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# Transnational Control of Narcotics

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law are often not found on the statute books, so too the methods of enhancing compliance to international criminal law go beyond formal sanctions.

Just as international criminal law and the jurisdictional unit can be understood only in terms of a dynamic development, so must we view the sanctions with which this international criminal law is, or wishes to be, equipped. The sanctions of international criminal law—both those protecting compliance with accommodation norms and those protecting the substantive propositions—are of a type and severity that is conditioned by the cultural and ideological common denominators of the cultures served by it. Regulated violence was the expected response in some cultures, manipulations of shame and disgrace prevailed elsewhere (and still do), while arbitration or even adjudication, with subsequent execution of judgments by force, are preferred in most Western cultures. Sanctions are beginning to play a role in regulating the relations among nations in a form comparable to the old-fashioned regulation of human beings in their relations among each other within a nation, or within other jurisdictional units. We are extremely hesitant to put these sanctions in an order of ascending or descending significance; for, while formal adjudication seems to be preferred in the international community of most of the so-called developed nations, the less formidable and less formal methods of coercing compliance with international conduct norms through manipulation of national or personal pride and reputation, seems to bespeak of greater culture. This informal pressure on nations—even if aimed only at coercing compliance with minimum standards of international co-operation, may well have to do for a while, particularly in the area of hijacking and narcotics offenses, until mankind is ready to experiment with a more formal, court-like, enforcement apparatus.

The members of this panel will probe these issues and will hopefully lead us nearer a solution.

## TRANSNATIONAL CONTROL OF NARCOTICS

*by*

M. C. BASSIOUNI \*

### *Dimensions of the Question*

The control of illicit drug traffic and prevention of drug abuse originated in 1909 with the Shanghai Opium Commission. It was convened after the realization that colonial policies in China had brought about an opium addict population, estimated at 10 million persons. The efforts of the world community to halt the spread of illicit drug traffic and prevent drug abuse have resulted in the elaboration of eleven treaties between 1912 and 1972.\*\*

Far from having stemmed drug abuse, the world community is still plagued by its consequences. The present world population of heroin

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\*\* For a survey of these treaties and a detailed discussion, see Bassiouni, "The International Narcotics Control Scheme—A Proposal" 46 *ST. JOHN'S LAW REV.* (1972).

addicts is estimated at 2 million persons of which some 500,000 are in the United States. They consume some 25 to 30 tons of heroin yearly of which 5 to 6 tons are consumed in the United States at a retail cost of some 3 billion dollars.

The present world production of opium is estimated at 3,000 tons of which only 1,400 is licit; thus, the difference can be assumed to enter illicit traffic channels. The cocaine addiction population of the world is less ascertainable, but educated guesses put it between 250,000 to 500,000 persons. The opium addiction population (smoking and eating), also in doubt as to its accuracy, ranges in estimation from 500,000 to 1 million.

There are no available estimates of cannabis sativa habitual users nor for that matter of synthetic drug habitual users, but a ratio of 5 to 1 proportion between non-hard drug and synthetic drug habitual users and hard drugs addiction is advanced. On this basis the estimated number of habitual users of non-hard drugs and synthetic drugs would be 17.5 million persons. The estimated total world population of addicts and habitual drug users, regardless of category, reaches the astounding figure of 20 million persons. These estimates exclude persons who by reason of sickness are treated with addicting or habit-forming drugs.

The world population of illicit habitual users which consists of those who drift into drug use but are unable to drift out of it subsequently is constantly fed by the non-habitual user population. Their number is indeterminable. Prescinding, however, from the controversial question of whether occasional use leads to habitual use and causes increased reliance leading to the hard drugs, it is nonetheless established that hard drug users have experienced, at an early stage in their practice, less potent drugs. Thus, the number of occasional users should be determined as an indication of trends in the future population of habitual users. (These estimates are not quantifiable because of the many factors which affect trends in population shifts.)

