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equipment for the preparation or use of opium; drug trafficking by mail; and obtaining drugs by consulting two doctors. Between 1922 and 1930, 7,096 persons were convicted for an offence under the *Opium and Narcotic Drug Act*. Of these, over 4,900 were Chinese, or 69%.[52]

Police powers

From 1920 to 1930, various amendments to the *Opium and Narcotic Drug Act* led to the police being granted new powers. These amendments specifically had to do with powers of search. Section 7 of the 1911 Act provided for the issuance of a search warrant authorizing police officers who had reasonable grounds to search the following kinds of premises: a dwelling-house, shop, boutique, warehouse, garden or ship, and to seize drugs found there as well as any containers in which the drugs had been found. Section 3 of the 1922 Act provided for the possibility of conducting a search for drugs without a warrant, either during the day or at night, in the above-mentioned premises. However, police officers were required to have a warrant to search a dwelling-house.

Section 8 of the 1911 Act provided that any drugs seized and the containers in which the drugs were found could be confiscated and delivered to the Court, and be destroyed after the accused's conviction. However, section 9 imposed a number of conditions on the procedure provided under section 8. Indeed, if the person charged was acquitted, there was a three-month period during which the Court could be asked to issue an order to give back the seized drugs. If they were not claimed during this period, they were to be destroyed. The 1921 Act slightly amended these two provisions by specifying that henceforth, drugs and the containers in which they were found were to be confiscated and turned over to the Department of Health, which would dispose of them as it saw fit. This amendment was deemed necessary by the Narcotics Division because several judges, rather than order the destruction of the goods, sent them to hospitals. The Division was afraid that the drugs so returned might fall into the hands of traffickers.

In 1923, the powers to search and the orders of forfeiture were extended to vehicles in which drugs were found. In 1929, this procedure was extended to all traffickers' vehicles, whether or not any such substances were found in them. The purpose of this was to impede the activities of traffickers and to prevent their vehicles from being used by other criminals after they were convicted. The procedure was later extended to aircraft. In 1925, Parliament, by enacting the *Act to amend the Opium and Narcotic Drug Act, 1925*,[53] authorized police officers to search any person found on the premises searched, with or without a warrant.

The 1929 Act granted special search powers to police officers. Section 22 of this statute allowed a writ of assistance to be issued to a police officer. This was a general power, without any restrictions of time or place, to remain valid throughout the career of the peace officer. Such a writ authorized its recipient to enter a dwelling-house at any time of the day or night accompanied by whatever persons were deemed necessary to conduct searches and seize drugs. The writ of assistance thus made it possible to get around the prohibition on searches and seizures of drugs in a dwelling-house without a warrant. At the same time, the Act was amended to authorize police officers, during searches or seizures, with or without a warrant, to use force if required to conduct a search and to be assisted by persons other than peace officers.

Criminal procedure

In the 1920s, another major amendment was introduced to facilitate convictions in drug cases, a reverse onus provision. The onus was now on the accused, not on Crown prosecutors, to prove that he had not committed the crime with which he was charged. Under British criminal law, the task of proving an accused's guilt traditionally falls on the Crown, hence the expression "presumed innocent until proven guilty".

Section 10 of the Act of 1911 provided that, in a prosecution for drug possession or trafficking (with the exception of importing and exporting), in order to be acquitted, the accused had to prove that he had a legitimate excuse or that he had used such substances for therapeutic or scientific purposes. When Parliament amended the Opium and Narcotic Drug Act in 1920 to provide a better framework for dealing with importing and exporting, the manufacture, sale and prescription by physicians of scheduled drugs by means of a permit, the procedure established in 1911 was amended to specify that, in order to be acquitted, the accused had to prove that he had had a permit duly issued by the Department of Health.

Section 1 of the Act of 1921 expanded the application of the reverse onus to include any person who possessed or occupied a place (dwelling, store, boutique, warehouse, garden or ship) where drugs had been found. According to the wording of the section, that person was deemed to possess such a substance if he was unable to prove that it had been in that place without his consent or that he did not know that the drug was there.

The article also provided that this procedure would apply when a person was charged with trafficking in raw or prepared opium for smoking purposes without having first obtained a permit issued by federal authorities. In 1923, the *Act to Prohibit the Improper Use of Opium and Other Drugs* (Act of 1923)[54] extended application of the reverse onus to offences involving the import or export of drugs without a permit. In cases involving the prescription or administration of a scheduled substance for non-therapeutic purposes, a physician or pharmacist had to prove that that substance had been used solely for medical purposes.

The Act of 1923 also cancelled another fundamental legal guarantee, the right of appeal. Section 25 eliminated the right of appeal in summary conviction cases involving possession, drug trafficking without a permit or for the sale, gift or distribution of a drug to a minor, the latter being an indictable offence. Section 26 of the Act of 1929 expanded this procedure to include possession of or trafficking in a substance similar to a drug. This new procedure rendered moot the provision enacted in 1911 prohibiting any application for a writ of *certiorari*, and the Narcotics Division sought its removal from the act, which was actually done in 1929.[55]

Two other important amendments were made to the *Opium and Narcotic Act* between 1920 and 1930 to provide for the admissibility of the certificate of a federal analyst and the application of the *Identification of Criminals Act* to summary conviction offences. Section 1 of the Act of 1921 had amended the legal procedure applicable in drug prosecutions by making the certificate of a federal analyst admissible in evidence with respect to one or more drugs seized by police officers. However, the courts were reluctant to accept the certificate because they could not authenticate the analyst's signature[56] or confirm his appointment. In 1929, an amendment was made to the *Opium and Narcotic Drug Act* (section 18) providing that the certificate would henceforth constitute *prima facie* evidence of the status of the person who gave or issued it. In this context, proof of that person's appointment or authentication of his signature was no longer necessary.

In 1923, the *Opium and Narcotic Drug Act* was amended to apply the provisions of the *Identification of Criminals Act* to persons convicted of an offence by way of summary conviction. Section 2 of that act permitted police officers to fingerprint, photograph and measure the accused solely in cases where they were indicted. That information constituted the accused's official "criminal record", which was kept in the national police records, with all the consequences that entailed for social, professional or family stigmatization. However, from the standpoint of the Narcotics Division, this amendment would prove beneficial since it would henceforth make it possible to establish files and more effectively monitor drug addicts convicted by way of summary conviction.

Control measures

The *Act to Amend the Opium and Narcotic Drug Act* (Act of 1920)[57] established a control system for the legal trade in narcotics through a system of permits issued to businesses, pharmacists and physicians by the Department of Health in order to regulate Canada's supply of drugs for medical or scientific purposes. The Act provided for: a prohibition against importing or exporting drugs at a port not designated for that purpose by federal authorities; the issue of permits for the import, export, manufacture, sale and distribution of drugs; the imposition of criteria regarding packaging and labelling of packages containing such substances; an obligation for businesses to keep a record of their drug importing, exporting, manufacturing, sale and distribution activities duly authorized by federal authorities; an obligation for physicians to provide the information requested by federal authorities concerning the purchase, manufacture or prescription of medications containing drugs; an obligation for pharmacists to keep a record of their purchases and sales of drugs, the preparation of their own medications containing such substances and renewals of prescriptions signed by a physician;[58] and the authorization to sell medications (such as ointments and liniments) containing very small quantities of scheduled drugs without a permit, provided they were not administered to children under two years of age and met certain labelling criteria.

Amendments to the Act to Amend the Opium and Narcotic Drug Act in 1954

In 1954, Parliament passed the *Act to Amend the Opium and Narcotic Drug Act* (Act of 1954),[59] repealing offences relating to opium use and the possession of equipment intended for that purpose, the sale of drugs to a minor and drug trafficking through the mail. It also made two other significant amendments to the act.

Under the impetus of R.E. Curran, Deputy Minister of Health, it now included a definition of the offence of drug trafficking in order to make the act more comprehensible and increased the maximum prison term for that offence from seven to 14 years. The minimum prison term of six months and the fine were repealed. Henceforth, this offence could only be prosecuted by way of indictment. However, a person convicted of the offence was still liable to whipping and deportation.[60]

Subsection 4(3) of the Act of 1954 created the offence of possession for the purpose of trafficking, for which the new penalties provided for drug trafficking applied. This new offence would mean that those possessing large quantities of narcotic drugs would no longer be convicted for simple possession. As we have seen, a reverse onus was part of Canada's drug legislation from 1911 to 1929. In 1954, subsection 4(4) added a new criminal procedure to facilitate convictions for possession of drugs for the purpose of trafficking.

Thus, in every criminal prosecution for this offence, Crown prosecutors first had to prove that the accused was illegally in possession of the drug. The defendant then had to prove that he had not possessed the substance for the purpose of trafficking. If he succeeded, he was found guilty of possession; otherwise he was convicted of trafficking. In this specific case, Canadian courts established a distinction between the so-called secondary burden, which is to prove a specific fact (in this case the intention to traffic) and the primary burden (illegal possession), which consists in proving that fact where all the evidence is adduced. Thus the Crown prosecutor had the primary burden of establishing that an offence was indeed committed. In this particular case, however, the Crown did not have to prove that the accused intended to engage in trafficking. Proof of illegal possession was sufficient for the court to conclude that there was an intention to traffic.

This amendment was enacted in response to the recommendation by the RCMP and the Narcotics Office (former Narcotics Division) since, failing an admission by the accused, it was very difficult to prove the intention to traffic. However, this new procedure considerably undermined the rights of the accused, particularly since the act did not specify the quantity of drugs necessary to determine whether the accused had actually possessed it for the purpose of trafficking. The accused was thus guilty of trafficking in the absence

of evidence to the contrary.[61]

Senate report of 1955

On February 24, 1955, the Senate passed a motion creating a Special Committee of the Senate on the Traffic in Narcotic Drugs in Canada following the motion made a few weeks earlier by Senator Thomas Reid. At that time, Senator Reid had asked the Senate government leader, W. Ross MacDonald, whether the federal government intended to create such a committee since, based on his information, the traffic in opium and other narcotics in the City of Vancouver was beyond the control of police authorities. In debate on the motion, Senator MacDonald accurately summed up the task before the members of the Senate Special Committee as follows:

The work of the committee will largely be to consider the causes of this unfortunate problem with which this country is faced, to hear expert witnesses and to determine in what way the Government can make its most valuable contribution in resolving this unfortunate condition. The reports of this committee, based upon an objective, cautious and factual assessment of the problem, may well become a document of the utmost importance and have far-reaching consequences in helping to found policy upon which the successful solution of this problem can rest. [62]

Upon adoption of the motion, Senator Reid was appointed chairman of the Committee. From March 25 to June 17, 1955, the committee organized public hearings in Ottawa and was the first to travel outside the capital, holding meetings in Montreal, Toronto and Vancouver. In addition to specialists, public servants and police officers, the senators also met a group of 150 people suffering from a drug dependency at Oakalla Prison in Vancouver to gain a better understanding of the reasons leading them to use drugs. The Committee heard 52 witnesses: 13 from law enforcement agencies, 10 from the various federal departments concerned by the fight against drug trafficking and 12 addiction treatment specialists. On June 23, 1955, Senator Reid tabled the Committee's report containing a series of recommendations for the treatment of people suffering from a drug dependency and the fight against the traffic in narcotic drugs.

According to the report, the figures provided by the Department of Health revealed that there were 515 "medical addicts" in Canada, that is to say individuals who had become dependent on a drug as a result of treatment for a disease, 333 "professional addicts" (doctors, pharmacists and so on) and 2,364 "criminal addicts", for a total of 3,212. Of the persons belonging to the last category, 1,101 were located in Vancouver.[63] *Only 26 of the 2,364 "criminal addicts" were under 20 years of age.*

To establish a relationship between crime and drug dependency and to explain the difficulties in establishing treatment programs, the Committee cited a study conducted by the RCMP noting that, of 2,009 "criminal addicts", 341 had first been convicted of an offence under the Opium and Narcotic Drug Act, 1,220 had first been convicted for other crimes and 478 had already had a criminal record. Thus, 1,668 of the total 2,009 "drug addicts" were criminals, which was sufficient in the Committee's view to confirm the thesis of the "criminal" or "contaminating" user.[64] It was therefore clear that drug addiction was not a disease. In the Committee's view, most "addicts" came from disadvantaged backgrounds in which crime and family problems were omnipresent.

The evidence of medical authorities was to the effect that drug addiction is not a disease in itself. It is a symptom or manifestation of character weaknesses or personality defects in the individual. The addict is

usually an emotionally insecure and unstable person who derives support from narcotic drugs. The Committee was gravely concerned to learn that relatively few cases could be authenticated where drug addicts, while out of custody, had been successful in abstaining from the use of drugs for any lengthy period of time. The complications and difficulties in the successful treatment of drug addiction, having regard to the pattern of development of the addict and his almost invariable criminal tendencies, cannot be too heavily stressed. [65]

In the circumstances, the Committee unanimously rejected the idea of creating government clinics which, on certain conditions, would provide "criminal addicts" with ambulatory treatment. The Committee moreover emphasized that a resolution adopted at the time at the tenth annual session of the United Nations Narcotic Drug Commission, stated that this form of treatment was not advisable.[66] It also rejected the United Kingdom's model after confirming, with the aid of British specialists, that doctors should not encourage drug addicts to persist in their addiction if they could not, even after lengthy treatment involving gradual reduction of the prescribed doses abstain from drugs. On this point, the report states: "*[...] dangerous (narcotic) drugs in the United Kingdom are subject to a wide degree of control of the exacting standards demanded by the international agreements to which the United Kingdom, in common with Canada, is a party.*"[67]

Considering that "addicts" were "basically criminals who daily violate the *Opium and Narcotic Drug Act*", the Committee argued that municipal and police authorities, more particularly those of Vancouver, should more effectively invoke the provisions of the *Criminal Code* dealing with theft, vagrancy and prostitution. Citing the testimony of Harry J. Anslinger before a U.S. Congress committee, the Committee stated that such an initiative would solve much of the problem caused by drug addiction. Second, it noted that "*the evidence of many witnesses recommended the compulsory segregation and isolation of all addicts for long periods of time for the purpose of treatment and possible rehabilitation.*"[68]

Thus, to prevent this "scourge" from spreading in the penitentiaries and to cure "criminal addicts" convicted of crimes, the Committee suggested that "*the penitentiary authorities might give further consideration to the particular problems presented by criminal addicts in terms of segregation, treatment including specialized training and rehabilitation and other measures necessary in view of the special problems which addiction superimposes.*"[69] In fact, as Minister of Health, Paul Martin had done a year earlier, the Committee instead emphasized the limits of federal jurisdiction and the efforts the provinces should devote to the treatment of "drug addicts" who had not been convicted of a crime. Still advocating the segregation of these individuals, the Committee indicated that the federal government wanted to make available to British Columbia the federal William Head quarantine station on Vancouver Island so that it could transform it into a treatment centre similar to that in Lexington, Kentucky. It further proposed the creation of a national health program to provide financial support for provincial drug addiction initiatives.

The Committee also encouraged the creation of groups similar to Alcoholics Anonymous, but rejected the idea of national education campaigns for the general public and teenagers on the ground that "*such programs should not be used where they would arouse undue curiosity on the part of impressionable persons or those of tender years*".[70] The Committee supported the position of the UN Narcotic Drug Commission, recommending instead that a "mental health" program be established to detect behaviour in the schools that might lead to drug addiction.

Since treatment programs could not cure all "drug addicts", the Committee also proposed that certain measures be adopted to fight illegal trafficking in narcotics. It thus recommended:

- that a separate offence be created for the illegal importing/exporting of narcotic drugs in order to put an end to drug smuggling;

- that a maximum prison term be imposed of up to 25 years (life) for that new offence;
- that the maximum prison term be increased from 14 to 25 years for trafficking offences; and
- that it be possible to establish proof of a conspiracy in order to facilitate the conviction of the leaders of criminal organizations not directly involved in the sale of narcotics but which benefit therefrom.

In the Committee's view, the severity of these penalties would *"act as an effective deterrent to an individual in smuggling drugs into Canada for the profit of a 'higher up.'"*[71] *Rather than waste police and court resources in trying to convict organized crime leaders who were the cause of the problem, an attempt had to be made to eliminate the "trafficker-distributors" in the neighbourhoods of the large cities and the problem would be solved.*

Although the Committee's proposals were much more conservative than those advanced in the debates preceding its establishment, contrary to a number of other reports by parliamentary committees or royal commissions of inquiry, most of its recommendations would be followed by federal authorities. First, it contributed to a number of research projects in British Columbia and Ontario in 1956. And second, the Senate Committee's report was at the origin of most of the new provisions of the Narcotic Control Act, which was passed in 1961 to replace the *Opium and Narcotic Drug Act*.

From 1960 to the Le Dain Commission: the search for reasons

The period following World War II witnessed new attitudes toward narcotic drug control that would call into question the approach adopted by Canada since 1908 in fighting the abuse of and trafficking in narcotic drugs. The international human rights movement, the creation of organizations dedicated to the defence of civil liberties, the gradual democratization of access to universities, the appearance and development of new disciplines in the social sciences such as criminology, psychology, sociology, political science and the sociology of law, scientific progress and research into drug addiction were factors in the creation of new pressure groups consisting of more articulate individuals who disputed the use of criminal law as a "miracle" solution in responding to drug problems. However, it was not until the explosive increase in drug use in the 1960s, the hippie protest movement and the work of the Le Dain Commission that these demands materialized.

Narcotic Control Act (1961)

Passage of the *Narcotic Control Act* (Act of 1961)[72] coincided with the coming into force of the *Single Convention on Narcotic Drugs* of 1961, which played an important role in the creation of the modern international narcotic drug control system, an extension and expansion of the international legal infrastructure developed between 1909 and 1953. Work to group together the nine multilateral treaties signed during that period into a single international enactment began in 1948, and Canada played a significant role in the negotiations and drafting that led to its adoption.

While the Act retains most of the criminal procedures and offences established over the previous years, two amendments formed the subject of major parliamentary debate: the creation of an offence for illegal importing or exporting of narcotics and the increase in penalties for the offence of trafficking, and the

treatment of drug addicts?. The minimum prison term of six months for simple possession was repealed, as was the procedure that provided that the *Identification of Criminals Act* would apply in the case of a summary conviction and the provision eliminating the right of appeal for certain offences.

The Act of 1961 was divided into two parts: the first, entitled "Offences and Enforcement", was placed under the authority of the Minister of Health, and the second, "Preventive Detention and Detention for Treatment", was to be administered by the Minister of Justice.

As the Senate Committee had recommended, section 5 of the Act of 1961 created the offence of importing and exporting narcotic drugs. Whoever was convicted of that offence (solely by way of indictment) was liable to a minimum prison term of seven years to a maximum of 25 years. That provision was designed to combat drug smuggling between the United States and Canada and to comply with the international undertakings Canada had made in ratifying the Single Convention.[73]

In accordance with another recommendation from the Senate Committee report, section 4 of the Act of 1961 raised the maximum prison term for trafficking in narcotic drugs from 14 to 25 years. The provision for whipping was also repealed. These amendments also applied to the penalty provided for possession for the purposes of trafficking.

Part II of the Act, which comprised sections 15 to 19, defined the new federal policy regarding preventive detention and detention for treatment. First, the courts henceforth had the power to order that an individual convicted of trafficking, possession for the purpose of trafficking or importing/exporting drugs, and only if the accused had previously been convicted of similar offences, be placed in preventive detention for an indeterminate period of time. This measure replaced any other sentence which might have been imposed. Second, when a person was charged with simple possession, possession for the purpose of trafficking, trafficking or import/export, the court, at the request of Crown counsel or the accused, could order the accused detained for examination purposes to determine whether he was eligible for a drug addiction treatment program. If that was the case, the accused had to be sentenced to detention for treatment at a specialized federal institution for an indeterminate period of time in lieu of any other sentence provided for under the act. For a first offence, preventive detention could not exceed 10 years. The individual had a right of appeal, was subject to the *Parole Act* and could be referred to preventive detention at any time if he used drugs during his probation period.

Lastly, the Act of 1961 provided that, if a province adopted a preventive detention policy combined with a drug addiction treatment program (in cases not involving an offence under the act), the federal government could enter into an agreement with the competent authorities of that province to transfer drug addicts to the specialized federal institutions. These new provisions in fact enacted the Senate Committee's proposals.

