CHAPTER THREE

THE ORGANISATIONAL STRUCTURE AND METHOD OF INTERNATIONAL DRUG CONTROL THROUGH THE UNITED NATIONS

Introduction

Perhaps the scourges of the two world wars prompted the drafters of the U.N. Charter to far exceed the ambitions of the League of Nations. The U.N. envisaged a more concrete and positive programme of drug control than that of the League. Various organs of the U.N. have been entrusted with the task of eradicating drug problems. The enforcement machinery to implement the Convention provisions has been decentralised and diversified. The U.N. has shown its concern for formulating effective and practical means of dealing with both the curative and preventative aspects of drug addiction and controlling illicit traffic in drugs.

The aims and objectives of the drug control programme under the U.N. regime, should be viewed from the overall U.N. notion towards various international programmes and the degree of co-operation it could expect from the contemporary international community. "The intentions of the United Nations in its early days of international co-operation were progressive, but less precise than its political intentions."[15]

Nevertheless, these became evident as an intention in the international community to move from an essentially negative attitude to positive rules of co-operation.[16]

A brief Examination of the Drug Protocols and Conventions Concluded during the U.N. Period

The instruments concerned with the solution of drug problems concluded during the U.N. period are the following:

- The 1946 Protocol
- The 1948 Protocol
- The 1953 Protocol
- The Single Convention on Narcotic Drugs 1961
- The Convention on Psychotropic Substances 1971
- The Protocol Amending the Single Convention on Narcotic Drugs (1961) 1972

Of these instruments the most important ones are the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic Substances, 1971 and the Protocol Amending the Single Convention (1961) 1972. Indeed, the various regimes established by various drug Conventions have been consolidated into a Single Convention, 1961. In order to make this study comprehensive, the instruments concluded prior to the Single Convention on Narcotic Drugs, 1961 have been discussed only briefly. Basically, the present drug regimes are governed by the Single Convention on Narcotic Drugs, 1961 and the Convention on Psychotropic Substances, 1971.

THE 1946 PROTOCOL

The 1946 Protocol, Amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at the Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 January 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, signed at Lake Success, New York, on 11 December 1946 referred to in Article 44, paragraph 1, sub-paragraph (f) of the Single Convention, was open for signature or acceptance by any of the States Parties to the aforesaid Agreements, Conventions and Protocols on narcotic drugs. This Protocol was concluded with a view to continuing with the drug regime with which the League was concerned, and that even after the dissolution of the League, the Parties to this Protocol thought it would be expedient for the U.N. and The World Health Organisation or its Interim Commission to perform the functions relating to the regime. The amendments set forth in an Annex to the Protocol were to come into force in respect of each Agreement, Convention and Protocol when a majority of the Parties thereto had become Parties to the Present Protocol.[17] The primary purpose of this Protocol was to substitute the names of the new institutions engaged in the operation of the drug regime for the corresponding former ones, and not to bring about any major change in the contents of the previous international narcotic Conventions and Agreements. It was, in fact, a link-Protocol.

THE 1948 PROTOCOL

The 1948 Protocol bringing under international control drugs outside the scope of the Convention of 13 July for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol signed at Lake Success, New York, on 11 December 1946, signed at Paris on 19 November 1948, referred to in Article 44, paragraph 1, sub-paragraph (h) of the Single Convention, was concluded with a view to filling in the gaps left by the Limitation Convention of 1931, that is, to bring under control the synthetic drugs capable of producing addiction.[18] This Protocol was not concerned with the non-synthetic substances covered by the Hague Opium Convention of 1912 and the Geneva International Opium Convention of 1925. Bringing of synthetic drugs under the international control regime being of utmost and immediate importance, a separate Protocol for the purpose was deemed appropriate instead of amending certain provisions of the existing Convention, namely, Article 10 of the 1925 Convention and Article 11 of the 1931 Convention.[19] This Protocol came into force on 1 December 1949.

This Protocol attained reasonable success. Most of the important drug manufacturing countries became Parties to it, and many countries, without even acceding to the Protocol, co-operated in the implementation of it and submitted estimates of their requirements for drugs to the Supervisory Body.[20] However, like many other international Conventions concluded during the League period, this Protocol also provided for a "denunciation clause", according to which, "after the expiration of five years from the date of the coming into force of the Protocol, any State Party to the present Protocol may, on its own behalf or on the behalf of any other territories for which it has international responsibility, denounce this Protocol by an instrument in writing deposited with the Secretary-General of the United Nations ....."[21]

THE 1953 PROTOCOL

The 1953 Protocol Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at New York on 23 June 1953, referred to in Article 44, paragraph 1, sub-paragraph (i) of the Single Convention was found essential for the purpose of limiting the production of raw materials to medical and scientific needs and regulating the production of raw materials from which natural narcotic drugs are obtained. In other words, this Protocol was concluded for the purpose of limiting and regulating the cultivation of the poppy plant, and the

international and wholesale trade in, and use of, opium. The other primary purposes of this Protocol were to combat addiction and illicit traffic in narcotic drugs and substances and to strengthen the system of international narcotics control by close collaboration among all States.[22]

This Protocol made references to poppy and opium, and did not make any mention of coca leaf and Indian hemp (marihuana, hashish and cannabis). This Protocol brought in certain novelties in the drug control regime. It provided for the establishment of national agencies or other similar competent Government authorities for the purchase of opium crops for controlling import and export of these crops by them. The Parties undertook the obligation to cultivate and use poppy exclusively for the production of opium poppy only and to ensure control of the manufacture of narcotic substances from poppy straw.[23] The Protocol also provided for the limitation of stocks of opium and accountability to the Permanent Central Board. Article 6 of the Protocol provided, inter alia, that import and export would be permitted of opium produced in certain designated countries only, viz. Bulgaria, Greece, India, Iran, Turkey, USSR and Yugoslavia. Import and export of opium were permitted only among the Contracting Parties, and in accordance with the system of import certificates and export authorisations provided for in Chapter V of the International Opium Convention of 1925. This Protocol also conformed to the estimates and statistical returns systems established by the Limitation Convention, 1931.

