

INTERNATIONAL NARCOTICS CONTROL: A PROPOSAL TO ERADICATE AN INTERNATIONAL MENACE

The international community is presently fighting a losing battle against an enemy that destroys entire economies, contributes to starvation and breeds corruption.¹ The enemy is the illicit drug industry, which is organized, sophisticated and well-financed.² The industry is currently so lucrative that traffickers can afford to sink vessels to avoid capture, allow million dollar cargoes of drugs to be seized or destroyed and abandon expensive planes and ships after only a single use.³ Existing multilateral treaties and drug enforcement programs have failed to curb the expansion of the illicit narcotics industry. This problem has resulted because the present international narcotics control system is defective in several areas. First, the system is directed primarily at limiting and regulating the legal drug industry.⁴ Although effective where licit traffic is concerned, control of the illicit drug industry remains inadequate. Second, the current international control system is drastically underfunded. Third, concrete enforcement mechanisms for the system are lacking.⁵ Finally, the current multilateral treaties allow for denunciation and provide "escape clauses" for the signatories.⁶ These provisions permit signatories to withdraw at any time from the present treaties. Any attempt to control the illicit drug industry must directly address and solve these inadequacies.⁷

This Comment will examine the current problem of illicit drug trafficking and its impact on the international community, illustrat-

1. *International Narcotics Trafficking: Hearings Before the Permanent Subcomm. on Governmental Affairs of the U.S. Senate*, 97th Cong., 1st Sess. 1 (1981) (statement of U.S. Senator Roth) [hereinafter cited as *Hearings*]; *id.* at 242 (statement of F. Mullen, Acting Administrator, Drug Enforcement Agency (DEA)). For example, a UN representative was forced to resign and waive immunity after he was found to be involved in a heroin smuggling ring. *N.Y. Times*, May 20, 1982, at B5, col. 6.

2. *Hearings*, *supra* note 1, at 1 (statement of U.S. Senator Roth). See also *N.Y. Times*, Oct. 21, 1982, at A30, col. 5, noting that Bolivian drug trafficking is protected and controlled by military and paramilitary forces.

3. *Hearings*, *supra* note 1, at 2. Columbian crewmen dumped 136 bales of marijuana, worth 3.4 million dollars, into the ocean when approached by a United States Coast Guard Cutter. *N.Y. Times*, July 24, 1982, at 6, col. 6.

4. See *infra* text accompanying note 158.

5. See *infra* text accompanying notes 172-74, 179-81.

6. See *infra* text accompanying notes 165-71.

7. See *infra* notes 129-81 and accompanying text.

ing that the problem has reached epidemic proportions.⁸ The Comment will continue with a brief overview of the drugs which are most frequently abused and their geographic origins.⁹ The history of international narcotics control will also be examined, focusing on the evolution of a comprehensive legal system.¹⁰ An analysis of the treaties regarding international narcotics control which are presently in force will expose the weaknesses in the present control system.¹¹ In conclusion, a proposal designed to achieve a more effective system of control via the enactment of a multilateral treaty which will both address the weaknesses of the present system and legally bind the international community will be presented.

I. THE INTERNATIONAL NARCOTIC PROBLEM: AN EPIDEMIC

An initial understanding of the magnitude of the international narcotics problem is useful. It is also helpful to examine the drugs that are commonly abused and trace their international trafficking routes from production to consumption. An understanding of these facts indicate an alarming increase of drug abuse throughout the world.

A. *The Scope of the Expanding Problem*

A conservative estimate of the retail value of the illicit drug trade in the United States was eight billion dollars in 1980,¹² establishing the illicit drug industry as the second largest business in the United States.¹³ Over 90 percent of illicit drugs consumed in the United States are of foreign origin.¹⁴ In 1980 it was estimated that 3.6 to 4.3 metric tons of heroin,¹⁵ 40 to 48 metric tons of cocaine hydrochloride,¹⁶ 9,000 to 14,000 metric tons of marijuana,¹⁷ and

8. See *infra* text accompanying notes 12-35.

9. See *infra* text accompanying notes 34-55.

10. See *infra* text accompanying notes 57-128.

11. See *infra* text accompanying notes 162-81.

12. Smith, *Drug Traffic Today-Challenge and Response*, 9 DRUG ENFORCEMENT 2 (1982).

13. The illicit drug industry is second only to Exxon's 1980 annual sales of 103 billion dollars. *Id.*

14. U.S. DEPT. OF STATE, FEDERAL STRATEGY 1982 (1982) [hereinafter cited as FEDERAL STRATEGY 1982].

15. THE NATIONAL NARCOTICS INTELLIGENCE CONSUMERS COMMITTEE, NARCOTICS INTELLIGENCE ESTIMATE 3 (1982) [hereinafter cited as NIE]. A metric ton equals 2,204 pounds.

16. *Id.* at 6.

17. *Id.* at 7.

200 metric tons of hashish,¹⁸ methaqualone¹⁹ and other dangerous drugs²⁰ were illegally imported into the United States. The United States' response to this multi-billion dollar problem has been to expend a mere fifty million dollars per year for overseas enforcement.²¹ Similar problems exist in the international context.

The situation (in Southeast Asia and South America) no longer permits authorities there to dismiss the narcotics issue as a distinctly American problem. It has reached epidemic proportions . . . [and] as a result, governments which once merely gave lip service to international drug enforcement seem to be willing at last to become seriously involved in narcotics control.²²

Moreover, vast amounts of money obtained from illicit trafficking are "laundered" throughout the world.²³ Unfair competition and economic havoc are created by channeling some of this money into supposedly legitimate businesses.²⁴ Businesses which utilize this money are able to operate at a loss, which in turn has a destructive effect on their competitors.²⁵

Hong Kong, Switzerland, and the Cayman Islands attract launderers of illicitly obtained money due to their status as major international financial centers.²⁶ Their bank secrecy laws cloak the movement of large sums of money. Traffickers favor Switzerland and the Cayman Islands because of their proximity to the United States.²⁷ The free currency market²⁸ of Hong Kong is favored be-

18. *Id.* at 8.

19. Methaqualone is commonly known in the United States as quaalude. *Id.*

20. NIE, *supra* note 15, at 8.

21. *Id.*

22. *Hearings, supra* note 1, at 13 (statement of U.S. Senator Nunn).

23. To launder money is to conceal its source. NIE, *supra* note 15, at 79-86. Authorities broke up a typical laundering operation in New York. The operation laundered over 100 million dollars from illicit trafficking in drugs into legitimate businesses. The money was funneled through a coffee importing company to various New York bank accounts. From these accounts, the money was transferred to accounts in other states and countries, often as bogus business loans. The money then appeared "clean" and was withdrawn by those for whom it was laundered. Thus, the source and detection of the money was avoided and no taxes were paid. N.Y. Times, Nov. 17, 1982, at B3, col. 6.

24. *Hearings, supra* note 1, at 3 (statement of U.S. Senator Roth). William von Raab, United States Commissioner of Customs, recently attacked Florida bankers for profiting from drug dealers by hiding their transactions. He charged that they ignore laws requiring them to report any transaction of over \$10,000. N.Y. Times, May 10, 1982, at A16, col. 6.

25. Additionally, the DEA has linked illicit drugs to terrorist groups throughout the world. These groups finance their activities by selling illicit narcotics. See N.Y. Times, Apr. 25, 1982, § I, at 29, col. 6.

26. NIE, *supra* note 15, at 81.

27. *Id.*

28. A free currency market is one where any amount of cash or gold may be brought

cause it provides a tailor-made environment for the international drug trade.²⁹

In addition, illicit trafficking breeds corruption by generating enormous profits.³⁰ For example, high ranking military and governmental officials receive millions of dollars in bribes from drug traffickers.³¹ Illicit narcotics traffic also encourages crime, such as execution-style murders of entire families³² and in one instance, the murder of a federal judge who was to preside over a narcotics case.³³ Such criminal activity is prevalent throughout the entire spectrum of the illicit drug industry.

