



Policy analysis

Regime change: Re-visiting the 1961 Single Convention on Narcotic Drugs

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ARTICLE INFO

Article history:

Received 25 April 2011

Received in revised form 18 July 2011

Accepted 17 August 2011

Keywords:

Foundational treaties

Single Convention on Narcotic Drugs

Cannabis

Coca

Opium

Regime change

ABSTRACT

Background: March 2011 marked the 50th anniversary of the Single Convention on Narcotic Drugs. This legal instrument, the bedrock of the current United Nations based global drug control regime, is often viewed as merely a consolidating treaty bringing together the multilateral drug control agreements that preceded it; an erroneous position that does little to provide historical context for contemporary discussions surrounding revision of the international treaty system.

Method: This article applies both historical and international relations perspectives to revisit the development of the Convention. Framing discussion within the context of regime theory, a critique of the foundational pre-1961 treaties is followed by detailed content analysis of the official records of the United Nations conference for the adoption of a Single Convention on Narcotic Drugs and, mindful of later treaties, an examination of the treaty's status as a 'single' convention.

Results: The Single Convention on Narcotic Drugs represents a significant break with the regulative focus of the preceding multilateral treaties; a shift towards a more prohibitive outlook that within international relations terms can be regarded as a change of regime rather than the straightforward codification of earlier instruments. In this respect, the article highlights the abolition of drug use that for centuries had been embedded in the social, cultural and religious traditions of many non-Western states. Further, although often-overlooked, the Convention has failed in its aim of being the 'single' instrument within international drug control. The supplementing treaties developed in later years and under different socio-economic and political circumstances have resulted in significant inconsistencies within the control regime.

Conclusion: Having established that a shift in normative focus has taken place in the past, the article concludes that it is timely for the international community to revisit the Single Convention on Narcotic Drugs with a view to correcting past errors and inconsistencies within the regime, particularly those relating to Scheduling and traditional drug use.

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Introduction

The year 2011 marked the 50th anniversary of the United Nations Single Convention on Narcotic Drugs; the bedrock of the current international drug control regime comprising this convention as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. When discussing this multilateral treaty system, there is a tendency to talk of its history and evolution in terms of smooth continuum connecting events in the first decade of the twentieth century to the present day; an unbroken arc of progress incorporating both soft and hard law instruments alike. Within this descriptive framework, the Single Convention on Narcotic Drugs (hereafter sometimes referred to as the Single Convention) plays a key role in linking multilateral

drug control agreements made before and during the lifetime of the League of Nations to the structures operating under the auspices of the United Nations (UN). Among its original aims, it is generally the Convention's consolidating or unifying role that, mindful of its title, understandably retains a central place within the dominant historiography. There is a certain utility or functionality to be gained from this perspective. For instance it is useful when constructing a narrative of successful 'containment' of the so-called 'world drug problem' over the course of a century of international drug control (United Nations Office on Drugs and Crime, 2008). Or, from an international relations viewpoint, the Convention can be seen neatly as one in a succession of treaties comprising what has usefully been called the 'Global Drug Prohibition Regime' (Andreas & Nadelmann, 2006, pp. 37–46). From a different angle, however, the perspective provides a particularly useful point of entry when revisiting the formulation and operation of the Single Convention.

Indeed, when looking at the UN drug control framework as an example of an international regime, that is to say a set of 'implicit or explicit principles, norms, rules, and decision-making

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procedures around which actors' expectations converge in a given area of international relations' (Krasner, 1982, p. 186), the Single Convention represents what should be regarded as a 'watershed' event. As we shall see, its passage represented a moment when the multilateral framework shifted away from regulation and introduced a more prohibitive ethos to the issue of drug control. While some have alluded to this idea (Carstairs, 2005, p. 61; Paoli, Greenfield, & Reuter, 2009, pp. 249–250; Buxton, 2010, p. 85), it is useful to employ an international relations perspective to unpack further the notion of 'change.' This is especially the case in light of discussions about moving beyond current changes *within* the prohibition-oriented regime to changes *of* the regime. Within this context, changes *within* the regime represent a process of weakening and normative attrition whereby many Parties to the conventions have engaged in soft defection from its 'prohibitive expectancy' (Bewley-Taylor, 2009, pp. 7–11). This has involved both the adoption of a range of harm reduction interventions relating to intravenous drug use and liberalizing policy trends in relation to the possession of controlled drugs, particularly cannabis, for personal use. While such policy choices take place within the confines of the extant treaty framework by means of its interpretative flexibility, changes *of* the regime involve a substantive alteration in normative focus via a formal treaty amendment or modification. As such, recent moves by the Plurinational State of Bolivia to lift the international ban on coca chewing via an amendment to the Single Convention represented the first truly open attempt to institute a change of the contemporary regime. It was also a move that triggered intense opposition from states with an underlying concern for the 'integrity' of the convention (Jelsma, 2011).

With all this in mind, this article has three principal and mutually reinforcing aims. First, in revisiting the place of the Single Convention within the historiographic account of international drug control it hopes to highlight the fact that, far from being the result of a century of uninterrupted normative development, the international drug control system has in the past experienced a substantive change in focus. This reality not only marks Bolivia's endeavours as a natural part of an evolutionary process rather than a heretical act, but also suggests that a significant future change of the regime is not beyond the bounds of possibility. Second, through an in-depth discussion of debates at the conference for its adoption, the article reveals how the Convention's final form deals with plant based substances, cultivation and traditional drug use as it does. Third, it explores how, as a result of the many compromises made in 1961, the 'Single' Convention retained a legitimate claim upon that title for only seven years after coming into force. Indeed, it is argued that the resultant inconsistencies between the instrument and those that followed, the issue of coca prominent among them, provide a powerful rationale for the international community to revisit the Single Convention and revise some aspects of the current regime that is based upon it.

The foundational pre-1961 treaties

In strictly technical terms, the lineage of the modern international drug control regime of which the Single Convention remains core dates back to The Hague in 1912. The International Opium Convention, the first of a series of legally binding multilateral agreements on the issue, was however a 'step further on the road' (Preamble, *International Opium Convention, 1912*) opened by the US initiated International Opium Commission three years earlier. Then, driven by a complex mix of moral, commercial and geopolitical considerations 13 nations met in Shanghai amidst growing concerns about opium use in China. Often held up as a totemic example of early multilateral cooperation, the Commission in fact represented the barest minimum of a multi-state agreement.

Despite the endeavours of 'transnational moral entrepreneurs' (Andreas & Nadelmann, 2006, p. 19) such as Bishop Charles H. Brent and Dr Hamilton Wright to internationalize the still emerging US doctrine of prohibition (Bewley-Taylor, 2001, pp. 17–24), participants resolved, but did not commit, to suppress opium smoking, limit its use to medical purposes and control its harmful derivatives. No attempt was made to regulate penal law.

