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LEGAL ASPECTS OF
INTERNATIONAL DRUG CONTROL

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Thesis submitted to the University
of London for the degree of
Doctor of Philosophy

University College London
Faculty of Laws
1977
ABSTRACT

The need for suppressing the illicit traffic in drugs can hardly be over-emphasised. Yet, the licit uses of drugs, especially for medical and scientific needs, cannot be suppressed. Apparently, it is a question of determining the world requirements of drugs for such legitimate uses, and of producing and manufacturing them accordingly.

Owing to their multifarious medical uses in various parts of the world, it proves to be almost impossible to determine exactly the amount of drugs required for legitimate purposes. There is also the complicating factor that drugs are used for sociological and religious reasons, which have a long history. Not only are the licit uses and legitimate amounts of drugs difficult to determine but also such difficulties give rise to illicit traffic in them. Yet, it is believed that a concerted international policy, coupled with national co-operation, on various facets of the related problems, namely, limitation of production and/or manufacture of drugs, restriction on cultivation of plants that may contribute to addiction-producing substances, training and rehabilitation of drug addicts, and efficient national administration, would help eradicate drug-abuse.

In search of an appropriate remedy, this thesis has been devoted to a practical study of the problem and to exploring in this area of international law the relationship between the political and economic interests and the international economic order. It has four
Parts: Part I deals with the social and cultural aspects of drug-use and also details the historical origins of opium, which has a long association with drug-abuse. This Part also deals with the nature of international action for the suppression of drug-abuse until the establishment of the League of Nations. In Part II an account is given of the League machinery employed for this purpose on the basis of the agreements and conventions concluded during this period. Part III is devoted to an evaluation of the U.N. machinery, which is now based on the Single Convention on Narcotic Drugs, 1961 and the Protocol of 1972, amending this Convention. Part IV assesses the contributions of some of the inter-governmental and international non-governmental organisations concerned with the suppression of illicit trade and traffic in drugs. Finally, an attempt has been made to examine the present state of legal order in this area of international law.
ACKNOWLEDGEMENTS

At the outset, I must convey my gratitude to Professor G. Schwarzenberger under whose guidance this research was originally embarked upon. I should also like to express my gratitude to Mr. R.H.F. Austin, Senior Lecturer in Law, who, after the retirement of Professor Schwarzenberger, has been not only my guide but also a very sympathetic teacher without whose assistance this research would not have been completed.

Like many other research workers, my never-ending doubts concerning certain matters of legal controversy prompted me to consult a number of legal experts. Of them, I am greatly indebted to Dr. Rosalyn Higgins, Visiting Fellow, Centre for International Studies, London School of Economics for her very useful comments especially on certain legal issues concerning international institutional law. Being concerned with a very practical topic, my research necessitated my visiting various organizations and specialised bodies, viz. the World Health Organization, the Food and Agriculture Organization, the Division of Narcotic Drugs (U.N.), the International Narcotics Control Board and the International Criminal Police Organization, which deal, inter alia, with the problems of international drug control, and I must express my gratitude to various officials of those organizations who have clarified my understanding of a number of practical matters associated with this topic. A special mention must be
made of the late Mr. S.P. Sotiloff, Assistant to the Director of the Division of Narcotic Drugs, and Mr. J. Dittert and Mr. S. Stepaczynski, Secretary and Deputy Secretary respectively of the International Narcotics Control Board for their very useful comments on various practical points. I should like however to make it clear that all opinions expressed in this thesis are my own.

This research also entailed visits to certain foreign countries with a view to collecting and consulting a considerable number of useful documents. Of the librarians who have been of immense help to me thanks must be conveyed to Mr. F. Sicat of the World Health Organization Library and the members of the staff of the U.N. Library in Geneva. Money being the sixth organ, I would like to express my gratitude to the Central Research Fund of the University of London and the European Centre of the Carnegie Endowment for International Peace for their awards of financial assistance without which this research would have remained unfinished.

Finally, my special thanks and gratitude to my parents to whom I have shown neglect in pursuance of my selfish ambition, but who, despite all my limitations, have constantly encouraged me in my completing this research.
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The "1931 Agreement"/


Documents and Institutions

Assembly of the League of Nations

Permanent Central Board/International Narcotics Control Board (as the case may be).


Commission on Narcotic Drugs

Economic and Social Council of the United Nations
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<td>FAO</td>
<td>Food and Agriculture Organisation</td>
</tr>
<tr>
<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>INTERPOL</td>
<td>International Criminal Police Organization</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<td>Opium Advisory Committee</td>
<td>Advisory Committee on the Traffic in Opium and Other Dangerous Drugs</td>
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<td>PCIJ</td>
<td>Permanent Court of International Justice</td>
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"It is not because men's desires are strong that they act ill; it is because their consciences are weak."

J.S. Mill,
PART I

Introduction

Drugs have many uses. Their use for social and cultural reasons gives rise to multifarious problems. These social and cultural causes are so deep-rooted in some societies that it appears to be difficult to change the attitudes of the users of drugs in those societies by law. This Part explores the nature of the social and cultural aspects of drug-use in order to determine whether at any stage of history there was any "social awareness" which might have contributed to forming a corpus of law for the suppression of drug-abuse, or any attempt to create such an awareness.

Opium having a very long association with drug-abuse, an attempt has also been made to trace its historical origins and the nature of early international action for the control of its uses and abuses. Indeed, the early anti-opium movement even before the Shanghai Conference of 1909 affords interesting possibilities for further research, and it is appropriate to discuss this movement with a view to determining the extent of its contribution to the later development of law in this area.
CHAPTER I

I. (A) SOCIAL AND CULTURAL ASPECTS OF
DRUG-USE

Drug-abuse is now a social evil but the early sociology of drug-use largely identified itself with religious and cultural beliefs. "Almost all communities, in every part of the world, had their medicine men, witch doctors ... selected mainly on account of their ability to communicate with the spirits. To visit the spirit world, the medicine men had to be able to enter a state of trance; and this was frequently attained with the help of drugs." 1 The indispensability of drugs and/or other addictive substances to religious ceremonies has also been confirmed by the Rig Veda in India 2 and the Bible in Christendom. Indeed, in many parts of the world, "plant drugs which had originally been used to facilitate access to the spirits came to be regarded, and later worshipped as spirits, or deities, in their own right." 3

Again, archaeological evidence from Cyprus, Crete and Greece shows that opium was probably used ritually about 2000 B.C. 4 Archaeological evidence of tobacco smoking among South-Western American Indians yields dates of 200 A.D. and for Eastern Coastal Indians about 800 A.D. 5 The mind-altering effects of drugs appear to have attracted the hunting and gathering tribes in Paleolithic,
Mesolithic and Neolithic times, although no concrete evidence of this has yet been found. 6

The medicinal use of plants, not always as a direct cure, but for producing mind-altering effects goes back to 2000 B.C. 7 Not only are there biblical and Babylonian apothecary's guides, but also the Ebers Papyrus, (circa 1500 B.C.) contained remedies listing wine, beer, wormwood, cumin etc. 8 In India, Rig-Veda medicinal use of plants is claimed before 1600 B.C. and in the Sushutra Samhita drug therapies are referred to about 1000 B.C. 9

According to McKinlay 10 and Piggott 11 drugs were also used for social purposes such as ceremonial occasions or for informal and non-institutionalised gatherings like parties. In their study of society and drugs, Blum and Associates observed that "Long before the time of Christ, descriptions were written of private or individual centred drug use, as for example, in drinking without regard to social circumstances that resulted in stupor, euphoria and comparable states. Opium and perhaps cannabis are also implicated by that date." 12 According to Chopra, hemp is perhaps the "oldest plant which has been used and held in reverence by ancient Orientals. Its past is associated with religious, social and medical uses which indicates the depths in which the problem is rooted." 13

It is believed that the chewing of coca leaves was practised in Peru possibly before the Incas. In the opinion of chroniclers of the conquest of Peru by the Spaniards, "the cultivation and use of coca was very restricted at that time, so that chewing was a privilege of the Inca aristocracy, who consumed coca during official and religious ceremonies. According to the Chronicler Santillan and also
the Viceroy Francisco de Toledo, after the Spanish conquest limitations on coca use and cultivation were removed and coca became a lucrative business." 14

In writing the history of the poppy and of opium and their expansion in antiquity in the Eastern Mediterranean area, Kritikos and Papadaki confirmed that the ancient Greeks portrayed the divinities Hypnos (sleep), Nyx (night) and Thanatos (death) wreathed with poppies in their hands, 15 and that not only has mention of it been made by Aristotle (384–322 B.C.), but also archaeological evidence (e.g. clay models, ornaments etc.) confirms that the poppy was well-accepted in social and cultural life in that part of the world.

More recently, certain of the colonial areas have also been affected by opium. In his discussion of cross-cultural influences on ideas about drug, Leong observed that opium "as an article of commerce, was a fact of life at the time of the founding of Singapore in 1819. It was a prestige substance and certainly a very expensive commodity." 16 He also confirmed that Chinese physicians "often recommended opium smoking against certain ills, particularly dysentery. Fresh scrapings from a warm opium pipe were often applied to boils and the coarse papers used as filters in the manufacture of prepared opium (chandu or smokeable extract) from raw opium were used as an external application for piles." 17

On the other hand, the problem of drug addiction in West Africa is a fairly recent phenomenon, 18 although it was quite common in the southern part of Africa, especially among the Chinese coolies.
According to one study, "of the factors contributing to the spread of drug addiction in West Africa, that of population movement, especially of internal and inter-territorial, comes first. The spread of drug addiction is facilitated in populous regions frequented by tourists and by seasonal workers, and districts where the inhabitants have easy access to large centres of population for business or pleasure and are, therefore, within reach of temptations which lay them open to the risk of illicit drug use and drug peddling."  

Addiction, whether to alcohol or other addiction-producing agents, viz. cannabis and ganja, is quite widespread among the West Indians. It is commonly believed that ganja which is generally taken as a substitute for opium was introduced into Jamaica by Indian indentured labour brought in to work for the sugar plantations after the abolition of slavery in 1834. It is also believed that in Jamaica ganja was widely used by Indian labourers in the cane fields to allay fatigue, and that subsequently its use spread throughout the lower class Jamaican population. Interestingly, according to one study, neither ganja nor any other form of cannabis is extensively used in other Caribbean islands. It is used in Trinidad but not to the extent that it is in Jamaica.

Therefore, in most parts of the world some kind of addictive product (generally a natural product) was in use, although the cultivation and/or production of such addictive plants and/or products was prevalent in certain countries, mainly those on the Asian, Middle Eastern and South American regions. In the parts in which its cultivation and/or production was not originally in existence, viz.
primarily the European continent, addictive products (opium, cannabis etc.) were accepted much later for the same sociological reasons that they had been in use in the traditional areas.

Whereas the countries in the former category cultivated and/or produced addictive substances and plants primarily for fulfilling the demands emanating from superstition, which was gradually absorbed into their culture and religion, the countries in the latter category, besides their requirements for medical and scientific purposes, imported them mainly for the use of addicts. The latter aspect of the use of drugs has threatened the whole world and it would be interesting to determine the reasons for the demand for them, which is generally prompted by certain attitudes towards life and society, and the impact which they produce upon societies.

Causes of Demand for Drugs

Apart from medical and scientific needs, drugs are not a necessity for human life. Yet, "necessity" being a relative term, in certain cases, nothing appears to be unnecessary. Therefore, it becomes necessary to identify those cases where relatively unnecessary objects become indispensable to human life. Like business in all other commodities, the forces of demand and supply also operate in respect of drugs. The demand for drugs is caused by various factors, viz. psychological deficiencies in
people, social conditions, including broken family conditions, leading to disappointment, non-fulfilment of ambitions, and hence a drift into addiction, social pressures giving rise to a feeling of inadequacy and inability to compete with peers, the alternative life style very pronounced among young people, which is otherwise known as "youth culture", cross-cultural influences on ideas about drugs, loss of faith in the existing values of life and consequently, protest against values by infringing the so-called taboos concerning drug-use, and auto-established addiction, which is noticeable among medical staff and their relatives, and also the use of drugs in certain cultures and rites.

On the other hand, as in the case of various other commodities, the demand for drugs is also influenced by their supply. In other words, either they are made available in abundance or their supply is restricted. From a psychological point of view the second situation makes the demand for drugs more compulsive, and despite all hazards, efforts are made to obtain such a not-so-easily available commodity, mainly for two reasons: (a) to enhance self-esteem, augmented by the admiration of others, and (b) to satisfy the needs of an addict. An understanding of these psychological phenomena prompts the traffickers to ensure a high demand for drugs.

Such multifarious—and primarily sociological—reasons for the use of drugs inevitably lead to their abuse. Conversely, the remedy primarily lies in the elimination of the incidence of drug-use caused predominantly by sociological factors.
Any attempt to encourage drug users to switch to alcohol, for example, is not desirable since it produces the same social effects, although in view of its comparative availability, alcoholism may not give rise to the problem of illicit traffic in alcoholic substances to the extent to which narcotic substances have been subject. Drug-ism being a social phenomenon, in almost all parts of the world, it would be appropriate to determine the social and legal measures to suppress this evil. It is believed that an international policy, operating through national governments, may remedy this situation. With this view in mind, an attempt has been made in the subsequent chapters to evaluate the international movements, and national co-operation in this regard since the Shanghai Commission of 1909.

However, it is appropriate at this stage to state a few hypotheses concerning international action for the suppression of the illicit traffic in drugs and also the drug-habit at large, for further analysis of these problems.

It appears that crude drugs and opium were mainly in use only in certain parts of the world, namely, Egypt, Greece, certain parts of the Middle East, Asia and South America. Narcotic drugs and other allied substances are manufactured products, and the advancement of technology in the western part of the world must have contributed to their being in use. Drugs being an integral part of religious rites and culture, especially in Asia, Middle East and South America, the question of legalising their use did not arise prior to the Shanghai Commission of 1909. In other words, the cause of "social awareness" as regards the prohibition of the use of drugs
was not in existence, and this situation was augmented in their being accepted for medical uses also. At this point it is appropriate to discuss whether there was any relationship between law and social awareness during the early period of drug-abuse. Generally speaking, people should be motivated to turn to law for protection of their interests; in other words, people will turn to law for "justice". This offer of justice can effectively be made only in appropriate social and legal conditions. In the absence of such conditions, however, there remain two alternatives: (a) to create those conditions within a given society by certain local means; or (b) to create those conditions by means of external efforts, and gradually to transfer the process to indigenous means. But, in both cases, the beneficiaries are not only a given society but also the world society at large.

In so far as the use of drugs is concerned, during the early period of its acceptance by certain societies as a part of their social and cultural life, the question of rejection did not even arise. The conviction for their acceptance was so strong that even at a time when action against their abuse was overdue, no effective attempt was made towards it. However, it would be unjust to say that the absence of "social awareness" was the only reason for making attempts towards suppression of the drug-problem even more remote or improbable. The acceptance of drugs, socially and culturally, in certain parts of the world became the basis for a promising profiteering trade in them for certain others, who
principally came from the western part of the world.\textsuperscript{32} It should also be pointed out that even in those days the drug-affected areas were economically less developed, principally owing to the absence of technological advancement, and in consequence, no high priority could be given to the question of suppressing this social malaise. Bearing these points in mind, in the absence of any "social awareness" as regards the suppression of drug-abuse during the early period, i.e., prior to the Shanghai Commission of 1909, the following observations may be made:

(i) that in the absence of any identifiable social awareness the prospect of a basis for action, whether on a national or an international level, culminating in a legal force, was remote;

(ii) that in the course of time, in this area of international law, like many other areas of international humanitarian law, social awareness as regards the suppression of the drug malaise, was kindled by certain individuals, mostly from outside the affected areas; \textsuperscript{33}

(iii) that the predominantly external means of kindling social awareness sometimes proved to be conflicting, i.e., giving rise to culture-conflict, and hence, in retaliation, an attempt might have been made to consolidate the existing cultural pattern.

These inferences give rise to certain further reflections. In general, the use of conscious legislation in societies makes the process of adjustment of the law to social change rather easy. But
this process has no application in a society which abhors any social change, and in such a situation, any attempt, internal or external, to bring about "social awareness" makes a frontal attack on the existing social norm, and consequently, during this period of conflict, legislation is made for a social change and not the other way around. Again, as evidenced in international legislation for the suppression of drug-abuse, legislations in this situation, will, presumably, be predominantly based on a presumed idea of "social good" held by certain non-indigenous people. Therefore, what would be more appropriate is to create a constructive public opinion by education, among the indigenous people, in conjunction with the available external efforts, and to endeavour to shift the social practice from one situation to another; otherwise, the longer the period of such change, the stronger would be the likelihood of social contamination by the problem in question, both nationally and internationally. Indeed, this situation was particularly evidenced during the period of the movement when sporadic attempts were being made to suppress drug-abuse. It was during this prolonged period of social malaise that the abusive aspect of drugs involved the western world also. All attempts at law-making for the suppression of the drug-evil were rendered futile by the more concerted action to keep alive the process of illicit traffic in drugs.

Secondly, in so far as the drug-problem is concerned, the behavioural change demanded by law was very sudden, although in almost all societies there is an identifiable difference between the actual
behaviour of people and the desired behaviour required by law. So, the "tension" which was created by the sudden demand for a desired legal norm, was very high. Such a "tension" operates as a "social and cultural shock". This shock can only be effectively allayed by a process of gradual enlightenment of people, and not by "sudden" legal means. In other words, the basis of work for law, in such a situation, will not be the existing socio-cultural norms, but only a functionally-orientated ideology. The function of such an ideology will be twofold:

(a) to implement a law, which besides its usual functions, will shape social behaviour, in order that it may respond more effectively to the actual needs of a society; in other words, law in this instance will have an educative function, which may also be described as a curative function; and

(b) in performing its preventive function, it must not impose any foreign element or norm; in other words, it must educate a given society by and through that society. Also, that the function of law in this situation will not be solely punitive. A sociological knowledge about the functions of law is necessary. In discussing the relationship between law and sanctions, Barkun rightly observed that "legal procedures are senseless, ... and ultimately, non-existent if there is no way to organise perceptions so that actions can be separated into deviant and compliant."
This dichotomization is by no means simply the prerogative of the social scientist who is anxious to systematize his subject matter; law has to place the individual and the group in situations in which choices are real and decisions are possible. 36

Thirdly, that although the term "drugs" and their use was originally associated with the non-western parts of the world, the term "narcotic drugs" is associated with both the western and non-western parts of the world. Yet, there are differences in the patterns of their use, and the causes of their use. In the western part of the world, the inadequacies of the societies resulting in frustration in human lives, and other related psychological factors, are responsible for drug-abuse, whereas in other parts of the world, socio-cultural reasons are the primary reasons for their use and abuse, although psychological factors, e.g. disappointment caused by poverty, contribute to a certain extent to their abuse.

Nevertheless, in consequence of constant international action, changes in the general social attitude in both the western and non-western parts of the world are identifiable, although drug-abuse in both parts of the world persists in a large degree. There is no doubt that drug-abuse is considered to be taboo in all countries, whether nascent or otherwise, but interestingly enough, the effect of such taboo has become unprecedented—psychologically speaking—the breach of taboo gives an individual certain pleasure, develops confidence in him for a further breach in the event of his going
unpunished and also the inadequacies of societies prompt him to resort to drugs surreptitiously.

Therefore, the net result is that both the western and non-western countries have accepted drug-abuse as a social malaise, and that is the basis on which international action and law in this area rest, although the cure lies not in law alone but also in the treatment of the drug-users and the societies at large. Law represents the belief that there must be something behind and above government without which it cannot attain permanence or respect. Ultimately, this is a question of values, of the balancing between the interest in the safety and the strength of a given society, and the consideration of the individual as a person. In discussing the changing problems of punishment, Friedmann rightly observed that "what is of far greater importance to the theory of punishment as applicable to all major offences is the progress of social science in a manner parallel to that of modern psychology and psychiatry." In other words, emphasis should be laid upon reformation rather than upon punishment.
I. (B) HISTORICAL ORIGINS OF THE
USE OF OPIUM

It is appropriate to devote a separate section to the discussion of opium for the following reasons:

(i) opium has the longest association with abuse;
(ii) the complicating factor of its indispensability to medicine and science; and
(iii) its socio-cultural significance in certain societies.

It seems that opium was destined for abuse. The origin of opium poppies is enmeshed in historical controversy.³⁹ Leaving such controversy aside, the majority of historians believe that the cultivation of opium poppies originated in the eighth century B.C., if not in the sixth century B.C. Historians are, however, unanimous that trade in opium across national boundaries started as early as the eighth century,⁴⁰ and it is believed that the Arabs were the fore-runners in this field of business. Opium was brought by them by way of Persia to India and China. Although trade in opium was originally confined to the Orient, the discoveries in ancient tombs in South America testify to the existence of the coca plant before the Incas, i.e., C.1100.⁴¹

Whatever might be the historical origins of opium, that it was in Homeric description, "the drug of forgetfulness" was accepted universally. The other use of this drug, which is medicinal, made the demand for it imperative. Historically again, the cultivation of opium and its use prior to the sixteenth century
was mostly confined to the Middle Eastern, Asian and South American countries. Until the sixteenth century, the abusive aspect of the opium poppy was not deemed a matter of concern by certain societies, viz. Asian and Middle Eastern, primarily because of its acceptance by these societies not only as a medicine, but also as a "drug of forgetfulness". The use of drugs being inevitable, the question of their control and/or production even on a national level did not arise. Although international society in the formal sense existed as early as the sixth century B.C., present day international law can only be traced back to the twelfth century, and international action for the control of traffic in opium dates only from the sixteenth century. Regular trade in opium with China was started by the Moghuls as early as the sixteenth century. According to Glatt, cultivation of opium and its use probably spread from Asia Minor to neighbouring regions long before reaching China, involving many other peoples such as the Egyptians, the Assyrians, the Greeks and the Romans. There are reports of the widespread abuse of opium among the Turks in the sixteenth century.

One theory that may be isolated is that opium was originally in wide use in the Asian, Middle Eastern and South American countries, although it was originally produced in Persia so that "The importation of opium into Europe from the East led to much abuse of the drug in countries such as Germany and England, and that illicit traffic in opium did not generally start prior to the
sixteenth century. The beginning of trade and traffic in opium coincides with the start of colonial and imperial expansion of the European powers throughout Asia, Africa and South America. Trade in this commodity flourished since opium being unreservedly acceptable in the aforesaid societies, the need for limitation of trade and traffic in it was not envisaged.

However, no attempts to change the social attitude towards the unabated use of opium had been made prior to the sixteenth century, and this became manifest in the movements of individuals and various action groups. The starting point of international action for the control of illicit traffic in opium cannot be dated earlier than the sixteenth century.
II. EARLY INTERNATIONAL ACTION FOR THE
CONTROL OF THE USE OF OPIUM

(a) International Action for the Control of
Illicit Trade and Traffic in Opium Between
the Sixteenth Century and the Shanghai
Conference of 1909

This period was characterised by an awareness of the
desirability of controlling the illicit traffic in opium.
However, in order to produce a working hypothesis in this regard
one should first assess the character of the international society,
since the corpus of international law at a certain period gains
life from the contemporary international society. In brief, until
the eleventh century, it was the period of test for *Jus Gentium*.
Yet, not only isolated evidence of the practice of arbitration
in a rudimentary form may be found here and there,46 but also
efforts at alliance between the Christian and the non-Christian
states were being made.47 As Oppenheim said, "the conception
of a Family of Nations did not arise in the mental horizon of the
ancient world..."48, and he also observed that there was no room
for the Law of Nations during the Middle Ages.49 Starke shares
the view that although the genesis of international law (treaties,
immunities of ambassadors, recourse to arbitration etc.) are to be
found in Egypt, India and the Islamic world long before the dawn
of Christianity, "it would be wrong to regard these early instances
as representing any serious contribution towards the evolution
of the modern system of international law." Nevertheless, amidst the serenity of the medieval order grew the idea of discovery, the idea of widening horizons, and also the zeal for invention. Indeed, the techniques of handling overseas trade originated in the medieval age. However, the phase of discovery was followed by the race of colonisation among the powerful commercial nations, through trading activities. Schwarzenberger observed that "in the process of colonial and imperial expansion of the European Powers, European society gradually engulfed the New World, Asia and Africa." The South American countries were also under the pressure of colonisation by the Portuguese who themselves ultimately suffered a defeat commercially by the Dutch. Despite the fact that the nations started widening their horizons in the twelfth century, it was not until the sixteenth century that world trade really did expand. It was also during this period that the Law of Nations was in the process of gradually developing into a self-contained legal discipline, although it passed through various changes during different ages.

However, widespread opium smoking and trade in opium did not start until the seventeenth century. Until the period of the British acquisition of Bengal and Bihar in India, the Dutch were the chief purchasers of opium, and instruction to make opium as part of the investment was first issued by the East India Company in 1683. In China, Emperor Yung Cheng
issued the first anti-opium edict from Peking in 1729.\textsuperscript{57} Interestingly enough, although by the seventeenth century opium-smoking and trade in it had become widespread in almost every part of the world, it was in China that the traffic in opium thrived, although originally there was no opium problem in China.

In order to show the genesis of international action in this field, it will be necessary to describe the process of interaction among the nations, which ultimately led to the "Opium War". The Portuguese established themselves on the West Coast of India in the sixteenth century and were gradually attracted to the opium trade in China. Opium trade in China was, in fact, started by the Indians and the Arabs, but was ultimately taken over by the Portuguese for a short period. Yet, it was during this period that the British managed to strengthen their base for opium trade in China. The Anglo-Dutch War of 1781 interrupted the trade, but the East India Company maintained their foothold in China even after the War. On the other hand, the determination of the British to trade in opium in China led to international action. Two important points should be mentioned at this juncture: firstly, that opium was not an indigenous product of China and that it was brought into China from India and therefore, secondly, that for China, the struggle was to uproot the evil, while for Britain, it was to found their trade. This aspect of the problem formed the background of the Shanghai Conference of 1909.
Action had been taken by China through the issue of Imperial Edicts prohibiting the importation of opium, and Britain did recognise the gravity of the situation. The British Foreign Office, in protest at the renewed efforts made by some British merchants and Governors to re-establish the opium trade in China, sent a note to Lord Napier stating that "It is not by force and violence that His Majesty intends to establish a commercial intercourse between his subjects and China; but by the other conciliatory measures so strongly inculcated in all the instructions which you have received,"

Although conciliatory measures were advocated by the British authorities, they failed to take such measures. The Chinese High Commissioner appealed to the Queen of England for co-operation in suppressing the opium trade, but unfortunately met with no success. In his biography of Gladstone, Lord Morley rightly mentioned that the "British subjects insisted on smuggling opium into China in the teeth of Chinese law." The inevitable effect was of course the outbreak of the "Opium War". Absence of stringent legislation and political power caused China to be powerless in this war, but she learnt the lesson that effective suppression of the illicit traffic in opium could not be achieved without attaining international consensus.

Despite their apparent victory, the continuous pressure of the Chinese upon the British trade made the British authorities realise that legalisation of the opium trade would be the only
solution, even though it would mean a financial loss to the Treasury. In an attempt to continue the trade on an amicable basis, the Treaty of Nanking was signed in 1842 primarily to establish equality in consular activities between Britain and China. This Treaty introduced fair tariff rates at the Treaty ports, but owing to the lack of provision for effective measures in the Treaty, all attempts to control the trade in opium by effective legislation proved to be abortive. Moreover, a veil of secrecy was maintained as to the working procedure for implementation of the treaty provisions.

Lord Palmerston issued instructions 62 to the British Representative in China in 1845 to make some arrangements with the Chinese government for treating opium as an article of lawful commerce and thereby strengthening commercial relations between the two countries, but this could not stop the Arrow War of 1856-58.

The Arrow War was not a war for the legalisation of trade in opium; it was aimed at rescuing China from her economic imbalance. The various protests lodged by China against British action ultimately led to the conclusion of the Treaty of Tientsin in 1858. 63 Under this Treaty, opium was declared to be a dutiable article, and as a measure of control, the Treaty was designed to give the natives the right to cultivate opium for the purpose only of local consumption, i.e., for medical use and to a certain extent as a "drug of forgetfulness". Rule 5 of the Treaty stated, inter alia, "(Opium) will be carried into the interior by Chinese only, only as
Chinese property; the foreign trader will not be allowed to accompany it." This appeared to be a positive attempt to control the traffic in opium in China, but the remaining provision of the same Rule, "... nor, in future revision of the tariff, is the same rule of revision to be applied to opium as to other goods", undermined the stringency of the measure. The Treaty of Tientsin, which contained such a provision, instead of promoting the anti-opium movement in China, helped strengthen the British monopoly in that trade.

However, with Lord Elgin's regime in China the British authorities turned over a new leaf with regard to the opium trade in China. A British subject was made subject to punishment if found engaged in illicit traffic in opium in China. Lord Elgin declared that "legalisation is preferable to the evils attending the farce now played."64(a)

In this connection mention should be made that the problem of trade and traffic in opium in China became a triangular one. Opium was brought into China, but in the course of time, China started producing opium and, in fact, the habit of opium-smoking developed, which gave rise to illicit traffic within the territory.65 The loopholes in Rule 5 of the Treaty of Tientsin were strongly contested by the Chinese authorities, and consequently, the Chefoo Convention was concluded in 1876. By this Convention, the British government accepted in principle a proposal that inland taxation (likin) on opium should be collected simultaneously with the import duty, i.e., by the Imperial authorities and not by the Chinese Provincial authorities. This was made effective
by the Additional Article signed on the 18th July, 1885. The Chefoo Convention gave adequate routine power to the Chinese Customs Officers, but Rule 5 of the Treaty of Tientsin debarred these officers from exercising their power in dealing with the trade in opium in the usual way. In fact, what the Chefoo Convention gave to the Chinese officers, the Tientsin Treaty took away. Moreover, the British government did not ratify the Chefoo Convention until 1885, primarily because the terms of the Convention were not favourable to the British interest. At this juncture, it may be advisable to state the nature of the trade relationship between India and China, as far as this commodity was concerned.

The opium trade in India came as a direct legacy from the Muhammadan rulers of India and from the early Portuguese traders who were finally superseded by the British after the Battle of Plassey in 1757. The British, by virtue of economic and political power, established a strong foothold in India, and by dethroning the local merchants they ultimately monopolised the opium trade. "The plan of sending opium from Bengal to China was first suggested by a Mr. Watson, in the year 1767, to a council of representatives of the East India Company held at Calcutta." This suggestion was very cordially accepted by the members of the Company as it indicated a secure revenue. Therefore, the whole network of the trade was designed to supply opium to the Chinese market
by establishing a monopoly in India. The gradual monopolisation of this trade was summarised by Owen when he stated that "the opium industry of Bengal was thus taken under the wing of the East India Company[whose] officials at Patna... administered it as a personal monopoly. From this status to public monopoly was but a short distance, and the distance was traversed at the suggestion of Warren Hastings." 68 At the time Warren Hastings was appointed Governor of Bengal, Britain was seriously considering the laissez-faire principle. Hastings admitted the efficiency of this principle, but inconsistently enough, was concerned about the development of the opium trade in India. He urged that "opium was not a necessary of life, but a pernicious article of luxury, which ought not to be permitted but for the purpose of foreign commerce only, and which the wisdom of the Government should carefully restrain from internal consumption." 69 Hastings's policy concerning opium trade was in effect re-vitalising rather than discouraging.

The first constructive step, however, in legalising the opium trade in India and also in working out an acceptable basis of business was taken by Earl Cornwallis. 70 By the time Cornwallis was sent as Governor, Indian merchants were amassing wealth through production of opium with cheap labour. At this point, the main task for Cornwallis was to limit the production of opium, which would reduce the business for both the East India Company and the Indian businessmen. The cultivation of poppies was allowed only with the authorisation of the government and the sale of opium was also controlled by the government. The inadequacy of effective machinery
for the whole country coupled with the intensity of the problem, made Cornwallis limit his efforts to Bengal and Bihar only, and also to licit trade.

In the meantime, the British monopoly in opium trade in India faced competition from the Malwa opium, most of which found its way in illicit traffic into China. The British authorities, in order to put an end to the Portuguese supremacy in Malwa opium, lowered the price of the Bengal opium; this action was aimed at attaining monopoly in the opium trade by eliminating the competition.

The Chinese authorities adopted measures to combat the opium evil, but their efforts proved to be feeble in the face of British measures. A committee of the House of Commons reported in 1832 that in the "present state of the revenue in India, it does not appear advisable to abandon so important a source of revenue, a duty upon opium being a tax which falls principally upon the foreign consumer, and which appears upon the whole less liable to objection than any other which could be substituted."

The Tientsin tariffs were due to be revised in 1869. The Treaty of Tientsin was an unhappy instrument for the British because it contained provisions for the increase of the tariff. In 1869, Sir Rutherford Alcock tailored this Treaty in favour of the British by amending many provisions, but it failed to attain Chinese ratification. The other major convention designed to control traffic in opium in China was the Chefoo Convention. By the time this Convention was ratified, i.e., 1885, the volume
of indigenous production of opium for local consumption (i.e., in China) posed another problem. According to one Report of the Royal Commission,\textsuperscript{73} China by 1885 was probably producing at least twice as much opium as she was importing.

The trail of the opium trade in China and India seemed to be a never-ending one.\textsuperscript{74} Yet, the termination of illicit trade came with a suddenness that must have startled even the anti-opium leaders.\textsuperscript{75} Perhaps the increasing awareness of the nations of the menace of opium smoking contributed to the reformation movement. There was the example set by Japan: "whose consistently strict domestic policy of prohibiting opium smoking was being successfully extended to her acquisition, Formosa;"\textsuperscript{76} and "another was the experience of employers of Chinese labour in the British colonies of the undesirable effects of opium smoking on efficiency and trustworthiness..."\textsuperscript{77}

The Imperial Decree of September 20, 1906 declared that "within a period of ten years, the evils arising from foreign and native opium (would) be equally and completely eradicated."\textsuperscript{78}

In order to give a comprehensive account of international action in this regard, mention should be made that other countries, viz. Austria-Hungary, Belgium, Denmark, France, Germany, Italy, Mexico, Norway, Peru, Portugal, Russia, Spain, Sweden and U.S.A. signed Treaties of Peace, Amity and Commerce or Treaties of Peace, Friendship, Commerce and Navigation, or in some cases,
became Parties to the Tientsin Treaty, in order to legalise the trade in opium with China.\textsuperscript{79}

In this attempt to unravel the history of international actions in this field, before the Shanghai Conference was convened, it is worth mentioning that opium was not produced in most of the countries which concluded treaties with China. Crude opium was imported into those countries from China, India or Turkey, mainly for medicinal and scientific purposes. In some cases, however, e.g. Siam, it was re-sold, on manufacture, to the highest bidder, and in some other cases illicit traffic thrived in it. In this connection it will be relevant to show the exact position of the countries involved in the trade and traffic in opium, and the initiative taken by them for the prevention of illicit traffic, or for the legalisation of traffic in opium, as the case may be.

\textbf{Austria-Hungary} \quad The poppy was not grown in Austria-Hungary. Opium was imported from Turkey exclusively for medical purposes.

\textbf{France} \quad According to one author, there was probably a large illicit use of morphine and considerable smoking of opium in Paris, Toulon and Bordeaux.\textsuperscript{26} The manufacture of smoking opium in French Indo-China was a government monopoly, and the small amount of opium which was produced in French Indo-China might only be imported by the official Administration of Customs and Excise.

\textbf{Germany} \quad The poppy was not grown in Germany. Opium was imported into Germany from Turkey exclusively for medicinal purposes.\textsuperscript{51}
Great Britain

The poppy did not grow in Great Britain. The chief supplier of opium for Great Britain was Turkey. Opium was imported into Great Britain exclusively for medicinal purposes. It seems that opium found illicit routes into Great Britain, and the Act to Regulate the Sale of Poisons, 1868, is said to have effectively prevented the illicit traffic in opium in this country.

Self-Governing Colonies

Australia Because of the large Chinese population in Australia, the situation there was different. The Chinese population indulged in opium smoking, and started spreading the habit to others. Opium was imported into Australia for medicinal purposes, but owing to its demand for other purposes, viz. smoking, it was not only manufactured in Australia but also was smuggled from Macao. Although the Commonwealth Customs Act, 1901 used the phrase "all goods, the importation of which may be prohibited by proclamation", this could not stop the smuggling of opium in which an illicit traffic thrived.

Canada Opium in Canada, was imported from India and Turkey. The Prohibitory Act of 1908 permitted the importation of opium only for medicinal purposes. In Canada too, the Chinese population affected the situation. The habit of opium smoking being very common amongst the Chinese, opium was manufactured locally. The surplus found its way illicitly into the United States of America.

New Zealand and South Africa These two countries prohibited the importation and use of opium except for medicinal purposes, and they had no opium problems. In South Africa however the opium problem started with the introduction of Chinese labour to the Rand. It gradually spread
to the black community, and in the course of time an illicit traffic arose out of the surplus of production of opium.

**Japan**

Opium problem in Japan started with the annexation of Formosa. Formosa, while under the Chinese regime, became a place of opium smoking. For political reasons, i.e., to avoid alienation, Japan could not apply her strict home laws concerning the prohibition of opium smoking. However, in 1897, the Formosa Opium Ordinance was issued bringing the importation, sale and smoking of opium under government control. All opium in Formosa was imported from India, Persia and Turkey. However strict the Japanese home laws concerning the prohibition of opium abuse were, Japan did not sign any treaty with China prohibiting the Chinese population in Japan from trading in opium.

**The Netherlands**

A regular trade in opium was in existence between China and the Netherlands. In fact, the opium trade in the Netherlands was controlled by the government. Opium was not produced in the Netherlands. Crude opium was imported into the Netherlands mainly from India and Turkey, and on manufacture, it was sold in the local market. By the Treaty of Tientsin of 1863, opium trade was legalised between the Netherlands and China.

**Persia**

Persia was a large opium producing country. No action by the government was taken to monopolise the production and sale of opium. Persia exported opium to various countries. She had no treaty relations with China.

**Portugal**

It was only in the colony of Macao that opium posed a problem, which related mainly to the Chinese population in that area. India exported most of her opium...
to Macao. In 1887, a government monopoly for the importation and exportation of opium was established. The sole right was however given to a Chinese Syndicate. With the conclusion of the Anglo-Chinese Treaty of Tientsin of 1858, the trade in opium between Macao and China became subject to tariff. Subsequently, a treaty of Amity and Commerce had to be concluded to permit the operation of the Portuguese government in the prevention of traffic in opium.

**Russia**

Russia had no opium problem except in the Moslem populated area and in parts of Siberia where the Chinese lived. By the Russian Treaty of Tientsin of 1858, trade in opium was prohibited.

**Siam**

The poppy was not grown in Siam. Opium was imported into Siam from India. Such importation was controlled by government. The Siamese government however had a trade relationship with U.S.A. for the export of opium.

**Turkey**

One of the largest poppy producing areas. Turkey exported opium to Europe and U.S.A. for medicinal purposes. There was no governmental control to prohibit production of the poppy in Turkey; on the contrary, the government encouraged production. No treaty was concluded with China for the prohibition of trade and traffic in opium.

If these countries are grouped geographically, it will be found that most European countries, except Portugal and Russia, had no opium problem. Although opium posed a problem in North America, it was under strict control, except in Canada. As far as the South American countries were concerned, it was only in Mexico that some kind of control was in existence. On the African continent,
South Africa faced this problem in the nineteenth century. Of the countries in the South Pacific, viz. Australia and New Zealand, New Zealand had no problems concerning this commodity, whereas in Australia the opium evil persisted. Opium abuse was prevalent in the Middle East, East and Far East primarily because they were mostly opium-producing countries. Therefore, it may be observed that those countries which experienced an opium problem did so either because of the absence of control-measures, or for some external reason, viz. the immigration of an opium-smoking population despite the adoption of some measures of control by means of internal legislation, as in the case of Australia, Canada, Russia and South Africa.

The failure of the opium-producing countries to adopt any measure of control was primarily for economic reasons. Such failure was either intentional or inevitable, but it provided the foundation on which was built the success of the anti-opium movement. At Westminster (London) the anti-opium leaders found themselves in a more favourable situation than ever before, and brought pressure once again upon the government to end this nefarious trade. The wave of this movement was felt in North America also and gradually it became an international one.
(b) The Anti-Opium Movement before the Shanghai Conference of 1909

By coincidence, the anti-opium movement started at a time when the idea of internationalism itself was gaining momentum. This movement, unlike other international movements, developed in Asia rather than in Europe, although Europe initiated it. It appears that four important factors contributed to this movement:

(i) the nature of this commodity, that is, its capacity to cross national boundaries easily and to corrupt social and economic life;

(ii) the persistence of the opium trade both in the richer and poorer nations, the ultimate motive in both cases being economic;

(iii) all municipal legislations and/or bi-lateral treaty obligations concerning the prohibition of illicit traffic in opium generally proved to be ineffective or abortive owing to the greater bargaining power of the trading countries; and

(iv) the negative attitude of the trading countries towards prohibition of the traffic in opium indirectly gave more impetus to the movement.

Nevertheless, there were some social questions which posed problems for nearly every country, in regard to which international consultation and co-operation were of obvious values. The social threat posed by drug-trafficking across boundaries led a few non-governmental organisations to launch an anti-opium movement. The only strength these organisations
had was their determination inspired by humanitarian ideals, and to this must be added their concept of organising a movement on a world-wide basis, in the face of all opposition.

On the governmental level, the Treaty of Tientsin made the first attempt to weaken the British monopoly in opium in China. In the American Treaty of Tientsin, no anti-opium clause appeared. The appeal made by Mr. Reed, an American Minister, to Lord Elgin, the then British Plenipotentiary, to make some constructive efforts to prevent the illicit traffic in opium, brought effective pressure upon the British authorities.

The anti-opium movement pioneered by the Wesleyans, Baptists and some London Missionary Societies and also by the Society for the Suppression of the Contraband Trade in Opium, whose ideas were supported by people like William Fry and Samuel Gurney, is considered to be the first concerted effort to register a protest against the governmental policy concerning opium in China.

On the other hand, the individual or independent movement raised by the Earl of Shaftesbury despite Robert Peel's defence of the opium policy in China, found support from other references like Mr. Hobson and the Reverend Dr. W.H.eadhurst. It was Lord Shaftesbury (later known as the Earl of Shaftesbury) who, as early as 1857, posed two legal questions in the House of Lords: whether it were lawful (i) for the East India Company to derive a revenue from the monopoly of opium, and (ii) to
manufacture it for export to China. 88 He also did not fail to mention that trade in opium with China in an unrestricted way was in violation of the treaty obligations (Tientsin), and that, according to him, this contention found support of the legal experts. 89

The anti-opium movement in England, despite all opposition from Westminster, was further strengthened by the support of the Far Eastern Protestant missionaries, who associated the opium problem with religion. But as Rowntree observed, "the linking of the religion of Jesus of Nazareth with the British opium trade is as bitter an irony as professing Christians have ever brought on themselves, which is saying much. To the Chinese they came together, spread together, have been fought for together, and finally legalised together." 90 The missionaries in China also faced opposition and were accused of interference in the local administration. What was seen objectionable was "neither Christianity nor commerce, but the imperium in imperio which makes such difficulties for a State and the class exemption which has in it so much that humiliates and disintegrates." 91 The protest came from the Chinese very overtly. 92 They held the opinion that the "difficulty ... is the foreign influence attaching to the missionary, and not his theology, which in truth matters as little to Chinese generally as it did to Gallio." 93 They expressed the bitterness of their feelings in the farewell message for Sir Robert Alcock, who left Peking in 1869:
"Take away your opium and your missionaries, and you will be welcome." It may therefore be observed that the English anti-opium movement in China achieved only a limited success.

In fact, the anti-opium movement was a struggle against a deep-seated evil which was founded on a colossal economic motive. This movement was motivated purely by philanthropic ideals. At this stage, it was not institutionalised. However, it created a remarkable impact upon the opium trade. The voice of opposition was raised by Lord Ashley in the British Parliament, when he pointed out that continuance of the opium trade in China would not only be destructive of all relations of amity between England and China, but also utterly inconsistent with the honour and duties of a Christian kingdom.

In India, however, the cultivators realised that it was the order of the government that they should cultivate the poppy. Nevertheless, protest however unorganised, was made by the cultivators to the British authorities. What was noticeable in the comparative strength of the Chinese and Indian protests was that while the Indians had no voice in the administration, the Chinese had control of the administration. The problem for China was how to stop the illicit trade in opium organised by the British. What, however, was needed for both situations was the shifting of production from opium to other commodities, but this was not effected by the investors, who wished to keep the
source of revenue alive. Nevertheless, protest continued, and the names of Sir William Muir and Sir Charles Trevelyan will remain in the memory of the Indians for ever. The untiring efforts of Sir Joseph Pease influenced the government of Gladstone to appoint a Royal Commission in 1891, although the Commission reported that the Bengal monopoly seemed to be the best system. To this was added the unexpected support of the local merchants for continuing with the trade. Despite the defeat of resolutions in the British parliament, concerning the prohibition of trade in opium, it was clearly shown to them that native public opinion generally condemned the habit of opium smoking as disreputable, mainly because of its associations, and that this opinion was shared by the great majority of European witnesses, both official and private, including medical practitioners. The concern of nations across the world to combat the evil was increasingly evident; Japan gradually extended to Formosa her strict domestic policy of prohibiting opium smoking; and across the Atlantic, the U.S.A. made efforts to control the manufacture, sale, distribution, exportation and importation of opium.