Despite the intervention of two ministers, this treatment policy, based on a penal approach and, to a certain degree, oriented toward repression of the "contaminating user" or "criminal user", failed to stir up interest among parliamentarians. The measures were passed without opposition but, for reasons that remain unclear, were never proclaimed. The Le Dain Commission moreover questioned this decision by the federal government: "*Whether this is because of doubts about the constitutional validity of these provisions or the failure to develop suitable treatment methods and facilities or later reservations by the government as to the advisability of compulsory treatment in principle, or some combination of these, it's not clear.*"[74]

Another provision of the Act of 1961, but not the least, was passed by Parliament without debate: the schedule. The Single Convention of 1961 contained a series of schedules prepared by the World Health Organization containing the list of drugs subject to rigorous control for the purpose of preventing them from being used for other than medical or scientific purposes. Most were on the schedule to the Act of 1961, which now comprised more than 92 drugs and their derivatives, spread over 14 major classes (opium, cannabis, coca, phenypipedridine, and so on). No member of Parliament questioned the Minister of Health to determine the criteria or reasons advanced by his department for subjecting such a large number of substances to the restrictive provisions of the act.

An Act respecting Food and Drugs and Barbiturates (1961)

In the early 1960s, the use of drugs not included in the schedule to the Opium and Narcotic Drug Act, or, later, in the *Narcotic Control Act*, began to concern medical and government authorities. These drugs were barbituric acids or "goof balls", amphetamines, methamphetamines and the salts and derivatives of those three substances. These so-called psychotropic drugs could be used to reduce stress, eliminate insomnia, stimulate muscle and brain activity and eliminate appetite.

When physicians and other health professionals began to notice the number of barbiturate dependence cases and the serious secondary effects of those drugs in the 1950s, they asked the government to regulate their distribution and use more effectively. In addition, in 1957, following a Health Department survey of 2,500 pharmacies, more than 300 pharmacists were convicted for failing to comply with regulations respecting the prescription of barbiturates and amphetamines. This time, it should be pointed out, the position of health professionals had more influence on government authorities than the positions of police officers or the Narcotic Control Office. These substances were included in the *Food and Drugs Act* as "controlled drugs" and not in the *Narcotic Control Act*, for two reasons. First, certain harsh provisions of the Act of 1961 were coming under increasing criticism. Second, the use of those substances in a number of prescription medications mea... that their use was widespread among the general public, particularly among persons holding good jobs, which ultimately was quite different from the unflattering picture hitherto painted of "drug addicts". In the circumstances, having recourse to the provisions of the Act of 1961 was out of the question.[75]

In 1961, Parliament thus passed the *Act to Amend the Food and Drugs Act* (Food and Drugs Act of 1961)[76] to better regulate the trade in barbiturates and amphetamines. The new act created Part III concerning the "controlled drugs" listed in Schedule G. It also created the offence of trafficking or possession for the purpose of trafficking, for which an accused was liable to a maximum prison term of 10 years, if convicted by way of indictment, or 18 months by summary conviction. However, simple possession of the substances was not illegal. Furthermore, unlike the *Narcotic Control Act*, the definition of trafficking excluded the distribution or giving of a controlled drug, but included the offences of importing and exporting.

In the case of criminal procedures applicable in a trial, a number of aspects were retained from the Act of 1961, such as the procedure concerning the reverse onus in a prosecution for possession for the purpose of trafficking, the use of a certificate from a federal analyst to confirm the nature of the drug, search and seizure writs of assistance, and the forfeiture and restitution of seized substances.

Lastly, Schedule G of the Act included three drugs: amphetamines, barbituric acids and methamphetamines, as well as the salts and derivatives of those drugs. During the debates, one member asked why other similar substances were not included in the schedule. The Minister of Health answered that, based on scientific research, only those three drugs were considered dangerous to human health.[77] Furthermore, as had been the case with the *Opium and Narcotic Drug* Act and the new *Narcotic Control Act*, the Governor in Council could make regulations upon recommendation by the Minister of Health, and where the public interest warranted it, to amend the schedule.[78]

Food and Drugs Act and hallucinogenics (1969)

In 1969, Parliament extended the application of legislative and bureaucratic controls to hallucinogenic drugs by passing the *Act to Amend the Food and Drugs Act* (Food and Drugs Act of 1969).[79] *That enactment*

created Part IV, which was to govern the use of and trade in "restricted drugs" enumerated in the new Schedule J. Those drugs were lysergic acid diethylamide (LSD), N-Diethyltryptamine (DET) and Methyl-2,5-dimethoxyamphetamine (STP).

To better control the use of and trade in hallucinogenic drugs, the act provided for the same offences and procedures as those applying to barbiturates. It also created an offence of possession in order to deter anyone from using such drugs. In that instance, an accused was liable, on summary conviction, to a maximum prison term of three years and a fine of $5,000.[80] If found guilty of a first offence, on summary conviction, an accused was liable to a prison term of up to six months or a maximum fine of $1,000. For subsequent convictions, the act provided for a maximum prison term of one year or a fine of $2,000

Narcotic Control Act and the offence of possession of cannabis

In the parliamentary debates on the Food and Drugs Act of 1969, the Minister of Health moved a very important amendment to the *Narcotic Control Act*. From 1921 until the *Narcotic Control Act* was passed, Canadian legislation had provided for a hybrid offence in the case of simple possession of a drug. Since 1961, however, that offence was solely an indictable offence punishable by a prison term of up to seven years. The amendment proposed in 1969 maintained the offence, but again offered the option of proceeding by way of summary conviction, thus recreating a hybrid offence. In the case of a first offence in which an accused was found guilty on summary conviction, the Act provided for a maximum prison term of six months or a fine of up to $1,000, and a term of up to one year and a fine of $2,000 for subsequent offences. The amendment was considered necessary by the Minister of Health since the number of prosecutions for cannabis possession had increased from 493 in 1966 to 1,727 in 1969.[81] In his view

> [...] in spite of the enormous variety of individual situations involved in that number of cases, the relevant section of that act provides very little scope for flexibility, either on the part of the Crown prosecutors or presiding judges or magistrates. There is no provision for the Crown to choose to proceed summarily. [...] This rigidity has been the subject of increasing criticism from a wide variety of sources such as the addiction research agencies of several provinces. [82]

Lastly, the Food and Drugs Act of 1969 amended the procedure adopted in 1929 providing for the admissibility of a certificate from a federal analyst at trial for an offence involving a scheduled drug under the *Narcotic Control Act* or a Schedule G or J drug under the *Food and Drugs Act*. Crown prosecutors would henceforth be permitted to prove orally, under oath, by affidavit or solemn declaration, the status of the signatory of the certificate, who thus no longer had to appear in court. However, a judge could require the analyst to appear before him for examination or cross-examination to better assess the information contained in the affidavit or solemn declaration. The amendment was designed to ensure greater respect for the fundamental rights of the accused.

The Le Dain Commission (1969-1973)

When parliamentarians were examining the provisions of the *Food and Drugs Act* in 1969, they asked that a special committee be struck to look into the issue of drug use in Canada, particularly the use of cannabis. On May 29, 1969, the Liberal government headed by Pierre Elliott Trudeau passed Order-in-Council P.C. 1969-1112, establishing the Commission of Inquiry into the Non-Medical Use of Drugs, more commonly

known as the Le Dain Commission. One of the reasons put forward to justify its creation was:

That notwithstanding these measures and the competent enforcement thereof by the R.C.M. Police and other enforcement bodies, the incidence of possession and use of these substances for non-medical purposes has increased and the need for an investigation as to the cause of such increasing use has become imperative. [83]

The Commission's activities and reports

The Commission carried out its activities from mid-October 1969 until December 14, 1973, when its final report was tabled. During this period, it heard from 639 groups and individuals: 295 organizations presented briefs and 43 appeared before the members of the Commission; 212 individuals made submissions and 89 gave oral presentations. In total, the Commission held public hearings in 27 cities, including Ottawa and the ten provincial capitals, travelling some 50,000 miles around the country. During its term, the Commission published four reports: an interim report (1970), a special report on cannabis (1972), a report on treatment (1972) and a final report (1973). In addition to its Chairman, Gerald Le Dain, the Commission comprised four members: Ian L. Campbell, Heinz Lehman, Peter Stein and Marie-Andrée Bertrand.

Before reviewing the Commission's recommendations in relation to cannabis, it is worthwhile to look into four aspects of the Commission's work that Dr. Marie-Andrée Bertrand brought up at a hearing of our Committee.

The first relates to the Commission's mandate, which was "extremely generous and broad." She presented it thus:

(a) to marshal from available sources, both in Canada and abroad, data and information comprising the present fund of knowledge concerning the non-medical use of sedative, stimulant, tranquillizing, hallucinogenic and other psycho tropic drugs and substances;

(b) to report on the current state of medical knowledge respecting the effect of the drugs...;

(c) to inquire into and report on the motivation underlying the non-medical use referred to in (a);

(d) to inquire into and report on the social, economic, educational and philosophical factors relating to the use for non-medical purposes... in particular, on the extent of the phenomenon, the social factors that have led to it, the age groups involved, and problems of communications; and

(e) to inquire into and recommend with respect to the ways or means by which the Federal Government can act, alone or in its relation with Government at other levels, in the reduction of the dimensions of the problems involved in such use

Because the mandate was so broad, commissioners and the Commission's personnel got involved in a vast project which, in my opinion, had a great deal of impact on Canadian society. I am convinced that even though it had no influence at all on criminal legislation, the Le Dain Commission brought about a considerable change in the mentalities of Canadians, as it raised, for instance, awareness about the effects of traditional drugs.[84]

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Before reviewing the Commission's recommendations in relation to cannabis, it is worthwhile to look into four aspects of the Commission's work that Dr. Marie-Andrée Bertrand brought up at a hearing of our Committee.

The first relates to the Commission's mandate, which was "extremely generous and broad." She presented it thus:

(a) to marshal from available sources, both in Canada and abroad, data and information comprising the present fund of knowledge concerning the non-medical use of sedative, stimulant, tranquillizing, hallucinogenic and other psycho tropic drugs and substances;

(b) to report on the current state of medical knowledge respecting the effect of the drugs...;

(c) to inquire into and report on the motivation underlying the non-medical use referred to in (a);

(d) to inquire into and report on the social, economic, educational and philosophical factors relating to the use for non-medical purposes... in particular, on the extent of the phenomenon, the social factors that have led to it, the age groups involved, and problems of communications; and

(e) to inquire into and recommend with respect to the ways or means by which the Federal Government can act, alone or in its relation with Government at other levels, in the reduction of the dimensions of the problems involved in such use.

Because the mandate was so broad, commissioners and the Commission's personnel got involved in a vast project which, in my opinion, had a great deal of impact on Canadian society. I am convinced that even though it had no influence at all on criminal legislation, the Le Dain Commission brought about a considerable change in the mentalities of Canadians, as it raised, for instance, awareness about the effects of traditional drugs.[84]

Second, the method used by the Commission to seek the opinions of Canadians. After mentioning the Commission's travel, she recalled that the public hearings gave the public an opportunity to ask questions and to confront the experts.

Thus, we raised a wide national debate on the factors whereby Canadian society ... can, frequently resort to psychotropic substances to alleviate some of its suffering. In my opinion, the generosity of the mandate, the method of consultation, the style and attitude of the commissioners - and more specifically those of the Commission's chairman - brought about an effervescence of ideas about democracy, about how the State functions, and about the feeling of alienation that many Canadians felt and still feel vis-à-vis their national, provincial or municipal government. [85]

Third, the Commission's research mandate. Dr. Bertrand stated that the Le Dain Commission, at the height of its mandate, employed 100 persons, 30 of whom were full-time researchers. These researchers basically worked on four targets: (1) the effects of the drugs – and especially of cannabis, (2) drug use, (3) treatment problems, and (4) the influence of the media on the phenomenon.

Fourth, the Commission's impact. Dr. Bertrand believes that the democratic debate kicked off by the Commission had significant impact on knowledge about drugs. Many people came to understand that stereotypes of drug users as criminals were just that-stereotypes. The Commission also kicked off a deep debate about the factors pushing people to take drugs and increased awareness of these issues. What became apparent very quickly after the Commission started its work was Canadians' feeling of alienation from Canadian politicians and lawmakers, and the frustration that ordinary people are not listened to in this country.

The special report on cannabis

Before presenting their recommendations in connection with a new public policy on cannabis, the Commissioners made a number of observations about Canadian cannabis legislation.

- The decision to criminalize cannabis was made "*without any apparent scientific basis nor even any real sense of social urgency* [...]".[86]

- The reversal of the evidentiary burden of proof for an offence of possession for the purpose of trafficking places a very heavy burden on the accused - significantly weakening the principle of the presumption of innocence – since he must prove that he did not intend to traffic by a preponderance of evidence, not just by raising a reasonable doubt in the mind of the judge or jury.

- Law enforcement is made very difficult by the very nature of the offences that take place secretly and often on a consensual basis, and extraordinary methods of law enforcement must be used. However, "*the combined effect of their use in connection with [drug] laws has been one of the chief causes of concern about the impact of the criminal law in this field.*"[87]

- RCMP officers and officers in the provincial or municipal police services do not have the necessary

financial, human or technical resources to curb narcotics trafficking as well as dealing with simple possession offences. All too often, possession cases are discovered accidentally in the course of other police investigations or surveillance activities over several months, resulting in a discriminatory application of the law.

❖ The decision as to whether to proceed by indictment or summary conviction varies considerably from one area to another of the country, and is influenced by the number of ongoing cases involving narcotics and the significant discretion exerted by crown attorneys. This inequitable application of the law can have extremely serious consequences on a defendant's future, particularly if a criminal record is the outcome.[88]

❖ Sentencing practices in drug cases are characterized by a wide disparity across Canada because of individual judges' perceptions about drug addiction, and their relative experience in criminal law and with cases involving simple possession or drug trafficking. According to the Commission's research, judges with greater experience in these types of cases handed down more lenient sentences. For example, sentences for simple possession involved fines or probation when a defendant did not have a criminal record, and, in trafficking cases, imprisonment of less than two years;[89] and

❖ From 1968 to 1971, the proportion of fines imposed for simple possession of cannabis increased from 1 % of all dispositions to more than 77 %.[90]

While the Commissioners agreed with these observations, their conclusions and recommendations were not unanimous.

The majority opinion – the recommendations of Gerald Le Dain, Heinz Lehman and Peter Stein

In order to explain the underlying reasons for their recommendations, the majority based their conclusions on the concept of harm, considering this the most useful criterion for laying down a new social policy for cannabis. This principle is associated both with the harm caused to an individual who uses a harmful substance, particularly his physical or mental health, and with the harm the individual causes to society, i.e. the impact on his family and colleagues. The concept of harm was of significance to the majority, since it made it possible to assess whether society should be concerned about the adverse effects of cannabis on human health and on society and, if such were the case, to what extent should criminal law apply in order to reduce those adverse effects. Should one criminalize simple possession of cannabis or only trafficking? Should measures such as decriminalisation or legalization be considered?

Initially, the majority wanted to eliminate some of the myths about the danger of cannabis:

The evidence of the potential for harm of cannabis is far from complete and far from conclusive. It is possible to find some fault with the methodology or the chain of reasoning in virtually all of the evidence. [...] On the whole, the physical and mental effects of cannabis, at the levels of use presently attained in North America, would appear to be much less serious than those which may result from excessive use of alcohol. However, there has not been sufficient experience with long-term, excessive use of cannabis under North American conditions to justify firm and final conclusions. [91]

Regarding the amotivational syndrome, the Commission said it did not have conclusive data about personality change.

Some observers have spoken of apathy and a loss of goals, an absorption in the present with little or no thought for the future. All of these symptoms might be equally associated with a profound change of values and outlook which many might regard as salutary.[92] In our opinion, these concerns justify a social policy designed to discourage the use of cannabis as much as possible, particularly among adolescents. [93]

The Commission did not have specific and conclusive scientific data to identify the harmful or beneficial effects of cannabis. On the other hand, while it believed that the dangers of cannabis (particularly those involving operation of a motor vehicle, poly-drug use, long-term mental deterioration and disorder, and criminality) were exaggerated, the Commission recognized that cannabis, like all other drugs, can have particularly harmful effects when it is used along with other drugs and that its use by adolescents could have a harmful effect on their maturation. The majority of members explained that, even if the use of cannabis is not a threat to the foundations of Canadian society or to our system of values based, for example, on a productive life, this element could not be excluded from the formulation of a new policy on cannabis.

Secondly, since, in addition to health problems, cannabis use entails significant costs to the family, to society and to the economy, the majority justified the use of the criminal law, stating:

In our opinion, the state has a responsibility to restrict the availability of harmful substances and in particular to prevent the exposure of the young to them and that such restriction is a proper object of the criminal law [...] where, in its opinion, the potential for harm appears to call for such a policy. [94]

For this reason, the majority rejected a public policy model based on legalization of the use and distribution. Even if legalization would have had the benefit of better controlling supply and quality, without a considerable increase in the number of long-term users, it could have led to some users moving on to hashish, with its higher concentration of THC, or encouraged users to smoke more marijuana or other cannabis products in order to obtain the desired psychoactive effect, and this would have cancelled out the effectiveness of control measures and increased the likelihood of abuse. [95]

Therefore, the majority recommended maintaining the offences of cannabis trafficking, of possession of cannabis for the purpose of trafficking, and importing and exporting cannabis. However, it adopted a much more liberal position with regard to controlling the demand:

The criminal law should not be used for the enforcement of morality without regard to potential for harm. [...] If we admit the right of society to use the criminal law to restrict the availability of harmful substances in order to protect individuals (particularly young people) and society from resultant harm, it does not necessarily follow that the criminal law should be applied against the user as well as the distributor of such substances. [96]

In this context, the majority felt it was necessary to amend the Narcotic Control Act, because "we do not believe that a change in the law need have an adverse effect on a proper appreciation of the caution with which we believe cannabis should be treated."[97] It was necessary to restore Canadians' confidence in and respect for the cannabis policy by reclassifying the drugs listed in the appendix to the Act, particularly

cannabis. The majority opinion was based on the fact that:

> While the Single Convention groups cannabis with the opiate narcotics it does not insist that it be given identical treatment in the law of the member states. The Single Convention has certainly been responsible for reinforcing the erroneous impression that cannabis is to be assimilated to the opiate narcotics but it does not prevent domestic legislation from correcting this impression. Because the present classification and legislative treatment of cannabis is so generally recognized to be erroneous and indefensible, any change in it which corresponded more closely to the facts could be expected to command much more respect and careful attention [to the law]. [98]

Restoring Canadians' confidence in the *Narcotic Control Act* also involved a comprehensive review of criminal penalties relating to cannabis. To justify this view, the majority pointed out that the harm caused by the criminal law, particularly on mere users, was more serious than the harm to their health and their environment caused by using the drug. In its analysis, the majority focussed on the consequences of sentences on young people, since over 85% of those convicted for cannabis possession or trafficking in 1970 and 1971 were under the age of 25.

A criminal record could have serious consequences for the future of young people, limiting the right to travel, and because of the family, social or professional stigma it caused. The majority were of the view that the possibility of obtaining a pardon is not sufficient to resolve this situation, since: *"the knowledge which a lot of people invariably possess of a conviction and the knowledge which can be obtained by interested parties through careful investigation cannot be eliminated."* [99] *In fact, the Criminal Records Act* provides only for removing information about the criminal record stored in national police files following a pardon, but not information in police investigation reports, or in legal documents stored in the law courts about the trial and the sentence, let alone newspaper articles.

