a similar provision in the 1953 protocol that allowed countries temporarily to permit opium smoking for registered users.<sup>47</sup>

There was an attempt during the negotiations of the Single Convention to make cannabis the only 'prohibited' substance on the premise that there was "no justification for their medical use", according to a memo from the WHO. The WHO Expert Committee however remained of the opinion that the "prohibition or restriction of the medical use of cannabis should continue to be recommended by the international organs concerned, but should not be mandatory".<sup>48</sup>

The third draft on the table at the Single Convention conference included a special section under the heading "prohibition of cannabis", but strong opposition from several sides prevented its adoption. India objected partly because it opposed banning the widespread traditional use of *bhang* made from cannabis leaves with a low THC content. Support came from Pakistan and Burma, while others pointed out the use of cannabis in some pharmaceutical preparations as well as in indigenous medicine, further remarking that it could not be excluded that future research would reveal more medicinal benefits.<sup>49</sup> Several compromises were reached. In a rare deviation from the zero-tolerance principle so prevalent at the conference, the leaves and seeds

were explicitly omitted from the definition of 'cannabis', which now only referred to the "flowering or fruiting tops of the cannabis plant". Hence the traditional use of *bhang* in India could continue. The explicit reference to "prohibition of cannabis" was deleted, but as noted above the drug was included in Schedule I and in the strictest Schedule IV. With regard to the latter, the Single Convention stipulates that any signatory "shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only".<sup>50</sup>

Contrary to popular belief, none of the scheduled drugs were ever made 'illegal' under the Single Convention and its sister UN treaties. The drugs were not prohibited, but their production and trade were placed under strict controls in order to limit their use to medical and scientific purposes. Exactly the same controls apply to cocaine, morphine, methadone and oxycodone.

The oft-used term 'illicit drug' does not appear in the Single Convention, it only distinguishes between licit and illicit (non-licensed) cultivation, production, trade and possession. As the previous treaties did not impose controls on the cultivation of plants from which drugs could be extracted, at the time of the Single Convention negotiations 'illicit cultivation' did not yet exist according to international law; even though several countries already had introduced laws at a national level that outlawed unlicensed cultivation of opium poppy and cannabis.

Another main drafter of the Single Convention and the author of its Commentary, Adolf Lande, wrote shortly after the Conference that the "most serious gap in the treaties in force was probably the lack of provisions for effective control of the cultivation of plants for the production of the

narcotic raw materials.”<sup>51</sup> It proved to be difficult to find a satisfactory agreement on how to fill this gap, as observed by the UN Under-Secretary for Special Political Affairs in his opening statement to the Conference. Speaking on behalf of the Secretary-General, Mr. Narasimhan stated, “The formulation of measures for the control of agricultural raw materials which would be both adequate and practicable was undoubtedly the most difficult part of the Conference’s task.”<sup>52</sup>

Although this may have been the case, the Convention “embodies the general strategy of the developed drug consumer states to curtail and eventually eliminate the cultivation of drug producing plants, objectives that could only be achieved at some cost to the developing countries where these plants were grown.”<sup>53</sup> Furthermore, as Boister points out the political moment was “heavily influenced by the process of de-colonisation, which resulted in the political dichotomy of developing producer and developed consumer states that still polarizes drug control today.”<sup>54</sup>

Earlier drug control schemes had been introduced in quite a few Asian and African countries under colonial rule. Moreover, several newly independent states inherited the colonial opium monopolies. Similarly, Indonesia at the time of the 1961 Conference still presented itself as a coca-producing nation, despite the fact that most of the coca plantations installed in Java under Dutch colonial rule had been destroyed shortly after the Second World War.

There was much debate in the ten years leading up to the Single Convention whether the right to produce opium and coca leaf for the international market should be reserved to ‘traditional producer countries’. The 1953 Protocol had agreed to such a restrictive list of countries allowed to export opium: namely Bulgaria, Greece, India, Iran, Turkey, USSR and Yugoslavia. In the case of opium, the Third Draft of the Single Convention included the same list,

with the addition of Afghanistan, and for “coca leaves and crude cocaine” restricted the right to Bolivia, Peru and Indonesia. For cannabis no such list was included because (as mentioned above) the draft still intended to prohibit cannabis altogether, except for small amounts for scientific research and “for use in indigenous medicine” (article 39, para. 3).

