

## A REVIEW OF THE EVOLUTION OF THE INTERNATIONAL LEGAL FRAMEWORK FOR THE CONTROL OF ILLICIT DEALINGS ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES\*

### Abstract

*The issue of the illicit use and trafficking in drugs has been of great concern to mankind for ages. Over the years, the world has developed a consensus on the need to adopt a global approach to the problem. This paper attempts to review the various legal instruments adopted at the international level for the purposes of curbing the illicit manufacture and use of narcotic drugs and their effectiveness in addressing the global drug problem.*

### The Meaning of “Drug”

The word “drug” in a generic sense has been defined in the following terms:

Drug includes any substance of vegetable, animal or mineral origin or any preparation or a mixture thereof manufactured, sold or advertised for use in the diagnosis, treatment, mitigation or prevention of any diseases, disorder, abnormal physical state or the symptom thereof, in man or animal; restraining, correcting or modifying organic functions in man or in animal; disinfection or the control of vermin, insects or pests, or contraception.<sup>1</sup>

The above definition is an all-inclusive definition of the word “drug”. It takes in all narcotic and psychotropic substances which have been processed and prepared for the diagnosis and treatment of diseases, disorder and abnormality in man or animal. It also includes narcotic and psychotropic substances that have been processed and manufactured for use in the restoration, correction or modification of organic functions in man and animals. Psychotropic and narcotic substances, if any, which are used in the manufacture of medicine for the disinfection and control of vermin, insects and pests as well as those used in preparing medicine for contraception are all inclusive in the definition of drug proffered above. The Food, Drugs and Related Products (Registration, etc) Act<sup>2</sup> also defines “drug” in the above terms.

However, this paper is interested in the reviewing of the development of an international legal framework for the control and elimination of illicit use of narcotic drugs. What then are narcotic drugs? Illicit drugs are used in this paper in the same sense as narcotic drugs and psychotropic substances.

A narcotic drug has been defined as:

An addictive drug, especially an opiate that dulls the senses and induces sleep  
...A drug that is controlled or prohibited by law.<sup>3</sup>

A narcotic drug may also be viewed as a natural or synthetic substance that alters one’s perception or consciousness. Narcotic drugs are normally addictive and open to abuse. An addictive drug is a drug which usually causes physical dependence and results in well-defined psychological symptoms upon withdrawal after repeated consumption. Narcotic drugs are usually prone to abuse by raw consumption not for the purpose of treatment of disease or illness

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<sup>1</sup> Section 21 Food and Drug Act, Cap. F33 Laws of the Federation of Nigeria, 2004.

<sup>2</sup> Section 13 Food and Drugs and Related Products (Registration, etc) Act, Cap. F33 Laws of the Federation of Nigeria 2004.

<sup>3</sup> B. A. Garner, **Black’s Law Dictionary**, 8<sup>th</sup> Edition, St. Paul West Minnesota, 2004, P. 1049

in human beings or animals. In almost all the countries of the world, the use of narcotic and psychotropic substances except for processed drugs under the prescription of medical experts is prohibited. The use of narcotic drugs and other psychotropic substances have ravaged the population of many countries with its attendant negative effect for their Gross Domestic Product (GDP). The alarming rise in psychiatric cases as a result of the raw consumption of opiate substances have attracted the attention of the world since the beginning of the 20<sup>th</sup> century.

## **2. The Evolution of an International Legal Framework for Drug Control**

The first conscious global effort for the control of the production and consumption of narcotic drugs was the Shanghai Opium Commission of 1909. It was this conference that laid down the foundation for the first international drug treaty, viz, the International Opium Convention of the Hague, (1912). The treaty entered into force in 1915. The major focus of this document was to curb the shipment of narcotic drugs that were not meant for medical purposes. It was a truly international instrument as it received the blessing of most countries of the world including the colonial powers. However, Turkey was not part of the convention.<sup>4</sup>

The League of Nations took over international drug control in 1920. Under the auspices of the United Nations, three international conventions emerged for the control of the manufacture and trade in narcotic drugs. They are: the 1925 Convention, the 1931 Convention and the 1936 convention.<sup>5</sup> The aforementioned three conventions provided the groundwork for the practical operations of the international drug control system. The conventions actually curtailed the trade and trafficking in narcotic drugs.