In Britain, the Legislative Council in its Annual Financial Statement for the year 1907-1908 expressed the view that "There is no doubt, throughout the civilized world a feeling of disgust at the demoralising effect of the opium habit in excess; it is a feeling which we cannot but share. We cannot with any self respect refuse to assist China on the grounds of loss of revenue to India." In the U.S.A., the Philippine Opium Committee made another advance in
internationalising this movement. This Committee's recommendations had a far-reaching effect upon the opium trade, not only in respect of those countries on which it made studies, but also on the world at large. The recommendations of the Committee, which are worth mentioning, were:

(i) that an immediate government monopoly should be created;
(ii) that complete prohibition except for medical purposes should be enforced after three years;
(iii) that licences should be granted only to smokers over twenty-one, and then only until prohibition;
(iv) that all venders and dispensers of opium except for medical purposes should be government servants; and
(v) that every effort should be made to deter the young from starting, to help those who wanted to give up the habit, and to punish, if necessary by deportation, repeating offenders.\(^{107}\)

It appears from its recommendations that the Committee envisaged the remedy of the problem to lie in the restrictive use of opium, also in its monopolisation by government. However, the Committee took cognizance of the social aspect of the problem, i.e., the rehabilitation of the addicts. The question as to whether or not a government monopoly would be an effective remedy has been discussed in chapter IX of this thesis. It is true that
the United States could not devise any control measure concerning illicit traffic in opium until 1909, but it is undeniable that her efforts to study the problem in the Far Eastern countries spoke for her intention to arouse international fervour. There was a marked difference between the American and the British policies in as far as the solution of this problem was concerned. While the American policy aimed at prohibition, the British policy aimed at regulation. (It may be observed that perhaps the absence of any proprietary right of the U.S.A. in the opium trade in Asia and the Far East helped the Americans lend their unreserved support in the war against drug abuse.) Thus Bishop Brent was prompted to write a personal letter to President Roosevelt asserting that his experience on the Philippine Opium Investigating Committee led him to believe that the problem was of sufficient magnitude to warrant an endeavour to secure international action. As a prelude to concerted international action, the U.S. government invited reports from various governments, and this effort culminated in the Shanghai Opium Conference of 1909.
(c) Comments

According to one author, "the beginnings of international action against the drug traffic form no essential part of Anglo-Chinese opium relations". On the other hand, the present writer believes that the Anglo-Chinese opium-trade relationship indirectly contributed much to the promotion of an international movement, which ultimately, at the intervention of the United States, led to an international opium Commission (i.e., the Shanghai Opium Commission).

The next question that may be posed is whether the genesis of the Shanghai Conference was different from that of any other conference belonging to that period. Incidentally, during the nineteenth century the term "congress" was ordinarily used for gatherings of exceptional importance, and the term "conference" for lesser occasions. Naturally, the question of controlling traffic in drugs was found to be of lesser importance. Nevertheless, even in the old diplomatic system conferences were convened with a view to drawing up general rules for dealing with some particular problems of an international character, when such problems were considered to be ripe for international treatment. The criteria for determining the ripeness of a problem of international magnitude were two: public opinion, "resulting from an agitation conducted by public-spirited private citizens; and/or an initiative, taken by international bodies of an unofficial character, to consider matters of international importance with a view to devising..."
international rules. Conferences of the latter type were known as rule-making or law-making conferences. The character of the Shanghai Conference has been examined in chapter II of this thesis.

Finally, it is necessary to consider very briefly the nature of the treaties concluded by various nations in their efforts to control illicit traffic in opium, as this would help determine the rules of international law, if any, in this matter. The treaties which had been concluded concerning control of the traffic in opium were bi-lateral. They were of "particular type", i.e., of limited application, and designed for the protection of the interests of the self-defence of the contracting parties. According to Schwarzenberger, "unorganised international society lacks any central law-making authority. The subjects of international law constitute sectional and conflicting loyalty areas of high potency. They cannot easily be persuaded to transfer to the international society functions which, however inadequately, they consider they can discharge themselves."

Therefore, from the above synoptic account it may be deduced that:

(i) there was no incidence of international law in the area of control of the traffic in opium, prior to the Shanghai Conference; in other words, there was no desire of states to have the mutual relations which their social nature rendered indispensable regulated with the greatest possible rationality and uniformity.
(ii) the evidence of international law in this area would be the bi-lateral treaties, unilateral declarations, instructions to diplomatic officials, laws of ordinances and the writings of jurists;

(iii) the importance of such bi-lateral treaties in this area of international law, as in all other areas, is to be recognised only if they are sufficient in number and contain similar subject-matter, and thus establish a general practice. The parties to the drug-treaties concluded during this period were unequal, i.e., one of them was not only politically more powerful, but also exercised control over the local administration, and the motives of the stronger parties behind these treaties being suspect, the practice established by such treaties should not be regarded as a progressive step in the development of international law in this area;

(iv) the pioneers of the international movement to regulate the drug-trade were faced with widely divergent national legislation, or in many countries no legislation at all. There was therefore no uniformity of general principles and comprehensive rules in the national laws concerning this matter.
CHAPTER I

FOOTNOTES.

SECTION I (A)

   "Drugs" in this context includes any substance capable of producing addiction or changing the psychophysiological condition of the person concerned.

   Wasson made a speculative study of Soma. However, he made attempts to establish that an hallucinogen called Soma which according to him was a plant as well as a god was in use among the Aryans some 3,500 years ago in the middle of the second millennium before Christ.

3. B. Inglis, op. cit., p. 28.
   In Peru, for example, it was popularly believed that the benediction of coca leaves was a condition precedent to prosperity in business.
   In Bolivia, coca leaf was so important in the personal lives of people that it became the practice of married men to throw a dollop of chewed coca leaf on to a rock before going on a journey in the belief that if it did not drop during their absence, their wives adhered to their marital vows.
   See further W. A. Waddell, Voyage dans le nord de la Bolivie, Paris, 1853.


5. Blum and Associates, Society and Drugs (Drugs I), San Francisco, 1969, p. 16.


7. See footnote 1.


20. *infra.*, (see footnotes 22 and 23).


23. Prince, Greenfield and Marriott, *op. cit.*, at p. 3.


31. Supra at pp. 5-6

32. infra., see supra at sect. I (B).

33. e.g. Dr. Hamilton Wright, Bishop Brent (both of American nationality), infra.


35. infra., sect. I (B)


38. infra., pp. 491-504
39. "Opium" is the Latin of "Opiyum". Mention of "opium" is found in the writings of Virgil (100 B.C.) e.g. "Sleep-giving poppy". Hippocrates (460-379 B.C.) called it "Onos".

It is the popular belief that "opium" was originally cultivated in China. In fact, in the Memorandum submitted by China at the Shanghai Conference, 1909 it was stated, inter alia, that "The poppy has therefore been unknown in China for at least twelve centuries, its medicinal use for nine centuries, and that the medicinal properties lay in the capsule for six centuries."


Many critics however deny the authenticity of the above statement. Dr. I. Macht stated that the poppy was first found in Asia Minor and then transplanted in Greece and that the Arabs introduced opium to the natives of Persia and India. It is more probable that the Persians learned the use of opium from the Babylonians, and historical surveys even suggest that the earliest known mention of the poppy is in the language of the Sumerians, who descended from the uplands of Central Asia into Southern Mesopotamia, there to found a kingdom some five or six thousand years before the birth of Christ.

For a detailed discussion on the historical origin of the poppy, see A.R. Neligan, The Opiyum Question, with special reference to Persia, John Bale Sons and Danielson, London, 1927.

Historical evidence however shows that the poppy grew in Egypt, Central Europe and Western Asia. Although the poppy is mentioned in Persian literature of the later period, and despite the fact that very little evidence substantiating the exact period of the first use of the poppy in Persia is available, historians still assert that opium in Persia was introduced by Asia Minor in any case not later than the 10th Century. Allen however holds the view that the poppy was originally a native agricultural product of Persia.

See further N. Allen, The Opiyum Trade, including a sketch of its history, extent, effects etc. as carried on in India and China, James P. Walker, Mass., U.S.A.

40. The Report of the Royal Commission on Opium, 1894, also suggested that it was coincident with the invasion of the Arabs of Sind in the eighth century that the mention of opium is found in the ancient Indian medical literature.

Lowes also suggested that probably "it was the inhabitants of what are now Turkey and Iran who were responsible for bringing the properties of opium to the attention of the peoples of India and China."

40. Opium was apparently not known to the Chinese previous to the Tang Dynasty (618-906). According to Sir George Watt, formerly Professor of Botany at the University of Calcutta, India and also Superintendent of the Indian Museum (Industrial Section), "opium poppy was extensively cultivated in China long anterior to the importation of Indian opium", and that it was in the sixteenth century that opium imports into China from India had been established. See George (Sir) Watt, The Commercial Products of India, being an abridgment of the Dictionary of the Economic Products of India", John Murray, London, 1908, at p. 646.


41. The origin of the coca plant in South America has not been established.

42. Supra., p. 18.


45. infra., pp. 21-23 and p. 36.

46. Particularly in the Greek City States.


49. L. Oppenheim, op. cit., p.


51. Even before Columbus discovered the sea-route to America, Marco Polo, in the thirteenth century, discovered China. The Spaniards also made attempts to find a west-ward passage through South America.
In fact, Europe started bringing agricultural and luxury products from the East as early as 1099. Such goods arrived in Cairo and Constantinople and therefore, they gradually found their way into Europe. On the other hand, in the mid-thirteenth century the Mongols or the Tartars marched towards the Danube, but they failed in their mission.

G. Schwarzenberger, Power Politics: A Study of World Society, Stevens, p. 28.

The Portuguese led by Prince Henry sailed not only to the Indian coast but to the African also, and on their way to India, a Portuguese fleet commanded by Pedro Cabral discovered Brazil in 1500. See further J.P. Caloger, A History of Brazil, (Translated and edited by P.A. Martin), Chapel Hill, 1939.


F.T. Merrill, Japan and the Opium Menace, (International Secretariat Institute of Pacific Relations and the Foreign Policy Association), New York, 1942, p. 5.

Bulletin on Narcotics, vol. VI, No. 3-4, p. 1. This edict was issued for the purpose of prohibiting the cultivation of opium beyond a certain limit.

The first two edicts were issued in 1729 and 1796 respectively.

Accounts and Papers, 1840, vol. 36, p. 26. After the East India Company's monopoly in the opium trade was ended, a renewed effort to found this trade in China was made by Lord Napier. This act of Lord Napier made him very unpopular both in Britain and China. In 1833 he was appointed Chief Superintendent of the British mission to China.

On 12th March, 1840.


Parliamentary Papers, 1857.
H.J.T. Palmerston (1784-1865), British Foreign Secretary, 1830-'34, 1835-'41 and 1846-'51. Prime Minister (1855-'58, 1859-'65).

The Encyclopaedia Britannica (1971 Edition) also confirms that "Relations with China had deteriorated during the 1830's and in 1839, in an attempt to suppress the opium trade, the Chinese confiscated cargoes belonging to British merchants and harassed the British residents in Canton. Although his strong protests to the Chinese were criticized in Parliament in April 1840, Palmerston won the debate and shortly afterward a punitive
62. expedition was sent to Canton. The Treaty of Nanking (1842), which ended the First Chinese War, was concluded after Palmerston had ceased to be Foreign Secretary, but its terms - the cession of Hong Kong and the opening of five treaty ports to foreign traders - were the direct results of Palmerston's policy. "p. 188.

63. November 8, 1858; see also The British Foreign and State Papers, vol. 48, pp. 58 and 60

64. Lord Elgin (1811–63). Upon the outbreak of the Arrow War, Lord Elgin accompanied the expedition to China as a special envoy. In 1858, he negotiated the Treaty of Tientsin with the Chinese, successfully securing British demands. Interestingly enough, it was during his regime as Viceroy and Governor General of India that the rule of the East India Company was brought to an end. See further Encyclopaedia Britannica, op. cit., p. 281.


65. In 1860 official information revealed that all opium consumed in Western China was of local origin; see further Calcutta Papers, 1870 and Supplement, 1872, p. 16. Imperial edicts and laws bore no fruit presumably because opium had by that time proved to be a promising profit-earning business.

66. Historians are of the opinion that the opium monopoly of the Moghuls in India began a little later than Akbar's time. See further George (Sir) Watt, The Commercial Products of India; op. cit., p. 847.


70. Earl Cornwallis (1738-1805), British General and Statesman. Governor General of India (1786-93). Although generally criticised for his ill-thought out action for the permanent settlement for Bengal (India), his government in India was notable for a series of administrative reforms culminating in the Cornwallis' Code. See further Encyclopaedia Britannica, op. cit., p. 515.
70. Cornwallis introduced a pricing system, i.e., a minimum price which the contractors were required to pay the ryots (i.e., cultivators) and adopted measures for the welfare of peasants. A good account of his contribution to the Indian administration may be found in the Duncan Records, vol. II (1788).

71. Malwa opium, commonly known as Camboy opium, was produced in the central part of India and Rajputana. The trade in Malwa opium was conducted by the Portuguese without any restriction except transit duty. It found a good market in China mainly at the unauthorised ports.


73. Vol. VI, p. 52.

74. The Treaty of Amity and Commerce of December 1, 1862 with Portugal and the Agreement between Hong Kong and Kwantung, as measures to prevent the smuggling of opium by junks, could not stop the evil totally although they diminished it to a considerable extent.


76. P. Lowes, op. cit., p. 74.

77. Ibid.

78. China Papers, No. 1, 1908 (Inclosure in No. 3)


Belgium-China: Treaty of Friendship, Commerce and Navigation of November 2, 1865.


France-China: Treaty of Tientsin of June 27, 1858, modified by the Treaty of Peace, Friendship and Commerce of June 9, 1885, also regulations restricting trade in opium in the Annam Frontier area were determined jointly by France and China on April 25, 1886.

Germany-China: By Article 5 of the "Commercial Relations" of the
(i) German Treaty of Tientsin (1861) trade in opium was legalised.
(ii) Agreement of April 17, 1899 concerning the establishment of a maritime customs office at Tsingtao.
(iii) Agreement of April 17, 1904, as amended on December 1, 1905, concerning the establishment of a maritime customs office at Tsingtao.
<table>
<thead>
<tr>
<th>Country</th>
<th>Treaties and Agreements</th>
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<tr>
<td>Italy-China</td>
<td>Treaty of Friendship, Commerce and Navigation of October 26, 1866.</td>
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<tr>
<td>Mexico-China</td>
<td>Treaty of Commerce of December 14, 1900.</td>
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<tr>
<td>Peru-China</td>
<td>Treaty of Commerce of June 26, 1875.</td>
</tr>
</tbody>
</table>
| Portugal-China| (i) Treaty of Tientsin of August 13, 1862.  
(ii) Protocol, Treaty, Convention and Agreement of March 26, 1887.  
(iii) Treaty regarding Collection of Duty on Opium of November 14, 1904. |
| Russia-China | (i) Treaty of Peace, Friendship, Commerce and Navigation of June 1-13, 1858.  
| Spain-China  | Treaty between Her Most Catholic Majesty Donna Isabel and His Majesty the Emperor of China of May 10, 1867. |
| Sweden and Norway-China | Treaty of Peace, Amity and Commerce of March 20, 1847. |
The provision concerning traffic in opium in this Treaty was superseded by the Treaty of 1858.  
(ii) Treaty as to Commercial Intercourse and Judicial Procedure concluded on November 17, 1860.  
(iii) Treaty as to Commercial Relations concluded on October 8, 1903. |
| U.S.A.(America)-Japan | (i) Treaty of Amity and Commerce concluded on July 29, 1858.  
(ii) Treaty of Commerce and Navigation concluded on November 22, 1894. |

See further 3 American Journal of International Law, 1909, Supplement, pp. 253-269.

81. See the Imperial Ordinance of October 22, 1901.

82. infra., p. 344.

83. 4 Parliamentary Debates, May, 1906, CXVIII, pp. 505-515.


85. "...I appeal to Your Excellency's high sense of duty, so often and so strongly expressed, to this helpless and perverse people, whether we, the representatives of the Western and Christian nations, ought to consider our work done without some attempt to induce or compel an adjustment of the pernicious difficulty..."

Reed to Elgin, 13 September, 1858, China Correspondence, 1859. Reprinted in American Journal of International Law, 1909, op. cit., pp. 270-274.

86. 3 Hansard, LXVIII, 362 ff.

87. Earl of Shaftesbury (1801-1885) (also called Lord Ashley from 1811-1851). A social and industrial reformer in 19th century England and a leader of the evangelical movement within the Church of England. Among other contributions to industrial reform, he pioneered the factory reform legislation in England.


88. 3 Hansard CXLIV, 2027-2033.

89. "We think now that opium is made contraband by the law of China, and that its importation into China is made by Chinese law a capital crime, the continuance of the Company's practice of manufacturing and selling this opium in a form specially adopted to the Chinese contraband trade, though not an actual and direct infringement of the treaty, is yet at variance with its spirit and intention, and with the conduct due to the Chinese Government by that of Great Britain as a friendly power, bound by a treaty which implies that all smuggling with China will be disapproved by Great Britain."

Quoted in J. Romtree's "The Imperial Drug Trade," op. cit., p. 112.


A series of outrages against missionaries began in 1865, and incendiary placards charged the Christians not only with kidnapping and vile offences, but also with claiming exemption from the laws by which men ought to be governed. After the massacre at the cathedral and orphanage at Tientsin in 1870, the Chinese Government issued a circular to its foreign representatives, proposing as a remedy, that all foreigners visiting or residing within the country for purposes of propaganda, should divest themselves of extra-territorial privileges, and become subject to territorial jurisdiction.


J. Rowntree, op. cit., p. 246.

Robert (Sir) Hart, op. cit., p. 68; see also H.B. Morse, The International Relations of the Chinese Empire, (vol. II. the Period of Submission, 1861-1893). London (Longmans), 1918.

See further F.S. Lyons, op. cit.

Lord Ashley was the Commissioner of the Indian Board of Control (see footnote 87).


A petition was made by the cultivators to Lord Brassey, stating:

The following: "We have heard that your honours come to India to ask us whether we like to cultivate opium or not ... Sugarcane and potato cultivation we find much more profitable. We cultivate the poppy under pressure from Government, otherwise we would not do it, and our prayer is that we be released from this trouble."

See further J. Rowntree, op. cit., p. 193.

A member of the Supreme Council who in 1858-60, in 1864 and again in 1868-69 advocated changes in the British opium policy on moral grounds. He was also a member of the then Allahabad Board of Revenue (India).

Sir Charles Trevelyan, a financial member of the Supreme Council, advocated abolition of the British opium monopoly on economic grounds.


According to some of the local merchants, "any action on their part towards the stoppage of the importation of Indian opium into China would be unhampered by the treaty obligations entered into by them with the British Government."


57


108. (a) The Opium Exclusion Act was passed on February 9, 1909;

(b) On January 17, 1914 the government of the U.S. passed another Act with a view to prohibiting the re-exportation of opium; and

(c) The Harrison Act of December 17, 1914 brought under government control all persons engaged in the manufacture, sale, distribution, importation and exportation of opium, coca leaves or any other derivatives.

109. The Philippine Committee itself contrasted the American and British attitudes concerning the prohibition of trade in opium. According to its Report:

"The laws of the English colonies visited, Burma exempted, accomplish the purpose for which they were drafted. The draft of the report of the Royal Commission represents the official mind of Great Britain in the Orient, and it is to the effect that (1) the use of opium is not necessarily injurious to orientals, in some circumstances possibly being beneficial; (2) when it obtains as a fixed habit it is useless to try to extirpate it; and (3) as it affords a means of revenue, the government may as well as not seize the opportunity it gives of swelling its credit. As carefully drawn laws protecting trade interests they are above criticism, barring their failure to quench the practice of smuggling. They do not pretend to be laws for the protection of a people against a vice, but rather commercial regulations guarding a branch of commerce." See Report of the Committee, op. cit., p. 49.

110. The Right Reverend Charles H. Brent, Protestant Episcopal Bishop of the Philippine Island. For the letter, see House Doc. 360, p. vii, 68th Congress, first session.


112. See further, P. Lqwes, op. cit., p. 109.

114. A. Zimmern, op. cit., 35. The Geneva Conference of 1864 (which drew up the Red Cross Convention) was convened at the initiative of Henry Dunant and Tolstoi.


115. supra, ¶ 31-34


119. See further S.H. Bailey, op. cit., p. 20.
CHAPTER II

A. INTERNATIONAL ACTION FOR THE CONTROL
OF TRADE AND TRAFFIC IN DRUGS
BETWEEN 1909 AND 1911

(a) Introduction

In this chapter an attempt will be made to show the progress made by states in their first effort to control the trade and traffic in opium and other allied substances by convening an international conference which is known as the Shanghai Opium Conference. An attempt will also be made to depict the conflict of interests, both economic and political, among states and also the state of the economic order until the First World War. Such a study will help assess the improvements, if any, made in international economic relations during the period under consideration and establish working hypotheses for further research. An account will also be given of the activities of the non-governmental organisations which were engaged in this area of international law. The aim is to produce a purely factual narrative as neutral as possible and to draw logical conclusions; speculation on motives will be kept to a minimum, otherwise, the whole study would be rendered too hypothetical.

However, it was the Right Reverend Brent, who, in his
letter of July 24, 1906, addressed to President Roosevelt, was bold enough to suggest that the question of the illicit traffic in opium deserved consideration on an international level. The Shanghai Commission met at Shanghai on February 1, 1909. The Commission extended its jurisdiction beyond the Far East as "during the passage of the diplomatic correspondence it developed that the opium habit was no longer confined to the Far Eastern countries, and that the United States especially had become contaminated through the presence of a larger Chinese population. Further, that the morphine habit was rapidly spreading over the world." The response to this alarming situation, of course, helped to bring representatives from more countries, whether involved directly or indirectly in the opium business. The necessity for such an international action was appreciated by the great and small nations alike, but how far they acted on that necessity is still a matter for consideration.

(b) The Shanghai Commission

(i) Objectives

The main object of the Commission, in the words of the Viceroy of the Liang Kiang was "to consider the question of putting a stop to the consumption of opium. .... for the whole world if by the labours of the Conference a way be found to shorten the limit and bring about the abolition of opium at an early date." As a
preliminary to this avowed end, a study was to be made of all phases of the opium question in each country represented on the Commission. Reports were invited from the governments concerned, but no structure was indicated in accordance with which reports should have been prepared. The United States however submitted a draft which was accepted by other states as the best model according to which the investigation programme should be conducted. This model is shown below:

1. The importation of crude opium, its derivatives and Chandu (opium prepared for smoking);
2. Internal consumption of crude opium, both licit and illicit;
3. Internal manufacture and use of Chandu;
4. Manufacture of morphine and other derivatives;
5. Use of crude drugs and preparations;
6. Use of morphine and other derivatives, both licit and illicit;
7. Extent of poppy cultivation in America;
8. Possibilities of poppy cultivation;
9. Federal laws regarding the importation of opium; and
10. Municipal laws governing the use of opium and its derivatives.

The Commission also aimed at reaching some final conclusions of a practical character regarding the traffic in opium on the basis of ascertained fact without leaving any scope for emotion. Each
country concerned was kept alert to its responsibility when the Commission suggested that each country should obtain "such information regarding the conditions at home as would enlighten the Commission, and enable it to carry the work before them to a successful issue." In order to support the objectives of the Commission, the then President of the United States did not omit to convey his good wishes to the Commission, by saying, "I extend to the Commissioners today assembled my good wishes and conviction that their labours will be of the greatest importance towards the general suppression of the opium evil throughout the world."  

(ii) An Analysis of the Reports Submitted by the Participant States.

It became apparent from the reports that each participant state had regulatory measures available which offered at least the theoretical possibility of the control of the production and traffic in opium. Some of them, apart from the United States and Great Britain, had treaty relations with China restricting the traffic in opium to legitimate purposes only. In spite of such regulations, private individuals, in certain countries, had started the industry of boiling crude opium into smoking opium and shipping it abroad, and this type of private venture received the support of private organisations. Turkey however presented a different kind of problem. She was one of the largest opium producing countries in the world, yet her government was not represented on the Shanghai
Commissions, although invited, and indeed growth of the poppy has been encouraged in Turkey until recently. The Australian report asserted that the powers of the Commonwealth Government were not sufficient to ensure the suppression of opium dens because the mere possession of the drug was not an offence against the Commonwealth law. Although the reports showed that a few countries were either free from the vice or very little affected by it, it was largely a world-wide problem. This serves to prove that the Shanghai Commission was a necessity not only for China and other Asian countries but also for the world at large.

(iii) An Analysis of the Shanghai Resolutions

The text of Resolution No. 2 was:

"That in view of the action taken by the Government of China in suppressing the practice of Opium smoking, and by other Governments to the same end, the International Opium Commission recommends that each Delegation concerned move its own Government to take measures for the gradual suppression of the practice of Opium smoking in its own territories and possessions, with due regard to the varying circumstances of each country concerned."

The text of Resolution No. 3 was:

"That the International Opium Commission finds that the use of Opium in any form otherwise than for medical purposes is held by almost every participating country to be a matter
for prohibition or for careful regulation; and that each country in the administration of its system of regulation purports to be aiming, as opportunity offers, at progressively increasing stringency. In recording these conclusions the International Opium Commission recognises the wide variations between the conditions prevailing in the different countries, but it would urge on the attention of the Governments concerned the desirability of a re-examination of their systems of regulation in the light of the experience of other countries dealing with the same problem."

Opium smoking was still considered to be legitimate by many governments. Such resolutions can be effective only when opium smoking has been totally prohibited by all governments. If the objective of the Shanghai Commission was to abolish opium smoking totally, these resolutions should have been drafted differently.

Resolution No.4 dealt with the question of the smuggling of opium and its derivatives. The text of this Resolution was:

"That the International Opium Commission finds that each Government represented has strict laws which are aimed directly or indirectly to prevent the smuggling of Opium, its alkaloids, derivatives and preparations into their respective territories; in the judgment of the International Opium Commission it is also the duty of all countries to adopt
reasonable measures to prevent at ports of departure the Shipment of Opium, its alkaloids, derivatives and preparations, to any country which prohibits the entry of any Opium, its alkaloids, derivatives and preparations."

The word "duty" in this resolution denotes "obligation", although the word is used in a wider sense to designate cases of moral obligation which lie outside the juridical sphere. Although the Shanghai Commission urged states to adopt reasonable measures to prevent at ports of departure the shipment of opium, no definite legal obligation was imposed upon states in this matter. Nevertheless, the Commission's idea of adopting preventive measures against the illicit traffic of opium was implemented by the International Opium Convention signed at Geneva in 1925, which made the import certificates and export authorisations obligatory for the parties to the convention, a provision also embodied in the Single Convention on Narcotic Drugs of 1961 with some small modifications.

In Resolution No. 5 the Commission drew the attention of the participant countries to the danger of the "unrestricted manufacture", sale and distribution of morphine and also other derivatives of opium. This resolution was basically confined to the production, distribution and sale of morphine in an unrestricted manner. Although the Commission described itself as an International Opium Commission, it invariably extended its recommendations to cover the field of "narcotic drugs" also.
This resolution however paved the way to the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 1931. It may also be stated that the idea contained in this resolution (i.e., the concept of drastic measures of governmental control of the manufacture, sale and distribution of drugs) culminated in the adoption of the Multilingual List of Narcotic Drugs under international control.

Resolutions 7 and 8 were solely directed towards those governments which possessed Concessions and Settlements in China and which had been trading in opium with China, to take effective and prompt measures for the prohibition of the trade and manufacture of such substances as contain opium and its derivatives.

Although the Commission in Resolution No. 9 recommended the governments concerned to apply their respective pharmaceutical laws to their respective subjects in the Consular districts, Concessions and Settlements in China, it nevertheless, indirectly indicated the importance of having stringent pharmaceutical laws in the matter of controlling the traffic in opium and allied drugs. In fact, even today, had the pharmaceutical laws of the countries concerned been sufficiently stringent and had the scope of the uses of narcotics for medicinal purposes been determined with exactitude, the problem of illicit traffic in narcotics might have been solved to a great extent.
From a further study of the Report of the Proceedings of the Commission it will appear that all the resolutions were prepared by the delegates of three countries only, viz. China, Great Britain and the United States of America.

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<th>Resolution</th>
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<td>1</td>
<td>Great Britain</td>
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<td>2, 3 and 6</td>
<td>A compromise between Great Britain and the United States of America</td>
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<td>4 and 9</td>
<td>United States</td>
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<td>5</td>
<td>Great Britain and the United States of America (a joint proposal)</td>
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<td>7 and 8</td>
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In this connection it seems appropriate to explain the nature of the differences of opinion which found expression in the resolutions proposed by the delegates concerned.

The economic interests of the powerful states reigned supreme, and consequently, it proved difficult for the states having such interests to let loose the reins. Resolution No. 2 was the outcome of a compromise between the American and British resolutions, but the original American resolution supported the total prohibition, and was subsequently re-phrased to "gradual suppression of the practice of opium smoking" on the proposal of the British delegate. Since opium smoking was a social evil, it would perhaps have been better to make an attempt for its immediate rather than gradual suppression. To one participant, at least, in view of the existing attitudes of states, total suppression of the
opium evil appeared to be an unattainable ideal, yet the argument put forward by the Chinese delegate as a plea for total abolition of the evil merits quotation in full. "The sentiment of the people has been stirred as it has never been stirred before during two thousand odd years of history; and as the Chairman has stated that sentiment rules the world so it rules China today, and we firmly believe that, where a people are convinced that a certain moral reform ought to be carried out, sentiment can overcome almost insurmountable difficulties." In order to substantiate his conviction, the Chinese delegate also cited as an example that the opium dens that existed in Chengtu had all been closed. The Dutch delegate, in contradiction to his own statement, emphasised the necessity for devising measures which would prevent any person concerned in the management of a monopoly or farm from being interested to any degree in the sale of opium. The sixth resolution of the International Opium Commission, as stated before, was arrived at as a result of a compromise between the British and the U.S. delegates. The original U.S. resolution was in favour of a concerted effort to be made by each government represented in the Commission to assist every other government in the solution of its internal opium problem. The British delegate objected on the grounds that the "principle which is aimed at in this resolution is a direct interference with the internal administration of a country, which I do not think it within our
power to deal with, and on that ground alone I think it would be imprudent to accept the resolution which has been introduced by the American delegation. 31 Although the American delegation was willing to omit the word "each" before "government" if the British government would vote for that resolution, 32 the British government did not agree to this, 33 and their firm conviction was that the matter was absolutely within the domestic jurisdiction of each individual government. It is arguable that the British delegate showed too great a concern for the concept of national sovereignty in the context of the prevention of the drug habit and the smuggling of drugs. The question as to whether or not international regulations concerning suppression of the illicit traffic in drugs would amount to infringement of national sovereignty is still discussed today, and is relevant even after sixty-five years. States may refuse to sign, ratify or to accede to treaties on the grounds that they infringe national sovereignty. 34 The Shanghai Commission did not adopt any Convention, 35 nor did it pass any binding resolution.

This Commission was neither convened by a particular person, 36 as in the case of the Geneva Conference of 1864, nor by international bodies of an unofficial character. It was therefore a hybrid between the two traditional types of conference. However, this Commission, like many other nineteenth century international conferences was an assemblage of sovereign states of equal status, but differing in experience and outlook,
in economic development and power. Nevertheless, the states participants of the Commission, offered the world an opportunity to assess the existing "power metric." A marked conflict of interests was also revealed, that is, while the weaker states were anxious to retain their rights, the stronger sought to keep up their prestige and superiority. In other words, an attempt was made to achieve an equilibrium of interests between two unequal forces which had been moving in opposite directions. For the weaker it was a challenge to legality and morality, for the stronger a challenge to power and for the neutral, a marriage between the two. Nevertheless, the fact remained that the weaker needed the stronger as much as the stronger needed the weaker for their respective interests, which in the former case represented economic survival and in the latter, economic fulfilment. However, the state of the contemporary international legal order has been discussed in a subsequent section of this chapter.

(iii) China re-visited

The British authorities made a plea to extend the probationary period of the Tientsin Agreement of 1903 by a further period of three years. Chinese pressures however were too strong, and the non-governmental pressure exerted by the missionary organisations, created a great impact upon this issue. The fact that China was making attempts to suppress the cultivation
of poppies was duly confirmed by Sir Alexander Hosie of H.M.'s Consular Service, who was commissioned to make a tour of investigation through certain parts of China. The opposition from China was so strong that it even surpassed the Indian undertaking to secure the complete cessation of her opium trade by 1917, and on May 8, 1911 a fresh Agreement was signed between Britain and China. Although the Shanghai Commission did not conclude an international convention, yet it created an indirect impact upon the international community. The legitimate trade for Indian opium was lost, and a staggering blow was dealt to the English Exchequer. In 1913 the Under Secretary for India in his Indian Budget Speech declared that "the remarkable feature of the year is that this is the first budget in which no receipts can be expected from the Indo-Chinese opium traffic." 

The question that may be posed is whether Britain really did intend to stop the opium trade with China completely. Had Britain intended to do so, then there would hardly have seemed any necessity to pursue this matter up to the Hague Conference. The author ventures to say that the Hague Conference was necessary, and in order to justify this statement it is worthwhile to examine the relevant provisions of the Tientsin Agreement of 1911 between Britain and China. Article 2 of the Agreement stipulated, inter alia, "His Majesty's Government agree that the export of opium from India to China shall cease in less than seven years if clear proof is given of the complete absence of production
of native opium in China. The question arises as to what would have been the effect if no clear proof had been given of the complete absence of production of native opium in China, and in that case, whether China would have reverted to her original position. The wording of the article tends to show that Britain concluded this Agreement not inspired by any idealistic motive, but as a result of the pressure brought upon her from outside. Therefore, there was a tendency to maintain a strong foothold in China as far as the opium trade was concerned. Article 3 of the Agreement showed the same tendency. In Article 5 His Majesty's Government agreed to the despatch by China of an official to India to watch the opium sales, on condition that such an official would have no power of interference; however, in accordance with article 4 of the Agreement it was permissible for His Majesty's Government to obtain evidence continuously of the diminution of the cultivation, by local inquiries and investigation conducted by one or more British officials. Such evidence, it is submitted, was not likely to be fruitful, if the officials were not given adequate power to call evidence.

The other question that may be posed is whether the 1911 Agreement was designed to improve the existing conditions in China as far as the opium trade was concerned, and also whether China was in a position to free herself from the evil completely. On March 31, 1917 the Shanghai Municipal Council revoked all licences for the opium shops and prohibited the sale of opium within the International Settlement. Importation of opium from
India stopped officially on April 1, 1917, but interestingly enough, in accordance with the 1911 Agreement, six provinces were left open to traffic in opium from India until April 1, 1917. To this must be added the accumulated opium which China had already stored before the aforesaid Act came into force. Much stricter prohibitory measures were adopted in China to stop local production of opium, and in 1917 no less than 227 cases of opium offenses were brought before the Shanghai Mixed Court. This was however only one side of the story. Behind the curtain illicit traffic in opium still thrived. At Shanghai smuggled opium from the North and Hong Kong was being constantly detected and seized. Although many nationalities were engaged in the nefarious traffic, the Japanese figured conspicuously in carrying on the trade surreptitiously. Smuggling was prevalent both in the North and South of China and the products used to be smuggled from Formosa and even from Persia by fishing boats and junks. Smuggling of opium from Japan also took place, and this added another dimension to the problem. The 1911 Agreement therefore failed to prevent illicit traffic in opium in China.
(iv) An Evaluation of the Shanghai Commission

The Right Reverend Bishop Brent reminded the delegates that "they were neither Envoys Extraordinary nor Ministers Plenipotentiary; .... that none of the Governments represented would be bound to accept the conclusions or to act upon the recommendations of the Commission; consequently, they would not in any sense commit their Governments to any definite course of action by the views which they might express, individually or collectively, during the course of the enquiry." The importance of the Shanghai Commission, however, lay not in its structural ingenuity, but in its very important role in creating a consensus. Although the terms of reference of the Commission were neither extended to the scientific investigation of anti-opium remedies and of the properties and effects of opium and its products, nor to any resolution which involved existing international treaties and agreements, the Commission strove "to take a great problem one step forward in the cause of development and progress." It "symbolized the awakening of a worldwide determination to rid the world of the opium evil and the realization that addiction to manufactured drugs was also beginning to menace the welfare of humanity." It paved the way to the Hague Opium Convention of 1912.
B. INTERNATIONAL ACTION FOR THE
CONTROL OF TRADE AND TRAFFIC
IN OPium BETWEEN 1912 AND 1919.

(a) Introduction

Dr. Lowes pointed out that the "resolutions of Shanghai set the limits which succeeding reformers could achieve." The three main participants of the Shanghai Commission, viz. China, Great Britain and the United States conspicuously maintained their individual approach towards their respective problems and interests. China had a vital interest in the eradication of the habit of opium-smoking and also illicit traffic in opium; the United States showed herself sympathetic to Chinese wishes, and it was due to her efforts that the Shanghai Commission had been convened. As far as Great Britain was concerned, the question of the eradication of opium-smoking in China had a direct bearing upon British revenue. The resolutions of the Shanghai Commission were not implemented, and indeed, the participants were not bound to do so. It proved to be difficult to attain a compromise among the disparate ideas of the three main participants despite the fact that the U.S. and Chinese proposals were rather similar in some respects. The British were still meditating over the Indo-Chinese Agreement which was due to be renewed in 1910.
The Shanghai resolutions were construed by many philanthropists as a great step towards the suppression of opium-smoking and the control of traffic in opium, but the delay in their implementation by the participants made the philanthropists pursue their programme with a new vigour. In the summer of 1910, Bishop Brent while in England to attend the Missionary Conference wrote to Dr. Hamilton Wright, "I shall write again after I have talked with the Archbishop, Lord Crewe and Sir Edward Grey. ... I am to be at rather a notable dinner to-night, Roosevelt, Morley, Cromer, Roberts, Sir Edward Grey, Crewe, Asquith and a distinguished et cetera. ... am expecting to talk to our old friend the enemy Sir Cecil." Bishop Brent unfortunately failed to persuade the British friend on that occasion. The London and Edinburgh Committee for Suppressing the Indian-Chinese Opium Trade sent a joint memorandum to the Foreign Office registering their protest. Opposition from within the British parliament. Mr. Laidlow made an unofficial verbal report of the Proceedings of the Shanghai Commission to the House of Commons.

In the meantime, proposals for convening the Hague Conference were in progress, and Bishop Brent, Dr. Hamilton Wright and ultimately the U.S. State Department were determined to keep up the pressure.

The Hague Opium Convention of 1912 was found necessary not for
the purpose of humiliating any particular country for inaction in the restraint of trade in opium, but as a means of adopting some effective measures on an international level to prevent the illicit traffic in opium. The Anglo-Chinese affair was only one example of the gravity of the problem. The task of the pioneers was difficult; the lessons of the Shanghai Commission were still pertinent and therefore, the immediate problem was how to attain universality both in representation at the Conference and in application of the Convention. Considerable hesitation to participate in the Hague Opium Conference prevailed amongst some countries, but Dr. Hamilton Wright and Bishop Brent were destined to succeed. This Conference was convened on Friday, December 1, 1911 and the Right Honourable Sir Cecil Clementi Smith, at the end of the Proceedings, proposed a cordial vote of thanks to be offered to Bishop Brent "for the dignity, impartiality and ability" with which he had discharged his duties as President. This Conference led to the conclusion of the Hague Opium Convention of 1912.
(b) The Hague Opium Convention of 1912

The Hague Opium Convention of 1912 was the first international Convention in which an attempt was made to suppress the abuse of opium and other related substances. The Preamble to the Convention read:

"Desirous of advancing a step further on the road opened by the International Commission of Shanghai of 1909."

This Convention consisted of six chapters which dealt exclusively with opium (raw and prepared) and related substances (cocaine, morphine etc.), although a special chapter (chapter VI) was made applicable only to China giving effect to some of the Shanghai resolutions. The Convention did not come into force until the date when the Treaty of Peace with Germany became effective.

(i) An Analysis of the Convention

On the recommendation of the Programme Committee, definitions of "raw" and "prepared" opium as drawn up by the technical delegates were approved at the third plenary session. According to these definitions "raw opium" is the spontaneously coagulated juice obtained from the capsules of the Papaver Somniferum, and which has been submitted only to the necessary manipulations for packing and transport. "Prepared opium" is
the "product of raw opium obtained by a series of special operations, especially by dissolving, boiling, heating and fermentation, having for their object its transformation into an extract suitable for consumption. Prepared opium shall include dross and any other residues remaining when opium has been smoked." 64 It is to be noted that there was not much controversy concerning the definition of "opium", whether "raw" or "prepared" at the First Opium Conference. It is a matter for the medical profession to decide what constitutes "opium" whether "raw" or "prepared", but it is true to say that the Hague Opium Convention of 1912 defined "opium" whether "raw", "prepared" or "medicinal", and other necessarily related substances such as "morphine" and "cocaine". This Convention was however limited only to opium.

The French government however asked for an extension of the provisions of the Hague Opium Convention to cover those substances which produce effects similar to those produced by opium and its derivatives. The Council of the League of Nations at its meeting on February 1, 1923 adopted a resolution in order to refer the observations of the governments on the list of drugs submitted by the French government which were not included in the Hague Opium Convention, to the Joint Sub-Committee for consideration and report. 65 Article 1, which is one of the most important articles,
needs discussion. This article provides that the Contracting Powers:

"shall enact effective laws or regulations for the control of the production and distribution of raw opium; unless laws or regulations on the subject are already in existence."

It can be seen that the responsibility for enacting laws and regulations in this field lay with the Contracting Powers. As it was exclusively a matter within the respective domestic jurisdiction of the Contracting Powers, the efficacy of such provisions obviously very much depended upon the good intentions of the Powers concerned. The Convention, however, did not make any provision in this respect with regard to non-contracting powers. Therefore, the door to illicit traffic in opium was left open to the non-contracting powers.

It is now necessary to consider the other major provisions of the article, i.e., the control of the production and distribution of raw opium. This provision was the genesis of many subsequent conventions in this field. However, as far as the 1912 Convention is concerned, it failed to define the extent to which the production of raw opium should be controlled. It was only a pious declaration by the Contracting Powers. Unless there were some systematic rules for domestic control any such declaration would prove to be nugatory.
Re: Control of export and import of opium.

Articles 3, 5, 7, 8 and 13

The Contracting Powers undertook an obligation to prevent the export of raw opium to countries which had prohibited its entry, and also to control the export of raw opium to countries which had restricted its import. Such export and import of raw opium was only permissible by duly authorised persons, and to persons furnished with licences or permits provided for by the laws or regulations of the importing country. It may be noted that the Convention did not provide for any method by which the obligations of the Contracting Powers should be fulfilled. As a measure to combat the opium trade, a government monopoly of trade in opium might have been a probable remedy. The Dutch delegate however suggested that the trade in opium should be left exclusively to governments. He said, "... I have come to the conclusion that freedom of traffic in an article as dangerous as opium, is not freedom but rather licence (ungebundenheit) and I make, in the name of my Delegation, in the name of my Government, a warm appeal to you, Gentlemen, to withdraw this commerce from the hands of our greatest enemies, the contraband dealers in opium, and to place it in the safe hands of our Governments." The appeal of the Dutch delegate to place the trade exclusively in the hands of the governments did not gain much support as the Convention finally provided that "the Contracting Powers shall not allow the import
and export of raw opium except by duly authorised persons." 67

Although there was no provision for any effective preventive action against unauthorised import and export trade in opium, an attempt was made to impose more restrictions on import and export by giving greater power to the customs officers. This move was made by the British government and it was revealed at the ninth plenary session of the International Opium Conference. The British government was prepared to impose more restrictions upon opium trade with foreign countries, provided of course the foreign governments were ready to take reciprocal action, i.e., by adopting stringent regulations on the manufacture of and trade in morphine and cocaine. 68

The provisions contained in Article 7 of the Convention related to "prepared opium" only. This provision was rather vague and indefinite. It did not specify how and by what time the Contracting Powers should have prohibited the export of "prepared opium". It might also be assumed that even if the import and export had been stopped under the provisions of this article, the export of raw opium might have been continued. Consequently, by the importation of raw opium, the way to the manufacture of prepared opium was kept open.

According to paragraph (c) of Article 8 of the Convention the Contracting Powers which were not ready to prohibit immediately the export of prepared opium "shall prohibit the consignment of prepared opium to a country which desires to restrict its entry, unless the exporter complies with the regulations of the importing country." The phrase "which desires to restrict its entry" clearly signifies that entry of a consignment of prepared opium was still
left to the desire of the country concerned, and no specific legal prohibition was provided for. Article 13 of the Convention stipulated that the Contracting Powers "shall use their best endeavours to adopt, or cause to be adopted, measures to ensure that morphine, cocaine, and their respective salts shall not be exported from their countries, possessions, colonies." The expression "shall use their best endeavours" is vague and does not appear to have created any legal obligation. Despite the absence of any consistent state practice, Article 6 of the Convention provided that the Contracting Powers "shall take measures for the gradual and effective suppression of the manufacture of, internal trade in, and use of prepared opium, with due regard to the varying circumstances of each country concerned, unless regulations on the subject are already in existence." With this provision may also be read the Preamble to the Convention. The Convention did not mention how measures leading to effective suppression of the manufacture of, internal trade in, and use of prepared opium could be adopted and made effective. As it appears from the provision of the Article, it was for each Contracting Power to decide as to how gradual suppression of the manufacture of and internal trade in opium could be brought into effect. The Convention was equally silent as to the consequences of the failure of a particular Contracting Power to take action towards the gradual and effective suppression of the manufacture of, internal trade in, and use of prepared opium.

Article 9 however made some positive efforts towards the limitation of the manufacture, sale and use of morphine, cocaine and their respective salts, by the enactment of pharmacy laws or regulations.
Again, it left it to the Contracting Powers to determine how much morphine and cocaine should be manufactured, used or sold. The initiative towards the introduction of pharmacy laws and regulations to limit the manufacture, sale etc. of morphine, cocaine and their respective salts to legitimate purposes, was taken by the British delegate at the Conference. As a clarification of the word "legitimate" the British delegate (Sir William Collins) indicated that the word had been introduced with a view to "covering the chemical and scientific use of morphine." 71 Apart from this the Convention failed to define the scope of "medical and legitimate" use of opium, morphine, cocaine and their respective salts. Also, the production and distribution of raw opium was to be subjected to control, but "no limitation was placed on the quantity to be produced or distributed except by the indirect means of the obligation to prohibit or restrict export in accordance with the legal or administrative requirements of the importing countries. Nor were any measures indicated as to how control over production and distribution was to be effected." 72

The mention of penal measures can be found only in Article 20 73 of the Convention. This was only a pious hope. The reasons that the Contracting Powers did not take the initiative of incorporating any penal measures may perhaps be traced in the opening speech of the Chairman of the Conference: "In approaching our task, we have the consciousness that any legislative action which may ultimately result from the work of the Conference will have behind it a public opinion that is worldwide. Without this, an international agreement or legislative effort would be, if not futile, at any rate of minor value.
Sentiment without formal expression lacks that precision and definiteness which human nature looks to as a support. On the other hand, more superimposed law is impotent.\textsuperscript{74} The attitude of the governments who participated in the Hague Opium Conference may be gathered from the foregoing discourse, and this will be discussed in the subsequent section.