One of the noteworthy features of this Protocol was its detailed provisions regarding international supervision and enforcement measures. International supervision consisted of the following:

(a) request for information;

(b) request for explanation;

(c) proposals for remedial measures; and

(d) local inquiry.

Mutual co-operation rather than coercion was the basis for international supervision. The enforcement measures, on the other hand, consisted of public declarations, recommendatory embargo and mandatory embargo. The Permanent Central Board had the sole authority to determine the period of the embargo.

Under this Protocol the Board was even allowed to take certain measures in respect of non Parties, although there was no guarantee as to the implementation of such measures. The Protocol made a renewed effort to deal with the opium problem and provided for Government control over cultivation, production, trade in and use of opium.[24]

Although limited in scope, the provisions of this Protocol were much more elaborate and definitive than those of the previous Protocols relating to drug problems. The Protocol also dealt with the use of opium for quasi-medical purposes, that is eating of opium to cure diseases or to relieve pain, a practice customary in many countries of the Asian, Middle Eastern and South American regions. However, it did not provide for the cure of the habit of opium-eating; the Contracting Parties were expected to take measures in this regard. A Contracting Party to this Protocol might denounce it after the expiration of five years from the date of its coming into force. Unfortunately, this Protocol came into force about ten years after its adoption, even though ratification or accession of only twenty-five States, including three manufacturing and three producing States, was necessary.[25] This Protocol was another reminder of the unpreparedness of States to be governed by a regime of international control of drugs.

THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961 AND THE CONVENTION ON PSYCHOTROPIC SUBSTANCES, 1971[26]

(a) The Primary Objective of the Single Convention on Narcotic Drugs

The primary objectives of the Single Convention on Narcotic Drugs are the following:

(i) To codify the existing multilateral conventions on drugs

(ii) To simplify the international control machinery

(iii) To extend the control system to cultivation of other natural products in addition to opium and poppy-straw which produce narcotic effects, e.g. cannabis, cannabis resin and coca leaves (except when such leaves are used for the purpose of flavouring beverages)

(iv) To limit manufacture and importation of drugs

(v) To control illicit trade and traffic in narcotic drugs; and

(vi) To adopt appropriate measures for the treatment and rehabilitation for drug addicts.

(b) The Primary Objectives of the Convention on Psychotropic Substances, 1971

The primary objectives of the Convention on Psychotropic Substances are the following:

(i) To bring psychotropic substances and many of their preparations under international control

(ii) To reduce the incidence of abuse of and illicit traffic in them

(iii) To adopt special provisions regarding the control of substances

(iv) To limit the use of substances for medical and scientific purposes; and

(v) To promote the training of personnel in the treatment, after-care, rehabilitation and social re-integration of abusers of psychotropic substances.

(c) The Scope of Control under the Single Convention on Narcotic Drugs

One of the most important aspects of both the Single Convention and the Convention on Psychotropic Substances is their respective scope of control. A degree of flexibility has been maintained in the scope of control envisaged by the Single Convention on Narcotic Drugs. A change in the scope of control under this Convention would mean bringing an uncontrolled substance into the control regime; changing the regime applicable to a drug; cancelling such a regime in respect of a preparation and removing a drug completely from its control regime. This Convention has also authorised the World Health Organisation to exempt certain preparations from the control regime if it finds that the preparation may not give rise to the drug habit. Under this Convention, an attempt has been made to assimilate all the operative parts of the previous agreements and conventions although in certain cases, amendments to and extensions of provisions have been made as and when necessary. The initiative to amend any of the Schedules may be taken either by a Party to

the Convention or by the World Health Organisation. The responsibility for making a final decision as to the change of the scope of control lies with the Commission on Narcotic Drugs and such decision "shall become effective with respect to each Party on the date of its receipt of such communication and the Parties shall thereupon take such action as may be required under this Convention." (Article 3, paragraph 7). All decisions of the Commission on Narcotic Drugs are, in practice, based upon the recommendations of the World Health Organisation and pending the recommendations of the said Organisation, the Commission on Narcotic Drugs may direct the Parties to apply provisionally to that substance all measures of control applicable to drugs in Schedule I. The decisions of the Commission shall not be subject to the review procedure provided for in Article 7 of this Convention.

Under this Convention the scope of control has two aspects:

(a) provisional; and

(b) mandatory.

When a notification relates to a substance not already in Schedule I or in Schedule II, "the Parties in terms of paragraph (i) of Article 3 shall examine in the light of the available information the possibility of the provisional application to the substance of all measures of control applicable to drugs in Schedule I." Therefore, it is left to the judgement of a Party whether or not there is a possibility of applying the provisional control measures to a drug.

The mandatory aspect of control comes into play when the provisional measures of control have received confirmation as to their compulsory application in the future. The mandatory measures of control consist of two stages: first, the World Health Organisation must find that the substance is "liable to similar abuse and productive of similar ill effects as the drugs in Schedule I or Schedule II or is convertible into such a drug"; and second, if its finding should be in the affirmative, it must communicate accordingly to the Commission of Narcotic Drugs upon which the Commission may decide that "the substance shall be added to Schedule I or Schedule II". Under the Single Convention, there are four Schedules:

Schedule I - the substances which have been included in this Schedule are those:

(a) Having addiction-producing or addiction-sustaining properties greater than those of codeine and more or less comparable to those of morphine;

(b) Convertible into substances having addiction-producing or addiction-sustaining properties with an ease or yield such as to constitute a risk of abuse greater than codeine; or

(c) Having a liability to abuse comparable to that of cannabis, cannabis resin or cocaine;

(d) Convertible into substances having a liability to abuse comparable to that of cannabis, cannabis resin or cocaine.

Schedule II - The substances which have been included in this Schedule are those:

(a) Having addiction-producing or addiction-sustaining properties not greater than those of codeine but at least as great as those of dextropropoxyphene; or

(b) Convertible into a substance having addiction-producing or addiction-sustaining properties with an ease and yield such as to constitute a risk of abuse not greater than that of codeine.