The illicit drug industry also contributes to adverse agricultural conditions. For example, in Bolivia and Peru, farmers motivated by greater profits substitute marijuana and coca crops for necessary staples.³⁴ This increases the burden on already starving populations.³⁵

into or out of the country. See Litton, *Hong Kong: A Financial Centre of the Pacific and the Far East*, N.Z.L.J., January 1982 at 5-7.

29. *Southeast Asian Drug Trade: Hearings Before the Subcomm. on East Asian and Pacific Affairs of the Senate Comm. of Foreign Relations*, 97th Cong., 2nd Sess. 19 (1982) (statement of F. Mullen, DEA) [hereinafter cited as *1982 Hearings*].

30. *Hearings*, *supra* note 1, at 242 (statement of F. Mullen, DEA).

31. N.Y. Times, Nov. 9, 1982, at A8, col. 4. Four high ranking Cuban officials, including the chief of the Cuban Navy, were indicted on narcotics smuggling charges. They allowed for the protection and resupply of ships transporting methaqualone tablets and marijuana from Colombia to the United States. N.Y. Times, Nov. 6, 1982, at 1, col. 1.

32. A Colombian couple and their two children were slain execution style in Queens, New York. Fifteen million dollars worth of cocaine, one million dollars in cash and an arsenal of weapons and ammunition were found in their apartment. The killings were tied to cocaine trafficking from Colombia. N.Y. Times, Feb. 1, 1982, at B1, col. 6. Two days later, two more people were executed in Queens as a result of involvement with the same Colombian cocaine trafficking. John J. Sanntucci, Queens District Attorney, summarized the situation as follows: "There is a cocaine warfare taking place. There are terrorist-like attacks, ambushes, kidnappings, raids on peoples' apartments and homes. It has all the earmarks of guerrilla warfare among dealers. They are fighting for huge profits." N.Y. Times, Feb. 3, 1982, at B3, col. 5.

33. A narcotics smuggler accused of importing cocaine and marijuana murdered the Federal judge who was to preside over his case. The suspected reason for the murder was that the judge was known to impose stiff penalties for drug trafficking. William Webster, Director of the FBI noted that "the large sums of money available to those who deal in narcotics has generated a kind of arrogance that makes them willing to take on the institutions that try them." N.Y. Times, Jan. 16, 1982, at B7, col. 1.

A subsequent murder was prevented by authorities when they indicted several persons for hiring two killers to murder a judge who had sentenced their father to twenty years on narcotics charges. Other targets of this plot were the District Attorney involved and several Drug Enforcement Administration agents. N.Y. Times, Oct. 9, 1982, at 26, col. 1.

34. *Hearings*, *supra* note 1, at 242 (statement of F. Mullen, DEA).

35. See N.Y. Times, July 31, 1982, at 26, col. 1.

B. *Abused Drugs and their Origins*

Heroin abuse is the most serious international drug problem.³⁶ The two major world production centers, the Golden Triangle³⁷ and the Golden Crescent,³⁸ produce alarming amounts of the opium poppy which is used to make heroin.³⁹ The Golden Triangle traffics to the United States and Europe, as well as to its own domestic users.⁴⁰ Much of the opium produced in the Golden Crescent is consumed domestically,⁴¹ where opium and heroin abuse have reached unprecedented levels.⁴²

Along with heroin, cocaine abuse is increasing worldwide at a rapid pace. The growth rate of cocaine use in recent years is unparalleled by any other drug.⁴³ Bolivia and Peru are the principle

36. The reasons for this are that heroin produces a strong physical dependence, which is easily acquired. The drug is extremely potent and, if too pure, will cause an overdose. An overdose frequently results in death. Address by John Warner, National Drugs Conference in Preston England (Mar. 24-26, 1981).

Heroin is responsible for most of the overdose deaths that occur in the United States. See WHITE HOUSE DRUG ABUSE POLICY OFFICE, FEDERAL STRATEGY FOR THE PREVENTION OF DRUG ABUSE AND DRUG TRAFFICKING 15 (1982).

37. The Golden Triangle consists of Burma, Laos and Thailand. The principle production areas are along their adjoining borders. NIE, *supra* note 15, at 29.

38. The Golden Crescent consists of Afghanistan, Iran and Pakistan. *Id.*

39. The opium is sold to a merchant by the farmer. The merchant sells the opium to a morphine base processor, who sells this "base" to a laboratory. Emerging from the laboratory as pure heroin, the drug eventually finds its way to the user via a conglomerate of traffickers. The farmer is paid between \$350.00 and \$1,000.00 for 10 kilograms of raw opium. That opium produces one kilogram of heroin, which is sold to users for \$2.23 million. See NIE, *supra* note 15, at 30, 32. In 1980, Burma produced about 170 metric tons of raw opium, Laos about 40 metric tons, and Thailand about 15 metric tons. This output of 225 metric tons from the Golden Triangle is well below its usual 500 metric ton average. NIE, *supra* note 15, at 30, 32.

In 1980, Pakistan produced about 125 metric tons of raw opium, down from the 1979 production level of 800 metric tons. This decrease was due to poor growing conditions, depressed prices, and governmental intervention. *Id.* at 22.

No accurate estimate is possible from Afghanistan due to the invasion by the Soviet Union. However, based on previous estimates, its production level could be as high as 200 metric tons annually. Iran, equally difficult to estimate, is thought to have produced between 400 and 600 metric tons in 1980. *Id.* at 24.

40. NIE, *supra* note 15, at 32. About 70 percent of the Golden Triangle is controlled by the Shaw United Army. While their location and activities are known, little can be done since they are heavily armed and fortified. U.S. DEPT. OF STATE, *International Narcotic Control Strategy* 2 (1981); see also, N.Y. Times, Jan. 25, 1982, at A5, col. 5.

41. NIE, *supra* note 15, at 24, 25.

42. *Id.* at 25.

43. NIE, *supra* note 15, at 49. One gram of street pure cocaine (12-20 percent purity) costs the user about \$120.00. *Id.* at 46. The coca leaf is processed into coca paste. (Approximately 350 kilograms of coca leaves yields about 2.5 kilograms of coca paste.) The paste is then sold to produce a cocaine base which is transformed into cocaine hydrochloride. This is buffered or "cut" to a 10 to 20 percent purity and sold to the user. The farmer receives

world sources for coca leaves which are processed into cocaine.⁴⁴ Columbia is the world's primary coca processing country.⁴⁵

Columbia is also the world's largest supplier of marijuana.⁴⁶ Estimates placed Columbia's 1980 marijuana crop at a staggering 40,000 metric tons,⁴⁷ which far exceeded the international demand.⁴⁸ Marijuana is the most commonly abused drug in the United States,⁴⁹ and approximately 75 percent of the marijuana consumed in the United States is imported from Columbia.⁵⁰

Mexico, in conjunction with Columbia, is a major producer and smuggler of methaqualone.⁵¹ Methaqualone is the most widely used depressant on the United States market and is rapidly increasing in world popularity.⁵² Mexico is also a major producer of marijuana⁵³ and heroin.⁵⁴ Moreover, it is an important transshipment point for other drugs.⁵⁵

In addition to heroin, cocaine, marijuana, and methaqualone, other dangerous drugs are being abused throughout the world.⁵⁶

approximately \$6,600 for 350 kilograms of coca leaves. This produces one kilogram of "street" cocaine (i.e. cocaine hydrochloride) for which the pusher receives about \$800,000. The profit, therefore, from the farm to the street is enormous. NIE, *supra* note 15, at 46-47.

44. At optimum production levels, Bolivia and Peru can make available to the world market 63 metric tons of cocaine hydrochloride annually. *Id.*

45. FEDERAL STRATEGY 1982, *supra* note 14, at 14.

46. The production of marijuana is quite simple. It is grown, dried, and then packaged. Little processing is needed, although some hybrid types, such as "sinsemilla" require more elaborate methods of planting and care. See NIE, *supra* note 15, at 56. The grower may sell to a broker, who sells to an exporter. The exporter will sell to a foreign importer, who sells the marijuana to a distributor. The distributor sells to a retailer, who sells to the user. *Id.* The grower's price ranges anywhere from \$3.00 per pound for "Colombian" to \$1,800.00 per pound for sinsemilla. The retailer, in turn, receives from \$575.00 per pound for sinsemilla. *Id.* The approximate street value—the cost to the user—of one metric ton of marijuana is \$1.6 million. *Hearings, supra* note 1, at 200. (statement of Linneman, INM).