(ii) An Evaluation of the Convention

A perusal of the Summary of the Minutes reveals the attitude of the participating states towards the conclusion of an international convention in this field.\textsuperscript{75} The humanitarian ideals of the Right Reverend Bishop Brent and Dr. Hamilton Wright prompted them to convene the Conference, but did all the participating countries prove their worth in such a mission? Germany, as a large manufacturer of drugs, made every effort to safeguard her interest in the drug manufacturing industry. With regard to codeine the German delegation said, "... but as to codeine I have not been able to find one scientific publication which pronounces itself unreservedly of the opinion that codeine is a stupefying drug or that it creates a mania ... It is for this reason that the German Delegation does not consider itself justified in approving of the insertion of codeine, in the stipulations of the Convention, either with respect to the scientific world or with respect to the legislative authorities."\textsuperscript{76}
On the other hand, the Dutch delegate was anxious to include Indian hemp within the ambit of the Convention. He said, "It is desirable that the participating governments should study the question of Indian hemp from the statistical and scientific standpoint, with a view to regulating eventually its abuse, either by internal legislation or by an international understanding." In fact, controversy existed as to what substances should have been included within the scope of the Opium Convention. The indefatigable zeal and efforts of the Right Reverend Bishop Brent and Dr. Hamilton Wright however led to the conclusion of a long-awaited convention.

The attitude of the Contracting Powers had also been revealed in the matter of ratification of this Convention. A radical departure from the usual method of ratification was made in the Hague Opium Convention of 1912. Chapter VI of the Convention, and Articles 22 and 33 in particular relate to the special method of ratification of this Convention. In order to attain a universal application of the Convention, a provision was made to obtain the signatures of all the powers in Europe and America not represented at the Conference. Ratification by the powers represented at the Conference would be obtained only after the adhesion of all the non-represented powers. The Convention, however, made provision that in the event of the signature of all the powers invited not having been obtained by 31 December, 1912, the government of the Netherlands "would immediately call another conference of the powers which had signed the Convention to examine at the Hague the possibility of depositing their ratifications notwithstanding."
The apprehension that it might be difficult to attain a universal application of the Convention was voiced by Mr. Delbrick, the German delegate. He also referred to the various methods of ratification prevalent in different countries. There are a number of countries where a convention cannot be ratified without the intervention of the legislature (e.g., U.S.A. and Germany), although in some other countries, viz., U.K., Japan, and the U.S.S.R., an act of the legislature is not necessary for the ratification of a convention. The proposal for the adhesion of other powers before ratification was not welcomed by Dr. Hamilton Wright, and he vehemently protested against such a proposal by saying that "it would seem most unusual to decide that what had been accomplished by the Conference must wait for the adhesion of Powers not represented. If the participating Powers did not represent sufficient power to compel other interested governments to adhere, nothing they could do in the way of passing a formal clause on adhesion could have much effect." Although the opinion of the German delegate did not gain much support from the Contracting Powers, it had a persuasive effect for the proposal had a considerable practical value in that once the Convention had entered into force it could not be changed except by another international convention. However, it was thought that any endeavour on the part of a few powers to regulate trade in such a product would not be justified because the same product could be produced or manufactured by any other state which was not bound by the Convention and therefore was not subject to any restrictions on traffic in it. Although Dr. Wright made an endeavour to convince the German delegate, even by assuring him of the position
in the United States, the German proposal was finally accepted and incorporated into the Convention. Despite the considerable efforts which have been mentioned, not all the powers adhered to the Convention. Two more conferences had to be convened, one in July, 1913 and the other in June, 1914. It may be observed that even if the powers had duly adhered to the Convention, the way to produce or manufacture opium and its related substances in an unrestricted manner was left open to those countries which had not adhered to the Convention. Consequently, states kept themselves aloof from the Convention.

Apart from the question of ratification, the Convention seems to have been drafted rather loosely. The parties were not legally bound to adhere to various important provisions for the purpose of effective control of illicit traffic in opium; on the contrary, they pledged themselves to "use their best endeavours only" to this effect. However, it may be mentioned in this connection that many international treaties which have been effective in their application contain similar provisions. According to Brierly, the "rules of law binding upon states . . . emanate from their own free will as expressed in Conventions or by usages generally accepted as expressing principles of law." He also opined that legal obligation may emanate from consensus and consequently, "a contract or a treaty is capable of having juridical effect only because there exists an underlying general rule of law to the effect pacta sunt servanda." Brierly, of course, in a subsequent chapter showed his understanding of the fact that nations do not always observe their obligations in good faith. Professor Schwarzenberger rightly
observed that a community not only requires self-sacrifice and love but also presupposes mutual trust. Needless to say that the absence of "mutual trust" and lack of a sense of international responsibility still underlie the un-international conduct of states. However, the Contracting Powers kept themselves aloof from the First Hague Opium Convention primarily in order to jealously guard their own interests, economic or otherwise.

(c) The Second Hague Opium Conference

The Second Hague Opium Conference was convened primarily with a view to expediting adherence to or ratification of the First Opium Convention as the case might be. Nevertheless, at this Conference, the benefit which the nations might have derived from such a Convention was also discussed at considerable length. As the Contracting Powers were doubtful whether the signatures required to bring the Convention into force would be obtained by 31 December, 1912, an amendment to Article 23 was thought to be necessary. A Protocol of Clôture, as an amendment to Article 23 was therefore prepared by the Editing Committee. It provided, inter alia, that "should the signatures of all the Powers invited in accordance with paragraph 1 of Article 23 not be obtained by December 31, 1913 the Government of the Netherlands immediately invite the Signatory Powers at that date to appoint delegates to proceed to the Hague to examine the possibility
of putting in force the International Opium Convention of January 23, 1912. It also embodied a clause ruling out the necessity of convening any further conference for the purpose of depositing ratifications.

The Second Opium Conference could not expedite ratifications, and its failure to attain the long-awaited success evidently made it clear that the world was not prepared to enter into an agreement in order to control the traffic in opium. For some, the question of self-interest, as expressed in trade, appeared to be the vital factor, and for others, a more technical pretext under the veil of morality was the excuse. It is, however, noteworthy that Turkey, one of the major opium-producing countries, refused to sign the Convention for economic reasons. Servia pleaded that she had not been able to study the opium question sufficiently well.

(d) The Third Hague Opium Conference

This Conference was convened in a further attempt to bring the 1912 Convention into force. It was convened at the Hague on June 15, 1914, and was attended by representatives from thirty countries. The primary purpose of this Conference was to bring the 1912 Convention into force even without the signatures of all the invited powers, let alone the deposit of ratifications by all the signatory powers. Some of the signatory powers however
refrained from ratifying the Convention on the grounds that it was widely adhered to. From the legal point of view the primary questions were:

(a) was it possible under those circumstances to bring the Convention into force despite the fact that some of the powers abstained from signing and some others failed to ratify the Convention, and if the answer were in the affirmative, then,

(b) how was the coming into force of the Convention to be regulated among the signatory powers.

The above two questions were duly considered by the Comité de Rédaction, and it was resolved that the date of coming into force of the Convention should be either that fixed by paragraph 1 of Article 24 or the 1st December, 1914, whichever was the earlier, subject to the condition that all required ratifications had been deposited.

As regards the second point the Committee resolved that the bringing into effect of the Convention among all the signatory powers would take effect when the powers who had already signed and those who had expressed their intention of adhering had ratified it; the date of taking effect of the Convention would be that fixed or settled by paragraph 1 of Article 24. Although an amendment to the resolution concerning ratification was proposed by the Chinese delegate, to bring the Convention into force more rapidly, the proposal was vehemently opposed, especially by the delegations of France and Russia on the grounds that the act of ratification was absolutely a matter of sovereignty and that an international
conference had no authority to give judgment upon it. Needless to say that the Contracting Powers were still careful to guard their sovereignty jealously, although, of course, the French delegation appropriately maintained that the act of ratification was essentially a matter of sovereignty.\textsuperscript{99} The doctrine that governments are bound to ratify whatever their plenipotentaries, acting within the limits of their instructions, may sign, and that treaties may therefore be regarded as legally operative and enforceable before they have been ratified, is obsolete, and lingers only as an echo from the past.\textsuperscript{100} It is also not customary to fix a time-limit for the ratification of treaties.\textsuperscript{101}

The Third Hague Opium Conference was merely ancillary to the First Opium Conference. The proceedings of this Conference tend to show why some states refrained from ratification. The Third Conference did not achieve a total success and its proceedings ended in the adoption of a clause, which, representing a compromise between different viewpoints, provided that the Convention might be brought into force by a group of powers without waiting for automatic enforcement, as provided for in Article 24, i.e., ratification by all the signatory powers. The possibility of acceding to the Convention was left open to the powers who had not yet signed it.\textsuperscript{102} In order to bring the Convention into force at the earliest, the Conference unanimously passed a resolution for making an urgent and respectful representation to the powers which had not yet ratified the Convention, nor expressed their intention of doing so.\textsuperscript{103}
Comments

The Third Hague Opium Conference only emphasised the importance of the Opium Convention of 1912. A constructive beginning was however made by China and the United States. The Harrison Act of 1914 in the United States brought the manufacture, sale, distribution, importation and exportation of opium or any other derivatives thereof under governmental control. In terms of this Act, all persons engaged in traffic in narcotic drugs including opium were required to register themselves with the government. This Act imposed an internal revenue tax of $500 per pound upon all U.S. manufacturers of opium for smoking purposes and prescribed some regulations in respect of the manufacturers. The provisions of this Act were however restricted only to citizens of the United States. 104

The restrictive efforts of the Chinese authorities concerning control of the manufacture of and traffic in opium and other allied drugs deserve commendation. The anti-opium campaign achieved remarkable results despite the existing political chaos in China.105 China did not only welcome an international convention in this regard, but was also one of the countries to ratify the Hague Opium Convention of 1912.

Britain, one of the deeply involved countries in this trade, was still observing the attitude of the other powers towards the Convention. On October 24, 1918, the Secretary of State for Foreign Affairs announced in the House of Commons, "His Majesty's Government are still considering the question of putting into force some or all of the Articles of the Opium Convention without waiting for
its ratification by all the Signatory Powers." 106

This then, was the situation which persisted long after the conclusion of the Third Hague Opium Conference. The Hague Opium Convention of 1912 did not come into force until the date that the Treaty of Peace with Germany became effective. 107 This evidently proved that the sectional interests of certain nations had an overriding consideration over the universal interest. The measures prescribed by the Convention were preventive rather than curative; they lacked legal force. Even the preventive measures suggested by the Convention did not encompass all the possibilities of evasion; it also failed to bring all nations, large or small, within its scope. The ratification of the Convention was delayed by the First World War. However, in view of the attitudes of the nations, it is difficult to say whether the ratification of all the signatory powers could have been readily obtained even if the War had not intervened. Interestingly enough, by the time the required ratifications had been obtained, another international conference for the purpose of adopting further measures for the control of traffic in narcotic drugs was found necessary, and the Geneva Convention of 1925 was concluded. 108

Nevertheless, the success of the Hague Opium Convention lay in the fact that it outlined the area of the problem and drew the attention of the powers to the necessity of making their best efforts to exterminate the menace. The Convention, despite its defects which have already been mentioned, influenced world opinion
against the dangerous practice of opium smoking and against the illicit trade and traffic in opium.

At this point it may be advisable to examine the structure of the existing international society, which in turn will help draw some conclusions as to whether there was any international legal order in that society. International systems may be analysed by means of 'types'—one type dominated by units, i.e., by states, and the other by central institutions. The period between 1648 and 1914 was primarily dominated by units. The interplay among the units and between them and the international order is affected by the nature of each historical system. Since an economic order is shaped by the existing political forces, which are a part of the historical system, the question arises as to what the units aspire to do, and how far they will co-operate within the existing order or whether they will make any attempt to replace the existing order by a new one. The period between 1648 and 1914 saw the forces of nationalism emerge. This was the period during which the balance of power system came to be regarded as an aspect of international relations. The greater powers joined hands in their venture for the world beyond Europe. Unfortunately, it was all like a pseudo-community feeling. Each state "remained as competitive as ever" and retained its right to break the rules of the system. Behind all this were, of course, genuine interests which nations had in restraining certain forms of international conduct. Under such a situation any control, direct or indirect, by any central institution would be considered as a limitation upon
their power. Selfishness prevailed over considerations of international order.

Nevertheless, during the early part of the nineteenth century, the powerful nations shared a common faith in laissez-faire economics, and consequently, they showed their willingness to see the system work on a world-wide basis whenever or wherever it touched upon their interests. Thus, the balance was maintained by a few powerful states who themselves engaged in economic pursuits without having to clash with one another seriously. Thus, challenge instead of producing confrontation, melted into negotiation. In the case of any conflict, however, preservation of the opponent "as a potential future ally" instead of his elimination, was thought to be a more practical approach. This economic game played by the European world in the non-European world inevitably necessitated intervention in the domestic affairs of the newly explored areas, and establishment of the minimum standards of Western justice. Between the competing nations, trade was allowed on equal terms, and there was nothing to endanger the national security of the major nations, and consequently, the political positions of these nations were safe and unaffected. Nevertheless, nothing did prevent any of the competing nations from violating the norms, but each had an interest in protecting those norms for self-enrichment. The contemporary international society was not a "progressive society" yet not a "stationary" one.

The conditions did not however remain the same. The Greater Powers started competing with each other for expansion outside Europe,
and in fact, the momentum lost its force to a great extent in the latter part of the nineteenth century. 113

The nature of international legal order in the contemporary international society was characterised by the type of order as it existed in different phases of the development of international relations. This development of international relations falls into three clear phases:

(a) the period from the Renaissance to the Congress of Vienna. It was during this period that an attempt was made to replace the philosophy and institutions of Christendom by a unifying theory of human relations.

(b) The period from 1815 to the First World War. During this period the law of nations made its way through the tangles of natural law. In fact, it tended to replace natural law. At this point, the law of nations had overwhelmingly a European orientation.

(c) The period from the First World War to the present day, i.e., the period of universalisation of the matters of international concern.

Whatever might be the fundamental differences in the modes during the first two phases of development of international law, their common deficiencies were that they fell short of any attempt to create an international legal order, and also that no definition of such an order was devised. In discussing the problems of economic world order in unorganised international society, Professor Schwarzenberger observed that the rudimentary state of international
order as existed in pre-1914 international society can only be described as pseudo-orders, whether non-legal or normative.\textsuperscript{114} However, basically, a legal order seeks to maintain and further justice, the ideal relation among men, morals, the ideal development of individual character, and security which is at the foundation of economic order.\textsuperscript{115} The same philosophy can be applied in the case of establishing an international order. In the absence of any legal order during the aforesaid period, the question of establishing, maintaining and furthering justice for the ideal development of humanity did not arise. On the contrary, the moral-legal order of the Christendom, which was prevalent during the 17th century, lost its force, and the juristic theory of international law lapsed in the nineteenth century. It was a period of chaos aggravated by the confusion between \textit{imperium} and \textit{dominium}. The law of nations in this period was a body of laws for the sake of sovereigns.

Professor Schwarzenberger again observed that in an international society, "composed of a plurality of independent and armed entities which look upon themselves as ultimate values, the place of a law of this type is more humble. It is likely to be reduced to a mere façade of an international political system, verging on anarchy. It may also serve to strengthen whatever temporary equilibrium is attainable in any system of power politics." \textsuperscript{116}

Whatever may be the nature and mechanism of any political system, in all political systems, formal authority must be legitimised in the same way. This relates to the question of relationship between law and order. It is perhaps necessary to mention that law is more than a system of order, for any legal system will embody
values other than order. In international law, "legitimation" may be achieved by a sovereign's unilateral assertion or by recognition and acquiescence by a third party. The first situation is known as the auto-interpretation of law, while the second as consensual interpretation. 117

Like many other treaties, the treaties concerning prohibition of traffic in opium and allied substances fell short of consensual legitimation in the pre-1914 days of the de facto quasi-order. The belated recognition of the Hague Opium Convention evidenced the unpreparedness of nations to embark upon an organised international platform. Pound rightly observed that "there will be need of adjusting the relations and ordering the conduct of nations so long as there are distinct, cohesive, organised societies." 118 Naturally, the need for adjusting the relations and ordering the conduct of nations was still not felt by the nations themselves even though it was expected of them.
CHAPTER II

FOOTNOTES

1. In his inaugural speech the President of the Shanghai Commission mentioned, *inter alia*, the following:

   "It devolves upon me to pronounce with emphasis that this is a Commission, and as those who are informed as all of you must be in matters that pertain to international affairs of this kind- a Commission is not a Conference. The idea of a Conference was suggested, but it seemed wise to choose this particular form of action rather than a Conference, because, for the present at any rate, we are not sufficiently well informed, and not sufficiently unanimous in our attitude, to have a Conference with any great hope of immediate success."


3. Siam had no treaty relations with China, but was considered to be an important participant on account of her monopoly in the manufacture and distribution of smoking opium.

   For Russia, vicinity was considered to be the principal factor for participation.


   Apart from adopting a general policy for the suppression of the illicit traffic in opium, the Commission decided to formulate appropriate policies of an international character which would assist China in fulfilling her goal of eradicating the opium evil from the country.


7. ( ) added.


   The President of the Commission observed that, "The emotional stage finds expression in agitation. We have had agitation. Now I believe we are at least midway in the second or scientific stage, when men deal with ascertained fact, and on the basis of ascertained fact reach certain conclusions of a practical character that will enable those upon whom the responsibility rests to arrive at some final conclusion." ibid.


11. supra., (chapter I, pp. 53-54)

12. For example, the use of opium was widespread among the Chinese population in Macao, Portugal. The Treaty of Amity and Commerce between Portugal and China of 1887 also covered the trade relationship in opium between the two countries and the Superintendencia da Fiscalizacao da Importacao e Exportacao de Opio Cru had control over the importation and exportation of opium. In spite of such regulations, private individuals in Macao started the industry of boiling crude opium into smoking opium and shipping it abroad, which was ultimately taken over by a Chinese Syndicate. Macao had a large internal consumption, and opium was sold in smoking dens "where the coolies would call for a chat and a smoke to pass the time of day", apart from sale through licensed shops.


(Trade in opium between Macao and China was subject to the tariff annexed to the Anglo-Chinese Treaty of Tientsin of 1858, which was in force in 1887).

13. In 1905 the value of the opium export amounted to 730,000 pounds Turkish. As the Turkish government published neither accounts nor estimates of revenue and expenditure, it was impossible to state the revenue tariff from opium.

See further H. Wright, op. cit., p. 667.

14. Turkey has recently adopted preventive measures (in a rather limited way) with regard to the growth of poppies and production of opium.


Australia herself imported a considerable amount of opium prior to the proclamation of December 29, 1905 imposing the prohibition of opium other than for medicinal and legitimate purposes. The following table gives an account of the import and export of opium into the Commonwealth prior to the date of prohibition.

<table>
<thead>
<tr>
<th>Year</th>
<th>lbs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1901 (including opium for medicinal purposes)</td>
<td>56,473</td>
</tr>
<tr>
<td>1902 (including opium for medicinal purposes)</td>
<td>59,762</td>
</tr>
<tr>
<td>1903 (for smoking only)</td>
<td>42,429</td>
</tr>
<tr>
<td>1904 (for smoking only)</td>
<td>34,369</td>
</tr>
<tr>
<td>1905 (for smoking only)</td>
<td>47,116</td>
</tr>
</tbody>
</table>

16. New Zealand was the only country having no problem with regard to traffic in opium, see above, p. 52 (chapter I).

17. In this connection see D.F. Owen, British Opium Policy in China and India, op. cit., According to him, the "beginnings of international action against the drug traffic form no essential part of Anglo-Chinese opium relations," p. 340.


19. infra., pp. 199-202

20. infra., pp. 441-465

21. infra., chapter II.


24. Text of Resolution No. 2: "Be it Resolved, therefore, that in the judgment of the International Opium Commission, the principle of the total prohibition of the manufacture, distribution and use of smoking opium is the right principle to be applied to all people, both nationals and dependents and protected; and that no system for the manufacture, distribution or use of opium smoking should continue to exist, except for the express purpose and no other of stamping out that evil of opium smoking in the shortest possible time."

25. See Resolution No. 2 of the Shanghai Opium Commission.

26. The dissent expressed by the Chinese delegate from the opinion voiced by the Dutch delegate was that "Whereas, the total eradication of the use of opium within a few years is to be considered a high but at present unattainable ideal."

27. op. cit., p. 63.

28. ibid.

29. ibid.

30. Text of the U. S. Resolution: "That whereas, the reports submitted to the International Opium Commission by the Delegates present indicate that though each Government represented is best able by its National Laws to control its own internal problem as regards the manufacture, importation or abuse of opium, its alkaloids, derivatives and preparations, yet that not Government, represented may by its National Laws wholly solve its own opium problem without the conjoint aid of all those Governments concerned in the production and manufacture of opium, its alkaloids, derivatives and preparations:
Be it Resolved, therefore, that in the judgment of the International Opium Commission, a concerted effort should be made by each Government represented in the Commission to assist every other Government in the solution of its internal opium problem.

That, whereas, the reports submitted to the International Opium Commission by the Delegations present, directly or immediately recognise that the foregoing resolutions cannot be made effective except by the conjoint action of the Government concerned:

Be it Resolved, therefore, that the Commission as a whole, record its sense in favour of the principle of an International Conference for the solution of the problem."


32. ibid.,

33. Certain other speakers were, however, of the opinion that this resolution was very similar to Resolution No. 4. The proposal was advanced by the Japanese delegate, His Excellency T. Miyaoa. See Report of the International Opium Commission, vol. I, op. cit., p. 53.

In this connection the suggestion of the British delegate in respect of Resolution No. 4 (which was an American resolution) may also be referred to. The original American Resolution read as follows:

"That, whereas, the reports submitted to the International Opium Commission by the Delegations present, record that each Government has strict laws which are aimed directly or indirectly to prevent the smuggling of opium, its alkaloids, derivatives and preparations into their respective territories.

Be it Resolved, therefore, that the judgment of the International Opium Commission, it is the duty of all countries which continue to produce opium, its alkaloids, derivatives and preparations, to prevent at ports of departure the shipment of opium, and of its alkaloids, derivatives and preparations, to any country which prohibits the entry of opium or of its alkaloids, derivatives and preparations." See Report of the International Opium Commission, vol. I, op. cit., p. 47.

The British delegate suggested that the phrase " which continue to produce opium, its alkaloids, derivatives and preparations " in the second paragraph of the Resolution should be omitted on the grounds that this would put pressure not upon one country only but upon all countries. The phrase, " it is the duty of all countries to adopt reasonable measures to prevent etc." was incorporated in the Resolution No. 4 (in its final version) at the suggestion of the British delegate. See Report of the International Opium Commission, vol. I, op. cit., p. 51.
34. infra, p 34 and pp. 344-367

35. In this connection the observation made by the British delegate is worth quoting:

"What validity by any action of this Commission should be
given to the resolutions which we have now adopted? I venture
to think that the proper course for us to adopt is to move that
the PRESIDENT, on behalf of the Commission, do sign the resolu-
tions as having been passed by the Commission. It seems to me
that it would be more properly done thus than by getting signa-
tures from all the members of the Commission, and I beg to move
accordingly in that sense."

op. cit., p. 81.

36. Undoubtedly, the initiative was taken by the Right Reverend
Bishop Brent, but certain unofficial bodies also contributed
to the anti-opium movement, and their efforts should also be
recognised.

37. The Missionary Conference held at Edinburgh in 1910 had passed
a resolution on the subject, and a national day of humiliation
and prayer had been decreed for October 24, the fiftieth anniver-
sary of the ratification of the Treaty of Tientsin (October 24,
1860).


38. The China Year Book, 1916, p. 663

His inquiries confirmed that no opium was grown in the provinces
of Shansi and Szechuan. There had been a reduction in the culti-
vation of poppies of 30% in Shansi, 25% in Kansu, 70% in Sweichow
and 75% in Yunan.

39. ibid.,


41. As a result of the unscrupulous purchases for speculative purposes,
some 60,000 chests of Indian opium were accumulated at Shanghai
towards the end of 1914.

See W.T. Dunn, The Opium Traffic in its International Aspects,
Columbia University Press, 1920, p. 120.

As the Indian stock had been continuously increasing at
Shanghai, the Department of Foreign Affairs in June 1913 proposed
to pay the charges for sending the accumulated opium back to
India but the British Government declined to accept this offer.

43. See generally W.T. Dunn, op. cit., Trade Reports, 1917, vol. 4, p. 1112.

44. Japan not only manufactured opium but cultivated opium poppies also mainly in Formosa and Korea. The Korean Independence Committee wrote to the U.S. Minister at Peking: "The Japanese Government has established a bureau for sale of opium and under the pretext that opium was used for medicinal purposes has caused Koreans and Formosans to engage in poppy cultivation. The opium secretly shipped into China." The New York Times, March 30, 1919, p. 20, quoted in W.T. Dunn, op. cit., p. 128.


46. With reference to the structure of the Commission the British delegate, Sir Cecil Clementi Smith, commented that the Commission was not appointed with a scientific basis. He thought that apart from Dr. Hamilton Wright and the Japanese delegate, who was a scientist, there was none among them competent to deal with such matters as anti-opium remedies or the medical and scientific aspects of opium.

Dr. Hamilton Wright, however, pointed out that "there was on the Chinese Delegation also a medical expert, trained in the West, who speaking from a scientific point of view, was quite competent to judge on the subject under discussion." Dr. Wright emphasised that three experts would be enough for a Commission of this type. See further Report of the International Opium Commission, vol. I, op. cit., pp. 37-38.

47. The Right Reverend Bishop Brent observed that, "As in the past, so in the future, and in the present, sentiment is bound to be the final arbiter in all great questions, and no legislative or practical action can avail unless public opinion, rightly informed, acts spontaneously, strongly and naturally in the direction of formal, enacted law."

48. Statement made by the President of the Commission when addressing the House (see Report of the International Opium Commission, vol. I, p. 42). In evaluating the work of the Commission, Dr. Hamilton Wright observed the question had been "elevated from the narrow confines of dual agreements and treaties to a plane where every civilized nation may have a voice in its final settlement." Dr. Hamilton Wright, "International Opium Commission", Part 2, 3 A.J.I.L., 1909, pp. 828-868, at p. 867.
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52. infra.

53. P.D. Lowes, op. cit., p. 158.

54. Quoted in Dr. Lowes' *The Genesis of International Narcotics Control*, p. 159.

55. On February 2, 1919, F.O. 415 (Correspondence relating to Opium, Public Records Office)

55(a). *Parliamentary Debates (House of Commons)*, vol. 8, p. 1104.
Mr. Laidlow was also on the British Delegation at the Shanghai Commission.

56. Britain did not show much interest in attending the Conference. She made a plea for the Conference to be deferred until the Indo-Chinese Opium Agreement had been signed. Also, the cable from the American Minister at the Hague will stand as evidence:

"... the Minister of Foreign Affairs is in possession of confidential information that Great Britain does not desire the Conference for an early date...".
Quoted in Dr. Lowes' *The Genesis of International Narcotics Control*, op. cit., p. 174.


58. This Convention was signed at the Hague on January 23, 1912.
L.N. Doc. C.82.M.41. 1925.XI.

59. "... désirant marquer un pas de plus dans la voie ouverte par la Commission Internationale de Shanghai de 1909...".

60. China virtually became the smuggling ground of opium, although opium is indigenous to China. The Chinese government fought for many years to prevent the importation of drugs into the country. Although importation was prohibited by law, smuggling continued. In fact, the natives of many Powers including her own were engaged in the traffic in drugs, and all her efforts to prevent smuggling failed due to a lack of co-operation from those Powers. Consequently, it was widely held that in order to protect her own people against this humiliating situation, China in the First World War became engaged with European Powers and granted extra-territorial rights to the nationals of the Treaty Powers. This of course meant that China had to reduce her action against the importation of those goods in which the Treaty Powers were involved. As the product of foreign grown poppies was not to be excluded, the Chinese people began to cultivate the plant. It was a vicious circle.
It was due to the immense importance attached to this problem that the Chinese delegation insisted that the Articles with regard to China should be included in the main Convention. See *Summary of the Minutes (unofficial) of the International Opium Conference (The Hague, December 1, 1912 to January 23, 1913)*, p. 102.

Signed on June 28, 1919.

December 7, 1911. See further *Summary of the Minutes (unofficial) of the International Opium Conference*, op. cit., p. 10.

*ibid. *

op. cit., p. 11.


Article 5 of the Opium Convention, 1912.

The exact proposal of the British Government was the following:

"The Customs shall be empowered to detain imported consignments, except in transit, of the above drugs, until satisfied that the consignee is a licensed manufacturer or dealer, or a person duly authorised to receive the drugs."

"Exportation to foreign countries, whether adhering to the Convention or not, and to other portions of the British Empire, to be permitted only upon production to the Customs authorities of a certificate from the country of destination, that the consignee is authorised to import the drugs either in accordance with the stipulations of the Convention or with local laws and regulations which, in the opinion of the Customs authorities, are equally stringent."

*Summary of the Minutes (unofficial) of the International Opium Conference*, op. cit., p. 49.
69. "... Determined to bring about the gradual suppression of the abuse of opium, morphine and cocaine as also of the drugs prepared or derived from these substances, which gave rise to or might give rise to similar abuses."

70. Article 9:

"The Contracting Powers shall enact pharmacy laws or regulations to limit exclusively to medical and legitimate purposes the manufacture, sale and use of morphine, cocaine and their respective salts unless laws or regulations on the subject are already in existence. They shall co-operate with one another to prevent the use of these drugs for any other purpose."


73. Article 20:

"The Contracting Powers shall examine the possibility of enacting laws or regulations making it a penal offence to be in illegal possession of raw opium, prepared opium, morphine, cocaine and their respective salts, unless laws or regulations on the subject are already in existence."

74. Summary of the Minutes (unofficial) of the International Opium Conference, op. cit., p. 3.

75. A very good account of opium monopoly has been given by E.N. La Motte. The author observed, inter alia, that "The Opium Monopoly was not established for any humane or altruistic purpose. It was not established to provide the medical profession with a drug for the relief of pain, to ease the agony of the injured and wounded, or to calm the last days of those dying with an incurable disease. This, which may be called the legitimate use of opium, is not the object of the Opium Monopoly. Used only in this manner, there would be no money in it. It is only when opium is produced in quantities far in excess of the legitimate needs of the world that it becomes worth while to the Opium Monopoly. That Monopoly was established not to relieve pain and suffering, but with the deliberate intention of creating pain and suffering, by creating drug victims by the thousand."

See E. N. La Motte, The Opium Monopoly, New York, 1920, p. 80.
Summary of the Minutes (Unofficial) of the International Opium Conference, op. cit., Twelfth Plenary Session, pp. 76-77.

op. cit., p. 83.

Article 23, paragraph 2.

Only twelve Contracting Powers were concerned with the formulation of this Convention, nevertheless, their determination was expected to have an important influence upon the rest of the world.

Summary of the Minutes (Unofficial) of the International Opium Conference, op. cit., p. 104.

Dr. Hamilton Wright pointed out that "If this Convention was signed by the United States plenipotentiaries and ratified according to the usual procedure, it would be carried out in good faith, and if they pledged themselves to enact or propose legislation in a certain time that legislation would be passed or proposed and would be made effective."

op. cit., p. 105.

Britain did not ratify the Convention on the grounds that clarification as to the advantageous position of the smaller Powers would be necessary before ratification.

The case of Switzerland was rather different. The Swiss government abstained on the grounds that Switzerland was not an opium producing country, and that the use of opium was restricted to medicinal purposes only, under the strict control of the Cantonal laws and regulations of the National Pharmacopæia. It was, however, believed that the Swiss government's abstention would jeopardise the results of the Convention, presumably because other similar countries might follow suit on the same grounds, and thus make the problem of adhesion more difficult.

See Summary of the Minutes (Unofficial) of the Second International Opium Conference (The Hague, 1-9 July), 1913, Resolution of the Third Plenary Session, pp. 18-19.


J.L. Brierly, "The Shortcomings of International Law" in the Basis of Obligation in International Law, op. cit., p. 79.


infra., pp. 344-348
At the time the Second Opium Conference rose the number of States who had signed the Convention was 34*, of which 12 were the original participants.

Argentina, Belgium, Bolivia, Brazil, Chile, Colombia, Cuba, Costa Rica, Denmark, Dominican Republic, Ecuador, Guatemala, Hayti, Honduras, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, Panama, Peru, Portugal, Roumania, Salvador, Sweden, Switzerland and Venezuela.

* with reservation for the Belgian Congo.

The Parties that had not signed the Convention by December 31, 1912 were: Austria, Bulgaria, Greece, Hungary, Servia, Turkey and Uruguay.

Summary of the Minutes (Unofficial) of the Second International Opium Conference, op. cit., p. 32.

Mr. Archer (for the Siamese government) asked if it would be necessary, supposing they then deposited their ratifications, to meet again to consider whether they should be deposited or not. The President of the Conference replied in the negative, op. cit., pp. 22-23.


It was held for the period from June 15 to June 25.

The following powers ratified the Convention:

Belgium, China, Denmark, Guatemala, Honduras, Italy, Portugal, Siam, Sweden, United States of America and Venezuela.

The following powers were prepared to ratify subject to the approval of their respective parliaments:

Argentina, Brazil, Chile, Costa Rica, Ecuador, France, Hayti, Luxemburg, Mexico, Spain and Switzerland.

(France, however, made it clear that her ratification would be subject to reservation as to Indo-China and India)

The following powers were ready to ratify:

Great Britain, Japan, the Netherlands and Persia.

(Their hesitancy was primarily due to some loopholes in the Convention)

The powers that had not still expressed their intention to ratify:

Bolivia, Bulgaria, Colombia, Cuba, Dominican Republic, Germany, Greece, Montenegro, Nicaragua, Norway, Panama, Paraguay, Peru, Roumania, Russia, Salvador and Uruguay.

The following powers refused to sign the Convention:

Servia and Turkey.
Translated from French: "Que la mise en vigueur de la Convention entre toutes Puissances signataires aura lieu lorsque les Puissances qui l'ont déjà signée et celles qui ont exprimé leur intention d'y adhérer, l'auront ratifiée. La date d'entrée en vigueur de la Convention sera celle fixée par le paragraphe 1 de l'article 24."

See Actes et Documents; Third International Opium Conference, (Procès-verbaux Officiels), op. cit., p. 49.

The Chinese delegate proposed that the Convention should come into force on December 1, 1914 except in respect of those powers who had to defer ratification on constitutional grounds, and for them the Convention would come into force at the date when they had deposited their ratifications, and for the other powers at the date of successive deposit of their ratifications. Translated from French:

"La Convention entrera en vigueur le 1er décembre 1914, à moins que la ratification générale par les Puissances ci-dessus mentionnées ne soit différée pour des raisons d'ordre constitutionnel; dans ce cas la Convention entrera en vigueur à cette date pour les Puissances qui auront déposé leur ratification, et pour les autres Puissances à la date du dépôt successif de leur ratification."

op. cit., p. 35.

In the name of the Russian colleague and in mine I come to declare that we shall abstain on the vote of amendment made by the delegation of China. In fact, we believe that an international conference has not got the right to judge the reasons which decides a state to accept or to deny the ratification of a diplomatic instrument. The act of ratification being an act of sovereignty that should not be submitted to the appraisal of a third party."

Translated from French:

"Au nom de mon collègue de Russie et au mien, je viens déclarer que nous nous abstenons sur le vote de l'amendement de la Délégation de Chine. Nous estimons en effet qu'une conférence internationale n'a pas de droit de juger les raisons qui déterminent un État à accorder ou à différer la ratification d'un instrument diplomatique, cette ratification étant un acte de souveraineté qui ne saurait être soumis à l'appréciation des tiers.

op. cit., p. 41.

Other powers such as Chile, Sweden and Switzerland accepted the views of the French delegate.

The Swiss delegate said that with regard to the question of the relation between the ratification and the coming into force of the Convention according to the terms of Article 24, to which the delegates of Great Britain have drawn the attention of this Conference remember that Switzerland has signed the Protocol of Adhesion with the expressed reservation that she cannot put into effect on her territory the disposition of the Convention within the delays required by the time-limit. This condition remains whole and entire, and is formally maintained."

Translated from French:
"... en se referant à la question de la connexité qui existe entre la ratification et l'entrée en vigueur de la convention aux termes de l'article 24 et sur laquelle M.M. les Delegues de la Grande-Bretagne ont attiré l'attention de la Conference, rappelle que la Suisse a signé le Protocole d'adhesion avec la reserve expresse qu'elle ne pourra pas mettre en vigueur, sur son territoire, les dispositions de la Convention dans les delais prevus par celle-ci. Cette reserve demeure entiere et est formellement maintenue."  


The powers which signed the Special Protocol at the Hague were: China, Honduras, the Netherlands, Norway and the United States of America.

Such a request was made by the government of the Netherlands on behalf of the Conference.

The government of the United States certainly made a major attempt by means of the Harrison Act to control manufacture of and illicit traffic in opium and other allied substances. However, in view of the results it achieved, it may perhaps be said that the Act was inadequate. It failed to restrict the use of narcotic drugs for illicit purposes. No limitation was prescribed as to the amount of drugs an individual could buy. It also fell short of effective machinery for joint action by the Federal and local authorities.

For a good account of trade and traffic in opium in China see R.Y.C. Lo, The Opium Problem in the Far East, Shanghai, 1933, and also the China Year Books.

Hansard, 1918, vol. 110, p. 894.
Article 295 of the Treaty of Peace, 1919 reads as follows: "Those of the High Contracting Parties who have not yet signed, or who have signed but not ratified, the Opium Convention signed at the Hague on January 23, 1912 agree to bring the said Convention into force and for this purpose to enact the necessary legislation without delay in any case within a period of twelve months from the coming into force of the present Treaty.

Furthermore, they agree that ratification of the present Treaty should in the case of Powers which have not yet ratified the Opium Convention be deemed in all respects equivalent to the ratification of that Convention and to the signature of the Special Protocol which was opened at the Hague in accordance with the resolutions adopted by the Third Opium Conference in 1914 for bringing the said Convention into force."

Similar provision may also be found in:
Article 230 of the Treaty of Peace with Hungary, dated June 4, 1920;
Article 174 of the Treaty of Peace with Bulgaria dated November 27, 1919; and
Article 280 of the Treaty of Peace with Turkey dated August 10, 1920.

The question of the identity of the units became important in the transition from the Roman Empire to the Medieval system and from the nineteenth century system of multi-national and colonial empires to the present.


The restoration of France after the defeat of Napoleon partly reflected this need.


This was primarily owing to a halt in colonial expansion caused by the fact that most of the available areas had already been colonised.


op. cit., p. 18 et. seq.

op. cit., p. 8.
"A people may be unprepared for good institutions; but to kindle a desire for them is a necessary part of the preparation."

J.S. Mill,
PART II

INTERNATIONAL ACTION FOR THE CONTROL
OF TRADE AND TRAFFIC IN DRUGS
BETWEEN 1920 AND 1944.

Introduction

This Part will be concerned with the contributions of
the League of Nations to the control of the manufacture of
and trade and traffic in narcotic drugs.1 As the League of
Nations was the first institution of the universal type,
attention will be paid to the lack of preparedness of the
international society for practical internationalism by such
an institution, and such a study will obviously assist to
assess the work of the League as far as the control of the
manufacture or and trade and traffic in narcotic drugs was
concerned. An account will also be given of the anti-opium
movement during this period, emphasising of course, the reasons
for the need for such a movement outside the League of Nations.

The League, at the time of its creation, had little or
no experience behind it concerning control of the manufacture
of and trade and traffic in narcotic drugs. Interestingly
enough, at the time the League was created, very stringent
international control measures were found to be necessary, but
unfortunately, the limited use of international co-operation
posed another stumbling block to the proper functioning of the League.

To this must be added the inadequate knowledge of the medical, social and scientific aspects of narcotic drugs and also the lack of proper machinery for collection of accurate information and data.

In so far as the national control of manufacture of and trade and traffic in narcotic drugs was concerned, almost all governments had laws and regulations well in hand with a view to limiting the trade in drugs, whether raw or manufactured, to medical and scientific purposes, and that also by authorised persons. Formal governmental control, viz. maintenance of records and compulsory submission of reports to the respective government departments, detailing stocks, periodic inspection etc., was in operation. Owing to lack of effective machinery at national level, such methods were not found entirely satisfactory, and the League Council found it necessary to adopt various methods with a view to supervising the licit trade in drugs, both on the national and international levels. However, the export and import of raw materials and manufactured drugs were generally unrestricted, and this stimulated the illicit traffic in such substances across national boundaries.

Therefore, when the League involved itself in the management of drugs, it had two distinct tasks before it:

(a) to devise a more systematic method for national
control of the manufacture of and trade and traffic
in drugs and to call upon the national governments
to adopt such a method; and

(b) to formulate effective preventive regulations and
other control measures for the total suppression
of the illicit traffic in drugs across national
boundaries.

The League derived its power to control both licit and
illicit manufacture of, and trade and traffic in, opium and other
dangerous drugs from paragraph (c) of Article 23 of its Covenant,
which read as follows:

"Subject to and in accordance with the provisions of
international conventions existing or hereafter to be
agreed upon, the Members of the League:

(c) will entrust the League with the general supervision
over the execution of agreements with regard to...
the traffic in opium and other dangerous drugs." 2

The conventions which were drawn up concerning this matter
and brought into force under the auspices of the League were:

(a) the International Opium Convention of 1925
    (hereinafter called the 1925 Convention);

(b) the Convention for Limiting the Manufacture and
    Regulating the Distribution of Narcotic Drugs, 1931
    (hereinafter called the Limitation Convention); and

(c) the Convention for the Suppression of the Illicit
    Traffic in Dangerous Drugs, 1936
    (hereinafter called the 1936 Convention).
With these, account should also be taken of the Agreements which had been concluded under the auspices of the League:

(a) the Agreement concerning the Suppression of the Manufacture of, Internal Trade in, and Use of Prepared Opium, 1925 (hereinafter called the 1925 Agreement); and

(b) the Agreement concerning the Suppression of Opium Smoking, 1931 (hereinafter called the Bangkok Agreement).

In order to examine the machinery of international control of drugs (i.e., the manufacture of, and trade and traffic in, opium and narcotic drugs) devised by the League it would be advisable to give a consolidated account of the organisational structure of such machinery along with the methods of control and supervision by the League. Such an account is necessary owing to the fact that the provisions of such control and supervision overlap at various points. In examining the mechanics of control and supervision, however, only a brief account will be given of the composition of the various organs concerned, as it is intended to lay more emphasis on the working method, and procedure of enforcement of the regulations in this regard.

In fine, it would be appropriate to recall what President Woodrow Wilson said with reference to the League of Nations, in his first draft of the League Covenant which he placed before the Paris Conference: "A living thing is born." Unfortunately, the "living thing" was born crippled. Efforts will also be made to determine
the causes of the malady which frustrated the avowed objectives
of the League in health and social matters, and also whether
during its short span of life it left any mark of success, or
at least paved the way to success in this area of international law.
Diagram showing the Structure of the League Machinery concerned with Drug-Control

Secretary-General of the League of Nations

League Council/Assembly

Opium Advisory Committee

Permanent Central Board (for estimates of world requirements of drugs)

Assisted by the Supervisory Body (also entrusted to examine statistical records of drugs submitted by states parties to various drug conventions)

Health Committee (for technical questions concerning addiction — producing capacity of a drug or substance, etc.)

Assisted by the Office International d'Hygiène publique in Paris
CHAPTER III

THE ORGANISATIONAL AND FUNCTIONAL FRAMEWORK AS DEVISED BY THE LEAGUE OF NATIONS FOR THE PURPOSE OF CONTROLLING THE MANUFACTURE OF TRADE AND TRAFFIC IN DRUGS

A. The Assembly and the Council of the League of Nations

(a) The Scope of Work of the Assembly and the Council

Article 23, paragraph (c) of the League Covenant entrusted the League with the task of general supervision over the traffic in opium and other dangerous drugs. Article 2 of the Covenant provided that "the action of the League under the Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat." Article 3, paragraph 3 of the Covenant gave the League Assembly wider powers by authorising it to "deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world. Article 4, paragraph 4 of the Covenant authorised the League Council also to "deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world." The spheres of activities of the Assembly and the Council under Articles 3 and 4 of the Covenant would appear to be identical,
but their activities were not the same in nature. As there was no definite line of demarcation between the functions of the Assembly and the Council, it cannot, therefore, be said that the Council performed executive functions only; on the contrary, more often than not, the functions of these two bodies overlapped. It is to be borne in mind that "the more conspicuous events of the League history took place against the background of a broad and complex system of international co-operation in economic, social and humanitarian activities, functioning under the general authority of the Assembly and the Council." 

(b) Functions of the Assembly and the Council

The Assembly's functions, as far as control of the traffic in opium and other dangerous drugs was concerned, were mostly supervisory owing to the fact that the major task concerning this matter was entrusted to the Advisory Committee on the Traffic in Opium and Other Dangerous Drugs (hereinafter called the Opium Advisory Committee). The purpose of this Committee was specified in the following resolution of the First Assembly of the League of Nations: "... to secure the fullest possible co-operation between the various countries in regard to the matter, and to assist and advise the Council in dealing with any questions that may arise." 

The League institutions were of two kinds, viz. (a) Legal and political and (b) social and economic. The basic functions of the institutions under the second category were to "facilitate and extend the habit of practical co-operation in the ordinary conduct
of international affairs." Unlike the United Nations Organization, the organisational structure of the League was a centralised one; nevertheless, in order to maintain practical co-operation in the administration of humanitarian activities, the League created several subordinate bodies, most of which were technical and advisory. The general work of the League Assembly in relation to the work of any such subordinate body was one of supervision, and as a means of co-ordination, those subordinate bodies were made responsible to the League Assembly for their respective fields of activities. In certain cases, however, the Secretariat of the subordinate bodies was provided by the Secretary-General, as was done in the case of the Drug Supervisory Body. In the case of control of the traffic in drugs during the League period, the main responsibility lay with the Opium Advisory Committee, which was directly responsible to the League Assembly /Council.