Schedule III - This Schedule contains those preparations which:

(a) Are intended for legitimate medical use; and

(b) Have a specified drug content and are compounded with one or more ingredients in such a way that the preparation has no, or a negligible risk of abuse, and in such a way that the drug content cannot be recovered by readily applicable means or in yield which would constitute a risk to public health.

Schedule IV - The Substances which have been included in this Schedule are those:

(a) Having strong addiction-producing properties or a liability to abuse not offset by therapeutic advantages which cannot be afforded by some other drug; and/or

(b) For which deletion from general medical practice is desirable because of the risk to public health.

The Single Convention justifies the convertibility of a substance by reference to its properties rather than its chemical formula. In view of the nature of substances that fall under Schedule IV it would be appropriate to place them simultaneously under Schedule I. In the event of the transfer of a drug from Schedule I to Schedule II it should be deleted from Schedule IV. The transfer of a drug from Schedule II to Schedule I will generally involve inclusion of the same drug in Schedule IV. If a drug listed in Schedule I or Schedule II is deleted, its preparation will automatically be deleted from Schedule III, assuming however that it would not constitute a risk to public health if de-controlled.

The scope of control under the Single Convention extends to the cultivation of opium poppy, coca bush, cannabis plant and poppy straw and the Contracting Parties are responsible for effecting the control regime in this regard. It appears that seeds and straw of poppies should also be included in the international control regime (Article 22 and Article 25, paragraph 3). The Convention also requires the Parties to enforce the uprooting of all coca bush growing wild and to destroy it if illegally cultivated (Article 26, paragraph 2). Both coca bush and coca leaves must be made over to national opium agencies in accordance with Article 23. Save the temporary exemption allowed under Article 49, cannabis and cannabis resin shall not be produced for purposes other than medical and scientific. The control regime under this Convention shall not however apply to cannabis if it is cultivated for industrial or horticultural purposes. The control regime does not apply to coca leaves either when such leaves are used for the preparation of a flavouring agent and do not contain alkaloids.

(d) The Scope of Control under the Convention on Psychotropic Substances

It should be pointed out that a country may denounce all previous drug Conventions except the 1936 Convention, and become a Party to the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances. Certain of the psychotropic substances, such as amphetamines, barbiturates and tranquillizers are not necessarily excluded from the scope of the Single Convention, but in order to give special emphasis to psychotropic substances for international control, a separate convention has been concluded.

Legally speaking, there is no objection to placing under the regime of the Single Convention a substance which is already controlled by the Convention on Psychotropic Substances. The rules concerning 'production' of narcotic drugs under the Single Convention apply to cultivation of those drugs also, where appropriate; under the Convention on Psychotropic Substances however, the rules concerning 'manufacture' would apply to the 'production' of those substances also. Consequently, a situation might arise in which harvesting of cannabis, cannabis resin and coca leaves particularly would be controlled by two different regimes, i.e. the regimes of the Single Convention regarding 'production' and those of the Convention on Psychotropic Substances. The definitions of a number of properties under these two Conventions overlap, and indeed, many of the psychotropic substances fall within the scope of Article 3, paragraph 3 of the Single Convention. Psychotropic substances for the purpose of control have been placed under four Schedules.

Schedule I

Includes the hallucinogenics group - drugs of a harmful nature posing a serious risk to public health and the control of which is governed by Article 7 of the Convention. Their use must be limited to scientific and very limited medical purposes and they are directly under the control of their Government. Their manufacture, trade, distribution etc. requires a special licence and their import and export may be permitted by special authorisation only. Statistical reports on their stocks, use, imports and exports must be submitted to the International Narcotics Control Board.

Schedule II

Includes stimulant sympathomimatic drugs of the amphetamine type and certain narcotic analgesics such as phencyclidine, which are of limited or no therapeutic use. Substances falling under this Schedule are highly addictive and they are governed by the ordinary control regime of Article 7.

Schedule III

Therapeutically useful drugs, such as barbiturates, have been included in this Schedule. They may only be recommended under medical prescriptions and full statistics on their use, production etc. are not required to be submitted to the International Narcotics Control Board although usual restrictions relating to trade apply to them.

Schedule IV

Includes a variety of hypnotic, tranquillizing and analgesic drugs which contain a high quantity of addictive properties and which are widely used therapeutically. Medical prescriptions are required for their use and the usual restrictions as to trade, labelling and manufacture operate for them too. A lesser level of control is recommended for these substances.

In terms of Article 2, paragraph 2, the Secretary-General of the United Nations shall transmit notification concerning placement or de-placement of substances or any information which he may consider relevant to the Parties and the Commission on Narcotic Drugs. If such a notification is made by a Contracting Party to the Convention, then he will transmit it to the World Health Organisation.

If a notification is received from a State which is not a Party to the Convention, the Secretary-General may either (a) take no action; or (b) notify the Parties to the

Convention, the World Health Organisation and the Commission on Narcotic Drugs of the receipt of such information. On the other hand, if a Party or the World Health Organisation believes that an exempted preparation should be re-classified, it shall notify the Secretary-General, giving sufficient evidence for its belief to this effect.

(e) COMMENTS

The control systems devised by the Single Convention and the Convention on Psychotropic Substances are not complete; in view of the constant progress of science neither can it be complete. Then, the National systems vary widely. The Commission on Narcotic Drugs however maintains that a substance should not come under one of the regimes of international control solely on therapeutic grounds, ignoring its usefulness for scientific purposes. Indeed, the World Health Organisation Expert Committee on Drug Dependence pointed out that the "need, type and degree of international control must be based on two considerations: (a) the degree of risk to public health; and (b) the usefulness of the drug in medical therapy."[27] The initiative for a change in the control regime may be taken either by a Party to the Convention (or even by a non-Party in the case of the Convention on Psychotropic Substances) and by the World Health Organisation.

However, whereas under the Single Convention the Commission's decision as to whether or not a drug should be placed under a Schedule or transferred from one Schedule to another or even made free from control is dependent upon the recommendation of the World Health Organisation, under the Convention on Psychotropic Substances the Commission's decision on this matter, mutatis mutandis, is not dependent upon the findings of the World Health Organisation, although both these institutions work in harmony.