Moreover, the majority of members deplored the extreme severity of sentences for cannabis use, stating, *"they are out of all proportion to the harm which could possibly be caused by cannabis. Moreover, they are excessive by comparison with those of most other nations."* [100] *It disapproved of the maximum penalty of seven years' imprisonment for cannabis cultivation for one's own use, the mandatory minimum penalty of seven years' imprisonment for cannabis importing or exporting, as well as the possibility of life imprisonment for cannabis trafficking. The majority's criticism also covered the definition of trafficking, which included giving or offering, so that people who are merely passing a joint among friends in an evening could be charged with trafficking. The majority also mentioned that these sentences were made even more severe because:*

- *in the cases relating to possession of cannabis for the purpose of trafficking, the Crown could only proceed by way of indictment, with the consequence of more severe sentences; and*
- *the enforcement of the Narcotic Control Act was discriminatory (police investigations, the Crown Attorneys' discretion in deciding how to proceed, reversal of the burden of proof to the detriment of the accused, and judges' past experience).*

The criminalization of cannabis had another negative effect: the illegal nature of simple possession and cultivation was conducive to the development of an illicit market, where some people must engage in crime or at least deal with criminals in order to obtain a supply. In some cases, people were exposed to other, more dangerous drugs. According to the majority:

Making cannabis legally available would not isolate people from contact with the illicit market in other drugs. From the point of view of influence, the important contacts are between drug users rather than between users and traffickers. Most users are initiated into new forms of drugs by other users. Interest in other drugs would not cease if cannabis were made legally available. [101]

Finally, the use of extraordinary police powers, such as writs of assistance, often against users, only discredited the law further and adversely affected the morale of law enforcement authorities.[102]

For all these reasons, the majority recommended:

- *that importing and exporting should be included in the definition of trafficking (as they are under the Food and Drugs Act), and they should not be subject to a mandatory minimum term of imprisonment;*
- *that it be possible to proceed by indictment or summary conviction in the case of trafficking and possession for the purpose of trafficking, and, on indictment, the penalty for this offence should be five years, and on summary conviction, eighteen months. It should be possible in either case to impose fine in lieu of imprisonment;*
- *that the prohibition against the simple possession of cannabis be repealed;*
- *that trafficking should not include the giving, without exchange of value, of a quantity of cannabis which could reasonably be consumed on a single occasion;*
- *that the prohibition against cultivating cannabis for personal use be repealed; and*
- *that the burden of proof on a person charged with possession for the purposes of trafficking be lightened, by stipulating in the Act that it is sufficient for the accused to raise a reasonable doubt as to his intention to traffic.*

Minority Opinion–the recommendations of Marie-Andrée Bertrand

According to Marie-Andrée Bertrand, Canada's cannabis policy required an in-depth reform that went far beyond merely amending the Narcotic Control Act. Dr. Bertrand took a much more liberal approach than the majority, and particularly Ian L. Campbell, as we will see below. Dr. Bertrand wrote that the Commission's research findings "*establish that a large number of people have used cannabis-more than a million in Canada. Very few of them have ever required medical or psychological treatment as a consequence. Smoking marijuana or hashish generally produces no serious personal problems, nor does it result in criminality.*"[103] *Cases of habitual and excessive use were exceptional, as most users used cannabis recreationally. Any new public policy aiming at controlling cannabis use effectively without causing harm both to users and to society should consider these determinants. The use of the criminal law was out of the question. According to the Commissioner, there were several arguments in support of this conclusion.*

Like the majority, she rejected a number of prejudices concerning harm caused by cannabis to human

health, in particular its effects on brain activity and the ability to drive a vehicle, but recognized nevertheless that in large amounts cannabis could cause psychoses. While Marie-Andrée Bertrand commented that cannabis might have an effect on adolescent maturation, she said that very few facts supported the hypothesis put forward by the majority.[104] She also concluded that there was no relationship between cannabis use and criminality, aggression or the infamous amotivational syndrome.[105] Moreover, she rejected claims that cannabis use leads to poly-drug use in most users:

[...] a certain proportion of cannabis users take other drugs [...]. We are not dealing with a phenomenon that is limited to cannabis, LSD and the amphetamines (which are used in combination by only a few) but with an almost indiscriminate use of mood-changing substances in our society. When we include alcohol, it can be said that Canadians consume great quantities of a variety of psychoactive drugs, even if cannabis is excluded.[106]

Second, users could not be sure of the quality of cannabis they bought, with all the concomitant repercussions, given the illicit and clandestine nature of production and distribution activities. Dr. Bertrand responded to the argument made by the majority that quality control of cannabis in a legal market would encourage a number of users to move to hashish by saying that no evidence points to such a possibility.[107]

Third, the prohibition of cannabis trade and illicit use was expensive and ineffective. Attempts to curb trafficking, despite all the efforts made by RCMP officers and municipal police forces, along with severe penal sanctions, were ineffective. The sentences provided for simple possession no longer had any dissuasive effect, since a million Canadians were using or had used cannabis.

Fourth, in its current form, the law had no educational or dissuasive impact, since Canadians' perception of the harm caused by cannabis was no longer the same as the government's. In this connection, Marie-Andrée Bertrand wrote:

A more important factor underlying problems in the application of the law is the gradual change in opinion taking place among Canadians regarding the harmfulness of this substance. The evidence has been taken into account - cannabis is not an opiate, its use does not induce physical dependence. The earlier opinions of society have been challenged and modified. [...] However, the continued prohibition of cannabis has precipitated, among many users, a generalized disrespect for the law. [108]

For all these reasons, Marie-Andrée Bertrand recommended a "controlled legalization" policy for cannabis. She concluded that the federal government should remove cannabis from the Narcotic Control Act and initiate discussions with the provinces to have the sale and use of cannabis placed under controls similar to those governing the sale and use of alcohol. Such a system would entail regulations prohibiting the sale or distribution of cannabis to minors, and governing the distribution of a quality product at a price that would make smuggling impractical. To guarantee the success of the new approach, the federal and provincial governments were to work together in developing all stages of the production and distribution of cannabis, while undertaking multidisciplinary epidemiological research to evaluate the repercussions of a controlled legalization policy on health and human behaviour and to monitor patterns of use.[109]

Lastly, Marie-Andrée Bertrand considered that this policy would prove beneficial, not only for users, but also for the federal and provincial governments because of the considerable revenue they might well derive

from the sales t ..es on such a popular product.[110]

Minority Op nion–the recommendations of Ian Campbell

In comparison with the very liberal recommendations made by Marie-Andrée Bertrand, the recommendations by Ian Campbell were much more conservative in tone. Although he was in almost full agreement with the conclusions of the majority, he firmly believed that decriminalizing simple possession of cannabis would be misinterpreted by the media and by Canadians. If cannabis were legalized, the signal that would be sent out to society, particularly to young people, would be that cannabis is harmless, and might eventually lead to the accepted use of other, much more dangerous drugs. In this regard, he stated that, in both cases:

I think there is also a risk that the repeal of the prohibition on the possession of cannabis, even by the young, would be misunderstood as indicating a willingness by the society to condone and accept the use of the drug. There is little evidence to suggest that such a willingness exists. [...] The risk of such progression is probably not as great among those who have been deterred from use by the present law as among those who have already used cannabis. But the risk of progression is nonetheless real for some considerable number.[111]

He also felt that maintaining the prohibition had a positive benefit–that o protecting young people from the harm caused by cannabis:

The potential for harm from adult use of cannabis is probably very much less than from use by the young. But, I find sufficient reasons to recommend the continuation of the general prohibition. Not the least of these reasons is the practical impossibility, at this time, of using the law to convey a perception of the dangers of cannabis without maintaining the prohibition for all, whether young or old. [112]

Against this backdrop, the law was in the interest of prevention and morality, protecting as it did both individuals and society. Continuing in this vein, Mr. Campbell spoke about cannabis and young people's lack of maturity, saying:

We have properly been concerned about the damage done by placing too many duties and responsibilities on the individual too early. But it seems to me that recently we have been far too little concerned with the consequences of placing too many rights and freedoms on the shoulders of the young. [113]

Despite it all, like other members of the Commission, Mr. Campbell recognized that some penal sanctions provided by the law could cause harm that was disproportionate in comparison with the real harm caused by cannabis on human health and society. He therefore recommended that the prohibition on the possession of cannabis be maintained, with possession of cannabis being punishable, upon summary conviction, by a fine of $25.00 for the first offence and a fine of $100.00 for any subsequent offence. Maintaining the prohibition would benefit not only users, but also police officers, since it:

Is entirely reasonable to assume that a high proportion of those currently arrested for possession as a result of systematic police investigation are in fact guilty of trafficking. [114]

The work of the Le Dain Commission ended on December 14, 1973 when its final report was tabled. On July 31, 1972, John Munro, Minister of Health, revealed the policy that the federal government wanted to pursue following the tabling of the Commission's special report on cannabis. Even though he refused to legalize the use of cannabis, the Minister stated his intention to remove cannabis from the *Narcotics Control Act* and place it under the *Food and Drugs Act*. This measure would be accompanied by lighter sentences for certain cannabis-related offences, research and education programs about its non-medical use, and less severe legal consequences for users. This measure would have covered hashish since the government *"wanted to make a clear distinction between this drug [cannabis] and dangerous narcotics like heroin."*[115] *Two years later, on November 26, 1974, the federal government met its commitments by tabling Bill S-19 in the Senate.*

Bill S-19 and cannabis

Bill S-19 created Part V of the Food and Drugs Act entitled "Cannabis". Thus, as recommended in the majority opinion expressed in the Le Dain Commission's special report, cannabis and cannabis users were no longer subject to the harsh provisions of the *Narcotic Control Act*.

Clause 7 of Bill S-19 defined "cannabis" as hashish, marijuana, cannabidol and THC. It continued the offence of possession, which, however, could only be prosecuted summarily. Anyone convicted of a first offence would be liable to a maximum fine of $5000 or, failing payment, to a maximum prison term of six months. For repeat offences, the fine would be fixed at an amount not exceeding $1,000 or, failing payment, a prison term not exceeding six months could be imposed. As may be seen, fines were favoured over imprisonment for simple possession.

The Bill also maintained the offences of trafficking, possession for the purposes of trafficking and cultivation of cannabis without a permit provided for by the *Narcotic Control Act*, punishable on summary conviction by a maximum fine of $1,000 or a prison term of up to 18 months or, if prosecuted by way of indictment, by a prison term of up to 10 years. The penalties provided were thus less severe than those provided for by the Act of 1961, except for the cultivation of cannabis. Although Bill S-19 created a dual-procedure offence for this crime, the maximum prison term was more severe (10 years rather than seven if prosecuted by way of indictment).

Lastly, a person convicted of importing or exporting cannabis was liable, on summary conviction, to a maximum prison term of two years or, if prosecuted by way of indictment, to a prison term of three to 14 years. Parliament thus wanted to show that cannabis trafficking and smuggling were crimes which it still considered very serious.

Apart from these offences, Bill S-19 also contained the criminal procedures included in Parts III and IV of the *Food and Drugs Act* (evidence of possession for the purpose of trafficking, certificate of the analyst, police powers and so on). Lastly, the provisions respecting regulations that the governor in council may make concerning the issuing of cultivation permits and possession of cannabis were now contained in the new Part V.

The Bill was considered by the Senate Standing Committee on Legal and Constitutional Affairs, which, in its report, recommended three amendments. The first added a provision for an exception to the *Criminal Records Act* so that any person receiving an absolute or conditional discharge would be automatically pardoned. The purpose of this measure was to eliminate the possibility that a criminal record might remain

with the Canadian Police Information Centre (CPIC) following discharge. The second amendment increased the maximum prison term for trafficking in a narcotic from 10 to 14 years less a day. The third repealed the minimum term of three years for smuggling.

Bill S-19 was passed on third reading on June 15, 1975 and referred to the House of Commons, where it never passed second reading. In the fall of 1976, Mitchell Sharp stated in an interview that the bill would not be reintroduced since more important legislation was under consideration.

After Le Dain: forging ahead regardless

Throughout the 1970s, a number of federal politicians promised major reforms to lessen, even eliminate, the criminal penalties imposed on cannabis users. In 1972, the Liberal Party of Canada stated in its election platform that it intended to amend Canada's policy on marijuana,[116] which likely gave birth to Bill S-19. In 1978, Joe Clark, Leader of the Progressive Conservative Party, declared that a government formed by his political party would decriminalize possession of that drug.[117] However, promises of reform ceased in the early 1980s.

In the mid-1980s, Canadians witnessed a significant change in the federal government's position on drugs. This new situation was perhaps not unrelated to the U.S. policy of "war on drugs" adopted in the early 1980s by President Ronald Reagan. The United States once again became very active within international drug control agencies to encourage the international community to take energetic measures to put an end to drug trafficking, which "threatened American youth".

In 1987, Canada became actively involved in the work of the International Conference on Drug Abuse and Illicit Trafficking.[118] Two important events occurred at that meeting organized under the aegis of the United Nations. First, delegates passed a full multidisciplinary plan for future activities to combat drug abuse encouraging the states to comply with their obligations under existing treaties. That initiative targeted four important areas: prevention and reduction of demand for illicit drugs, control of supply, suppression of illicit trafficking and treatment and rehabilitation. For the first time, international legal instruments made express provision for the reduction of supply. Second, delegates put the final touches on the treaty to suppress drug trafficking on a global scale. That treaty was passed in Vienna on December 20, 1988 as the *Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (Convention of 1988).

In addition to taking part in the work leading to the adoption of that convention, starting in the mid-1980s, Canada stepped up its international efforts with regard to drugs. In June 1987, it ratified the Convention on Psychotropic Substances of 1971[119] and promised to increase its financial participation in the United Nations Fund for Drug Abuse Control to $1 million by 1991. The Canadian government justified its participation in the international drug effort as follows:

"The Government is acting to stem the flow of drugs in and out of Canada, not only because Canadians are among the victims of drug abuse, but also because we have a role to play as responsible citizens of the world." [120]

Canada was influenced by this international effort when, on September 13, 1988, before it had even signed or ratified the Convention of 1988 – which was not done until 1990 – Parliament passed Bill C-61, designed to combat laundering of the proceeds of crime (money laundering, enterprise crime, etc.). The Bill was aimed at organized crime and the financing of its operations through drug trafficking. The *Criminal Code* and the *Narcotic Control Act* were thus amended to create two new offences: laundering of proceeds of crime and possession of property obtained through drug trafficking. These new provisions also applied to the illegal activities of drug cultivation, trafficking and importing and exporting in or outside Canada if they were committed by Canadian citizens. Parliament did not need to legislate to criminalize the other activities prohibited by the Convention of 1988 since, as noted above, many had already been covered since 1961.

Controlled Drugs and Substances Act

In accordance with the commitment the federal government made in 1987, Minister of Health Perrin Beatty tabled Bill C-85, *An Act respecting psychotropic substances*, on June 11, 1992. It merged Parts III and IV of the *Food and Drugs Act* as well as the *Narcotic Control Act* into a single piece of legislation. Bill C-85 never passed report stage and died on the Order Paper in September 1993, when the 34th Parliament was dissolved.

On February 2, 1994, the new Minister of Health, Diane Marleau, retabled the legislation proposed by the former government under a different name, the *Controlled Drugs and Substances Act* (CDSA), which was passed by the House of Commons on October 30, 1995. After the first session of the 35th Parliament was prorogued, the bill was reintroduced in the Senate on March 6, 1996, and renumbered Bill C-8. The legislation went into effect on June 20, 1996.

This was the first major reform of Canada's drug legislation since the 1960s. Apart from the amendments made in 1988 under Bill C-61, the *Narcotic Control Act* had been amended in 1985 to abolish the writ of assistance and the procedure for establishing proof of possession of narcotics for the purpose of trafficking. In 1987, in *R. v. Smith*, the Supreme Court of Canada ruled that the minimum prison term of seven years for importing or exporting was unconstitutional under section 12 of the *Canadian Charter of Rights and Freedoms* (cruel or unusual punishment), as a result of which it was repealed.

One of the objects of the bill was to meet Canada's international obligations under the *Single Convention on Narcotic Drugs* (1961), the *Convention on Psychotropic Substances* (1971), and the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention, 1988)*. It was further designed to introduce a legislative framework for regulating the import, production, export, distribution and use of scheduled substances under previous acts. The following sections describe the main provisions of this legislation.

Substances

The merger of the schedule of the *Narcotic Control Act* with those of the *Food and Drugs Acts* of 1961 and 1969, combined with the addition of new substances such as benzodiazepines and the precursors of this long list of substances, considerably increased the number of drugs subject to the restrictive provisions and procedures of the CDSA.

The expression "controlled substance" means a substance included in Schedule I, II, III, IV or V. In addition, the Act defines the term "analogue" as any substance that, in relation to a controlled substance, has a substantially similar chemical structure. Furthermore, anything that contains or has on it a controlled

substance and that is used or intended or designed for use in producing or introducing the substance into the human body will be treated in the same way as that illegal substance.

- **Schedule I:** narcotic drugs such as opium, morphine and cocaine.
- **Schedule II:** cannabis, hashish, cannabinol, etc.
- **Schedule III:** stimulants such as amphetamines, hallucinogenics, such as mescaline, LSD and DET, and sedatives such as methaqualone, commonly called quaalude.
- **Schedule IV:** among others, anabolic steroids, hypnotics such as barbiturates and benzodiazepines (better known by their trademarks Seconal, Luminal, Valium and Librium).
- **Schedule V:** enumerates other substances that may be abused.
- **Schedule VI:** precursors, which produce no effects on the mind but can be converted or used to produce designer drugs, "simili-drugs" or substances contained in the schedules under Canada's international obligations under the *Single Convention on Narcotic* Drugs (1961) and the *Vienna Convention* of 1988.
- **Schedules VII and VIII:** concerning application of penalties for cannabis offences.

A total of more than 150 drugs, psychotropic substances and precursors now appear in the schedules of the act. It should be noted that section 60 of the CDSA continues the provision adopted in 1911 that the Governor in Council may, by order, amend any one of the schedules of the act by adding or deleting one or more substances where the Governor in Council deems the amendment to be necessary in the public interest.

Part I: Offences and Punishment

Participation in the aforementioned activities would not necessarily result in criminal penalties. As will be seen below, the act provides for regulations authorizing the possession, import and export and production for medical, scientific, industrial purposes or for the purposes of the act. Part I of the CDSA enumerates a number of types of offences:

(1) Possession of a Schedule I, II or III substance (subsection 4(1)); obtaining or seeking to obtain a Schedule I, II, III or IV substance, or the order necessary to obtain it from a practitioner (subsection 4(2)). The following table shows the maximum penalties for the offence of possession:[121]

Possession of a Schedule I Substance

Indictable offence

Summary conviction

Reoffence

Seven years' imprisonment

Fine of $1,000 or 6 months' imprisonment or both

Fine of $2,000 or one year's imprisonment or both

Possession of a Schedule II Substance (cannabis in all its forms):

Indictable offence

Summary conviction

Reoffence

Five years' imprisonment less a day

Fine of $1,000 or 6 months' imprisonment or both

Fine of $2,000 or one year's imprisonment or both

Possession of a Schedule VIII Offence

(less than 1 g of cannabis resin (hashish) or less than 30 g of marijuana)

Summary conviction only

Fine of $1,000 or 6 months' imprisonment or both

Possession of a Schedule III Substance

Indictable offence

Summary conviction

Reoffence

3 years' imprisonment

Fine of $1,000 or 6 months' imprisonment or both

Fine of $2,000 or one year's imprisonment or both

The penalties imposed for the offence under subsection 4(2) are similar but slightly different from those provided for possession.

(2) Trafficking in a Schedule I, II, III or IV substance or any substance represented to be such a substance. Trafficking is defined as any transaction to sell, administer, give, transfer, transport, send or deliver a schedule substance, or to offer to do any one of those things. To "sell" means offering for sale, exposing for sale, having in one's possession for sale and distributing a substance, whether or not the distribution is made for consideration (subsection 5(1)); possessing any Schedule I, II, III or IV substance for the purpose of trafficking (subsection 5(2)). The following table shows the maximum penalties for these offences:

Trafficking in a Schedule I or Schedule II Substance

(except in cases involving less than 3 kg of cannabis)

Indictable offence

No summary conviction offence

Life imprisonment

Trafficking in a Schedule III Substance

Indictable offence

Summary conviction

10 years' imprisonment

18 months' imprisonment

Trafficking in a Schedule IV Substance

Indictable offence

Summary conviction

Fine of $1,000 or 6 months' imprisonment or both

One year's imprisonment

Trafficking in cannabis is not always punishable by the maximum penalty of life imprisonment. In cases of trafficking involving less than 3 kg of cannabis, a person is guilty of an indictable offence and subject to a maximum term of five years' imprisonment less a day.

(3) Importing or exporting any Schedule I to VI substance (subsection 6(1)); having in one's possession

any Schedule I to VI substance for the purpose of exporting it (subsection 6(2)). The following table shows the maximum penalties for these offences:

Importing or Exporting a Schedule I or II Substance

Indictable offence

No summary conviction

Life imprisonment

Importing or Exporting a Schedule III or IV Substance

Indictable offence

Summary conviction

10 years' imprisonment

18 months' imprisonment

Importing or Exporting a Schedule IV Substance

Indictable offence

Summary conviction

3 years' imprisonment

One year's imprisonment

(4) Producing a Schedule I, II, III or IV substance. The expression "produce" is defined as meaning to obtain a substance by any method or process including manufacturing, synthesizing or using any means of altering the chemical or physical properties of the substance, or cultivating, propagating or harvesting the substance or any living thing from which the substance may be extracted or otherwise obtained. The following table shows the maximum penalties for this offence:

Producing a Schedule I or II Substance

(other than cannabis/marijuana)

Indictable offence

No summary conviction

Life imprisonment

Producing cannabis (marijuana)

(less than 1 g of cannabis resin (hashish) or less than 30 g of marijuana)

Indictable offence

No summary conviction

7 years' imprisonment

Producing a Schedule III Substance

Indictable offence

Summary conviction

10 years' imprisonment

18 months' imprisonment

Producing a Schedule IV Substance

Indictable offence

Summary conviction

3 years' imprisonment

One year's imprisonment

(5) Possession of property obtained by crime (section 8) and offences relating to the laundering of proceeds of crime (section 9).

The penalties are obviously closely related to the schedule in which the substance in question appears. Furthermore, the penalties determined for cannabis offences also vary considerably depending on the quantity

involved, a subject discussed in greater detail below.