Although the execution of decisions depended upon the political bodies, the advisory function of the Opium Advisory Committee on technical matters influenced the final decisions of those political bodies. The Council's function in this area of international law was not limited to executive functions; it could even request the Opium Advisory Committee to undertake certain studies and prepare conventions.

The members of the Permanent Central Board were appointed by the League Council. Article 24 of the Geneva Convention of 1925 brought the Board into direct relationship with the League Council, whenever an occasion to consider the question of embargo arose. The Board was required to submit its annual reports to the League
Council, and it was also supposed to notify the Council of the inclusion of new drugs under the Geneva Convention, 1925, and the limitation of the application of the Convention in cases of certain narcotic preparations. The Opium Advisory Committee was also required to submit reports of its sessions to the League Council. Incidentally, the Limitation Convention of 1931 authorised the Secretary-General, instead of the League Council (as was in the case of the Geneva Convention of 1925) to accept new drugs under the Convention.

Again, as allocation of funds to the subordinate bodies was made by the League Assembly, the Opium Advisory Committee and the Permanent Central Board, were in this matter solely dependent upon the League Assembly. The Limitation Convention however did not make any provision for any direct relationship between the Supervisory Body and the League Assembly or the League Council.

Comments

It may be reiterated in this connection that all the League Committees, whether political or economic, social or socio-economic, were either advisory or consultative in character. The committee-system of the League was founded directly upon the experience gained during the War. Committees were found to be necessary where international decisions through negotiation between governments were not only insufficient but inadvisable too.
Members of such committees were not representatives of governments, and consequently, national urges were not meant to influence committee decisions. Nevertheless, in order to create a co-ordinated policy in each of these technical fields, it was not considered necessary to confer on such bodies more than advisory powers. Such limitations were necessary to protect the claims of state sovereignty, yet gestures had been made to formulate policies based on international considerations. It was in this way that the committees of the League were gradually transforming national into international administration. In certain cases the League committees took a direct role in formulating rules of international law, as did the Opium Advisory Committee in the case of the Limitation Convention of 1931. Nevertheless, it would be true to say that the decision-making power lay with the League Assembly or the Council, as the case might be, i.e., there was a marked preference for decision-making by political means. What was however necessary was to foster international co-operation based not on national interests but on international interests.
B. THE ADVISORY COMMITTEE ON THE TRAFFIC IN OPIUM

AND OTHER DANGEROUS DRUGS

(a) **Composition**

By a resolution adopted by the First Assembly of the League an Advisory Committee on the Traffic in Opium and Other Dangerous Drugs was appointed by the Council in 1921 in order to secure the fullest possible co-operation among various countries in regard to their responsibilities under the Hague Opium Convention of 1912 and the League Covenant, and also to assist and advise the Council in dealing with any question that might arise concerning the control of trade and traffic in opium and other dangerous drugs. The resolution of the Assembly also provided that the Committee should include representatives of the countries chiefly concerned, in particular, China, France, Great Britain, Holland, India, Japan, Portugal and Siam. The League Council, however, had been authorised, if and when they thought it necessary, to add as assessors to the Opium Advisory Committee not more than three persons, not representatives of governments, having special knowledge of the question. It appears that originally the Committee included those states which had interests in the trade in opium only, and not those states with interests in manufactured drugs. Consequently, the function of the Committee was limited to one aspect of the problem. In fact, all states except China had direct interest in the opium trade, and consequently, financial considerations would have kept them from taking the proper course of action. The membership of the Committee was on the increase.
It is further observed that apart from Italy, no drug-consuming country was represented on the Committee until 1930, when seven more states, viz. Austria, Belgium, Egypt, Mexico, Poland, Spain and Uruguay were invited to send representatives to the Committee. By 1940, the Committee consisted of 24 members, and it is interesting to show the policy of membership by categorising them according to their participation in this trade:

**Opium Producing Countries:** Belgium, Greece, India, Iran, Japan, Turkey and Yugoslavia.

**Principal drug manufacturing and exporting countries:** Belgium, Czechoslovakia, France, Germany, India, Italy, Japan, Poland, Switzerland, Netherlands, United Kingdom, United States of America and Yugoslavia.

**Coca Leaf Producing Countries:** Bolivia, Formosa, Netherlands and Peru.

**Opium Consuming Countries:** Canada, Egypt, Greece, Mexico, Spain, Sweden and Uruguay.

Of the opium producing countries, Afghanistan and the Union of Soviet Socialist Republics were not members of the Committee.

The novelty of the Committee lay in its system of appointing assessors. The primary reason for inviting assessors on to the Committee was to obtain the unbiased opinions of experts in this
field. Appointments of the assessors was made by the League Council for one year initially subject to renewal. The position of Chairman was not open to the assessors, nor had they any right to vote, as they were appointed in a personal capacity and they were not representatives of any government; otherwise, they enjoyed the same rights as other members of the Committee. Since the Advisory Committee itself was an expert committee, the need for additional assessors had not been felt, except in those matters where very specialised knowledge was necessary.

The general rules concerning the constitution and functions of the Committee were adopted in 1936. Originally, membership of the Committee was for an unlimited period, but after 1936, it was decided that the members would be appointed for three years with provision for renewal which would be subject to review. Such periodic membership deserves appreciation because it avoids setting any pattern, or the exercise of particular influence by any member state. The expenses of the Committee were borne by the normal budget of the League of Nations.

The scope of the Opium Advisory Committee's competence was limited by the Hague Opium Convention of 1912, which made provisions for the limitation of production of manufactured drugs only. The question of the limitation of raw and prepared opium was believed to be outside the competence of the Advisory Committee. The Committee was not intended to be authorised to "collect data and deal with disputes", and consequently, the Committee had no power to investigate the needs for raw and prepared opium of various countries, which power
was necessary for setting the limit to the production and manufacture of opium. The competence of the Committee was questioned by the Indian delegate when he stated, "If the enquiry were to include raw opium, the terms of the Convention would be set aside, because in the Convention this product was placed in a different class from other drugs." He also mentioned that he had no objection to conforming to the procedure of enquiry as laid down by the Secretariat of the League for the requirement of drugs provided that it was clearly understood that it only referred to the drugs mentioned in chapter III of the Convention. After some discussion between the Indian delegate, Mrs. Hamilton Wright and the British delegate, the Committee adopted the proposal, adding the words: "specified in chapter II of the Convention"; as suggested by the Indian delegate. This evidently proved that the Committee's scope of function was determined by national interests. Evidence of the influence of national interests may also be found in the statement made by the participants of the Committee in connection with the interpretation of Article 6 of the Hague Opium Convention. The U.S. delegate emphasised that any compliance with the spirit of the 1912 Convention would prevent the international traffic in raw opium and coca leaves, as well as their derivatives, for non-medical and non-scientific purposes. In order to substantiate his view, he referred to the resolution of the U.S. Congress to this effect: "... the effective control of these drugs can be obtained only by limiting the production thereof to the quantity required for strictly medicinal and scientific purposes, thus eradicating the source or root of the present conditions, which
are solely due to production many times greater than is necessary for such purposes; and in fact, he submitted a proposal to the Opium Advisory Committee maintaining the same idea. The U.S. delegate did not however fail to mention that chapter III of the Hague Opium Convention bound the Contracting Powers, inter alia, "to limit the manufacture, the sale and the use of morphine and its salts to medical and legitimate uses only." Interestingly enough, seven out of ten members of the Committee accepted the U.S. proposal concerning Article 6 of the Convention. As regards the question of limiting the production of opium, the Indian delegate found that it was outside the scope of the Committee's power to make any recommendation.

These, then, were the prevailing attitudes of the nations at the time the Opium Advisory Committee was formed. At the Second Meeting of the fifth session of the Committee, Bishop Brent concluded his speech by saying, "We are in the valley of decision. There are but two alternatives. As Lord Grey has said, "The nations must learn or perish." We have not perished as yet, but the nations have not learnt even after fifty years. The national interests of the participants prevailed so much that seeking compromise seemed to be a cry in the wilderness. However, the conclusions which necessarily emerge from the above discussion are:

(i) that as the states were inclined to guard their national interests jealously, they were not willing to allow the Opium Advisory Committee, and the League of Nations at large, to inquire into their internal affairs;
(ii) that the states were still inclined to produce poppy in an unrestricted manner; and

(iii) that the Opium Advisory Committee was denied competence to take more effective measures to control the opium problem.

(b) Functions of the Opium Advisory Committee on the Traffic in Opium and Other Dangerous Drugs

(i) Introduction

The title of the Committee suggests that its functions were advisory in matters concerning the traffic in opium and other dangerous drugs. The immediate conclusion that may be drawn is that the Committee's views were not in any sense binding upon other bodies concerned with this problem. Compliance with the advice of this Committee depended upon the sense of responsibility and good faith of the governments. However, the work of the Committee may be considered under two heads: (a) as an aid to the policy-making for the League of Nations in dealing with this problem; and (b) its role as a supervisory organ. The functions of the Opium Advisory Committee were concerned, on the one hand, with the appropriate operation of the licit trade in drugs, and on the other with the suppression of the illicit traffic in this commodity.
(ii) Opium Advisory Committee as an aid to the
League of Nations in formulating policies of
drug-control

By a resolution of the League Assembly of 15 December, 1920, the Opium Advisory Committee was authorised to take over the functions implied in the Hague Opium Convention of 1912. This inevitably implied that the Committee's functions involved controversial questions concerning both economic and political interests.

By means of resolutions, the League Council or the League Assembly or both asked the Committee to undertake studies as preparations for international conventions on drug-control. The Committee was bound by the terms of resolutions adopted by the League Council or the League Assembly or by both, as the case might be. Nevertheless, it was free to appoint sub-committees, if necessary, for the purpose of conducting the required studies. The Committee on receipt of report(s) of the sub-committee(s), apprised the League Council/Assembly as the case might be, to whom it was directly responsible. The Committee was however given a free hand in conducting studies, provided they were within the terms of reference, and even to ask the national governments concerned to submit their reports on certain matters. It was the function of the Committee to study those reports (submitted by the national governments concerned) and to report on its observations to the League Council/Assembly as the case might be. Such observations were considered by the League Council/Assembly before actually recommending the governments concerned, on certain matters, by means of resolutions.
In fact, the draft conventions on drugs were prepared by this Committee. 40 The practice of the Committee of preparing draft conventions on the basis of the observations made by various governments proved helpful to the League Assembly/Council, and served the purpose of giving prior indications as to the attitudes of the governments. This Committee was in a sense a screening committee for the League Assembly/Council as far as this problem was concerned. The procedures followed by the Committee in studying matters relating to drug-control were not uniform, although the purpose of such studies in all instances was the same, e.g. the procedure followed by the Committee in the preparation of the Conference for the Suppression of the Illicit Traffic in Drugs, 1936 was different from that of the Limitation Conference of 1931. The procedure varied according to the nature of the subject matter under study, e.g. in the preparation for the 1936 Conference, the Committee requested the International Police Commission in Vienna to participate in the discussion, and it (the Commission) submitted a draft convention to the Opium Advisory Committee. 41 This clearly indicates that the Committee, in order to be able to study a matter fully and impartially, was given a free hand in obtaining information and expert opinions from various informed sources. Such freedom, especially in obtaining the views of the governments, was guaranteed by the League in its resolution of September 25, 1931. 42 The Committee was also granted the privilege of obtaining assistance from the League Secretariat in the preparation of any convention, if necessary. Such assistance was obtained by it from the League Secretariat in the preparation of
a proposed convention for the limitation of the production of raw opium.\footnote{43}

One of the important functions performed by the Opium Advisory Committee was to prepare "the way for the perfection in application of existing agreements and for agreement upon new measures of control."\footnote{44} The Model Code for the Administrative Control of the Drug Traffic\footnote{45} in connection with the Limitation Convention was prepared by this Committee. The acceptance of the Code by a great majority of nations clearly demonstrated its effectiveness as also the acumen of the drafters (i.e., the members of the Opium Advisory Committee). The policy of the League in the matter of the limitation of manufacture of drugs and the regulations thereof, was translated into this Code by the Opium Advisory Committee.

(iii) Opium Advisory Committee as a Supervisory Organ

This function of the Committee was quite extensive in its scope. It not only supervised the general application of the drug conventions but was also responsible for ensuring that the programme of drug-control, i.e., the limitation of production and manufacture of drugs and other related matters, including the licit and illicit trade in them, was under control. It derived its power of supervision from paragraph (c) of Article 23 of the League Covenant. This aspect of the Committee's function referred to the problem generally, and even on a particular basis, if necessary, i.e., the particular situation (e.g., requirements of drugs etc.)
In each country. In order to fulfil this task, the Committee emphasised the necessity of the accountability of the national governments to it. Such accountability was thought to be best achieved by devising a system of compulsory submission of annual reports by the national governments. The Committee, at its first session, recommended that "a report should be made annually to the League by each country which is a party to the Convention (i.e., the Hague Opium Convention, 1912), on the execution in its territory of the provisions of the Convention, with statistics of production, manufacture and trade." The first form of annual report was adopted by it in April, 1922, but owing to the coming into force of the Geneva Convention of 1925, a new form of annual report had to be adopted. According to this form of annual report, the governments were under an obligation to supply specified statistical information to the Permanent Central Board, and the reference to the statistical information previously required was therefore removed from the form of annual reports. Again, with the coming into force of the Limitation Convention, another new form had to be adopted. In Article 21 of the Limitation Convention the High Contracting Parties undertook not only to communicate to one another through the Secretary-General of the League of Nations, the laws and regulations promulgated in order to give effect to this Convention, but also to forward to the said Secretary-General an annual report on the working of the Convention in their territories, in accordance with a form drawn up by the Opium Advisory Committee. Renborg rightly observed that the effect of this provision was that it f
within the power of the Committee to decide what information govern-
ments should have included in the annual reports, and that the
Committee might from time to time revise the form so as to include
more or other information which the circumstances, in the opinion
of the Committee, might warrant.\textsuperscript{51} This Committee was also entrusted
with the task of examining the reports submitted by various govern-
ments. It was also authorised to suggest possible remedies to a
particular country, and to review the procedure of application of the
provisions of the conventions. However, it was assisted by the League
Secretariat in the examination of these reports.\textsuperscript{52} (The analytical
study was made by the League Secretariat, and the Opium Advisory
Committee examined the situation on the basis of that study). The
Secretariat sent out such annual reports together with the annual
analytical study to all governments concerned so that the direct effect
(i.e., information regarding drug-control in other countries) of such
an exercise was felt by national governments. By means of such reports
the nations were kept apprised of the situation in the production/
manufacture of drugs and the trend in the international trade.

The nature of the work of this Committee was reciprocal. The
Member countries also helped the Committee in preparing its own obser-
vations on the basis of the annual reports submitted to it by them.
There was also a system of exchanging the texts of national laws and
regulations between the parties to the conventions, through the League
of Nations.\textsuperscript{53} The actual purpose of this communication of drug
legislation, as has been observed by Renborg, was to make possible a
real "international control over the extent to which governments implemented the Conventions in their national legislation." On the other hand, access to the Opium Advisory Committee facilitated national governments in securing its advice on special problems concerning drug-traffic. The inter-dependence, whether formal or informal, between it and the member governments was maintained; it was primarily a question of teamwork rather than a relationship between a higher authority and subordinate(s). It was also for this reason that a system of participation of the member states on the Committee was adopted. The Committee selected one of the body of three experts constituted for the purpose of deciding whether or not a new drug was capable of producing addiction, or should have been included in sub-group (b) of Group I or II. It is possible that its progress would have been much slower had it not been manned by independent experts only. Indeed, the League of Nations' success in this area was largely due to the "penetrating effective influence exercised upon governmental nominees by regular collaboration in the Advisory Committee." As a direct means of combating illicit traffic in drugs, the Committee's reports to the League Council and the minutes of meetings had been made available to the public. The Committee was concerned with both the maintenance of licit trade in drugs as well as the suppression of illicit trade and traffic in them. The philosophy of its work was always the same, although the procedure might have varied according to the nature of the problem.
The role and functions of the Opium Advisory Committee in the matter of administration of the drug industry internationally were too significant to be overlooked. All the drug conventions during the League period had been prepared by it after studying the problems in their most relevant perspectives. It was not a rule-making body; it had always taken the role of a reformer. It was free from any bias. It had direct contact with national governments, and this gave a fillip to the member governments in their efforts to combat illicit traffic in drugs and to punish the offenders. It was nothing less than a "laboratory for the discovery and testing out of new measures of international co-operation against the traffic in dangerous drugs." Its relationship with the Council/Assembly was that of a partnership. It was accountable to the League Council/Assembly but that did not affect its functional character. It was an expert body capable of functioning with the help of other experts, whenever and wherever necessary. It had not been empowered to implement regulations, but its recommendations were usually accepted by the League Council/Assembly. In view of the 'neutral' nature of this Committee, it easily attained cooperation from the other organs of the League involved in this work, viz. the Permanent Central Board and the Supervisory Body. Again, the relationship between the Committee and the Permanent Central Board or the Supervisory Body was that of a unit of a total body. Incidentally, the Council of the League invited the Opium Advisory Committee and the Permanent Central Board to participate in the 1931 Conference (for the Limitation Convention) in a
consultative capacity. The status of the Committee was however elevated to such a level that despite its advisory character, the Contracting Parties in Article 21 of the Limitation Convention undertook to forward to the Secretary-General of the League annual reports on the working of the Convention in their territories in accordance with a form drawn up by the Committee. This meant that such a form was not to have been approved by the League Council. In view of its functional relationship with most other relevant organs of the League of Nations, from the administrative and managerial point of view, this Committee was a horizontal committee. Functionally again, it was formed to advise and guide and not to command, except in certain situations which have been mentioned before.
C. THE PERMANENT CENTRAL BOARD

(a) Introduction

In his opening speech at the Second Opium Conference the President of the Conference said, inter alia, "in order to make good the omissions in the Convention of 1912, the Advisory Committee found that it was necessary to adopt a policy of limiting the production of raw materials from which narcotic drugs are manufactured." The question of limiting the production of raw materials was closely connected with that of estimating requirements. This was the genesis of an international body for the purpose of the supervision of the trade and traffic in narcotic drugs. A suggestion was made by the Opium Advisory Committee to create a Central Board for this purpose, and finally, Article 19 of the Geneva Convention of 1925 provided for the creation of the Permanent Central Board.

It would be interesting however to recall the circumstances which led to the creation of the Permanent Central Board (hereinafter called the Board). The economic self-interest of nations being dominant, any consensus among them as to their submission to an international body of estimates of opium and other drugs was highly improbable, and this was borne out by the Preparatory Committee, which was entrusted with the preparation of a draft programme for the Second Conference (hereinafter called the Preparatory Committee). This Preparatory Committee was formed by a resolution of the League Council in December, 1923. In order to
enable it to fulfil its task, the Preparatory Committee not only suggested that the League Council should extend its terms of reference but also passed a resolution drawing the attention of the said Council to the fact that as it would be necessary for it to act in consultation with the representatives of the chief manufacturing and producing countries, the Council should invite the governments of those countries to nominate representatives, who should be called upon to collaborate with it, when necessary, in the preparation of the draft agreement in which they were individually concerned.67 This Committee consisted of six members, three of them being nominated by the Opium Advisory Committee and the remaining three by the Council of the League. Two out of six members were assessors.68 Interestingly enough, the chief drug producing and manufacturing countries were not represented on the Preparatory Committee.69 In order to limit the manufacture and production of drugs, the logical step was to determine the world's legitimate requirements of such drugs. The Council of the League, therefore, on the recommendation of the Opium Advisory Committee, requested the Members of the League to prepare an estimate of the total annual requirements of the inhabitants of their territories for medical, scientific and other necessary uses.70 A Mixed sub-committee was therefore formed with the assistance of the Health Committee of the League to examine the annual legitimate requirements of the drugs in question. The functioning of the Mixed sub-committee was necessarily dependent upon the information which the Member states were required to supply.
Consequently, the information which the Member states of the League and the Mixed sub-committee were required to supply formed the basis of the work of the Preparatory Committee. 71

Neither the Preparatory Committee nor the Mixed sub-committee had been given the power to investigate the problem of drugs in any state, and therefore, the powers of such bodies were passive rather than active. With regard to limitation of the manufacture of morphine, heroin and cocaine, the Opium Advisory Committee reached the conclusion that "it now seems possible for the governments of the producing countries to approach each other with a view to reaching a general understanding." 72 A number of governments submitted their annual estimates or internal consumption, but unfortunately at the time when the cocaine question was under discussion, irreconcilable differences of opinion became so manifest that the Preparatory Committee abandoned the discussion, and did not proceed to discuss the opium problem which was considered to be even more complex. The Preparatory Committee was therefore rendered unable to prepare a single draft programme for the Second Conference. However, separate draft conventions were prepared by the British, French, Dutch and U.S. governments. The British and U.S. governments advocated an agreement between the producing and manufacturing countries, under which the latter would themselves restrict their manufacture of narcotic drugs in accordance with an estimate to be fixed by the governments, of their medical requirements. 73 This proposal was intended to impose the sole responsibility concerning restrictions of the manufacture of drugs upon the manufacturing states. On the
other hand, while the Dutch proposal had, as its object, the indirect limitation of the manufacture of cocaine, to be effected by a gradual decrease in the production of coca leaves, the French proposal provided for the application of more effective measures with regard to reduction of manufactured products both on national and international levels. While the Dutch proposal put more emphasis on the control of exportation of the raw material, than on control of the manufacture of drugs, or the monopoly of trade in drugs, the French government advocated limitation by means of restriction of contraband as opposed to limitation of manufacture. These irreconcilable opinions had a paralysing effect upon the Preparatory Committee's efforts to draw up a plan for the Second Conference. This was however obviated by the emergence of a compromise formula between the Anglo-American and the French proposals. The compromise formula gave recognition to both the principles of direct limitation of production, and control of trade in opium. In order to fulfil this proposal, the Opium Advisory Committee suggested that a Permanent Central Board, composed of experts, should be constituted by the League Council. The compromise formula was therefore the basis of the Permanent Central Board.
(b) Composition

Chapter VI of the 1925 Convention dealt with the organisation, powers and functions of the Permanent Central Board. Members of the Board were appointed by the League Council, and were persons possessing knowledge of the drug situation, both in the producing and manufacturing countries on the one hand, and in the consuming countries on the other, and connected with such countries. It may therefore be observed that in the matter of appointment of the members of the Board, the policy of "equitable proportion" was maintained. The members of the Board, in performing their functions, were not dependent upon their respective governments, and this helped maintain their independence and impartiality. The independence of the Board itself had been maintained to a great extent by the provision of the necessary funds from the budget of the League. As regards the status of the Board, opinions differed. According to the sub-committee to which this matter was referred, the Board was not independent of the League. The most critical comment however came from the Italian delegate (M. Cavazzoni), when he said, "this Board was not an organ of the League. It had its separate existence and it was not sufficient to say that the Convention had been drawn up under the auspices of the League. According to constitutional law, an organ must be entrusted by a general and higher organisation to carry out the wishes of the organisation." This in fact was the bone of contention as regards the delegation of powers to the Board. According to the Italian delegate, although the Board was created by the League, in view of the nature of the work the Board was required to perform or in order to maintain impartiality, it should have full independence in the sphere of its activities. He was
apprehensive that "the situation was still more serious in the case of states which had not ratified the Convention and more Members of the Council, which might be obliged to take orders from the Central Board." In order to substantiate his arguments, he referred to Articles 24 and 25 of the Hague Convention which, according to him, gave authorisation to the appointment of an independent committee. It may be useful to recall that the functions of the League were to be discharged not only in accordance with the existing conventions (i.e., the Hague Convention in this instance) but also according to the provisions of any other convention which would be concluded in the future (the Geneva Convention of 1925). Article 20 of the Geneva Convention however assured the full technical independence of the Board in carrying out its duties, and Article 24, paragraph 5 of it gave the Board the right to send reports to the Council, which were to be forwarded to the governments should the government of any importing country have failed to act on the recommendations of the Board. However, the Italian delegate had the support of China, France, Germany and Portugal. The contrary view was held by Britain, India, Japan and the Netherlands. The opposition which was led by the British delegate advocated a complete independence of the Board on the grounds that any curtailment of independence of the Board would not only debar it from the service of experts, but also deprive it of its technical independence. While one group was anxious to retain the supremacy of the Board by freeing it from the supervision of the League, the other was apprehensive of its potential autonomy which might encroach upon the sovereignty of states. The other conflicting opinion was
expressed by the Italian delegate (M. Scialoja). According to
him the "Secretary-General of the League should be charged with
the constitution of the Secretariat of the Central Board, which would
thus form an integral part of the Social Section of the Secretariat
of the League. This would permit states to control, through the
League, the activities of this Board." This view gained support
from the French delegate especially in view of the fact that this
would be the most natural way of fulfilling the provision of
article 20 of the Geneva Convention.

Despite the divergence of these opinions concerning the
status of the Central Board, they recognised the technical charac-
ter of the Board and therefore each delegate was anxious to preserve
its independence and impartiality. Consequently, a compromise
between the two divergent views was attained, and the Board was not
deprived of its relationship with the League, although it maintained
its impartiality and technical character within the framework of its
constitution.

The executive power of the Board was to a great extent deter-
mined by the member states. They held diametrically opposite views
on this matter. While one view did not favour any compulsion as
to the submission of estimates except statistical reports on
narcotic drugs, the other favoured the compulsory submission of
both. It may be recalled in this connection that, while discus-
sing the proposal for establishing a Central Board, the Japanese
delegate said, "it could not be invested with the power to make
estimates, for that would be contrary to the principle of sover-
eignty of states; it could only act by publicity and by appealing
to public opinion." The U.S. delegate, on the other hand, stated, "the Central Board should have at least all the attributes of the Advisory Committee. If a new body was created, it must be given the general control of all measures relating to the traffic in harmful drugs. The executive powers of the Central Board must therefore be extended." He also stated that "the Central Board would have executive and not advisory powers. It would be non-political and would be entrusted with controlling every aspect of the traffic." This matter of conferring real powers upon the Board was finally referred to a Committee of Five, for a decision, but the vehement opposition from certain powers made the Committee adopt a lenient recommendation. The French delegate said that "the Central Board could only exercise a general supervision over the traffic. Supervision in matters of detail could only be exercised by the country concerned." The phrase, "general supervision" lacks obligatory force. The Board was thus short of effective power of control, and this may again be proved by referring to the system of submission of estimates by various governments. The draft article 1 of the Convention which was adopted by the Sub-Committee A, and which became article 21 of the Geneva Convention of 1925, was not only amended to "for medical, scientific or other purposes" from "for medical and scientific purposes", but also took away the effective power of the Board.
(b) Functions of the Permanent Central Board

Generally, the functions of the Permanent Central Board were to limit the production and/or manufacture of narcotic drugs in accordance with the legitimate world requirements, and also to take effective measures for the prevention of the illicit traffic in the said commodities by controlling their production/ manufacture. However, both the Geneva Convention of 1925 and the Limitation Convention of 1931 devised certain specific functions for the Board, and those functions may be shown under two categories:

(i) To obtain current information concerning the actual production/ manufacture, stocks, consumption etc. of drugs

The basic idea was to keep the Board informed of the current position regarding the actual production/ manufacture, stocks, consumption etc. of drugs by means of statistics. Under Article 22 of the Geneva Convention, 1925 the Contracting Parties agreed to send annually to the Board, within three months (in the case of stocks of substances, five months) after the end of each year, as complete and accurate statistics as possible relative to the preceding year, showing the exact position of the production of raw opium and coca leaves, manufacture of certain specific drugs, stocks of all narcotic substances (other than Indian hemp and Indian hemp drugs) consumption of narcotic drugs (other than Indian hemp and Indian hemp drugs) for non-governmental purposes, and also accounts of narcotic substances covered
by the Convention which had been confiscated on account of illicit import and export. 

In order to complete the information of the Board as to the disposal of the world's supply of raw opium, the governments of the countries where the use of prepared opium was temporarily authorized should, in a manner prescribed by the Board, in addition to the statistics provided for in Article 22, forward annually to the Board, within three months after the end of each year, as complete and accurate statistics as possible relative to the preceding year showing:

1. the manufacture of prepared opium, and the raw material used for such manufacture; and

2. the consumption of prepared opium.

However, the Board had no effective power to prevent the accumulation of excessive quantities of the substances covered by the Convention, nor was it within the competence of the Board to question or to express any opinion upon the statistics. The Limitation Convention of 1931 prescribed the same method for the parties to the Convention for the supply of statistics. The parties were required, as usual, to send statistics to the Board in the prescribed forms devised by it. Three points are to be mentioned in this connection viz. (a) that under this Convention, the parties were required to send to the Board statistics of imports and/or exports annually instead of quarterly, (b) that the provisions of chapter V of the Geneva Convention of 1925 (i.e., import authorization) were applicable to drugs in Group II of the Limitation Convention, and not to "compounds containing any of these..."
drugs which are adapted to a normal therapeutic use", and (c) that returns of statistics were not required to be sent to the Board in the case of preparations containing these drugs.\(^\text{103}\)

Article 24 of the Geneva Convention stated that the Central Board should continuously watch the course of the international trade. If the information at its disposal led the Board to conclude that excessive quantities of any substance covered by the present Convention were accumulating in any country, or that there was a danger of that country becoming a centre of illicit traffic, the Board was given the right to ask, through the Secretary-General of the League, for explanations from the country concerned.\(^\text{104}\) If no explanation was forthcoming within a reasonable time or if the explanation was unsatisfactory, the Board was given the right to call the attention of the governments of all the Contracting Parties and of the Council of the League of Nations to the matter, and to recommend that no further export of the substances covered by the present Convention, or any of them, should be made to the country concerned, until the Board reported that it was satisfied as to the situation in that country in regard to the said substances. The Board at the same time was required to notify the government of the country concerned of the recommendation made by it. The country concerned was entitled to bring the matter before the Council of the League. The government of any exporting country which was not prepared to act on the recommendation of the Central Board was also entitled to bring the matter before the Council of the League. If it did not do so, it was to immediately inform the
Board that it was not prepared to act on the recommendation explaining, if possible, why it was not prepared to do so. The Central Board was given the right to publish a report on the matter and communicate it to the Council, which was thereupon to forward it to the governments of all the Contracting Parties. This meant that it was not obligatory for the country concerned to abide by the recommendation of the Board. In fact, according to Article 25 of the Geneva Convention of 1925, it was the friendly right of any of the Contracting Parties to draw the attention of the Board to any matter which appeared to it to require investigation. Yet, this article specifically limited the powers of the Board, and indeed it provided that "this Article shall not be construed as in any way extending the powers of the Board." However, in the case of a country which was not a party to the Geneva Convention of 1925, the Board might take the same measures as were specified in Article 24, if the information at the disposal of the Board led it to conclude that there was a danger of the country becoming a centre of the illicit traffic; in that case the Board was required to notify the League Council and the country concerned of the recommendation made by it. In all cases however the powers of the Board were mere recommendatory. Incidentally, as far as the Board's powers on statistical information were concerned, it appears that in accordance with paragraph 3 of Article 22 and Article 23 of the Geneva Convention, the Board was authorised to question or to express its opinion on any drug other than prepared opium.
(ii) **To supervise the estimates of drugs**

The systems of furnishing statistics and submitting estimates of drugs by the Contracting Parties were complementary to each other. While statistics showed the actual position of consumption, stocks, manufacture etc. of drugs in a year, estimates gave an idea of the requirements of manufactured drugs for medical and scientific purposes for each country. The Supervisory Body was created for the purpose of examining the requirements, but the overall responsibility of supervision lay with the Permanent Central Board. In accordance with Article 21 of the Geneva Convention, the Contracting Parties agreed to send annually to the Board estimates of the quantities of each of the substances covered by the Convention to be imported into their territory for internal consumption during the following year for medical, scientific and other purposes. These estimates were not to be regarded as binding on the government concerned, but were meant for the purpose of serving as a guide to the Board in the discharge of its duties. Should however circumstances have made it necessary for any country in the course of the year, to modify its estimates, the country in question was supposed to communicate the revised figures to the Board. The estimates of drugs for "medical" and "scientific" purposes themselves posed problems, because what are regarded as "medical" and "scientific" purposes by one country may not be so regarded by another. The expression "other purposes" was vague, and gave unlimited discretion to the states to determine those "purposes". On a further analysis, it appears that although
the Contracting Parties agreed to send annually to the Board their respective annual estimates, no provision was made in the Geneva Convention authorising the Board to compel any defaulting state to comply with the requirement.

This situation was however improved by the Limitation Convention of 1931. Article 14, paragraph 2 of the Convention provided that if it appeared from the import and export returns made to the Board or from the notifications made to the Board in pursuance of Article 14, paragraph 1 that the quantity exported or authorised to be exported to any country or territory exceeded the total of the estimates for that country or territory, as defined in Article 5, with the addition of the amounts shown to have been exported, the Board was required to notify the fact to all the High Contracting Parties, who would not, during the currency of the year in question, authorise any new exports to that country except:

(i) in the event of a supplementary estimate being furnished for that country, in respect both of any quantity over-imported and of the additional quantity required; or

(ii) in exceptional cases, where the export in the opinion of the government of the exporting country was essential on humanitarian grounds, e.g. for the treatment of the sick.

The Board was authorised to examine the statistical accounts of drugs and also the estimates submitted by countries, although in the latter case mainly through the assistance of the Supervisory
Body. Again, however, should a Contracting Party, in the opinion of the Board, default in carrying out its obligations concerning the preparation of an annual statement, the Board could only give judgment in the form of recommendations and that also through the Secretary-General of the League. In terms of Article 26 of the Geneva Convention of 1925 however the Board was authorised to take the same measures as specified in Article 24, in the case of a country which was not a Party to the Convention. In conclusion, it may be stated that the Board was given those powers which involved routine work. It was a supervisory organ with a limited competence.
The genesis of the Supervisory Body can be found in the Limitation Convention of 1931. Article 5, paragraph 6 of this Convention stated, inter alia, that "the estimates will be examined by a Supervisory Body." In 1929, the League Assembly requested the Opium Advisory Committee to prepare a scheme for the Limitation of the manufacture of narcotic drugs, in order that the League Council would thereupon decide to convene an international conference with a view to drawing up an international convention to this effect. The scheme for a convention for the purpose of limiting the manufacture of narcotic drugs, and for creating various organs for its execution, was therefore in the contemplation of the League long before the Limitation Convention was drafted. However, the Supervisory Body came into action with the coming into force of the Limitation Convention in July, 1933.

In terms of Article 5, paragraph 6 of the Limitation Convention, the Opium Advisory Committee of the League, the Permanent Central Board, the Health Committee of the League and the Office International d'Hygiène Publique each had the right to appoint one member of the Supervisory Body. Provision was also made that the Secretariat of the Supervisory Body should be provided by the Secretary-General of the League of Nations. The Convention did not however prescribe any basic qualifications for the members of this Body. The question of eligibility for membership of this Body was discussed at some length at the Second Meeting of the
Sixteenth Session of the Opium Advisory Committee. The Chairman noted that it was essential that the membership of the Supervisory Body should possess first class qualifications and a special knowledge of Far-Eastern questions. The phrase "first class qualifications" was vague and controversy centred round two basic proposals, viz. (a) that the Supervisory Body should consist primarily of medical men with a knowledge of the varied medical conditions obtaining, especially in the Far East, and (b) that the Supervisory Body should also include persons who were familiar with the administrative aspect of this matter and with the machinery of various drug conventions. The German delegate (Dr. Kahler) rightly emphasised the medical nature of the task entrusted to this new organ, and the Dutch delegate (M. van Wettum) gave a compromise view that there should be two doctors and two non-medical members representing the administrative side. The first members of the Supervisory Body were:

1. Dr. Carrière
   Swiss delegate to the Comité Permanent, Office International d' Hygiène Publique, Paris
2. Sir Malcolm Delevingne
   Under Secretary of State, Home Office, Great Britain
3. Mr. Herbert L May
   Vice Chairman of the Permanent Central Board (also Acting Chairman of the Supervisory Body)
4. Professor H. Tiffeneau
   Professor of Medicine, University of Paris.

The eligibility of these members for the work of the Supervisory Body can hardly be questioned. Incidentally, Mr. H.L. May
was also a member of the Permanent Central Board and Professor Tiffeneau was subsequently appointed a member of the Board at the retirement of M.L. Angel in December, 1933. Needless to say that the overlap of membership between the Board and the Supervisory Body was helpful for the purpose of co-ordination. The Convention did nor prescribe any duration for the term of appointment for the members of the Supervisory Body. However, at the time of first appointment of the members, the Opium Advisory Committee without prejudice to future practice, pronounced in favour of a three-year term of appointment for members of the Supervisory Body. It was also to be the practice to renew the appointment each time for three years. Members of this body, like members of the Board, were paid subsistence allowance only during meetings, plus travelling expenses. The role of the members was very much like that of the assessors of the Board. The Convention did not make any provision for the expenses of the Supervisory Body, presumably because the Supervisory Body was an integral part of the Board. The expenses of the Board were borne by the normal budget of the League. In fact, functionally, if not organically, the Supervisory Body was a committee of the Board. The financial independence of the Supervisory Body was therefore planned to be maintained along with such independence as the Board enjoyed.

The Limitation Convention did not specify the exact status of the Supervisory Body presumably because it was an integral part of the Board. Like the Board, it was also a treaty-organ. It acted as an ad-hoc body endowed with a permanent status. Consequently,
the question of any legislative or judicial powers for such a body did not arise. Article 5, paragraph 6 of the Limitation Convention however conferred administrative powers upon the Supervisory Body by enabling it to ask governments for further information with a view to explaining the estimates, despite the fact that in accordance with the terms of the Convention, the estimates, whether regular or supplementary, were to be submitted to the Permanent Central Board. The Supervisory Body went hand in hand with the Board, and in order to ensure close collaboration with the latter authority, the Secretariat of this Body was provided by the Secretary-General of the League.

The division of powers between the Board and the Supervisory Body was based on the policy of efficiency. In fact, not only were the functions of the Supervisory Body complementary to the work of the Board but also the structure of limitation and supervision work depended upon the continued functioning of the Supervisory Body. The Convention however did not make any provision for any direct relationship between the Supervisory Body and the League Council /Assembly.
(b) Functions of the Supervisory Body

The functions of the Supervisory Body had been detailed in paragraphs 2 and 3 of Article 2 and paragraphs 6, 7 and 8 of Article 5 of the Limitation Convention. Paragraph 2 of Article 5 of the Limitation Convention necessitated the creation of a separate body like the Supervisory Body, in order to obtain details of statistical information as required by the Convention in respect of the requirements of each country or territory for each year, not only in the form of alkaloids or salts, but also for the quantity necessary for medical and scientific needs, including the quantity required for the manufacture of preparations for the export of which export authorisations were not required, the quantity necessary for the purpose of conversion whether for domestic consumption or for export, the amount maintained as reserve stocks and the amount required for the establishment and maintenance of any government stocks. The corresponding Article of the 1925 Convention merely asked for estimates of the quantities of each of the substances covered by the Convention to be imported into their territory for internal consumption during the following year for medical, scientific and other purposes." 116

Whereas under the 1925 Convention the Board had no powers to question the validity of the requirements submitted by a country, under the Limitation Convention, it was imperative for the countries to submit their estimates for the coming year on the basis of some standard of legitimate needs. The Supervisory Body, which was a highly technical body, was established and empowered to
examine the needs of individual countries in terms of the standard of legitimate needs as determined by them. The Supervisory Body was also empowered to examine the supplementary or amended estimates furnished by governments in the same way as the ordinary annual estimates. As a further means of obtaining the required information for the purpose of examining the legitimate requirements of the countries, second sub-paragraph of paragraph 6 of Article 5 of the Limitation Convention empowered the Supervisory Body to amend any estimate subject, of course, to the consent of the government concerned.

This body was given wide powers as far as estimates of drugs were concerned, but owing to its technical nature it had not been given any direct punitive power which might have been applied against a defaulting country. The power of this body was merely passive.

Before this body was created however, the only control measures in respect of the manufacture of drugs, which the Board exercised, were on the strength of Article 24 of the Geneva Convention of 1925. Such powers of the Board were merely recommendatory. The creation of the Supervisory Body was therefore a functional necessity to rectify the defects of the Geneva Convention of 1925 in so far as the estimate system was concerned. The function of this body was not only to examine the estimates which were submitted by various governments, but also to determine the world requirement of drugs for legitimate purposes. The Convention also empowered this body to furnish estimates of drugs in respect of those countries for which no estimate had been furnished.

The success of the Limitation Convention depended very much upon this subtle task of the Supervisory Body. In the case of an
overestimate, the surplus drugs already manufactured, would find their way into illicit traffic, and on the other hand, an under-estimate might have a great bearing upon the legitimate need for drugs for medical and scientific purposes. This aspect of the problem involved the sense of responsibility and co-operation of states, whether or not they joined the League. Although the Supervisory Body was authorised to determine the estimates, taking into account the needs of the non-Contracting Powers or colonial areas for which the imperial states had not accepted the obligations of the Convention, the absence of any obligatory provision in the Convention for the submission of estimates even for the Contracting Powers, let alone the non-Contracting Powers, posed another problem for the Supervisory Body. This body, in the absence of a report from a country was not in a position to determine the stocks already existing in that country, and consequently, any estimate based on an assumption of stocks, would either augment the stocks or deprive the country of its legitimate needs for the coming year. In fact, the former situation was more dangerous than the latter as any unguarded assumption would add to the stock already existing and the accumulated stock would find its way into illicit traffic.

Nevertheless, the functions of the Supervisory Body enabled the Board to exercise more effective supervision over the world drug situation. The preparation of the Annual Statement of Estimated World Requirements of Drugs, which was devised by the Limitation Convention was largely carried out by the Supervisory
Body. This body not only enlarged the functions of the Board, but also acted as a "watchdog" in relation to changes in the world requirements of drugs, and gave the Board signals, when necessary, in order to enable the Board to take effective preventive measures. The Supervisory Body was therefore an integral part of the Permanent Central Board.
E. THE HEALTH COMMITTEE OF THE LEAGUE OF NATIONS 119

(a) Composition

The Health Committee was one of the constituent parts of the Health Organisation of the League. Members of the Health Committee were medical experts or officials in charge of national public health services. They were selected from various countries in Europe, the Far East and Latin America, depending upon the subject matter under discussion at a particular time. The members were not representatives of their governments. This Committee was a non-political body, and consequently, its discussions on technical and scientific matters were not influenced by political considerations. Membership of this Committee was open to the non-Members of the League also.

Its duty was to lay down the programmes of work for the Health Section of the League and to give expert advice on technical questions submitted to it by the League Council /Assembly. It was assisted by technical committees or conferences of experts. Its work was subject to the approval either of the League Council /Assembly as the case might be. It had a separate commission on 'Opium'.
(b) Functions of the Health Committee

At its sixth meeting the Health Provisional Committee, at the instruction of the League Council, passed a resolution asking the Health Committee of the League or any other similar organisation to "undertake an enquiry, to determine approximately the average requirements of the drugs specified in chapter III of the International Opium Convention, for medicinal and other legitimate purposes in different countries." The drugs specified were medicinal opium, morphine and cocaine.

In order to carry out the request of the League Council, the Committee decided to undertake an enquiry in certain countries in which the use of these drugs was said to be excessive, as well as in certain others in which their use was at that time more probably limited to medicinal and other legitimate purposes, with a view to obtaining information as accurate as possible regarding the average quantities that might be required, and to report to the Council as rapidly as the conditions of the enquiry permitted.

The Committee further decided to authorise the Chairman to appoint a sub-committee which would deal with this question and communicate, if necessary, with the Opium Commission through its Secretary. The Committee found it difficult to arrive at an average quantity that might be required for world consumption owing to the absence of a uniform method of collection of data by the drug producing and manufacturing countries. The functions of the Health Committee were various although none of them involved direct action, i.e., not in the form of direct supervision. One of
the areas where the Health Committee was very much involved was in the process of extending the scope of the Geneva Convention of 1925 to include manufactured drugs. Article 4 of this Convention stated:

"The provisions of the present chapter apply to the following substances:

(a) Medicinal opium;

(b) Crude Cocaine and Ecgonine;

(c) Morphine, diacetylmorphine, cocaine and their respective salts;

(d) All preparations official and non-official (including the so-called anti-opium remedies) containing more than 0.2 per cent of morphine or more than 0.1 per cent of cocaine;

(e) Galenical preparations (extract and tincture) of Indian hemp;

(g) Any other narcotic drug to which the present Convention may be applied in accordance with Article 10."

Article 10 of this Convention gave the Health Committee the power to extend the scope of the Convention. According to this Article, in the event of this Committee after having submitted the question for advice and report to the Permanent Committee of the Office International d'Hygiene Publique in Paris, finding that any narcotic drug to which the present Convention does not apply is liable to similar abuse and production of similar ill-effects as the substances to which this Chapter of the Convention applies,
the Health Committee shall inform the Council of the League accordingly and recommend that the provisions of the present Convention shall be applied to such drug."

"The Council of the League shall communicate the said recommendation to the Contracting Parties. Any Contracting Party which is prepared to accept the recommendation shall notify the Secretary-General of the League, who will inform the other Contracting Parties."

"The provisions of the present Convention shall thereupon apply to the substance in question as between the Contracting Parties who have accepted the recommendation referred to above."

Therefore, it was for the Health Committee to recommend whether or not the Convention should be extended to a particular drug, which had not been mentioned in Article II of the Convention. Article 10, paragraph 2 suggested that such a recommendation of the Health Committee which was communicated to the Contracting Parties by the League Council was not binding upon the Contracting Parties. Nevertheless, the Convention became applicable to the drug in question as between the Contracting Parties who had accepted the recommendation. However, there is, perhaps, justification for saying that in the case of such discretionary provisions, acceptance by all the Contracting Parties would be improbable. Yet, what was noticeable was that Article 10 had been applied to a number of drugs which were subsequently included in Article 1, Group I of the Limitation Convention. The procedure under Article 10 was also applied to bring under the control of the Convention of 1925 all drugs in Group I to which the Convention did not apply. Article 10 however lost its importance to
a great extent because the Limitation Convention covered all known narcotic drugs which were used for medical purposes. Nevertheless, the importance of this Article lay in the fact that those narcotic substances to which the Limitation Convention could not be made applicable, could be brought under control by the application of Article 10 of the Convention. It was the Health Committee alone with which lay the responsibility for the application of Article 10; but the initiative for the application of this Article might be taken by a government, or even by the Opium Advisory Committee or the Council/Assembly of the League. The most important function of this Committee however was under Article 11 of the Limitation Convention which should be read with Article 1 of the said Convention. It appears that efforts were made to include in Article 1 all kinds of narcotic drugs which were habit-forming or capable of being converted into a habit-forming drug. Article 11 was devised as a second line of defence, i.e., in the case of any omission of any kind of narcotic drug in Article 1, Article 11 would fill the gap. The technique that was devised to fulfil this policy was twofold:

(a) where any government determined that the new drug was not capable of producing addiction or of conversion into a product capable of producing addiction, the manufacture of such a drug would be permitted.