Nonetheless, echoes of Shanghai were to permeate the various binding instruments that were ultimately consolidated into the Single Convention in 1961. During what can be regarded as the regime's foundational period, most states, for disparate reasons, displayed a general reluctance to penalise non-medical and non-scientific use of certain psychoactive substances. Indeed, between 1912 and the late 1940s, despite fierce debate, drug treaties were concerned predominantly with the regulation of the licit trade and the availability for medical purposes of a range of drugs. While, often at the behest of US delegations (Bruun, Pan, & Rexed, 1975, pp. 132–148), the issue of non-medical and non-scientific use of certain substances became an increasingly central concern, it was addressed primarily by legal mechanisms designed to limit production, manufacture and prevent the leakage of licit drugs into illicit channels.

Framed within its preamble in terms of a 'humanitarian endeavour,' the essential character of The Hague Convention reflected this reality. Impelled by an ongoing fear among participating states that unencumbered trade in a range of substances, including heroin, morphine and cocaine, would lead to an increase in domestic drug use the treaty called upon signatories to licence manufacturers, regulate distribution and, in the case of opium, halt exports to those jurisdictions that prohibited its import. The approach was continued under new multilateral structures developed in the wake of the First World War. Having assumed responsibility for the issue, including supervision of the 1912 Hague Convention, the League of Nations moved to strengthen transnational aspects of the emergent system and institute controls over a wider range of drugs. This process included the creation of the 'Advisory Committee on the Traffic of Opium and Other Dangerous Drugs.' Usually referred to as the Opium Advisory Committee, the OAC was composed of government representatives and met quarterly in its early years and annually later on. It served as the 'focal responsible organization' for drug matters and was supported in its operation by the newly formed 'Opium and Social Questions Section' (McAllister, 2000, p. 44).

The principal multilateral product of such endeavour was a new International Opium Convention signed at Geneva in 1925. Like its immediate predecessor, this instrument also framed its task as primarily a 'humanitarian effort' (Preamble, *International Opium Convention, 1925*). The Geneva Convention established a standardised import–export certification system designed to regulate drug movements between Parties, and included significantly for the first time cannabis (referred to then as Indian hemp). All signatories had to compile statistics on drug transactions passing across their borders and keep records of the stocks within their countries in line with a uniform procedure. It also added to the growing international drug control bureaucracy by establishing the Permanent Central Opium Board (PCOB) to monitor and supervise the international drug trade. At the time, diversion of licit drug trade was the main source of supply for illicit markets. While the import control system, instituted in 1925, regulated traffic between signatory nations, the now familiar process of displacement limited its effectiveness. In this case, some of the trade, both in terms of traffic and manufacture, simply moved to non-signatory states.

In response, the League of Nations convened another conference in Geneva with the intention of placing restrictions on the manufacture of cocaine, heroin and morphine to amounts necessary for medical and scientific needs, as well as controlling their

distribution. At the core of the resultant 1931 Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs was a proscriptive manufacturing limitation system. Parties were required to provide estimates of national drug requirements to a newly established organ, the Drug Supervisory Body (DSB or Body). Based on these estimates, the Body would calculate manufacturing limits for each country. The Convention also established a group, or schedule, scheme for the classification of different substances. Levels of control were thus based on 'addictive propensity, as determined by governmental representatives with advice from medical experts, testimony from pharmaceutical companies, and input from the research community' (McAllister, 2000, p. 100). At a diplomatic level, the conference for the 1931 Convention was a significant event because it marked the entry onto the international scene of Harry J. Anslinger. Commissioner of the newly formed US Federal Bureau of Narcotics and for many years head of delegation to meetings and conferences, Anslinger's unswerving faith in prohibition, particularly the control of organic drugs at source, was to remain a prominent and increasingly contradictory aspect of the multilateral deliberations leading to the Single Convention (Bewley-Taylor, 2001, pp. 36–39, 136–164).

When viewed together, the 1925 Geneva Convention and the 1931 Limitation Convention reveal some important characteristics of the emerging international control framework. The regime at this point was based upon a number of key tenets (McAllister, 2004a, pp. 186–187). First, supply control was dominant, with a reduction in the illicit market sought via the 'drying up' of excess capacity. Second, nation states retained control over their internal affairs, ensuring that the powers of supranational regulatory bodies, like the PCOB and DSB, were circumscribed. Third and closely related to concerns of national sovereignty, the regime relied predominantly upon indirect control. As such, governments agreed to report estimates of need, actual usage, imports, exports and reserve stocks to international agencies, but those agencies received no power to approve transactions ahead of time. The 1931 Limitation Convention gave the PCOB the authority to place an embargo on the export of drugs to nations exceeding their estimates. This, however, did not represent a form of direct control since the mechanism reacted to state behaviour rather than constrained it in the first instance. Fourth, the regime 'favored free trade over substantive limitations on manufacture and/or agricultural production.' This, as the historian William McAllister explains, is why attempts to institute quotas for production, manufacture and/or consumption consistently failed (McAllister, 2004a, p. 187). Finally, drug control within the system was guided by schedules relating to perceptions of the addictive potential of a substance relative to its medicinal utility (McAllister, 2004b). As we shall see, many of these features were retained with the passage of the Single Convention.

Such regulation of the licit trade, however, represents only part of the story. In creating a control system for and thus delineating the legal trade in drugs, the early conventions inevitably led to the development of an illegal market. In response, the international community convened a conference, again in Geneva, to address the realm of what was now proscribed activity. A resultant strengthening of the existing transnational legal framework was sought via the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs – generally known as the 1936 Trafficking Convention. Its complexity and encroachment upon legal areas considered by many states as sovereign meant it failed to receive widespread acceptance with only 13 countries initially signing and ratifying the instrument (Belgium, Brazil, Canada, China, Colombia, Egypt, France, Greece, Guatemala, Haiti, India, Romania and Turkey). Nonetheless, the Trafficking Convention represented a turning point for the drug control regime. Whereas all previous treaties had dealt primarily with the regulation of 'legitimate' drug activities, the Convention made trafficking-related

activities an international crime subject to penal sanctions. The approach was perfectly logical inasmuch as 'the definition of licit behaviour is,' as an expert in penal aspects of the conventions Neil Boister stresses, 'an absolute precondition for the definition of illicit behaviour' (Boister, 2001, p. 67).