47. NIE, *supra* note 15, at 54.

48. *Id.* at 7.

49. FEDERAL STRATEGY 1982, *supra* note 14, at 10. An estimated 25 million Americans use marijuana at least once a month. See NIE *supra* note 15, at 7.

50. NIE, *supra* note 15, at 54. The United States imports 93 percent of its annual supply of marijuana. FEDERAL STRATEGY 1982, *supra* note 14, at 12.

51. NIE, *supra* note 15, at 36.

52. *Id.* at 63. Methaqualone is commonly known as Mandrax in Europe and Quaalude in the United States. The drug is manufactured in a laboratory using various chemicals. It has limited medical uses, but most of the quantity of methaqualone is produced on the illicit market. There, bulk powder is manufactured into counterfeit tablets. FEDERAL STRATEGY 1982, *supra* note 14, at 12.

53. In 1980, Mexico produced an estimated 1,300 metric tons of marijuana. NIE, *supra* note 15, at 36.

54. In 1980, Mexico produced approximately one metric ton of heroin. *Id.* at 54.

55. *Id.* at 36.

56. For example, Hashish, a derivative of the cannabis plant, had a worldwide export

The magnitude of the drug problem has reached epidemic proportions and in response, the international community has attempted to develop an effective system to control narcotics. An examination of the history of international narcotics control will illustrate the evolution of this system.

II. HISTORY OF INTERNATIONAL NARCOTICS CONTROL

Several shortcomings are evidenced in the history of international narcotics control. The current control system remains inadequate due to the inclusion of outdated provisions.

A. *Early Attempts to Control Opium*

Prior to the 16th century, the use of opium for medicinal and ritualistic purposes was socially acceptable.⁵⁷ The first substantial illicit trafficking began with the colonial and imperial expansion by the European powers in the 16th century.⁵⁸ During this period, the legal trade of opium flourished. Since it was socially acceptable, the need for limitations on trade and trafficking was not envisaged.⁵⁹ By the end of the 17th century, however, opium abuse⁶⁰ had become widespread in almost every part of the world.⁶¹ Eventually, unorganized protests against illicit opium use began, and by the end of the 19th century the tide of public opinion had changed.⁶² By the turn of the century, opium smoking had become morally disfavored throughout the international community⁶³ and opium abuse had become recognized as an obvious worldwide

volume of 970 metric tons in 1980. *Id.* at 60. Hallucinogens such as LSD and PCP continue to be abused. The use of stimulants such as amphetamines and methamphetamines has doubled since 1975. FEDERAL STRATEGY 1982, *supra* note 14, at 18. Barbituates and tranquilizers are also frequently abused. These drugs are particularly dangerous because of the numerous instances of fatal overdoses. *Id.* at 17.

57. S. CHATTERJEE, LEGAL ASPECTS OF INTERNATIONAL DRUG CONTROL 3 (1981) [hereinafter cited as CHATTERJEE]. The medicinal and ritualistic use of the opium poppy dates back to at least 2000 B.C. There is archeological evidence that the use of opium for such purposes was widely accepted during that period. This attitude prevailed until the 16th century because no problem was perceived. *Id.* at 4-11.

58. Glatt, *The Development of International Control of Drugs*, 25 WHO CHRONICLE 24, 189 (May 1970).

59. *Id.*

60. The major form of abuse during this time was the smoking of the opium. See CHATTERJEE, *supra* note 57, at 12-13.

61. *Id.*

62. *Id.* at 14-17.

63. *Id.*

problem.⁶⁴ The magnitude of the dilemma made it apparent that a purely national solution was impossible.⁶⁵

In response, the Shanghai Commission convened with the objective of limiting the use of opium and its derivatives to medical and scientific consumption.⁶⁶ While no treaty entered into force, the conference promulgated nine resolutions which evidenced international concern over the increasing drug problem.⁶⁷ This concern eventually led to the Hague Convention.⁶⁸

The Hague International Opium Convention of 1912⁶⁹ was the first attempt at international narcotics control which legally obligated governments by treaty.⁷⁰ The Hague Convention became the foundation of subsequent international control efforts, but unfortunately lacked the administrative machinery to be effective.⁷¹ The parties, for instance, were not legally bound by certain provisions, but were merely encouraged to "use their best endeavours to comply with the provisions."⁷² Signatories could therefore refuse to comply. In addition, the Hague Convention provided that any party could denounce the treaty at any time.⁷³ It was believed that such a clause was necessary to encourage ratification of the treaty

64. UNITED NATIONS DIVISION OF NARCOTIC DRUGS, 50 YEARS OF INTERNATIONAL CONTROL 2 (March, April, 1979) (information letter) [hereinafter cited as DND].

65. *Id.*

66. H. Wright, *The International Opium Commission*, 3 AM. J. INT'L L. 648-673 (1909).

67. *Id.*

68. CHATTERJEE, *supra* note 57, at 39; DND, *supra* note 64, at 1.

69. Hague International Opium Convention of 1912, Jan. 23, 1912, T.S. No. 612, 8 L.N.T.S. 187 [hereinafter cited as Hague Convention].

70. M. BASSIOUNI & V. NANDA, TREATISE ON INTERNATIONAL CRIMINAL LAW 539 (1973) [hereinafter cited as BASSIOUNI]. Twelve nations—Germany, United States, China, France, United Kingdom, Italy, Japan, the Netherlands, Persia, Portugal, Russia, and Siam—participated in considering an attempt to curb the abuse of opium and its derivatives.

The purpose of the treaty is expressed in Article 1. The States "shall enact effective laws or regulations for the control of the production and distribution of raw opium." *Id.* The treaty enumerated four basic principles: 1) the production and distribution of raw opium shall be legally controlled; 2) opium smoking should be gradually suppressed; 3) manufacture, sale and use of morphine and cocaine should be limited to medical and legitimate needs; and 4) manufacturers and traders in such drugs should be subjected to a system of permits and recordings. Waddell, *International Narcotics Control*, 64 AM. J. INT'L L. 310, 312 (1970).

71. See, e.g., Recent Treaties and Statutes, *Drug Control-Protocol Amending Single Convention on Narcotic Drugs, 1981 Protocol Strengthens Authority of the International Narcotics Control Board*, 6 VAND. J. TRANSNAT'L L. 624 (1973) [hereinafter cited as *Drug Control*].

72. E.g., Hague Convention, *supra* note 69, art. 12: Due regards being had [sic] to the differences in their conditions, the contracting parties shall use their best endeavors to restrict to authorized persons the import of morphine, cocaine, and their respective salts.

73. *Id.* art. 25. If one of the contracting powers should wish to denounce the present convention, the denunciation shall be notified in writing to the government of the Nether-

by allowing States to protect their own interests.⁷⁴ In reality, the denunciation provision had an adverse impact upon the treaty. Although it attracted signatories, the provision encouraged non-cooperation.⁷⁵

Thus, the attitude of the Parties⁷⁶ and the manner in which the treaty was drafted⁷⁷ rendered the Hague Convention ineffective. The legal manufacture of narcotics far exceeded required needs of the international medical and scientific community.⁷⁸ With no effective means of control, drug production continued unchecked until the League of Nations intervened.

B. Control Under the League of Nations

In response to the inadequacies of the Hague Convention, the Geneva International Opium Convention was adopted in 1925.⁷⁹ This was the first attempt by the League of Nations to control the abuse of, and trade in a variety of narcotic substances.⁸⁰ States hoped that the production and manufacture of narcotic substances could be limited by exercising tighter control over international trade.⁸¹

lands, who will immediately communicate a certified copy of the notification to all the other powers, informing them of the date it was received.