The idea behind a closed list of a small number of producing countries for the international market was that it would make it easier to limit supply and prevent diversion to illicit purposes, as cultivation could be prohibited in all other countries. As the US delegation argued, “the smaller the number of producers, the more effective would be the fight against the illicit traffic”;<sup>55</sup> a point he considered to be “the most important part of the Convention.”<sup>56</sup> However, in the words of the Canadian delegate, “Many countries had felt the provision to be monopolistic and had objected to its retention in the Single Convention. They had considered that other countries should be able to add their names to the list in the future and that a closed list was incompatible with the theory of a country’s sovereign rights.”<sup>57</sup>

After lengthy debates, in the end the idea of a closed list was abandoned. Only in the case of opium were special privileges preserved for those countries that had exported opium in the ten years previous to 1961, but others could still apply to join. For export amounts under five metric tons of opium, a notification to the INCB was sufficient, for larger amounts, a permission from ECOSOC was required. The Commentary provides a list of the ten countries that had exported opium in the decade before 1961: Afghanistan, Bulgaria, Burma, India, Iran, North-Vietnam, Pakistan, Turkey, USSR and Yugoslavia.<sup>58</sup>

Article 22 of the adopted treaty then specified the treaty’s “special provision applicable to cultivation” using a similar phrasing as used for Schedule IV substances:

“Whenever the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation of the opium poppy, the coca bush or the cannabis plant the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic, the Party concerned shall prohibit cultivation.”

In relation to the interpretation of this article the Commentary explains that a government “might come to the conclusion that it cannot possibly suppress a significant diversion into the illegal traffic without prohibiting the cultivation of the plant ... The decision whether the conditions of article 22 for prohibition exist is left to the judgement, but not entirely to the discretion of the Party concerned. A Government which for many years, despite its efforts, has been unable to prevent large-scale diversion of drugs from cultivation can hardly be of the opinion that prohibition of such cultivation would not be ‘the most suitable measure ... for protecting public health and welfare and preventing the diversion of drugs into the illicit traffic’.”

The expansion of controls to the cultivation of the raw materials was closely connected to the Single Convention’s aim to abolish traditional uses of the plants. Effective control of cultivation aiming to reduce production to amounts required for medical and scientific purposes was considered difficult to achieve as long as large-scale local consumption practices of those raw materials continued in the main producing countries. Herein lies one of the fundamental distortions the Single Convention brought into the international drug control system. Concerns in the developed world about non-medical use of derivatives such as heroin and cocaine led to pressure on developing countries to end traditional uses (medicinal, religious/ceremonial and social traditions) of the plants of origin in order to eliminate the source of raw materials. Thus, opium, cannabis and coca leaf were

placed under the same controls as extracted and concentrated alkaloids like morphine and cocaine.

Debates ended up in largely unresolved questions about ‘indigenous medicine’, ‘quasi-medical uses’ and ‘traditional uses’ and about the precise definitions of the plants or derived substances that should be placed under control. An unsuccessful attempt was made to find a solution using the phrasing “medical, scientific and other legitimate purposes” originally appearing in the drafts to refer to the use of coca leaf for the preparation of a flavouring agent “which shall not contain any alkaloids” (for Coca Cola). It was argued by several delegations that the category of ‘other legitimate purposes’ could in fact be used to include certain traditional uses such as coca chewing, the Indian *bhang* brew and ‘indigenous medicinal’ uses, but no agreement could be found. The term ‘other legitimate purposes’ was considered to be confusing and a deviation from the fundamental principle of limitation to medical and scientific purposes only. The exceptions for Coca Cola and for industrial purposes of cannabis (fibre and seed) were brought under separate articles. ‘Other legitimate purposes’ of opium poppy (such as seeds for culinary use) were protected by excluding opium poppy and poppy straw from the schedules and by specifying that restrictions on cultivation only applied to the “cultivation of the opium poppy for the production of opium.” Other scheduling decisions allowed for some other minor exceptions, such as leaving cannabis leaves out of the definition of ‘cannabis’ and the introduction of Schedule III for preparations exempted from control. Under the exemption scheme also fall preparations containing less than 0.1 per cent of cocaine, but this still could not apply to coca tea for example as coca leaves contain an average of around 0.7 per cent cocaine.