Following the Second World War, the functions and drug control apparatus of the League were transferred to the newly formed United Nations. As part of this process, the first session of the UN's Economic and Social Council (ECOSOC) in February 1946 established the Commission on Narcotic Drugs (CND) as a functional commission to replace the League's OAC with the supporting Opium and Social Questions Section being replaced by the Division on Narcotic Drugs (DND). The resultant restructuring also required amendments to the existing conventions, all of which were concluded in 1947 in what became known as the Lake Success Protocol. A year later, this first UN instrument on the issue of drug control was supplemented by the Paris Protocol. This extended existing controls to new, predominantly synthetic, drugs outside the scope of the 1931 Convention. And in 1953, after much work by Anslinger and US diplomats, controls on the production and export of opium were tightened greatly with the passage of the New York Opium Protocol; a key feature of which was the restriction of the number of opium producing countries to seven. These efforts to extend the scope of the system, however, took place in parallel with work to draw together the increasingly unwieldy and confusing array of conventions that had been developing piecemeal since 1912. Indeed, as we shall see, the Single Convention was to supersede rapidly the stringent 1953 Opium Protocol.

The Single Convention on Narcotic Drugs

Work on some form of 'single' or 'unified' treaty had begun in 1948 when the recently formed ECOSOC approved a US drafted and sponsored resolution from the equally youthful CND (King, 1974, pp. 218–219; McAllister, 2000, p. 72). Owing much to Anslinger's endeavours, this requested the UN Secretary General to prepare a draft convention to replace the full list of existing treaties that had been agreed since The Hague Convention of 1912. The treaty was to have three core objectives; to limit the production of raw materials, to codify the existing conventions into one convention and to simplify the existing drug control machinery. Between 1950 and 1958, the nascent document went through three drafts.

The first, produced by the secretariat, 'bore the stamp' of international lawyer Leon Steinig (McAllister, 2000, p. 204). A key player in drafting drug treaties between 1931 and 1953, Steinig's initial draft was rejected by governments in 1955 because it contained too many features of the already unpopular International Opium Monopoly scheme. Also proposed in 1948 and enthusiastically supported by Steinig in his capacity as Director of the DND, the Monopoly would have established an international agency to act as the world's opium wholesaler. The CND's substantially revised second draft failed to act as a 'serviceable document' due to what McAllister calls its 'multiple trajectories' and myriad 'conflicting clauses'. These were in the main due to the efforts of Anslinger and the French CND representative Charles Vaille, like his American colleague an ardent supporter of the 1953 Opium Protocol, to incorporate many provisions of the earlier instrument into the text in case it failed to receive the necessary number of ratifications to come into force (McAllister, 2000, p. 205). The impressive editorial abilities of Robert Curran, the principle Canadian on the international scene in the late 1950s and 1960s, assisted the CND in the composition of a third draft in 1957–1958. Although, as discussed below, much remained to be resolved, this greatly streamlined version proved acceptable as the basis for negotiations and thus permitted the Commission to convene a plenary conference in New

York. Meeting from 24 January to 25 March 1961, this was attended by the representatives of 73 states and a range of international organisations and bodies with sometimes divergent interests.

As a consolidating treaty, the Single Convention unsurprisingly retained many of the features of its predecessors. In this respect, it recognized in its preamble that ‘the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering’ (United Nations, 1961) and sustained the indirect approach of earlier treaties, in that it placed obligations on the Parties and then monitored ‘the execution of that obligation’ (Boister, 2001, p. 43). In relation to control of drug manufacturing, the Convention adopted the measures incorporated in earlier treaties, including the licencing and manufacturing system used by the 1931 Convention. Parties consequently remain obligated to submit estimates of their drug requirements and statistical returns on the production, manufacture, use, consumption, import, export and stock of drugs. The import certification of the 1925 Geneva Convention also continued, with Parties required to licence all manufacturers, traders and distributors. In line with the objective of streamlining the existing drug control apparatus, the Convention retained the functions of the PCOB and the DSB, but merged them into one body; the International Narcotics Control Board (INCB or Board). Like its predecessors, the Board has no police powers to enforce the Convention’s provisions. In a similar fashion, informal pressure via a ‘name and shame’ process is, however underpinned by the INCB’s power in extreme circumstances to recommend a drugs embargo (International Drug Policy Consortium, 2008, pp. 2–3).

Several of the foundational treaties’ more general characteristics were also carried across into the new instrument. First, as suggested by the objective to limit the production of raw materials, the Convention maintained the regime’s enduring focus on drug supply. It is true that Article 38 broke new ground by stating, ‘The Parties shall give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts’ (United Nations, 1961). Nonetheless, this was little more than a passing nod in the direction of the demand side of the drug issue; even, as we shall see, after changes rendered by the 1972 Amending Protocol. The treaty, both original and amended, reflected the long-standing habit of the international community to privilege supply-side approaches in the belief that this would eliminate non-medical and non-scientific drug use. As McAllister has noted, ‘Problems of addicts and addiction’ often did not feature ‘prominently in international deliberations’ (McAllister, 2000, p. 5). Moreover, where it was discussed, the debates focused predominantly upon compulsory treatment in ‘closed institutions.’ It was only after prolonged negotiations that such an approach was not written into the final document. Despite interventions by a number of nations, including the US, it was agreed instead that the type of treatment deployed should be at the discretion of national authorities. This was, however, a decision based largely on concerns for cost rather than for the welfare of individual drug users (E/CONF.34/24, pp. 105–114).

Second, the Convention was framed within terminology redolent of the 1912 and 1925 treaties. Reflecting the desire of the UN Secretary-General, Trygve Lie, during the early drafting stages to emphasise the same principles (Lines, 2010, p. 6), it opens by noting the concern of Parties with the ‘health and welfare of mankind.’ This important phrase within the non-binding but context-setting preamble suggests that the international community viewed its drug control work as a humanitarian endeavour that was above the interests of individual states. The use of this language in the preamble is not insignificant. As Mr Bittencourt of Brazil observed of the preamble in the sixth plenary meeting in New York in 1961, it was ‘not a mere formal introduction, but rather dealt with the substance of a treaty; it was a statement of purposes and a justification of the aims of the

negotiation; and because it helped to understand the intentions of the negotiators it had a juridical force for the purposes of interpretation’ (E/CONF.34/24, p. 20).

It is therefore also significant how the preamble hints at the Single Convention’s departure from the path of its predecessors. Tellingly it presents ‘addiction’ to narcotic drugs as a ‘serious evil for the individual’ that is ‘fraught with social and economic danger to mankind.’ It goes on to state that Parties are ‘Conscious of their duty to prevent and combat this evil.’ Similar terminology had been apparent during the negotiations for earlier treaties and for the Single Convention itself, but this was the first time that the emotive term ‘evil’ had survived in the final document. Such a change was arguably reflective of a growing concern among participating member states, and perhaps the secretariat involved in drafting the preamble, for the non-medical and non-scientific use of drugs (E/CONF.34/24, p. 187). Indeed, despite the development and ongoing operation of an international system to control the production, manufacture of and trade in drugs, many states were still experiencing high levels of non-medical drug use; a phenomena involving both plant-based and synthetic drugs that would proliferate as such behaviour became an integral part of the counter-cultural movements of the 1960s. Consequently, while many of the characteristics of the regime based upon the 1925 and 1931 Conventions remained, certain aspects of the Single Convention represented a move away from reliance upon simply ‘drying up’ excess capacity; a process that, as Catherine Carstairs notes, included focusing attention on individual drug users (Carstairs, 2005, p. 61).