74. When the requirements of a convention are made optional, the party's sovereignty is protected. Professor Frankel has observed that State interaction is based upon a basic contradiction between the demands of sovereignty and State needs which can be satisfied only by interaction limiting this sovereignty, sometimes to the point of demanding for the greatest efficiency some form of super-national organization which would take decisions binding the State. Traditionally, this dilemma was solved in the favor of State sovereignty. J. FRANKEL, *INTERNATIONAL POLITICS: CONFLICT AND HARMONY* 236 (2d ed. 1973). To depart from this tradition, it is necessary to develop the habit of cooperation by means of joint efforts through international instruments and organization. *Id.* at 237.

75. CHATTERJEE, *supra* note 57, at 189. During this period the contracting Parties suffered from a lack of mutual trust and international responsibility. This, combined with the parties' desire to guard their own interests, caused two additional conferences to be convened to expedite ratification. *See Drug Control, supra* note 71.

76. *See supra* note 75.

77. *See supra* note 73.

78. DND, *supra* note 64, at 2.

79. Geneva International Opium Convention, Feb. 19, 1925, 81 L.N.T.S. 317 [hereinafter cited as Opium Convention]. The Convention met to bring about "a more effective limitation of the production and manufacture of [narcotic] substances." This convention adopted the Agreement Concerning Suppression of International Trade into Use of Prepared Opium Feb. 11, 1925, 51 L.N.T.S. 337, which had convened to take action against opium smoking, manufacture of, trade in, and smuggling of prepared opium. *See also* Waddell, *supra* note 70, at 312.

80. CHATTERJEE, *supra* note 57, at 119. The Hague Convention was aimed only at opium and its derivatives.

81. Waddell, *supra* note 70, at 312. The parties were required to submit annual statistics

One of the objectives of the Opium Convention was to provide the administrative machinery that the Hague Convention lacked.⁸² To accomplish this aim, the language used in the treaty provisions was strengthened. Under the Opium Convention, it was agreed that the Parties *shall require* that specific acts be done⁸³ and that definite measures be taken to control international narcotics.⁸⁴ The Permanent Central Board was created to supervise these provisions on an international level.⁸⁵ The Board's creation was significant because it evidenced the international community's recognition of the need for an international enforcement body. Unfortunately, the Board lacked any real power and therefore could not provide adequate international supervision.⁸⁶

Despite these weaknesses, two important legal achievements resulted from the Opium Convention. First, it divided the narcotics control structure into two components—domestic and international.⁸⁷ Second, it legally distinguished between the manufacture of drugs for medicinal and non-medicinal purposes.⁸⁸ The former accomplishment was important because both domestic and international controls are crucial to an effective system.⁸⁹ Domestic con-

to the Permanent Central Board concerning the manufacture, consumption and on-hand stocks of opium and coca leaves. Under Article 22 of the Opium Convention, quarterly reports on the importation and exportation of these two substances were to be included in the annual statistics. Further, Article 5 of the Opium Convention called for complete cooperation between signatories and for the enactment of laws to limit substances to medical and scientific purposes.

Opposition to this estimate system arose because it was believed that if the legal trade was controlled, then illicit manufacture and trafficking would be stimulated. Report of the Opium Advisory Committee, Annex 1, 380, LEAGUE OF NATIONS DOC. C.760 M.260 1924 XI (1924). This fear was later realized and is now one of the sources of the international problem. See *infra* note 204.

82. See *supra* note 61.

83. E.g., Opium Convention, *supra* note 79, art. 12: "Each contracting Party shall require . . ." this was intended to be more demanding than the language of the Hague Convention. See also *supra* note 70.

84. Opium Convention, *supra* note 79. Articles 2, 3, 5, 6, and 7 called for more definite measures of control than those of the Hague Convention.

85. *Id.* ch. vi, arts. 19-27.

86. *Id.* Article 24 gives the Permanent Central Board power to "call to the attention of the Governments of all the Contracting Parties and of the Council of the League of Adaptions" any matter the Board deems questionable. The most extreme power the Board has is that it can publish a report and forward it to the governments and the League. *Id.* art. 24 (5). Thus, the Board had no real enforcement powers.

87. Opium Convention, *supra* note 79. Chapters II and III of the Convention specifically enumerate provisions for internal control, while Chapter V provides for control of international trade.

88. DND, *supra* note 64, at 2.

89. The Hague Convention recognized the need of domestic control in Articles 1, 2, 9,

control is necessary to regulate the production of raw opium, coca leaves, and manufactured drugs. International control is necessary to control trade. The distinction between manufacture for medicinal purposes and manufacture for other purposes was important because by the 1920's the majority of the illicit narcotics supply was derived from legal trade.⁹⁰ This distinction was accomplished by utilizing an estimate system⁹¹ which provided that all narcotics not covered by the system were deemed to be used for abuse purposes.⁹²

The Opium Convention, however, had little effect because application of the estimate system was not compulsory.⁹³ Moreover, some important narcotics producing countries did not sign the treaty,⁹⁴ and thus it lacked any "universal" commitment. Further, the Convention possessed no adequate provisions for international supervision.⁹⁵ As a result, drug trafficking and addiction continued to spread throughout the world.

Instigated by an alarmed public, a third convention was signed at Geneva in 1931.⁹⁶ The premise underlying the 1931 Convention was both new and extremely useful to later treaties.⁹⁷ The new treaty was based on the premise that if the supply of drugs becomes limited, then illicit trafficking necessarily becomes limited as well.⁹⁸

10 and 11. The Opium Convention strengthened these and provided more definite measures of control. *Id.* arts. 2, 3, 5, 6 and 7. For example, the Opium Convention provided that export and import of coca leaves could be limited to a certain number of towns, ports or other places. *See* Opium Convention, *supra* note 79, art. 2. The Hague Convention had no such provisions.

90. At least 100 tons of opium derivatives entered into illicit traffic between 1925 and 1929. The world's licit demand during this period was only 39 tons. The excess production found its way into illicit channels. Today there is no significant diversion of narcotics from licit manufacturers to illicit traffic. DND, *supra* note 64, at 2.

91. *See supra* note 81.

92. DND, *supra* note 64, at 2.

93. Opium Convention, *supra* note 79, art. 18.

94. These States were Afghanistan, Albania, China, Ethiopia, Guatemala, Iceland, Iran, Liberia, Mexico, Nicaragua, Panama, Peru, Saudi Arabia, and the United States.

95. *See supra* note 86.

96. Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, July 13, 1931, 139 L.N.T.S. 301 [hereinafter cited as 1931 Convention]; Waddell, *supra* note 70, at 313. The purpose of the Convention was to supplement the Hague and Geneva Conventions by "rendering effective by international agreement the limitation of the manufacture of narcotic drugs to the world's legitimate requirements for medical and scientific purposes and by regulating their distribution."

97. The Modern United States Strategy for International Narcotics Control operates on the premise that the most effective way to combat illicit trafficking is to control it at its source. FEDERAL STRATEGY 1982, *supra* note 14, at 2.

98. CHATTERJEE, *supra* note 57, at 153. The 1931 Convention introduced a new esti-

The 1931 Convention was very effective in limiting and regulating the manufacture and distribution of legitimate narcotics. It became increasingly difficult for illicit traffickers to obtain drugs from legitimate factories⁹⁹ which were originally their primary source.¹⁰⁰ Consequently, the illicit trafficker's use of clandestine laboratories to produce narcotics increased.¹⁰¹

As these conventions were all primarily directed at legal narcotics control and regulation, a new treaty was needed to fill the void left in the industry's illicit aspects. The Convention for the Suppression of Illicit Traffic in Dangerous Drugs was adopted in 1936 to provide this gap-filler.¹⁰² The 1936 Convention was the first convention to directly attack illicit trafficking¹⁰³ and make the offense criminally punishable.¹⁰⁴ While previous treaties had asked for mere cooperation between the parties, the 1936 Convention required States to recognize illegal trafficking as a criminal offense and punishable as such. This mandate was not easily accomplished. The 1936 Convention attempted to set out stringent penalties and expected States with different philosophies on criminal law to accede to these sanctions.¹⁰⁵ Further, the 1936 Convention in-

mate system whereby all countries, both signatories and non-signatories, were to provide estimates of their legitimate narcotics need for the following year. By these means, the legitimate worldwide need for narcotics could be determined. Thus, the manufacture and export could be controlled to comply with those needs. The Permanent Central Opium Board was given the power to embargo any imports that would exceed the estimates. See 1931 Convention, *supra* note 96, at art. 14. This power, however, was never exercised. See Waddell, *supra* note 70.