Section 10 of the Act states the purpose of sentencing, which is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community. This section also provides a list of circumstances which the court is required to consider as "aggravating" factors in determining the sentence that shall be imposed on a person convicted of a designated substance offence. Those factors are: the use of a weapon or use of or threat to use violence, trafficking in a substance on or near school grounds or in or near any public place frequented by minors or by persons under the age of 18 years, and previous convictions of a designated substance offence. In addition, the use of the services of a minor in the commission of a designated substance offence is an aggravating factor. Any judge deciding not to sentence a person to imprisonment despite the presence of one or more aggravating factors is required to give reasons for that decision.

Part II: Enforcement

Sections 11 and 12 of the act concern search and seizure activities, which are discussed in greater detail in Chapter 14.

Section 13 incorporates certain *Criminal Code* provisions establishing a detailed plan for the return, reporting and detention of seized property. In the case of offence-related property, the *Criminal Code* provisions apply subject to sections 16 to 22 of the Act. Furthermore, a separate procedure is established under sections 24 to 29 to determine the disposal of controlled substances. It should be noted that section 14 provides for the issuing of a restraint order in respect of offence-related property.

Sections 16 and 17 concern the forfeiture of offence-related property. Offence-related property is defined as any property, within or outside Canada, by means of or in respect of which a designated substance offence is committed, that is used in any manner in connection with the commission of a designated substance offence, or that is intended for use for the purpose of committing a designated substance offence, but does not include a controlled substance or real property, other than real property built or significantly modified for the purpose of facilitating the commission of a designated substance offence. A court which convicts a person of a designated offence shall order the forfeiture of offence-related property where it is satisfied, on a balance of probabilities, that the property is offence-related property. Where the offence-related property cannot be related to the offence with which the person is charged, the court may nevertheless order its forfeiture. The court may make such order where it is satisfied, beyond a reasonable doubt, that it is offence-related property. Furthermore, offence-related property may be forfeited even if legal proceedings were never instituted. The court shall render an order of forfeiture of property if it is satisfied (1) beyond a reasonable doubt that any property is offence-related property, and (2) that proceedings in respect of a designated substance offence in relation to the property were commenced, and (3) that the accused charged with the offence has died or absconded.

Sections 18 to 22 are essentially a restatement of sections 462.4 to 462.45 of the *Criminal Code*. The purpose of these provisions is to protect the interests of innocent third parties and good-faith buyers. As a general rule, if the court is satisfied that the claim is lawful, it may order the return of the property (or payment of its value if restitution is impossible) to the person who is its legitimate owner or who is entitled to own it.

Section 23 merely incorporates the *Criminal Code* provisions on forfeiture of proceeds of crime. The same terms and conditions are thus established in the case of the forfeiture of the proceeds of designated offences.

Part III – Disposal of Controlled Substances

Under subsection 13(4) of the Act, where a controlled substance has been seized, a report identifying the place searched, the substance seized and the location where it is being detained shall be filed with the justice of the peace of the territorial division concerned. Sections 24 to 29 of the Act govern the disposal of controlled substances.

Section 24 establishes the pre-trial procedure for the return of controlled substances. For example, any person may, within 60 days after the date of the seizure, finding or acquisition by a peace officer or inspector, apply to a justice of the peace for a restitution order. If the justice is satisfied that the application is valid, he shall order that the substance be returned to the applicant. In the opposite case, the justice orders forfeiture to the Crown. The substance is then disposed of in accordance with the applicable regulations or as the Minister directs. Where no application for return is made, the substance is delivered to the Minister and disposed of in accordance with the applicable regulations or, failing such regulations, in such manner as the Minister directs.

It should be noted that section 26 enables the Minister to ask the justice of the peace to order that a controlled substance be forfeited, at any time, if he has reasonable grounds to believe that it constitutes a potential security, public health or safety hazard. The application is essentially made *ex parte*. If the justice of the peace finds that the Minister has reasonable grounds to believe that the substance constitutes a potential security, public health or safety hazard, he orders its forfeiture. The substance is then disposed of in accordance with the applicable regulations or, if there are no applicable regulations, in such a manner as the Minister directs.

Section 27 regulates the post-trial procedure for returning controlled substances seized–the persons whose substances were seized is entitled to have them returned where the court rules his activities legitimate. Otherwise, the substance is returned to the true legitimate owner, provided that that person can be identified. If neither is possible, the substance is forfeited to the Crown, which disposes of it in accordance with the applicable regulations or, if there are no applicable regulations, in such manner as the Minister directs.

Section 28 enables the Minister to dispose of a controlled substance with the owner's consent.

Lastly, under section 29, the Minister may destroy any plants from which a Schedule I, II, III or IV substance may be extracted and that is being produced without a regulatory licence or in violation thereof.

Part IV – Administration and Compliance

This part concerns the powers assigned to inspectors to ensure that holders of a regulatory authorization or licence to deal in controlled substances or precursors are complying with the regulations.

The inspector may, at any reasonable time, enter any place he believes on reasonable grounds is used for the purpose of conducting that person's business or professional practice. The Act authorizes inspectors to conduct a series of inspection acts, including seizing and holding any controlled substance or precursor which he deems on reasonable grounds must be seized or held. The Act makes provision for the return of seized property. It should be noted that, in the case of dwelling-places, the inspector must first obtain the occupant's consent or hold a warrant.

Part V – Administrative Orders for Contraventions of Designated Regulations

This part makes provision for the administrative procedure that is to be followed where a regulation designated by the Governor in Council has been contravened. Under section 33 of the CSDA, the Governor in Council may proclaim certain regulations made under section 55 as "special regulations". Non-compliance with those regulations may result in administrative orders providing for severe penalties, including revocation of the permit or licence issued by the Minister of Health (subsection 40(4)).

Part VI – General

Sections 44 to 60 are general provisions. For example, sections 44, 45 and 51 concern the designation of analysts, the scope of their duties and the admissibility of their reports at trial.

Section 46 creates a general penalty applying to anyone who contravenes a provision of the Act for which no penalty is specifically provided or contravenes a regulation. An indictable offence is punishable by a maximum fine of $5,000 and/or three years' imprisonment. An offence punishable on summary conviction results in a $1,000 fine and/or six months' imprisonment.

Under section 47, summary convictions for certain offences under the act and regulations must be commenced within one year of the commission of the offence. All other summary procedures must be commenced witain six months of the offence.

Other sections concern the following matters: that the prosecutor is not required, except by way of rebuttal, to prove that a certificate, licence, permit or other qualification does not operate in favour of the accused (section 48); that a copy of any document filed with a department is admissible in evidence without proof of the signature of the authority (section 49); that a certificate issued to a police officer exempting him from the act or its regulations is admissible in evidence at trial and, in the absence of evidence to the contrary, is proof that the certificate or other document was validly issued, without proof of the signature or official character of the person purporting to have certified it, although the defence may, with leave of the court, cross-examine the person who issued the certificate (section 50); that the giving of any document may be proved by oral evidence, affidavit or solemn declaration, even though the court may require the signatory to appear (section 52); that the continuity of possession of any exhibit tendered as evidence in a proceeding may be proved by the testimony, affidavit or solemn declaration of the person claiming to have had it in his possession (section 53); and that certified copies of records, books, electronic data or other documents seized may be presented as admissible evidence by the Minister's officer, the copied versions having the same probative force as the originals, unless the accused submits evidence to the contrary (section 54).

Subsection 55(1) establishes the power of the Governor in Council to make regulations. One of the objectives of Canada's drug policy was to monitor the legal trade in scheduled drugs for medical or scientific purposes. The CSDA significantly enhanced the Governor in Council's power to make regulations with respect to designated substances and precursors. The regulations made under the CSDA apply in particular to businesses, physicians and pharmacists. The Governor in Council may thus make regulations, with respect to the designated substances or precursors:

- Governing, controlling, limiting, authorizing the importation and exportation, production, packaging, sending, transportation, delivery, sale, administration, possession or obtaining of those substances or precursors;

- Issuing permits to businesses or persons permitting the aforementioned activities, defining the terms and conditions of payment and their revocation, and determining the qualifications required of permit holders;

- Controlling the methods of production, storing, packaging and restricting the advertising, if necessary, for the sale of those substances;

- Governing the books, records, electronic data or other documents that must be established by the businesses, physicians or pharmacists or any other permit holder engaged in the activities enumerated in the first point;

- Authorizing, if necessary, the communication of information obtained through investigations conducted by the inspectors of the Department of Health to provincial authorities in respect of a serious contravention of the regulations concerning the activities defined in the first point so that they may take disciplinary measures;

- Exempting, on conditions set out in the regulations, any person or class of persons from the application of section 55.

Under subsection 55(2), the Governor in Council, on the recommendation of the Solicitor General of Canada, may make regulations that pertain to investigations and other law enforcement activities. This includes regulations exempting police officers, in certain circumstances, from the application of Part I of the Act (Offences and Penalties).

Under section 56, the Minister may, on such terms and conditions as the Minister deems necessary, exempt any person or class of persons or any controlled substance or precursor or any class thereof from the application of all or any of the provisions of the act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest. Section 57 concerns the delegation of the powers of the Minister and the Solicitor General.

Section 58 provides that the provisions of the act and the regulations made under it prevail over any incompatible provisions of the *Food and Drugs Act* or its regulations.

Section 59 makes it an offence to make or assent to the making of a false or misleading statement in any book, record, return or other document that must be made under the act or regulations.

As mentioned, under section 60, the Governor in Council may amend any schedule to add or delete a controlled substance.

The specific case of cannabis

In the first version of the CSDA, cannabis was cited in the schedule containing the most dangerous drugs to which the most severe criminal penalties described above applied. To allay criticism, the government agreed to withdraw cannabis from Schedule I and created Schedules II, VII and VIII, which concern that drug exclusively. Schedule II defines cannabis as marijuana, cannabis resin (hashish) cannabinol, and so on. Schedule VII established at three kilograms of cannabis or hashish the maximum quantity for the imposition of a less severe penalty for trafficking or possession for the purpose of trafficking in that substance. Lastly, Schedule VIII provided that a person who had less than one gram of hashish or less than 30 grams of cannabis in his possession for his own personal use was liable to less severe criminal penalties than those provided for in Schedule II.

As a result, if a person is convicted of possession, possession for the purpose of trafficking or possession

of a quantity greater than that defined in Schedules VII and VIII, the more severe penalties provided for in Part I for Schedule I or II substances apply. Otherwise, the CSDA defines new criminal penalties. As regards Schedule VIII, section 4 of the CSDA provides that a person charged with simple possession of cannabis may be prosecuted summarily and provides for a maximum term of six months' imprisonment, a maximum fine of $1,000 or both. Contrary to the majority recommendation made in the 1972 special report of the Le Dain Commission respecting the reduction of the penalty imposed for importing and exporting cannabis, life imprisonment still applies. Lastly, the maximum prison term of seven years provided for by the *Narcotic Control Act* for the offence of cultivation (production) of that drug remains unchanged under the CSDA.

Conclusions

- Early drug legislation was largely based largely on a moral panic, racist sentiment and a notorious absence of debate.

- Drug legislation often contained particularly severe provisions, such as reverse onus and cruel and unusual sentences.

- The work of the Le Dain Commission laid the foundation for a more rational approach to illegal drug policy by attempting to rely on research data.

- The Le Dain Commission's work had no legislative outcome, except in 1996, in certain provisions of the Controlled Drugs and Substances Act, particularly with regard to cannabis.

- No action was taken on the reform proposals introduced in the 1970s, particularly for the decriminalization of cannabis.

- Thirty years after the Le Dain Commission, the legislation and its application ha' had no notable effect on the supply and demand of cannabis.

- The present act Act takes no account of data from research on the comparative effects of various substances, particularly the effects of cannabis.

[1] Pires, A.P., (2002) *op. cit.*, page 43.

[2] INCB (2002) pages 58-60 in particular.

[3] Testimony by Neil Boyd, Professor of Criminology, Simon Fraser University, before the Special Senate Committee on Illegal Drugs, Canadian Senate, Second Session of the Thirty-Sixth Parliament, October 16, 2000, Issue 1, page 49.

[4] This chapter is based largely on the excellent report prepared at the Committee's request by François Dubois, research assistant to Senator Pierre Claude Nolin: *Le Parlement fédéral et l'évolution de la législation canadienne sur les drogues illicites*, Ottawa: Special Senate Committee on Illegal Drugs, June 2002. This report is available on line at www.parl.gc.ca/illegal-drugs.asp

[5] See Chapter 19 for more details.

[6] We note in passing that in fact these were synthetic opium derivatives such as morphine. It was not discovered until much later that smoking heroin was much less harmful to the user than injecting it or using its synthetic derivatives. We can also draw a parallel with synthetic derivatives of cannabis, which cause more problems than smoking cannabis, as we saw in Chapter 9.

[7] Line Beauchesne talks about large pharmaceutical companies that flooded the market by manufacturing these products en masse and then trying to dispose of them in any way possible. Beauchesne, L., (1991) *La légalisation des drogues... Pour mieux en prévenir les abus*. Montreal: Méridien, pages 95-96.

[8] Beauchesne, L. *op. cit.*, page 98

[9] *Ibid.*, page 126

[10] Beauchesne, L. (1999) "À propos du cannabis, que faire?" *L'écho-toxico*, page 14.

[11] Ati-Dion, G., (1999) *The Structure of Drug Prohibition in International Law and in Canadian Law (Doctoral Paper)*, Montreal, Université de Montréal, École de criminologie, page 24.

[12] Giffen, P.J. et al., (1991) *Panic and Indifference: The Politics of Canada's Drugs Laws*, Ottawa: Canadian Centre on Substance Abuse, page 53.

[13] *Ibid.*, page 53

[14] Boyd, N. (1991) *High society. Illegal and Legal Drugs in Canada*, Toronto, Key Porter Books, page 27

[15] William L. Mackenzie King, *The Need for the Suppression of Opium Traffic in Canada*, Ottawa, Parliamentary Document 36b, 1908, 18 pages

[17] Beauchesne, L., (1991) *op. cit.*, page 125

[18] *Ibid.*

[19] Giffen, P.J. et al., (1991) *op. cit.* page 125

[20] Testimony by Neil Boyd, Professor of Criminology, Simon Fraser University, before the Special Senate Committee on Illegal Drugs, Canadian Senate, Second Session of the Thirty-Sixth Parliament, October 16, 2000, issue 1, page 49.

[21] Beauchesne, L., *op. cit.* page 128

[22] *Ibid.*, page 128

[23] Ati-Dion, G., (1999) *op. cit.* page 25

[24] Hansard, House of Commons, July 10, 1908, page 12550

[25] Statutes of Canada 1908, c. 50

[26] Statutes of Canada 1911, c. 17

[27] Hansard, House of Commons, January 26, 1911, page 2549.

[28] This was discussed in Chapter 10.

[29] Giffen, P.J., et al., *op. cit.*, page 105.

[30] *Ibid.*, pages 105-121.

[31] *Ibid.*, page 144.

[32] *Ibid.*, pages 138-146.

33 *Ibid.*, page 127.

[34] Statutes of Canada, 1938, c. 9.

[35] Hansard, House of Commons, April 23, 1923, page 2117.

[36] Beauchesne, L., (1991) *op. cit.*, page 117.

[37] Spicer, Leah, (2000) *Historical and Cultural Uses of Cannabis and the Canadian "Marijuana Clash"*, Ottawa: Law and Government Division, Library of Parliament, Report prepared for the Senate Special Committee on Illegal Drugs, p. 20, available online at www.parl.gc.ca/illegal-drugs.asp

[38] *Ibid.*, page 21.

[39] Giffen, P.J. et al., *op. cit.* page 179.

[40] Hansard, House of Commons, 1932, page 1792.

[41] Hansard, House of Commons, February 24, 1938, page 772.

[42] Hansard, House of Commons, February 24, 1938, page 773.

[43] Statutes of Canada, 1932, c. 20

[44] Sinha, Jay (2001) *The History and Development of the Leading International Drug Control Conventions*, Ottawa: Library of Parliament, Law and Government Division, report prepared for the Senate Special Committee on Illegal Drugs, page 15. Available at www.parl.gc.ca/illegal-drugs.asp

[45] *Ibid.*, page 199.

[46] *Ibid.*, pages 199-200

[47] Statutes of Canada, 1920, c. 31

[48] Statutes of Canada, 1921, c. 42

[49] Statutes of Canada, 1922, c. 22

[50] Statutes of Canada, c. 49.

[51] Giffen, P.J. et al., *op. cit.*, page 596.

[52] *Ibid.*, page 594.

[53] Statutes of Canada, 1925, c. 20

[54] *Statutes of Canada*, c. 22.

[55] P.J. Giffen *et al.*, *op. cit.*, page 261.

[56] *Ibid.*, pp. 278-279.

[57] *Statutes of Canada*, 1920, c. 31.

[58] This provision was added to the Act of 1911. In the years that followed, the criteria for renewing prescriptions issued by physicians were restricted so that the legal trade in narcotics could be monitored and drug addicts prevented from obtaining prescriptions and using the drugs thus obtained for trafficking purposes. For example, the Act of 1921 provided that a pharmacist could not fill or refill a prescription unless it had been signed by a physician. The Act of 1923 went further by prohibiting multiple refills of prescriptions of a drug based on the original prescription. The patient thus had to consult a doctor each time he wanted to renew.

[59] *Statutes of Canada*, 1954, c. 38.

[60] The provisions respecting the deportation of immigrants were transferred to the Immigration Act in 1952 but still applied to drug offences.

[61] Giffen, P.J. *et al.*, *op. cit.*, pages 448-450.

[62] *Hansard*, Senate, February 24, 1955, page 239.

[63] *Hansard*, Senate, June 23, 1955, page 739.

[64] *Hansard*, Senate, June 23, 1955, p. 739.

[65] *Hansard*, Senate, June 23, 1955, p. 742.

[66] *Hansard*, Senate, June 23, 1955, p. 740.

[67] *Hansard*, Senate, June 23, 1955, p. 740.

[68] *Hansard*, Senate, June 23, 1955, p. 744.

[69] *Hansard*, Senate, June 23, 1955, p. 745.

[70] *Hansard*, Senate, June 23, 1955, page 741.

[71] *Hansard*, Senate, June 23, 1955, page 746.

[72] *Statutes of Canada*, 1961, c. 35

[73] *Hansard*, House of Commons, June 7, 1961, page 6794.

[74] G. Le Dain *et al.*, *Cannabis: Report of the Commission of Inquiry into the Non-Medical Use of Drugs*. Ottawa: Government of Canada, page 221.

[75] P.J. Giffen *et al.*, *op. cit.*, pages 471-475.

[76] *Statutes of Canada*, 1961, c. 37.

[77] *Hansard*, House of Commons, May 30, 1961, page 5799.

[78] Subsection 37(2) of the *Food and Drugs Act, 1961*.

[79] *Statutes of Canada*, c. 41.

[80] Section 9 of the *Food and Drugs Act, 1969*.

[81] *Hansard*, House of Commons, March 27, 1969, page 7203.

[82] *Hansard*, House of Commons, March 27, 1969, page 7203.

[83] Le Dain, G., *et al.*, (1973) *Canadian Government Commission of Inquiry into the Non-Medical Use of Drugs*, Ottawa: Government of Canada, page 4.

[84] Dr. Marie-Andrée Bertrand, Professor Emeritus of Criminology, Université de Montréal, Evidence presented to the Special Committee on Illegal Drugs, Senate of Canada, First Session, Thirty-Seventh Parliament, 2001, page 45.

[85] *Ibid.*, page 46.

[86] Le Dain, G. *et al.*, (1972 *Cannabis: A Report of the Commission of Inquiry into the Non-Medical Use of Drugs*, Ottawa : Government of Canada, page 230.

[87] *Ibid.*, page 239.

[88] *Ibid.*, page 245.

[89] *Ibid.*, pages 248-249.

[90] *Ibid.*, page 249.

[91] *Ibid.*, pages 266-267.

[92] *Ibid.*, page 270.

[93] *Ibid.*, page 274.

[94] *Ibid.*, page 281.

[95] *Ibid.*, pages 283-286.

[96] *Ibid.*, page 282.

[97] *Ibid.*, page 291.

[98] *Ibid.*, page 292.

[99] *Ibid.*, page 293.

[100] *Ibid.*, page 293.

[101] *Ibid.*, page 296.

[102] *Ibid.*, pages 295-299.

[103] *Ibid.*, page 303.

[104] *Ibid.*, page 308.

[105] *Ibid.*, pages 307-309.

[106] *Ibid.*, page 308.

[107] *Ibid.*, page 309.