In this regard, a key provision of the Convention is found under General Obligations in article 4. This reads, “The parties shall take such legislative and administrative measures. . . (c) Subject to the provisions of this Convention to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, *use and possession of drugs*” (emphasis added). Similar clauses were included in the 1912 Hague Convention, the 1925 International Opium Convention and what, because of its supersession by the Single Convention only 18 months after coming into force, was essentially the stillborn 1953 Opium Protocol; articles 9, 5 and 2 respectively. Its inclusion within the Single Convention as a ‘General Obligation’ is, nevertheless, significant for a number of reasons. First, we must question why it was felt the Convention required an article referring to ‘general obligations’ at all. As with any treaty, Parties are expected to interpret the instrument as a whole and ascertain easily their obligations. With this in mind, the legal expert S. K. Chatterjee suggests, “[P]erhaps, owing to the not-so successful accomplishment of the previous drug conventions, the authors of the Single Convention wished to emphasize the obligations in a novel way. It is from this point of view that the ‘general obligations’ in the Single Convention may be taken as ‘special obligations’” (Chatterjee, 1981, p. 358).

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

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

Such provisions were not as harsh as they had been in the widely contested preparatory drafts of the Convention. In line with the compromises necessary for the conclusion of any international agreement, the final version was ultimately devised to avoid conflict with the different legal systems of the Parties. In fact, while largely modelled on language within the 1936 Trafficking Convention, the relatively moderate nature of the provisions led to an agreement that they would not replace the earlier 1936 treaty for the small number of states that chose to apply its stronger provisions (Boister, p. 44). Nonetheless, while weaker than the clauses within the 1936 instrument, article 36 of the Single Convention is significant because it was the first time that penal provisions were included within, and indeed sat at the heart of, a *widely accepted* international drug control treaty. A few caveats regarding its application must be applied. Nonetheless, as will be shown, these do not detract from the importance of the article in contributing to a normative shift within the drug control regime.

As has been discussed in detail elsewhere, Parties to the Single Convention retain a degree of flexibility in the application of its penal provisions (Bewley-Taylor, 2003, pp. 173–174). For instance, the lack of clear definition of ‘medical and scientific’ purposes, a hangover from the 1925 Convention, (E/CONF.34/24/Add.1, p. 123) provides considerable room for manoeuvre. Similarly, the non-self executing nature of the Convention leaves the offences and penalties to be applied up to the Parties themselves.

It is also important to highlight that, while mentioned in the non-penal article 4, the *use* of drugs is not specifically mentioned in article 36. Rather, as was the case with the 1936 Trafficking Convention, possession here relates to drugs intended for distribution. Article 33 of the Single Convention deals with possession for personal consumption succinctly stating, ‘The Parties shall not permit the possession of drugs except under legal authority.’ Again, use is not specifically mentioned, but the article is clearly intended to prevent/deter the non-medical and non-scientific use of listed substances on the basis that consumption is impossible without possession. That said, as the *Commentary to the Single Convention* points out, governments may interpret this in different ways and are not necessarily required to punish unauthorised possession as a ‘serious offence.’ They can impose administrative penalties, such as fines or censure, or choose to avoid penalties altogether providing they ‘use their best endeavours to prevent this possession by all those administrative controls of production, manufacture, trade and distribution which are required by the Single Convention’ (United Nations, 1973, p. 402).

Overall then, as the United Nations Office on Drugs and Crime (UNODC) has noted, the Single Convention does indeed permit a ‘high degree of flexibility’ for states dealing with domestic drug use: providing that they remain committed to the general obligation laid out in Article 4 (c) (UNODC, 2008, p. 62). Yet, when read in combination with both the use of the term ‘evil’ within the preamble and article 36, this ‘special’ obligation clearly set the normative tone of the document. As such, since in international relations terms the process involved the alteration of norms necessary for a change of regime (Krasner, 1982, p. 189), it marks a significant shift away from the predominant commodity focus of its widely accepted predecessors. Moreover, while the Single Convention contains a number of lacunae between the obligations presented in article 4 and the specificity of the penal provisions in article 36, it was undoubtedly the intention of the authors to create a scheme ‘without holes.’ By Boister’s reckoning, ‘. . .if the Convention regulated any particular form of conduct the Convention was designed to get the Parties to criminalize any failure to comply with that regulation’ (Boister, p. 75).

Within this context, further evidence that the Convention should be seen as a break with the past can be found in relation to practical aspects of its reach. The ‘scope of control of the

Single Convention is much wider than that of any previous drug convention’ in that it brought together various clauses within earlier treaties for placing additional drugs under international control (Chatterjee, 1981, pp. 344–354). Further, rather than simply codifying provisions of the previous treaties, it extended existing controls in a number of areas, including both production and consumption (E/3527, pp. 3–14). For instance, the Single Convention broadened the purview of the regime to include the cultivation of plants grown as raw material for the production of natural narcotic drugs. In so doing, it not only continued to keep a tight rein on the production of opium but also ‘extended international controls on the production of poppy straw, coca leaf and cannabis’ with the Single Convention becoming the ‘first multilateral convention to make prohibitory provisions concerning the cultivation of the coca bush’ (UNODC, 2008, p. 61).

While maintaining the schedule system established by the 1931 Convention, the Single Convention expanded them from two to four categories. One important outcome of this process was the categorisation of cannabis within the strictest schedules alongside heroin. Consequently, cannabis, cannabis resin, extracts and tinctures of cannabis are in Schedule I among substances whose properties might give rise to dependence and which present a serious risk of abuse and so are subject to all control measures envisaged by the Convention. Cannabis and cannabis resin are also listed in Schedule IV, alongside another 15 substances that are already listed in Schedule I and are deemed particularly dangerous by virtue of what are regarded to be their harmful characteristics, risk of abuse and extremely limited therapeutic value. This so-called ‘composite classification,’ observe analysts from the European Monitoring Centre for Drugs and Drug Addiction, ‘reflects the concern about the abuse of cannabis and the desire of the convention promoters to advise countries to design, under national legislation, the most stringent control on cannabis’ (Ballotta, Hughes, & Bergeron, 2008, p. 103). As we shall see, cannabis was not the only plant-based drug subject to new and stringent controls.