99. DND, *supra* note 64, at 4.

100. *Id.*

101. See DND, *supra* note 64, at 4. The 1931 Convention presented an interesting attempt at "international legislation," which was, up until that time, unknown to international law. Compared with other commodity agreements, this convention achieved a higher degree of international cooperation because its authors applied two methods which underlie all organized attempts at influencing human behavior. These were seeking the consent of those whose cooperation will enable the execution of the rule of social behavior to be effective and putting pressure on possible dissenters. See *The Evolution of the International Control of Narcotic Drugs*, 2 BULL. NARC. 3, at 5 (July, 1950).

102. Convention for Suppression of Illicit Traffic in Dangerous Drugs, June 26, 1936, 198 L.N.T.S. 299 [hereinafter cited as 1936 Convention]. This is the only pre-UN Convention that is not expressly terminated by the Single Convention on Narcotic Drugs, March 30, 1961, 520 U.N.T.S. 151, T.I.A.S. 6298 [hereinafter cited as Single Convention].

103. CHATTERJEE, *supra* note 57, at 169.

104. 1936 Convention, *supra* note 103, at art. 2. The parties were to impose severe penalties against traffickers notwithstanding their nationality or the situs of the crime. In effect, the Parties were asked to apply the principle of universality in their criminal law provisions. See Waddell, *supra* note 70, at 313. The Parties were also required to facilitate extradition for drug offenses. BASSIOUNI, *supra* note 70, at 540.

105. CHATTERJEE, *supra* note 57, at 181-82. The penal provisions were at best vague.

fringed upon the States' cherished principles of territoriality and extradition.¹⁰⁶ For example, offenders could be punished for the same act in different countries, as the act in each country was considered a separate offense.¹⁰⁷

The 1936 Convention failed to attract a significant number of signatories¹⁰⁸ because its "get tough" principles made it unacceptable to many States.¹⁰⁹ Due to inadequate international support, the 1936 Convention failed to achieve an international consensus as to what would be considered punishable acts in narcotics trafficking.¹¹⁰ The 1936 Convention also contained provisions for denunciation similar to those of the Hague Convention.¹¹¹ Thus, the 1936 Convention did not provide effective deterrence against illicit trafficking¹¹² and the problem continued to expand.

The Second World War ended the League of Nations period. States sought to protect their own interests and consequently the requisite desire to adequately participate in international narcotics control was lacking. The major accomplishment of the treaties of the pre-war period was that they forced illicit traffickers to seek new sources for narcotics.¹¹³ However, because the control scheme was directed at the legal narcotics industry, it failed to deter the illicit drug industry.¹¹⁴

C. Control Under the United Nations

After the Second World War, the newly formed United Na-

The treaty set out acts to be punished, but it failed to specify any grade to the offense. Thus, the Parties were given no guidelines to distinguish, for example, between preparatory acts, attempts, simple possession and possession with intent to distribute. See 1936 Convention, *supra* note 103, art. 2.

106. 1936 Convention, *supra* note 103, arts. 3, 4, 6, 7; Starke, *The Convention of 1936 for the Suppression of Illicit Traffic in Dangerous Drugs*, 31 AM. J. INT'L L. 31 (1937); see also *supra* note 74.

107. 1936 Convention, *supra* note 103, at art. 4. Thus, the offender could be subject to double liability.

108. There were only thirty-four signatories to this treaty. See DND, *supra* note 64, at 8.

109. CHATTERJEE, *supra* note 57, at 189.

110. *Id.* at 183.

111. 1936 Convention, *supra* note 103, at art. 18, sec. 3.

112. This author and others believe that the 1936 Convention was an achievement in that it put on the individual States the obligation to severely punish illicit traffickers in drugs. See, e.g., Starke, *supra* note 107, at 38. The United States is not a signatory of the 1936 Convention. Cabranes, *International Law and Control of the Drug Trafficking*, 7 INT'L LAW. 761, 764 (1973).

113. They had to seek new sources due to the regulation of legal production. See DND, *supra* note 64, at 4.

114. *Id.*

tions sought to continue the efforts of the League of Nations to develop an effective system of narcotics control. The 1946 Geneva Protocol¹¹⁵ was adopted to transfer institutions of the extinct League of Nations to the corresponding institutions of the United Nations.¹¹⁶ However, the 1946 Geneva Protocol was primarily administrative and did not affect existing treaties.

With the advancement of pharmacology and chemistry during the post-war period many new drugs capable of producing addiction were synthesized.¹¹⁷ These drugs were mainly synthetic and were not covered under the 1931 Convention.¹¹⁸ In order to include drugs outside of the scope of the 1931 Convention, the 1948 Paris Protocol was enacted.¹¹⁹

The 1948 Paris Protocol met with mixed success. Many countries complied with its provisions.¹²⁰ On the other hand, the 1948 Paris Protocol evidenced a residual pre-United Nations attitude and many States still lacked the desire to be bound by an international instrument.¹²¹ In addition, the 1948 Paris Protocol contained a provision which allowed the Parties to denounce the treaty.¹²² Similar to previous treaties, the purpose of this provision was to attract signatories.¹²³ Moreover, the 1984 Paris Protocol was again directed primarily at the legal aspects of the international drug industry.¹²⁴

In 1953 a new protocol was signed.¹²⁵ The most significant

115. 1946 Geneva Protocol, Dec. 11, 1946, T.I.A.S. Nos. 1617, 1859, 12 U.N.T.S. 180, 277 [hereinafter cited as 1946 Geneva Protocol].

116. Waddell, *supra* note 70, at 314.

117. *Id.*

118. *Id.* See 1931 Convention, *supra* note 96.

119. 1948 Paris Protocol, Nov. 19, 1948, 44 U.N.T.S. 277 Under the provisions of the 1948 Paris Protocol, any new drug that was discovered by chemistry or pharmacology with the potential of addiction was to be reported to the Secretary General of the United Nations. See *id.* art. 1, § 2. If the drug was deemed potentially addictive it would be subject to the controls of the 1931 Convention. *Id.*

120. CHATTERJEE, *supra* note 57, at 328-330.

121. To wit, the hesitancy of the Parties to accept the "territorial clause" which was adopted by a 33 to 8 vote with 12 abstentions. *Id.* at 330.

122. 1948 Paris Protocol, *supra* note 118, art. 9.

123. See *supra* notes 73-75.

124. 1948 Paris Protocol, *supra* note 118.

125. Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in and Use of Opium, June 23, 1953, U.N. Doc. E/N.T./8 [hereinafter cited as 1953 Protocol]. The 1953 Protocol's aim was to fill the gaps left by earlier conventions. BASSIOUNI, *supra* note 70, at 541. See Bilder, Burman, Cohen, Huang, Nilsen, Reis, *Contemporary Practice of the United States Relating to International Law*, 57 AM. J. INT'L L. 894, 896 (1963) for an interesting discussion as to whether the 1953 Protocol is still alive.

aspect of the 1953 Protocol was that it sought to control the agricultural production of the opium poppy. The 1953 Protocol specifically prohibited its non-medical use and limited the number of countries which were authorized to export opium.¹²⁶ Before the 1953 Protocol entered into force, however, the Single Convention on Narcotic Drugs was signed.¹²⁷ The Single Convention is the foundation of the present control system.