The concentration of all categories of drug users regardless of category of drugs is not geographically (or ideologically) defined. (For that matter, it is not even an exclusive urban manifestation as some advanced.) The manifestations of illicit drug use are prevalent on all continents and at least 70 countries are affected by it in some measure. Not all countries will admit to illicit drug traffic and drug abuse or to its extent and significance. Only recently some Western European countries have become more forthright about the extent and significance of the problem.

To this speaker the acknowledged and estimated world dimension of this problem raises serious misgivings as to the existing international control scheme (not to mention the problems of national control), concluding therefore that an alternative international scheme must be considered, as will be proposed in this paper.

### *The Present International Scheme*

The present scheme of international control of narcotic drugs is founded on multilateral treaty obligations. The operation of this system rests on

national control established by each state within its territorial jurisdiction and subject to its juridical system. States are to adopt appropriate legislation, introduce necessary administrative and enforcement measures, and co-operate with international control organs as well as with other countries in compliance with treaty provisions. The scheme relies essentially on the "best efforts" of the participating states and their wilful co-operation. It is predicated on two characteristics: (a) it depends almost entirely on voluntary international co-operation and (b) it does not rely on any international enforcement or coercive powers but on the ability to denounce a violator to the international community and therefore produce a moral deterrent to coerce compliance. The scheme functions on the basis of three mechanisms: estimates, certification, and dissemination of information.

(1). *The Estimate System*: The system of estimates was introduced in 1931 and provides for measures of quantitative production control extending to signatory as well as nonsignatory states. The system is intended to limit the narcotics supplies of the world to the quantity required for medical and scientific purposes by having all states furnish their estimates of narcotics needed for the forthcoming year. The estimates are then evaluated and constitute the basis of licit cultivation and traffic.

(2). *The Import-Export Certification System*: To be legitimate, shipments sent from one country to another must have an import authorization from the government of the receiving country and a corresponding export authorization from the government of the sending country. Its purpose is to control the movements of legal drugs and to enable detection of (a) any country's exceeding its import maximum under the estimate system and (b) illicit cultivation and traffic.

(3). *The Disclosure and Dissemination of Information*: Governments provide the international control organs with data and information on which the system depends. Governments maintain a record of the import certificate and export authorization, furnish annual reports and texts of laws and regulations enacted by them to implement the narcotics treaties, and report seizures of narcotic drugs and other relevant data. Ostensibly this type of informational scheme is to increase international co-operation.

More than 100 countries are parties to one or more of these conventions, and are, therefore, participants in this international control system. As a result, universal acceptance of an international control system has been attained, even though the exercise of effective control measures still leaves much to be desired. A sense of historic continuity in international co-operation has, nonetheless, been achieved and progress toward more effective controls is developing consistently.

The object of this system is not to eliminate all narcotic substances and drugs from cultivation or manufacture because of their medical and scientific importance but to restrict their uses to these purposes. Thus, the dilemma of control and enforcement: to produce substances and drugs necessary for medical and scientific purposes, and control their production and use to prevent illicit use. This indirect scheme of control has, so far, been necessitated by the reluctance of states to yield any of their sovereign

prerogatives to an international body. Indeed, because of such attitudes only an indirect scheme of international control could have ever been developed.

#### *A Proposed International Scheme*

Unlike the indirect scheme this one is predicated on the theory of direct control by an independent international organization.

##### A. Operative Principles

- (1) Establishment of an independent U.N. Agency to allow autonomous functioning.
- (2) Abolition of all forms of cultivation, manufacturing, sale and distribution of any of the following except under the terms of this agency's authority:
  - (a) Prohibition of *opium* and its derivative morphine, produced from the opium poppy, and *cocaine* produced from the coca bush.
  - (b) A world monopoly in the international agency for the cultivation and manufacture of needed drugs for medical and scientific purposes either directly or indirectly by means of licensing.
- (3) Development within the agency of an international control and sanctions scheme through a multilateral treaty.