[108] *Ibid.*, p. 304

[109] *Ibid.*, pp. 310-311

[110] *Ibid.*, p. 304

[111] *Ibid.*, page 311

[112] *Ibid.*, page 313

[113] *Ibid.*, page 314

[114] *Ibid.*, page 316

[115] VALOIS, Donat, "La marijuana et le haschisch ne seront pas légalisés", *Le Droit*, Ottawa, August 1, 1972.

[116] Spicer, L. (2002) *Historical and Cultural Uses of Cannabis and the Canadian "Marijuana Clash"*. Ottawa: Parliamentary Research Branch, Library of Parliament.

[117] Giffen, P.J. *et al.*, (1991) *Panic and Indifference: The Politics of Canada's Drugs Laws*. Ottawa: Canadian Centre on Substance Abuse, page 571.

[118] Briefing notes, Research Office of the Progressive Conservative Party of Canada, June 1, 1987.

[119] International Narcotics Control Board, *Report of the International Narcotics Control Board for 1987*, Vienna, United Nations Organization, 1988, p. 21.

[121] The tables of penalties in this section are reproduced from *Bill C-8: An Act to regulate certain drugs and other substances*, Legislative Summary 240, prepared by Allain, J., (1996; revised May 1997) Ottawa: Law and Government Division, Parliamentary Research Branch, Library of Parliament.

CANNABIS : OUR POSITION FOR A CANADIAN PUBLIC POLICY

REPORT OF THE SENATE SPECIAL COMMITTEE ON ILLEGAL DRUGS

VOLUME III : PART IV and CONCLUSIONS

Chairman: Pierre Claude Nolin
Deputy Chairman: Colin Kenny

SEPTEMBER 2002

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APPENDICES

Glossary of key terms

Abuse

Vague term with a variety of meanings depending on the social, medical and legal contexts. Some equate any use of illicit drugs to abuse: for example, the international conventions consider that any use of drugs other than for medical or scientific purposes is abuse. The Diagnosis and Statistical Manual of the American Psychiatric Association defines abuse as a maladaptive pattern of substance use leading to clinically significant impairment or distress as defined by one or more of four criteria (see chapter 7). In the report, we prefer the term excessive use (or harmful use).

Acute effects

Refers to effects resulting from the administration of any drug and specifically to its short term effects. These effects are distinguished between central (cerebral functions) and peripheral (nervous system). Effects are dose-related.

Addiction

General term referring to the concepts of tolerance and dependency. According to WHO addiction is the repeated use of a psychoactive substance to the extent that the user is periodically or chronically intoxicated, shows a compulsion to take the preferred substance, has great difficulty in voluntarily ceasing or modifying substance use, and exhibits determination to obtain the substance by almost any means. Some authors prefer the term addiction to dependence, because the former also refers to the evolutive process preceding dependence.

Agonist

A substance that acts on receptor sites to produce certain responses.

Anandamide

Agonist neurotransmitter of the endogenous cannabinoid system. Although not yet fully understood in research, these neurotransmitters seem to act as modulators, THC increasing the liberation of dopamine in nucleus accumbens and cerebral cortex.

At-risk use

Use behaviour which makes users at-risk of developing dependence to the substance.

Cannabinoids

Endogenous receptors of the active cannabis molecules, particularly 9-THC. Two endogenous receptors have been identified: CB1 densely concentrated in the hippacampus, basal ganglia, cerebellum and cerebral cortex, and CB2, particularly abundant in the immune system. The central effects of cannabis appear to be related only to CB1.

Cannabis

Three varieties of the cannabis plant exist: *cannabis sativa*, *cannabis indica*, and *cannabis ruredalis*. *Cannabis sativa* is the most commonly found, growing in almost any soil condition. The cannabis plant has been known in China for about 6000 years. The flowering tops and leaves are used to produce the smoked cannabis. Common terms used to refer to cannabis are pot, marihuana, dope, ganja, hemp. Hashish is produced from the extracted resin. Classified as a psychotropic drugs, cannabis is a modulator of the central nervous system. It contains over 460 known chemicals, of which 60 are cannabinoids. Delta-9-tétrahydrocannabinol, referred to as THC, is the principal active ingredient of cannabis. Other components such delta-8-tétrahydrocannabinol, cannabinol and cannabidiol are present in smaller quantities and have no significant impacts on behaviour or perception. However, they may modulate the overall effects of the substance.

Chronic effects

Refers to effects which are delayed or develop after repeated use. In the report we prefer to use the term consequences of repeated use rather than chronic effects.

Commission on narcotic drugs (CND)

The Commission on Narcotic Drugs (CND) was established in 1946 by the Economic and Social Council of the United Nations. It is the central policy-making body within the UN system for dealing with all drug-related matters. The Commission analyses the world drug abuse situation and develops proposals to strengthen international drug control.

Decriminalization

Removal of a behaviour or activity from the scope of the criminal justice system. A distinction is usually made between *de jure decriminalization*, which entails an amendment to criminal legislation, and *de facto decriminalization*, which involves an administrative decision not to prosecute acts that nonetheless remain against the law. Decriminalization concerns only criminal legislation, and does not mean that the legal system has no further jurisdiction of any kind in this regard: other, non-criminal, laws may regulate the behaviour or activity that has been decriminalized (civil or regulatory offences, etc.).

Diversion

The use of measures other than prosecution or a criminal conviction for an act that nonetheless remains against the law. Diversion can take place before a charge is formally laid, for example if the accused person agrees to undergo treatment. It can also occur at the time of sentencing, when community service or

treatment may be imposed rather than incarceration.

Depenalisation

Modification of the sentences provided in criminal legislation for a particular behaviour In the case of cannabis, it generally refers to the removal of custodia' sentences.

Dependence

State where the user continues its use of the substance despite significant health, psychological, relational, familial or social problems. Dependence is a complex phenomenon which may have genetic components. Psychological dependence refers to the psychological symptoms associated with craving and physical dependence to tolerance and the adaptation of the organism to chronic use. The American Psychiatric Association has proposed seven criteria (see chapter 7).

Dopamine

Neuromediator involved in the mechanisms of pleasure.

Drug

Generally used to refer to illicit rather than licit substances (such as nicotine, alcohol or medicines). In pharmacology, the term refers to any chemical agent that alters the biochemical or physiological processes of tissues or organisms. In this sense, the term drug refers better to any substance which is principally used for its psychoactive effects.

European Monitoring Centre on Drugs and Drug Addiction (EMCDDA)

The European Monitoring Centre was created in 1993 to provide member states objective, reliable and comparable information within the EU on drugs, drug addictions and their consequences. Statistical information, documents and techniques developed in the EMCDDA are designed to give a broad perspective on drug issues in Europe. The Centre only deals with information. It relies on national focal points in each of the Member States.

Fat soluble

Characteristic of a substance to irrigate quickly the tissues. THC is highly fat-soluble.

Gateway (theory)

Theory suggesting a sequential pattern in involvement in drug use from nicotine to alcohol, to cannabis and then "hard" drugs. The theory rests on a statistical association between the use of hard drugs and the fact that

these users have generally used cannabis as their first illicit drug. This theory has not been validated by empirical research and is considered outdated.

Half-life

Time needed for the concentration of a particular drug in blood to decline to half its maximum level. The half-life of THC is 4.3 days on average but is faster in regular than in occasional users. Because it is highly fat soluble, THC is stored in fatty tissues, thus increasing its half life to as much as 7 to 12 days. Prolonged use of cannabis increases the period of time needed to eliminate is from the system. Even one week after use, THC metabolites may remain in the system. They are gradually metabolised in the urine (one third) and in feces (two thirds). Traces on inactive THC metabolites can be detected as many as 30 days after use.

Hashish

Resinous extract from the flowering tops of the cannabis plant and transformed into a paste.

International Conventions

Various international conventions have been adopted by the international community since 1912, first under the Society of Nations and then under the United Nations, to regulate the possession, use, production, distribution, sale, etc., of various psychotropic substances. Currently, the three main conventions are the 1961 Single Convention, the 1971 Convention on Psychotropic Substance and the 1988 Convention against Illicit Traffic. Canada is a signatory to all three conventions. Subject to countries' national constitutions, these conventions establish a system of regulation where only medical and scientific uses are permitted. This system is based on the prohibition of source plants (coca, opium and cannabis) and the regulation of synthetic chemicals produced by pharmaceutical companies.

International Narcotics Control Board (INCB)

The Board is an independent, quasi-judicial organisation responsible for monitoring the implementation of the UN conventions on drugs. It was created in 1968 as a follow up to the 1961 Single Convention, but had predecessors as early as the 1930s. The Board makes recommendations to the UN Commission on Narcotics with respect to additions or deletions in the appendices of the conventions.

Intoxication

Disturbance of the physiological and psychological systems resulting from a substance. Pharmacology generally distinguishes four levels: light, moderate, serious and fatal.

Joint

Cigarette of marijuana or hashish with or without tobacco. Because joints are never identical, scientific analyses of the effects of THC are more difficult, especially in trying to determine the therapeutic benefits of cannabis and to examine its effects on driving.

Legalisation

Regulatory system allowing the culture, production, marketing, sale and use of substances. Although none currently exist in relation to « street-drugs » (as opposed to alcohol or tobacco which are regulated products), a legalisation system could take two forms: without any state control (free markets) and with state controls (regulatory regime).

Marijuana

Mexican term originally referring to a cigarette of poor quality. Has now become equivalent for cannabis.

Narcotic

Substance which can induce stupor or artificial sleep. Usually restricted to designate opiates. Sometimes used incorrectly to refer to all drugs capable of inducing dependence.

Office of national drug control policy (ONDCP) USA

Created in 1984 under the Reagan presidency, the Office is under the direct authority of the White House. It coordinates US policy on drugs. Its budget is currently US $18 billion.

Opiates

Substance derived from the opium poppy. The term opiate excludes synthetic opioids such as heroin and methadone.

Prohibition

Historically, the term designates the period of national interdiction of alcohol sales in the United States between 1919 and 1933. By analogy, the term is now used to describe UN and State policies aiming for a drug-free society. Prohibition is based on the interdiction to cultivate, produce, fabricate, sell, possess, use, etc., some substances except for medical and scientific purposes.

Psychoactive substance

Substance which alters mental processes such as thinking or emotions. More neutral than the term "drug" because it does not refer to the legal status of the substance, it is the term we prefer to use.

Psychotropic substance (see also psychoactive)

Much the same as psychoactive substance. More specifically however, the term refers to drugs primarily used in the treatment of mental disorders, such as anxiolytic, sedatives, neuroleptics, etc. More specifically, refers to the substances covered in the 1971 Convention on Psychotropic Substances.

Regulation

Control system spe ing the conditions under which the cultivation, production, marketing, prescription, sales, possession or e of a substance are allowed. Regulatory approaches may rest on interdiction (as for illegal drugs) or controlled access (as for medical drugs or alcohol). Our proposal of an exemption regime under the current legislation is a regulatory regime.

Society of Nations (SDN)

International organisation of States until 1938; now the United Nations.

Tetrahydrocannabinol (D9-THC)

Main active component of cannabis, Δ9-THC is very fat-soluble and has a lengthy half-life. Its psychoactive effects are modulated by other active components in cannabis. In its natural state, cannabis contains between 0.5% to 5% THC. Sophisticated cultivation methods and plant selection, especially female plants, leads to higher levels of THC concentration.

Tolerance

Reduced response of the organisms and increased capacity to support its effects after a more or less lengthy period of use. Tolerance levels are extremely variable between substances, and tolerance to cannabis is believed to be lower than for most other drugs, including tobacco and alcohol.

Toxicity

Characteristic of a substance which induces intoxication, i.e., "poisoning". Many substances, including some common foods, have some level of toxicity. Cannabis presents almost no toxicity and cannot lead to an overdose.

United Nations Drug Control Program (UNDCP)

Established in 1991, the Programme works to educate the world about the dangers of drug abuse. The Programme aims to strengthen international action against drug production, trafficking and drug-related crime through alternative development projects, crop monitoring and anti-money laundering programmes. UNDCP also provides accurate statistics through the Global Assessment Programme (GAP) and helps to draft legislation and train judicial officials as part of its Legal Assistance Programme. UNDCP is part of the UN Office for Drug Control and the Prevention of Crime.

World Health Organization (WHO)

The World Health Organization, the United Nations specialized agency for health, was established on 7 April 1948. WHO's objective, as set out in its Constitution, is the attainment by all peoples of the highest possible level of health. Health is defined in WHO's Constitution as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Part IV

Public Policy Options

Chapter 19

The International Legal Environment

This chapter could begin and end with the same words: The international drug control conventions are, with respect to cannabis at least, an utterly irrational restraint that has nothing to do with scientific or public health considerations.

Very useful restraint, to be sure, if one favours prohibition, for when the advocates of such policy run out of scientific and public health arguments, they can simply fall back on the conventions that Canada has signed. More than signed, in fact: owing to the efforts of certain men, police officers and federal public servants, Canada was a leading proponent of those conventions.

Currently, three conventions govern the entire life cycle of drugs, from cultivation of the plants to their consumption: the *Single Convention on Narcotic Drugs, 1961* (Single Convention),[1] the 1971 *Convention on Psychotropic Substances* (Psychotropics Convention)[2] and the 1988 *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (Trafficking Convention).[3] They create not only international law concerning drugs but also control mechanisms and bodies, both political and bureaucratic.

Yet these agreements have a history that began well before the Single Convention, a history that sheds light on the issues that led to their development and on their contemporary significance. That is the subject of the first section. The conventions create obligations, as shown in the second section, detailed obligations that are morally rather than legally binding. And they are a patchwork of compromises that leave states with some leeway, as we shall see in the third section.

A genealogy

The genealogy of the international conventions governing drug production and trade is fascinating and unique. The story begins in the mid-19th century, when Britain and China fought two opium wars, both quickly won by the British. In this era, the roles were reversed: the British owned the lucrative opium monopoly of the East India Company and refused to relinquish it, while the Chinese had been trying for decades to stamp out opium use, not so much for health reasons as for economic ones, since this trade was exacting a heavy toll.

China had long exercised the upper hand in its economic relations with the Occident. Silks, teas, fine pottery, and other items flowed west. Yet the Middle Kingdom desired little from the outside. (...)

Encouraging the China opium trade therefore solved several related problems for colonial governments. Opium production provided a living for numerous peasants, merchants, bankers, and governments officials. Exports to China earned hard currency, thereby reducing specie outflow. [4]

While Britain balked at introducing control mechanisms that would deprive it of hard currency, the United States realized at the turn of the century that this was a perfect opportunity to assert itself on the international scene.

The drug story's geopolitical ingredients blended with well-known domestic political interests, racist attitudes and economic interests in a complex cocktail. In Chapters 11 and 12, we touched on certain aspects of the anti-Chinese racism that marked the turn of the century in Canada. The same phenomenon existed in the U.S.

[Translation] The United States had a number of reasons for acting on this proposal. The official reason was a moral one: at a time when the temperance leagues and the churches were demanding Prohibition, puritan America decided to take the lead in civilization's world crusade. It claimed to be protecting uncivilized races from the ravages of opium and alcohol. But it also had some less virtuous reasons. Under pressure from the trade unions, which feared competition from Chinese labour, it passed the Exclusion Laws, openly xenophobic legislation whose purpose was to control the yellow peril. It therefore spread the myth of the 'unsavoury Chinese opium addict,' devoted to his habit and ready to contaminate American youth. [5]

Naturally, the Chinese government vigorously protested against the Exclusion Laws, but the Middle Kingdom, a victim of its conflicts and its internal disorganization, lacked the resources to make an impact on the international scene. While continuing to combat opium use within its own territory, China set about promoting poppy cultivation at the local level.

The pharmaceutical industry, which had been booming since the mid-19th century, was able to produce more and more low-priced medicines, many of which contained extracts of coca or opium.

The mid-1880s euphoric reaction of cocaine set off a chain reaction. Pharmaceutical companies rushed to fill orders, but fresh coca leaf was unavailable in sufficient quantity. Consequently, the price skyrocketed. To meet demand and share in the profit, several imperial powers stepped up efforts to develop commercially saleable coca. (...) Within a few years, coca production increased dramatically, coca paste processing became commonplace, coca leaves became a commodity traded on the international market and pharmaceutical manufacturers competed for business on the basis of price, availability, and quality of product. Hardly available in 1885, cocaine became quickly emblematic of the modern, technological, international, political economy. (...) By the early twentieth century, cocaine ranked third in terms of dollar value among drugs. The popularity of the two drugs superseding cocaine, morphine and quinine, resulted from the same constellation of factors – a burgeoning pharmaco-industrial complex. [6]

The third factor was the growing professionalism and social power of the medical community. The latter was essentially working against a form of popular medicine, ostensibly because it was a source of abuse and charlatanism, but mostly because it was practised outside the medical establishment and thus was less tightly controlled by scholarly medical "authority". Certain of its science, the powerful medical lobby would quickly swing into action and demand the regulation of drugs and sole authority to diagnose and

prescribe.

Last but not least, there were moral considerations. The temperance movements fighting the moral and social "vices" of alcohol and drugs were growing rapidly and carried substantial political clout, which the prohibitionists wielded brilliantly.

The last piece of the puzzle was the 1906 decision by Britain's new Liberal government to oppose the forced opium trade between India and China, which made it possible for the Chinese government to launch an extensive campaign against opium consumption and production. In 1907, the British agreed to reduce exports of Indian opium to China by 10 per cent a year, provided that China would permit independent verification of its own production cuts. The accord proved more effective than the two countries expected, until the Manchu (Ch'ing) dynasty fell in 1911. After that, the Chinese warlords began encouraging opium production on a large scale to finance their military spending. Nevertheless, future prohibition advocates would view the 1907 "ten-year agreement" as the first successful opium "treaty"; for the next 60 years. This agreement was to set the tone for international drug control negotiations.[7] The stage was now set for the first in a long series of international conferences, treaties and conventions, as shown in the table below.[8]

Multilateral Agreements on Narcotics and Psychotropic Substances[9]

Date and place signed

Title of agreement

Date of entry into force

26 February 1909

Shanghai, China

Final Resolutions of the International Opium Commission 1

Not applicable

23 January 1912

The Hague, Netherlands

International Opium Convention

11 February 1915 /

28 June 1919 2

11 February 1925

Geneva, Switzerland

Agreement concerning the Manufacture of, Internal Trade in, and Use of Prepared Opium

28 July 1926

19 February 1925

Geneva, Switzerland

International Opium Convention

25 September 1928

13 July 1931

Geneva, Switzerland

Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs 3

9 July 1933

27 November 1931

Bangkok, Thailand

Agreement for the Control of Opium Smoking in the Far East

22 April 1937

26 June 1936

Geneva, Switzerland

Convention for the Suppression of the Illicit Traffic in Dangerous Drugs

26 October 1939

11 December 1946

Lake Success, New York, USA

Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931, and at Geneva on 26 June 1936

11 December 1946

19 November 1948

Paris, France

Protocol Bringing under International Control Drugs outside the Scope of the Convention of 13 July 1931, for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol signed at Lake Success, New York, on 11 December 1946

1 December 1949

23 June 1953

New York, USA

Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of, Opium

8 March 1963

30 March 1961

New York, USA.

Single Convention on Narcotic Drugs, 1961

13 December 1964

21 February 1971

Vienna, Austria

Convention on Psychotropic Substances

16 August 1976

25 March 1972

Geneva, Switzerland

Protocol amending the Single Convention on Narcotic Drugs, 1961

8 August 1975

20 December 1988

Vienna, Austria

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

11 November 1990

1 This is the only document in the table that is not an enforceable multilateral treaty. It is included because it marks the beginning of substantial international cooperation on drug control.

2 China, the Netherlands, and the U.S. implemented the Convention in 1915 (Honduras and Norway followed suit later that year). It did not come into force globally until it was incorporated into the Treaty of Versailles in 1919.

3 As amended by the Protocol signed at Lake Success, New York, on 11 December 1946.

The 1909 Shanghai Conference

U.S. interest in international drug control grew substantially following the Spanish-American War, which led to its acquisition of the Philippines in 1898.[10] The acquisition brought with it what the American administration perceived as a serious problem: a government-run opium supply monopoly. Under the guidance of the new Episcopal Bishop of the Philippines, Charles Henry Brent, the monopoly was shut down. Yet smuggling continued, and Brent, who regarded the opium issue as a moral question and use of the drug as *"a social vice ... a crime,"* persuaded President Theodore Roosevelt to support holding an international meeting in Shanghai to remedy what was clearly a regional problem.[11]

In February 1909, the International Opium Commission[12] met in Shanghai, with Brent as its president.

However, because the participants did not have the necessary plenipotentiary powers to conclude a treaty, the result was simply a collection of facts and a set of non-binding recommendations. In the discussions on the Commission's terms of reference, one question that arose was whether drug-related medical issues, such as addiction and its treatment, should be considered; the proposal was defeated (by a majority of one) because it was felt that there was insufficient medical expertise present at the meeting.[13] This set a telling precedent: most subsequent drug meetings would be attended predominantly by diplomats and civil servants, with little significant input from medical experts.