III. THE PRESENT INTERNATIONAL NARCOTICS CONTROL SYSTEM

As of 1953, there were nine major multilateral agreements regarding international narcotics control that were in need of simplification and codification.¹²⁸ To accomplish this task, the Single Convention on Narcotic Drugs was adopted¹²⁹ and replaced all existing multilateral narcotics treaties.¹³⁰

A. *The Machinery of the Present System*

Each party to the Single Convention is required to provide annual statistics to the International Narcotic Control Board¹³¹ disclosing the amount of drugs produced, consumed, seized, or stockpiled.¹³² These amounts are compared with the estimated medical and scientific requirements of each drug¹³³ and limited ac-

126. These countries were Bulgaria, Greece, India, Iran, Turkey, USSR, and Yugoslavia. 1953 Protocol, *supra* note 126.

127. *See* Single Convention, *supra* note 103.

128. *Id.* With this objective in mind, seventy-four parties and representatives from the World Health Organization, the Permanent Central Opium Board, the International Police Organization and the Drug Supervisory Board convened in New York. Waddell, *supra* note 70, at 316.

129. Single Convention, *supra* note 103. At the time of its drafting, the Single Convention had four major objectives: 1) the codification of the existing multilateral conventions on drugs; 2) the simplification of the international control machinery; 3) the extension of the control system to the cultivation of other natural products, in addition to opium and poppy strains, which produce narcotic effects; and 4) the adoption of appropriate measures for the treatment and rehabilitation of drug addicts. *See* CHATTERJEE, *supra* note 57, at 343.

130. Single Convention, *supra* note 103. While the Single Convention did not replace the 1936 Convention, it did incorporate similar penal provisions. These penal provisions are subject to the constitutional limitations of the Parties. *Id.* art. 36.

131. *Id.* at art. 5. The Permanent Central Opium Board and the Drug Supervisory board were consolidated to form the International Narcotic Control Board. The Board is the enforcement mechanism of the Single Convention, while the Commission on Narcotic Drugs is the policy making organ. *See, e.g.*, Waddell, *supra* note 70, at 316-17.

132. Single Convention, *supra* note 103, art. 19.

133. *Id.*

cordingly¹³⁴ so as not to exceed the designated requirements.¹³⁵ The Single Convention also requires the Parties to provide that the cultivation,¹³⁶ manufacture,¹³⁷ trade, and distribution of drugs¹³⁸ be permitted only under an authorized license. Thus, strict compliance with the statistical returns and licensing scheme ensures the Parties an internal monopoly on the legal drug industry.¹³⁹

Of the fifty-one Articles contained in the Single Convention, only two of them deal specifically with the illicit aspects of narcotic substances.¹⁴⁰ Article 35 is deceptively entitled "Action Against Illicit Traffic." Yet, the Article simply "asks" that the parties cooperate with each other to eradicate illicit drug trafficking. Article 36 "recommends" penal provisions against all offences with regard to illicit narcotic substances. A provision in the Article states, however, that "the Party shall have the right to refuse to effect the arrest or grant the extradition in cases where the competent authorities consider that the offense is not sufficiently serious."¹⁴¹ The final provision in Article 36 provides that "nothing contained in this Article shall affect the principle that the offences to which it refers shall be defined, prosecuted, and punished in conformity with the domestic law of a party."¹⁴² It is apparent from these two Articles that the Parties may treat illicit traffickers and producers as they wish.

In addition to the Single Convention, the present international

134. Limitation can occur in one of two ways. First, if a party exceeds its annual estimate, the amount of excess is deducted from the following year's estimate. If this does not provide an adequate limitation, an embargo may be imposed on the Party which exceeds its estimate. See *id.* art. 21 (4)(a) and (b).

135. *Id.* art. 21. The Single Convention classifies narcotic substances into four schedules or groups. Article 1(1)(V) defines the schedules as a "list of drugs." *Id.* at art. 1. Each schedule is subject to certain provisions of the Single Convention—the more dangerous the drug, the more control necessary. *Id.* at art. 2.

136. *Id.* arts. 23, 25, 26, 28.

137. *Id.* at art. 31.

138. *Id.*

139. Theoretically, all phases of opium, coca leaf and marijuana transactions can be regulated under the Single Convention. See DND, *supra* note 64, at 5.

140. Single Convention, *supra* note 103, arts. 35, 36; see also art. 37 that provides for seizure and confiscation of illicit contraband. Article 38 provides for the treatment of drug addicts. This provision is an important step in the international scheme since, for the first time, addicts can be treated and rehabilitated, whereas in the past they were treated as criminals. The more addicts that can be rehabilitated, the less demand there would be for illicit narcotics.

141. *Id.* art. 36(2)(b).

142. *Id.* art. 36(4). These provisions, then, allow a party to simply ignore the provisions against illicit trafficking. These provisions are carried over from the previous multilateral treaties, and severely weaken the Single Conventions' effectiveness.

control system utilizes two other important treaties. These are: (1) the Convention on Psychotropic Substances,¹⁴³ and (2) the 1972 Protocol Amending the Single Convention.¹⁴⁴ The Convention on Psychotropic Substances was enacted to bring psychotropic substances¹⁴⁵ under international control, as well as to reduce the abuse and illicit traffic of such drugs.¹⁴⁶ The Convention on Psychotropic Substances is modeled after the Single Convention and utilizes the same basic mechanism.¹⁴⁷ The major differences between the Convention on Psychotropic Substances and the Single Convention is that the former does not utilize the estimate system.¹⁴⁸

The Convention on Psychotropic Substances resembles the Single Convention in that it contains almost identical provisions for action against illicit traffic which are equally ineffective.¹⁴⁹ Furthermore, the Convention on Psychotropic Substances also contains a denunciation clause¹⁵⁰ and provides that a Party may accept the treaty with reservations.¹⁵¹ Clearly these provisions significantly reduce the import of both Conventions.¹⁵²

The other important international agreement is the 1972 Protocol Amending the Single Convention on Narcotic Drugs.¹⁵³ The

143. Convention on Psychotropic Substances, *opened for signature* Feb. 21, 1971, U.N. Doc. E/CONF 58/7.

144. 1972 Protocol Amending the Single Convention on Narcotic Drugs, Mar. 25, 1972, 26 U.S.T. 1439, T.I.A.S. No. 8118 [hereinafter cited as 1972 Protocol].

145. A psychotropic substance is one that acts on the mind. The Convention is designed to cover hallucinogens (*e.g.*, L.S.D., phencyclidine), stimulants (*e.g.*, amphetamines) and depressants of the central nervous system (*e.g.*, barbituates, methaqualone). DND, *supra* note 64, at 6.

146. CHATTERJEE, *supra* note 57, at 456; *see* BASSIOUNI, *supra* note 70, at 543.

147. In fact, in some places there is overlap. The Single Convention, for example, allows psychotropic substances to be placed under its control without that substance being removed from the schedules of the Convention on Psychotropic Substances. *See* CHATTERJEE, *supra* note 57, at 473-74.

148. *Id.* The Convention on Psychotropic Substances does not use the estimate system because psychotropic substances are widely used for medicinal purposes, and therefore were previously not included in the international control system. Since there was no previous experience in estimating psychotropic substances, they could not be accurately projected.

149. *See supra* note 143. Article 21 of the Convention on Psychotropic Substances does not significantly differ from Article 36 of the Single Convention.

150. Convention on Psychotropic Substances, *supra* note 144, art. 29.

151. *Id.* art 31.

152. *See* the discussion of denunciation clauses, *supra* notes 73-75, and *infra* notes 165-168.