Plants, cultivation and traditional use

The new-found proscriptive tenor is also abundantly evident in article 49; a section of the Convention that in many ways revealed more than other parts the prohibitive expectations of its authors. The Single Convention introduced for the first time the explicit objective to end all ‘quasi-medical’ and traditional uses of three plants. While ‘not prohibited under the treaties in force’ at the time of the conference for the adoption of the Convention in 1961 (E/3527, p. 3), the widespread practises of opium smoking and eating, coca-leaf chewing as well as the smoking and other uses of cannabis resin and cannabis herb in the so-called ‘developing countries’ where these plants were cultivated, all had to be terminated. Although article 49 permitted countries to make reservations in relation to such practises, these were defined as nothing more than transitional periods from the date the Convention came into force. As such, the treaty required the abolition of the ‘quasi-medical’ use and smoking of opium within 15 years and that both coca-leaf chewing and non-medical and non-scientific cannabis use be abolished within 25 years. Since the 1961 Convention entered into force upon achieving the necessary 40 ratifications in December 1964, the 15-year phase-out scheme for opium ended in 1979 as did the 25-year scheme for coca and cannabis in 1989.

In relation to this point, Herbert May, a long-time member of both the PCOB and DSB and widely regarded for many years as the ‘leading elder statesman’ in international drug control (May, 1955, p. 1), wrote in 1955:

Limitation of the use of dangerous drugs to medical and scientific needs is the guiding rule of the present system of international control. However, opium (other than medicinal opium), coca leaves, and cannabis (Indian hemp) as well as the resin of *Cannabis sativa* L. (Indian hemp plant), although subject to some measures of international control, are not subject to this basic rule. This represents a serious gap which the Commission set out to close when it undertook to elaborate the Draft Single Convention. The Commission, therefore, did not allow for any exceptions to this rule when deciding to include it among the permanent rules on the Draft Single Convention. But serious difficulties arise in some countries or territories where it has been impracticable to suppress immediately such undesirable practices as opium eating and smoking, coca leaf chewing and the non-medical use of cannabis and cannabis resin (May, 1955, p. 4.)

The introduction of transitional measures, necessary to get key countries like India, Pakistan, Burma, Peru and Bolivia on board, was modelled on a similar provision in article 19 of the 1953 protocol that allowed countries temporarily to permit opium smoking for registered users.

Significantly, there was an attempt during the negotiations to make cannabis the only 'prohibited' substance on the premise that, according to a memo from the World Health Organization (WHO), 'the medical use of cannabis was practically obsolete and that such use was no longer justified'. The WHO Expert Committee on Addiction-producing Drugs and Dependence, however, remained of the opinion that the 'prohibition or restriction of the medical use of cannabis should continue to be recommended by the international organs concerned, but should not be mandatory' (E/CONF.34/24, p. 59). The third draft on the table at the Single Convention conference included a special section under the heading 'prohibition of cannabis', but strong opposition from several sides prevented its adoption. India objected partly because it opposed banning the widespread traditional use of *bhāng* made from cannabis leaves with a low Tetrahydrocannabinol (THC) content. Support came from Pakistan and Burma. Other states also pointed out the use of cannabis in some pharmaceutical preparations as well as in indigenous medicine and remarked that it was feasible that future research would reveal more medicinal benefits (E/CONF.34/24, p. 58–62). Several compromises were reached. In a rare deviation from the zero-tolerance principle so prevalent at the conference, the leaves and seeds were explicitly omitted from the definition of 'cannabis', which now only referred to the 'flowering or fruiting tops of the cannabis plant'. As such, the traditional use of *bhāng* in India could continue. The explicit reference to 'prohibition of cannabis' was deleted, but as noted above the drug was included in Schedule I and in the strictest Schedule IV. With regard to the latter, article 2, 5 (b) of the Single Convention stipulates that any signatory 'shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only'.

Contrary to popular belief, none of the scheduled drugs were ever made 'illegal' under the Single Convention and its sister UN treaties. The drugs were not prohibited, but their production and trade were placed under strict controls in order to limit their use to medical and scientific purposes. Exactly the same controls apply to cocaine, morphine, methadone and oxycodone. The oft-used term 'illicit drug' does not appear in the Single Convention, it only distinguishes between licit and illicit (non-licensed) cultivation, production, trade and possession. As the previous treaties did not impose controls on the cultivation of plants from which drugs could

be extracted, at the time of the Single Convention negotiations 'illicit cultivation' did not yet exist according to international law; even though several countries already had introduced laws at a national level that outlawed unlicensed cultivation of opium poppy and cannabis.

A main drafter of the Single Convention and the author of its Commentary, Adolf Lande of the DND, wrote shortly after the Conference that the 'most serious gap in the treaties in force was probably the lack of provisions for effective control of the cultivation of plants for the production of the narcotic raw materials' (Lande, 1962, pp. 776–797). It proved to be difficult to find a satisfactory agreement on how to fill this gap, as observed by the UN Under-Secretary for Special Political Affairs in his opening statement to the Conference. Speaking on behalf of the Secretary-General, Mr. Narasimhan stated, 'The formulation of measures for the control of agricultural raw materials which would be both adequate and practicable was undoubtedly the most difficult part of the Conference's task' (E/CONF.34/24, p. 1).

As Boister points out, the Convention 'embodies the general strategy of the developed drug consumer states to curtail and eventually eliminate the cultivation of drug producing plants, objectives that could only be achieved at some cost to the developing countries where these plants were grown'. Furthermore, the political moment was 'heavily influenced by the process of de-colonisation, which resulted in the political dichotomy of developing producer and developed consumer states that still polarizes drug control today' (Boister, 2001, p. 45). Earlier drug control schemes had been introduced in quite a few Asian and African countries under colonial rule. Moreover, several newly independent states inherited the colonial opium monopolies. Similarly, Indonesia at the time of the 1961 Conference still presented itself as a coca-producing nation, despite the fact that most of the coca plantations installed in Java under Dutch colonial rule had been destroyed shortly after the Second World War.

There was much debate in the 10 years leading up to the Single Convention whether the right to produce opium and coca leaf for the international market should be reserved to 'traditional producer countries'. As mentioned earlier, the 1953 Protocol had agreed to such a restrictive list of countries allowed to export opium: namely Bulgaria, Greece, India, Iran, Turkey, USSR and Yugoslavia. In the case of opium, the Third Draft of the Single Convention included the same list, with the addition of Afghanistan, and for 'coca leaves and crude cocaine' restricted the right to Bolivia, Peru and Indonesia. For cannabis no such list was included because, as mentioned above, the draft still intended to prohibit cannabis altogether, except for small amounts for scientific research and 'for use in indigenous medicine' (article 39, para. 3).