It should be noted that before the Shanghai Opium Commission of 1909, production and consumption of narcotic drugs was not strictly unlawful. It was a free for all theatre of the most absurd.

The United Nations took over multilateral drug control after the second world war and established several protocol to improve the control system. The most far reaching was the 1953 Opium Protocol. The Protocol aimed at limiting opium production and use for medicinal and scientific needs. According to the protocol, only seven countries were authorized to produce opium for export.<sup>6</sup> However, it did not outrightly ban the production of opium for local use by member countries of the protocol. It went further to provide for six measures to be taken for the purpose of implementing a comprehensive control system at the national levels of participating countries.<sup>7</sup> The measures include:

1. The establishment and maintenance of one or more government agencies to perform the functions assigned to it by the protocol.
2. Limiting the cultivation of opium only to areas designated by the agency or a competent government body so as not to make the cultivation a free for all business as was previously the case.
3. Only cultivators licensed by the relevant government agency were to engage in the growing of the opium plant.
4. Every *licensee* shall specify the extent of the area to which the cultivation of the poppy is permitted.

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<sup>4</sup> Report of the International Opium Commission, Shanghai, China Feb. 1-26, 1909, Vol. II

<sup>5</sup><http://www.unadc.org/documents/data-and-analysis/studeg/100-years-of-drug-control/pdf.microsoft/her.../>

<sup>6</sup> The countries were Bulgaria, Greece, India, Iran, Turkey, USSR and Yugoslavia

<sup>7</sup> Article 3 of the 1953 Opium Control

5. The agency shall purchase and take physical possession of all the opium crops as soon as possible.
6. The agency or other competent government authorities shall have the exclusive right of exporting, importing and wholesale trading in, opium and of manufacturing opium stocks other than those held by manufacturers licensed to manufacture alkaloids from opium.

The above provisions effectively and stringently strove to remove opium stock from the hands of private individuals. The opium drug by virtue of the protocol became a controlled one so much so that it became unlawful for private individuals in member countries of the protocol to grow or stock the drug. The protocol also provided for the establishment of a Permanent Central Board with investigative and supervisory powers to propose a committee for the purpose of conducting inquiries in member countries to ascertain the exact drug situation in those countries.<sup>8</sup> The protocol also made provisions for various classes of embargo against countries that were violating its provision.<sup>9</sup>

The greatest drawback encountered by the protocol was its provision that for the Protocol to come into force, at least twenty five countries including three of the seven producing states, must ratify the treaty.<sup>10</sup> As a result of this provision, the protocol never came into force until about 1963, when the requisite number of countries had ratified it. This was inspite of the fact that the United Nation's ECOSOC Resolution on the universal and early application of the protocol urged all members of the United Nations to sign, ratify and accede to the Protocol as soon as possible.<sup>11</sup> 61 countries ratified the Protocol. However, trouble came from the seven producing countries because only India and later Iran ratified the treaty in the 1950's. This was insufficient to bring the Protocol into force. The Soviet Union opposed some of the inspection regulations contained in Article II of the Protocol and thus refused to ratify the Protocol. Greece only ratified the Protocol in February, 1963 and Turkey ratified the Convention in July, 1963 following increased pressure from the U.S.A. But by this time, the 1961 Single Convention to which Nigeria is a signatory had already been established. The 1961 Single Convention entered into force in December, 1964. The 1961 Convention suspended the 1953 Opium Protocol.

The 1961 Single Convention was adopted to bring together all the nine international legal agreements on narcotic drugs. It suspended all previous international conventions, protocols and treaties on drugs.<sup>12</sup> The 1961 Single Convention has the greatest number of ratifications.<sup>13</sup> As at March, 2008, 183 countries had ratified the Single Convention. The Single Convention has 51 articles covering definition of controlled substances, the framework for the operation of the international drug control bodies, reporting obligation for member states, control on production, manufacture, trade, consumption and penal provisions. The most important provision of the convention is that it mandated parties to take such administrative and legislative measures to limit the production, manufacture, export, import distribution or trade in use and possession of drugs for medical and scientific purposes.<sup>14</sup> The Nigerian Drug Law Enforcement Agency (NDLEA) Act<sup>15</sup> is a response to this provision of the 1961 Single

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<sup>8</sup> Article 11 of the 1953 Opium Protocol.