According to paragraph 2 of Article 11 any High Contracting Party permitting trade in or manufacture for trade of any such product should immediately send a notification to that effect to the
Secretary-General of the League, who would advise the other High Contracting Parties and the Health Committee. In terms of para 3 of the said Article the Health Committee would then, after consulting the Permanent Committee of the Office international d'Hygiène publique, decide whether the product in question was capable of producing addiction (and was in consequence assimilable to the drugs mentioned in sub-group (a) of Group I), or whether it was convertible into such a drug (and was in consequence assimilable to the drugs mentioned in sub-group (b) of Group I or in Group II). If, however, the Health Committee had decided that the product was not itself a drug capable of producing addiction, but was convertible into such a drug, the question whether the drug in question should fall under sub-group (b) of Group I or under Group II had to be referred for decision to a body of three experts competent to deal with the scientific and technical aspects of the matter, of whom one member was to be elected by the government concerned, one by the Opium Advisory Committee of the League and the third by the two members so elected. Any decision arrived at in accordance with the above procedure, had to be notified to the Secretary-General of the League, who would communicate it to all the Members of the League and to the non-member states mentioned in Article 27 of the Convention.

(b) If any government was of the opinion that the product in question was capable of producing addiction or was convertible into a drug capable of producing addiction, the High Contracting Parties would, upon receipt of the communication from the Secretary-General, apply
to the drug the appropriate regime laid down in the Convention according as to whether it fell under Group I or Group II.

The term "appropriate regime" obviously included the obligation of the country to observe three conditions, viz.

(a) that the quantity of drugs to be manufactured should not exceed the total of the domestic requirements of the country or territory for medical and scientific needs;

(b) that the country concerned would be permitted to manufacture only up to that quantity which would be required to meet export orders; and

(c) that the provisions of the Convention would apply; and also that it was required to send an immediate notification to this effect to the Secretary-General of the League. The matter would then be referred to the Health Committee for a decision and the same procedure as in the first situation, would follow. According to Article 11, paragraph 7 any such decision might be revised in the light of further experience, on an application addressed by any of the High Contracting Parties to the Secretary-General.

The question that necessarily arises is whether or not this procedure was equally applicable to synthetic drugs. Article 10 of the Geneva Convention of 1925 made an "open" provision in this regard, i.e., instead of categorising any specific kind of drug, it mentioned "any narcotic drug". Although Article 11 apparently limited its application by stating that "No trade in or manufacture for trade of any product obtained from any of the phenanthrene alkaloids of
opiou or from the ecgonine alkaloids of the coca leaf, not in
use on this day's date for medical or scientific purposes shall
take place in any country or territory ..., the question
whether Article II should be made applicable to synthetic drugs
was submitted to the Opium Advisory Committee. This Committee at
its seventeenth session recommended that it was "undoubtedly the
intention of the Conference that the Article should apply to such
synthetic substances, as appears from the records of the Conference,
and the Committee recommends that Governments parties to the Conven-
tion should be asked to agree to apply the article accordingly."132
Therefore, the Limitation Convention gave the Health Committee the
power to decide on the 'quality' of a drug as to whether it was
synthetic or non-synthetic. Moreover, under the Limitation Conven-
tion the verdict of the Health Committee carried considerable
weight because the decisions of this Committee, communicated through
the Secretary-General, were made compulsory under this Convention.133

Again, in terms of Article 8 of the Geneva Convention of
1925, whether or not a drug should be 'exempted' depended upon
the decision of the Health Committee, and such decisions, which
were communicated to the Contracting Parties by the Council of
the League, had immediate legal effect.134 Interestingly enough,
the Health Committee's decisions under Article 10 of the same
Convention were only recommendatory; nevertheless, the League
Council, in practice, accepted such recommendations.135 The
difference between Article 8 and Article 10 was that while Article
8 was concerned with preparations contained in many of the narcotic
drugs referred to in chapter II (International Control of Raw
Opium and Coca Leaves), Article 10 was concerned with those narcotic drugs to which the Geneva Convention of 1925 did not apply. Therefore, in the latter situation the Health Committee was only authorised to give recommendations, otherwise it would be difficult for the League Council / Assembly to secure the co-operation of nations. However, there was no difference in the quality of decisions rendered by this Committee under Articles 8 and 10.

The Health Committee had no direct connection with the Contracting Parties in the matter of control measures for narcotic drugs. Constitutionally, the Committee was meant to be a specialised body to carry out technical tasks, which were referred to it by the League Council / Assembly. Originally, the Committee's status was very similar to that of the Supervisory Body, but while the Supervisory Body had some executive powers, the Health Committee was completely devoid of such powers. It was directly responsible to the League Council / Assembly. The benefit of the expert opinions which were delivered by the Health Committee was to be found only in the deterrent effects which they had upon the manufacturers. In other words, a manufacturer would be reluctant to manufacture drugs unless the final affirmative decision had been pronounced by this Committee. From this point of view this Committee exercised supranational power. All drugs under Article 11 of the Limitation Convention were subject to the approval of the Health Committee. On the other hand, this Committee could, if circumstances appeared to warrant, subsequently revise the decisions made by governments, and declare a drug to be habit-forming or capable of being habit-forming. This proves that a wide functional jurisdiction was given
These functions of the Health Committee had a bearing upon a wider aspect of the problem of limitation of drugs, and this can be seen from two viewpoints:

(a) where a manufacturer had submitted a sample of a drug for an opinion of the Health Committee through the League, such a manufacturer was not legally bound to restrain manufacture of the drug during the interim period, i.e., the period between the bringing of this matter to the attention of the League Council/Assembly, and the pronouncement of a decision by the Health Committee; and

(b) when the Health Committee reversed the decision of a government as to the quality of a drug, i.e., whether or not it was habit-forming, or whether or not it could be converted to a habit-forming drug.

No provision was made as to what was to be done with the amount that had already been manufactured. According to the suggestion advanced by Dr. May no manufacturer should be allowed to manufacture any drug until the final decision of the Health Committee had been pronounced, and he thought it desirable to insert a recommendation in the draft Limitation Agreement to that effect, which would reverse the procedure provided by Article 10 of the Limitation Convention. Such a recommendation was also found necessary in that the provisions of Article 10 were inadequate to provide a prompt machinery for the limitation of the production of the poppy and coca leaf to medical and
and scientific purposes. However, what was also implied in
Dr. May's statement was that the services of a specialised
body created for certain special purposes, should be available
whenever the need arose. Indeed, the usefulness of any such
body must be measured by its philosophy of purpose and its
quality of work.
Introduction

1. By the time the League of Nations was established, the world of drugs had been so enlarged that it contained not only opium and its allied substances but also narcotic drugs, i.e., the drugs manufactured chemically. It was for this reason that Article 23 (c) included "opium and other dangerous drugs".

2. The only other convention existing at that time was the Hague Convention which came into force on the date when the Treaty of Peace with Germany became effective. See chapter II, p.

Chapter III

3. The Report of the First Committee on the Relations Between, and Respective Competence of, the Council and the Assembly, as amended and adopted by the Assembly on 7 December, 1920 also mentioned that "Article 2 of the Covenant provides that the action of the League shall be effected through the instrumentality of an Assembly and a Council. It follows that the League is a single organism ..."
   It also stated that "the Council and the Assembly have each their distinctive rights and duties, there are matters the decision of which is left to the League of Nations, without its being specified to which organ of the League the right of decision belongs. Articles 23 and 24 of the Covenant; Article 103, Article 336, Article 338, Article 376 of the Treaty of Versailles." See League of Nations: The Records of the First Assembly: Plenary Meetings, Annex A, pp. 318-319.


5. Under the second paragraph of Article 11 of the League Covenant it was declared to be the friendly right of each Member of the League to "bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends."


9. Such requests were made by the League Assembly also.

10. infra., p. 132

11. infra., p. 144


15. See further H.R.G. Greaves, op. cit., p. 11 et. seq.,

16. League of Nations, Records of the First Assembly, 1920, pp. 538-539. It should be noted that the Members of the League considered the drug problem as an international problem of great magnitude since they preferred to constitute a special committee which was to be entrusted with the task of securing co-operation between nations, instead of leaving the task to the League Council, which would be assisted by the Secretariat. In fact, this was the alternative proposal.


18. Germany and Yugoslavia joined in 1921, Switzerland and Bolivia joined in 1924, and Italy joined in 1926. In 1922, the Council invited the United States to nominate a member to serve on the Committee. The U.S. government appointed its representative in an advisory and un-official capacity, since U.S. never became a Member of the League of Nations.

19. Italy left the Committee because she withdrew from the League of Nations in 1937. Germany also withdrew from the League in 1933.

20. The Tenth Assembly adopted a resolution to the effect that more non-manufacturing countries should be represented on the Opium Advisory Committee. See Report of the Fifth Committee to the Assembly, L.N. Document A 86. 1929.XI, pp. 6-7.

21. Sweden left the Committee in 1937 because her representative was appointed to a diplomatic post and no other person was sent to the Committee to replace him.
22. The first assessors were: Sir John Jordan who contributed significantly to the conclusion of the Indo-Chinese Opium Agreement of 1907, M. Henri Brenier, an experienced administrator who served the government in French Indo-China and who was very familiar with the opium problem, and Mrs. Hamilton Wright, the widow of the late Dr. Hamilton Wright, who was also familiar with the opium problem and who was the nearest person to continue the policy of her husband.

23. The assessors were paid daily subsistence allowance during meetings and travelling expenses out of the budget of the League.


25. Members of the Committee were not paid by the League because they were not representatives of governments.


27. The League Assembly in adopting the resolution to form an Advisory Committee found it preferable "... to undertake the duties placed upon the Netherlands Government by the Opium Convention with regard to the collection of data and dealing with disputes." League of Nations, Records of the First Assembly, 1920, op. cit., p. 538.


29. ibid.,

30. Article 6 of the International Opium Convention signed at the Hague on January 23, 1912:
"The Contracting Powers shall take measures for the gradual and effective suppression of the manufacture of, internal trade in, and use of prepared opium, with due regard to the varying circumstances of each country concerned, unless regulations on the subject are already in existence."


32. The text of the proposal was as follows:
1. "If the purpose of the Hague Opium Convention is to be achieved according to its spirit and true intent, it must be recognised that the use of opium products for other than medicinal and scientific purposes is an abuse and not legitimate."
"In order to prevent the abuse of these products, it is necessary to exercise the control of the production of raw opium in such a manner that there will be no surplus available for non-medicinal and non-scientific purposes."

League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs, Minutes of the Fifth Session, 2nd Meeting, p. 15 (L.N. Doc. C. 418.M. 184.1923.XI).

France, Germany, Great Britain, Japan, the Netherlands, Portugal and Siam.

The Chairman of the Committee, however, pointed out that not only in the opinion of doctors, medical use only was considered legitimate, but that such an inference could also be drawn from the text and spirit of the Convention as well as from the discussions of the Advisory Committee.

He also mentioned that the word "legitimate" should be understood in a special sense in this instance, which had been attributed to it by the Legal Section of the Secretariat. The Legal Section of the Secretariat had given the following interpretation of Article 6:

"The complete and effective suppression of the manufacture of, home trade in, and use of prepared opium constitutes one of the ultimate obligations undertaken by Governments under the 1912 Convention; but it is for each State to decide, according to individual circumstances, as to the precise manner in which its suppression may be brought about."

League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs, Minutes of the Fifth Session, 3rd Meeting, p. 21 (L.N. Doc. C.418.M. 184.1923.XI).

This opinion was also held by the Indian delegate.


See Records of the First Assembly, op. cit., p. 538.

See further, S.H. Bailey, op. cit., p. 108.

The practice followed in the preparation of the Limitation Convention is very instructive.

A Model Code was devised to serve as a "guide" to the national legislatures in drafting laws and regulations for the application of a drug convention. Such a Code was prepared in connection with the International Opium Convention of 1925. This Code consisted of provisions which had stood the test of practice and was based on a selection of the most important rules of those countries which had a complete system of control. When the Limitation Convention was prepared, the sub-committee of the Advisory Committee on the Model Committee decided to draft a separate and temporary code for this Convention instead of amending the previous Code which was drafted at the instance of the 1925 Convention. The new code supplemented the old code. This Code was circulated to the Members and non-members of the League and the Signatories to the Limitation Convention.


The system of government replies had, in fact, been devised in the Hague Opium Convention of 1912 (Article 21).

Articles 22 and 23 of the International Opium Convention, 1925.

The Opium Advisory Committee entrusted the Secretariat of the League with most of the preparatory studies for the 1936 Conference and similar studies for its subsequent sessions.

Article 21, paragraph (a) of the Hague Opium Convention, 1912, Article 30 of the International Opium Convention, 1925, Article 21 of the Limitation Convention, 1931, and Article 16 of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 1936.

55. Article 11, paragraph 4 of the Limitation Convention, 1931.

56. See the Section on the W.H.O. Expert Committee on Drug Dependence, infra., Part II, p.


58. This report was based on the Progress Report which was prepared by the Secretariat of the League. This Progress Report contained important information from the member governments, and also the replies of the governments which received circular letters issued by the Secretariat conveying the decision taken by the Opium Advisory Committee and approved by the League Council, on matters concerning administration of the drug-trade. Such Progress Reports were submitted by the Secretariat to the Opium Advisory Committee at each session.

59. It was for this reason that the Committee in its reports was able to criticise many governments on their unsatisfactory progress in combating the illicit traffic in drugs.


61. The main task of documentation for this Conference was however done by the Secretariat. See L.N. Doc. C.587.M.228.1930.XI., Parts I, II and III.

62. Article 21 of the Limitation Convention: "The High Contracting Parties shall communicate to one another through the Secretary-General of the League of Nations the laws and regulations promulgated in order to give effect to the present Convention, and shall forward to the Secretary-General an annual report on the working of the Convention in their territories, in accordance with a form drawn up by the Advisory Committee on Traffic in Opium and Other Dangerous Drugs."

The other matters for which the Committee was authorized to work independently were: the appointment of a member of the Supervisory Body and the selection of one of a body of three experts, to whom, in the event of the Health Committee deciding that a product was not itself a drug capable of producing addiction, but was convertible into such a drug, the question whether the drug in question should fall under sub-group (b) of Group I or under Group II should be referred a decision in so far as the scientific and technical aspects of the matter was concerned.

Article 5, paragraph (6) and Article 11, paragraph (4) respectively of the Limitation Convention, 1931.

63. infra., footnote 2.
64. Records of the Second Opium Conference (November 17, 1924-
L.N.Doc. C.760.M.260. 1924.XI.


66. See Annex to the Records of the Second Opium Conference, vol. I,

67. ibid.,

68. M. van Wettum (the Netherlands) Chairman
M. Bourgeois (France)
Sir Malcolm Delevingne (Great Britain) Nominated by

Mr. Neville (U.S.A.) Nominated by
M. Brenier -Assessor the Council of
Sir John Jordan- Assessor the League

69. At that time the chief drug producing and manufacturing
countries were the following:
(a) Morphine and Heroin Germany, Japan and Switzerland.
(b) Cocaine Germany, Japan and Switzerland.
(c) Raw Opium Greece, India, Kingdom of the
Serbs, Croats and Slovenes, Russia and Turkey.
(d) Coca Leaf Bolivia and Peru.

70. op. cit., p. 372.

71. ibid.,

72. ibid.,


74. ibid., see also Reports of the respective delegates,
pp. 373-381.

75. op. cit., p. 380.

The efforts made by Sir John Campbell (India) and Dr. Anselmino
(Germany) contributed to a great extent to the determination of
a compromise formula.
See Annex 2 to the Records of the Second Opium Conference,
vol.I. L.N. Doc. A 32(a) 1924.XI., O.C. 216(5).
In discussing the relationship between the Central Board and the Opium Advisory Committee, the Sub-Committee, in its report, maintained that the Board was not an independent body. See further O.C. 669, and L.N. Doc. C.557.M.199.1927.XI., pp. 43-45.

Opium Advisory Committee, Minutes of 10th (Extraordinary) Session, p. 44. L.N.Doc. C.557.M.199.1927.XI.

The International Opium Convention, 1925.

Opium Advisory Committee, Minutes of 10th (Extraordinary) Session, op. cit., p. 44.

op. cit., p. 45.

Article 23 of the League Covenant.


It remains to be seen whether this conflict of opinions and interests was overcome subsequently, and even under the United Nations system.

Opium Advisory Committee, Minutes of 11th Session, 18th Meeting, p. 98. L.N. Doc. C.328.M.88.1928.XI.

Op. cit., p. 99. According to Article 20 of the Geneva Convention of 1925, "... The Secretary-General shall appoint the Secretary and staff of the Board on the nomination of the Board and subject to the approval of the Council."


op. cit., p. 99.

op. cit., p. 102.

France, Great Britain, Japan, the Netherlands and the United States.


op. cit., p. 104.
95. The draft Article provided that "the Contracting Powers should send to the Permanent Central Board... estimates of the quantities of substances covered by the Convention to be imported for internal consumption during the following year into their territory for medical and scientific purposes."

op. cit., p. 104.

Article 21 of the International Opium Convention of 1925 reads as follows:

"The Contracting Parties agree to send in annually before December 31st, to the Permanent Central Board set up under Article 19, estimates of the quantities of each of the substances covered by the Convention to be imported into their territory for internal consumption during the following year for medical, scientific and other purposes.

These estimates are not to be regarded as binding on the government concerned, but will be for the purpose of serving as a guide to the Central Board in the discharge of its duties.

Should circumstances make it necessary for any country, in the course of the year, to modify its estimates, the country in question shall communicate the revised figures to the Central Board."

96. Articles 22 and 23 of the International Opium Convention, 1925.

97. Article 22 of the International Opium Convention, 1925:

"1. The Contracting Parties agree to send annually to the Central Board, in a manner to be indicated by the Board, within three (in the case of paragraph (c), five) months after the end of the year, as complete and accurate statistics as possible relative to the preceding year, showing:

(a) Production of raw opium and coca leaves;

(b) Manufacture of the substances covered by Chapter III, Article 4(b), (c) and (g) of the present Convention and the raw material used for such manufacture. The amount of such substances used for the manufacture of other derivatives not covered by the Convention shall be separately stated;

(c) Stocks of the substances covered by Chapters II and III of the present Convention in the hands of wholesalers or held by the government for consumption in the country for other than government purposes;
97. (d) Consumption other than for government purposes, of the substances covered by Chapters II and III of the present Convention;

(e) Amounts of each of the substances covered by the present Convention which have been confiscated on account of illicit import or export; the manner in which the confiscated substances have been disposed of shall be stated, together with such other information as may be useful in regard to such confiscation and disposal.

The statistics referred to in paragraphs (a) to (e) above shall be communicated by the Central Board to the Contracting Parties.

"3. In furnishing the statistics in pursuance of this Article the governments shall state separately the amounts imported or purchased for government purposes, in order to enable the amounts required in the country for general medical and scientific purposes to be ascertained. It shall not be within the competence of the Central Board to question or to express any opinion on the amounts imported or purchased for government purposes or the use thereof."

"4. For the purposes of this Article, substances which are held, imported, or purchased by the government for eventual sale are not regarded as held, imported or purchased for government purposes."

98. Article 23 of the International Opium Convention, 1925.

99. Raw opium, coca leaves, Indian hemp and the narcotic drugs as enumerated in Article 4 of the International Opium Convention, 1925.

100. The Board received no statistics of internal seizures or confiscations; such statistics were to be submitted to the Opium Advisory Committee.

101. Article 13 of the Limitation Convention, 1931.

102. Article 13, paragraph 2.

103. Article 13, paragraph 2, sub-paragraph (c), clause (ii).

104. In fact, the system of acquiring statistical information as regards trade in raw opium, prepared opium, morphine, cocaine and their respective salts, as well as in the other drugs or their salts or preparations was prescribed in the Hague Opium Convention of 1912; see Article 21, paragraph (b).
105. See further B. Renborg, op. cit., p. 195.

106. infra., Section on Supervisory Body, pp.

107. Article 24 of the International Opium Convention, 1925.

108. May 16, 1933.


110. The Dutch delegate pointed out that there would be no deadlock between the two doctors and the other two members of the Advisory Body, who would presumably represent the administrative side. He thought that it would be advisable to appoint a member of the Opium Advisory Committee on the understanding that the person selected would never be responsible to the Committee.

See Opium Advisory Committee, Minutes of 16th Session, p. 11. L.N.Doc. C.480.M. 244.1931.XI.

111. op. cit., p. 12.

112. L.E. Eisenlohr, op. cit., p. 199.

113. Article 5, paragraphs 4 and 5 of the Limitation Convention, 1931.

114. Article 5, paragraph 6 of the Limitation Convention, 1931.


116. Article 21 of the International Opium Convention, 1925.

117. Article 2, paragraphs 2 and 3 of the Limitation Convention, 1931.

118. Such a situation arose in 1933, when some of the countries failed to furnish the required information on reserve stocks. L.N.Doc. C.610.M.286. 1933.XI., p. 7.

119. See L.N. Doc. C.400,M.260.1921.III.

The other constituent parts of the Health Organization were: (a) the Advisory Council, and (b) the Health Section forming part of the Secretariat of the League of Nations. The Health Section was primarily an executive organ. In fact, a chain of events led to the formation of the Health Committee: the un-official conference held in London in July 1919 followed by the official conference, also held in London in April, 1920, which drew up the plan of a helath organisation, and the meetings of the Council at San Sebastian, in the course of which the plan was adopted with certain modifications. This plan provided for the establishment
of an organisation entrusted with the duty of advising the Council on technical matters concerning health, organised on the same line as the Transit, Economic and Financial Organisations previously established by the League of Nations. Its duty was to convene international conferences, to exchange information and to take all necessary steps to ensure an effective international co-operation in all matters of health.

The Council of the League was unable to establish this organisation since it was based on the collaboration of the Office International d'Hygiène Publique, such collaboration being essential for all work undertaken in matters of health. This Office was unwilling to make the Rome Convention of 1907 (which was the basis of its existence) conform to the plan of the League of Nations.

The Council had, therefore, been unable to establish the Technical Committee laid down in the Assembly Resolution, but it had decided to create a health committee.

op. cit., pp. 3-4.

120. The Head of the Federal Health Service of the United States was a member.

121. See further Health Organisation, published under the auspices of the League of Nations, 1931; see also N.M. Goodman, International Health Organizations and Their Work, London, 1971.

122. Held on 29th August, 1921.


L.N. Doc. C.400.M.280.1921.III.


126. See further B.A. Renborg, op. cit., p. 64.

Also, the procedure of work adopted by the Health Committee appeared to be slow. In order to perform the function under Article 10 of the Convention, a Committee of Experts was appointed by the Office International d'Hygiène Publique in Paris to determine whether a drug was dangerous or not. The Report of the Experts went first to the Permanent Committee of the Office, and then on to the Health Committee. Thereafter, the Health Committee transmitted the report to the League Council. The procedure therefore proved to be time-consuming, and in fact, it might take several years to complete the cycle.
127. See B.A. Renborg, op. cit., p. 65. Such an initiative was taken by the Limitation Conference in an effort to ensure that the Hague Opium Convention and the International Opium Convention should be applied to all the drugs included in Group I of Article 1 of the Limitation Convention.

128. Article 27 of the Limitation Convention: "The present Convention, of which the French and English texts shall both be authoritative, shall bear this day's date, and shall, until December 31st, 1931, be open for signature on behalf of any Member of the League of Nations, or of any non-member State which was represented at the Conference which drew up this Convention, or to which the Council of the League of Nations shall be communicated a copy of the Convention for this purpose."

129. In terms of the provisions of Article 6 of the Limitation Convention "domestic requirements" seems to have included "reserve stocks" and "government stocks".

130. The implication was that an estimate should have been submitted to the Supervisory Body before the issue of any permit "authorizing the trade in or manufacture for trade of the drug in question."

131. Article 10 of the International Opium Convention, 1925 provided, inter alia, that: "In the event of the Health Committee of the League of Nations, after having submitted the question for advice and report to the Permanent Committee of the Office international d'Hygiène publique in Paris, finding that any narcotic drug to which the present Convention does not apply is liable to similar abuse and productive of similar ill-effects as the substances to which this Chapter of the Convention applies, the Health Committee shall inform the Council of the League accordingly and recommend that the provisions of the present Convention shall be applied to such drug."


133. This was not so under the International Opium Convention, 1925, Article 10.
Article 8 of the International Opium Convention, 1925:

"In the event of the Health Committee of the League of Nations, after having submitted the question for advice and report to the Permanent Committee of the Office international d'Hygiène publique in Paris, finding that any preparation containing any of the narcotic drugs referred to in the present Chapter cannot give rise to the drug habit on account of the medicaments with which the said drugs are compounded and which in practice preclude the recovery of the said drugs, the Health Committee shall communicate this finding to the Council of the League of Nations. The Council will communicate the finding to the Contracting Parties, and thereupon the provisions of the present Convention will not be applicable to the preparation concerned."


Article 5, paragraph 6 of the Limitation Convention, 1931.

The following was the text of the recommendation put forward by Dr. May:

"Notwithstanding anything contained in Article 10 of the Second Geneva Convention, the provisions of that Convention shall apply to all alkaloids of opium and coca leaves and their derivatives, and all derivatives of all substances mentioned in Article 4 of the said Convention, unless and until the Health Committee of the League of Nations, after having submitted the question for advice and report to the Permanent Committee of the Office international d'Hygiène publique in Paris, finds that any such alkaloid or derivative cannot give rise to the drug habit; and unless and until the Health Committee communicates this finding to the Council of the League of Nations, and unless and until the Council communicates the finding to the Parties to this Agreement."

A. THE FIRST GENEVA AGREEMENT ON OPIUM, 1925

(a) A Critical Examination of the Agreement

The purpose of this Agreement was indicated in its Preamble which expressed a determination "to bring about the gradual and effective suppression of the manufacture of, internal trade in and use of prepared opium, as provided for in chapter II of the International Opium Convention of January 23rd, 1912, in their Far Eastern Possessions and Territories, including leased or protected territories, in which the use of prepared opium was temporarily authorised. The Parties to this Agreement were also desirous "on the grounds of humanity and for the purpose of promoting the social and moral welfare of their peoples, of taking all possible steps for achieving the suppression of the use of opium for smoking with the least possible delay", and therefore, they decided to conclude an agreement supplementary to the International Opium Convention of 1912.

In the Preamble to the Agreement the Signatories also took note of the fact that the increase of the smuggling of opium in the greater part of the territories in the Far East since the
ratification of the Hague Opium Convention of 1912 was obstructive to the accomplishment of the gradual and effective suppression of the manufacture of, internal trade in, and use of prepared opium, as provided for in the Convention, and was even rendering less effective some of the measures already taken to that end.

This Conference was attended by the representatives of eight states, but China subsequently withdrew her delegation. The application of this Agreement was limited to the Far Eastern possessions of territories of the Contracting Powers, including leased or protected territories, in which the use of prepared opium was temporarily authorised. On an analysis of this Agreement it appears that the Contracting Powers declared that the importation, sale and distribution of opium should be a monopoly of the governments and the right to import, sell or distribute opium was not to be leased, acceded or delegated to any persons whatever. They also undertook that the making of prepared opium for sale should be made a monopoly of the government as soon as circumstances permitted. The system of employing persons paid by fixed salary and not by a commission on sales for the retail sale and distribution was to be applied experimentally in those districts where an effective supervision could be exercised by the administrative authorities, and elsewhere the retail sale and distribution of opium was to be conducted only by persons licensed by governments. They also agreed to limit as far as possible the number of retail shops and, where smoking
divans (i.e., dens) were permitted, the number of divans. One of the important Articles of this Agreement was Article VI in which the Contracting Powers agreed that the export of opium, whether raw or prepared, from any Possession or Territory into which opium was imported for the purpose of smoking, should be prohibited. The transit through or transit-shipment in any such Possession or Territory of prepared opium was to be prohibited. They also undertook that the transit through or transit-shipment in any such Possession or Territory of raw opium consigned to a destination outside the Possession or Territory should also be prohibited unless an import certificate issued by the government of the importing country which could be accepted as sufficient guarantee against the possibility of illegitimate use was produced to the government of the Possession or Territory. A provision was also made prohibiting the entry of minors into any smoking divan, and for the giving of suitable instruction in schools with a view to discouraging the use of prepared opium within their respective territories, except where a government considered such measures to be undesirable under the conditions existing in its territory. They agreed to assist one another in their efforts to suppress the illicit traffic by the direct exchange of information and views among the heads of the services concerned, and also to take legislative measures to render punishable illegitimate transactions which would be carried out in another country by a person residing within their territories. Their sense of obligation was also made explicit in Article X of the Agreement in which they agreed to furnish all
information which they could obtain with regard to the number of opium smokers, such information to be transmitted to the Secretary-General of the League for publication. The Contracting Powers also agreed that they would jointly review from time to time at such dates as might be mutually agreed, the position in regard to the application of Chapter II of the Hague Opium Convention of 1912, and of the present Agreement, and the first meeting was to take place at the latest in 1929. According to Article XIV the Agreement was to have come into force when ratified by two Powers.

(b) Comments

The Agreement evidenced the concern of the Contracting Powers to take more positive steps towards effective suppression of opium-smoking, manufacture of, trade in and smuggling of prepared opium in the Far East. The striking feature of this Agreement was the effort of the Contracting Powers to establish government monopoly in respect of cultivation, manufacture of and trade in opium. In fact, the Portuguese representative, on signing the Final Act of the Agreement, made a declaration that his government "while accepting the principle of a monopoly as formulated in Article I, does so, as regards the moment at which the measures provided for in the first paragraph thereof shall come into force, subject to the limitation contained in the second paragraph of the
Articles. 10 Such a reservation presumably was meant to protect the interest of the country concerned, and in fact, Portugal had an interest in Macao, and a government monopoly was established in Macao in 1927. 11 It appears that the obligations under this Agreement were not taken seriously by the Contracting Powers, and this was evidenced in Article XV of the Agreement, according to which if one of them wished to denounce this Agreement, the denunciation should be notified in writing to the Secretary-General of the League who would immediately communicate a copy of the notification to all the Contracting Powers. In the Protocol, the Contracting Powers also agreed that as soon as the poppy-growing countries ensured the effective execution of the necessary measures to prevent the exportation of raw opium from their territories from constituting a serious obstacle to the reduction of consumption in the countries where the use of prepared opium was temporarily authorised, they would strengthen the measures already taken in accordance with Article VI of the Hague Convention of 1912, and that they would take further measures which might be necessary for the reduction of consumption of prepared opium in the territories under their authority. In order to fulfil this task, by a stipulated time (a period of not more than fifteen years), the Contracting Powers also made provisions for the appointment of a Commission by the League Council, empowering it to decide when the effective execution of the measures concerning the above matter should be taken. 12 Unfortunately, such a Commission was not appointed. During the discussion on the work of the Bangkok Conference, the reasons which had prevented the Council from nominating the Commission (provided by Article III of the Protocol to the Geneva Agreement of 1925) had also been referred to, and according to the Director of the Opium Section, the Commission had not been nominated because "none of the Parties concerned had invited the Council to put this provision into force.
and because the Council, on its side, had not taken the initiative.  

The Secretary of the Advisory Committee raised the question, " was the fact that all opium-producing countries had not signed the Protocol drawn up at the first or at the second opium conference or had not ratified the Geneva Convention, an obstacle to the appointment by the Council of the Commission mentioned in Article III of the Protocol to the Geneva Agreement? Were the Commissions mentioned in Article II of the Protocol to the Geneva Convention and Article III of the Protocol to the Geneva Agreement one and the same?"

Indeed, the Legal Section, in giving its interpretation of Article III of the Protocol to the Geneva Agreement, stated that it was clear from the Preamble to the Protocols, and from the records of the two conferences that the two Protocols were closely interconnected.

In the opinion of the Legal Section, the obligations of the Protocol of February 19, 1925 came into force for each signatory state at the same time as the Geneva Convention and, under the Protocol, had to be executed within a five-year period ending February 19, 1930. "The Council was legally able to appoint the Commission as soon as the five years had expired, because both Protocols were in force and there was no provision making such appointment conditional on the acceptance of either Protocol by any particular state or group of states. It did not follow, however, that at the end of this five-year period the Council was bound to appoint the contemplated Commission."  

Although the Indian delegate pointed out the necessity of appointing a commission, he realised that in view of the
prevailing attitudes of the countries, appointment of a commission
would not have found an answer to the existing opium problem. 16
Indeed, he pointed out that even if the Commission were appointed,
and "it decided that the time was opportune to proceed with
measures to reduce the consumption of prepared opium, what guarantee
would there be that this state of affairs would continue? Persia
had made it clear that she was not prepared to ratify the Hague
Convention. Turkey had not yet ratified any opium Convention.
The Committee knew what the position was in China." 17 He also
referred to Sir Malcolm Delevingne's statement concerning the
enormous consignments of opium from Persia to Vladivostok.
Therefore, the concern of certain of the Powers for the suppres-
sion of opium-smoking, manufacture of, trade in and smuggling of
prepared opium in the Far East was outweighed by the selfish
interest of certain others, and this must have contributed to the
unsatisfactory achievement of this Agreement.
B. THE GENEVA INTERNATIONAL OPIUM CONVENTION OF 1925

(a) Introduction

The Geneva International Opium Convention of 1925 was the first convention concluded during the League period in an attempt to suppress the drug menace. This Convention which was adopted at the Second Opium Conference held at Geneva from November 1924 to February 1925, was found necessary because of the failure of the Hague Opium Convention of 1912 to control contraband trade in, and abuse of, narcotic substances. The Contracting Parties felt convinced that the contraband trade in and abuse of these substances could not be effectively suppressed except by bringing about a more effective limitation of the production and manufacture of the substances, and by exercising a closer control and supervision of the international trade, than were provided for in the Hague Opium Convention of 1912. Therefore, the object of this Convention was to bring about a more effective limitation of the production or manufacture of narcotic substances by exercising a closer control and supervision of the international trade. This Convention consisted of seven chapters, viz.

Chapter I Definitions
Chapter II Internal Control of Raw Opium and Coca Leaves
Article 36 of the Convention provided that the Convention would not come into force until it had been ratified by ten Powers, including seven of the states by which the Central Board was to be appointed in pursuance of Article 19, of which at least two must be permanent members of the Council of the League. This Convention came into force on September 25, 1928.

(b) An Analysis of the Convention

(i) The Scope of the Convention

On analysis, it appears that it made special provisions for domestic control of raw opium, coca leaves and manufactured drugs, and control of international trade in same. Such provisions were obviously necessary for controlling surplus and illegitimate production of drugs, whether raw or manufactured. In other words, this Convention indicated that the control-structure had two aspects: (a) domestic and (b) international. The importance of domestic control of drugs was recognised by the Hague Opium Convention of 1912 in Articles 1, 2, 9, 10 and 11, but the present Convention
was an improvement upon the Hague Convention in that it devised more definite measures of control (Articles 2, 3, 5, 6 and 7).

In Article 2 of this Convention the Parties undertook to review periodically and to strengthen as required the laws and regulations on the subject which they had enacted in virtue of Article 1 of the Hague Opium Convention of 1912 or of the present Convention.

This Convention also made provision for the internal control of coca leaves by limiting the number of towns, ports or other localities through which the export or import of coca leaves was to be permitted. No such provision for internal control was made in the Hague Opium Convention of 1912.

A special chapter was devoted to Indian Hemp. This was the first convention to recognise Indian Hemp as an internationally recognised drug. This was done primarily on the report of the sub-committee 'F'. The government of India was in full sympathy with the proposal to bring Indian Hemp under international control. In fact, the government of India had taken steps to control the traffic in Indian Hemp before this matter was discussed at the Second Geneva Opium Conference. Mention should also be made that the delegates of Egypt and Turkey took considerable initiative to bring this drug under international control. Also, although the Hague Opium Convention recognised that all dangerous drugs should be brought under control, it failed to establish any international agency entrusted with the task of examining the properties of new drugs, and giving expert opinion as to whether or not a new drug should be brought under control. This Convention, in Articles
8 and 10, devised a procedure by which the quality of a drug, i.e., whether or not it should be categorised as a dangerous drug for the purpose of international control, would be determined by the Health Committee in consultation with the Permanent Committee of the Office international d'Hygiène publique in Paris. In the event of the Health Committee finding that any narcotic substance, to which this Convention did not apply, was liable to abuse and productive of ill-effects, comparably with the substances to which chapter III of this Convention applied, the said Committee was to inform the Council of the League accordingly, and recommend that the provisions of the Convention be applied to any such drug. The League Council would then communicate the recommendation to the Contracting Parties. Any Contracting Party which was prepared to accept the recommendation was required to notify the Secretary-General of the League, who would inform the other Contracting Parties. As stated earlier, although the responsibility for the application of Article 10 apparently rested upon the Health Committee, an initiative in this matter could be taken by a government, or even by the Opium Advisory Committee or the Council/Assembly of the League. Moreover, until the Opium Advisory Committee gave its recommendation, it was not quite clear whether or not the procedure as devised by Article 10 of the Convention was equally applicable to 'synthetic drugs'.
(ii) The Creation of the Permanent Central Board

Chapter VI of the Convention was devoted to the Permanent Central Board, which was created for the purpose of international supervision of the drug industry. In accordance with Article 24 of the Convention, this Board was created to watch continuously the course of international trade. It was authorised to do so by obtaining from various countries statistical information on production, manufacture, stocks etc. and also by ascertaining estimates of world requirements of drugs from the Supervisory Body. In the case of any unsatisfactory situation in any country concerning accumulation of, and traffic in, drugs the Board was given the right to call the attention of the governments of all the Contracting Parties, and of the Council of the League, to the matter, and to recommend that no further exports of the substances covered by the present Convention, or any of them, should be made to the country concerned until the Board reported that it was satisfied with the situation in that country in regard to the said substances. In accordance with Article 25 of this Convention, it was the friendly right of any of the Contracting Parties to draw the attention of the Board to any matter which appeared to require investigation provided that this article was not construed as in any way extending the powers of the Board.

(iii) The Creation and Implementation of the System of Import Certificates and Export Authorisation

This was one of the striking innovations of the Geneva Convention of 1925. Each Contracting Party was required to
obtain a separate import certificate for each importation of any of the substances covered by the present Convention. This, in fact, was the new direct method of controlling international trade in drugs. An import certificate stated the quantity of drugs to be imported and the names and addresses of the importer and exporter. Such a certificate specified the period within which the importation would be effected. 27 On the other hand, each Contracting Party required a separate export authorisation for each exportation of any of the substances to which this Convention applied. Such an authorisation stated the quantity to be exported and also the names and addresses of the exporter and importer. 28 In terms of Article 13, paragraph 2, the Contracting Party, before issuing such an export authorisation required an import certificate... issued by the government of the importing country certifying that the importation was approved, and such evidence was to be produced by the person or establishment applying for the export authorisation. The export authorisation specified the period within which the exportation was required to be effected, and also stated the number and date of the import certificate and the authority by whom it had been issued. 29 As a proof of the authenticity of the transaction, a copy of the export authorisation accompanied the consignment, and the government issuing the export authorisation was required to send a copy of it to the government of the importing country. The government of the importing country was required to return the export authorisation to the government of the exporting country with an endorsement declaring when the importation had been effected or when the period
fixed for the importation had expired. Such endorsements also specified the amount actually imported. 30 Should, however, a quantity less than that specified in the export authorisation have actually been exported, the competent authorities in the country concerned were required to note the quantity actually exported on the export authorisation and on any official copy thereof. 31 In order to prevent unauthorised or excessive accumulation of drugs, Article 13, paragraph 7 provided that if a government wished to export a consignment to any country for the purpose of preserving that quantity in a bonded warehouse in that country, a special certificate from the government of that country approving the introduction of the consignment for the purpose of warehousing might be accepted by the government of the exporting country in the place of the import certificate. 32 In such a case, it was required to specify on the export authorisation that the quantity was to be exported for the purpose of being placed in a bonded warehouse. 33

The system of import certificates and export authorizations, as described above, was novel. The application of this system was not however made compulsory for the Contracting Parties, nor had it any universal application. According to Article 18 of the Convention, if any Contracting Party found it impossible to apply any provision of this Chapter to trade with another country by reason of the fact that such country was not a party to this Convention, such Contracting Party would only be bound to apply the provisions of this Chapter so far as the circumstances permitted. So, the door to unrestricted trade in drugs
remained open for the non-Contracting Parties to this Convention. This Convention also failed to make any provision for taking any non-contracting party to task if it deliberately indulged in illicit traffic in drugs. Thus, the system of import certificates and export authorisations was not applicable between non-contracting parties, and in the case of trade between a Contracting Party and a non-contracting party, the former was bound to apply the provisions of this chapter (Chapter V) only so far as the circumstances permitted. Fortunately however most of the countries that produced, manufactured and consumed drugs became parties to this Convention almost immediately. The countries which did not become parties to the Convention immediately were, Afghanistan, Albania, China, Ethiopia, Guatemala, Iceland, Iran, Liberia, Mexico, Nicaragua, Panama, Peru, Saudi Arabia and the United States of America, and the reasons for their refusal to accept this Convention promptly were obvious—they jealously guarded their economic interest. On the other hand, it may be reiterated that this Convention was not meant to be a truly universal convention.

(iv) The Control of International Trade

Chapter V of this Convention dealt with the programme for the control of international trade in drugs. Apart from the provisions contained in this chapter, Articles 5 and 7 of the Convention also referred to the control of international trade in drugs. In terms of Article 5, the Contracting Parties were asked
to enact effective laws or regulations to limit exclusively to medical and scientific purposes, the manufacture, import, sale, distribution, export and use of the substances which had been referred to in Article 4 of this Convention. The Contracting Parties were merely required to co-operate with one another to prevent the use of these substances for any other purpose. They, in accordance with Article 7 of the Convention, were also required to take measures to prohibit as regards their internal trade, the delivery to or possession by any unauthorised person of the substances to which this chapter applied. In fact, these were mere repetitions of the provisions of Article 9 of the Hague Opium Convention of 1912.

Since a compulsory control programme was necessary, the innovation of import certificates and export authorisations was a landmark in the technique of controlling international trade in drugs. The wider aspect of the control programme was devised in Articles 14, 15, 16 and 17 of the Convention. In order to ensure the full application and enforcement of the provisions of this Convention, the Contracting Parties undertook to apply the same laws and regulations in free ports and free zones situated within their territories, and to exercise therein the same supervision and control in respect of the substances covered by the Convention, as in other parts of their territories. The Contracting Parties were not prevented from applying more drastic measures in respect of the substances covered by the Convention, in their free ports and free zones, than in other parts of their territories. In accordance with Article 15
no consignment of any of the substances covered by this Convention, which was to be exported from one country to another, should have been permitted to pass through a third country, whether or not it was removed from the ship or conveyance in which it was being transported, unless the copy of the export authorisation (or the diversion certificate) which accompanied the consignment had been produced to the competent authorities of that country. The provisions of this Article were not however applicable to transportation of the substances by post. No consignment of any of the substances covered by this Convention, which had been placed in a bonded warehouse, could be withdrawn from the warehouse unless the required import certificate issued by the government of the country of destination had been produced to the authorities having jurisdiction over such a warehouse. Any such consignment while passing in transit through the territories of any Contracting Party or whilst being stored there in a bonded warehouse should not be subject to any process which would alter the nature of the substances in question or, without the permission of the competent authorities, the packing. However, the provisions of control of international trade in drugs under this Convention were not obligatory. According to Article 18 of the Convention, should a Contracting Party have found it impossible to apply any provision of this chapter (chapter V) to trade with a non-contracting party, the Contracting Party, under such a situation, would be bound only to apply the provisions of the chapter in so far as the circumstances permitted. Consequently, such a provision was destined to fail in controlling international
trade in drugs on a universal basis. In its report of January 29, 1925, Sub-Committee 'E' also pointed out that it was "recognised that the requirement of an import certificate can only be applied only in the case of export to countries which are parties to the Convention or, at least, accept the import certificate system. The Government of an exporting country will not be compelled to require the production of an import certificate in respect of exports to a country which is outside the Convention and does not agree to furnish such certificates. It is to be understood that in these cases the principle above mentioned will not apply, but at the same time a moral obligation will rest on the Government of the exporting country not to allow the export of the substances in excessive quantities to countries which decline to furnish import certificates and to co-operate in the system of international control and which in some cases are known to be centres of the illicit traffic." In fact, in his Scheme and Exposé, the British delegate proposed that all countries would be invited to become parties to the agreement, whether or not manufacturing the drug or producing the raw material at that time. The French and U.S. delegates also proposed that the import and export certificate system and the Convention must be universally applied. Opposition arose for three reasons, viz. (a) that it would entail employment of a large number of officials; (b) that a stricter system of control would not force the producing countries to limit their production to a great extent. On the contrary, a worse situation might result from it, because if restriction would really be the result, prices would rise
and the clandestine trade would consequently show more activity,
and (c) that a great deal of illicit trade arises from the invisible
traffic which would not be hit by this stricter measure of control
and would actually be stimulated by it.\textsuperscript{45}

However, despite all opposition, the Convention moved a long
way in its mission to control the illicit traffic in drugs. As a
deterrent to the illicit traffic, the Contracting Parties in article
28 agreed that the breaches of the laws or regulations by which the
provisions of the present Convention were enforced, would be punish-
able by adequate penalties including, in appropriate cases, the
confiscation of the substances concerned.

(c) The Problems Encountered in Formulating
this Convention

The Geneva Convention was a landmark in the history of
control of the traffic in narcotic drugs. However, it seems
necessary to consider the problems which were faced or raised
by different nations in formulating this Convention. A consider-
ation of these problems will enable a more logical evaluation of
the functional effectiveness of the Convention.