In the end, the Single Convention considered chewing a coca leaf at the same level as injecting heroin, or smoking a joint the

same as snorting cocaine. Social use of cannabis, in many developing countries seen as comparable to the social use of alcohol in the developed world at the time, and chewing or drinking coca in the Andean region, comparable to drinking coffee, were thus condemned to be abolished.

### **“SINGLE” CONVENTION?**

Despite being widely lauded as a positive ‘step forward’<sup>59</sup> there was considerable dissatisfaction on the US side about the outcomes of the 1961 Conference, especially in comparison to the 1953 Protocol and its control on opiates and concerning the INCB’s embargo-powers towards non-compliant States. The US consequently argued that the Single Convention “should be amended to make it more effective before it came into force. It would not be advisable to accept the new treaty without such a revision” and therefore not only refused to sign the treaty but was also the only country who voted against the ECOSOC resolution in 1962 that invited governments to ratify or accede to the Single Convention<sup>60</sup> (see text box on page 7).

In 1967 the US eventually acceded to the treaty and only a few years after Senate ratification initiated a period of unusually intense diplomatic activity designed to bolster the UN drug control framework.<sup>61</sup> Within the context of President Nixon’s increasingly punitive posturing, Washington worked hard in the early 1970s to initiate a plenipotentiary conference in Geneva to amend the Single Convention; a procedure permitted under article 47.

The resultant 1972 conference, sponsored by 31 nations and attended by representatives from 97 States, considered an extensive set of amendments. The product of the meeting, the Protocol Amending the Single Convention on Narcotic Drugs, was signed on 25 March 1972 and came into force August 1975. Rather than making dramatic changes to the Single Convention, the

Amending Protocol actually fine-tuned existing provisions relating to the estimates system, data collection and output, while strengthening law enforcement measures and extradition, and the functioning of the INCB.<sup>62</sup>

Following on from what some commentators regard as a ‘milestone’ achieved in the 1971 Convention on Psychotropic Substances,<sup>63</sup> the Protocol also made greater provision for treatment, rehabilitation and prevention measures.<sup>64</sup> In concert with the amended article 38, the amended article 36 introduced the option of alternatives to penal sanctions for trade and possession offences when committed by drug users: “Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers of drugs shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration.” It is important to note that the option of alternatives under article 36 and the approach laid out in article 38 is of a secondary nature and its application entirely up to the discretion of national governments.<sup>65</sup> It is in this respect that even the Single Convention on Narcotic Drugs as Amended by the 1972 Protocol represents a minimal reorientation of the regime towards considerations for problematic drug users. Overall, the outcome was not as stringent as the US had hoped. Significantly, however, it maintained the prohibitive ethos and supply-side focus of the drug control regime.

Meanwhile a parallel process had started to emerge with the signing of the 1971 Convention on Psychotropic Substances, as countries chose to set up a new convention instead of incorporating those concerns within the amendment procedure for the 1961 Convention. “These two efforts which should have logically been integrated into a single convention proceeded along separate paths” argues the President of the International Association of Penal Law, Cherif Bassiouni. “While the developed countries of the West desired to impose strong con-

trols over the cultivation, production and traffic of natural drugs originating in the developing countries,” he continues “they were unwilling to impose the same types of control over their own chemical and pharmaceutical industries.”<sup>66</sup>