The idea behind a closed list of a small number of producing countries for the international market was that it would make it easier to limit supply and prevent diversion to illicit purposes, as cultivation could be prohibited in all other countries. As the US delegation argued, 'the smaller the number of producers, the more effective would be the fight against the illicit traffic'; a point Anslinger considered to be 'critical' (E/CONF.34/24, p. 151–152). However, in the words of the Canadian delegate, Robert Curran, 'Many countries had felt the provision to be monopolistic and had objected to its retention in the Single Convention. They had considered that other countries should be able to add their names to the list in the future and that a closed list was incompatible with the theory of a country's sovereign rights' (E/CONF.34/24/Add.1, p. 161). After lengthy debates, eventually the idea of a closed list was abandoned. Only in the case of opium were special privileges preserved for those countries that had exported opium in the 10 years previous to 1961, but others could still apply to join. For export amounts under five metric tons of opium, a notification to the INCB was sufficient, for larger amounts, a permission from ECOSOC was

required. The Commentary provides a list of the 10 countries that had exported opium in the decade before 1961: Afghanistan, Bulgaria, Burma, India, Iran, North-Vietnam, Pakistan, Turkey, USSR and Yugoslavia (United Nations, 1973, p. 294).

Article 22 of the adopted treaty then specified the treaty's 'special provision applicable to cultivation' using a similar phrasing as used for Schedule IV substances: 'Whenever the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation of the opium poppy, the coca bush or the cannabis plant the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic, the Party concerned shall prohibit cultivation' (United Nations, 1961). In relation to the interpretation of this article the *Commentary* explains that a government 'might come to the conclusion that it cannot possibly suppress a significant diversion into the illegal traffic without prohibiting the cultivation of the plant' and that '... The decision whether the conditions of article 22 for prohibition exist is left to the judgement, but not entirely to the discretion of the Party concerned.' It goes on to note, 'A Government which for many years, despite its efforts, has been unable to prevent large-scale diversion of drugs from cultivation can hardly be of the opinion that prohibition of such cultivation would not be "the most suitable measure ... for protecting public health and welfare and preventing the diversion of drugs into the illicit traffic"' (United Nations, 1973, pp. 275–276).

The expansion of controls to the cultivation of the raw materials was closely connected to the Single Convention's aim to abolish traditional uses of the plants. Effective control of cultivation aiming to reduce production to amounts required for medical and scientific purposes was considered difficult to achieve as long as large-scale local consumption practises of those raw materials continued in the main producing countries. Herein lies one of the fundamental distortions the Single Convention brought into the international drug control system. Concerns in the developed world, particularly within the United States (Bewley-Taylor, 2001, pp. 69–70), about non-medical use of derivatives such as heroin and cocaine led to pressure on developing countries to end traditional uses (medicinal, religious/ceremonial and social traditions) of the plants of origin in order to eliminate the source of raw materials. Thus, opium, cannabis and coca leaf were placed under the same controls as extracted and concentrated alkaloids like morphine and cocaine.

Debates ended up in largely unresolved questions about 'indigenous medicine', 'quasi-medical uses' and 'traditional uses' and about the precise definitions of the plants or derived substances that should be placed under control. An unsuccessful attempt was made to find a solution using the phrasing 'medical, scientific and other legitimate purposes' originally appearing in the drafts to refer to the use of coca leaf for the preparation of a flavouring agent 'which shall not contain any alkaloids.' This was an exemption put in place for Coca Cola. It was argued by several delegations that the category of 'other legitimate purposes' could in fact be used to include certain traditional uses such as coca chewing, the Indian *bhang* brew and 'indigenous medicinal' uses. Yet no agreement could be found. The term 'other legitimate purposes' was considered to be confusing and a deviation from the fundamental principle of limitation to medical and scientific purposes only. The exceptions for Coca Cola and for industrial purposes of cannabis (fibre and seed) were brought under separate articles. 'Other legitimate purposes' of opium poppy (such as seeds for culinary use) were protected by excluding opium poppy and poppy straw from the schedules and by specifying that restrictions on cultivation only applied to the 'cultivation of the opium poppy for the production of opium'. Countries permitting the cultivation of the opium poppy for purposes other than the production of opium had to ensure that no opium would be produced from those poppies. A similar construction unfortunately was not introduced for coca bush, like limiting

restrictions to its cultivation 'for the production of cocaine' or 'concentrate of coca leaf' similar to 'concentrate of poppy straw', defined in the schedule as 'the material arising when poppy straw has entered into a process for the concentration of its alkaloids'. Other scheduling decisions allowed for some other minor exceptions, such as leaving cannabis leaves out of the definition of 'cannabis' and the introduction of Schedule III for preparations exempted from control. Under the exemption scheme also fall preparations containing less than 0.1% of cocaine, but this still could not apply to coca tea for example as coca leaves contain an average of around 0.7% cocaine.

Thus, ultimately the Single Convention did not make any distinctions, in terms of classification or imposed controls, between coca leaf and cocaine, or between cannabis and heroin, except for the transitional exemptions allowing countries a period to phase out traditional uses. Social use of cannabis, in many developing countries seen as comparable to the social use of alcohol in the developed world at the time, and chewing or drinking coca in the Andean region, comparable to drinking coffee, were thus condemned to be abolished.

A 'Single' convention?

Despite being widely lauded as a positive 'step forward' (E/CONF.34/24, p. 217 and 218) there was considerable dissatisfaction on the US side about the outcomes of the 1961 Conference. As Herbert May wrote in a private letter to Anslinger in July 1962, "I know that the US is not satisfied with the Convention. . . But an international convention is a compromise: it practically never gives everyone all that it wants" (May, 1962). Less content to accept compromise than other nations the US, particularly Anslinger who was acting increasingly at odds with the views of the State Department, had wanted the new Convention to retain not only the 1953 Protocol's stringent clauses concerning opium production but also to give the INCB greater embargo-powers in dealing with non-compliant states.

The US consequently argued that the Single Convention 'should be amended to make it more effective before it came into force. It would not be advisable to accept the new treaty without such a revision' and therefore not only refused to sign the treaty but was also the only country who voted against the ECOSOC resolution in 1962 that invited governments to ratify or accede to the Single Convention (Lande, 1962, pp. 776–797). Mindful of the fact that the US had initiated the process for a unifying treaty (E/CONF.34/24, p. 6), this put Washington in a somewhat paradoxical position; an uncomfortable state of affairs explained by increasing divisions within the US drug control bureaucracy (Bewley-Taylor, 2001, pp. 136–164). In 1967 the US eventually acceded to the treaty and only a few years after Senate ratification initiated a period of unusually intense diplomatic activity designed to bolster the UN drug control framework (Woodiwiss & Bewley-Taylor, 2005, pp. 11–12; Zhang, 2010; Kušević, 1977, p. 47; Fisher, 1984, p. 361; McAllister, 2000, pp. 236–237). Within the context of President Nixon's increasingly punitive posturing, Washington worked hard in the early 1970s to initiate a plenipotentiary conference in Geneva to amend the Single Convention; a procedure permitted under article 47.