153. 1972 Protocol, *supra* note 145. The 1972 Protocol was developed to strengthen the Single Convention. It provided for an expanded estimate system (Articles 9, 10) and purportedly increased the authority of the International Narcotics Control Board to ensure com-

1972 Protocol modernized the attitude towards drug abusers, providing education, treatment, rehabilitation, and social reintegration as alternatives to imprisonment.¹⁵⁴ The 1972 Protocol also provides that serious crimes are extraditable.¹⁵⁵ If the Parties have no other legal basis for extradition, the Single Convention may be invoked.¹⁵⁶

The amended Single Convention and the Convention on Psychotropic Substances comprise the current legal foundation for international narcotics control. They effectively control the entire legal drug spectrum, from production to consumption. As a result, there is virtually no diversion of manufactured narcotic drugs from the licit to the illicit market.¹⁵⁷

The Convention on Psychotropic Substances, however, has not been as successful as the amended Single Convention. The problem of diversion of psychotropic substances from legal to illicit traffic is yet to be resolved.¹⁵⁸ This difficulty is due to the lack of experience in control methods.¹⁵⁹ Moreover, there are only seventy-six parties to the Convention on Psychotropic Substances, whereas the Single Convention has over one-hundred and fifty signatories.¹⁶⁰

The history of international narcotics control reveals that there is growing world concern over the narcotics epidemic. This is evidenced by the fact that twelve major international agreements have been concluded in the last eighty years. These agreements, aided by experience and refinement, have managed to control the legal narcotics industry and provide a firm basis for the control of licit psychotropic substances. However, these agreements fail to directly address the immense problem of illicit drug control. Therefore, a new system must be devised to attack this problem. The weaknesses of the present system must be examined and corrected by the enactment of a multilateral treaty directed toward curtailment of the illicit narcotics industry.

pliance with the Single Convention. *See id.* art. 6. It further called for increased cooperation between the Parties such as augmentation of an informational exchange. *See id.* art. 13.

154. *Id.* art. 14(b).

155. *Id.* art. 14(2)(b)(i).

156. *Id.* art. 14(2)(b)(ii).

157. DND, *supra* note 64, at 7.

158. *Id.*

159. *See supra* note 149.

160. For a list of the signatories, see U.S. DEP'T OF STATE, TREATIES IN FORCE 1982, 260-61 (1982).

B. Weaknesses of the Present System

The present system of international narcotics control inherits six major weaknesses from earlier multilateral treaties. These weaknesses are: (1) inclusion of denunciation clauses (2) inclusion of escape clauses, (3) lack of concrete enforcement mechanisms, (4) lack of any mechanism designed to attack crop production, (5) exclusive focus on the legal industry and (6) lack of funding. An examination of these deficiencies will illustrate which problems the new multilateral treaty needs to address.

First, the aspects of illicit drug control receive little attention in the present treaties.¹⁶¹ The Single Convention devotes only two of its fifty-one articles to the illicit industry,¹⁶² and only two of the twenty-two articles of the 1972 Protocol are aimed at “strengthening” the Single Convention.¹⁶³ Without comprehensive multilateral provisions, the Parties lack guidelines for combatting illicit production and trafficking.

Second, the present system allows the parties to denounce any or all of the current treaties.¹⁶⁴ These provisions, a carry over from previous conventions, were used to attract signatories. The effect of these provisions is to allow the parties to hold a non-obligatory view towards the treaties.¹⁶⁵ As long as such an atmosphere exists, a universal commitment to combat the illicit drug industry is impossible.¹⁶⁶ Thus, provisions for denunciation reduce the effectiveness of the present conventions.¹⁶⁷

Third, the present conventions contain “escape clauses”¹⁶⁸ which allow a party to avoid certain provisions of a treaty. For example, Article 36 of the Single Convention enumerates specific acts which are to be considered punishable offenses.¹⁶⁹ However, the same Article states that the parties “shall have the right to refuse arrest or grant the extradition in cases where the competent authorities consider that the offense is not serious enough.”¹⁷⁰ Fur-

161. See, e.g., Single Convention, *supra* note 103, art. 35; 1972 Protocol, *supra* note 145, art. 13.

162. See *supra* note 151.

163. 1972 Protocol, *supra* note 145, arts. 13 and 14.

164. E.g., Single Convention, *supra* note 103, art. 46.

165. See *supra* note 73-75.

166. See CHATTERJEE, *supra* note 57, at 189, 206, and 528.

167. *Id.* at 493.

168. See, e.g., Single Convention. *supra* note 103 art. 36. Again, this weakness was a carryover from previous treaties, hoping to attract more signatories.

169. *Id.* art. 36(1).

170. *Id.* art. 36(1).

thermore, Section 4 of Article 36 provides that the parties may define, prosecute, and punish offenses consistent with their own domestic law. In effect, these clauses impose no binding obligation on the parties, as they permit the entire Article to be followed or ignored by any party at its discretion.

Fourth, the present international control system lacks any concrete enforcement mechanism.¹⁷¹ The existing enforcement bodies possess only advisory authority. Article 6 of the 1972 Protocol directs the International Narcotics Control Board to alert the parties or the General Assembly of the United Nations to any non-compliance by a particular party. In extreme cases, the Board may recommend an embargo of the import and export of drugs from a particular party.¹⁷² Neither measure is required, however, and the Board can only recommend that the steps be taken. Thus, the Board operates only as a pseudo-enforcement mechanism.¹⁷³

Fifth, the system directs its attack toward production at the source (crop control). While theoretically valid, attainment of this goal is impossible in practice. The illicit drug industry could support worldwide demand from only a few production sources.¹⁷⁴ If illicit production is reduced in one area, the shortage can be compensated in another.¹⁷⁵ Moreover, in some areas, crop control is simply not feasible because crops are heavily guarded by armies employed by the illicit producers.¹⁷⁶ Unless production can be simultaneously reduced everywhere, the ultimate objective of the present conventions can never be obtained.¹⁷⁷

Finally, existing programs are drastically underfunded.¹⁷⁸ The Single Convention provides that parties shall contribute to the expenses in such amounts that the General Assembly shall find "equitable and assess from time to time."¹⁷⁹ There is no specified amount to be contributed to defray the expenses of international narcotics control, and there is no obligation placed on the parties to

171. Cabranes, *supra* note 113, at 765.

172. 1972 Protocol, *supra* note 145, art. 6(2); this measure has never been imposed. See *supra* note 132.

173. Cabranes, *supra* note 113, at 765.

174. DND, *supra* note 64, at 2-3.

175. *Policy Issues Related to International Narcotics Control, 1982 Hearings*, *supra* note 29 (statement of D. DiCarlo, INM).

176. *Id.* See also *infra* note 205.

177. *1982 Hearings*, *supra* note 29 (statement of D. DiCarlo, INM).

178. See, e.g., *Hearings*, *supra* note 1 (statement of Linneman, INM).

179. Single Convention, *supra* note 103, art. 6.

provide contributions.¹⁸⁰ As a result, there is no reliable source of income and little money is actually contributed.

IV. TOWARD A SYSTEM OF EFFECTIVE CONTROL

A universal commitment by the international community is necessary before any successful international effort to control the illicit drug industry can be undertaken.¹⁸¹ Without such a commitment, the measures required to combat expansion of the illicit industry cannot be enacted and applied. Fortunately, there are favorable indications that this climate of universal commitment exists today.

A. *The Existence of Universal Commitment*

It is now generally recognized that drug addiction and usage problems in the international community have reached epidemic proportions.¹⁸² Internal drug problems are causing countries to seek solutions on an international level since they cannot eradicate the problem domestically.¹⁸³ States are now refusing to protest prosecution of nationals who have been arrested for committing drug offenses in foreign countries¹⁸⁴ and this encourages the prosecution of drug offenders.¹⁸⁵

The international community's readiness to mobilize against drug trafficking is also evidenced by the large number of signatories to the existing treaties. There are more than 150 signatories to the Single Convention.¹⁸⁶ International commitment is also demonstrated by the positive steps being taken in the direction of narcotics control. For example, the United States has enacted legislation¹⁸⁷

180. *Id.*

181. This assumes that there exist a desire by most of the international community to take the necessary steps to eradicate the illicit drug industry.

182. See *supra* notes 12-56 and accompanying text.

183. See *supra* note 22.

184. See, e.g., Note, "Double Jeopardy" on the High Seas: *International Narcotics Traffickers Beware*, 10 GA. J. INT'L AND COMP. L. 647, 671 (1980).

185. *Id.*

186. TREATIES IN FORCE 1982, *supra* note 161, at 170.

187. The United States has enacted the following legislation aimed at the illicit narcotics industry: 1) legislation to allow the United States military to provide assistance to narcotics law enforcement agencies. Amendment to the Posse Comitatus Act, 10 U.S.C. 372 (Amending 18 U.S.C. 1385); 2) legislation to allow for the herbicidal spraying of drug crops, Amendment to the Foreign Assistance Act; 3) legislation to provide criminal sanctions for deterrence, 31 U.S.C. 1058; 4) legislation to compel financial institutions to disclose information on illicitly obtained money, 31 U.S.C. 1081.