(i) Problems of Definition of Drugs

Sub-Committee 'F' was entrusted with the task of
examining a number of points, e.g. the definitions contained in
chapters I and III, and also the justification of application of
the provisions of the Convention to various toxic substances. This Sub-Committee took as a basis of its investigation the text of the Hague Opium Convention of 1912. As for example, whereas the U.S. proposal supported that ephedrine, which is a secondary raw material in the manufacture of cocaine, should have been included in 'drugs', all other delegates found it appropriate to bring such substances under the provisions adopted for the manufacture of and traffic in in 'noxious drugs'. However, discussion on this point was confined to the use of terms. No alteration was made which would have weakened the definitions given in the Hague Opium Convention (chapter III). Again, the U.S. delegate used the word 'derivatives' in most of the articles. Sub-Committee 'F' decided to reject this word since, in its opinion, if the expression was not limited exclusively to the dangerous derivatives aimed at by the Convention, which were already known or might be discovered, this expression would constitute in the case of some of those derivatives a serious technical error. The Sub-Committee did, however, find justification in the statement made by the German delegate that the word 'heroin' could not stand by itself in the text of the Convention, since "it was the property of the commercial firm and had not come into public use; it was therefore found desirable to refer to this product by its chemical name of diacetylmorphine."

With this may be considered the question of exemption of certain substances, which was raised by different members. The Spanish delegate, particularly, wished to introduce a list of preparations by name, showing the products which would or would not be affected by this Convention. The Sub-Committee, however, found that it would be very difficult to establish 'limitative lists'. The Belgian delegate
proposed exemption of narcotic alkaloids on the grounds that, because of their medicinal and complex composition, they could not lead to the formation of dangerous habits. On the other hand, the Minority Report of Sub-Committee 'F' pointed out that the deletion of the word 'derivatives' would make accurate accounting impossible with regard to the disposition of consignments of opium. According to this Report, "If derivatives of the raw material are not accounted for, the effectiveness of any convention which may be concluded would be seriously impaired." 

(ii) Absence of consensus in bringing about a more effective limitation of the production or manufacture of narcotic substances

The Contracting Parties, in the Preamble to the Convention, not only mentioned that they were convinced that the trade in abuse of these substances could not be effectively suppressed, except by bringing about a more effective limitation of the production and/or manufacture of the substances, but also realised that such limitation and control required the close co-operation of all the Contracting Parties. It was only in Article 5 of this Convention (i.e., the 1925 Convention) that the Contracting Parties undertook to enact effective laws or regulations to limit production and/or manufacture of drugs exclusively to medical and scientific purposes. Since no criterion could be devised to determine the
amount of drugs necessary for a Contracting Party for medical and scientific purposes, such a provision was vague and ineffective on its own. Moreover, according to the provision of this article, the Contracting Parties were to co-operate with one another to prevent the use of those substances for any other purposes, but no machinery for international supervision concerning this matter was established.

The question of limiting the manufacture and/or production of drugs was not discussed at this Conference, and this in fact, led to the withdrawal of China and the United States of America. The U.S. delegate presented two proposals concerning limitation of production and/or manufacture of drugs, viz.

"1. If the purpose of the League Opium Convention is to be achieved to its spirit and true intent, it must be recognised that the use of opium products for other than medicinal and scientific purposes is an abuse and not legitimate."

"2. In order to prevent the abuse of these drugs, it is necessary to exercise the control of the production of raw opium in such a manner that there will be no surplus available for non-medicinal and non-scientific purposes."

In order to give effect to the proposals submitted by the U.S. delegate the Opium Advisory Committee recommended to the Council of the League the advisability of inviting the governments of the various drug producing countries, including the governments having territories in which the use of prepared opium was temporarily continued in accordance with the provisions of chapter II.
of the Hague Opium Convention of 1912, and the government of the Republic of China to enter into negotiations with a view to reaching an agreement on the questions of limitation of production and/or manufacture of drugs. Unfortunately, no compromise or agreement could be reached and the proposal was dropped altogether. It may be interesting to point out the divergence of opinions which stood in the way of reaching an agreement on this matter. The Indian representative made a reservation to the U.S. proposal by saying that "the use of raw opium, according to the established practice in India, and its production for such use, are not illegitimate under the Convention." The delegates of Australia, Austria and Cuba were of the opinion that in order to avoid the incidence of drug-abuse, the production or the growth of raw materials in all countries which did not at that time produce poppy or coca leaf should be prohibited. Indeed Sub-Committee D had passed the following resolution:

"The Committee realised that this proposition imposed a very heavy obligation on non-drug-producing countries, but, as restriction of production was the only practical method of combating the evil, agreed to the Australian proposal in principle but on the following conditions:

1. that the producing countries agreed to reduce their production;

2. that the interests of the consuming countries were fully protected in the matter of their obtaining adequate supplies to meet their
reasonable requirements for medical and scientific purposes."\(^{56}\)

Although this resolution was accepted by the producing countries, the conditions laid down by Sub-Committee 'D' were not acceptable to them. Meanwhile, problems were posed by the coca leaf producing countries. To take one example, Sub-Committee 'C' after having considered the information supplied by the Bolivian delegate regarding the innocuous use of coca leaves by the Bolivians came to the conclusion that "the limitation of the production of coca leaves to the amount necessary for medical and scientific purposes cannot be realised, as it would imply the absolute prohibition of the harmless consumption of coca leaves in several South American states. In Java this limitation of the production of coca leaves would also be inadvisable as it would imply the extirpation of all coca shrubs used by the natives as living hedges, the leaves of which are never consumed nor exported."\(^{57}\)

In such a situation, the possibility of any consensus concerning limitation of the production or manufacture of narcotic substances was very distant.\(^{58}\)

(iii) Problems in Securing the Universal Application of this Convention

The universality of the opium and narcotic problems had been recognised by both the Shanghai Commission of 1909 and the Hague Opium Convention of 1912. Unfortunately, the attempts made on both occasions for international action in this field met with
limited success. Although the Preamble to the Geneva Convention of 1925 confidently reiterated that "this humanitarian effort will meet with unanimous adhesion of the nations concerned," the diversity of opinions was soon revealed at the Conference. The British delegate, in his Scheme and Expose submitted to the Opium Preparatory Committee proposed that all countries would be invited to become parties to the agreement, whether manufacturing the drug or producing the raw material at that time or not. This proposal was made with a view to limiting the manufacture of drugs and also to estimating the average annual consumption for medical and scientific purposes, with a sufficient margin for contingencies. In an attempt to implement the plan, the British delegate even went on to suggest that in the case of states which "supplied no figures as an estimate of their requirements, the amount would be assessed by the League of Nations." The League's efforts to attain this objective, with the assistance of the Permanent Central Board and the Supervisory Body had not been totally successful. In terms of article 21 of the Convention, the estimates were not to be regarded as binding on the government concerned, but would be for the purpose of serving as a guide to the Board in the discharge of its duties. Again, Article 18 of the Convention stipulated that in the case of any Contracting Party finding it impossible to "apply any provision of this Chapter to trade with another country by reason of the fact that such country is not a party to the present Convention, such Contracting Party will only be bound to apply the provisions of this Chapter so far as the circumstances permit."
One of the reasons for having a Convention with such favorable conditions was expressed in the Scheme and Exposé of the French delegate in which he stated, inter alia, that the "Convention must be easily acceptable by all the countries, for otherwise the industry would merely be transferred to the non-signatory states and would thus escape international control." At the time the Convention was drafted it was not only deemed impossible to control the export of raw material from most of the exporting countries, but also there was little hope for its implementation in those countries within a short time. To this must be added the fear of the manufacturing and exporting countries that they would be exposed to discussion of the limitation of their rights of manufacture and exportation and also to unwelcome conditions of business. Moreover, the countries were not prepared to respect the authority of the League in the matter of supervision of the control of drugs, nor was it possible for the League to impose any penal sanctions upon a recalcitrant country.

The other aspect of the problem was concerned with the question of alternative source of income and employment particularly in those countries for which manufacture and/or production of drugs was vital to their economy. Sub-Committee 'B' took this point into account, and suggested the appointment of a Commission for further study concerning this matter, but unfortunately no unanimous approval to this proposal could be obtained. However, the question of substituting for the production of drugs and the development of other natural resources has received the serious attention of the U.N. Narcotics Commission. In fact, the lack of initiative by the
states to enact effective laws or regulations for the control of
the production and distribution of raw opium and the suppression
of its abusive use, may be largely attributed to this factor. The
proposal for stringent regulations was suggested by the Indian
delegate to Sub-Committee 'B' but unfortunately did not attain
unconditional acceptance by most of the countries and in view of
the fact that some of the participating countries maintained
their own ideas as to regulations and control, the Committee was
unable to arrive at any agreement.
C. THE AGREEMENT CONCERNING THE
SUPPRESSION OF OPium SMOKING, 1921

(a) Introduction

Under Article XII of the Geneva Agreement on Opium, 1925 the Signatory states had undertaken to review from time to time the position with regard to the application of chapter II of the Hague Opium Convention of 1912 and also of the Geneva Agreement. This Conference on the Suppression of Opium Smoking was therefore convened in fulfilment of the promises of the parties concerned.

It is perhaps necessary to reiterate that this Agreement was concerned with the suppression only of opium smoking in the Far Eastern countries, especially because of the intensity of the problem in that part of the world. However, such a Conference was helpful in many ways, viz.,

(i) it was important that public opinion should be based on accurate knowledge of what was happening in each country and of the difficulties which each country faced;

(ii) knowledge of one another's experience would be helpful to the participants; and

(iii) a new conference would enable a review of the situation.
In order to review the situation, the participating countries were given opportunity to make short statements emphasising certain aspects of the situation in their respective territories. Statements were also made by countries which had some interests or some role in the suppression of opium smoking in the Far Eastern countries. These statements did not, however, show much improvement in the situation in Burma and Siam. The Siamese government signed the 1925 Agreement with a reservation to paragraph 3, sub-division (a) of Article I which provided that "the system of employing persons paid by a fixed salary and not by a commission on sales for the retail sale and distribution of opium shall be applied experimentally in those districts where an effective supervision can be exercised by the administrative authorities." The Siamese government also made a reservation to Article V of the Geneva Agreement of 1925 which prohibited the sale of dross excepting to a government monopoly. One of the reasons for such a reservation was that at the time the 1925 Agreement had been prepared, this government was contemplating the introduction of the system of registration, licensing and rationing. All smokers were supposed to be registered by a certain date, and the government contemplated a complete abolition of opium smoking provided of course it had effective control over the supplies. At the Conference, the Siamese delegate expressed the intention of his government to implement this contemplated control system by 1928, and consequently, it did not deem it necessary or desirable to accept provisions in the 1925 Agreement which would bring about a drastic change in the method of distribution.
Unfortunately, the situation with regard to poppy cultivation had not improved by 1927; on the contrary, large quantities of opium were available for smuggling into Siam, and the nature of its land and sea frontiers rendered impossible an effective control of smuggling. The Siamese government, therefore, instead of making any further attempt to implement the registration and rationing system, decided to postpone the bringing into force of its registration laws. It also notified the League of its decision to withdraw the reservations which had been made to Articles I and V of the Geneva Agreement of 1925.\textsuperscript{73}

The failure of the Siamese government to gain effective control over opium smoking may be attributed to economic factors, namely, shortage of government shops owing to paucity of funds. The geographical condition and the lack of reliable persons to take responsibility for such shops were also contributory to such failure. What however was noticeable was the desire of the government to suppress the evil. It seems necessary to give a brief account of the opium smoking situation in the countries concerned.

(b) \textit{A Brief Account of the Opium-Smoking Situation in the Countries in the Far East}

(i) \textit{Burma}

The case of Burma was presented by the Indian delegate. Burma followed a closed register system, i.e., prohibiting the consumption
of opium by any Burmese not on the register. It was thought that at the death of all smokers total prohibition of opium smoking would come into effect. The scheme however did not meet with success, mainly for three reasons, namely, (a) failure of a large number of addicts to get themselves registered; (b) belief in the efficacy of opium as a cure for various diseases and hence procurement of same even by illicit means; and (c) non-applicability of the scheme to the non-Burmese population so that there was a high demand for opium from them.

The Commission of Enquiry which was set up to study the opium situation in the Far East recommended a complete registration, licensing and rationing of consumers and also a reduction in retail prices in order to compete with smugglers. The register was to be kept open, and in all aspects of sale and distribution a government monopoly was to be established. The Indian delegate however pointed out that the situation in Burma was different from that of in other parts of the Far Eastern territories. The retail prices in Burma were already considerably below those in force in other parts of that region. As there was a market in Burma for smugglers for selling opium to those who were not on the register or those who wanted more than the amount they were allowed to buy at government shops, the price of such smuggled opium had tended to be higher than that of government opium. Consequently, the pricing policy which had been in existence in Burma made excessive consumption of opium "a very expensive luxury", and therefore, the Indian delegate emphasised that the government of Burma could not altogether subscribe to the observation made by the Commission of Enquiry that
"the policy of attempting to limit the demand for opium and suppress the illicit traffic by high prices for Government opium has had the effect of making smuggling very profitable and has proved a failure." Nevertheless, the policy suggested by the Commission of Enquiry combined with strict control over cultivation and distribution and an efficient customs administration produced significant results in other parts of the Far Eastern territories. As regards smoking establishments, the government of Burma did not consider the recommendation that the government retail shops should be merged into government-owned smoking establishments to be a practical one primarily because the smokers were scattered all over the province and a considerable number of them lived at a distance from the shops.

Owing to the intensity of the problem, the government of Burma emphasised that no general formula of suppression of opium-smoking would be applicable to that area. It was for this reason that that government did not consider useful the proposal of educational propaganda in schools against prevention of opium-smoking. On the contrary, it strongly opposed the cancellation of the exception to Article VII of the Geneva Agreement of 1925. A great majority of the opium consumers who were immigrants in Burma (mostly Chinese and Indians) according to the Burmese government would not have the benefit of that propaganda in schools, while a considerable number of the indigenous population who were opium consumers did not have formal education at recognised educational institutions. As a remedy, the government of Burma recommended re-opening of the registers for addicts, and also lowering the government price of opium even further in order
to bring the government opium into direct competition with smuggled opium. The government of Burma started implementing this in Burma alone, on an experimental basis.

It appeared from the report of the Indian delegate that the problem of opium-smoking was very serious in Burma, and had taken a different pattern from that prevalent in other parts of the Far East. Therefore, regulatory and control measures which were applicable to the Far East in general, would not have been so applicable to Burma. The government of Burma however recognised the gravity of the situation and supported both national and international action for the suppression of the evil.

(ii) Formosa

Upon ratification of the Geneva Agreement of 1925 the Japanese government adopted more stringent measures of control not only over individual smokers but also over the distribution of opium in general in Formosa. By adopting the system of licence, the number of smokers was greatly reduced, and all secret smokers who had their supplies from illicit sources had been detected. The system of compulsory treatment of the opium smokers was found to be an effective measure, and a great number of such addicts had been treated within the experimental period, which was one year. The Formosan government had also adopted a chemical test for the purpose of detection of unlicensed opium smokers. On the administrative side, the government had revised numerous administrative measures, especially those related to the system of distribution of prepared opium. Every smoker was allotted
to designated retailers, and any licensed smoker desirous of obtaining opium outside the area of his habitual residence was required to produce his licence together with a police certificate specially authorising him to do so. The government had also increased the police forces both in the customs and other such areas where smuggling had been a regular feature.

(iii) Kwantung Leased Territory

The government of the above territory had also made efforts to suppress the evil. This government had adopted registration and rationing systems for controlling the habit of opium smoking. It also made arrangements for the treatment of habitual and curable smokers at government hospitals. However, one of the remarkable steps taken by this government was the anti-opium propaganda through various social organisations which aimed, inter alia, at instruction in schools to counter the habit of opium smoking.

However, the geographical situation of Kwantung posed special difficulties for its government in solving this problem. Kwantung was one of the gateways into Manchuria and therefore, left the door open to the coolies who were habitual opium smokers. Sometimes these coolies outnumbered the permanent population of Kwantung.
(iv) **The British Possessions in the Far East**

The British delegate contended that the government of the United Kingdom had effectively applied the provisions of the Geneva Agreement of 1925 concerning this aspect of the problem. He also confirmed that his government was prepared to give most careful and sympathetic consideration to any proposals for securing more effective control that might be made at the Conference. The two most important British Possessions affected were Malaya and Hong Kong, and a brief summary of the existing situation in those two areas is given below.

**Malaya**

As a follow-up of the 1925 Conference, the system of registration of addicts and rationing of supply had been adopted. The incidence of drug-trafficking in Malaya could at one time be largely attributed to the immigration of Chinese population. By 1931 the immigrant population had declined sharply owing mainly to the depression in trade. The intensity of illicit traffic in drugs varied considerably in different areas of Malaya, and this matter was left to the Conference for consideration. However, the measures taken by the authorities in Malaya for securing information (tabulation and analysis of sales) paved the way for further improvement. Since the problem was a deep-rooted one, the authorities, despite their desire to eradicate it, had been considering only gradual and effective measures of suppressing drug-abuse.
According to the statement of the British delegate, the situation in Hong Kong was not encouraging at all. The reasons for such a situation were largely attributed to the geographical position of the Possession. As the incidence of the illicit traffic in opium, both by land and by sea, was so high in Hong Kong, any control measure applied would be bound to meet with some degree of failure. The authorities of the Possession estimated the quantity of smuggled opium at ten times, and perhaps more, the quantity of government opium sold. Chinese raw opium was available in large quantities, and it was made available through illicit traffic.

The position in Malaya however was rather encouraging. Efforts were made by the Straits Settlement authorities to dislodge the smugglers' organisations, and seizures of opium since 1924 showed remarkable progress. Most of the raw opium seized in Hong Kong and Malaya came from China and Persia. One of the reasons for such success, as pointed out by the British delegate, was the cooperation between governments in the interchange of information as to the traffickers and their methods, sources of supply and so on, in pursuance of the recommendation of the Opium Advisory Committee and the Geneva Agreement of 1925.

It appears that considerable improvement concerning prohibition of traffic in opium was made in Malaya after the conclusion of the Geneva Agreement. However, the British delegate, exemplifying the case of Malaya, drew the attention of the Conference to certain
points:

(a) that efforts should not only be made to detect the illicit traffickers but also to punish them severely. The British delegate, as an example of such a policy, stated that the Strait authorities in Malaya had not only sentenced such traffickers to imprisonment but also expelled them from the Colony;

(b) that since it was found difficult to advance a definite proof to convince a court that an offence had been committed by a certain individual, in cases where illicit opium was found in his possession or under his control, it might be advisable to place the onus of proof on the party in the dock;

(c) that smuggling was concomitant with the high rate of production of opium;

(d) that little attention had been paid to the problem of addiction and that this problem was to be solved by seeking to remove the factors which produced it, and also by taking measures to prevent the addict from returning to smoking opium. He also emphasised the need to educate public opinion on this subject, especially because in many cases the habit of smoking opium had been developed under the belief that opium cured diseases. The British delegate found support for this opinion in the report of the Malayan Committee; and
(e) that it was necessary to concentrate on specific and practical measures, and he emphasised that purchases of raw opium were to be made under government arrangements, and that this would have a bearing upon production of opium, on the illicit traffic and price fluctuations. Further, so far as possible, this trade was to pass through the hands of responsible firms not connected with the illicit traffic.

(v) The French Possession: French Indo-China

The French delegate drew the attention of the Conference to the fact that except for its northern frontier, Indo-China was not a centre for the propagation of the opium traffic nor was it characterised by opium smoking. The native population accounted for only 30 per cent of the total number of smokers. He also pointed out that there would therefore be "practically no consumption in our territory were it not for certain foreign immigrants." The position on the northern frontier however was different owing to the fact that in many areas of that part of Indo-China, opium was produced. It was only in those areas that government efforts towards prevention of this evil failed. In order to demonstrate their concern about the opium problem the French delegate drew the attention of the Conference to the fact that long before the Shanghai Commission of 1909, France
launched an anti-opium campaign, the main features of which were, inter alia, "a monopoly of purchases, manufacture and sales in the hands of the administration, prohibition of the sale of dross, progressive closing of smoking establishments, reduction of sales in retail establishments, increase of prices, moral propaganda by posters, lectures and instruction in schools." The reasons for failure in the northern frontier despite detailed regulations and strict measures of control of traffic in opium were attributed to Indo-China's geographical position. It was mainly for this reason that the French delegate emphasised that the remedy was to be found in prohibition or at least in restriction, of the growth of the poppy, and not in the policy of restricting consumption. "The most drastic prohibitions," he said, "the most Draconian laws will be of no avail. Their only result will be to put a premium on smuggled opium, which will take the place of the lawful article." Any increase in the sale price of government opium would only aggravate the situation, because the customers in that case would resort to smuggled opium which would be available at a lower price. Therefore, the régio, which was powerless to stamp out smuggling by force had been compelled, as a last resort, to reduce the sale price of government opium to the level of smugglers' opium with a view to avoiding competition, and to make it a non-profitable venture for the smugglers. Despite all these policies and preventive measures, the flow of smuggled opium in the northern frontier of the Indo-China remained unabated. The prices charged by the régio for opium in Tonkin and Upper Annam were higher than those charged by smugglers. The French delegate, therefore,
emphasised that the evil should be destroyed at the root, i.e., by prohibiting or at least by restricting the cultivation of the poppy.

(vi) **The Portuguese Possession**

**Macao**

The Portuguese delegate pointed out that it was principally the Chinese population in Macao amongst whom opium smoking was prevalent. He also emphasised that the implementation of the provisions of the Hague Opium Convention of 1912 in Macao limited not only the importation of raw opium, but also the re-exportation and consumption of same. This system of control brought a substantial decrease in the importation of raw opium. Although the provisions of the Geneva Agreement of 1925 could not be implemented in Macao immediately after its conclusion owing to the currency of the existing contracts with the opium farmers, a government monopoly was finally established in 1927. In accordance with the stipulation contained in the 1925 Agreement, all imports were to be supported by import certificates, and raw opium had to be imported exclusively for local consumption. Raw opium and prepared opium could no longer be exported. A system of licence was introduced for retail shops and smoking dens, but owing to the difficulties in the rationing and registration of opium, limitation of sale to consumers had to be achieved by fixing a quota for each shop.
Despite all these efforts, the illicit traffic in opium was still prevalent in Macao. Apart from the clandestine importation of raw and prepared opium, the falsification and adulteration of government opium had greatly hampered the work of the competent authorities. The Macao government however made efforts to solve the problem to a certain extent by resorting to remedial measures such as inducing addicts to undergo treatment in hospitals and propaganda against opium smoking in schools.

The Portuguese delegate emphasised that Macao was the only Portuguese colony where the problem was found, owing to its geographical situation and the nature of its population, and that the suppression of this evil depended very much upon the co-operation of China. He also asserted that the cultivation of poppy should not be allowed without restriction. Nevertheless, he pointed out that the Portuguese government had given support to the measures and provisions of the Geneva Agreement of 1925.

(vii) The Netherlands Indies

The Dutch delegate pointed out that since the institution of the opium régie system in the latter part of the 19th century, the government of the Netherlands maintained as far as possible the "prohibition area", i.e., the areas where the use of opium was totally forbidden. As a necessary condition of the régie system, government monopoly had been maintained. Again, as a necessary condition of the success of the government monopoly, a licensing and
rationing system had been established. He emphasised that the opium rēgie in the Netherlands Indies had been operating in the manner prescribed by Article VI of the Hague Opium Convention, i.e., the "measures adopted in order to combat the use of prepared opium aim at total prohibition as their ultimate objective. So long as total prohibition is not a matter of practical politics, the measures, including those with regard to the retail selling prices of prepared opium are intended to bring about the restriction of the licit use of prepared opium, in so far as such restriction is consistent with the effective checking of illicit consumption." The government of the Netherlands not only preferred the government monopoly scheme but also emphasised the need for an informed national opinion as the vehicle of a successful anti-opium movement. Yet, it encountered difficulties in implementing the government monopoly scheme successfully owing to apparent contradictions in its policy, i.e., while on the one hand it endeavoured to establish a perfect government monopoly, on the other, it was subsidising the private societies for making the anti-opium movement successful. The opium rēgie in the Netherlands Indies, despite its best efforts to suppress the evil did not meet with success. The percentage of dross bought by the rēgie had always been low as compared with sales of opium. It was pointed out by the Dutch delegate that the reduction of prices to a low level was not the only way to suppress contraband trade, and that the possible sources of illicit supply from other parts of the world might have accounted for the failure of their domestic plan.
Interestingly, the Dutch delegate also pointed out that since the rationing and licensing system produced an enormous increase in smuggling, it was ultimately repealed, and he suggested that in view of the differing circumstances in different countries, the decision as to when a system of licensing and rationing of opium would be introduced should be left to each government, and that the government of the Netherlands did not consider it an appropriate time to introduce such a system in any area under its jurisdiction.

This, then, was the actual situation regarding the control of opium smoking in the Far Eastern territories. At this point it may be worthwhile to consider the recommendations of the Commission of Enquiry into the Control of Opium-Smoking in the Far East. Such an effort would also help assess the practical difficulties encountered by the governments concerned in enacting laws or taking other appropriate administrative measures.

(c) The Commission of Enquiry into the Control of Opium-Smoking in the Far East

This Commission of Enquiry was set up in accordance with the proposal made by the British government to the League Council for the purpose of investigating on the spot the problems concerning opium-smoking and of reporting fully on the situation. The Commission, after studying the opium-smoking situation in the countries
of the Far East, made recommendations on twenty different items, as shown below, including its suggestions as to the principal changes which the Hague Opium Convention of 1912 and the Geneva Opium Agreement of 1925 would require.

Recommendation-1: Necessity for Concurrent Measures

The Commission found it essential that all measures aiming at the gradual suppression of opium smoking should be taken concurrently and applied as progressively as circumstances permitted.

Recommendation-2: Scientific Research on the Opium-Smoking Problem.

Recommendation-3: Limitation and Control of Poppy-Cultivation by International Action.

Recommendation-4: Measures to Combat the Demand for Opium for Smoking Purposes.

Recommendation-5: Measures to Prevent Illicit Traffic.

Recommendation-6: Measures to Identify Government-Prepared Opium.

Recommendation-7: Control of International Trade.

Recommendation-8: Reduction of Retail Price on Government Opium.


Recommendation-10: Retailing of Opium for Cash only.
Recommendation-11: Measures to Control Individual Consumption.

Recommendation-12: Prohibition of Minors from Smoking Opium.


Recommendation-14: Control and Disinfection of Opium Pipes.

Recommendation-15: Control of Dross.

Recommendation-16: Cure of Opium-Smokers.

Recommendation-17: Opium Revenue.


Recommendation-19: Annual Reports to the League.


On an analysis it appears that all the recommendations of the Commission were of a practical nature. Recommendation No. 1 clearly indicated that in view of the complexity of the problem a multi-remedial approach instead of a mono-remedial measure would be necessary. These recommendations aimed not only at the control of demand for and consumption of opium, but also the control of production, manufacture and distribution of opium. They also aimed at combining the curative aspect of opium-addiction with its preventive aspect. Although recommendation No. 3 apparently seems to be very useful, the feasibility of replacing the cultivation of poppy by an appropriate alternative is still a vexed question. Nevertheless, the recommendation that this problem may be solved by international action deserves commendation. The Commission believed that only
governmental control would help ascertain the total demand for opium and stabilise its price. Recommendation No. 5 suggested certain measures to combat illicit traffic in opium with a view to making access to opium more difficult for the smokers also. Although the Commission recommended certain traditional measures, viz., provision of additional equipment (motor launches and coast guard steamers), an increase in special preventive "flying squads", in crease of personnel etc., it also emphasised the importance of close co-operation in the preventive work, which is of utmost practical importance. In order to ensure close co-operation in preventive work, it recommended that a single central intelligence bureau in every territory should be given authority in this matter, and that exchange of information concerning illicit traffic in opium would be necessary between the countries in the Far East. It also recommended severe punishment of opium-offenders. What however the Commission failed to suggest was the method as to how the governments concerned should have organised the existing national preventive services in pursuance of a common plan. In practical terms, the varying factors and circumstances in each part of the Far Eastern territories, impeded their adoption of a common plan in this regard. The existence of varying circumstances and factors, which were not comparable with another country, was appropriately pointed out by the Portuguese delegate in his statement before the Conference. The Commission's recommendation on reduction of retail prices of government opium to a level sufficiently low to make smuggling unprofitable (recommendation No. 8) did not appear to be an effective remedial measure, unless smuggling in opium
could be stopped in all parts of the world, and indeed the Dutch delegate rightly observed that "the retail price to be fixed is a matter of expediency and must be considered solely in the light of local conditions." However, the Commission's recommendation on registration and licensing of opium smokers (recommendation No. 11) deserved unreserved support. All the countries affected had unanimously supported this policy, and implemented it too, within their respective territories. Its other recommendations which were directly concerned with the abolition of opium smoking viz., prohibition of minors from smoking opium (recommendation No. 12), and the introduction of the system of compulsory smoking in public smoking establishments (recommendation No. 13) received full support from all the countries concerned. Recommendation No. 13 was however an entailment of recommendations Nos. 9 and 11. In order to adopt more stringent measures, the Commission in its recommendation No. 13 (Smoking Establishments) very appropriately mentioned that "the policy of limiting as much as possible the number of smoking establishments mentioned in Article IV of the Geneva Opium Agreement should be abandoned." According to it, unless a sufficient number of smoking establishments had been opened, the authorised smokers would be driven to illicit means to obtain opium for smoking purposes, and in order to ensure effective control of public smoking establishments, it also suggested that such establishments should be owned and managed by the governments concerned. Smoking outside the government smoking establishments would be allowed only under very special circumstances and that al
under special authorisation. Equally stringent plans had been suggested for the control of dross including provisions for preventing adulteration. The Commission however did not fail to recognise the financial implications of such a policy, and therefore pointed out that with the abolition of the smoking, establishments would no longer be required. They should therefore be planned in such a way that they might later be used for other public and social purposes. The revenue earned on opium and its dross, as suggested by the Commission, should have been appropriated against the expenses, and the balance if any, allocated to preventive measures, according to priorities. The revenue earned on these substances would normally counter-balance the expenses.

That the evil of opium smoking should be fought by organised public opinion and systematic propaganda by education, sports and physical training was supported by all governments, and the Commission noted the necessity of training for prospective teachers in accordance with the local conditions. Although most of the governments concerned recognised the usefulness of such a programme, and some of them implemented it to a certain extent, it was only the government of the Netherlands Indies which took active measures to create what may be called an effective public opinion and to organise systematic propaganda concerning this matter. In order to recognise the gravity of the situation in the Far East, the Commission suggested that the League of Nations should have established in the Far East a central bureau for the opium-smoking problem as a part of the Opium Section of its Secretariat, which would deal, inter alia, with questions of education, propaganda, scientific research, co-operation between
governments, monopolies and other issues having a direct bearing upon opium smoking. The co-operation between the governments concerned and the League was to be maintained by means of annual reports.

(d) An Evaluation of the Agreement

The Bangkok Conference of 1931 set another milestone in the history of international action for the suppression of smoking of, and illicit traffic in, opium. The title of the Agreement indicates that it was concerned with a limited area of action. Although this Conference was convened in fulfilment of the promise of the governments concerned as embodied in the First Hague Opium Conference and the Geneva Agreement of 1925, the situation in the Far East itself in the 1930s warranted the convening of yet another conference. The gravity of the situation led the government of the United States to send an observer, although this conference was convened under a treaty to which the United States was not a party. The Commission of Enquiry observed, inter alia, that "the gradual and effective suppression of opium smoking requires concerted action on similar and concurrent lines by all governments concerned." However, it would be pertinent to observe that the areas affected by the problem of opium smoking in the Far East were all colonies, and therefore, the administration and control of opium smoking were in the hands of the Imperial Powers. Bailey suggested that the "European Powers had taken a lighter view of their responsibilities to the peoples subject to their administration in Eastern Asia than to their nations in their home countries."
Although some kind of measures for the prevention of opium smoking had been taken by most governments, it cannot be disputed that no measures for total prohibition of opium smoking had been taken by any of them. This was also pointed out by the representative of the United States' government which had no political or economic interest in the opium trade and /or opium smoking in the Far East, when he stated that "while prepared to lend all practicable aid to measures directed toward suppression of the destructive vice, the Government of the United States is not prepared to follow a line similar to, and concurrent with, that followed by other Governments so long as those other Governments elect to retain the monopoly system and are not willing to attempt prohibition."\(^{117}\) The licensing and rationing system proved to be effective only to a limited extent, as the pent-up demand for opium consequent upon restriction of the legitimate supply came to be satisfied by the illegitimate supply.\(^{118}\) Indeed, it was feared that unless governments were prepared to sell opium at a loss, it would be difficult to compete with the prices offered by the traffickers.\(^{119}\) What however should also have been done was to enforce more stringent measures for the cure of the smokers, and also to apply effective methods for the detection of unlicensed opium-smokers as was done by the government of Japan. Both the British delegate and the Commission of Enquiry\(^{120}\) rightly suggested that much emphasis needed to be laid upon attacking the causes of addiction by means of propaganda, education etc. A better cooperation between the governments in exchanging accurate information concerning illicit traffic was also needed. In fact, in the draft programme submitted by the
President of the Conference it was noted that "were the Conference to refrain from acquainting the world in this way with the facts of the illicit traffic, it was to be feared that it would be accused of trying to evade the obligations entered into under the Hague Convention. That charge had been put forward explicitly in 1924–1925, and the Conference must justify to the world the attitude it was recommending the Governments to adopt in this matter." At this point the question that may be posed is whether the Hague Opium Convention of 1912 (particularly chapter II) and the Geneva Opium Agreement of 1925 did impose any obligation upon the governments as far as trade and traffic in opium was concerned. In article 6 of the Hague Opium Convention the governments pledged themselves to take measures for the gradual and effective suppression of the manufacture of, and internal trade in and use of, prepared opium. It imposed no obligation upon the governments and it was left to the governments to take measures according to the varying circumstances of each country. Articles 7 and 8 of the Hague Opium Convention had been superseded by articles I and VI of the Geneva Agreement of 1925 and yet, the anomaly remained because not all the signatories of the Hague Opium Convention adhered to the Geneva Agreement of 1925. The principal defects of the Geneva Agreement of 1925 had been imported from the Hague Opium Convention of 1912. It is presumably for this reason that the Commission of Enquiry left aside the question of the additional contractual obligations (i.e., obligations concerning stricter and more effective control of trade and traffic in opium and also limitation of the production of opium, which would have a direct bearing upon
the opium smoking problem also) to be included in a future agreement concerning the suppression of opium smoking. The Commission of Enquiry therefore suggested that the gaps left in the Hague Opium Convention of 1912 and the Geneva Agreement of 1925 should have been filled in to attain better results in this regard. As no suitable basis for the limitation of production could be determined at this Conference, the efforts of the governments were only successful to the extent that it brought about some minor changes.
D. THE CONVENTION FOR LIMITING THE MANUFACTURE
AND REGULATING THE DISTRIBUTION OF NARCOTIC
DRUGS, 1931

(a) Introduction

It was already too late for the nations to conclude
a convention in an effort to limit the manufacture of narcotic drugs. The Geneva Opium Conference of 1924–1925 did not pursue the proposal, although the reasons for including certain provisions concerning this
matter were existent. In fact, during the interval between the
signing of the Geneva Convention of 1925 and its ratification in
1928, it became apparent that the smuggling of drugs was so extensive,
that legislation more drastic than that provided for by this Conven-
tion would be necessary. It was also felt that the coming into force
of the Geneva Convention of 1925 alone would be inadequate to meet
the situation of ever-growing smuggling of drugs, because although it
imposed a general obligation to limit the manufacture, it did not
devise any method of achieving such limitation. The Bangkok
Conference of 1931, although limited in scope, re-emphasised the
necessity of limitation and control of poppy cultivation by interna-
tional action, and the Commission of Enquiry adopted a recommenda-
tion to this effect. The reasons for the absence of a consensus at the
Geneva Opium Conference of 1925 on bringing about an effective limi-
tation of the production or manufacture of narcotic substances have
already been explained. It should once again be emphasised that
the conflict of economic interests over drugs had the following
characteristics, viz. (a) for some, it was a question of keeping the source of some extra income alive, while (b) for others, non-availability of an alternative source of income necessitated their keeping the source of income alive. However, *necessitas publica major est quam privata.* The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 1961 (hereinafter called the Limitation Convention) was finally concluded in 1931, and came into force on July 9, 1933.

(b) **The Anatomy of the Convention**

In the Preamble to the Convention the Contracting Parties declared that this Convention was concluded not only to supplement the Hague Opium Convention of 1912 and the Geneva Opium Convention of 1925, but also to render effective "by international agreement the limitation of the manufacture of narcotic drugs to the world's legitimate requirements for medical and scientific purposes and to regulate their distribution." In order to achieve these purposes, a detailed procedure was devised, which was enumerated in the following chapters:

- **Chapter I** Definitions
- **Chapter II** Estimates
- **Chapter III** Limitation of Manufacture
- **Chapter IV** Prohibitions and Restrictions
- **Chapter V** Control
- **Chapter VI** Administrative Provisions
- **Chapter VII** General Provisions.
It should be mentioned that in this Convention the term "drugs" was meant to denote not only "completely refined" but also "partly manufactured" drugs. Since the Convention was designed to limit the manufacture of narcotic drugs, the measures of limitation were not applicable to the production of raw opium, coca leaves, Indian hemp or prepared opium. This Convention did not prescribe for any new body, whether administrative or technical, as such bodies had already been created by the previous drug conventions, and also because this Convention, among other things, was designed to supplement the previous conventions. As far as the division of the chapters in this Convention is concerned, it may be observed that since the measures of control are connected with the procedure of prohibition, the prohibitions prescribed in chapters IV and V could have been combined in one chapter. A similar observation may also be made in respect of chapters VI and VII; in many cases the provisions overlap. Nevertheless, this Convention very appropriately maintained the difference between "prohibitions" and "restrictions" since they are complementary. As regards settlement of disputes between the High Contracting Parties concerning interpretation or application of this Convention, the same procedure, as enumerated in Article 32 of the Geneva Convention of 1925 was maintained. It is noteworthy that in both Conventions, provisions had been made for a dispute to be referred to the Permanent Court of International Justice at the request of one of the Parties, when such a dispute could not be settled by diplomacy, or in accordance with any applicable agreement in force between the Parties providing for the
settlement of international disputes, or in its absence, by arbitration or judicial settlement, or even where no agreement could be attained as to the choice of another tribunal. The objectives of this Convention, as its title indicates, were very precise and indeed this was the first international convention, the avowed purposes of which were to "limit" the manufacture and to "regulate" the distribution of narcotic drugs. Whether or not any genuine effort was made by nations to fulfil these purposes has been discussed in the subsequent Sections. It will suffice to say that the Limitation Convention was intended to be more elaborate and comprehensive than it appeared to be. As this Convention primarily supplemented the First Hague Opium Convention of 1912 and the Geneva Convention of 1925, it was restrictive in its aim. Whatever might have been the effectiveness of this Convention, it put the nations to test as to whether or not they had real understanding of the problem of control of manufacture of and traffic in narcotic drugs, and as to their willingness to adopt effective measures to suppress drug-abuse.

(c) An Analysis of the Convention

In order to discuss the limitative aspect of this Convention, it would be advisable to refer to the interpretations of some of the relevant non-technical terms:

"Manufacture" included any process of refining;
"Conversion" denoted the transformation of a drug by a chemical process, with the exception of the transformation of alkaloids into their salts;

"Estimates" denoted not only the estimates required to be furnished in accordance with Articles 2 to 5 of this Convention but also the "supplementary" estimates;

"Reserve Stocks" denoted the stocks of drugs required for:
the normal domestic consumption of the country in which they were maintained;
conversion in that area; and
export;

"Government Stocks" denoted stocks kept under 'government control' for the use of the governments and 'to meet exceptional circumstances.'

These two terms, it is observed, were misleading. All stocks, whether they were for the use of the country as a whole, or for the use of governments were supposed to be under government control. Also, the amount meant for export had to be determined by a process where governments were directly involved; in other words, all authorised stocks were 'government stocks', and any special terminology to mean 'for the use of the government' was misleading.
"Export" included re-export, except where the context otherwise required.

From the functional point of view, this Convention may be analysed in five sections, viz. (i) Estimates; (ii) Limitation of Manufacture; (iii) Prohibition, Restriction and Control; (iv) Suppression of the Illicit Traffic in Drugs; and (v) Administrative Provisions.

(i) Estimates

Each High Contracting Party undertook to furnish annually to the Permanent Central Board estimates for each of the drugs to which this Convention was made applicable. Such estimates were required to reach the Board not later than 1st August in the year preceding that in respect of which the estimate was made. Should however any High Contracting Party have failed to furnish an estimate by the specified date, an estimate would, so far as possible, be furnished by the Supervisory Body. In terms of Article 3 of this Convention, in the event of any High Contracting Party submitting supplementary estimates for a year, an accompanying explanation of the circumstances which necessitated such supplementary estimates should have been provided. The non-contracting parties were to be requested by the Board to provide estimates in accordance with the provisions of this Convention. If for any such country an estimate had not been furnished, the Supervisory Body was itself, so far as possible, to have made the estimate.

In every case however all estimates relating to any of the drugs
required for domestic consumption were to be based solely on the medical and scientific requirements of that country. The High Contracting Parties might, however, in addition to such stocks, create and maintain government stocks. All estimates were to be furnished using the form prescribed by the Board. Each country was required to show in its estimate for each drug its alkaloids or salts or of preparations of the alkaloids or salts:

(a) the quantity necessary for medical and scientific needs, including the quantity required for the manufacture of preparations for the export of which export authorisations were not required, whether such preparations were intended for domestic consumption or for export;

(b) the quantity necessary for the purpose of conversion, whether for domestic consumption or for export;

(c) the amount of the reserve stocks which it was desired to maintain; and

(d) the quantity required for the establishment and maintenance of any government stocks.

The method of arriving at the total estimate for each country was the following:

the total of the amounts specified under (a) and (b) above plus the amount which might be necessary to bring the reserve stocks and the government stocks up to the desired level or minus any amount by which those stocks might exceed that level. These additions and deductions were not required to be taken into account if the High Contracting Parties
concerned had forwarded in due course the required estimate to the Board. Every estimate was to be accompanied by a statement explaining how the amounts had been calculated, and whether any margin for possible fluctuations in demands had been taken into account.

The estimates, after submission, were to be examined by the Supervisory Body. This Body, in order to make the estimates complete, was authorised to obtain further information from the governments concerned or to ask for an explanation in connection with a statement made by a government, except as regards requirements for government purposes. In the case of any amendment of the estimates however the consent of the government concerned was to be obtained by the Supervisory Body. This Body, after examination of the estimates, and after preparation of estimates for those countries which had failed to furnish them was to forward a statement containing the estimates for each country, together with the explanations and statements, as referred to above, by the 1st November each year, to the countries, whether or not Members of the League of Nations, through the intermediary of the Secretary-General. The same procedure applied in respect of supplementary estimates also.

This was the machinery for determining estimates of drugs as set out by the Limitation Convention. It may be mentioned at this point that in framing this machinery two assumptions were made, viz.

(a) that the countries not parties to this Convention would abide by the directives of the League (initiated by the Supervisory Body); and
(ii) that the estimate system was a perfect system and that there would be no addiction producing drugs which would not come under the purview of the League.

Nevertheless, the estimates under the Limitation Convention were meant to be binding upon governments. Paragraph 1 of Article 2 enunciated that "Each High Contracting Party shall furnish annually to the Permanent Central Board ... estimates in accordance with the provisions of Article 5 of this Convention." Again, according to paragraph 2 of the said Article, "in the event of any High Contracting Party failing to furnish ... an estimate will, so far as possible, be furnished by the Supervisory Body specified in paragraph 6 of Article 5." The binding nature of these estimates can be found in Articles 6 and 7 of the Convention in that they were devised to limit the manufacture and import of drugs in conformity with the estimates examined and/or determined by the Supervisory Body. The attempt made by the Convention to make its provisions equally applicable to the non-parties to the Convention deserves appreciation. Although this Convention was supplementary to the previous drug conventions, in view of the fact that almost all states Parties to the Geneva Convention of 1925 were also Parties to this Convention, the estimates under the Geneva Convention for manufactured drugs lost their practical importance and even the subsequent statistical forms used by the Permanent Central Board for obtaining estimates no longer contained columns for manufactured drugs. One of the main differences between the Geneva Convention and the Limitation Convention concerning estimates was that, while the
estimates under the Geneva Convention related only to the drugs which were to be imported, estimates under the Limitation Convention related to drugs, whether imported or manufactured. Nevertheless, while the Geneva Convention in establishing the requirements of drugs not only covered the manufactured drugs, but also the raw materials from which drugs would be manufactured, the Limitation Convention covered manufactured drugs only. The Limitation Convention also devised two expressions, viz. the 'limits of the estimates' and the 'total of the estimates' for indicating the requirements for each country and for each drug. These were to be shown by the Supervisory Body on the Estimated World Requirements of Dangerous Drugs. Control over the estimates was exercised by the Board, and estimates could be altered by submitting supplementary estimates. The system of submission of quarterly statements on imports and exports served the purpose of a continuous check upon the movement of drugs over a year. The mechanism which the Convention devised concerning this matter may be shown in the form of a formula:

\[
\text{Total estimates} = \text{Manufacture} + \text{imports} - \text{the quantity exported during a year.}
\]

One of the bold steps which the Convention took was its belief that it would receive near-universal ratification. In fact, the idea of limitation becomes meaningless if it is not applied to all parts of the world. Paragraph 3 of Article 2 and Article 26 of the Convention made provisions so as to make the application of the Convention universal to the extent of including the protectorates, colonial territories and the non-signatories. Although the non-parties were
not legally bound to undertake any obligation under this Convention, it introduced a novelty in this regard in that such non-parties were requested to perform certain acts in accordance with the provisions of this Convention.

(ii) **Limitation of Manufacture**

By Article 6 of the Convention no country was authorised to manufacture, in any one year, a quantity of any of the drugs greater than the total of the prescribed quantities, viz.