<sup>9</sup> Article 12 *Ibid*.

<sup>10</sup> Article 21 *Ibid*

<sup>11</sup> ECOSOC Resolution 1953/505/(XVI) G.

<sup>12</sup> Article 1 of the 1961 Single Convention

<sup>13</sup> 95% of the countries in the world with 99% of the total World population had ratified the convention by 2008.

<sup>14</sup> Article 4 of the 1961 Convention.

<sup>15</sup> Cap. N30 Laws of the Federation of Nigeria, 2004.

Convention. In fact, the definition of “narcotic drugs” contained in the Nigerian Drug Law Enforcement Agency Act is by reference to the Schedule to the 1961 Single Convention.<sup>16</sup>

The Single Convention made a provision for the punishment of drug offenders in the following way:

Subject to conventional limitations each party shall adopt such measures that cultivation, production, manufacture, extraction, preparation, possession, offering, distribution, purchase, sale, delivery... brokerage, dispatch, transport, importation and exportation of drugs contrary to the provisions of the convention... shall be punishable offences when committed internationally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.<sup>17</sup>

It is submitted that the above provision of article 36 is intended to fight illicit trafficking in narcotic drugs. It did not mention the “use of drugs” as one of the offences to attract serious punishment. The possession mentioned in the quoted article is with respect to possession for distribution. The convention however, deals with possession for personal consumption where it states that “The parties shall not permit the possession of drugs except under legal and authority.”<sup>18</sup>

The convention does not enjoin governments to punish possession for personal consumption as a serious offence. It is sufficient that parties to the convention take necessary administrative and legislative measures to ensure that possession and use of narcotic drugs is limited to scientific and medical purposes. Finally, the convention obliges member states to assist their drug addicts with treatment and rehabilitation.<sup>19</sup>

There was a rise in the illicit possession and use of drugs in the 1960s and during the wake of the 1970s especially in the United States of America. The major drugs that were being increasingly abused was heroin and cannabis. Thus, a conference was convened in Geneva in March 1972 for the purpose of amending the Single Convention in order to strengthen the international supply and demand reduction efforts for hard drugs. The 1972 protocol was the product of the conference. It made a total of 22 amendments to the 1961 Single Convention. One of the notable amendments to the single convention was the requirement that countries involved in the cultivation of opium were to supply to the Governing Board of the 1961 Convention information on the area of land to be used for the cultivation and the estimated quantity of opium to be produced.<sup>20</sup> Another amendment provided for the deduction from a country’s quota of lawful opium production for every year of the quantity that was illicitly produced in that country for the previous year.<sup>21</sup>

One of the amendments to article 22 of the 1961 Convention also provided for member countries of the convention to commit themselves to seizure and destruction of illicitly cultivated opium plants. Article 14 of the amendment also provided for assistance for developing countries producing opium based plants to encourage them to shift to the production

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<sup>16</sup> Section 52 *Ibid.*

<sup>17</sup> Article 36 of the Single Convention

<sup>18</sup> Article 33 of the 1961 Convention

<sup>19</sup> Article 38 *Ibid*

<sup>20</sup> Article 21 of the 1961 Convention

<sup>21</sup> Article 38 *Ibid*

of other valuable crops. The Protocol also expanded the scope of the provision for treatment and rehabilitation of drug addicts to prevention of drug abuse.<sup>22</sup>

It is submitted that the 22 amendments to the Single Convention and the prohibition of the cultivation of opium poppy by Turkey after June, 1972, led to a decline in the global consumption rate of heroin and illicit opium. The strengthening of the 1961 Single Convention by the 1972 Protocol produced a positive result in the global fight against narcotic drugs.

Apart from the Single Convention, and the amending Protocol, the 1971 Convention on Psychotropic Substances otherwise known as the 1971 Vienna Convention came into force to limit and control the distribution of amphetamines, barbiturates, tranquilizers, and other synthetic non-plant based drugs. The above drugs though not hard drugs in the strict sense, have the quality of making their users become addicted to and dependent on the drugs when they are used outside medical prescription. The convention which is made up of 33 articles provided detailed scheduling for controlled and psychotropic substances. Member countries are obliged to ensure that the use of such substances is restricted to medical prescription.