(f) A COMPARISON BETWEEN THE TWO CONVENTIONS

(i) Schedule IV of the Single Convention and Schedule I of the Convention on Psychotropic Substances

Drugs and substances included in these two Schedules are subject to the most restricted regimes. They can only be made available for scientific purposes and very limited use by authorised persons in medical and scientific institutions under the control of national authorities. Their manufacture, import and export are subject to strict control (Article 2 of the Single Convention and Articles 2, 7 and 16(4)(a) of the Convention on Psychotropic Substances).

(ii) Schedules I and II of the Single Convention and Schedules II and III of the Convention on Psychotropic Substances

Except for drugs under Schedule II of the Single Convention, the drugs and substances under the above-mentioned Schedules can only be dispensed by a chemist on prescription from an authorised medical practitioner. Import certificates and export authorisation are necessary for drugs included in Schedules I, II and IV of the Single Convention and substances under Schedule II of the Convention on Psychotropic Substances. Both the statistical returns and estimates systems are applied to Schedules I and II of the Single Convention. Statistical returns on the manufacture, stocks, imports and exports of psychotropic substances belonging to Schedules II and III must be submitted to the International Narcotics Control Board. An importer is required to draw up a declaration of the amount(s) imported and the name(s) of the importer(s) for substances belonging to Schedule III of the Convention on Psychotropic Substances. The manufacture, trade and distribution of all these drugs and substances are subject to a special licence (Article 2 of the Single Convention on Narcotic Drugs and Articles 2, 8 and 9 of the Convention on Psychotropic Substances).

(iii) Preparations under Schedule III of the Single Convention and Schedule III of the Convention on Psychotropic Substances

Generally speaking, preparation should also be subject to control if they pose public health risks. Exemptions under Article 2, paragraph 3 of the Convention on Psychotropic Substances have to be justified by the Parties concerned; those under Article 3, paragraphs 2 and 3 may be terminated by the Commission on Narcotic Drugs at any time. In respect of substances under paragraphs 2 and 3 of Article 7 of the Convention on Psychotropic Substances, Parties are required to comply with the requirements of licences (Article 8), records (Article 11), prohibition and restrictions on import and export (Article 13), inspection as it applies to manufacture (Article 15), reports (Article 16) and the penal provisions (Article 22).

Preparations in Schedule III of the Single Convention are subject to the following measures:

- licensing of manufacture and trade except when carried out by a state enterprise;

- control under licence in establishments and premises in which such manufacture may take place;

- control of all persons and enterprises carrying on or engaged in the manufacture, trade or distribution of drugs, import or export of drugs;

- limitation of drugs exclusively to medical and scientific purposes in production, manufacture, export, import, distribution of, trade in, use and possession of drugs, and also the rules concerning package or wrappers; and

- keeping of records concerning the manufacture and sale of drugs by manufacturers, traders etc.

- Exemptions under Schedule III can only be confirmed by the Commission on Narcotic Drugs.

The Single Convention on Narcotic Drugs has made specific provisions of control for opium, opium poppy, coca bush, cannabis resin, poppy straw and cannabis leaves (Articles 22, 24, 25, 26, 27 and 28). Of course, a Party can adopt a stricter regime of control than those prescribed by these two Conventions. Indeed, Article 23 of the Convention on Psychotropic Substances provides that:

> "A Party may adopt more strict or severe measures of control than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the protection of the public health and welfare."

In order to attain the Convention objectives, both the Single Convention and the Convention on Psychotropic Substances have provided for certain procedures and mechanisms many of which were devised by the earlier drug Conventions. Of the procedures and mechanisms recommended by these two Conventions, mention should be made of the following:

- Estimates and Statistical Returns Systems

- Licences for Manufacture

- Records

- Regulations concerning International Trade

- Measures against Illicit Traffic

- Treatment, Rehabilitation and Education of Drug Addicts

- Penal Provisions

(iv) Estimates and Statistical Returns Systems under the Single Convention on Narcotic Drugs

Article 19, paragraph 1 of the Single Convention on Narcotic Drugs provides that:

> "1. The Parties shall furnish to the Board each year for each of their territories, in the manner and form prescribed by the Board, estimates on forms supplied by it in respect of the following matters:
>
> (a) Quantities of drugs to be consumed for medical and scientific purposes;
>
> (b) Quantities of drugs to be utilised for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention;
>
> (c) Stocks of drugs to be held as at 31 December of the year to which the estimates relate; and
>
> (d) Quantities of drugs necessary for addition to special stocks."

Under the Single Convention on Narcotic Drugs (Article 1, paragraph 2) a drug shall be regarded as 'consumed' when it has been supplied to any person or enterprise for retail distribution, medical use or scientific research. The term 'consumed' in the practice of the International Narcotics Control Board stands not only for "the amounts supplied for retail distribution, medical use or scientific research, to any person, enterprise or institute (retail pharmacists, retail distributors, institutions or qualified persons duly authorised to exercise the therapeutic or scientific functions; doctors, dentists, veterinarians, hospitals, dispensaries and similar health institutions, both public and private, scientific institutes)" but also for quantities dispensed through a national health scheme, regardless of the fact that the system is administered by the state. Preparations listed in Schedule III are considered as 'consumed' under the Single Convention. Therefore, the estimates to be furnished under Article 19, paragraph 1 relate to the drug content of drugs, crude drugs, salts, preparations other than preparations listed in Schedule III. Article 19, paragraph 1, sub-paragraph (a) provides for the estimates of drugs required for domestic consumption. Such estimates must not include the amounts of drugs required for the wholesale manufacture of preparations in Schedule III. [28]

According to Article 20 of the Single Convention on Narcotic Drugs the "Parties shall furnish to the (International Narcotics) Board for each of their territories, in the manner and form prescribed by the Board, statistical returns on forms supplied by it in respect of the following matters:

- Production or manufacture of drugs;

- Utilisation of drugs for the manufacture of other drugs, of preparations in Schedule III and of substances not covered by this Convention, and utilisation of poppy straw for the manufacture of drugs;

- Consumption of drugs;

- Imports and exports of drugs and poppy straw;

- Seizures of drugs and disposal thereof; and

- Stocks of drugs as at 31 December of the year to which the returns relate."