(a) the quantity required within the limits of the estimates for that year for medical and scientific needs; this amount would also include the quantity which would be required for the manufacture of preparations, whether for domestic consumption, or for export for which no export authorisation would be necessary;

(b) the quantity required within the limits of the estimates for that year for conversion, whether for domestic consumption or for export;

(c) the quantity required for the execution of the orders for export in accordance with the provisions of this Convention;

(d) the quantity required to maintain the reserve stocks at the level specified in the estimates for that year; and
(e) the quantity required to maintain the government stocks at the level specified in the estimates for that year.

For a proper determination of the estimates, the provisions of Article 7 were also to be taken into account. According to this article it was necessary to deduct the following amount(s) from the total quantity of each drug permitted to be manufactured under Article 6:

(a) any amount of that drug imported minus the quantity re-exported (imported amount included "returned deliveries of the drug");
(b) any amount seized and utilised for domestic consumption or for conversion.

Where it was impossible to make necessary deductions during the currency of a year, the excess amount, if any, was to be deducted from the estimates of the following year. The same procedure was applicable to drugs that had been manufactured, if the amount so manufactured had exceeded the total amount, as authorised by Article 6, less any deductions made under Article 7.\footnote{144} According to Article 8 the full amount of any of the drugs imported into or manufactured in any country for the purpose of conversion in accordance with the estimates should, if possible, have been utilised for that purpose within the period for which the estimates applied. Where however it was impossible to utilise the full amount for that purpose within the specified time, the residue was appropriated to the following year's estimates for that country by means of deduction of the amount
in question. This Article was therefore devised as a safeguard against excessive accumulation in respect of a particular drug, which could be utilised, on conversion, in execution of future large orders. In order that the Convention should be efficacious from the moment of its coming into force, it provided that if the existing stocks of any of the drugs in any country exceeded the amount of the reserve stocks of that drug, which a country, according to its estimates, desired to maintain, such excess amount was to be deducted from the amount which during the year could ordinarily be imported into and/or manufactured in that country. Alternatively, the existing stocks were taken possession of by the government and released from time to time in such quantities as would be in conformity with the provisions of the Convention. Any quantity, however, so released during any year was deducted from the total amount of that drug to be imported into or manufactured in a country during that year.

The Limitation Convention was not in itself sufficient to fulfil its purposes. It was designed to work in conjunction with chapter V of the Geneva Convention of 1925, i.e., the regulations concerning import certificates and export authorisations. In this Convention the limitations of manufacture aimed at quantitative limitation only. According to this Convention the drug manufacturing countries were given a free hand in determining their quotas, although final authorisation was to be given by the Board. Therefore, no attempt was made to adopt any measure to determine the quantity of drugs required for the world as a whole. The system of limiting the manufacture of drugs in accordance with the estimates
submitted by the countries, which in turn were dependent upon the medical and scientific needs of the countries concerned, deserves appreciation. This was implied in the expression, "quantity required within the limits of the estimates." In other words, if a country's medical and scientific needs appeared to be less than its total estimates of drugs, then that country would not be allowed to manufacture in excess of the lesser amount. 146

The application of the system of limitation of manufacture of drugs under this Convention required effective supervision on both national and international levels. However, it may be mentioned that the Convention over-simplified the problem and worked on the basis of the following assumptions:

(a) that the estimates which were submitted by the manufacturing countries could be taken as genuine estimates in total disregard of the fact that such countries in order to fulfill their economic interests might not submit "genuine" estimates;

(b) that a directive from a universal body would be equally effective upon the non-contracting parties, even though the Convention itself lacked sanctions;

(c) that the limitation of the manufacture of drugs only would help solve the problem (the Convention did not mention anything regarding the production of other kinds of drugs, despite certain flaws in the control measures as adopted in the Geneva Convention of 1925); and

(d) that the calculation of estimates did not admit of any complications. 148
Also, the system of limitation of manufacture did not make any provision for meeting certain contingencies such as shortage of supply of drugs in general, or perhaps shortage of supply of a specific kind of drug.
(iii) Prohibition, Restriction and Control

Chapters IV and V of the Convention dealt with the above aspects of the problem. Article 10 of the Convention prohibited export of a particular kind of drug (diacetylmorphine) including its salts, and preparations containing that drug. Nevertheless, such prohibition would not be effective "if its importation and exportation were found necessary for medical and scientific needs", and in such a situation a request was to be made to the manufacturing country by the non-manufacturing country concerned, along with an import certificate and proof that the drug in question had been consigned to the government department indicated in the import certificate. Any quantity so imported was to be distributed by, and on the responsibility of, the government of the importing country. Trade in or manufacture for trade of any product obtained from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf were brought under the same restrictions, i.e., exclusively for medical and scientific purposes and that also by confirmation of the importing government concerned. If, however, any High Contracting Party had been allowed to trade in, or manufacture for trade any such product, it was obligatory for that country to notify this to the Secretary-General of the League in order to enable him to advise the other High Contracting Parties and the Health Committee of the League. The Health Committee, thereupon, after consulting the Permanent Committee of the Office International d'Hygiène Publique, decided whether the product in question was capable of producing addiction, or whether it was
convertible into such a drug. The Secretary-General was to be informed of all decisions in order to enable him to notify accordingly the Members and the non-members mentioned in Article 27, (i.e., a non-member state which was represented at the Conference).

In the event of an affirmative decision (i.e., the product in question was addiction-producing or convertible into a drug capable of producing addiction) the High Contracting Parties would, upon receipt of the communication from the Secretary-General, apply to the drug appropriate regime laid down in the Convention according to whether it fell under Group I or Group II. The decisions were however subject to revision on an application made by the High Contracting Party to the Secretary-General on the strength of further experience. However, the imports in any one year into one country of any of the drugs were not to be allowed to exceed the total of the estimates as defined in Article 5, and the total of the amount exported from that country during the year, less the amount manufactured in that country in that year.

Chapter V of the Convention dealt with the procedure of control. The Board was entrusted with this task. Article 14 provided that if any government issued an export authorisation in respect of any of the drugs which were or might be included in Group I, to any country which was not a Party to this Convention nor to the Geneva Convention of 1925, it should immediately notify the Board to that effect. In the event of the amount of export being 5 kilogrammes or more, authorisation was not to be issued until the government concerned has ascertained from the Board that the export
would not cause the estimates for the importing country to be exceeded. If the Board notified that such an excess might be caused, the government was not to authorise the export of any amount which would have that effect. In the case of the export quota of any country being exceeded, it was the duty of the Board to notify the fact to all the High Contracting Parties in an effort to prohibit any new export to that country during the currency of that year, except:

(a) in the event of a supplementary estimate being furnished for that country in respect of the quantity over-imported and the additional quantity required; or

(b) where the export, in the opinion of the government of the exporting country, was essential on humanitarian grounds or for the treatment of the sick.

For further control, the Board was authorised to prepare a statement each year in respect of each country, showing the position of estimates, consumption, manufacture, conversion, importation and exportation in the previous year. This had certainly a preventive effect upon the country, and helped the Board to determine how far a country was responding to the control procedure. If it were found that a High Contracting Party had failed to carry out its obligations under this Convention, the Board had the right to ask for explanations, through the Secretary-General of the League, from that High Contracting Party, and the procedure specified in paragraphs 2 to 7 of Article 24 of the Geneva Convention of 1925 would be applicable in such a case. The Board was also authorised to publish its statement together with
its observations, in most cases, on the explanations given by the High Contracting Parties of their failure to observe the obligations. The Board was required to take the necessary measures to ensure that statistics and other relevant information were not made public in such a manner as would facilitate the operation of speculators, or cause injury to the legitimate commerce of any High Contracting Party.

On an examination of the above provisions, it appears that the greater part of the responsibility for prohibition, restriction and control had been given to the High Contracting Parties, and hence it was intended that the medical and scientific requirements for drugs of a country should be determined by the government concerned. The difficulties involved in such a system are discussed in a subsequent sub-section.\(^{158}\) The functions of the Board however were in most cases administrative and nowhere legislative and/or judicial. In this connection it may also be observed that the provisions of Article 11, paragraph 4 that "in the event of the Health Committee deciding that the product was convertible into a drug capable of producing addiction, the question whether such a drug would fall under sub-group (b) of Group I or under Group II was to be referred for a decision to a body of three experts, one of whom should be selected by the government concerned," were not satisfactory. For obvious reasons, the expert selected by the government concerned, might feel obliged to find in favour of it, which might have directly influenced the decision of the other two experts. It would have been advisable to constitute the body of experts without any representative from the government concerned, and in the event of that
body finding difficulties in arriving at a decision, because of interpretative problems regarding language or social conditions it should have been assisted by a representative of the government concerned only to that extent.

As stated above, the control provisions may be taken as part of the provisions concerning Prohibition and Restrictions. The responsibility for control lay primarily with the Contracting Parties, and the Board was authorised to intervene where there was a violation of the obligations on the part of a state. The only active move by the Board, so far as control was concerned, was the preparation of a statement showing for the preceding year, the amounts of drugs which each country or territory had handled and required. The sanctions which the Board was authorised to impose upon a Contracting Party might not have been equally effective upon a non-contracting party.

(iv) The Suppression of the Illicit Traffic in Drugs

The Preamble to the Limitation Convention did not make any direct reference to the suppression of the illicit traffic in drugs. Nevertheless, this Convention, as a part of its purpose, directly made attacks on the illicit traffic in drugs. To put it in another way, if the supply of the drugs became limited, the supply of drugs for the illicit traffic would also be limited. In this connection, a reference should be made to the List for which the Contracting Parties undertook the obligations to supply names,
addresses and other relevant information concerning the persons authorised to manufacture or convert drugs within a national territory. This obviously facilitated the work of the police authorities in tracing the sources of illicit traffic.\textsuperscript{159} The Articles making references to the suppression of the illicit traffic in drugs in the Convention were Articles 15, paragraph 2 and 23. Paragraph 2 of Article 15 provided that the "High Contracting Parties shall, if they have not already done so, create a special administration for the purpose of..." (c) organizing the campaign against drug addiction, by taking all useful steps to prevent its development and to suppress the illicit traffic." In accordance with Article 23, the High Contracting Parties "would communicate to each other, through the Secretary-General of the League of Nations, as soon as possible, particulars of each case of illicit traffic discovered by them which might be of importance either because of the quantities involved or because of the light thrown on the sources from which drugs were obtained for the illicit traffic or the methods employed by illicit traffickers." As a means of co-operation between the League and the High Contracting Parties themselves, Article 23 provided that each High Contracting Party, in the case of its detecting illicit traffic, must furnish the following information:

(a) amount and kind of the drugs involved;
(b) origin of the drugs, their marks and labels;
(c) points at which the drugs were diverted to illicit traffic;
(d) points of despatch, and the names of the shipping or forwarding agents or consignors, the methods of packing and the names and addresses of the consignees, if known;

(e) methods and routes used by the illicit traffickers and name of the ship;

(f) action taken by the government concerned on detection of such crime; and

(g) any other relevant information which would assist in the suppression of the illicit traffic in drugs.

The expected effect of these provisions was the limitation of the sources of illicit traffic in drugs and of the methods employed by the illicit traffickers. Unfortunately, all these provisions were applicable only to the Parties to the Convention. Needless to say, the incidence of the illicit traffic was more prevalent among the non-signatories to the Convention. However, there were two basic inherent difficulties in the total suppression of the illicit traffic: the first difficulty related to the nature and importance of the commodity itself. To expect a uniform standard of administration all over the world for this purpose would be a cry in the wilderness, and secondly, if the nations showed a lack of responsibility by not contributing to the strength of global interests, possibilities of over-production and/or manufacture of drugs, even in the name of legitimate requirements, thus making way for the illicit traffic, could not totally be ruled out. The Limitation Convention did not make any attempt to control the production of raw materials. However, the
basic purpose of this Convention was to limit the manufacture and to regulate the distribution of drugs, and further attempts to fill in the gaps left by this Convention in respect of the suppression of the illicit traffic in drugs were made by means of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 1936.160

(v) Administrative Provisions

The High Contracting Parties were required to take all necessary legislative and/or other measures in order to give effect to the provisions of this Convention in their respective territories. They were also required to create a special administration, if they had not already done so, for the following purposes:

(a) to apply the provisions of this Convention;
(b) to regulate, to supervise and to control the trade in the drugs; and
(c) to organise the campaign against drug addiction, by taking all useful steps to prevent its development and to suppress the illicit traffic.161

In terms of Article 16, each High Contracting Party was required to exercise a strict supervision over:

(a) the amounts of raw material and manufactured drugs which each manufacturer would possess for the purpose of manufacture, conversion or otherwise;
(b) the quantities of the drugs or preparations containing
the drugs produced; and

(c) the quantities of the drugs and preparations so produced,
disposed of in the form of deliveries from the factories.

One of the directives upon the High Contracting Parties
was that they should not allow any manufacturer to accumulate
any quantity of raw materials in excess of those required for the
economic conduct of business, having regard to the prevailing market
conditions. No manufacturer would be allowed to possess raw materials
in excess of the amount which would be required by him for manufacture
during the ensuing six months, and relaxation of these regulations would
be permitted only in exceptional cases, and that also on investigation
of the circumstances by the government concerned. Each manufacturer
was required to submit to his government a quarterly report stating:

(a) the amounts of raw materials and each of the drugs or any
other products whatever, received into his factory, and
produced from each of these substances. The report was
to state "the proportion of morphine, cocaine or ecgonine
contained in or producible therefrom" in accordance with
the method prescribed by the government and under conditions
considered satisfactory by the government;

(b) the quantities of either the raw material or the products
manufactured therefrom disposed of during that period; and

(c) the residue of the quantities in stock at the end of that
quarter.

Each wholesaler was also required to submit an annual
report to the government concerned, stating in respect of each drug,
the amount exported or imported, the quantity of the drug and also giving information on those drugs for the export or import of which no authorisation was required. In Article 18, each High Contracting Party undertook the obligation that in the event of the seizure of any of the drugs in Group I in illicit traffic, that drug would be destroyed or converted into non-narcotic substances, or appropriated for medical or scientific use, when it was no longer required for judicial proceedings or other action by the authorities of the state. It was also provided that the labels under which any of the drugs, or preparations containing these drugs, were offered for sale, must show the percentage of the drugs, and that the names of the drugs appearing on those labels must correspond with the names as provided for in international legislation.

With regard to the administrative provisions it may be observed that all of them were directed towards the High Contracting Parties. The basic idea of making the High Contracting Parties responsible was maintained here also. No specific provision was however made in respect of the non-contracting parties who were manufacturers or users of drugs. It may also be observed that certain administrative provisions were made in a rather loose manner, e.g. in accordance with Article 16, no High Contracting Party was to allow any manufacturer to accumulate any quantity of raw materials in excess of those "required for the economic conduct of business having regard to the prevailing market conditions." The phrase "economic conduct of business" is vague. Its effective application presupposes constant supervision of the factories by the competent authorities. Again, in terms of Article 17, each wholesaler was
required to submit an annual report to its government detailing the amounts of drugs imported or exported or in preparation during a year. The provisions concerning preparations were unquestionably difficult to understand, and they required a considerable effort on the part of the government officials entrusted with the task of administering the Convention. The success of the Limitation Convention depended upon the following:

1. domestic supervision of the drug manufacturers, importers, exporters and wholesalers;
2. a very efficient system of calculation of estimates;
3. a very efficient system of communication between the High Contracting Parties themselves on the one hand, and the High Contracting Parties and the League of Nations on the other;
4. universality of application of the Convention; and
5. sense of responsibility of the governments, whether or not a Party to the Convention.
(d) Putting the Convention to Test

(i) When is an estimate not an estimate

The Limitation Convention did not provide any definition of 'estimate'. Paragraph 4 of Article 1 only stated that "estimates shall denote estimates furnished in accordance with Articles 2 to 5 of this Convention and unless the context otherwise requires, shall include supplementary estimates." However, in terms of this Convention, an estimate for each drug was to be based essentially on the medical and scientific needs of the Contracting Party concerned, which was subsequently to be examined by the Supervisory Body. In the case of a non-contracting party failing to submit estimates, the Supervisory Body was authorised to determine the requirements for that country so far as it might consider necessary. The same system of approximate estimates was to be applied in the case of a Contracting Party which had failed to submit its estimates. Assuming that the Contracting Parties had submitted their estimates, in accordance with the terms of the Convention, there was still the possibility of having an incorrect estimate primarily because the non-contracting parties were not legally bound to submit such estimates. Any determination by the Supervisory Body of an estimate in such a situation, would have produced either an 'approximate estimate' or an 'over-estimate', and either of these situations, the second in particular, would have a disturbing effect upon the position of supply.

It appears that the Opium Advisory Committee of the League of Nations which contributed to a great extent to the
drafting of this Convention assumed that each state had not only an effective system of estimates but also possessed highly developed medical institutions. As this assumption had a weak foundation, it was fraught with dangers, and this was rightly pointed out by Dr. Knaffl-Lenz when he said that it was of importance to state that the figures obtained in this way had a relative value only, and that, owing to the differences in medical practice among different countries, they could not be used in calculating the requirements of each of them in opium and in opium derivatives.

Moreover, the estimates were subject to variations relating to the availability of substitutes, and the purposes for which the drugs were consumed. It is for this reason that accurate estimates of drugs become virtually impossible. The Health Section of the Secretariat of the League published separate figures for each narcotic drug, but no satisfactory conclusions as to the aggregate consumption of the countries in a particular year could be arrived at, although consumption in a given country appeared to be constant from year to year. The Board, in order to have a special report on this matter, requested Dr. Anselmino to conduct an enquiry. Dr. Anselmino's report was examined by the Health Committee. His main proposition was that an estimate of the total consumption of drugs which might be arrived at if the quantities of medical opium, morphine and heroin respectively consumed in different countries were expressed in terms of "average therapeutic doses." Such a proposition, it may be observed, was very faulty. It
not only assumed that all the three narcotic drugs were inter-
changeable, but also attempted to arrive at an average weight of
the doses of different drugs. His method also did not suggest
as to how to make an effective comparison between the consumption-
figures of various countries. Although his theory was greatly
appreciated by many and particularly by Professor Greenwood, a
very severe criticism came from Professor Knafl–Lenz. In relation
to "therapeutic doses" he pointed out that the question would inevi-
tably arise as to whether such a conversion-system would be possible
and if so, whether it would be appropriate too, especially from the
medical point of view. He therefore concluded that the customary
therapeutic doses as a means of calculating the proposed units would
be justified, if opium, morphine and discetymorphine produced the
same effects, and if the principles governing their employment were
same. Such however was by no means the case. Dr. Anselmino's
theory was also criticised by Professors Lepine and Lelieu. They
were of the opinion that the total estimate of requirements should
not be arrived at by "mathematical equivalent." It also
required the doctors in all countries to be trained in the same
kind of therapeutic training. Moreover, Dr. Anselmino's theory, if
implemented, necessitated the replacement of weight units (the
system in practice) by therapeutic units. This would have a repercus-
sion upon the manufacturers since the new system, in unequal condi-
tions, would necessarily make the figures extremely obscure and the
result would be the opposite of what was intended. The inherent
difficulties of the estimates system can be shown in the following way:

\[
\begin{align*}
\text{Consumption} & \downarrow \text{Production} - \text{Imports} \downarrow \text{Exports} \\
\text{Actual} & \quad \text{Potential}
\end{align*}
\]  

( Accurate figures of actual consumption were to be supplied by governments. Is it possible to supply such figures? )  

( Accurate estimates of potential consumptions may be made if: 

(a) accurate information on various aspects of consumption are available; 

(b) all the substances are included in the conventions; and 

(c) co-operation of governments is available. 

From the above discussion it may be established that the validity of the estimates system, as envisaged in the Limitation Convention, was questionable.
(ii) Limits of Limitation

The question of limitation is tied up with the system of estimates. In other words, the success or failure of the former is dependent upon the degree of success or failure of the latter. The Health Organization of the League also indicated that it would be impossible to come to an average figure for the consumption of opiates, from the particulars of consumption available from different countries, although the actual consumption of a particular country could be made available. It also indicated the difficulties involved in improving the existing situation when it reported that "at the moment, it seems inappropriate, perhaps even impossible, to lay down binding principles in the shape of definite quantities of opiates in relation to the individual inhabitants of a country, as provided in the International Convention for Limiting the Manufacture of Narcotics." 174

Any scheme for the control of the manufacture and distribution of drugs should fulfil certain conditions, viz.

(a) the arrangements must be precise so that as little room as possible is left for doubts or questions as to their meaning;

(b) the arrangements must be simple in order to help governments to derive the benefits without much inconvenience;

(d) the arrangements must provide some elasticity for adjustments in accordance with the demand in emergencies; and
(d) the arrangements must be open for reconsideration so as to take advantage of new experience gained in this regard.175

The first two conditions, i.e., precision and simplicity of the arrangements for limiting the manufacture of drugs were not fulfilled under the existing circumstances. There was insufficient information on these questions for a formula to be evolved, and there were still too many variations in the use of narcotic drugs by doctors. It was specially on this ground that Dr. Anselmino's suggestion of a mathematical formula for the determination of estimates, and consequently for the limitation of, could not be accepted. Also, it may not be possible to maintain the limit of manufacture of drugs every year especially because manufacture of drugs has to be kept aligned with economic and business factors.176

The provision of paragraph 2 of Article 12 that "the imports in any one year into any country or territory of any of the drugs shall not exceed the total of the estimates", should be read with Article 6 which used the expression, "within the limits of the estimates for that country or territory." The latter expression means that the maximum quantity a country or territory may produce may not coincide with the quantity which is required for its only purpose, i.e., medical and scientific needs and for the reserve of government stocks, and also for export orders authenticated by governments. In other words, the scope of Article 6 was wider than that of paragraph 2 of Article 12. In fact, the expression, "total of the estimates" is more accurate because the estimate of the world
requirement may be determined by adding together the estimates for each drug for each country. This implies that if a country had shown on its statement "nil" as the total estimate for a drug, and if this was endorsed by the Supervisory Body, the country might neither manufacture nor import that drug for that year, and this the country would do on taking into account the "reserve" and "government" stocks. The anomaly between the provisions of Articles 6 and 12 might have come as an advantage to many countries, and the sanctions provisions, i.e., Article 14 which virtually referred to the provisions of Article 24 of the Geneva Convention of 1925, were only recommendatory.

Again, the absence of any criterion for the determination of "reserve stocks" and "government stocks" also made the prospect of limitation of drugs uncertain. "Reserve stocks" were composed of the stocks available with the wholesalers and retailers, and "government stocks" meant the stocks which the governments found necessary to reserve for meeting emergency situations. Clause 4 of Article 1 provided, inter alia, that "the term reserve stocks in relation to any of the drugs shall denote the stocks required for ..." This indicated that there would be several "reserve stocks" for different kinds of drugs. Unfortunately, there was no criterion by which the government could determine such stocks. Therefore, the "reserve stocks" had to be determined on the basis of the wholesalers' and retailers' idea of requirements, and this system was fraught with the danger of over-estimation for obvious reasons. Since the
determination of reserve stocks was very much tied up with the process of estimates, the inaccuracy of one would make the other one also inaccurate. Although the countries did not have a free hand to add subsequently to their existing reserve stocks, and although the Supervisory Body was given the authority to determine the total estimates, the fact remained that the countries in determining their "reserve stocks" were free initially to determine such stocks according to their own ideas and prospects of business. This being so, the obvious consequences, viz. illicit supply etc. were bound to occur.

Regarding "government stocks" the situation was not satisfactory, although not as unsatisfactory as that of "reserve stocks". Government stocks were required for two kinds of contingencies, viz.

(a) for naval and military requirements; and

(b) for emergency situations, e.g. natural catastrophies.

In terms of Article 5, paragraph 2, sub-paragraph (d), it was obligatory for each state to show "... the quantity required for the establishment and maintenance of any government stocks."

Interestingly, in giving an account of the "reserve stocks", the governments were not required to reveal the quantity of "government stocks". The Supervisory Body had not been given any power to obtain any information on "requirements for government purposes", nor had it the authority to compile any estimate in this kind of situation. The Limitation Conference however attempted to imply that the Supervisory Body would have the competence to request further information. This gap created in the case of "government stocks" was not
thought to be a menace on the grounds that a government could never or should never be suspect. Moreover, the question of a government monopoly in drugs was much talked about. Nevertheless, the experience under the Geneva Convention showed that there were no grounds for assuming that stocks were safe because they were in the warehouse of a government drug-monopoly.183 Also, it may be mentioned that non-performance of certain acts by a government in certain cases amounts to "abuse of rights" and this should be attended to especially when a concerted action concerning certain matters is being taken on an international level; a government in such a situation should not fail to perform its obligations as a party to an international convention. In addition to reflecting governmental irresponsibility, such a lapse would have a bearing upon the accounting system, the functioning of which is dependent upon the co-operation of the governments. Accumulation of drugs, without revealing the quantity of stocks, should be a punishable offence both for an individual and a government.

(iii) When "Control" means "Relative Restriction"

The connection between "limitation" and "control" is that while limitation of manufacture is not possible without control, control is possible without limitation. The latter co-efficient of this relationship, i.e., the control is possible without limitation,
undermines in the whole system. This may be explained with reference to four things, viz. (a) the extent of application of the Convention; (b) allocation of quotas; (c) determination of derivatives; and (d) variation in the countries concerned in the use and production/manufacture of the commodity.

(a) The Extent of Application of the Convention

The drugs to which this Convention was made applicable were divided into two groups. Group I was again divided into two sub-groups, (a) and (b). The drugs included in sub-group (a) were broadly "all the known natural and artificial alkaloids, with their respective salts, which constitute narcotics giving rise to addiction or which are transformable into such narcotics", while sub-group (b) included such kinds of drugs which, while not constituting narcotics giving rise to addiction, might be converted to such drugs. Group II included those kinds of drugs which, though not in themselves narcotics capable of producing addiction, might be transformed into such substances.

The drugs included in Group II were not included in sub-group (b) of Group I, primarily because of their use in the medical world. Incidentally, what is to be noticed is that codeine was included in Group II. Although a system of absolute control was prescribed for the drugs included in Group I, no such regime was applicable to the drugs included in Group II. This was made evident in the provisions of Clause 3 of Article 5 (which stated, regarding estimates, "it is understood that in the case of any of the drugs which are are or may be included in Group II, a wider margin may be necessary that in the case of the other drugs"), Clause 6 of
of Article 5 (which was concerned with the submission of statements justifying estimates to the Supervisory Body and which stated, "it is understood that in the case of any of the drugs which are or may be included in Group II, a summary statement shall be sufficient"), Clause 2(a) of Article 13, (re: restrictions regarding sale, import and export, which stated, "the High Contracting Parties shall apply to the drugs which are or may be included in Group II the following provisions of the Geneva Convention (or provisions in conformity therewith):

(a) the provisions of Articles 6 and 7 in so far as they relate to the manufacture, import, export and wholesale trade in these drugs"),

Clause 2(b) of Article 13 (i.e., regarding control of international trade, "the provisions of chapter V, except as regards compounds containing any of these drugs which are adapted to a normal therapeutic use") and Clause 2(c) of Article 13 (i.e., regarding submission of statistics, "the provisions of paragraph 1(b)\(^{187}\), (c)\(^{188}\) and paragraph 2\(^{189}\) of Article 22 provided:

(i) "that the statistics of import and export may be sent annually instead of quarterly" and

(ii) "that paragraph 1(b) and paragraph 2 of Article 22 shall not apply to preparations containing any of these drugs".

The system of control as envisaged in chapter V of the Convention was not applicable to the retail trade in respect of the drugs coming under Group II. In this connection it may also be
observed that the Convention did not devise any such regime of control for the drugs coming under Group II. It also appears that, although each High Contracting Party was required to submit annual statistics in respect of "each of the drugs, whether in the form of the alkaloid or salt or of preparations of the alkaloids or salts, and irrespective of their uses", there were certain kinds of preparations "for the export of which no export authorization was necessary." (see Articles 5, paragraph 2, sub-paragraph (a), Article 6, sub-paragraph (i), clause (a) and Article 22). Again, it appears that a liberal regime was established not only regarding "government stocks" but also for the "requirements for government purposes", so much so that the Supervisory Body, for the purposes of completion of an estimate which had been submitted to it by a country, or for explanation of any statement made therein, was empowered to ask only the country concerned for further information or details in respect of its estimates, and no such power was given to the Supervisory Body as regards requirements for government purposes. Therefore, control, as far as these situations were concerned, meant restriction in a relative sense.

(b) Allocation of Quotas

The question of allocation of quotas becomes more relevant when the demands and requirements of the countries have been determined. For this purpose, the countries could be divided into
four categories, viz.,

(a) the countries engaged in the manufacture of drugs on a considerable scale both for their own needs and for the export trade (e.g. France, Germany, the Netherlands, Switzerland and U.K.);

(b) countries engaged in the manufacture of drugs for their own needs but which did not export an appreciable quantity (e.g. Japan, U.S.A., and U.S.S.R.);

(c) countries which manufactured a small part only of their own needs (e.g. Italy); and

(d) countries which manufactured and exported a considerable amount of crude morphine, but which depended upon imports for most of their medical requirements (e.g. India).

From the above classification it may be established that except for the countries in the third category, all other countries kept up their demands for drugs and their derivatives for the purpose of business. The countries in the fourth category occupied a special position in view of the fact that they were the source of the production of opium and similar other products, although they depended upon imports for most of their medical requirements. In allocating quotas the factors that had been taken into account were, for some countries, prospects for earning revenue, while for others, necessity, for both medical and scientific reasons. As no satisfactory criteria for determining the medical and scientific needs could be devised, any allocation of quotas would
necessarily be approximate and not precise. This problem would have a further bearing upon those countries where the use of drugs was accepted as a part of social and religious life.

The question of allocation of quotas had also to be considered from the point of view of distribution. The consuming countries did not necessarily get their supplies of drugs direct from the manufacturing countries. Supplies might take the form of preparations made by a country, and consequently, such countries would receive the manufactured drugs from some other sources. For the control of distribution it was therefore found necessary to make provisions for re-export trade. But owing to the absence of any standardised definition of drugs and their preparations, the re-export system would appear to be fraught with difficulties. It is to be presumed that in all cases of re-exportation, the amount of drugs imported for re-export, would be counted against the estimate of that country's domestic requirements. Article 7 of the Limitation Convention made provisions to this effect by referring to "any amount of that drug imported including any returned deliveries of the drug, less quantities re-exported." Since however each contracting party was the final estimator of the estimates, gaps in these areas were bound to occur, and this would give rise to illicit traffic. A country may find it necessary to import drugs for three distinct purposes, viz.,

(a) to meet its medical and scientific needs;

(b) to convert into some other drugs whether for its own use or for export; and
(c) to re-export, i.e., acting as a distributing centre.\(^{194}\)

No system could be applied to achieve an accurate allocation of quotas, nor could any restraint upon the illicit traffic be imposed, unless suitable yardsticks of "requirements", "conversion", and "re-export" had been devised.

Again, in allocating quotas consideration should be given to the principles followed by the manufacturing countries. The estimates of manufacturers might be based on the sales of the individual manufacturing firms, and therefore, a firm with branches in two different countries, might have credited a part of its production to the other branch in another country, and thus avoided the total ceiling of allocation. In fact, a Swiss manufacturer having factories in Germany and Switzerland, managed to credit a part of his production to the Swiss quota. On enquiry, it was revealed that the basis on which the manufacturers proceeded to estimate their requirements, was different from that on which the plan of limitation was worked out by the Opium Advisory Committee.\(^{196}\) The other possible way in which the allocation of quota could become imperfect was through there being no practice of taking into account the amount already diverted into the illicit traffic. If any amount were diverted into illicit traffic, this would mean that either the quota allocated was too large, or the control system was not effective enough to prevent the manufacturers from producing an amount in excess of their limits. The amount so absorbed into illicit traffic would not only multiply the incidence of illicit traffic, but would also generate a vigorous criminal sub-culture.
(iv) When Battery is more Effective than Assault

There were some countries which were in a special position as manufacturers or producers of drugs. Into this category came such countries as Japan and Turkey. Although Japan, in the contemporary period, did not export drugs in an appreciable quantity, she manufactured and supplied the whole amount required for her own territory and possessions. In such a situation, a very effective system of allocation of quota was warranted. The Japanese delegate, at the Limitation Conference, expressed his desire to find a basis for quota-allocation on which equitable distribution might be made to all the manufacturing countries, and indeed, until a clear-cut basis was agreed upon, he made a formal reservation with reference to all the decisions reached by the Conference. He however expressed the view that his government would undertake the export of drugs when a demand was made for them in accordance with the stipulation of the Geneva Convention of 1925. At the subsequent Conference on this matter, which was held in London in October and November, 1930, and which was attended by the representatives of ten countries, including Japan, Turkey, U.S. and the U.S.S.R., despite a general approval of the principle of limitation by a quota system, no agreement as to the allocation of quotas among the manufacturing countries was reached. At the time the Limitation Convention was being considered, Turkey stood in a position entirely different from that of any other country. The drugs which Turkey had started to manufacture, had not been used for legitimate medical and
scientific purposes. The total quantity of drugs manufactured crossed the boundaries of the countries either by export or by illicit traffic. Under Turkish law, no export licence was required to be obtained from the government, nor did the Turkish authorities require the production of a valid certificate of import from the government of the importing country. At the Limitation Conference the Turkish delegate expressed the desire of his government to have a share in the world production of drugs for medical and scientific purposes, if a satisfactory quota were to be assigned to them. The quota that he asked for was for one-third of the whole production. 199

The Conference did not accept this proposal, and consequently, the Turkish government could not agree to the basis upon which the quotas had been allocated. Incidentally, it was assumed that the existence of the European cartel would remove the difficulties in determining the quota system at least for those countries which came under it. Interestingly enough, Turkey being one of the largest suppliers of the European market, advanced strong objections, viz. (a) as Turkey possessed the raw materials, she considered herself as fully entitled to manufacture drugs from opium as any other manufacturing country; (b) she would consider as arbitrary an attempt to exclude Turkey from the allocation of quotas for the manufacture of drugs, on the grounds that certain factories established in her territory might have engaged in illicit transactions; and (c) as a producing country, Turkey thought that she had the right to demand the allocation of quotas on the same grounds as other countries. 200

The Turkish delegate also made it clear that his government was prepared to
accede to the Geneva Convention of 1925 and to limit the manufacture of narcotic drugs provided it were given fair quotas. The rally was joined by Yugoslavia. The Yugoslav delegate was anxious not only to see the extension of the Geneva Convention of 1925 to all civilised nations, but also the acceptance of the limitation scheme by both manufacturing and producing countries (otherwise the producing countries would become manufacturers). Nevertheless, he very cautiously mentioned three points as conditions of his government's acceptance of the limitation scheme, viz.

(a) that the Yugoslav government desired to protect the economic and social interests of the Yugoslav poppy-growers and also those of consumers in general;

(b) that in view of the special position occupied by Turkey and Yugoslavia, who supplied the greater part of opium for the purpose of manufacture, the Yugoslav government considered that if Turkey were authorised to manufacture, an equitable quota should be allocated to Yugoslavia also; and

(c) that Yugoslavia was determined to co-operate with the League of Nations in its struggle against drug-abuse, but could not do so unless she received satisfactory treatment on those points.

That it would be difficult to determine a satisfactory system of allocation of quotas and hence the limitation of manufactured drugs, was made abundantly clear at the first reading of the draft
at the Conference. In fact, various objections on this matter were raised, viz.

(a) that there was already a *de facto* monopoly of the manufacturers within the European cartel, and therefore, any allocation of quotas, only for those countries manufacturing for export in good quantities would convert this monopoly to a *de jure* one; consequently, no new manufacturer would be admitted to that system and this would go against the principles of freedom of commerce and of equal opportunities in economic development.

Two proposals aimed at avoiding this contingency were put forward by the Japanese delegate: (1) that the world's total requirements should be allocated to all drug-manufacturing countries in equal quotas, or (2) that the manufacturing countries should be allowed not only to manufacture the amounts coming in the form of legitimate orders but also an extra amount, in a limited way, to meet their domestic needs. According to the Japanese proposal, the countries usually manufacturing and exporting drugs should have continued manufacturing up to a certain limit even before receiving legitimate orders from abroad, and in the case of a surplus being revealed later on, that should be carried forward to the next year, and deducted from the next year's quantities to be manufactured. The obvious implications of this proposal were not only avoidance of the quota system, but also release of the countries from the bondage of limitation.
(b) That the quota system could be interpreted as self-defeating. In determining the quota, each country in the name of its requirements for scientific and medical purposes would include a margin, and the sum-total of these margins would produce an extra large quantity of drugs which might be diverted into illicit traffic;

c) that the quota system would destroy the qualitative aspect of the manufacture of drugs, since the Convention assumed that the quality of manufactured drugs was uniform in all countries, and that in consequence, the consuming countries might not be able to obtain drugs from the countries of their choice;

d) that the quota system would jeopardise the economies of those countries which were the major suppliers of raw materials for the manufacture of drugs. In fact, this point was very clearly made by Persia, Turkey and Yugoslavia. Fixation of a quota for the manufacture of drugs would necessarily have a bearing upon the demand for raw materials, and therefore, before any such action was taken, measures assuring a stable demand for raw materials were necessary; and

e) the idea that the scheme of periodic revision of the quota system and thereby adjustment of the quota, on the basis of actual trade over a definite period, would bar newcomers from joining; the trade was vehemently
opposed by the opponents of the quota system on the grounds that any authorisation to the new manufacturing countries to manufacture drugs on the basis of legitimate orders would help many new countries to join the manufacturing and export trade, and that the result would be liberalisation instead of limitation of the drug trade.

In accordance with the plan of the Opium Advisory Committee, each country was at liberty to buy drugs from any country of its choice, just as it was allowed to manufacture drugs so long as it did not exceed its limit. Yugoslavia took advantage of this plan, and being a drug producing country, immediately established a large factory for the manufacture of drugs. No agreement on allocation of quotas had been reached at the Limitation Conference, and in view of the strong objections raised by the opponents of the quota system, the method which was ultimately adopted had to be elastic and lenient.
E. THE CONVENTION FOR THE SUPPRESSION OF
THE ILICIT TRAFFIC IN DANGEROUS DRUGS,
1936. 203

(a) Introduction

Despite the fact that the League tried to establish a distinction between "licit" and "illicit" trade in narcotic drugs, and thereby take preventive measures against the latter type of trade, this was the first direct attempt which was made by it to suppress the illicit traffic in dangerous drugs, and to make the offence punishable. Efforts to this effect, although in a less concrete way, were also made by the League through the Geneva Convention of 1925 and the Limitation Convention of 1931. 204 In neither of these Conventions however was illicit traffic in drugs directly recognised as a criminal offence and therefore punishable. The Signatories to the Conventions were supposed only to co-operate with one another in the limitation and control of the manufacture of drugs, and to regulate the distribution of same in accordance with the provisions of the Convention. Regulations promoting the licit trade in a commodity do not necessarily entail the non-existence of the illicit trade in same. In fact, the League did apprehend the existence of the illicit traffic in narcotic drugs, and the failure of the Limitation Convention to limit the manufacture of drugs within the prescribed limit, which encouraged the illicit traffic, 205 made the League more aware of its existence. Any creative effort in this respect should strike a balance between the two aspects,
viz. "promotive" and "preventive". The preventive aspect should again be orientated in two directions, viz. (a) curative and (b) prohibitive. The drug conventions concluded during the League era were basically "promotive" to licit trade. In fact, the curative aspect of the illicit trade had not been dealt with in any of the conventions relating to this matter, although the "prohibitive" aspect of the illicit trade was mentioned in the conventions previous to the present one. Nevertheless, the difficulties involved in effecting a unified penal law concerning this matter, which were prevalent during the League era, should not be ignored. The attainment of an adequate standard of penal laws in this regard throughout the world was deemed essential. But in the contemporary international conventions which dealt with criminal offences, e.g. the Convention on the Suppression of the Traffic in Women and Children, 1921, the Convention on the Suppression of the Traffic in Obscene Publications, 1923, the Slavery Convention of 1926, the Convention on the Suppression of Counterfeiting Currency, 1929, and the Convention on the Traffic in Women of Full Age, 1933, etc., the Contracting States abstained from incurring obligations which went beyond the necessities of the situation. To achieve any result, in such a situation, "some relaxation by States of their cherished principles as to extradition and territoriality was indispensable, and this was only possible by international agreement." The present Convention made a frontal attack on those cherished principles of the states. The object of the Convention, as stated in its Preamble, was, "to strengthen the measures intended to penalize offences contrary to
the provisions of the International Opium Convention signed at the Hague on January 23rd, 1912, the Geneva Convention of February 19th, 1925 and the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs at Geneva on July 13th, 1931, and on the other hand, to combat by the methods most effective in the present circumstances the illicit traffic in the drugs and substances covered by the above Conventions."

The other important reason for the conclusion of a convention of such nature, as had been observed by the Sub-Committee appointed to study the draft convention submitted by the International Criminal Police Commission, was that it would enable the logical conclusion to be drawn from the distinction made in the three international opium conventions (1912, 1925 and 1931) between licit and illicit traffic in narcotic drugs. The three conventions established an international regime for the operation of licit traffic (manufacture and trade) in narcotic drugs, and stated that any other traffic would be illicit. Their object was not to establish an international regime to secure the effective suppression of illicit traffic; that aim could be achieved only by means of a special international agreement which, as experience had shown, was necessary if the proper value was to be given to the above-mentioned distinction between licit and illicit traffic. The 1936 Convention was framed with these objectives in mind.

In order to make an objective analysis of this Convention, it is necessary to refer to some of the important background factors
which produced an enormous effect upon this Convention. It was long before the conclusion of this Convention that the necessity had been felt of establishing a single authority in each country with the sole responsibility of supervising the drug trade. At its 13th session in 1930, the Opium Advisory Committee of the League adopted a recommendation not only to this effect but also for the ratification of police control, with a view to establishing closer cooperation in respect of drug offences between the police authorities of different countries.

The usefulness of such a convention in the matter of suppression of drug offences connected with illicit traffic could easily be demonstrated by the Convention for the Suppression of Counterfeiting Currency, which was concluded in 1929. In fact, the initiative to conclude such a convention in the area of drug control came from the International Criminal Police Commission. It was primarily for this reason that in examining the recommendations of the Opium Advisory Committee, the views were taken of the delegates of the said Commission, who presented them in the form of a draft convention which was very much modelled on the Convention for the Suppression of Counterfeiting Currency, 1929. It agreed, in principle, with the recommendations of the League emphasising the necessity of cooperation between the League and different countries. It also emphasised the necessity of very severe punishment for offenders connected with drug trafficking. The Opium Advisory Committee felt the necessity of having the opinions of different countries on this latter point. Meanwhile, the Limitation Conference was in progress and although the proposal for the establishment of a single authority responsible for drug control was
made to this Conference, it failed to attain the blessing of the majority. Instead, the Convention, as a kind of compromise, devised article 15, prescribing the creation of a special administration in consonance with the international programme of control of trade in drugs and suppression of illicit traffic in same.211 However, at its 16th session in 1933, the Opium Advisory Committee adopted a recommendation emphasising to the governments the importance of establishing in each country a central official organisation "with the task of watching the application of laws and regulations promulgated in pursuance of the Conventions and of communicating directly to the central official organisations in other countries all information regarding the illicit traffic."212 From the replies to the questionnaires received by the Sub-Committee on the question of punishment of offenders it appeared that the majority of the governments found it necessary to impose severe penalties on the offenders, as suggested by the International Criminal Police Commission. The Sub-Committee however found it difficult to devise a measure for the unification of the penal laws relating to drug offences, owing to the great diversities in penal laws of different nations, definitions of crimes, philosophy of punishment and the rigour of punishment etc. In December 1935 a revised draft incorporating the major provisions for the suppression of the illicit traffic in dangerous drugs was prepared by the Committee of Experts, taking into account the observations made by various governments concerning this matter, and this draft was transmitted to the League Council and to governments. At the invitation of the League Council, the Conference for
the adoption of a convention for the Suppression of the Illicit Traffic in Dangerous Drugs was held at Geneva from June 8th to 26th, 1936. This Convention came into force on October 26, 1939.

(b) The Anatomy of the Convention

This Convention did not comprise any "sections" or "chapters" presumably because the purpose for which it was concluded was one only, viz. the suppression of the illicit traffic in dangerous drugs, so that all the provisions in the Convention were inter-related. However, Article 1 of the Convention indicated the denotation of the term "narcotic drugs" in the context of this Convention. In fact, this Article declared that this term should be deemed to mean the drugs and substances to which the provisions of the Hague Convention of 1912, the Geneva Convention of 1925 and the Limitation Convention of 1931 were then applicable. A new term, viz. "extraction" was coined in this Convention, and it was indicated that for the purpose of this Convention this term would "connote an operation whereby a narcotic drug is separated from the substance or compound of which it forms a part, without involving any actual manufacture or conversion properly so called." This definition of the term "extraction" was not intended to "include the processes whereby raw opium is obtained from the opium poppy, these being covered by the term, "production"."
Anatomically, however, this Convention may be divided into five sections, viz.:

(i) Provisions aimed at improving domestic legislation to suppress the illicit traffic in drugs.
   (Articles 2-6)

(ii) Provisions designed to prevent offenders from escaping punishment on technical grounds, and to confiscate the materials intended to be put into illicit traffic
   (Articles 7-10)

(iii) Provisions concerning administration and international co-operation
   (Articles 11-16)

(iv) Provisions concerning settlement of disputes
    (Article 17)

(v) Other provisions
    (Articles 18-25)

(c) An Analysis of the Convention

(i) Provisions aimed at improving domestic legislation to suppress the illicit traffic in drugs

In Article 2 of the Convention each of the High Contracting Parties agreed to make the necessary legislative provisions for severely punishing drug traffickers, particularly by imprisonment or other penalties of deprivation of liberty. The following were the acts
for which provisions for severe punishment were made:

(i) the manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, despatch, despatch in transit, transport, importation and exportation of narcotic drugs, which were contrary to the provisions of the Conventions of 1912, 1925 and 1931;

(ii) intentional participation in the above-mentioned offences;

(iii) conspiracy to commit any of the above-mentioned offences;

and

(iv) attempts and subject to the conditions prescribed by international law, preparatory acts.