Finally, the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances came on board in 1988 to deal with the rise in illicit production, trafficking and abuse of opium/heroin and cocaine which rose to phenomenal levels in the 1950s. In fact, while the Single Convention of 1961 and the 1972 Protocol were able to deal with the global control placed on illicit drugs, the manufacture, consumption and trafficking in narcotic drugs got diverted to illicit routes. The Columbian case became a very serious one where two notable cartels known as the Medellin and Cali Cartels controlled the majority of the trade in Columbian cocaine. They were able to build a global network with which they corrupted and destabilized governments. The purport of the 1988 Convention was to confront this ugly development by giving more teeth and bite to the 1972 Protocol, which amended the 1961 Convention. The Convention of 1988 addressed most aspects of the illicit drug industry by enjoining contracting parties to enact the production, manufacture, distribution, importation and exportation of narcotic drugs or the cultivation of opium poppy, coca bush or cannabis plant contrary to the provisions of the 1961 Convention, (amended by the 1972 Protocol) or the 1971 Convention; as criminal offences in their statute books.<sup>23</sup> The convention also sought to criminalize the possession of narcotic drugs for personal use. It is however, submitted that there are legal loopholes open to countries that are opposed to the criminalization of the possession for use of narcotic drugs and psychotropic substances. The 1988 Convention also expanded the extradition provisions of the 1961 and 1971 Conventions by including money laundering or the manufacture, transport, distribution of equipment and substances used in the narcotic drug business as extraditable offences.<sup>24</sup>

### **Recommendations and Conclusion**

The purpose of the first international convention on drugs was to limit the illicit international trade in narcotic drugs to medical requirements. This implies that before the outcry against the uncontrolled production of narcotic drugs, their production could be lawful within the law of the producer nations. The scope of the control gradually expanded from opium to morphine, cocaine, cannabis (1925 Convention), synthetic opiates (1948 Protocol), psychotropic substances (1971 Convention), and precursor chemicals (1988 United Nations Convention). The last convention was designed to hit drug traffickers hard by depriving them of their

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<sup>22</sup> Article 36 of the 1988 Convention

<sup>23</sup> Article 36 of the 1988 Convention

<sup>24</sup> Article 6 Ibid

financial gains through anti money laundering laws made pursuant to the convention, freedom of movement restriction, and confiscation of proceeds from drug trafficking. To what extent have these measures achieved their desired target?

The greatest impediment to the realization of the goals of the convention is the problem of enforcement. Most member states have enacted laws along the lines of the provisions of the various conventions such as the Nigerian Indian Hemp Act,<sup>25</sup> the Dangerous Drugs Act,<sup>26</sup> and the National Drug Law Enforcement Agency Act<sup>27</sup> in Nigeria. Very few persons ever get convicted under the various national legislations as a result of corruption facilitated by the enormous revenues earned by the drug barons.

Second, the weapons of embargo provided for under the various anti-drug conventions are seldomly applied because of the selfish economic considerations of the world powers who are the powerful parties to the various conventions and who are supposed to give teeth to the embargo provisions. They are usually reluctant to apply embargo when their economic interest is at stake.

Third, there is the question of sovereignty. Applying the provisions of the various conventions strictly may violate the sovereignty of some member states.

It is however suggested that particular emphasis should be placed on the provisions of the various conventions especially the 1988 United Nations Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances with respect to the freezing and confiscation of the proceeds from drug trafficking. Financial institutions and banks that are associated with drug money should be closed up by the governments of the countries where they exist. Finally, illicit possession of narcotic drugs and psychotropic substances should receive the same severe sanctions provided against the traffickers and producers. It may be easier to rehabilitate drug addicts in confinement while they are serving prison terms.

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<sup>25</sup> Cap. 16 Laws of the Federation of Nigeria, 2004.

<sup>26</sup> Cap. D1 Laws of the Federation of Nigeria, 2004.

<sup>27</sup> Cap. N30 Laws of the Federation of Nigeria, 2004.