(v) Obligations of Parties to Submit Statistical Returns under the Convention on Psychotropic Substances

According to Article 16, paragraphs 4 and 5 of the Convention on Psychotropic Substances:

> 4. The parties shall furnish to the Board annual statistical reports in accordance with forms prepared by the Board:
>
> (a) In regard to each substance in Schedules I and II, on quantities manufactured, exported to and imported from each country or region as well as on stocks held by manufacturers;
>
> (b) In regard to each substance in Schedules III and IV, on quantities manufactured, as well as on total quantities exported and imported;
>
> (c) In regard to each substance in Schedules II and III, on quantities used in the manufacture of exempt preparations; and
>
> (d) In regard to each substance other than a substance in Schedule I, on quantities used for industrial purposes in accordance with sub-paragraph (b) of article 4.

The quantities manufactured which are referred to in sub-paragraphs (a) and (b) of this paragraph do not include the quantities of preparations manufactured.

> 5. A Party shall furnish the Board, on its request, with supplementary statistical information relating to future periods on the quantities of any individual substance in Schedules III and IV exported to and imported from each country or region. That Party may request that the Board treat as confidential both its request for information and the information given under this paragraph.

Under this Convention the International Narcotics Control Board has the power to request any non-Contracting Party to submit statistics on imports and/or exports of psychotropic substances and their properties. Unlike the Single Convention on Narcotic Drugs, this Convention does not require the Parties to submit estimates to the Board. The Board may ask for an explanation of statistics from States, whether Parties to the Convention or not, but not from private institutions or persons. The Board is primarily concerned with statistics on the contents of psychotropic substances, refined psychotropic substances (and

properties) but not on salts. Nevertheless, the Board requires statistics on isomers, esters and ethers of psychotropic substances. The respective duties of the Parties and the Board concerning statistics have been summarised in the following passage:

> "The Parties are required to report all quantities of psychotropic substances which have been manufactured, regardless of the purpose for which they are to be used. Quantities of a psychotropic substance appearing only as an intermediary product in a process of making a non-psychotropic substance are therefore to be included in the manufacturing statistics. When a psychotropic substance appears to be an intermediary product in the manufacture of another psychotropic substance, the quantities of both substances involved are to be included in the manufacturing statistics. It is within the discretion of the Board to determine in which cases it does not need figures on the intermediary products. When such a need does not exist, the Board may request Governments to exclude from their figures on manufacture quantities of a psychotropic substance which was only an intermediary stage in a process of manufacturing another psychotropic substance or a non-psychotropic substance. The Board may consider doing so in a case in which the intermediary product appears in a continuous process of manufacture. It is suggested that such an exclusion would not be advisable in a case in which the manufacturing process is interrupted, as where, for example, the intermediary product made by one manufacturer is to be delivered to another manufacturer for transformation into the final product. It is within the authority of the Board under paragraph 6 to determine what is in this context to be considered a continuous process of manufacture."[29]

Control Board recommended submission of estimates on a voluntary basis:

".....In contrast to the situation concerning narcotic drugs, in which there is virtually no diversion from the licit production and traffickers resort to illicit production and manufacture, the priority international control problem with regard to psychotropic substances currently concerns the substantial diversion from licit trade. ...exports have been made to certain developing countries, in some cases without the necessary import authorisation, in other cases on the basis of falsified import authorisations...."

".....exporting countries have a special responsibility to exercise vigilance, not only because they have long established drug control administrations, but also because a supposedly importing country may not be aware that its import licences are being falsified. In case of doubt, exporting countries should ensure the authenticity of import certificates... Moreover, when large quantities of psychotropics are involved, too large to be commensurate with the apparent needs of the countries of destination, exporting countries should not permit export unless queries to the designated authorities in the importing countries confirm the import requests and authenticate the import certificates...."

".....The Board believes that the aims of the Convention might be further advanced if the Governments were also voluntarily to take supplementary measures over and above those in the treaty. One such measure would be for Governments from time to time realistically to assess their requirements for psychotropic substances, at least for those in Schedule II, and to furnish this information to the Board. The Board, in turn, could thereafter communicate these assessments to manufacturing countries so that they may serve as guidelines to ensure against

over-production and diminish risks of diversion. The Board wishes to invite Governments to indicate whether they would be prepared to furnish such assessments to the Board, at least in respect of substances controlled under Schedule II. Moreover, to enable the Board more effectively to monitor the trade and have a better understanding of the control situation worldwide, it would be beneficial if Governments voluntarily were to provide to the Board quarterly statistics on imports and exports."

(vi) Licences for Manufacture

The provision of licences for manufacture under the Single Convention on Narcotics Drugs may be found in Article 30, paragraphs 1(a) and (b), Article 31, paragraph 3. These provisions are self-explanatory.

Article 30, paragraph 1(a)

"The Parties shall require that the trade in and distribution of drugs be under licence except where such trade or distribution is carried out by a State enterprise or State enterprises."

Article 30, paragraph (b)

"The Parties shall:

(i) Control all persons and enterprises carrying on or engaged in the trade in or distribution of drugs;

(ii) Control under licence the establishments and premises in which such trade or distribution may take place. The requirement of licensing need not apply to preparations."

Article 31, paragraph 3

"The Parties shall:

(a) Control under licence the import and export of drugs except where such import or export is carried out by a State enterprise or enterprises;

(b) Control all persons and enterprises carrying on or engaged in such import or export."

Therefore, under the Single Convention on Narcotics Drugs the Parties are allowed to manufacture drugs only under licences except where manufacture is carried out by a State enterprise. But a State enterprise will not be permitted to manufacture drugs, salts and preparations other than those for which a licence may be granted to a private manufacturer. A licence is meant for two purposes;

- to engage in the manufacture of drugs; and

- to use premises and establishments for the purpose of manufacturing drugs.