The issue of how to deal with traditional uses of certain plants came up again, especially with regard to the peyote cactus (containing the hallucinogenic ingredient mescaline, included in the 1971 schedules) that was used in religious ceremonies of Mexican and North-American indigenous groups and mushrooms containing the scheduled psilocybin. Contrary to the outcome of the negotiations in 1961, this time also the United States agreed to “a consensus that it was not worth attempting to impose controls on biological substances from which psychotropic substances could be obtained. ... The American Indians in the United States and Mexico used peyote in religious rites, and the abuse of the substance was regarded as a sacrilege.”<sup>67</sup> Mexico added that the “religious rite had not so far constituted a public health problem, still less given rise to illicit traffic ... It would clearly be extremely unjust to make the members of those tribes liable to penalties of imprisonment because of a mistaken interpretation of the Convention and thus add an inhuman punishment to their poverty and destitution. ... In addition, the present text would conflict with certain articles of the Mexican Constitution, which stipulated that all men were free to hold the religious beliefs of their choice and to practice the appropriate ceremonies or acts of devotion in places of worship or at home.”<sup>68</sup>

The Chilean delegate addressed the 1971 conference in a tone not heard during the deliberations on the Single Convention: “Man had always used drugs to soothe pain, to reach beyond certain limits of perception, to speak with the gods or to be like the gods. ... The hippies and others who used drugs, connecting them with flowers and love, did not perhaps realize that they were the modern representatives of a long

tradition. ... It must be remembered that alcohol was also a drug used as a means of escape. ... Since the abuse of drugs was thus an expression of man's yearning for the transcendental and of his frustrations in a godless society, it could not be fought against by repressive and prohibitory legislation alone. ... Those psychological, moral, social and spiritual factors would therefore have to be taken into account in any legislation or protocol for the regulation or prohibition of the use of psychotropic substances”.<sup>69</sup>

By excluding from the schedules plants from which alkaloids could be extracted, the 1971 Convention deviated – with good reason – from the guiding rule that was applied with zero-tolerance in the Single Convention. The whole concept of ‘psychotropic’ substances itself was a distortion of the logic behind the control framework, as the term lacks scientific credentials and was in fact invented as an excuse to safeguard the wide range of psychoactive pharmaceuticals included in the 1971 Convention from the stricter controls of the Single Convention.

Even THC, one of the active ingredients of cannabis, became defined as a ‘psychotropic’ substance, while as long as it stays in the plant it is a ‘narcotic’ drug. Additionally, substances that were ‘convertible’ into psychotropic drugs were left out from the 1971 schedules, in contradiction to the logic applied to narcotic drugs under the Single Convention.

Several of those ‘convertible substances’ were later included as ‘precursors’ in the lists of the 1988 Trafficking Convention adding more inconsistency, also by mixing up precursors (convertible substances) and chemical reagents. Ephedrine, for example, is the main precursor for methamphetamine, controlled under the 1971 Convention, but appears in the precursor list of the 1988 Convention. Ephedra is the plant from which the alkaloid ephedrine can be extracted, similar to the extraction of

cocaine from the coca leaf, but ephedra is not under international control.

The 1988 Convention also added further confusion on the issue of traditional use. In an attempt to still obtain legal recognition for traditional uses, Peru and Bolivia negotiated paragraph 2 of article 14 into the 1988 Convention, saying that any measures adopted “shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use.” However, the same article stresses that these measures shall not be less stringent than the provisions of the Single Convention. Several of these inconsistencies between the three treaties are in fact pointed out by the INCB in the supplement to its Report for 1994, concluding that it “does not appear necessary to amend the international drug control treaties in substantive terms at this stage, but some technical adjustments are necessary in order to update some of their provisions.”<sup>70</sup>

Herbert May wrote in the midst of the drafting process of the Single Convention, referring to the wide variety of the previous instruments negotiated under different historical circumstances, that it was “unavoidable that as a result some provisions are inconsistent, obscure, duplicated and even obsolete. ... At this stage would it not be well to consider the possibility of making this convention “a convention to end conventions” on narcotic drugs, and to obviate the necessity of frequent international conferences?”<sup>71</sup>

However, the original 1961 Convention did not become the intended ‘book of books’ he had hoped for. Not only did it undergo substantial amendments in 1972, but two new treaties were added in 1971 and 1988; all negotiated under quite different historical circumstances and resulting in different and sometimes contradicting outcomes. And again, it proved “unavoidable that as a result some provisions are inconsistent, obscure, duplicated and even obsolete”.