The negotiations during the Commission's meetings laid the groundwork for future conferences. The U.S., aggressively represented by Hamilton Wright, tried to persuade the colonial powers to support a narrow definition of "legitimate use" of opium, under which any non-medical or non-scientific use–by Western medical and scientific standards–would be considered illicit. The colonial powers advocated a softer approach, which would permit "quasi-medical use". In the final wording of Resolution 3, the Commission concluded "that the use of opium in any form otherwise than for medical purposes is *held* by *almost* every participating country to be a matter for prohibition *or for careful regulation*; and that each country in the administration of its system or regulation purports to be aiming, as opportunity offers, at progressively increasing stringency" (emphasis as in original).

The Commission was, in fact, far from "international". The focus was on China's opium problems–five of the nine resolutions mentioned China by name–and the U.S. and Britain dominated the discussions. The U.S. was pushing for prohibition and felt that China needed assistance with its domestic opium problems. Britain worked to protect its lucrative Indian opium trade, arguing that curbing such trade would be useless until China brought its domestic production under control.[14]

Underlying the U.S. delegation's hard-line stance at the Shanghai meeting were key domestic political and economic goals that would also colour later negotiations. It was assumed that if other countries controlled their own opium production and exports, the U.S. would not be burdened with the task, because the poppy and the coca leaf had never been grown in appreciable quantities in North America. Furthermore, international agreements calling on countries to take drastic internal measures provided ammunition for Brent and Wright, who were pressuring the U.S. government to develop stringent domestic drug control laws.[15]

The 1912 Hague International Opium Convention

At the Shanghai meeting, the Americans had proposed a future conference to draft an international drug control treaty that would include the Shanghai resolutions in an expanded and more stringent form. This proposal was contested by the other countries and went nowhere. In the years that followed, however, the U.S. lobbied continually and forcefully around the world for a new conference. Addressing the opium problem directly, publicly and internationally was a way for the U.S. to achieve its domestic control objectives, to put an end to the profitable drug trade dominated by the colonial powers, and to curry favour with the Chinese and thereby improve Sino-American economic relations.[16]

Twelve countries agreed to meet at The Hague on 1 December 1911 to draft a treaty.[17] Once again, the meeting was chaired by Brent, and Wright led the U.S. delegation. Most states had demanded amendments to the U.S. draft agenda, which focused on stringent control of opium production, manufacture and distribution in Asia. For example, Britain insisted that manufactured drugs such as morphine, heroin, and cocaine be considered. This was an attempt to dilute the opium agenda and deflect attention from Indian opium production. Britain also hoped that a fair treaty would create a level playing field for British pharmaceutical companies to compete with the dominant German synthetic drug industry.[18]

Chapters I and II of the 1912 *International Opium Convention*[19] *(1912 Hague Convention) dealt with raw and prepared opium. For example, Article 1 required parties to "enact effective laws or regulations for the control of the production and distribution of raw opium" unless such laws were already in place. The Convention also recognized the U.S.-initiated principle of restricting opium use to medical and*

scientific purposes. Chapter IV was aimed at reducing drug trafficking in China.

Chapter III focused on licensing, manufacturing and distribution controls on synthetic drugs, but Germany ensured that the provisions were weak and vague. Article 10 allowed countries to simply make their "best endeavours" to implement these controls. Furthermore, Germany refused to sign the treaty until it was agreed that all countries would have to ratify[20] the Convention before it came into force. This was an effective tactic for delaying control measures as it took almost a decade for all countries to ratify the agreement. Germany did so only because ratification was a condition of the Treaty of Versailles that ended the First World War in 1919.[21]

Wright used the 1912 Hague Convention in his campaign for U.S. domestic legislation, arguing that a federal law was necessary for the U.S. to fulfil its obligations under the Convention. In 1916, the U.S. Supreme Court ruled that this was not so, but by then the *Harrison Narcotics Act of 1914* had become the first federal drug control law in the U.S.; it would remain a pillar of U.S. drug policy for the next few decades.[22]

The establishment of the League of Nations in 1919 following the First World War provided the international community with a centralized body for the administration of drug control. In 1920, the League created the Advisory Committee on the Traffic in Opium and other Dangerous Drugs, commonly known as the Opium Advisory Committee (OAC), the precursor to the United Nations (UN) Commission on Narcotic Drugs. The League Health Committee, forerunner of the UN World Health Organization, was also formed. Administration of the 1912 Hague Convention had originally been the responsibility of the Netherlands, but was transferred to the Opium Control Board (OCB) created by the OAC. Enforcement of the Convention was sporadic as the countries on the OCB were the ones profiting most from the drug trade.[23]

The League began to consider demand-side socio-medical issues such as why individuals use drugs, what constitutes drug abuse, and what social factors affect abuse. However, prohibition and supply-side issues soon regained the ascendancy as preparations began and talks were held, again at the instance of the U.S., for a new treaty in the mid-1920s. In general, the international regime has tended to separate the study of drug-related medical and social problems, including etiological questions, from that of drug control problems.[24]

The 1925 Geneva Opium Conventions

Even though the U.S. had chosen not to join the League of Nations, its influence in international drug control matters remained strong. Worried by the 1912 Hague Convention's limited effect on the smuggling of opium and, increasingly, drugs manufactured in East Asia, the U.S. pressured the League to convene a new conference. The League feared that if it did not comply, the U.S. might act independently.[25]

Between November 1924 and February 1925, two back-to-back conferences were held, and two separate treaties were concluded. The first Geneva Convention[26] focused on opium-producing nations; signatories were permitted to sell opium only through government-run monopolies and were required to end the trade completely within 15 years.

The second Geneva Convention, the *International Opium Convention*[27] *(1925 Geneva Convention), was intended to impose global controls over a wider range of drugs, including, for the first time, cannabis, which was referred to as "Indian hemp" (marijuana) in Article 11 of the Convention. Articles 21 to 23 required Parties to provide annual statistics on drug stocks and consumption; the production of raw opium and coca; and the manufacture and distribution of heroin, morphine and cocaine. Chapter VI replaced the OCB with an eight-member Permanent Central Opium Board (PCOB).[28] Chapter V of the second Convention set up a PCOB-monitored import certification system to control the international drug trade by limiting the amount that each country could legally import.*

While the 1912 Hague Convention had focused on domestic controls, the Geneva Conventions were an attempt to improve transnational control. The U.S. had proposed strict adherence to the principle that drugs should be used only for medical and scientific purposes and that there should be stringent controls on drug production at the source. When these proposals were flatly rejected at the second conference, the U.S. delegation walked out of the conference and never signed the treaties. The Chinese delegation withdrew as well, because no agreement could be reached on the suppression of opium smoking.[29] Instead, the two countries concentrated on enforcing the 1912 Hague Convention.

The 1931 Geneva Narcotics Manufacturing and Distribution Limitation Convention / 1931 Bangkok Opium Smoking Agreement

The import control system put in place following the 1925 Geneva Convention was only partially effective, as drugs were simply transhipped through non-signatory countries. In 1931, the League of Nations convened a further conference in Geneva to place limits on the manufacture of cocaine, heroin and morphine, and to control their distribution. The result of the conference was the *Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs*[30] *(1931 Limitation Convention).*

In 1931, Canada abandoned its policy of simply reacting to international drug control efforts and began playing an active role in supporting U.S. efforts to expand control at the source. Colonel Charles Henry Ludovic Sharman, Chief of the Narcotics Division in the Department of Pensions and National Health, was the principal architect of Canada's domestic and international drug policy until the 1960s. Canada, through Sharman, was heavily involved in the negotiations leading up to the 1931 Limitation Convention.[31]

A new player also emerged from within the U.S. delegation: Harry J. Anslinger, first Commissioner of the newly created Federal Bureau of Narcotics, a position he would hold for 33 years. A firm believer in prohibition and the control of drug supplies at the source, Anslinger is widely recognized as a prime mover in the development of U.S. drug policy and, by extension, international drug control into the early 1970s.[32]

The centrepiece of the 1931 Limitation Convention was the manufacturing limitation system set out in Chapters II and III. Parties were required to provide the PCOB with estimates of their national drug requirements for medical and scientific purposes, and on the basis of those estimates, the PCOB would calculate manufacturing limits for each signatory. A Drug Supervisory Body (DSB) was created to administer the system. The Convention's effectiveness was seriously undermined by Article 26, which absolved states of any responsibilities under the Convention for their colonies. Article 15 required states to set up a "special administration" for national drug control, modelled to some extent on the U.S. domestic control apparatus.[33]

The Convention came into force quickly because various countries and the League of Nations thought it might provide a useful model for arms control negotiations. The League even prepared a report explaining how the principles set out in the 1925 Geneva Convention and the Limitation Convention could be applied to disarmament issues.[34]

In late 1931, another conference was held in Bangkok to address opium smoking in the Far East. The treaty[35] it produced was weak, primarily because the U.S. attended only as an observer and the European colonial powers were unwilling to implement effective controls on opium use while there was significant opium overproduction and smuggling. The fact that the U.S. strategy of absolute prohibition had made little impact on opium trafficking and use in the Philippines did not strengthen the U.S.'s hand in pushing for the elimination of poppy cultivation. The key result of the Bangkok conference was that it convinced the U.S. that a firmer approach was needed to combat raw material production and illicit drug trafficking.[36]

The 1936 Geneva Convention for the Suppression of the Illicit Traffic in Dangerous Drugs

Based on initiatives of the International Police Commission, forerunner of the International Criminal Police Organization (INTERPOL), negotiations had begun in 1930 to develop a treaty to stem illicit drug trafficking and punish traffickers severely through criminal sanctions.[37]

In 1936, the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs[38] (1936 Trafficking Convention) was concluded in Geneva. The U.S., led by Anslinger, had attempted to include provisions that would criminalize all activities–cultivation, production, manufacture and distribution–related to the use of opium, coca (and its derivatives) and cannabis for non-medical and non-scientific purposes. Many countries objected to this proposal, and the focus remained on illicit trafficking.[39] Article 2 of the Convention called on signatory countries to use their national criminal law systems to "severely" punish, "particularly by imprisonment or other penalties of deprivation of liberty," acts directly related to drug trafficking.

The U.S. refused to sign the final version because it considered the Convention too weak, especially in relation to extradition, extraterritoriality and the confiscation of trafficking revenues. The U.S. was also worried that if it signed, it might have to weaken its domestic criminal control system to comply with the Convention. In fact, the Convention never gained widespread acceptance, as most countries interested in targeting traffickers concluded their own bilateral treaties.

Despite its minimal overall effect, the 1936 Trafficking Convention marked a turning point. All the previous treaties had dealt with the regulation of "legitimate" drug activities, whereas the 1936 Trafficking Convention now made such activities an international crime subject to penal sanctions.

The Second World War

In the late 1930s, the Opium Advisory Committee (OAC) of the League of Nations began to question the international drug control regime's emphasis on prohibition and law enforcement. Some countries proposed combating abuse through public health approaches, including psychological treatment, dispensary clinics and educational programs. Asserting the U.S. belief that addicts could only be cured through institutionalization, Anslinger, supported by Sharman, was able to block all OAC efforts to consider social and etiological approaches to drug problems. Instead, at Anslinger's insistence, the focus remained on developing a new treaty to impose prohibition and supply control worldwide.[40]

Ironically, in anticipation of war, many countries (in particular the U.S.) built up stockpiles of opium and opium products intended for medical purposes.[41] The Second World War put further development of the international drug control apparatus on hold.

The 1946 Lake Success Protocol

Following the war, the drug control bodies and functions of the League of Nations were folded into the newly formed United Nations.[42] The UN Economic and Social Council (ECOSOC) took over primary responsibility through its Commission on Narcotic Drugs (CND), which replaced the OAC. Under the CND, the Division of Narcotic Drugs (DND) was charged with the preparatory work for conferences. The PCOB and the DSB continued under the CND in their respective roles of compiling statistics for national estimates and administering previous treaties. Canada's Sharman became the first Chair of the CND and also held a seat on the DSB.

All these changes in responsibility and organization meant that the existing international drug control treaties had to be amended. The amendments were made in a Protocol[43] signed at Lake Success, New

York, on 10 December 1946.

The 1948 Paris Protocol

Anslinger and Sharman campaigned hard to ensure that the CND would report directly to ECOSOC as an independent organization. They were afraid that if the main drug control apparatus was a larger health or social issues organization, such as the World Health Organization (WHO) or the United Nations Educational, Scientific and Cultural Organization (UNESCO), etiology and treatment issues might take precedence over the prohibition focus. In particular, they wanted to ensure that governments would be represented by law enforcement officials rather than physicians or others with sociology or public health backgrounds. Furthermore, the USSR showed interest in considering the social factors underlying drug abuse. For the Western powers to have agreed with the Soviet Union would have undermined their hard-line stance against Moscow and communism in the looming Cold War.

Although control remained principally with ECOSOC, the World Health Organization (WHO), in particular its Drug Dependence Expert Committee, became responsible for deciding what substances should be regulated.[44] This authority was given to the WHO in an international Protocol[45] signed in Paris in 1948. Article 1 stated that if the WHO found a drug to be "capable of producing addiction or of conversion into a product capable of producing addiction," it would decide how to classify the drug within the international drug control structure. The Protocol also brought under international control specific synthetic opiates not covered by previous treaties.

The 1953 New York Opium Protocol

By the late 1940s, it became clear that the large number of international drug treaties, with their differing types and levels of control, had become confusing and unwieldy. Anslinger, Sharman and their allies had the CND recommend to ECOSOC the idea of consolidating all existing treaties into one document. It would also be an opportunity to bring in more stringent prohibition-based controls.[46] This plan was sidelined for a decade when the Director of the DND, Leon Steinig, proposed the creation of an "International Opium Monopoly" in an attempt to end the illicit trade and guarantee wholesale licit opium supply.

Throughout the 1950s, Cold War tensions pushed Anslinger to rebuild the U.S. stockpile of opium and opium derivatives, often by making large purchases from Iran through U.S. pharmaceutical companies. Many European countries were also stockpiling. The multinational pharmaceutical companies in Europe and the U.S. feared that a monopoly like the one proposed by Steinig would lead to restrictions and higher prices. Anslinger and Sharman along with the British, Dutch and French killed the monopoly discussions in the CND. The French representative on the CND, Charles Vaille, suggested a new opium protocol as an interim solution until the treaties could be consolidated. ECOSOC approved a plenipotentiary conference, and Anslinger seized the new protocol initiative as an opportunity to impose strict global controls on opium production.[47]

The Protocol[48] (1953 Opium Protocol), finalized in New York in 1953, Article 2 stated bluntly that Parties were required *to "limit the use of opium exclusively to medical and scientific needs."* Various provisions were included to control the cultivation of the poppy and the production and distribution of opium. Article 6 restricted opium production to seven states, and Parties could only import or export opium produced in one of those countries.[49] The Protocol comprised the most stringent international drug control provisions yet, but it never gained the support Anslinger had hoped for. It did not receive sufficient ratifications to bring it into force until 1963, and by then it had been superseded by the 1961 Single Convention.

The three current conventions

The Single Convention on Narcotic Drugs, 1961

The Single Convention has played a central role in the creation of the modern prohibitionist system of international drug control. It is a continuation and expansion of the legal infrastructure developed between 1909 and 1953.

The work of consolidating the existing international drug control treaties into one instrument began in 1948, but it was 1961 before an acceptable third draft was ready to be presented for discussion at a plenipotentiary conference.[50] The conference began in New York on 24 January 1961, and was attended by 73 countries, each "with an agenda based on its own domestic priorities."[51]

William B. McAllister has divided the participating states into five distinct categories based on their drug control stance and objectives.

- Organic states group: As producers of the organic raw materials for most of the global drug supply, these countries had been the traditional focus of international drug control efforts. They were open to socio-cultural drug use, having lived with it for centuries. While India, Turkey, Pakistan and Burma took the lead, the group also included the coca-producing states of Indonesia and the Andean region of South America, the opium- and cannabis-producing countries of South and Southeast Asia, and the cannabis-producing states in the Horn of Africa. They favoured weak controls because existing restrictions on production and export had directly affected large segments of their domestic population and industry. They supported national control efforts based on local conditions and were wary of strong international control bodies under the UN. Although essentially powerless to fight the prohibition philosophy directly, they effectively forced a compromise by working together to dilute the treaty language with exceptions, loopholes and deferrals. They also sought development aid to compensate for losses caused by strict controls.

- Manufacturing states group: This group included primarily Western industrialized nations, the key players being the U.S., Britain, Canada, Switzerland, the Netherlands, West Germany and Japan. Having no cultural affinity for organic drug use and being faced with the effects that drug abuse was having on their citizens, they advocated very stringent controls on the production of organic raw materials and on illicit trafficking. As the principal manufacturers of synthetic psychotropics, and backed by a determined industry lobby, they forcefully opposed undue restrictions on medical research or the production and distribution of manufactured drugs. They favoured strong supranational control bodies as long as they continued to exercise de facto control over such bodies. Their strategy was essentially to "shift as much of the regulatory burden as possible to the raw-material-producing states while retaining as much of their own freedom as possible."

- Strict control group: These were essentially non-producing and non-manufacturing states with no direct economic stake in the drug trade. The key members were France, Sweden, Brazil and Nationalist China. Most of the states in this group were culturally opposed to drug use and suffered from abuse problems. They favoured restricting drug use to medical and scientific purposes and were willing to sacrifice a degree of national sovereignty to ensure the effectiveness of supranational control bodies. They were forced to moderate their demands in order to secure the widest possible agreement.

- Weak control group: This group was led by the Soviet Union and often included its allies in Europe, Asia and Africa. They considered drug control a purely internal issue and adamantly opposed any intrusion on national sovereignty, such as independent inspections. With little interest in the drug trade and minimal domestic abuse problems, they refused to give any supranational body excessive power, especially over internal decision-making.

- Neutral group: This was a diverse group including most of the African countries, Central America, sub-Andean South America, Luxembourg and the Vatican. They had no strong interest in the issue apart from ensuring their own access to sufficient drug supplies. Some voted with political blocs, others were willing to trade votes, and others were truly neutral and could go either way on the control issue depending on the persuasive power of the arguments presented. In general, they supported compromise with a view to obtaining the broadest possible agreement.

The result of all these competing interests was a document that epitomized compromise. The Single Convention clearly upheld and expanded existing controls and in its breadth was the most prohibitionist document yet concluded, though it was not as stringent as it might have been. It was free of the costly features of the 1953 Opium Protocol, such as the provision restricting opium production to the seven specified countries. Sharman no longer negotiated for Canada, and Anslinger had played a minor role in the conference owing to conflicts with the U.S. State Department. The latter was content with the Convention because U.S. influence was assured within the UN supervisory bodies and the prohibitive framework had been expanded to include tight controls over coca and cannabis. Since the U.S. originated the idea of the Single Convention, walking out of the conference would have meant losing face in the UN and given the impression of weakness vis-à-vis the Soviet Union during a tense Cold War period.[52]

The principal foundations of the previous treaties remained in place in the Single Convention.[53] Parties were still required to submit estimates of their drug requirements and statistical returns on the production, manufacture, use, consumption, import, export, and stockpiling of drugs.[54] The import certification system created by the 1925 Geneva Convention was maintained. Parties were required to license all manufacturers, traders and distributors, and all transactions involving drugs had to be documented.[55] The Single Convention built on the trend of requiring Parties to develop increasingly punitive criminal legislation. Subject to their constitutional limitations, Parties were to adopt distinct criminal offences, punishable preferably by imprisonment, for each of the following drug-related activities in contravention of the Convention: cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation.[56] Furthermore, the granting of extradition was described as "desirable."[57]

The Convention assigned substances to one of four schedules based on level of control. Schedules I and IV were the most stringent and covered primarily raw organic materials (opium, coca, cannabis) and their derivatives, such as heroin and cocaine. Schedules II and III were less strict and contained primarily codeine-based synthetic drugs. At the U.S.'s insistence, cannabis was placed under the heaviest control regime in the Convention, Schedule IV. This regime included drugs such as heroin (the WHO considered any medical use of heroin to be "obsolete"). The argument for placing cannabis in this category was that it was widely abused. The WHO later found that cannabis could have medical applications after all, but the structure was already in place and no international action has since been taken to correct this anomaly.

The U.S. was pleased with the Single Convention as it broadened control over cultivation of the opium poppy, coca bush and cannabis plant, though the measures were not as stringent as the ones Anslinger had negotiated in the 1953 Opium Protocol.[58] Articles 23 and 24 of the Convention set up national opium monopolies and put very strict limitations on international trade in opium.