'Manufacture' under this Convention includes manufacture of basic drugs, their salts and preparations, including preparations in Schedule III. The Parties to the Convention must ensure that the licensed manufacturer obtains licences periodically (except for preparations) justifying the reasons for obtaining

licences and showing the amount of drugs they would like to manufacture within that period. Article 29, paragraph 2(c) has abolished the supplementary estimates systems; instead, it requires the Parties to conform to the system of periodic licences so as to effect the quota system.

A licence must detail the names of drugs, their quantities and the period for which the manufacturer will be engaged in manufacturing them. The licensing authority shall have the discretionary power to revoke or amend the licence whenever necessary. No alteration to the conditions of a licence is permitted by a manufacturer.

(vii) Licences under the Convention on Psychotropic Substances

Article 8 of the Convention on Psychotropic Substances deals with the question of licences. According to this Article the Parties must ensure that the manufacture of, trade in and distribution of substances listed in Schedules II, III and IV are carried out under licence or other similar control measure. Like the Single Convention, the Convention on Psychotropic Substances provides for the use of licences only by the duly authorised persons and enterprises. The Convention on Psychotropic Substances and the Single Convention on Narcotic Drugs however specifically provide that licences may be obtained only by those persons who are "adequately qualified for the effective and faithful execution of the provisions of such laws and regulations as are enacted in pursuance of this Convention." (Article 8, paragraph 4 and Article 34(a) respectively). In granting licences the Parties must also ensure that sufficient security measures are available on the establishments and premises in order to prevent theft or other diversion of stocks.

(viii) Records

The Single Convention on Narcotic Drugs

Article 34(b) of the Single Convention on Narcotic Drugs provides:

> "The Parties shall require that Governmental authorities, manufacturers, traders, scientists, scientific institutions and hospitals keep such records as will show the quantities of each drug manufactured and of each individual acquisition and disposal of drugs. Such records shall respectively be preserved for a period of not less than two years. Where counterfoil books (Article 30, paragraph 2(b)) of official prescriptions are used, such books including the counterfoils shall also be kept for a period of not less than two years."

Under this Convention medical practitioners including veterinary surgeons and dentists are not required to keep any records - they are not traders within the meaning of this provision. However, it would be advisable for medical practitioners (including veterinary surgeons and dentists) who have a hospital or a nursing home or those who are engaged in scientific research in drugs, to keep records. It is however maintained that hospitals which engage in scientific research need not keep separate records for the drugs to be employed for medical treatment and for those to be used for research as hospital research is often considered to be an integral part of the treatment process.

By referring to the basic purposes of keeping records one could say that records of the use and disposal of drugs should be maintained wherever possible. However, under the Single Convention on Narcotic Drugs records of drugs in

Schedules I, II and IV must be maintained. Retail distributors, medical and scientific institutions must maintain records of the use and disposal of drugs in Schedule III to be made readily available.

Under the Single Convention traders who compound preparations whether listed in Schedule III or not should maintain records on manufacture. Retailers who compound preparations for individual sales cannot be called manufacturers; nevertheless, they should keep records of those drugs which are listed in Schedule I.

Cultivators who produce different kinds of plants from which addictive substances may be made are not required to keep records; nevertheless, the national opium agencies should maintain records of purchases from cultivators.

Loss of drugs and preparations by fire or by theft cannot be called 'disposal' of drugs. It would however be advisable for the institution and persons concerned to report that event to the supervisory Government authorities in order to enable them to adjust their records.

(ix) The Convention on Psychotropic Substances

Article II of the Convention on Psychotropic Substances has made detailed provisions concerning the maintenance of records in respect of psychotropic substances pertaining to various Schedules. According to Article II records should show "details of the quantities manufactured, the quantities held in stock and for each acquisition and disposal, details of the quantity, date, supplier and recipient." Paragraph 4 of Article II provides that the Contracting Parties must ensure that "through appropriate methods and taking into account the professional and trade practices in their countries, that information regarding acquisition and disposal of substances in Schedule III by retail distributors, institutions for hospitalisation and care and scientific institutions is readily available." Therefore, according to the instruction of the national Government concerned each institution must ensure that substances in their possession do not find their way into illicit traffic. A pharmacist or a retailer who compounds on prescription and exempt preparation is not legally obliged to maintain records in view of the fact that compounding does not amount to manufacturing and also that the preparation contains a substance in Schedule III or IV. However, in the event of his compounding on prescription a preparation containing a substance in Schedule II he would be required to maintain records of that. The following entry should be made in fulfilment of paragraph 6 of Article II of the Convention:

(a) The name of the psychotropic substance used for the manufacture of an exempt preparation as given in the national legislation concerned;

(b) The quantity of the psychotropic substance used for such manufacture;

(c) If practicable, the date of commencement and completion of the manufacturing process of each particular lot;

(d) The name, nature (i.e., its chemical structure indicated by description or reference) and amount of the exempt preparation produced from a particular quantity of a psychotropic substance, entered in the records pursuant to line (b) above;

(e) The name, nature and quantity of an exempt preparation disposed of;

(f) The nature of disposal (whether sale, destruction or otherwise);

(g) The identity of the recipient of any; and

(h) The date of disposal.

(x) Comments

The system of keeping records serves two important purposes: first, it enables the keepers of records to supply to the supervisory Government authorities the statistics which the latter need for the determination of the estimates of drug requirements and for the periodic statistical returns which they must furnish to the International Narcotics Control Board. Second, this system assists the supervisory Government authorities to keep control over the activities of persons, enterprises and institutions in relation to drugs. Therefore, it falls on the Governments to devise the most useful and effective system of record-keeping suitable to their own circumstances.

(xi) Regulations concerning International Trade

The Single Convention on Narcotic Drugs

Article 30 of the Single Convention on Narcotic Drugs details the provisions for trade in and distribution of narcotic drugs and substances for both domestic and international trade. According to Article 29, paragraph 1 trade in and distribution of narcotic drugs and substances shall be under licence except where such trade and distribution are carried out by a State enterprise. A licensee cannot take out a licence for the manufacture of drug or substance which he is not capable of manufacturing. Under the Single Convention the Parties have an obligation to control all persons and enterprises carrying on or engaged in the trade in or distribution of drugs and to control under licence the establishments and premises in which such trade or distribution may take place (Article 30(1)(b)(i) and (ii)).