## CONCLUSIONS

Considered by many at the 1961 conference as a “landmark in the history of the campaign against narcotic drugs”<sup>72</sup> the Single Convention was indeed far more than a mere consolidating exercise bringing together most of the treaties that preceded it. It was not simply another step along the same road began in Shanghai in 1909. Significantly, the Convention came close to imposing a fully-fledged ‘prohibition regime’ for some psychoactive substances of natural original and (semi)synthetic pharmaceuticals with comparative properties. It was only hard fought negotiated compromises within the conference rooms of New York that ultimately left that decision to authorities at the national level.

Such application of the Westphalian principle of the sanctity of national sovereign rights within multinational affairs reflected the continuation of one of the dominant features of the pre-1961 drug control treaties. Nonetheless, the Single Convention did mark a significant shift of direction for the treaty-based international drug control framework.

While codifying many previous regulations into one instrument, the Convention marked an appreciable shift from a system concerned predominantly with ‘restrictive commodity agreements’<sup>73</sup> to a stricter and wider ranging multilateral framework that, while continuing this function, became more prohibitive in focus; a process that included increased emphasis on the non-medical and non-scientific consumption of scheduled drugs.

Specifically within this reformulation, it introduced widely accepted penal obligations for signatory states to criminalise, under their domestic law, unlicensed production and trade and extended the pre-existing control regime to the cultivation of opium poppy, coca and cannabis. In this way, the Convention provided the international law basis for the ‘war on drugs’ that developed

later against drug-related crops and farmers.

Reflecting the divergent interests and varied political influence of the states involved in the drafting of the treaty and at the plenipotentiary conference itself, the Convention also forced many so-called 'developing countries' to abolish all 'non-medical and scientific' uses of the three plants that for many centuries had been embedded in social, cultural and religious traditions. This included medicinal practices not accepted by modern medical science as it had developed in the 'North'.

In tune with such cultural asymmetry, the Single Convention lacks a rational and evidence-based scale of harm for Schedule I and IV substances. While some scaling of harm was introduced between morphine-like (Schedule I) and codeine-like (Schedule II) properties and an exemption scheme included for preparations with low-alkaloid content, a similar ranking logic was not applied to the coca leaf and cannabis, both of which were brought under the morphine-like level of control without solid argumentation.

Fundamental shortfalls do not end there. The instrument ironically failed to serve one of its original purposes of becoming the 'Single' Convention when the control regime developed further with the 1971 and 1988 treaties; both of which have led again to many inconsistencies within the current global drug control treaty system.

Consequently, after fifty-years of existence, and given both the nature of the compromises made in 1961 and the inconsistencies created by the subsequent conventions, it is now clear that some form of revision is required. The Single Convention itself was not only presented as a move to clarify and adapt the earlier treaties "to the economic and social changes which had occurred over the years"<sup>74</sup> but also marked a break with the regulative character of the previous instruments. Recalling this history of

the Single Convention should do much to remove the misplaced aura of sacred immutability that currently shrouds the contemporary UN treaty framework.<sup>75</sup> Regimes of all types undergo change during their lifetimes. And in this respect there is certainly nothing unique about the current drug control regime and particularly the Single Convention upon which it is based. The fiftieth anniversary of the Convention is an opportune moment to start considering treaty reform.

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## NOTES

1. David Bewley-Taylor is a Senior Lecturer in the Department of Political and Cultural Studies, Swansea University UK and Associate Consultant with the International Drug Policy Consortium. Martin Jelsma is coordinator of the Drugs & Democracy programme at the Transnational Institute (TNI) in Amsterdam, The Netherlands.