##### B. Functional Outline of the Operation of the Direct Control Scheme

The Direct Control Scheme would be administered by a newly formed and independent U.N. Agency to be named the *International Narcotics Control Agency* and consisting of twelve members elected for terms of four years each by the U.N. General Assembly. The U.N. Secretary-General would appoint a thirteenth member to act as Chairman. Each of the six functional boards under the agency would be chaired by one member of the agency to be elected by the Agency for a term of two years.

(1) *The Central Board for the International Regulation Drug Traffic:* A regulatory body primarily established to create and administer an international monopoly to grow opium and manufacture morphine. It would select one or more locations in the world for growing opium and manufacturing morphine. The board would subsidize countries where opium is presently grown by farmers who would suffer economic damage from the absolute prohibition of the cultivation of the poppy. This body would continue the estimate and import-export certification systems. Only individuals, governments, or organizations licensed and supervised by this board would be permitted to use opium and its derivatives to manufacture products for medical and scientific purposes and distribute them. Any drug traffic not authorized by this board would be illicit and subject to international penal sanctions.

(2) *Central Drug Control Board:* This body would act as the enforcement arm in the direct control scheme. It would function in three areas. Within a particular state, the Central Drug Control Board would have the authority to direct and supervise arrests, seizures, and investigations carried out by local officials. Although this international police force would not have the authority to make arrests itself, it could be present and supervise

total law enforcement activities with respect to internal narcotics control in a particular state.

This force would also have responsibility for enforcing the monopoly structure. It would have the right of direct inspection with respect to facilities operated by the monopoly and the right to recommend to the Control Board imposition of a mandatory embargo whenever a state does not comply with its obligations under the monopoly.

The force would serve as a central clearing house for information and statistics pertaining to the status of illicit drug trafficking in the world. It would serve as a central data bank for such information as the identity of present offenders and the location of suspected illicit growing of poppies.

Its staff in each state would consist of law enforcement agents or specialists from that state who would be delegated to work for the international force. It would also provide scientific and technical assistance to states in the field of law enforcement.

(3) *Arbitration Board for the Resolution of Drug Related Disputes:* This body would serve as a convenient organ for the swift resolution of disputes arising out of the operations of the scheme. It would be composed of the President of the International Court of Justice, the Deputy Secretary-General for Legal Affairs of the United Nations, and the Chairman of the International Law Commission. This Board would also set up regional boards for arbitration of local or regional disputes.

(4) *Clearing House Commission:* This body would act as an open market for the purchase and sale of drug substances. It would be open to individuals, organizations, and states. It would buy any available drugs, even illicitly produced, which found their way to illicit channels at a set premium to eliminate illicit traffic in such substances but in a manner not likely to induce illicit activity.

(5) *Central Board for the Treatment and Study of Drug Dependence:* This scientific body would assume the responsibility of establishing "Minimum Standards for Treatment of Drug Dependent Persons," similar to the "Standard Minimum Rules for the Treatment of Prisoners." Its activities would include establishment of treatment centers throughout the world operated either directly or through subsidy to countries establishing their own treatment centers. The scientific body would also operate a central facility devoted to study and research on all aspects of drug dependence but not excluding study of scientific alternatives to the use of morphine for medical and scientific purposes (thus maybe finding substitutes that would eliminate the basis for its licit use). It would also have the authority to decide if certain substances should or should not be deemed "narcotic" or "dangerous" drugs. This central organ would also supply worldwide information on drugs, drug dependence, and related questions. The expertise of WHO and FAO would be utilized in the administration of these programs.

The minimum standards of treatment of drug dependent persons would be based on two operative principles: (a) Recognition that drug dependence is a disease and that as such is better controlled by treatment than by imprisonment and (b) Recognition of a distinction between dependence creating propensities of the hard drugs and synthetic drugs—*i.e.* opium and