Article 49 of the Convention required Parties to completely eliminate all quasi-medical use of opium,[59] opium smoking, coca leaf chewing, and non-medical cannabis use within 25 years of the coming into force of the Convention. All production or manufacture of these drugs was also to be eradicated within the same period. Only Parties for which such uses were "traditional" could take advantage of delayed implementation; for others, prohibition was immediate. Since the implementation period ended in 1989, these practices are today fully prohibited, and the drugs may be used only for regulated medical and scientific purposes.

Apart from consolidating the previous treaties and expanding control provisions, the Single Convention also streamlined the UN's drug-related supervisory bodies. The PCOB and the DSB were merged in a new body, the International Narcotics Control Board (INCB), responsible for monitoring application of the Convention and administering the system of estimates and statistical returns submitted annually by Parties.[60] The INCB was to have eleven members, three nominated by the WHO and eight by Parties to the Convention and UN members. The manufacturing lobby's effectiveness in the negotiations was evident in the knowledge requirement for WHO nominees: *"medical, pharmacological or pharmaceutical experience."*[61] *The INCB was given a limited power of embargo: it could recommend that Parties stop international drug trade with any Party that failed to comply with the provisions of the Convention.[62]*

The Convention's emphasis on prohibition was reflected in the minimal attention paid to drug abuse problems. Only Article 38 touched on the social (demand) side of the drug problem by requiring Parties to "give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts." Furthermore, it was considered "desirable" that Parties "establish adequate facilities for the effective treatment of drug addicts," but only if the country had *"a serious problem of drug addiction and its economic resources [would] permit."* The inadequate recognition of demand/harm reduction approaches, such as prevention through education, has been one of the key criticisms of both the Single Convention and international drug control treaties in general.[63]

The Single Convention effectively consolidated several decades' worth of assorted drug control machinery into one key document administered by one principal body, the United Nations.

Convention on Psychotropic Substances

In the 1960s, following the signing of the Single Convention, drug use and abuse exploded around the world, especially in developed Western nations.[64] The increase was particularly evident in the pervasive use and availability of synthetic psychotropic substances developed since the Second World War, such as amphetamines, barbiturates and LSD. Most of these drugs were not subject to international control, and because national systems of regulation differed widely, trafficking and smuggling flourished.[65]

Throughout the 1960s, the CND and the WHO debated the issue of control of psychotropic drugs at regular meetings and made various recommendations to member states concerning the national control of particular substances, including stimulants, sedatives and LSD. In January 1970, the CND discussed a draft treaty prepared by the UN Division of Narcotic Drugs on the international control of psychotropic drugs. Following some modifications by the CND, this document became the basis for negotiations at a plenipotentiary conference convened in Vienna on 11 July 1971; this conference produced the Psychotropics Convention.[66]

The 1961 Single Convention had been used as a template for the draft Psychotropics Convention, and many of the former's features are found in the latter: CND/INCB administrative authority, schedules establishing different levels of control for different drugs, mandatory transaction documentation and licensing, an import/export control system, illicit trafficking provisions and criminal sanctions. Though superficially quite similar, the two Conventions are in fact extremely different. The Psychotropics Convention imposes much weaker controls. The reason for this becomes apparent when the positions of the negotiating stakeholders are examined and selected parts of the two treaties are carefully compared.[67] The overwhelming influence of the multinational pharmaceutical industry on the Psychotropics Convention was particularly obvious.[68]

In contrast to the five negotiating groups identified by McAllister for the Single Convention, there were only two distinct blocs with conflicting positions at the Vienna conference. One group included mostly developed nations with powerful pharmaceutical industries and active psychotropics markets; this was essentially the "manufacturing group." The other group consisted of developing states, supported by the socialist countries, with few psychotropic manufacturing facilities; this was to a large extent the "organic group." At the 1971 negotiations, however, the positions of the two groups were *completely reversed*. The manufacturing group adopted the traditional arguments of the organic group: weak controls, national as opposed to international controls, and national sovereignty taking precedence over any supranational UN body. The rationale for these positions was that strict controls would be difficult to enforce and would cause financial loss. The organic group, on the other hand, pushed hard for strict controls similar to those it had been forced to accept in the Single Convention.[69]

A comparison of the Preambles of the two Conventions is revealing. Although the Preamble is not legally binding, it encapsulates the spirit of the instrument. In the Single Convention, addiction is described as *"a serious evil for the individual ... fraught with social and economic danger to mankind."* It is recognized, however, that *"the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes."* By contrast, the Psychotropics Convention makes no mention of the "serious evil" of "addiction," but rather notes *"with concern the public health and social problems resulting from the abuse of certain psychotropic substances."* As well, it is recognized that *"the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted."* The overall tone of the Psychotropics Convention Preamble is less harsh, and it implies that *"abuse of certain," not all, psychotropics, is not as serious a problem as "addiction to narcotic drugs"* in general.

The approach to categorizing drugs by means of schedules with varying levels of control also differed between the two Conventions. In the 1961 Single Convention negotiations, when the placement of a drug in a particular schedule was disputed, the drug almost always ended up in a schedule not favoured by the organic group – for example, the placement of cannabis in Schedule IV. The manufacturing group's insistence on this classification method was based on the idea that narcotic drugs should be considered hazardous until proven otherwise. This reasoning did not apply, however, when U.S. economic interests were at stake. In 1971, the U.S. delegation argued forcefully and often successfully that organic raw materials should be assigned to the strictest schedules, while their manufactured derivatives should be placed in the weaker schedules.

The Psychotropics Convention also contains four schedules of control, but they are substantially different in nature and organization from those of the Single Convention. For example, the most stringent schedule in the Single Convention is Schedule IV,[70] which is equivalent to Schedule I[71] in the Psychotropics Convention. In both cases, the drugs included may be used only by authorized persons in government-operated medical or scientific institutions, and their manufacture, import and export are strictly controlled. The weakest schedule in the Psychotropics Convention is Schedule IV, which contains tranquilizers. Some manufacturing states tried to eliminate Schedule IV by arguing that such drugs were sufficiently regulated by national controls and that international control was therefore unnecessary. In the end, Schedule IV was retained, albeit with a much shorter list of drugs. However, the principle on which drugs were classified was completely reversed, in particular by the U.S.: *"unless there was substantial proof that a substance was harmful, it should remain uncontrolled."*[72]

Another key difference between the two Conventions is revealed by a close comparison of the schedules. Previous treaties, including the Single Convention, not only covered the base substances but also extended control to include their salts, esters, ethers and isomers, i.e., their derivatives. In contrast, derivatives were completely absent from the schedules of the Psychotropics Convention. As a result, every substance to be covered under the treaty regime must be specified by name. In practical terms, that is impossible because new derivatives are constantly being produced, and they comprise 95 per cent of the substances developed by pharmaceutical firms. If a general reference to derivatives had been included, new substances would have been covered automatically. This omission was apparently the result of a deal made between

political representatives when the technical experts were not present; the derivatives had to be sacrificed in order to get the manufacturing states to sign the treaty.[73]

The system of estimates set out in Article 19 of the Single Convention requires Parties to report annually to the INCB how much of each controlled substance they will need for the next year. This system is one of the pillars of the international drug control regime and dates back to the second Geneva conference, which led to the 1925 International Opium Convention. It was *completely excluded* from the Psychotropics Convention. As McAllister has pointed out, *"[t]his omission was clearly in the interests of the manufacturing states, because without estimates of need it is impossible to calculate whether more of a substance than can legitimately be put to use is being fabricated."*[74] *This allowed multinationals to manufacture unlimited quantities of psychotropic substances without being constrained by annual production limits based on licit need.*

These omissions–derivatives and estimates–were largely corrected during the 1970s and 1980s through quiet recourse to customary international law by the DND and the INCB. The latter asked Parties to submit psychotropics information and statistics not required by the Convention. The initial positive responses from various organic group states were then used to persuade others to follow suit. Similarly, the CND and the WHO simply announced that derivatives would be included in the schedules. Some governments complied and others were eventually forced by international pressure to do likewise.

Article 3 of the Single Convention gives the WHO the key role in determining whether, on the basis of a medical or scientific analysis, a new drug should be added to a schedule and thus placed under international control. The WHO's recommendation is submitted to the CND, which makes the final decision. However, any Party may appeal the CND's decision to ECOSOC within 90 days. ECOSOC's decision is final. While a decision is being appealed, the CND may still require Parties to place control measures on the substance in question.

Under the Psychotropics Convention, the WHO continues to make recommendations based on medical and scientific criteria. However, Article 2(5) explicitly directs the CND to bear in mind "the economic, social, legal, administrative and other factors it may consider relevant" in coming to its decision. Furthermore, Article 17(2) states that the CND's decision is subject to approval by a two-thirds majority of CND members.[75] The CND's decision may still be appealed to ECOSOC, and Parties have up to 180 days to do so. In addition, ECOSOC's decision is not necessarily final; there is the possibility of continual appeals. Lastly, while a decision is being appealed, Article 2(7) allows a Party to take "exceptional action" and exempt itself from certain control measures ordered by the CND pending the outcome of the appeal. The cumulative effect of all of these additions to the Psychotropics Convention is that it can be much harder for the WHO to bring a new psychotropic drug within the control system than to add a new narcotic drug to the Single Convention.

The criteria for placing a new drug under control also differ between the two Conventions. According to Article 3 of the Single Convention, a narcotic drug will come within the control regime if it is *"liable to similar abuse and productive of similar ill effects as the drugs"* in the relevant schedule. The prerequisites under Article 2(4) of the Psychotropics Convention are significantly more stringent. The WHO must find:

(a) that the substance has the capacity to produce

(i) (1) a state of dependence, and

(2) central nervous system stimulation or depression, resulting in hallucinations or disturbances in motor function or thinking or behaviour or perception or mood, or

(ii) similar abuse and similar ill effects as a substance in Schedule I, II, III or IV, and

that there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a

public health and social problem warranting the placing of the substance under international control.

Taking the lead for the manufacturing group on this point, the U.S. and Britain were the most adamant about including such highly restrictive criteria.[76]

The Psychotropics Convention is far ahead of the Single Convention's superficial attempt to address the demand side of drug problems (Article 38 described above). Article 20 of the 1971 treaty is a milestone in that it introduced the concepts of public education and abuse prevention into the legal infrastructure of international drug control. In particular, it enjoins Parties to "*take all practical measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved, and [to] coordinate their efforts to these ends.*" Parties are also required to promote "as far as possible" the training of personnel to carry out these tasks and encouraged to further the study and public awareness of etiological issues related to abuse. Although these provisions leave plenty of room for countries to avoid taking measures, they are a definite improvement over the Single Convention.

The penal provisions in Article 22 of the Psychotropics Convention allow states to use treatment, education, after-care, rehabilitation and social reintegration instead of just conviction or punishment in dealing with abusers who commit offences under the Convention. While the acknowledgement of treatment and rehabilitation is an improvement over previous strictly penal provisions, such measures are intended as a supplement to imprisonment rather than as an alternative.[77]

On the whole, the 1971 negotiations resulted in a treaty that was significantly weaker than the Single Convention. Furthermore, any possibility of revisiting the provisions of the Psychotropics Convention was not realistic in the early 1970s, as a new chapter in the U.S. "war on drugs" was beginning.[78]

Protocol amending the Single Convention on Narcotic Drugs, 1961

In the early 1970s, U.S. President Richard Nixon officially declared "war on drugs" in response to the massive drug abuse in the U.S. and the social damage it was causing. This announcement had global repercussions.[79]

In 1971, as part of the Nixon administration's international anti-narcotics campaign, U.S. officials suggested creating a government-funded, UN-administered fund to combat drug abuse.[80] The United Nations Fund for Drug Abuse Control (UNFDAC) was launched in 1971 with an initial $2 million donation from the U.S. Other governments were reluctant to contribute because of the motives behind the Fund. This reluctance was well founded as UNFDAC essentially became a U.S. tool. The emphasis was on law enforcement and crop substitution rather than abuse and demand-oriented strategies. Money went primarily to projects that involved U.S. allies and focused on countries where the U.S. had been unable to stop opium production.[81]

The Fund was also sharply criticized for succumbing to the inefficiency of the UN's bureaucratic machinery: "*A large proportion of the money allocated to the Fund's various programs is in fact spent on supporting an ever-expanding bureaucracy to administer the programs. Indeed many of the Programs appear to serve no purpose other than to provide occupation for the enlarged secretariats.*"[82] *It was also argued that the UNFDAC should be transferred from the drug control bodies under ECOSOC to the United Nations Development Program, which was better able to assess the development and aid needs of recipient countries.[83]*

Another key initiative of the Nixon administration was to strengthen the Single Convention. As a result of heavy U.S. lobbying, a UN plenipotentiary conference was convened in March 1972 to amend the Convention.[84] What came out of the conference was the Single Convention Protocol. The main goal of

the amendments was to expand the INCB's role in controlling licit and illicit opium production and illicit drug trafficking in general. The U.S. wanted to revive certain aspects of the 1953 Opium Protocol by attempting to reduce licit opium production. However, in 1972, licit production was just meeting licit demand, and few countries were willing to risk a global shortage of opium for medical use.[85] Consequently, the U.S. proposals were significantly diluted.

The backbone of the Single Convention Protocol consists of provisions that enhance the INCB's powers, especially in relation to illicit trafficking. In Article 2 of the Single Convention, the definition of the INCB's functions now includes an explicit reference to the prevention of "illicit cultivation, production and manufacture of, and illicit trafficking in and use of, drugs." Article 35 encourages Parties to supply the INCB and the CND with information on the illicit drug activity in their territory; as well, the INCB is empowered to advise Parties on their efforts to reduce illicit drug trafficking. When Parties conclude extradition treaties with one another, such agreements are now deemed to automatically include the drug-related offences set out in the Single Convention, including trafficking.[86] Article 22(2) of the Psychotropics Convention says only that it is "desirable" that such offences be made extraditable.

The Protocol amended the Single Convention's abuse prevention provisions to bring them into line with Article 20 of the Psychotropics Convention.[87] The amended Single Convention also echoes the Psychotropics Convention by now allowing countries to use *"treatment, education, after-care, rehabilitation and social reintegration"* either as an alternative to or in addition to conviction or punishment.[88]

Although not as stringent as originally intended by the U.S., the Single Convention Protocol continued the prohibitive tradition of the international drug control regime, especially against opium, and stepped up the war on illicit trafficking.

Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

Numerous national and regional drug control initiatives were launched in the 1970s and 1980s.[89] In Europe, the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs, also known as the "Pompidou Group," was created to facilitate discussions between countries. In addition, the Heads of National Law Enforcement Agencies (HONLEA) met regionally - in Asia and the Pacific in the 1970s, and in Africa, Latin America and Europe in the 1980s - to improve police and customs drug enforcement cooperation. INTERPOL expanded its operations and became "an important clearinghouse for information and a sponsor of local, regional, and global drug enforcement meetings."[90]

Meanwhile, concerns arose within the UN and among its main control-oriented members that the anti-trafficking efforts of the international drug control system were being compromised by the fact that certain nations were not Parties to the Conventions or did not have domestic law enforcement systems capable of properly combating illicit trafficking.[91] In 1984, the UN General Assembly adopted resolution 39/141, which called on ECOSOC to instruct the CND to prepare "as a matter of priority" a draft convention considering *"the various aspects of the problem [of illicit drug trafficking] as a whole and, in particular, those not envisaged in existing international instruments."* Thus, the goal was to add an additional, trafficking-specific layer to the drug control system to complement the two existing Conventions.

The draft treaty was finalized at the 1987 UN Conference on Drug Abuse and Illicit Trafficking. Also at this Conference, a Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control[92] (CMO) was adopted to encourage states to fulfil their existing treaty obligations. The CMO focused on four areas: (1) prevention and reduction of illicit demand; (2) control of supply; (3) suppression of illicit trafficking; and (4) treatment and rehabilitation. Many of the objectives described in the CMO were reflected in the draft treaty. Between 25 November and 20 December 1988, representatives of 106 states met in Vienna to negotiate a final text. The result was the Trafficking Convention.

The Trafficking Convention is essentially an instrument of international criminal law. Its aim is to

harmonize criminal legislation and enforcement activities worldwide with a view to curbing illicit drug trafficking through criminalization and punishment. Under the Convention, Parties are required to enact and implement very specific criminal laws aimed at suppressing illicit trafficking. These laws relate to such aspects of the problem as money laundering, confiscation of assets, extradition, mutual legal assistance, illicit cultivation, and trade in chemicals, materials and equipment used in the manufacture of controlled substances. As with the other two Conventions, the CND and the INCB are charged with administration of the Convention. Furthermore, for minor offences, the Trafficking Convention allows demand-side measures to be used as an alternative to conviction or punishment.[93]

The Preamble describes illicit trafficking as "*an international criminal activity*" and points out the "*links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States.*" It also stresses "*the importance of strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international criminal activities of illicit traffic.*" Even the single reference in the Preamble to demand-side issues is couched in terms specific to criminal law: "*Desiring to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic*" (emphasis added). The implication is that drug users also are to be considered criminals. The Preamble clearly reflects its prohibitionist roots, even explicitly reaffirming "*the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances and the system of control which they embody.*"

Accordingly, the cornerstone of the Trafficking Convention is Article 3: "Offences and Sanctions." Here the treaty breaks new ground by *requiring* that Parties "legislate as necessary to establish a modern code of criminal offences relating to the various aspects of illicit trafficking and to ensure that such illicit activities are dealt with as serious offences by each State's judiciary and prosecutorial authorities."[94] The mandatory offences, set out in Article 3(1), include the following:

- The production, manufacture, distribution or sale of any narcotic drug or psychotropic substance in violation of the provisions of the Single Convention or the Psychotropics Convention;

- The cultivation of the opium poppy, coca bush or cannabis plant in violation of the above Conventions;

- The possession or purchase of any narcotic drug or psychotropic substance for the purpose of illicit trafficking;

- The manufacture, transport or distribution of materials, equipment and substances for the purpose of illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

- The organization, management or financing of any of the above offences.[95]

Furthermore, Article 3(2) of the Trafficking Convention requires each Party, subject to its constitutional principles and the fundamental principles of its legal system, to establish criminal offences for the possession, purchase or cultivation of drugs for personal consumption.

Some leeway?

Three points bear making concerning the substance of the current conventions.

The first has to do with the absence of definitions. The terms drugs, narcotics and psychotropics are not defined in any way except as lists of products included in schedules. It follows that any natural or synthetic substance on the list of narcotics is, for the purposes of international law, a narcotic, and that a psychotropic is defined in international law by its inclusion in the list of psychotropics.[96] The only thing that the 1961 Convention tells us about the substances to which it applies is that they can be abused. The 1971 Psychotropics Convention, which, as noted earlier, reversed the roles in that the synthetic drug producing countries wanted narrower criteria, indicates that the substances concerned may cause dependence or central nervous system stimulation or depression and may give rise to such abuse as to *"constitute a public health problem or a social problem that warrants international control."*

The second point, following from the first, relates to the arbitrary nature of the classifications. While cannabis is included, along with heroin and cocaine, in Schedules I and IV of the 1961 Convention, which carry the most stringent controls, it is not even mentioned name in the 1971 Convention, though THC is listed as a Schedule I psychotropic along with mescaline, LSD and so on. The only apparent criterion is medical and scientific use, which explains why barbiturates are in Schedule III of the 1971 Convention and therefore subject to less stringent controls than natural hallucinogens. These classifications are not just arbitrary, but also inconsistent with the substances' pharmacological classifications and their danger to society.

Third, if there was so much concern about public health based on how dangerous "drugs" are, one has to wonder why tobacco and alcohol are not on the list of controlled substances

We conclude from these observations that the international regime for the control of psychoactive substances, beyond any moral or even racist roots it may initially have had, **is first and foremost a system that reflects the geopolitics of North-South relations in the 20th century**. Indeed, the strictest controls were placed on organic substances - the coca bush, the poppy and the cannabis plant - which are often part of the ancestral traditions of the countries where these plants originate, whereas the North's cultural products, tobacco and alcohol, were ignored and the synthetic substances produced by the North's pharmaceutical industry were subject to regulation rather than prohibition. It is in this context that the demand made by Mexico, on behalf of a group of Latin American countries, during the negotiations leading up to the 1988 Convention, that their use be banned must be understood. It was a demand that restored the balance to a degree, as the countries of the South had been forced to bear the full brunt of the controls and their effects on **their own** people since the inception of drug prohibition. The result may be unfortunate, since it reinforces a prohibitionist regime that history has shown to be a failure, but it may have been the only way, given the mood of the major Western powers, to demonstrate the irrationality of the entire system in the longer term. In any case, it is a short step from there to questioning the legitimacy of instruments that help to maintain the North-South disparity yet fail miserably to reduce drug supply and demand.

Putting aside such questions of substance, we will now examine how much leeway countries have within the current conventions to adopt less prohibitionist policies.