2. See for example UNODC, *A Century of International Drug Control*, Vienna, United Nations, 2008 and Peter Andreas and Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relation*, (Oxford University Press, 2006), pp. 37-46

3. Preamble of the International Opium Convention, done at The Hague, January 23rd, 1912.

4. Neil Boister, *Penal Aspects of the UN Drug Conventions*, Kluwer Law International, 2001, p. 27.

5. See for example the Preamble of the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotics Drugs, Geneva 1931.

6. Preamble of the International Opium Convention, done at the Hague, January 23rd, 1912

7. See Preamble, International Opium Convention, done at Geneva, 19th February, 1925.

8. McAllister (2000), op. cit., p. 100.

9. William B. McAllister (2004a), "Habitual Problems: The United States and International Drug Control," in Jonathon Erlen & Joseph Spillane (Eds.), *Federal Drug Control: The Evolution of Policy and Practice*, Pharmaceutical

- Products Press (An imprint of Haworth Press, Inc.) 2004, pp. 186-7
10. Article 14 (2).
  11. McAllister (2004a), op. cit., pp. 187.
  12. William B. McAllister, "The global political economy of scheduling: the international-historical context of the Controlled Substances Act," *Drug and Alcohol Dependence* 76 (2004).
  13. Belgium, Brazil, Canada, China, Colombia, Egypt, France, Greece, Guatemala, Haiti, India, Romania and Turkey.
  14. See Jay Sinha, *The History and Development of the Leading International Drug Control Conventions*, Report prepared for the Senate Special Committee on Illegal Drugs, Parliamentary Research Branch, February 2001, pp. 15-6 and Boister, op. cit., p. 32. See particularly Article 2 of the 1936 Trafficking Convention which reads "Each of the High Contracting Parties agrees to make the necessary legislative provisions for severely punishing, particularly by imprisonment or other penalties of deprivation of liberty, the following acts — namely: (a) The manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, despatch, despatch in transit, transport, importation and exportation of narcotic drugs, contrary to the provisions of the said Conventions... [1925 and 1931.]
  15. Boister, op. cit., p. 67.
  16. Preamble, *Single Convention on Narcotic Drugs*
  17. Boister, op. cit., p. 43.
  18. Articles 19 and 20.
  19. McAllister (2000), op. cit., p. 5.
  20. E/CONF.34/24, United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, New York, 24 January – 25 March 1961, *Official Records, Volume 1: Summary Records of Plenary Meetings*, New York: United Nations, 1964, pp. 105-114. This is reflected in the wording of article 38, paragraph 2 of the un-amended Single Convention. This reads "If a Party has a serious problem of drug addiction and its economic resources permit, it is desirable that it establish adequate facilities for the effective treatment of drug addicts."
  21. E/CN.7/AC3/4, Economic and Social Council of the United Nations, Commentary on the Draft Single Convention: Note by the Secretary General" (March 1950), p. 8 in R Lines, "Deliver us from evil? – The Single Convention on Narcotic Drugs, 50 years on" in *International Journal on Human Rights and Drug Policy*, forthcoming.
  22. E/CONF.34/24, op. cit., p. 20.
  23. E/CONF.34/24, op. cit., p. 187
  24. See K. Bruun, L. Pann and I. Rexed, *The Gentlemen's Club: International Control of Drugs and Alcohol*, (University of Chicago, 1975, W. B. McAllister, *Drug Diplomacy in the Twentieth Century: An International History* (Lodnon and New York: Routledge) 2000 and D.R. Bewley-Taylor, *The United States and International Drug Control, 1909-1997* (London/New York: Continuum, 2001),
  25. E/CONF.34/24, op. cit., p. 6.
  26. H. May, "The International Control of Drugs," *International Conciliation*, 441 (1948), 320.
  27. D. Musto, *The American Disease: Origins of Narcotic Control*, (Oxford University Press, 1987), p. 36.
  28. International Opium Convention, signed at The Hague, January 23<sup>rd</sup> 1912.
  29. R L. Buell, *The International Opium Conference*, (Boston: World Peace Foundation, 1924), p. 100.
  30. W. O. Walker III, "Bernarth Lecture: Drug Control and the Issue of Culture in American Foreign Relations", *Diplomatic History*, 12 (1988), 375.
  31. McAllister, *Drug Diplomacy*, p. 123
  32. E/CONF.34/24, op. cit., p. 4.
  33. Catherine Carstairs, "The Stages of the International Drug Control System," *Drugs and Alcohol Review*, 24 (2005), 61.
  34. The 1912 Hague Convention, Article 9; the 1925 International Opium Convention, Article 5; the 1953 Opium Protocol, Preamble and Article 2.
  35. S. K. Chatterjee, *Legal Aspects of International Drug Control*, Martinus Nijhoff, The Hague-Boston-London, 1981, p. 358.