The United States has even proposed that its Federal judges refuse bail to certain per-

directed at narcotics control and is actively campaigning to convince the international community that its objective is to minimize the world drug problem.¹⁸⁸

Other indicia point to the existence of a universal commitment. Since World War II, international economic development has become a prevalent concern¹⁸⁹ which has led to the development of a cooperative international law.¹⁹⁰ In order to effectively deal with important international problems, States today are expected to compromise their sovereignty to a degree.¹⁹¹ To this end, Professor Schwarzenberger notes:

Thus, to any extent to which international functional cooperation requires a curtailment of sovereignty, it is assumed that, in the interest of the task at hand, States are willing to acquiesce in a corresponding restriction of their freedom of action [A]n international community would be expected to approach any critical problem in this spirit [of cooperation].¹⁹²

Thus, it appears that the international community is ready to take the necessary steps to minimize the global dilemma caused by the illicit narcotics industry.

B. A Proposed Multilateral Treaty

It has been demonstrated that the international community is willing to take the necessary steps to control the illicit drug industry. It is therefore proposed that a multilateral treaty be enacted to minimize the illicit drug industry by correcting weaknesses in the present control system. The articles of the new multilateral treaty should contain the following provisions.

First, the agreement must provide for the establishment of educational treatment centers throughout the world, with special concentration in those countries that harbor major producers, manufacturers, and abusers of narcotics. Construction of these centers would be required of each signatory, with the location and number of necessary centers determined by the United Nations

sons charged with drug offenses. See *Hearings*, *supra* note 1, at 14 (statement of U.S. Senator Roth).

188. This is a major problem for the United States. Other nations believe that since the abuse of drugs in the United States is so prevalent, it has no right to complain, until it can control its domestic problem.

189. W. FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW*, 11-12 (1964). See generally J. FRANKEL, *supra* note 74.

190. P. JESSUP, *TRANSNATIONAL LAW* 15-16 (1956).

191. G. SCHWARZENBERGER, *POWER POLITICS* 420 (1951).

192. *Id.*

Commission on Narcotic Drugs.¹⁹³ The construction and maintenance of these centers would be funded by both the State and the international community through the United Nations Fund for Drug Abuse Control (UNFDAC).¹⁹⁴ The current narcotics control systems call for "Regional Centers,"¹⁹⁵ but their establishment is at the discretion of the individual parties. A mandatory provision is necessary because these centers are vital to increasing the awareness of the problem. These centers would serve to decrease the number of addicts through rehabilitation, which would in turn reduce the demand for illicit narcotics.¹⁹⁶

Second, the new treaty should provide for increased monetary input by the signatories to UNFDAC.¹⁹⁷ UNFDAC currently receives contributions on a voluntary basis,¹⁹⁸ and the new treaty would make funding to UNFDAC mandatory. Each signatory would be required to donate a specified amount each year, depending upon its economic status. The expansion of monetary input to UNFDAC could also be accomplished by providing that all seized and confiscated narcotics money,¹⁹⁹ including the auction of confiscated vessels, be turned over to UNFDAC.²⁰⁰ If adequately funded, UNFDAC could provide a dependable source of support for programs designed to attack the illicit narcotic industry.

Third, the new treaty should eliminate all escape clauses and denunciation provisions. Such clauses are no longer necessary to attract signatories.²⁰¹ By eliminating such clauses and provisions, the treaty would legally obligate the parties to enact its provisions. This would result in a tangible universal commitment to attack the illicit drug industry and apply pressure on the parties to take action.

193. The Commission would have access to all information pertaining to the production, manufacture and trade in narcotic substances.

194. This is the current financial institution that provides funding to the International Narcotics Control Board. The Board recommends the granting of technical and financial assistance to the appropriate States. See DND, *supra* note 64, at 7.

195. 1972 Protocol, *supra* note 145, art. 16.

196. These centers would also constitute tangible evidence to the illicit drug industry that positive steps are being taken against them. This would hopefully contribute to a deterrence against them.

197. See *supra* note 195.

198. Single Convention, *supra* note 103, art 6; FEDERAL STRATEGY 1982, *supra* note 14, at 29.

199. More than \$48 million was seized in currency alone in 1981. N.Y. Times, Jan. 3, 1982, at 51, col. 1.

200. Single Convention, *supra* note 103, art. 37. This Article allows for seizure and confiscation, but does not provide where the proceeds are directed. *Id.*

201. See *supra* notes 184-193 and accompanying text.

Fourth, the new treaty would include provisions designed to de-emphasize crop control as a means of curbing illicit traffic. The control of production has been unsuccessful,²⁰² as the illicit producer simply shifts his production sights or uses synthetic substitutes. In the Golden Triangle, for example, the production and trafficking is too well protected by drug warlords.²⁰³ Therefore, an alternate strategy should be devised. A United Nations force could impose a blockade on large protected production areas.

Fifth, the new treaty should establish adequate enforcement measures, without which no treaty can function efficiently. Enforcement could be strengthened by granting existing enforcement agencies increased powers and supplemented by increased centralization and organization. An international force, such as an International Drug Enforcement Administration could be established. Such a body would be useful for the organization of information (including intelligence) and supervision of existing agencies combatting the illicit industry. Enactment and enforcement of severe penalties for engaging in any aspect of illicit production or trafficking would be required by the signatories. The penalties would be expressly agreed upon in the treaty in order to avoid existing problems concerning different philosophies of criminal law.²⁰⁴ Increased emphasis on enforcement and the imposition of severe penalties would create an effective deterrent to participation in illicit narcotics activities. The present system contains virtually no means to inhibit the illicit drug industry,²⁰⁵ and it is crucial that the new system contain effective measures.²⁰⁶

Finally, the treaty must be directed squarely at the *illicit* drug industry, as the legal aspects of the narcotics industry have been effectively controlled by the present system.²⁰⁷ This goal can be accomplished by incorporating the above proposals which would:

202. See *supra* notes 176-178 and accompanying text.

203. U.S. DEP'T OF STATE, INTERNATIONAL NARCOTICS CONTROL STRATEGY 2 (1981); see also N.Y. Times, Jan. 25, 1982, at 5, col. 1, noting that there are continuing bloody clashes between the drug armies and Thai border police.

204. Signatories can also be encouraged to develop legislation designed to expose the laundering of illicit money. For instance, the signatories would be required to fully cooperate in the development of an information network between the banks and the enforcement agencies.

205. See *supra* notes 172-175.

206. If the system provides an adequate deterrence, the illicit producer and trafficker will finally have something to discourage his practice. This is an essential framework with which to begin the assault on the illicit industry.

207. See *supra* note 158.

(1) establish educational treatment centers, (2) provide for adequate funding, (3) eliminate escape clauses and denunciation provisions, (4) change the focus of the attack from crop control to a viable alternative, and (5) establish a concrete enforcement system which would provide an effective deterrent to illicit producers and traffickers. By incorporating these provisions into a multilateral treaty, the foundation for eradication of this international menace would be established.

V. CONCLUSION

This Comment's examination of the scope of the international narcotics problem has made it readily apparent that the problem has reached epidemic proportions. A survey of the history of international narcotics control has illustrated that as the problem intensified the international community responded legally with the enactment of multilateral treaties. The present system that has evolved to provide narcotics control has brought with it the inadequacies of the previous systems, and is fatally weak in several respects. This Comment has demonstrated that the international community is prepared to unify to solve the problem. Prevention of illegal drug trafficking can be accomplished by eliminating the weaknesses which exist in the present treaties.

This Comment has proposed that stringent measures be enacted to remove the weaknesses associated with past and present treaties. The proposed system could be a demanding one for the international community, as it calls for affirmative action and does not leave its prospects for success in the hands of individual countries. Moreover, the nature and urgency of the current international narcotics problem dictates that these measures should be undertaken before the illicit drug industry becomes more powerful than the governments that seek to control it.

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