Article 31, paragraph 1 of the Convention has introduced special provisions concerning international trade. It prohibits the Parties from exporting drugs to any country or territory except:

(a) In accordance with the laws and regulations of that country or territory;

(b) Within the limits of the total of the estimates for that country or territory as defined in Article 19, paragraph 2, with the addition of the amounts intended to be re-exported.

International trade under this Convention is based on the system of import certificates and export authorisations. Transit of goods is a part of international trade and must therefore comply with the relevant provisions of the Convention.

The machinery for import and export designed by the Convention may be explained in the following way:

Stage I	Exporter
An importer applies to his national authority for an import authorisation and a certificate for each consignment. (Such certificates are to be obtained by traders, State enterprises and even by research scientists)	An exporter applies to his national authority for an export authorisation for each consignment. The application must accompany the corresponding valid import certificate. (This provision applies to all traders and Government enterprises)
Stage II	
The authorisation, if granted, shall state the make of drug, the names and addresses of the importer and exporter, the quantity to be imported and the period by which importation must be effected.	The authorisation, if granted, shall state the name of the drug, the names and addresses of the exporter and the importer, the period by which the exportation must be effected and the number and the date of the import certificate and the identity of the authority by whom it has been issued. The issuing authority shall send a copy of the export authorisation to the importing country or territory.
Stage III	
The importing authority shall after the importation has been effected or when the period for importation has expired, return the export authorisation to the exporting authority with an endorsement showing the amount imported.	In practice, Governments require two copies of export authorisation to accompany the consignment. On one copy the customs authorities at the port of the exporting country confirm the shipment of the drug and return it to the national authorities concerned with records. The other copy shall accompany the consignment.

All import certificates and export authorisation must be non-transferable, and the Parties should use where possible those names of drugs and substances which are generally used by the World Health Organisation.

Exports of consignments to a post office box or to a bank to the account of a party other than the party named in the export authorisation is not permitted (Article 31, paragraph 8). Shipment of drugs to banks may however be permitted if the account number of the Party is indicated on both the import certificate and export authorisation. Transnational shipment of narcotic drugs by insured letters and by postal parcels are forbidden unless they are sent for scientific and medical purposes and the receiving country received them only on that condition.[30] Export of consignments to a bonded warehouse is prohibited unless import certificates and export authorisation have been made out to that effect. Each withdrawal from a bonded warehouse shall require a warehouse receipt from the authorities concerned

and in the event of sending a withdrawal to a foreign country that should be treated as a withdrawal for export.

All private warehouses for storage of drugs shall be authorised by the Government concerned. Pursuing the provisions of the Single Convention one could say that the carrier or the master or the captain of a ship or an aircraft shall carry a copy of the export authorisation. The Single Convention on Narcotic Drugs implies that the Government of the transit State or territory shall take all due measures to prevent the diversion of a consignment of drugs to a destination other than that named in the export authorisation. In the event of a diversion being authorised the authority in the transit State or territory must issue the necessary export authorisation, a copy of which must be sent to the authorities who had orignally issued the import certificate and the other copy must be sent with the consignment, to the new destination. The copy of the original export authorisation should be sent to the Government of the original exporter, on endorsement.

No consignment of drugs while in transit or while being stored in a bonded warehouse shall be subjected to any manufacturing process or any other process which would change the nature of the drug in question. The packing may not be altered without the permission of the competent authorities. Alteration of packaging may be allowed only in special circumstances, viz. where considerable damage has already been caused to the existing package, or where diversion of a consignment will necessitate a division of a consignment into two or more parts. Although the Single Convention on Narcotic Drugs does not provide for any import certificate or export authorisation for any transnational shipment of preparations in Schedule III, in practice, some Governments require these documents for all or some of these preparations.

(xii) The Convention on Psychotropic Substances

Whereas the Single Convention on Narcotic Drugs distinguishes between an import certificate and an export authorisation, the Convention on Psychotropic Substances does not distinguish between these two instruments; it describes both of them as 'authorisations'. Under the present Convention such authorisation is required only in the case of international trade in substances in Schedules I and II but not for preparations in Schedule II. Whereas the present Convention imposes restrictions on export and import of substances in Schedules II, III and IV, and their preparations, the Single Convention on Narcotic Drugs limits the import and export of all narcotic drugs and their preparations to medical and scientific purposes. Article 12 of this Convention deals with the provisions relating to international trade. In the case of import or export of substances in Schedules I and II, a separate export or import authorisation is necessary for each substance. The corresponding provision of the Single Convention on Narcotic Drugs (Article 3, paragraph 5) requires the Parties to "follow as closely as may be practicable the form of import certificate approved by the Commission."

Rules regarding international trade in psychotropic substances and their preparations may be applied, mutatis mutandis, as they appear in the Single Convention on Narcotic Drugs. However the present Convention expects the Parties to take certain extra measures if necessary in respect of consignment of substances in Schedules I and II, when passing through free zones and free ports; the Single Convention on Narcotic Drugs also expects the Contracting Parties to take similar measures in similar circumstances.

One of the important purposes of Article 13 is to enable the Parties to bring under international control regime, those substances and preparations which are not subject to import certificates and export authorisations. The substances which will thus come under the international control regime are the following:

"(i) Transactions in substances in Schedule I and their preparations freed from the application of the import certificate and export authorisation system in certain bilateral relations according to Article 2, paragraph 7, sub-paragraph (a), clause (iii);

(ii) Transactions in substances in Schedule II and their preparations, freed from the application of the import certificate and export authorisation system in certain bilateral relations according to Article 2, paragraph 7, sub-paragraph (b) clause (iii);

(iii) Transactions in substances in Schedule II and their preparations to which pursuant to Article 2, paragraph 7, sub-paragraph (e) the regime applicable to substances in Schedule III or IV may be applied, and which consequently are not subject to the import certificate and export authorisation system;

(iv) Transactions in preparations of substances in Schedule II exempted pursuant to Article 3, paragraph 3 from the application of the import certificate and export authorisation system;

(v) To carrying by international travellers of small quantities of preparations of substances in Schedules II, III or IV for personal use pursuant to Article 4, paragraph (a);

(vi) Transactions in substances in Schedule III and their preparations (subject to the export declarations pursuant to Article 12, paragraph 2); and

(vii) Transactions in substances in Schedule IV and their preparations."[31]

In the case of combined transport it is believed that each country making arrangements for its separate form of transport will be considered the country of registration. Therefore, the substance carried by combined transport shall be subject to the laws, regulations, permits and licences of the country of registration.