36. Article 21 of the 1912 Hague Convention reads “The Contracting Powers *shall examine the possibility of enacting laws or regulations making it a penal offence* to be in illegal possession or raw opium, prepared opium, morphine, cocaine, and their respective salts, unless laws or regulations on the subject are already in place” (emphasis added).
37. Boister, *op. cit.*, p. 44.
38. E/CONF.34/24/Add.1, United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, New York, 24 January – 25 March 1961, *Official Records, Volume II: Preparatory Documents, Amendments and Miscellaneous Papers, Proceedings of Committees, Final Act, Single Convention and Schedules, Resolutions*, New York: United Nations, 1964, p. 123.
39. As Renborg points out, the offences with the 1936 Trafficking Convention were “all in the nature of illicit industrial and commercial transactions.” Bertil Renborg, “International Control of Narcotics” (1957) 2, *Law and Contemporary Problems*, p. 209.
40. United Nations, *Commentary on the Single Convention on Narcotic Drugs, 1961*, p. 446.
41. UNODC, *A Century of International Drug Control*, Vienna, United Nations, 2008, p. 62.
42. Boister, *op. cit.*, p. 75.
43. Chatterjee, *op. cit.*, p. 344, and more generally pp. 344-354.
44. UNODC, *A Century of International Drug Control*, Vienna, United Nations, 2008, p. 61. Also see Chatterjee, *op. cit.*, p. 349.
45. Danilo Ballotta, Brendon Hughes and Henri Bergeron, “Cannabis control in Europe,” in *A Cannabis Reader: Global Issues and Local Experiences*, EMCDDA Monographs 8, Lisbon, June 2008, Vol. 1, p. 103.
46. H. L. May, “The Single Convention on Narcotic Drugs; Comments and Possibilities”, *Bulletin on Narcotics*, 1 (1955), 4
47. 1953 Protocol, article 19, “Any Party may also, as a transitional measure, provided that it has made an express declaration to this effect at the time of signature or deposit of its instrument of ratification or accession, permit the smoking of opium by addicts not under 21 years of age registered by the appropriate authorities for that purpose on or before 30 September 1953, provided that on 1 January 1950 opium smoking was permitted by the Party concerned.”
48. Both WHO documents are quoted in: E/CONF.34/24, *Official Records of the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs*, New York 24 January – 25 March 1961, United Nations 63.XI.4.
49. E/CONF.34/24, *op. cit.*, pp. 58-62.
50. United Nations, *1961 Single Convention on Narcotic Drugs*, article 5b.
51. Adolf Lande, The Single Convention on Narcotic Drugs, 1961, in: *International Organization*, Vol. 16, No. 4 (Autumn 1962), pp. 776-797.
52. E/CONF.34/24, *op. cit.*, p. 1.
53. Boister, *op. cit.*, p.45.
54. *Ibid*, p. 42.
55. E/CONF.34/24, *op. cit.*, p. 151.
56. E/CONF.34/24/Add.1, *op. cit.*, p. 161.
57. *Ibidem*.
58. *Commentary* 1961, p. 294.
59. E/CONF.34/24, *op. cit.*, p. 217 & 218.
60. Lande, *op. cit.*
61. See M. Woodiwiss and D. Bewley-Taylor, *The Global Fix: The Construction of a Global Enforcement Regime*, (Transnational Institute, Crime and Globalization Programme, 2005), pp. 11-12, Y. Zhang, “The Internationalization of Nixon’s War on Drugs: The United States, the 1972 Amending Protocol and Strengthening of Global Drug Control Regime, (1969-1975),” Unpublished Paper, V. Kušević, “Drug Abuse Control and International Treaties”, *Journal of Drug Issues*, 7, 1 (1977) 47, K. Fisher, “Trends in Extraterritorial Narcotics Control: Slamming the Stable Door After the Horse Has Bolted,” *New York University Journal of International Law and Policy*, 16 (1984) 361, and W. B. McAllister (2000), *op. cit.*, pp. 236-7.
62. Boister, *op. cit.*, p. 47.
63. See Sinha, *op. cit.*, p. 29.
64. Article 38 of the Single Convention as amended by the 1972 Protocol follows very closely article 20 of the 1971 Convention. See *Commentary on the Protocol Amending the*