The resultant 1972 conference, sponsored by 31 nations and attended by representatives from 97 States, considered an extensive set of amendments. The product of the meeting, the Protocol Amending the Single Convention on Narcotic Drugs, was signed on 25 March 1972 and came into force August 1975. Rather than making dramatic changes to the Single Convention, the Amending Protocol actually fine-tuned existing provisions relating to the estimates system, data collection and output, while strengthening law enforcement measures and extradition, and the functioning of the

INCB (Boister, p. 47). Following on from what some commentators regard as a 'milestone' achieved in the 1971 Convention on Psychotropic Substances (Sinha, p. 29), the Protocol also made greater provision for treatment, rehabilitation and prevention measures (United Nations, 1976, p. 83). In concert with the amended article 38, the amended article 36 introduced the option of alternatives to penal sanctions for trade and possession offences when committed by drug users. Specifically, 'Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers of drugs shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration.' It is important to note that the option of alternatives under article 36 and the approach laid out in article 38 is of a secondary nature and its application entirely up to the discretion of national governments (United Nations, 1973, p. 447; United Nations, 1976, pp. 84–85). It is in this respect that even the Single Convention on Narcotic Drugs as Amended by the 1972 Protocol represents a minimal reorientation of the regime towards considerations for problematic drug users. Overall, the outcome again was not as stringent as the US had hoped. Significantly, however, it maintained the prohibitive ethos and supply-side focus of the drug control regime.

Meanwhile a parallel process had culminated with a plenipotentiary conference and the signing of the Convention on Psychotropic Substances in Vienna in 1971. Modelled on the Single Convention and coming into force in August 1976, this was the result of a growing global concern for the harmful effects of substances such as amphetamines, barbiturates and Lysergic Acid Diethylamide (LSD) that fell outside the scope of existing instruments. However, rather than incorporate such drugs within the amendment procedure for the 1961 Convention, countries chose to establish a related, but separate, convention. Thus, argues the President of the International Association of Penal Law, Cherif Bassiouni 'These two efforts which should have logically been integrated into a single convention proceeded along separate paths'. Furthermore, 'While the developed countries of the West desired to impose strong controls over the cultivation, production and traffic of natural drugs originating in the developing countries,' he continues 'they were unwilling to impose the same types of control over their own chemical and pharmaceutical industries' (Bassiouni, 1990, p. 314; also see McAllister, 2000, pp. 226–234).

The issue of how to deal with traditional uses of certain plants came up again at the 1971 conference, especially with regard to mushrooms containing psilocybin and the peyote cactus containing the hallucinogenic ingredient mescaline, both of which are included in the schedules of the 1971 Convention. Then as now, peyote was used in religious ceremonies of Mexican and North-American indigenous groups and contrary to the outcome of the negotiations in 1961, this time the United States agreed to 'a consensus that it was not worth attempting to impose controls on biological substances from which psychotropic substances could be obtained. . . . The American Indians in the United States and Mexico used peyote in religious rites, and the abuse of the substance was regarded as a sacrilege.' (E/CONF.58/7/Add.I, p. 38). Mexico added that the 'religious rite had not so far constituted a public health problem, still less given rise to illicit traffic . . . It would clearly be extremely unjust to make the members of those tribes liable to penalties of imprisonment because of a mistaken interpretation of the Convention and thus add an inhuman punishment to their poverty and destitution. . . . In addition, the present text would conflict with certain articles of the Mexican Constitution, which stipulated that all men were free to hold the religious beliefs of their choice and to practice the appropriate ceremonies or acts of devotion in places of worship or at home' (E/CONF.58/7/Add.I, pp. 106–107).

The Chilean delegate addressed the 1971 conference in a tone not heard during the deliberations on the Single Convention: 'Man

had always used drugs to soothe pain, to reach beyond certain limits of perception, to speak with the gods or to be like the gods. . . . The hippies and others who used drugs, connecting them with flowers and love, did not perhaps realize that they were the modern representatives of a long tradition. . . . It must be remembered that alcohol was also a drug used as a means of escape. . . . Since the abuse of drugs was thus an expression of man's yearning for the transcendental and of his frustrations in a godless society, it could not be fought against by repressive and prohibitory legislation alone. . . . Those psychological, moral, social and spiritual factors would therefore have to be taken into account in any legislation or protocol for the regulation or prohibition of the use of psychotropic substances' (E/CONF.58/7/Add.I, pp. 11–12).

By excluding from the schedules plants from which alkaloids could be extracted, the 1971 Convention deviated, with good reason, from the guiding rule that was applied with zero-tolerance in the Single Convention. The whole concept of 'psychotropic' substances itself was a distortion of the logic behind the control framework, as the term lacks scientific credentials and was in fact invented as an excuse to safeguard the wide range of psychoactive pharmaceuticals included in the 1971 Convention from the stricter controls of the Single Convention. Indeed, in the commentary to its model drug laws, the United Nations International Drug Control Programme (UNDCP), predecessor of the UNODC, recommends not to use the artificial distinction in national legislation. In 2000, the UNDCP acknowledged

. . . the international classification into narcotic drugs and psychotropic substances according to whether the substance is governed by the 1961 Convention or by the 1971 Convention has no conceptual basis. The legal definition of many psychotropic substances is entirely applicable to narcotic drugs, and in many cases, the reverse is true. Even more important, the international classification is not dependent on the risk that the substance poses for health and welfare. Substances which cause a low level of dependence are classified together with narcotic drugs, and highly addictive substances are classified together with psychotropic substances' (UNDCP, 2000, p. 8).

More recently, the WHO Expert Committee on Drug Dependence confirmed that the 'decision as to whether to control analgesic and stimulant drugs under the 1961 or 1971 Convention is a major problem'. 'Most potent analgesics', it pointed out 'are controlled under the 1961 Convention, but a few are controlled as psychotropic substances under the 1971 Convention. Of the stimulants of the central nervous system, cocaine is under the 1961 Convention, whereas amphetamines are under the 1971 Convention. Thus, the criteria for choosing between the two Conventions are ambiguous for these classes of drug.' (WHO, 2003). Even THC, one of the active ingredients of cannabis, became defined as a 'psychotropic' substance, although as long as it stays in the plant it is deemed a 'narcotic' drug.