(xiii) Measures Against Illicit Traffic

Measures against illicit traffic in drugs and psychotropic substances and the measures governing international trade overlap to a certain extent. However, both the Single Convention and the Convention on Psychotropic Substances have made special provisions for combating illicit traffic in narcotic drugs and psychotropic substances respectively.

(xiv) The Single Convention on Narcotic Drugs

Article 35 of the Single Convention enumerates the provisions for action against illicit traffic in narcotics.

This Convention clearly points out that appropriate arrangements at the national level for co-ordination of preventive and repressive action against the

illicit traffic is of the utmost importance. The Convention also recommends the national authorities to designate an appropriate agency responsible for such co-ordination. Paragraphs (b), (c) and (d) of Article 35 have made it obligatory for the Contracting Parties to:

> (b) Assist each other in the campaign against the illicit traffic in narcotic drugs;
>
> (c) Co-operate closely with each other and with the competent international organisations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic;
>
> (d) Ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner.

(xv) The Convention on Psychotropic Substances

Article 21 of this Convention enumerates the provisions for action against illicit traffic in psychotropic substances. These provisions are similar to those in Article 35 of the Single Convention on Narcotic Drugs. Article 21(b) however is more elaborate than the corresponding provisions in Article 35 of the Single Convention on Narcotic Drugs:

> "(b) Assist each other in the campaign against the illicit traffic in psychotropic substances and in particular immediately transmit, through the diplomatic channel or the competent authorities designated by the Parties for this purpose, to the other Parties directly concerned, a copy of any report addressed to the Secretary-General under Article 16 in connection with the discovery of a case of illicit traffic or a seizure."

Both the Conventions maintain that in taking action against the illicit traffic, due regard should be paid to the constitutional, legal and administrative systems of the Contracting Parties. However, success in this regard depends to a considerable extent upon co-ordination at the national level, that is, co-ordination between the national police and excise authorities and the local police and excise authorities.

(xvi) Treatment, Rehabilitation and Education of Drug Addicts

Both the Conventions advocate treatment, rehabilitation and education of drug addicts. The main responsibility in this regard lies with the Contracting Parties. One of the purposes of the U.N. Fund for Drug Abuse Control is to provide assistance to the Contracting Parties in this regard.

(xvii) The Single Convention on Narcotic Drugs (as amended)

Article 38 of the Single Convention on Narcotic Drugs, as amended, reads

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

(xviii) The Convention on Psychotropic Substances

The provisions of this Convention (Article 20) are more elaborate and dynamic than the corresponding provision of the Single Convention on Narcotic Drugs. This Article specifically provides for social re-integration of abusers of psychotropic substances, understanding of the problems of abuse of psychotropic substances, early identification, training of personnel in the treatment, after-care, rehabilitation of the abusers of psychotropic substances.

In view of the lack of sufficient financial resources, the Contracting Parties may not be able to implement these provisions. However, the idea of establishing regional centres for the purpose of promoting research with a view to devising probable solutions to the problems resulting from the illicit use of drugs might be pursued by national authorities. Drug education at the school level has not yet proved to be an effective method of reducing the number of potential drug addicts.

(xix) Penal Measures

As illicit use of, traffic in and manufacture of narcotic drugs and psychotropic substances and preparations are prohibited, both these Conventions provide for penal measures.

(xx) The Single Convention on Narcotic Drugs

Articles 33, 36 and 37 of the Single Convention on Narcotic Drugs provide for penal measures in the case of any offence relating to narcotic drugs and substances. On an analysis of these provisions it would appear that the decision as to whether or not an act is contrary to the provisions of the Convention, has been left to the judgement of the Contracting Parties. The determination and gravity of the offence will also be considered by the Contracting Party concerned by a reference to its constitutional provisions and criminal law. The Convention, however, provides that each of the offences enumerated in paragraph 1 of Article 36, if committed in different countries, shall be considered as a distinct offence. This provision admits of the principle of territoriality. The provision of Article 36(2)(a)(iii) that "foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism" bears considerable similarity to that of Article 6 of the 1936 Convention. Despite the all-too-familiar attitudes of the majority of States towards extradition of criminals, Article 14 of the 1972 Protocol amending the Single Convention on Narcotic Drugs has made the following provisions:

Paragraph 2, sub-paragraph (b), clause (ii)

(ii) 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 treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences enumerated in paragraphs 1 and 2(a)(ii) of this Article. Extradition shall be subject to the other conditions provided by the law of the requested Party.

Paragraph 2, sub-paragraph (b), clause (iii)

(iii) Parties which do not make extradition conditional on the existence of a treaty shall recognise the offences enumerated in paragraphs 1 and 2(a)(ii) of this Article as extraditable offences between themselves, subject to the conditions provided by the law of the requested Party.

Paragraph 2, sub-paragraph (b), clause (iv)

(iv) Extradition shall be granted in conformity with the law of the Party to which application is made, and, notwithstanding sub-paragraphs (b)(ii) and (iii) of this paragraph, the Party shall have the right to refuse to grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.

(xxi) The Convention on Psychotropic Substances

The relevant Article is Article 22 of this Convention, which bears good similarity with the provisions of Article 36 of the Single Convention on Narcotic Drugs.

Drug offences should be treated differently from political offences and hence, it would be advisable for the Contracting Parties to implement the penal provisions as far as possible.