*Single Convention on Narcotic Drugs, 1961*, op. cit., p. 330.

65. See *Commentary on the Single Convention on Narcotic Drugs, 1961*, op. cit., p. 447 and *Commentary on the Protocol Amending the Single Convention on Narcotic Drugs, 1961*, United Nations, New York, 1976, pp. 84-85.

66. Cherif Bassiouni, *Critical Reflections on International and National Control of Drugs*, in: *Denver Journal on International Law and Policy*, 311, 1990, p. 314.

67. E/CONF.58/7/Add.I, United Nations Conference for the adoption of a Protocol on Psychotropic Substances, Vienna, 11 January - 19 February 1971, *Official Records, Volume II: Summary records of plenary meetings, Minutes of the meetings of the General Committee and the Committee on Control Measures*, New York, United Nations, 1973, p. 38.

68. *Ibid*, p. 106-107.

69. *Ibid*, p. 11-12.

70. *Evaluation of the effectiveness of the international drug control treaties*, Supplement to the INCB Annual Report for 1994, p. 9. [http://www.incb.org/pdf/e/ar/incb\\_report\\_1994\\_supplement\\_en\\_3.pdf](http://www.incb.org/pdf/e/ar/incb_report_1994_supplement_en_3.pdf)

71. H. L. May, "The Single Convention on Narcotic Drugs; Comments and Possibilities", *Bulletin on Narcotics*, 1955, issue 1, p. 1-14.

72. See for example E/CONF.34/24, op. cit., p. 218.

73. H. L. May, "Narcotic drug control – development of international action and the establishment of supervision under the United Nations", *International Conciliation* 441 (1948), p. 305.

74. See for example E/CONF.34/24, op. cit., p. 1.

75. In specific reference to opiates, this is a point alluded to in Letizia Paoli, Victoria A. Greenfield and Peter Reuter *The World Heroin Market: Can Supply be Cut?* (Oxford University Press), pp. 249-50. The strong opposition against Bolivia's amendment proposal to delete the obligation to abolish coca chewing is another clear example, see: M. Jelsma, *Lifting the ban on coca chewing, Bolivia's proposal to amend the 1961 Single Convention*, TNI Series on Legislative Reform of Drug Policies, No. 11, March 2011.

## Drug Law Reform Project

The project aims to promote more humane, balanced, and effective drug laws. Decades of repressive drug policies have not reduced the scale of drug markets and have led instead to human rights violations, a crisis in the judicial and penitentiary systems, the consolidation of organized crime, and the marginalization of vulnerable drug users, drug couriers and growers of illicit crops. It is time for an honest discussion on effective drug policy that considers changes in both legislation and implementation.

This project aims to stimulate the debate around legislative reforms by highlighting good practices and lessons learned in areas such as decriminalization, proportionality of sentences, specific harm reduction measures, alternatives to incarceration, and scheduling criteria for different substances. It also aims to encourage a constructive dialogue amongst policy makers, multi-lateral agencies and civil society in order to shape policies that are grounded in the principles of human rights, public health and harm reduction.



### Transnational Institute (TNI)

De Wittenstraat 25  
1052 AK Amsterdam  
The Netherlands

Tel: -31-20-6626608

Fax: -31-20-6757176

E-mail: [drugs@tni.org](mailto:drugs@tni.org)

[www.tni.org/drugs](http://www.tni.org/drugs)

[www.druglawreform.info](http://www.druglawreform.info)