Additionally, substances that were 'convertible' into psychotropic drugs were left out from the 1971 schedules, in contradiction to the logic applied to narcotic drugs under the Single Convention. Several of those 'convertible substances' were later included as 'precursors' in the lists of the 1988 Trafficking Convention. This added more inconsistency by mixing up precursors (convertible substances) and chemical reagents. Ephedrine, for example, is the main precursor for methamphetamine, controlled under the 1971 Convention, but appears in the precursor list of the 1988 Convention. Ephedra is the plant from which the alkaloid ephedrine can be extracted, similar to the extraction of cocaine from the coca leaf, but ephedra is not under international control.

The 1988 Convention also added further confusion on the issue of traditional use. In an attempt to obtain legal recognition for traditional uses, Peru and Bolivia negotiated paragraph 2 of article 14 into the 1988 Convention, saying that any measures adopted 'shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use.' However, the same article stresses that these measures shall not be less stringent than the provisions of the Single Convention. Several of these inconsistencies between the three treaties are in fact pointed out by the INCB in the supplement to its Report for 1994. This concludes that it 'does not appear necessary to amend the international drug control treaties in substantive terms at this stage, but some technical adjustments are necessary in order to update some of their provisions' (INCB, 1995, p. 9).

Referring to the variety of previous instruments negotiated under different historical circumstances, Herbert May opined in the midst of the Single Convention drafting process how it was 'unavoidable' that 'some provisions are inconsistent, obscure, duplicated and even obsolete.' 'At this stage,' he wondered, 'would it not be well to consider the possibility of making this convention "a convention to end conventions" on narcotic drugs, and to obviate the necessity of frequent international conferences?' (May, 1955). The original 1961 Convention of course did not become the intended 'book of books' May had hoped for. Moreover, that its sister treaties were all negotiated under quite different historical circumstances produced a range of different and sometimes contradicting outcomes. And consequently, once again it proved 'unavoidable that as a result some provisions are inconsistent, obscure, duplicated and even obsolete'.

Conclusions

Considered by many at the 1961 conference as a 'landmark in the history of the campaign against narcotic drugs' (see for example E/CONF.34/24, p. 218) the Single Convention was indeed far more than a mere consolidating exercise bringing together most of the treaties that preceded it. It was 'greater than the sum of the parts it replaced' (Gregg, 1961, p. 188). Nor was it simply another step along the same road began in Shanghai in 1909 or, as sometimes presented, an example of the 'historic continuity' present within the realm of international drug control (Bassiouni, 1986, p. 509). Significantly, the Convention came close to imposing a fully fledged 'prohibition regime' for some psychoactive substances of natural original and (semi)synthetic drugs with similarity in terms of abuse potential and limited medicinal usefulness. It was only hard fought negotiated compromises within the conference rooms of New York that ultimately left the decision to prohibit certain drugs entirely or still allow them for medical purposes, to authorities at the national level.

Such application of the Westphalian principle of the sanctity of national sovereign rights within multinational affairs reflected the continuation of one of the dominant features of the pre-1961 drug control treaties. Nonetheless, the Single Convention did mark a significant shift of direction for the treaty-based international drug control framework. While codifying many previous regulations into one instrument, the Convention marked a change of regime from one concerned predominantly with 'restrictive commodity agreements' (May, 1948, p. 305) to a stricter and wider ranging multilateral framework which, while continuing this function, became more prohibitive in focus; a process that included increased emphasis on the non-medical and non-scientific consumption of scheduled drugs. Specifically within this reformulation, it introduced widely accepted penal obligations for signatory states to criminalise, under their domestic law, unlicensed production and trade and extended the pre-existing control regime to the

cultivation of opium poppy, coca and cannabis. In this way, the Convention provided the international legal basis for the 'war on drugs' approach against drug-related crops and farmers that developed later.

Reflecting the divergent interests and varied political influence of the states involved in the drafting of the treaty and at the plenipotentiary conference itself, the Convention also forced many so-called 'developing countries' to abolish all 'non-medical and scientific' uses of the three plants that for many centuries had been embedded in social, cultural and religious traditions, including practises referred to as 'quasi-medical use'. Further, in tune with a cultural asymmetry resulting from the dominance of the 'developed countries' of the 'North', the Single Convention lacks a rational and evidence-based scale of harm for Schedule I and IV substances. Although some scaling of harm was introduced between morphine-like, Schedule I, and codeine-like, Schedule II, properties and an exemption scheme included for preparations with low-alkaloid content, a similar ranking logic was not applied to the coca leaf and cannabis. Both of these were brought under the morphine-like level of control without solid argumentation.

Fundamental shortfalls do not end there. The instrument ironically failed to serve one of its original purposes of becoming the 'Single' Convention when the control regime developed further with the 1971 and 1988 treaties; both of which have led again to many inconsistencies within the current global drug control treaty system. In so doing, the Convention failed to avoid the pitfalls so prophetically articulated by Robert Gregg. Writing in April 1961 he warned, 'If the convention does not, in fact become the *single* instrument in the field, it will simply be one more of many narcotics treaties, adhered to by some, perhaps even many states, but only complicating an already confused regulatory picture' (original emphasis) (Gregg, 1961, p. 208).

Consequently, after 50-years of existence, and given both the nature of the compromises made in 1961 and the inconsistencies created by the subsequent instruments, it is now clear that it is time to revisit the Single Convention. The treaty itself was not only presented as a move to clarify and adapt the earlier treaties 'to the economic and social changes which had occurred over the years' (See for example E/CONF.34/24, p. 1.) but also marked a break with the regulative character of the previous instruments. Recalling this history of the Single Convention should do much to remove the misplaced aura of sacred immutability that currently shrouds the contemporary UN treaty framework. Indeed, the discipline of international relations shows us that regimes of all types undergo change of varying proportions during their lifetimes and experience 'continuous transformations in response to their own inner dynamics as well as to changes in their political, economic and social environments' (Young, 1983, pp. 106–107). As Malcolm Shaw, professor of international law, writes, 'It is understandable that as conditions change, the need may arise to alter some of the provisions in the international agreement in question. There is nothing unusual in this and it is a normal facet of international relations' (Shaw, 2008, p. 930). And in this respect there is certainly nothing unique about the current drug control regime and particularly the Single Convention upon which it is based. The fiftieth anniversary of the Convention is surely an opportune moment to start considering treaty reform and moving beyond current changes within the regime to substantive changes of the regime.

Acknowledgments

An earlier version of this article appeared as Fifty Years of the 1961 Single Convention on Narcotic Drugs; A Reinterpretation, Amsterdam: Transnational Institute, Series on Legislative Reform of Drug Policies, No. 12, March 2011. Some funding for the research

and writing came from the Open Society Foundations. Thanks go to Beatriz Martinez, Nick Buxton and Robin Room for comments on early drafts and Gerry Stimson and the three anonymous reviewers for feedback on our initial submission.

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