Several states have adjusted their criminal enforcement systems to allow *de facto* possession of small amounts of certain soft drugs, such as cannabis and its derivatives, for personal consumption while remaining within the legal bounds of the Conventions.[97] Although the Conventions do not permit legalization or even decriminalization of possession, those countries have circumvented the limitations by criminalizing possession, as required by the treaties, but not strictly enforcing the legislation, or they have effectively "depenalized" the offences by exempting them from punishment.[98]

According to some observers, such approaches clearly violate the spirit of the Conventions, especially the Trafficking Convention, which seems to use the term "trafficking" very broadly to include demand-side activities within a supply-oriented control regime. Yet there is a legal basis for these "softer" approaches because the treaties do not explicitly forbid them.

The hard-nosed criminal law approach adopted by the international drug control system has drawn criticism from human rights activists. Some maintain that the imprisonment penalties are excessive for soft-drug

offences such as possession of a small amount of cannabis for personal consumption.[99] It is argued that imprisonment in such circumstances is disproportionate to the offence and therefore violates the inherent dignity of persons, the right to be free from cruel and degrading punishment, and the right to liberty, as set out in such instruments as the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.[100] It has also been argued that drug use is a human right and should be recognized as such in the *Universal Declaration of Human Rights*.[101]

The Trafficking Convention is the only one of the three Conventions that mentions human rights. Article 14(2) of the Trafficking Convention explicitly requires Parties "to respect fundamental human rights" when they take measures to prevent and eradicate the illicit cultivation of plants containing narcotic or psychotropic substances, such as opium, cannabis and coca. The same provision also requires states to take into account traditional licit uses, where there is historical evidence of such use, and protection of the environment.

There are three factors that provide states, including Canada, with some leeway. The first is the fact that the conventions recognize the primacy of national legal systems. Indeed, the international drug agreements have no direct application in national law. To make them enforceable within its territory, the state must enact a law; in Canada, that law is the *Controlled Drugs and Substances Act*. Specifically, the conventions variously state that the proposed penalties are to be imposed "subject to [the Parties'] constitutional provisions" or *"having due regard to their constitutional, legal and administrative systems."* In Canada, the provisions of the *Canadian Charter of Rights and Freedoms* and the interpretations given to them by the Supreme Court are the framework for interpreting the international conventions on drugs.

The second, slightly more technical point suggests that sanctions for possession apply only to possession for the purposes of trafficking, especially in view of this provision's position between two articles on trafficking and of its earlier wording.[102] Failing to punish people for possession for personal use would not be, strictly speaking, prohibited. That is the legal opinion of an expert asked by Switzerland's Federal Office of Public Health to comment on its draft legislation to legalize cannabis: [Translation] *"The statute's general depenalization of the consumption and small-scale cultivation of cannabis would be compatible with the conventions."*[103] *With regard to cannabis trade and supply, the author writes: [Translation] "Even though regulating cannabis trade with a licensing system does not appear to be out of the question, some practical problems remain, partly because of the control mechanisms required by the 1961 Convention, and partly because the international community interprets the 1988 Convention as an obligation to punish the buying and selling of cannabis."*[104]

The third factor is that the conventions impose moral obligations on states and not legal obligations, much less penalties or sanctions for violating them, and that they also include review or amendment mechanisms.

CONCLUSIONS

As we have seen in Chapters 5, 6 and 7, cannabis is widely used in every part of the world, does not have the harmful effects ascribed to it, and poses little risk to public health. Consequently, it in no way deserves to be included in the convention schedules that list what are supposed to be the most dangerous drugs. Cannabis even has therapeutic uses recognized by Canadian courts. For the above reasons, we ***recommend that Canada notify the international community of its intent to seek the declassification of cannabis as part of a public health approach that would include stringent monitoring and***

evaluation.

Conclusions of Chapter 19

- *The series of international agreements concluded since 1912 have failed to achieve their ostensible aim of reducing the supply of drugs.*

- *The international conventions constitute a two-tier system that regulates the synthetic substances produced by the North and prohibits the organic substances produced by the South, while ignoring the real danger which those substances represent to public health.*

- *When cannabis was included in the international conventions in 1925, there was no knowledge of its effects.*

- *The international classifications of drugs are arbitrary and do not reflect the level of danger those substances represent to health or to society.*

- *Canada should inform the international community of the conclusions of our report and officially request the declassification of cannabis and its derivatives.*

[1] Single Convention on Narcotic Drugs, 1961 (RTC 1964/30), amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961 (RTC 1976/48). The Single Convention came into force in Canada in 1964 and the Protocol in 1976.

[2] Convention on Psychotropic Substances, RTC 1988/35. It came into force in Canada in 1988.

[3] Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, RTC 1990/42, which came into force in Canada in 1990.

[4] McAllister, W.B., (1999) Drug Diplomacy in the Twentieth Century. An international history, pages 10-11.

[5] Caballero, F., and Y. Bisiou (2000) *Droit de la drogue*. Paris: Dalloz, 2nd edition, page 36.

[6] McAllister, *op. cit.*, pages 15-16.

[7] McAllister, *op. cit.*, pages 24-27.

[8] This table and the text of this section are taken from the excellent report prepared by the Library of Parliament at the Committee's request: Sinha, J. (2001) *The History and Development of the Leading International Drug Control Conventions*. Ottawa: Library of Parliament, Parliamentary Research Branch, available on the Committee's Web site at www.parl.gc.ca/illegal-drugs.asp .

[9] Sources: Canadian Treaty Series; Kettil Bruun, Lynn Pan and Ingemar Rexed, (1975) *The Gentlemen's Club: International Control of Drugs and Alcohol*, Chicago: University of Chicago Press; United States, (1972) *International Narcotics Control: A Source Book of Conventions, Protocols, and Multilateral Agreements, 1909-1971*, Washington, D.C.: Bureau of Narcotics & Dangerous Drugs.

[10] Lowes, P.D. (1966) *The Genesis of International Narcotics Control*. Geneva: Droz, page 102.

[11] Bewley-Taylor, D.R. (1999) *The United States and International Drug Control*, page 19.

[12] The Commission included all the colonial powers in the region – Britain, France, Germany, Japan, the Netherlands, Portugal and Russia – and China, Siam [now Thailand], Persia [now Iran], Italy and Austria-Hungary. (McAllister (2000), page 28)

[13] Bruun *et al.* (1975), page 11; Lowes (1966), page 187-188.

[14] Walker III, William O., (1991) *Opium and Foreign Policy: The Anglo-American Search for Order in Asia, 1912-1954*, Chapel Hill, N.C.: University of North Carolina Press, page 16-17; Lowes (1966), page 152-153.

[15] Musto (1999), page 36-37.

[16] William B. McAllister, (1992) "Conflicts of Interest in the International Drug Control System," in William O. Walker III, ed., *Drug Control Policy: Essays in Historical and Comparative Perspective*, University Park, Pennsylvania: Pennsylvania State University Press, page 145.

[17] Germany, China, the United States, France, Britain, the Netherlands, Italy, Japan, Persia [now Iran], Portugal, Russia and Siam [now Thailand].

[18] McAllister (2000), page 32-33; Bruun *et al.* (1975), page 11-12.

[19] Done 23 January 1912; in force 28 June 1919.

[20] Ratification is the process by which each country enacts national implementing legislation – unless the new international obligations are already met by domestic legislation – and thereby consents to the treaty's application within its territory.

[21] McAllister (2000), page 36-37; Bruun *et al.* (1975), page 12; Lowes (1966), page 182-186.

[22] Musto (1999), page 59-63. Since the U.S. Constitution did not allow a direct federal role in criminalizing drug use, Wright designed the *Harrison Act* as a tax statute; physicians, pharmacists, wholesalers and retailers had to obtain a tax stamp to distribute drugs. The Treasury Department was responsible for enforcing the statute. Thus, the use of drugs was limited through access restrictions. (McAllister (2000), page 35)

[23] McAllister (1992), page 145-146.

[24] McAllister (2000), page 46-50; Lowes (1966), page 188.

[25] McAllister (2000), page 50-51.

[26] *Agreement concerning the Manufacture of, Internal Trade in, and Use of Prepared Opium*, done 11 February 1925, in force 28 July 1926.

[27] Done 19 February 1925; in force 25 September 1928.

[28] The PCOB was intended to be impartial and politically disinterested, but its operations remain

extremely political to this day (it still exists). Since its inception, its membership has always included a representative from Britain, the U.S. and France. (McAllister (2000), page 83)

[29] Bruun *et al.* (1975), page 14.

[30] Done 13 July 1931; in force 9 July 1933.

[31] Giffen *et al.* (2000), page 483.

[32] See, for example, McAllister (2000), page 89-90; Bewley-Taylor (1999), page 102-164; Bruun *et al.* (1975), page 137-141; Inglis (1975), page 181-190. See also Harry J. Anslinger and Will Oursler, "The War against the Murderers," in William O. Walker III, ed., *Drugs in the Western Hemisphere: An Odyssey of Cultures in Conflict*, Wilmington, Delaware: Scholarly Resources Inc., 1996.

[33] Anslinger would use this provision continually in the future as a way of protecting his position and the Federal Bureau of Narcotics from being altered through reorganization. (McAllister (2000), page 98, 108-109)

[34] *Ibid.*, page 110-111.

[35] *Agreement for the Control of Opium Smoking in the Far East*, done 27 November 1931, in force 22 April 1937.

[36] Taylor (1969), page 275-279; McAllister (2000), page 106.

[37] Taylor (1969), page 288-298.

[38] Done 26 June 1936; in force 26 October 1939.

[39] Taylor (1969), page 293-295.

[40] McAllister (2000), page 126-127.

[41] The possibility of war accentuated the hypocrisy and opportunistic nature of the U.S. prohibitionist position. In 1939, Anslinger "was simultaneously pursuing a League-sponsored treaty to curtail agricultural production in far-off lands, a regional agreement that would allow him to commence poppy cultivation at home, and a global acquisition program that amassed the world's largest cache of licit opium yet assembled." (McAllister (2000), page 133)

[42] See Bewley-Taylor (1999), page 54-59; Bruun *et al.* (1975), page 54-65.

[43] *Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931, and at Geneva on 26 June 1936*, done 11 December 1946, in force 11 December 1946.

[44] Bruun *et al.* (1975), page 70.

[45] *Protocol Bringing under International Control Drugs outside the Scope of the Convention of 13 July 1931, for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol signed at Lake Success, New York, on 11 December 1946*, done 19 November 1948, in force 1 December 1949.

[46] ECOSOC approved the recommendation in two resolutions: 159 II D (VII) of 3 August 1948, and 246 D (IX) of 6 July 1949. See also McAllister (2000), page 172; Bewley-Taylor (1999), page 137.

[47] McAllister (2000), page 172-179.

[48] *Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of, Opium*, done 23 June 1953, in force 8 March 1963.

[49] The seven producing countries were Bulgaria, Greece, India, Iran, Turkey, the USSR and Yugoslavia.

[50] One of the Canadian delegates to the CND, National Health and Welfare official Robert Curran, played the leading role in drafting a document that would be acceptable to all countries as a starting point for negotiations (McAllister (2000), page 205). For an analysis of this third draft, see Leland M. Goodrich, "New Trends in Narcotics Control", *International Conciliation*, No. 530, November 1960.

[51] McAllister (1992), page 148.

[52] Anslinger was extremely disappointed with the Single Convention because he believed that the opium control provisions were not stringent enough (e.g., Article 25 still allowed any country to produce up to five tons of opium annually, albeit subject to strict controls). He attempted to derail the Convention by lobbying countries to ratify the 1953 Opium Protocol in hopes of obtaining the number of ratifications needed to bring it into force. He failed, and his influence waned after that. (Bewley-Taylor (1999), page 136-161)

[53] Only the 1936 Trafficking Convention was not included in the Single Convention and remained in force separately, because agreement could not be reached on which of its provisions should be included in the Single Convention (McAllister (2000), page 207-208). Article 35 of the Single Convention simply encouraged cooperation between countries to combat illicit trafficking.

[54] Single Convention, Articles 19 and 20.

[55] *Ibid.*, Articles 21 and 29-32.

[56] *Ibid.*, Article 36.

[57] *Ibid.*, Article 36(2).

[58] Single Convention, Articles 22-28.

[59] The limit was 15 years for the quasi-medical use of opium.

[60] Single Convention, Articles 5 and 9-16.

[61] *Ibid.*, Article 9(1)(a).

[62] *Ibid.*, Article 14(2).

[63] See, for example, *Report of the International Working Group on the Single Convention on Narcotic Drugs, 1961*, Toronto, Addiction Research Foundation, 1983, page 10-11; recommendations 4, 5, 15, 19 and 20.

[64] See, for example, Vladimir Kušević, (1977) "Drug Abuse Control and International Treaties", *Journal of Drug Issues*, Vol. 7, No. 1, page 35-53. See also McAllister (2000), page 218-220; Musto (1999), ch. 11; McAllister (1992), page 153-162; Bruun *et al.* (1975), ch. 16; Inglis (1975), ch. 13.

[65] The U.S. attempted to regulate psychotropic substances through the Bureau of Drug Abuse Control, established under the *Drug Abuse Control Act of 1965*. This statute also shifted the constitutional basis for drug control from the taxing power to interstate and commerce powers, a change that led to the demise of Anslinger's Federal Bureau of Narcotics and the birth of the Bureau of Narcotics and Dangerous Drugs

(BNDD) under the federal Department of Justice. (Musto (1999), page 239-240)

[66] Kušević (1975), page 38.

[67] McAllister (1992), page 154-162; Kušević (1975), page 38-41. McAllister's comparison is highly detailed, and well worth reading; Kušević provides useful background and commentary. See also S.K. Chatterjee (1988) *A Guide to the International Drugs Conventions*, London: Commonwealth Secretariat, page 15-33, for a more technical, lower-level comparison of the two Conventions.

[68] The lead author of the preliminary draft, Arthur Lande, had ended his career at the UN shortly before the Vienna conference. He attended the conference as representative of the U.S. Pharmaceutical Manufacturer's Association, one of many industry observers. Another example of the industry's blatant influence involved a group of six small Latin American countries. They uncharacteristically supported weakening the treaty and were all represented by a Swiss national who was not fluent in Spanish and was not a government official, a diplomat or a narcotics expert. He worked for the European pharmaceutical giant Hoffmann-LaRoche. (McAllister (2000), page 232; Kušević (1975), page 39)

[69] McAllister (1992), page 154; Kušević (1975), page 39.

[70] Which includes cannabis and heroin, for example.

[71] Which includes hallucinogens, such as LSD.

[72] McAllister (1992), page 158.

[73] McAllister (2000), page 233.

[74] McAllister (1992), page 157.

[75] The U.S. tried to increase it to a three-quarters majority. (McAllister, 2000, page 161)

[76] *Ibid.*, page 159.

[77] United Nations, *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Done at Vienna on 20 December 1988*, New York: United Nations, 1976, page 353-354.

[78] The U.S. war on drugs is considered to have begun with the enactment of a federal drug control law known as the *Harrison Narcotics Act of 1914*, and has continued ever since at varying levels of intensity. The most recent supporters of the war on drugs include President Nixon in the late 1960s and early 1970s, President Ronald Reagan in the 1980s, President George Bush in the late 1980s and early 1990s, President Bill Clinton in the 1990s and now President George W. Bush. A great deal has been written about the war on drugs. See, for example, Steven R. Belenko, ed., *Drugs and Drug Policy in America: A Documentary History*, Westport, Connecticut: Greenwood Press, 2000; H. Richard Friman, *NarcoDiplomacy: Exporting the U.S. War on Drugs*, Ithaca, New York: Cornell University Press, 1996; James A. Inciardi, *The War on Drugs: Heroin, Cocaine, Crime, and Public Policy*, Palo Alto, California: Mayfield Publishing Company, 1986; Kenneth J. Meier, *The Politics of Sin: Drugs, Alcohol and Public Policy*, Armonk, New York: M.E. Sharpe, 1994; Musto (1999); William O. Walker III, *Drug Control in the Americas*, revised edition, Albuquerque New Mexico: University of New Mexico Press, 1989; Steven Wisotsky, *Beyond the War on Drugs: Overcoming a Failed Public Policy*, Buffalo, New York: Prometheus Books, 1990.

[79] Musto (1999), page 248-259; Bruun *et al.* (1975), ch. 10.

[80] The U.S. campaign included massive international funding for crop substitution, technical assistance to improve the administration and law enforcement, initiatives to combat smuggling, and coordination of educational programs. However, many developing countries were wary of U.S. money with strings

attached. The Americans saw the Fund as a way to get around that reluctance. (McAllister (2000), page 236-237)

[81] *Ibid.*, page 238.

[82] Bruun *et al.* (1975), page 281.

[83] *Ibid.*, page 282; Kušević (1975), page 51.

[84] U.S. ambassadors were selected specifically for the purpose of visiting signatory countries to persuade their leaders to support the amendments proposed by the U.S. It is widely believed that the conference was largely an instrument that Nixon planned to use in the approaching presidential election. (Kušević (1975), page 47)

[85] Kušević (1975), page 48. According to Kušević, it would have been better to try to reduce the *diversion* of licit demand into the illicit market.

[86] Single Convention, Article 36, as amended by the Single Convention Protocol, Article 14.

[87] *Ibid.*, Article 38, as amended by the Single Convention Protocol, Article 15.

[88] *Ibid.*, Article 36, as amended by the Single Convention Protocol, Article 14.

[89] In the U.S., the war on drugs lost some momentum in the 1970s during the administrations of Presidents Gerald Ford and Jimmy Carter. Eleven U.S. states decriminalized certain aspects of marijuana regulation and were supported by well-known organizations such as the American Medical Association, the American Bar Association, the American Public Health Association and the National Council of Churches. President Ronald Reagan reversed this trend in the early 1980s. (Wisotsky (1990), page xviii)

[90] McAllister (2000), page 242-243.

[91] Bewley-Taylor (1999), page 167; David P. Stewart, "Internationalizing the War on Drugs: The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances," *Denver Journal of International Law and Policy*, Vol. 18, No. 3, Spring 1990, page 387-404.

[92] *Declaration of the Conference on Drug Abuse and Illicit Trafficking, and Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control*, UN document ST/NAR/14, 1988.

[93] For a detailed description of the provisions of the Trafficking Convention, see William Gilmore, *Combating International Drugs Trafficking: The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, London: Commonwealth Secretariat, 1991; Stewart (1990). Since Stewart was a member of the U.S. delegation that took part in the negotiations, his article presents the U.S. perspective on the treaty.

[94] United Nations, *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Done at Vienna on 20 December 1988*, New York: United Nations, 1976, page 48.

[95] See Stewart (1990), page 392; Gilmore (1991), page 5.

[96] Caballero and Bisiou, *op. cit.*, page 26.

[97] For example, Belgium, Denmark, Germany, the Netherlands, Poland and some Australian states. Switzerland is currently considering a bill to legalize cannabis. The next chapter provides more detail on the Australian, Dutch and Swiss approaches in particular.

[98] See Krzysztof Krajewski, "How flexible are the United Nations drug conventions?" *International Journal of Drug Policy*, No. 10, 1999, page 329-338. Krajewski provides an excellent overview of the conventions' legal limits in the area of legalization and prohibition. He concludes that legalization or decriminalization would probably require amendment of Article 3(2) of the Trafficking Convention. See also the discussion on legalization in Dupras (1998), page 24-33; and Alfons Noll, "Drug abuse and penal provisions of the international drug control treaties," *Bulletin on Narcotics*, Vol. XXIX, No. 4, October/December 1977, page 41-57.

[99] See, for example, the following pages on the Web site of Human Rights Watch, a human rights non-governmental organization: http://www.hrw.org/campaigns/drugs/ and

http://www.hrw.org/worldreport99/special/drugs.html.

[100] The full text of these international instruments is available on the Web site of the Office of the UN High Commissioner for Human Rights:

http://www.unhchr.ch/html/intlinst.htm.

[101] See Erik Van Ree, "Drugs as a Human Right," *International Journal of Drug Policy*, Vol. 10, 1999, page 89-98. Van Ree proposes the addition of a new Article 31 to the *Universal Declaration of Human Rights*: Everyone has the right to use psychotropic substances of one's own choice.

[102] See Daniel Dupras (1998) *Canada's International Obligations under the Leading International Conventions on the Control of Narcotic Drugs*. Ottawa: Library of Parliament, available on the Committee's Web site at www.parl.gc.ca/illegal-drugs.asp .

[103] Peith, M., (2001) "Compatibilité de différents modèles de dépénalisation partielle du cannabis avec les conventions internationales sur les stupéfiants" [Compatibility of various models of partial depenalization of cannabis with international narcotics conventions]. Legal opinion requested by the Federal Office of Public Health of the Swiss Confederation, page 14.

[104] *Ibid.*, page 15.