On a further analysis of clause (a) of Article 2 it appears that any other offences whether of minor or major nature, which had not been included in the above paragraph, were excluded from the purview of this Convention, and that for such offences the High Contracting Parties were left free to punish the offenders. The quality of this article, however, lay in its attempt to devise a comprehensive provision from a denotative point of view. The terms "intentional participation in the offences", "conspiracy to commit" any offence and "attempts and preparatory acts" for any of the listed offences demonstrated this. One observation that may be made at this stage is that any negligent, unintentional or innocent but negligent acts were excluded from the penal provisions of this Convention. Moreover, the expressions, viz. "offering", "distribution", "despatch", "transport" admit of elasticity in interpretation.
The incorporation of such terms, e.g. "international participation", "conspiracy to commit any offence" widened the scope of application of this Convention. Both the expressions touch upon mens rea which carries a special significance in criminal law. Clause (d) of Article 2 spoke for the good intention of the Parties to the Convention. Yet, the vagueness of the Clause (especially expressions like "preparatory acts") eliminated its apparent value. Moreover, this Clause gave the national governments a wider discretion to deal with each individual case within their respective jurisdiction in the way they found most appropriate. In other words, standards of justice would vary according to the nature and philosophy of the legal system in question.

Article 3 however was one of the fundamental articles. In this article the High Contracting Parties who possessed extraterritorial jurisdiction in the territory of another High Contracting Party, undertook to enact the necessary legislation for punishing their nationals who were found guilty within that territory of any offence specified in Article 2, at least as severely as if the offence had been committed in their own territory. This provision was devised with particular regard to the conditions then prevailing in China and Egypt, in relation to the punishment of drug-traffickers who were nationals of the Capitulation Powers. The Egyptian delegate pointed out that "as there are fourteen consular courts in Egyptian territory, and as they do not always apply the general principles in force in the capital, varied and often ineffective penalties may be imposed in Egypt for the offences mentioned in the
Convention, according to the competent court.\textsuperscript{214} The Egyptian government therefore, following the precedent set in the Convention for the Suppression of the International Trade in Arms, emphasised that the insertion of such words as would enable "offenders who are nationals of the Capitulation Powers to be dealt with in Egyptian territory on the same footing as nationals of the country and foreigners amenable to the national courts" was absolutely necessary.\textsuperscript{215}

Article 4 was devised with a view to deterring potential offenders. According to this article, each of the acts specified in Article 2 should, if committed in different countries, be considered as a distinct offence, instead of an accessory to the principal offence. In terms of this article, the offender would be liable to punishment for each distinct offence, irrespective of how he had been treated on account of his previous offence even if such an offence had been committed in a different territory.

In terms of Article 5, the High Contracting Parties whose national laws regulated cultivation, gathering and production aimed at obtaining narcotic drugs, undertook the obligation to punish the offender in equal severity, equal presumably to the severity of punishment imposed for the offences mentioned in Article 2.\textsuperscript{216} The provisions of this article were limited in scope because they were made applicable only to those High Contracting Parties whose national laws regulated cultivation, gathering and production (of raw materials) with a view to obtaining narcotic drugs.
Article 6 aimed at establishing the habitual criminality of an offender, and prescribed that the countries where "the principle of the international recognition of previous convictions is recognised, foreign convictions for the offences referred to in article 2 shall, subject to the conditions prescribed by the domestic law", be recognised for the above purpose. These provisions in this article were however qualified by two limitations, viz. (a) subject to the conditions prescribed by the domestic law, i.e., the conditions would vary according to the standard and philosophy of law of a country's legal system, and (b) it would operate only in those countries where the principle of the international recognition of previous convictions was recognised. The provisions of this article were however very much in conformity with the philosophy of crime, criminal law and punishment of criminal offenders.

(ii) Provisions designed to prevent offenders from escaping punishment on technical grounds, and to confiscate the materials intended to be put into illicit traffic

Article 29 of the Geneva Convention of 1925 made certain provisions concerning this problem. The provisions of the Geneva Convention were not very articulate and their operation depended upon the sense of responsibility of the Parties to the Convention. The non-contracting parties were under no obligation to take
any measures in this respect. The 1936 Convention however made certain direct references to the punishment of offenders involved in the illicit traffic in dangerous drugs, and these may be found in Articles 7, 8 and 9. Both Articles 7 and 8, in principle, aimed at punishing the nationals and foreigners alike in those cases where the offenders escaped punishment on technical grounds. According to Article 7, "in countries where the principle of the extradition of nationals is not recognised, nationals who have returned to the territory of their own country, after the commission abroad of any of the offences referred to in Article 2, shall be prosecuted in the same manner as if the offences had been committed in the said territory." This principle would equally apply even in those cases where the offender had acquired his nationality after the commission of the offence. The provisions of Article 7 would not however apply if, in a similar case, the extradition of a foreigner could not be granted. In terms of Article 8, "Foreigners who are in the territory of a High Contracting Party and who have committed abroad any of the offences set out in Article 2 shall be prosecuted as though the offence had been committed in that territory," but this provision was subject to two conditions, viz.,

(a) that extradition had been requested and could not be granted for a reason independent of the offence itself; and

(b) that the law of the country of sojourn considered
prosecution for offences committed abroad by foreigners admissible as a general rule.

The net results of these provisions were that a delinquent, whether a national or a foreigner, irrespective of the place of commission of the offence, was generally made subject to punishment by the law either of the country of refuge or of the country where he would be surrendered. Also under Article 7 the obligation to prosecute nationals was made to apply only to other states, and even those states were under no obligation if they found it necessary to refuse to surrender the offender on grounds directly connected with the charge (e.g., period of limitation). 218

Article 9 represented an innovation. It was, in reality, a covering Article in that it made offences relating to illicit traffic in drugs extradition crimes, even though such offences were neither previously treated so, nor were mentioned in the existing extradition treaties. Paragraph 2 of Article 9 provided that the "High Contracting Parties who did not make extradition conditional on the existence of a treaty or on reciprocity shall as between themselves recognise the offences referred to above as extradition crimes." Since according to treaty practice, only offences of a serious nature admit of extradition, the participants of the 1936 Conference were not inclined to accept all offences falling under Article 2 as extradition crimes. Paragraph 3 of Article 9, therefore, provided that "extradition shall be granted in conformity with the law of the country to which application is made," and
it was also for the same reason that paragraph 4 of Article 9 gave
the High Contracting Parties the right to refuse to arrest or to
grant extradition of an offender should their competent authorities
have not found the offence in question to be sufficiently serious.
The Convention however did not specify the offences which would
qualify for extradition. Characteristically, Articles 7 and 8 were
'prosecution' articles, while Article 9 was an 'extradition' article.
Article 10 was devised to make the punishment more rigorous. By
this Article any narcotic drug as well as any substance and instrument
intended for the commission of any of the offences referred to in
Article 2 would be liable to seizure and confiscation. The wording
of this article was to a great extent contributed by the delegation
of the Union of Soviet Socialist Republics, who suggested that it
would be desirable "to place no restriction on the confiscation
of narcotic drugs, but to base it in all cases on illegal acts." 221

(iii) Provisions concerning administration and international co-operation.

Each of the High Contracting Parties, according to
the terms of the Convention was required to set up within the
framework of its domestic law, a central office for the supervision
and co-ordination of all operations necessary to prevent the offences
specified in Article 2, and for ensuring that steps were taken to
prosecute persons guilty of such offences. This central office was required not only to keep close contact with other official institutions or bodies dealing with narcotic drugs, but also to centralise all information which would facilitate the investigation and prevention of the offences specified in Article 2. This office was also required to be in close contact with the central offices of other countries, and was given the authority, where necessary, to correspond directly with them. In countries where powers were distributed between the central and local governments, or where the constitution was federal in character, the supervision, co-ordination and the execution of the functions were to be carried out in conformity with the constitutional or administrative system thereof. In the case of the mandated territories, protectorates, colonies etc., the requirements of Article 11 could be carried out by means of a central office set up in or for that territory acting in conjunction, if necessary, with the central office in the metropolitan territory concerned, if the metropolitan authorities undertook the obligations in respect of such areas.

The Convention also required the central office in the countries of each of the High Contracting Parties to co-operate with the central offices of foreign countries to the greatest possible extent, in order to facilitate the prevention and punishment of the offences specified in Article 2. In performance of a very important part of its functions, this office, where it thought expedient, could communicate with the central office of
any country in connection with any of the following:

(a) particulars which would make it possible to carry out any investigations or operations relating to any transactions in progress or proposed;

(b) any particulars which it had been able to secure regarding the identity and the description of traffickers with a view to supervising their movements; and

(c) discoveries of secret factories of narcotic drugs.225

The Convention also preferred the system of direct communication between the competent authorities of each country or through the central offices, and even through the diplomatic channel, if necessary, to effect the transmission of letters of request regarding the offences referred to in Article 2.226 For all practical purposes, the system of direct communication, as devised by the Convention, was laudable. The provision for establishing "direct correspondence between the Ministers of Justice of the two countries,"227 was suggested by the delegate of the Union of Soviet Socialist Republics.228 This proposal was opposed by the Indian delegate, who preferred the system of communication through the diplomatic or consular representative.229 Article 15, however, maintained the usual "escape provision" of a convention, that is, in this article, the liberty of the High Contracting Parties had been maintained in the matter of definition of the offences referred to in Articles 2 and 5, and as regards prosecution and punishment of offenders in
conformity with the general rules of domestic law. One of the most important Articles was Article 16, according to which the High Contracting Parties were required to communicate to one another through the Secretary-General of the League the laws and regulations promulgated in order to give effect to this Convention, and also an annual report on the working of the Convention in their territories. This provision did not meet with opposition, and in fact, this Article was one of the formal Articles usually devised in this kind of convention for the purpose of co-ordination between the world organisation and the Parties to the Convention.

(iv) Other Provisions

The remaining provisions were incorporated in Articles 18-25. Such provisions primarily included the usual method of ratification, accession and revision of a multilateral treaty. The notable Article in this Section, however, was Article 24. According to Article 24, paragraph 1, after the expiration of five years from the date of the coming into force of this Convention, it might be denounced. The denunciation was to have taken effect one year after the date of its receipt by the Secretary-General of the League, and should operate only as regards the Members of the League, or non-member state, on whose behalf it had been deposited. In terms of paragraph 3 of Article 24, if, as a result of simultaneous or successive denunciations, the number of Members of the
League and the non-member states bound by this Convention was reduced to less than ten, the Convention was to cease to be in force as from the date on which the last of such denunciations was to have taken effect. The implications of this type of provision can easily be followed. Any attempt to produce a constructive effect by means of a multilateral convention, as was done in the present case, proves to be abortive in the event of inclusion of such provisions in the Convention. What was given by one hand, i.e., the method of suppression of illicit traffic in drugs, was taken away by the other. Presumably, the nations who had most economic interest would take advantage of this type of provisions for obvious reasons. The prohibitory rules which are thus created by these conventions, owing to their failure to stand up to the requirements of international *jus cogens*, or to qualify potentially as rules of international *jus cogens*, are prohibitory in name only.230
(d) A Sigh of Relief?

After the Limitation Convention, the 1925 Convention was taken to be the "ultimate" Convention. Apparently, all aspects of the control of illicit traffic in drugs, viz. limitation of manufacture and production of drugs, control of trade in drugs, and suppression of illicit traffic in drugs had been embodied in international conventions. To render this effective, two other factors were also emphasised, viz. international co-operation and domestic administration. The Convention for the Suppression of the Illicit Traffic in Dangerous Drugs assumed great importance in that looking at it obliquely, the effectiveness of this Convention in fulfilling its avowed intentions would contribute greatly to the success of the other drug conventions, in that it would at least prevent the drugs from crossing the national boundaries illicitly. Accumulation of drugs in one territory, because of the failure of the limitation policy of the government concerned is, no doubt, a problem; but to allow even legitimately produced drugs to cross national boundaries illicitly, owing to the failure of the suppression policy, is certainly a problem of greater magnitude. It is for this reason that an attempt should be made to see whether or not the 1936 Convention justified a sigh of relief in this regard, and a discussion of the following should bring out an answer to this question.

(i) Suppression of the illicit traffic in dangerous drugs - League style;

(ii) When "punishment" means only a "caution"; and

(iii) Co-operation for non-co-operation?
The term "suppression" means the act of putting an end to the activity or existence of something. Such an act may be performed in two ways, viz. (a) positive; and (b) negative. The positive methods are those methods which directly aim at putting an end to an activity. The negative methods, on the other hand, are those indirect methods by which the activity will not be encouraged to flourish any further. In the context of the suppression of the illicit traffic in drugs, positive methods would be direct methods which help suppress the illicit traffic viz. legislation, co-operation, co-ordination and efficient management, while the negative methods would consist of punishment and control.

In order to make effective legislation, what is necessary is to set out the purpose of the legislation. It would appear that the aims as enunciated in the Preamble to the Convention became difficult to achieve owing to the absence of adequate description of the system of international agreements bearing on the subject. A simplified procedure would, doubtless, have been more effective in attaining the avowed objectives. As the Czechoslovak delegate pointed out that it would, above all be "desirable to consider whether the projected Convention should not embody a consolidated text of all the regulations in connection with the illicit traffic in opium and dangerous drugs. This would avoid all possible dispute as to whether any particular clause has been superseded or amended, or remains unaffected by the new Convention."
of adequate description of the system of international agreements relating to the matter in question becomes more relevant in relation to those states which were not Parties to the 1912, 1925 and 1931 Conventions.\textsuperscript{232}

Secondly, the manifest disproportion between the case with which an offence connected with illicit traffic may be prepared, organised and committed, and the difficulty of taking proceedings against and punishing the traffickers, leads to the conclusion that the growing internationalisation of criminal activities in that field must be met by internationalisation of the means of suppression, and in order to fulfil this objective, the Convention aimed, inter alia, at unifying the punishable acts in the various national laws on narcotic drugs. In Article 2, the High Contracting Parties, therefore, agreed to make the necessary legislative provisions for severe punishments, particularly by imprisonment or other penalties of deprivation of liberty in case of commission of or attempt to commit certain acts. In the event of commission of or attempt to commit these acts, the Convention prescribed for judicial and administrative penalties. The Convention failed to recognise the inability of many states to inflict judicial penalties in respect of all the acts mentioned in Article 2, although administrative penalties might be provided for acts to which judicial penalties were not applicable.\textsuperscript{235} It also did not make any provision for prosecution for fiscal offences in cases of violation of the customs laws and regulations, and this had a direct bearing particularly upon the nature of the offence committed. Not all
offences were punishable by imprisonment, as the Convention envisaged, and in fact, such a sweeping provision would come into conflict with the legal philosophy of punishment maintained by different states. This was emphasised by the Czechoslovak delegate when he said that it would "certainly not be just to inflict rigorous or long imprisonment on a person who had, without official permission or a doctor's prescription, obtained small quantities of dangerous drugs for such purposes as scientific experiment or his own treatment without endangering the health and well-being of others." In other words, the degree of gravity of the offence, i.e., the quantity of harmful drugs, their effect upon health and the casual, regular or even professional nature of the offence should have been taken into account. Although it is valid to say that in cases of offences relating to this kind of commodity, all complicity should be punished in the same degree, nevertheless, extenuating circumstances of a personal nature may make the principal or any of his accomplices or associates exempt from severe or any punishment. In view of the stringent provisions of the Convention in this regard, it could hardly be expected that the countries whose criminal laws were based on a philosophy different from that which found expression in the Convention, would be agreeable to introducing a completely new law in this area, and it was apprehended that such a provision might have kept a large number of states from acceding to the Convention. One of the principal reasons, according to Professor Starke, for the reluctance of states to ratify or accede to the Convention was that it "was based predominantly upon the
principles of penal law and criminal jurisdiction followed by
Continental countries, and was less adaptable to systems which did
not follow the principles of Continental penal code."

Moreover, the Convention, in its attempt to unify punishable
acts in the various national laws on narcotic drugs, should have
taken into account the attitudes of the national governments towards
sovereignty. The expression "preparatory acts" in clause (d) of
Article 2 begs comment. Preparatory acts are different from "attempts
to commit an offence". An 'attempt' is a stage of commencement of
execution, and this is punishable in almost all countries, but not
all "preparatory acts" may amount to an offence (i.e., leading
to an attempt) since it depends upon the circumstances of each
individual case, and therefore, it seems undesirable that any
change should be made in the domestic laws of any country on this
point, and in fact, opposition in this regard was raised by the
delgates of France, Sudan and Switzerland. It was therefore
suggested by them that the expression "preparatory acts" should
have been qualified by adding the words "in so far as the law allows",
and perhaps in the event of such a modification, it would have been
easier to obtain accession to the Convention. Incidentally, such a
form of words (i.e., "in so far as the law allows") had been adopted
in Article 3 of the Convention for the Suppression of the Traffic
in Women, 1921. On the other hand, in terms of clause (d) of
Article 2, the High Contracting Parties agreed to make the necessary
legislative provisions for severely punishing a person for making
attempts to commit an offence among those enumerated in Article 2. It is difficult to accept that a person should be prosecuted and punished for the mere intention of committing an offence even though such an intention has not been translated into action. 243

Also, the mention of the different kinds of acts in relation to traffic in drugs, in clause (a) of Article 2 appears to be unnecessary. The term "illicit trade" would have covered all kinds of acts, and it would have been advisable to leave it to the domestic courts to determine whether or not an act was an act of illicit traffic. This becomes more relevant in view of the fact that the concept of crimes change in accordance with the social and moral norms of a society. The Convention, however, failed to make any provision in cases of innocent and innocent but negligent acts of illicit traffic, as it equally excluded the possibility of a gift or loan of dangerous drugs. 244 It is suggested that the Convention should not only have graded the offences in Article 2 according to gravity of the acts (as otherwise "attempts" or "preparatory acts" might not in many countries be recognised as punishable offences), but should also have declared "co-culpability" and "punishable complicity" as distinct offences, in order to avoid the consequences rightly predicted by the Czechoslovak delegate when he said that "the proposed agreement will lose a considerable part of its value and the campaign against the smuggling of dangerous drugs will suffer and will become ineffective at its most vulnerable point." 245 The Convention also failed to make provision for legislation to be made
by each country for punishing a person who was not a common carrier, but "taking or carrying or causing to be taken or carried", from any place to another place any narcotic drug. It may however be observed that many of the difficulties in prosecuting offenders could have been avoided if an attempt had been made to formulate certain uniform definitions of crimes related to drug-trafficking on the basis of ejusdem generis rule, as had been done in the case of breaches of obligations of the regulations contained in the Conventions of the Universal Postal Union.

This Convention however made attempts to suppress the illicit traffic in dangerous drugs, by incorporating provisions which would have a deterrent effect in that the offenders could be described as habitual criminals. This the Convention did in Articles 3, 4 and 6. Unfortunately, all these articles had limited application and effect also. The provisions of Article 3 (relating punishment of an offender who has committed an offence in a territory where a government possessed territorial jurisdiction) had limited or no application. According to this article only those High Contracting Parties who possessed extraterritorial jurisdiction in the territory of another High Contracting Party undertook to enact the necessary legislative provisions for punishing such of their nationals as were guilty within that territory of any offence specified in Article 2, at least as severely as if the offence had been committed in their own territory. Articles 4 and 6 should be read together. According to Article 4, each of the acts in Article 2 was, if committed in different countries, to be considered as a distinct offence. As stated before, doubts persisted as to the
universal recognition of those offences which had been enumerated in Article 2 of the Convention, and in the course of time, the definition of an act of illicit traffic is bound to change. With these doubts in the background, Article 6 made an attempt to establish the habitual criminality of a person by referring to foreign convictions of the offences enumerated in Article 2, provided of course the principle of recognition of previous convictions universally, was accepted by the country subsequently inflicting punishment. It may be noted that since the principle of recognition of previous convictions internationally was not recognised in many countries, this provision did not attain a universal application. Moreover, it could not encourage those countries, which did not recognise the principle, to change their attitude since the recognition of foreign convictions for the purpose of establishing habitual criminality would be a cumbersome and costly venture in which many countries would not be justified in participating. 249 Starke again observed that the "difficulty that some States would experience in framing the relevant domestic legislation to give effect to certain provisions of the Convention" 250 was one of the principal reasons for the reluctance of States to ratify or accede to the Convention.

From the above discussion it may be concluded that the 1936 Convention because of its vague and controversial drafting failed to attain the support of a good number of countries and consequently, became unsuccessful in its attempt to unify punishable acts in the various national laws on narcotic drugs.
(ii) When "Punishment" means entering a "Caution" only

One of the aims of this Convention in combating the illicit traffic in drugs was to punish those criminals who organised from one country illicit acts relating to illicit traffic in another. On commission of the crime, the trafficker took shelter in the jurisdiction of another country. In order to solve this problem, the Convention made certain provisions which were embodied in Articles 7, 8 and 9. Article 7 made a general provision that the national, on return to the territory of his own country after commission of the offence in the territory of another country, would be prosecuted and punished in the same manner as if the offence had been committed in the territory of his own country. This provision was however qualified by the exclusion of those countries where the principle of the extradition of nationals was not recognised. The provision of Article 7 was made wide in scope by being applicable even in a case where the offender had acquired his nationality after the commission of the offence, i.e., change of nationality after commission of the crime, and even statelessness would not be an excuse in such a situation. Paragraph 2 of Article 7 provided that the provisions (i.e., the provision as embodied in paragraph 1) "does not apply if, in a similar case, the extradition of a foreigner cannot be granted." In the circumstances, neither a foreigner nor a national might be extradited, i.e., when it was thought that request for a return had a collateral motive and was therefore
outside the scope of this Convention. In fact, although many countries do not recognize the principle of the extradition of nationals, it is believed that all states will however on the grounds of protection of individual liberty be hesitant to grant the extradition of a foreigner, and consequently, cases of extradition in the matter of drug-trafficking crimes will also be rather uncommon.

Article 8 prescribed provisions for extradition in respect of foreigners exclusively. According to this Article, foreigners on their return to the territory of a High Contracting Party after commission of offences abroad, were subject to prosecution and punishment, if the following conditions had been fulfilled:

(a) that extradition had been requested and could not be granted for a reason independent of the offence itself; and

(b) that the law of the country of refuge considered prosecution for offences committed abroad by foreigners admissible as a general rule.

As regards clause (a) above, it may be pointed out that the phrase "for a reason independent of the offence itself" is unsatisfactory. The question necessarily arises as to what may be the reason independent of the offence itself—lapse of time, or political grounds? In so far as "lapse of time" as a ground of non-extradition is concerned, the views of the requisitioning and the requisitioned states are different. Nevertheless, the writers on extradition are generally of the opinion that the
requisitioned state should have the right to apply its own law of limitation, and this may be supported by treaty law. If however extradition were available for all kinds of crime, the concept of political asylum would be meaningless. In the present case, it appears that if extradition was not practicable on the grounds of political offence and if the principle of extradition was not admitted either, then it would not be possible to prosecute and punish the foreign offender who had taken refuge in that country. It therefore appears that clause (a) was devised to observe a mere formality especially by providing that extradition had to be requested (which is a legal formality), when it was known that it could not be granted for the usual reasons.

Clause (b) of Article 8 appears to be more controversial. It is arguable how many countries, as a general rule, recognise the prosecution and punishment of offenders for extra-territorial crimes. This clause, therefore, did not have a universal application. Moreover, even in a country to which this clause was applicable, it would be difficult to administer justice for practical reasons, for example, if a citizen of country A after committing a drug offence in country A had escaped and was found in a country with which country A had no extradition arrangements in drug matters, it would be very difficult to prosecute the offender at the request of the government of country A, and also to prove the case against him. The recognition of extra-territorial crime is rare. It was primarily for
this reason that the provisions of Article 9 of the Convention seemed to be of limited use. Article 9, paragraph 4, in particular, had an overriding effect upon all other provisions as it maintained the basic trend of non-recognition of extra-territorial crimes by different countries.\textsuperscript{253} Henrichs, with reference to the term "abroad" in the Convention (Article 8, paragraph (b)) observed that "this term did not mean any foreign country but only those foreign states who were not parties to the Convention." He went on to say that "against this interpretation it might, however, be objected that the protection of the country of custody and of its population against narcotic drug offenders, which is the purpose of the prosecution, is of such importance as to justify the institution of criminal proceedings not only on behalf of other states parties, but also on behalf of any state which combats the illicit traffic in narcotic drugs by the enactment of suitable regulations, whether within the framework of the Convention or not."\textsuperscript{256} However idealistic Henrich's idea might appear to be, it would be true to say that unless there is effective co-operation from the states for combating illicit traffic in narcotic drugs, through the relinquishment of their sovereignty to the extent to which would be necessary for this purpose, all efforts in this regard will be in vain.

(iii) Co-operation for non-co-operation?

The provision of co-operation can be found in Articles 11, 12, 13 and 16 of the Convention. According to the Concise Oxford Dictionary, the term "co-operate" means "to work together (with
person in a work, to an end; (of things) concur in producing an effect", and "co-operation" means "working together to the same end." It means a positive action for achieving something. In law, this term imposes obligations upon both the parties to a contract in both the affirmative and prohibitive or preventive sense. Affirmative obligations demand voluntary co-operation; preventive or prohibitive co-operation can also take the form of voluntary co-operation. In certain fields however as in International Relations and Law, another kind of co-operation can be found, which may be called "involuntary" co-operation, i.e., where states are not actively co-operating to achieve the desired goal, whether by positive or preventive or prohibitive means but are abstaining from standing in the way of other nations achieving the desired goal. Involuntary co-operation produces positive results only in the sense that it does not contribute to the damage or deterioration of something. Involuntary co-operation, in this context, will mean the opposite of voluntary co-operation, though not complete absence of co-operation.

In Article 11 the High Contracting Parties undertook to set up within the framework of their domestic laws central offices for supervision and co-ordination of all operations necessary to prevent the offences specified in Article 2, and also for ensuring that steps were taken to prosecute persons guilty of such offences. This provision ignored the fact that some countries would be unable to fulfil this requirement, for financial or technical reasons. The government of India pleaded its inability to establish such an office immediately,
for financial reasons. On the other hand, the other kind of difficulty was expressed by the Dutch delegate when he said that in the case of the Netherlands, "whose territory is situated in three different parts of the world, it would be impracticable to entrust a central office in Europe with the execution of measures designed to prevent illicit traffic in the Netherlands Indies. The parties should be allowed to set up a central office in each of the territories which belong to them and may be situated at a great distance from each other." In most countries matters relating to excise are directly dealt with by the Revenue/Finance department, and in that case it would be difficult to displace the function of an established department by a new department for one purpose only. Also, it would not be practicable for the central office to be in close contact with the police authorities throughout the country, nor would the local authorities be agreeable to this. Where it was not possible to establish a central office, the department of Revenue/Finance or any such department would not be entrusted with the task of an intelligence bureau. The Convention also assumed that the standard of the legal system in all countries was the same; the phrase, "within the framework of its domestic law" necessarily implies that there may be as many kinds of legal systems as there are members, and presumably, the functions which such central offices would perform would be different. Moreover, the grounds for prosecution of a person may be interpreted differently by different legal systems. The Convention also failed to specify the procedure by which the central office would centralise all
information likely to facilitate the investigation and prevention of the offences in Article 2. The strength of the system of co-operation by means of transmission of letters relating to the specified offences is eliminated in paragraph 8 of Article 13 which stated that "nothing in the present Article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or method of proof contrary to their laws or to execute letters of request otherwise than within the limits of their laws." Presumably, the requirements of obligation to the Convention were optional, and such a provision finds justification in the necessity of maintaining the sovereign authority of each Contracting Party. In such a situation, any provision for international co-operation was bound to meet with failure. It appears that the provisions of the Convention were very theoretical and the Convention itself was premature, although the necessity of suppressing the illicit traffic in drugs was urgent. It was premature in that there was still lack of unity of policy and action among the states. This was rightly pointed out by the Colombian delegate when he said that "When real unity of policy and action has been established among the Contracting Countries in the campaign against dangerous drugs, it will be desirable from every aspect to convene periodical conferences of the representatives of these countries for the objects laid down in the Convention." Successful international action very much depends on the degree of co-operation among nations. Where economic and political motives are involved, success for obvious reasons will not show any sign of developing. Predictably, participation in the economic
development of the "uncommitted" was not the trend of the day. It is only since the end of the Second World War that international economic development has become the predominant concern of publ international relations. Although internationalisation of economic interests has been rather a fashion since the Second World War, it has established important rival claims that at times comes into conflict with State loyalties, as the organisation of economic interests spreads across national borders. From this standpoint, there is no basic difference in the behaviour of the nations even today. What however is noticeable is the difference in the method of co-operation between the League and the post-League periods in the internationalisation of any aspect of life. Co-operation during the League period was negative in character rather than positive. It may be called a kind of co-operation too, since it at least did not jeopardise the prospects for development by positively acting against it. As Friedmann observed, "This move of international society, from an essentially negative code of rules of abstention to positive rules of co-operation, however fragmentary in the present state of world politics, is an evolution of immense significance for the principles and structure of international law." In other words, a co-operative international law representing the community aspirations has been developing. This Professor Schwarzenberger described as the Law of Reciprocity, which according to him constitutes "a compromise between the Laws of Power and Co-ordination, between the extreme of brutal domination and saintly self-negation."
Positive co-operation, however, takes the form of functional international co-operation. The nature of the co-operation envisaged in the 1936 Convention may be described as a negative co-operation. This was characteristic of the League of Nations era. As Schwarzenberger observed, "On the levels of the League of Nations or United Nations, it would be stretching a point to interpret the policies of the Powers in terms of functional co-operation. As of old, their policies in any of the central spheres of these comprehensive international institutions are guided by more or less narrow views of their own sectional interests. In other words, whatever phrasology States may employ, they still deal with the most vital issues of international relations in a typical society mentality. Thus, to single out international economic, social and cultural co-operation as functional is justified only as a convenient and well-understood abbreviation." The High Contracting Parties to the 1936 Convention were not required to curtail their sovereignty; on the contrary, in Article 14 it was assured that "the participation of a High Contracting Party in the present Convention shall not be interpreted as affecting that Party's attitude on the general question of criminal jurisdiction as a question of international law," and this was reinforced by Article 15, which provided that "the present Convention does not affect the principle that the offences referred to in Article 2 and 5 shall in each country be defined, prosecuted and furnished in conformity with the general rules of its domestic law." Professor Frankel rightly observed that state interaction is based upon a basic contradiction between the demands of sovereignty and State
needs which can be satisfied only by interaction limiting this sovereignty, sometimes to the point of demanding for the greatest efficiency some form of supra-national organisation which would take decisions binding the state. Traditionally, the dilemma, whenever acute, was solved in favour of state sovereignty. To depart from this tradition, what is necessary is to develop and cultivate the habit of co-operation, no matter however limited the overspill effect would initially be, by means of joint efforts through international instruments and organisation. Also, in order to help develop and cultivate such a habit, not only has a practical concept to be formed, but also the objectives and plans have to be based upon practical considerations. As far as the 1936 Convention is concerned, this point was very clearly made by the Canadian delegate by means of a hypothetical example, when he said, "Doubtless, the Committee had in mind the problem of coping with the man higher up who, from a point outside the danger zone, directs and controls the operations. It is difficult to see how his operations can be effectively coped with unless, for example, Canada makes it criminal for a person in Montreal to plan, organise and direct the shipment of narcotics into the United States of America or to plan, organise and direct distribution of narcotics within that or some other country. It would not appear that, in its present form, the Convention achieves that objective." The apparent gaps in the matter of international co-operation are very often left deliberately. Yet, whether such gaps are left deliberately or not, the result they produce is the same. The main purpose is to create opportunities for reaching the goal, where opportunities do not exist.
Conversely, no disintegrating or non-co-operative factor should be devised where no such factor exists. Professor Schwarzenberger rightly pointed out that if states "desire to behave even on matters they treat as political, the principle of reciprocity provides a sensible common denominator." The question of any effective international co-operation becomes remote and uncertain when a multilateral treaty itself offers opportunities to states to denounce the treaty obligations. Article 24 of the 1936 Convention provided that "After the expiration of five years from the date of the coming into force of the present Convention, it may be denounced by an instrument in writing... The denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations and shall operate only as regards the Member of the League or non-member state on whose behalf it has been deposited." Where such an opportunity to denounce the treaty obligations is offered, delinquency, i.e., non-co-operation or pseudo co-operation rather than real co-operation, will be the usual practice. This situation becomes further aggravated not only by the optional character of the Convention itself (i.e., applicability of the provisions only among the Member States), but also by the non-participation of a large number of states to protect their own interests. It is only the immense intensification and growing amplification of the concerns for security and welfare, that produces the constantly growing type of international law, which develops principles and methods of co-operation. The implementation of many of these concerns was too much to expect during the League of
Nations period. Functional co-operation is dependent upon politics, and consequently, where politics becomes a vitiating factor of international co-operation, the expectation of international order will never be fulfilled. An effective functional co-operation is the necessary pre-condition of an international order rather than the other way around.
I. (a) Introduction

A writer should be on guard that the pleasure of criticising does not rob the reader of the pleasure of being moved by some very interesting and instructive aspects of a topic. It is, therefore, thought advisable to re-visit the Conventions in order to draw up the final balance sheet of the League's work in this area of international law. The purpose of preparing this balance sheet, unlike others, will not be to show how the amounts on both sides balance each other out, but to show the apparently unequal results. Such unequal results occur because of the fragmentation of management, as opposed to a unified central administration, and all other related consequences will, ipso facto, ensue. In preparing this balance sheet it is observed that the League's work in this area should be evaluated from two viewpoints, viz. positive and negative. The positive achievements were those achievements which produced direct and indirect effects; negative effects are the converse of positive effects. The importance of negative effects lies in showing the failure of the League in this area of international law, and the causes thereof, and any recall of this failure should only be helpful to the success of the future international movement in this area, and therefore, in this way negative effects become positive effects. It is also to be borne in mind that the difference between the conception of international order before 1914 and the conception of international order after the creation
of the League was very remarkable since the "Covenant went further in constructive planning than even the most hopeful advocates of internationalism had dared to anticipate. This could be done because, as the result of the war, the change in public opinion was a matter not so much of intellectual persuasion as of passionate sentiment. In the long run, this fact was a source of weakness as well as of strength. At the same time, it was a source of life, ensuring to the new organization a vitality and resilience that no mere diplomatic contrivance could ever possess." 277

The Hague Opium Convention of 1912, despite its many failures, 278 was a good eye-opener to the League, as far as the control of manufacture and traffic in opium was concerned. It gave the League a pre-view of the areas of agreement and disagreement among nations in the matter of the suppression of the illicit traffic in drugs. The basic technique of the suppression of the illicit traffic in drugs, as prescribed in the Hague Opium Convention, ran through all the drug-convention concluded during the League period. Yet, what remains to be re-emphasised is that it was not only the non-co-operative attitude of some nations, and the inherent defects in the conventions, but also the degree of intensity of drug-addiction as a social problem, which largely eclipsed the efforts of the League in this area of international law. Bearing this point in mind, it may be worthwhile to draw up the balance sheet.
(b) The Geneva International Opium Convention of 1925

This Convention was born through controversy. However, it paved the way to success in the control measures required for narcotic drugs, not only by adopting constructive procedures like import authorisations and export certificates, but also by revealing the differences of opinions amongst nations, which served to indicate which course of action should be taken in the future to deal with the drug problem. This Convention also strengthened the provisions of the Hague Opium Convention of 1912 and prescribed stricter measures of control of the traffic in drugs. It widened the scope of control of drugs internationally, e.g. it elaborated the definitions of drugs, as contained in the Hague Opium Convention, and also placed a number of drugs under control, e.g. Indian hemp, ephedrine, cocaine etc. The institutions created by this Convention were very functional, although they were short of legislative power, limited in scope and vertical in character. The functional independence of these institutions were, however, maintained. The reason that they were otherwise made dependent may be traced in the general structure of the League. The structure of the League itself was that of a centralised institution, the Assembly and the Council being the ultimate authorities, not only for matters concerning peace and security but also for those related to health, social development etc. Questions relating to the control of the traffic in drugs came under the jurisdiction of the League Assembly, although many of its directives were occasioned by the Opium Advisory Committee.
This Convention, however, failed to fulfill one of its aims, which was stated in its Preamble, namely, to devise special international methods of "bringing about a more effective limitation of the production or manufacture" of narcotic substances. The Contracting Parties undertook only to enact effective laws and regulations to limit the manufacture of drugs exclusively to medical and scientific purposes, but no mention was made in the Convention as to the limitation of production of raw opium. In fact, the participants did not agree to discuss the matter of limitation of manufacture of drugs and substances at the Conference. The Convention should have provided for more effective means to strengthen the preventive measures available in national administrations. It also failed to prescribe measures for controlling and prohibiting the manufacture of and traffic in drugs amongst the non-contracting parties.

Despite its defects, the Convention marked a significant beginning. It testified to the awareness of the international community in respect of international control of traffic in and manufacture of drugs, which was further evidenced by the fact that it, on attaining the required ratifications, came into force shortly after it was signed by the states. The success of this Convention should be judged in the context of the circumstances in which it evolved; its failure to whatever degree one may like to think, should be attributed in some cases to the unpreparedness of the nations to be bound by treaty obligations, while in others, to economic factors.
The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 1931

This Convention was drafted at a time when the League of Nations had already established a pattern of suppression of the illicit traffic in drugs. The merit of the Limitation Convention lay in the fact that it was the first Convention to make a frontal attack on the limitation of the manufacture of drugs, and thereby control the incidence of the illicit traffic in same. This Convention, in many respects, supplemented the two previous drug conventions and emphasised the importance of the rigid control of import and export of drugs. It was an improvement upon the International Convention of 1925 in that it extended the scope of its operation by including more drugs under its control regime. Authorisation of exports of amounts of 5 kilogrammes or more of any of the substances in Group I to countries or territories which had ratified neither the International Convention of 1925 nor the present Convention, were subject to previous consultation with the Permanent Central Board in order to ascertain whether or not such export would cause estimates for the territory to have been exceeded. In an attempt to strengthen its position, the Convention also empowered the Board to impose sanctions. The Convention also attempted to extend its application even to those who were not parties to it. This Convention represented a very interesting attempt at international legislation in the sense given this term in national societies, a sense which was, as a rule, alien to international law. Compared with other commodity agreements, this Convention succeeded in achieving a higher degree of international co-operation because its authors
as has been observed by Dr. May, applied two methods which underlie all organised attempts at influencing human behaviour: seeking the consent of those whose co-operation will enable the execution of the rule of social behaviour to be effective; and putting pressure on possible dissenters. The effectiveness of a convention should not be judged in terms of the absolutely positive results; attempts made by the Parties to achieve something on an international basis, no matter how keen the opposition is, pave the way to success. The nations, through this Convention, made it manifest that limitation, both of manufacture and consumption of narcotic drugs, was an urgent problem for consideration. It was for this reason that an attempt, however ambitious it might appear to be, was made to extend the scope of application of the Convention among the countries who were non-signatories.

The success in limitation of the manufacture of drugs under this Convention depended upon the following conditions:

(a) the universal application of the estimate system;
(b) co-operation of various governments, whether Parties or not to the Convention;
(c) careful calculation of estimates by national governments;
(d) observance of the regulations concerning international trade in drugs (i.e., import certificates and export authorisations) by the national governments; and
(e) effective domestic administration and suppression as complementary to an effective international administration and supervision in this area of international law.
Equally, the system of distribution of drugs under this Convention depended, ex necessitate sitandiae, upon the same kind of conditions. The question of distribution was fraught with difficulties because in many cases the consuming countries did not have their supplies of drugs from the manufacturing countries. To this must be added the other contingency that supplies might have taken the form of preparations made by a country which did not itself manufacture the drugs, and the fact that countries remote from the manufacturing-centres obtained, as a matter of practice, their supplies from distributing-centres which were nearer to them.\textsuperscript{289} This aspect of the problem was closely connected with the question of re-export trade. Since re-export trade could not be done away with entirely, and since the distributing centres were found necessary at least to facilitate trade in medical specialities prepared from the drugs in countries which did not themselves manufacture, it was essential that the amount imported for re-export counted against the estimate of the country's domestic requirements until it was proved that the amount had been re-exported.\textsuperscript{290}

It was suggested at the Preliminary Meeting of the Official Representatives of the Manufacturing Countries,\textsuperscript{291} that this problem could have been solved by establishing a central office for the organisation of distribution\textsuperscript{292} under the supervision of the League. But this suggestion could not be furthered for two reasons, viz. (a) that it would be mostly the manufacturers who manufacture for the export trade who would deal with the central office,\textsuperscript{293} and (b) that there was no consensus as to the site of the central office. Moreover, the establishment of such an office would have all the defects that are usually associated with centrally administered states. With this must also
be taken into account the regional differences both in requirements of drugs, and as regards the economic dependence of a country on the production and manufacture of drugs. It was therefore suggested that regional offices, instead of a central office, might have served as a remedy to the problem of manufacture and distribution. The regional offices would have been directly responsible to the League.

Again, this Convention, though very ambitious in its plan, deserves criticism for maintaining a double standard with regard to "reserve stocks" and "government stocks," and for limiting the scope of its application by not covering certain other kinds of drugs and production of drugs. This Convention concerned itself with the quantitative aspect of drugs and not with the qualitative aspect.

Yet, it opened an avenue to the anti-drug campaign of the League, and it has to be emphasised that, apart from lack of knowledge of the extent and nature of the problem, the limited success of this Convention was pre-destined in view of the fact that when the League first began its work in this field, it was not possible for it to go further than governments and public opinion were ready to follow.

The purpose of this Convention was one only, viz. to suppress the illicit traffic in dangerous drugs, and to make the offence of illicit traffic in these commodities punishable. It appears that the provisions in this Convention for the prosecution and punishment of offenders for extra-territorial crimes were not novel. On the contrary, they followed the usual pattern of the time. The principal reason for making such vague provisions may be traced to the difficulties in providing stringent measures with regard to extra-territorial crimes. There is no universal rule of customary international law which imposes the duty of extradition. It is the municipal law which offers the basis for the conclusion of extradition treaties. In the event of a state possessing no extradition laws, and whose written constitution does not make any reference to it, the matter has to be left to the government which may conclude extradition treaties according to its discretion, although a government is quite competent to extradite an individual, even though no extradition treaty exists. Moreover, surrender of fugitives is the exception rather than the rule, and a matter of grace rather than of obligation, and even the executive cannot exercise any general power of arrest of a fugitive criminal. The underlying philosophy of extradition treaties is that extradition will be allowed only in cases of grave offences. The power to determine grave offences however is left to the government concerned. Also, the plea of protection of individual liberty, as opposed to the principle of community
of interest, is very often adopted in cases of extradition. It is against this background that the question of punishment of offenders for extra-territorial crimes has to be considered. It is, however, surprising how the authors of the 1936 Convention incorporated certain unrealistic provisions in this matter, despite the fact that the prevailing attitudes of nations relating to extra-territorial crimes had remained unchanged. The 1936 Convention ignored the problem relating to double criminality, i.e., the slim chances of recognition of a crime by both the countries—the requisitioning and the requisitioned countries, even though the criminality of offences in whatever term that might be, is recognised by both the countries. The chances of recognition of a crime by both countries were slim even within the British Commonwealth. The alteration of treaties by separate members of the Commonwealth, treaty interpretation, and variations in the domestic laws of Commonwealth countries, as in the case of double nationality, have all created divergencies in practice. Thus, the government of the United Kingdom might extradite a criminal on the grounds for which another Commonwealth country might refuse extradition. With this should be taken into account the established practice of the countries both within and without the Commonwealth. At the 1936 Conference, a considerable number of countries opposed the provisions of Article 4. The Indian delegate said that the "Indian Legislature has no power to provide for the punishment of offences committed outside India by foreigners." The Canadian delegate, however, commented that
the provisions of Article 8 appeared to be inadequate, and he found the justification of his statement in their experience of extradition arrangements with the U.S.A. It may be observed that not all the offences as enumerated in Article 2 were extraditable offences, and the observation of the Swedish delegate may be quoted as representative of the opinion of the majority. He said that in a great many countries, among them, Sweden, it would seem to be a rule of law that offences against special criminal laws do not give rise to extradition. Under the law of many countries, one requisite for extradition is that the offence for which extradition is demanded must be punishable with a heavier sentence than that which is normally inflicted for offences of the kind covered by the present draft.

He went on to say that "... it is hardly likely that any country would be prepared, in order to accede to a convention such as this, to abandon the general principles of its law. It would therefore be highly desirable to amend these clauses." Unless all the acts relating to the illicit traffic in dangerous drugs had been included as extraditable offences in every extradition treaty which has been, or may be concluded between that party and any other party which allows extradition for the same acts, the provisions of Articles 7 and 8 would have no effect. In this connection, the provisions of Article 9 for automatic incorporation of narcotic offences as extradition crimes in extradition treaties concluded or to be concluded, may be referred to. This Article, as has been rightly observed by Starke, "imposed far too general an obligation opening up possibilities of conflict with fundamental notions of a state's
extradition law and practices, and creating some difficulty or embarrassment in regard to the negotiation of new or amended extradition treaties. Schwartenberger observed that "extradition is a matter eminently suited for arrangements by means of bilateral treaties between states which, on a basis of effective reciprocity, are able and willing to assist each other in the administration of their criminal justice. Treaties of this kind follow long established patterns, in accordance with which controversial issues are settled by administrative or judicial organs of the parties to such treaties. If Contracting Parties to such treaties keep in mind the self-regulating effect of the principle of reciprocity, such issues as arise have a tendency to settle themselves. Relatively, little need, therefore, exists for international litigation in this field." It may, therefore, be observed that the 1936 Convention made too enthusiastic an attempt to bring the drug-traffickers to task. Some of its provisions relating to punishment of the drug-traffickers were vague, while some other were too narrow for the reasons explained above. Also, the most formidable obstacle in extradition proceedings being the condition of reciprocity, which is very strictly interpreted by many countries, the tendency would evidently be to discourage the making of an extradition order even though an offence had been committed, in any case where the statutory definition of the offence and the conditions governing its prosecution did not correspond in every detail. Lastly, like many other international conventions,
this Convention also conformed to the basic pattern of the
existing international legislation, i.e., instead of affecting
the individual drug-trafficker directly, it attempted to bind
certain states only to make provisions for the punishment of
drug-traffickers. This problem has been discussed in detail
with reference to the Single Convention on Narcotic Drugs, 1961. The provisions for punishment in this Convention were not so
practical as to cause any apprehension to the individual drug-
traffickers, and the effect they might have produced, if it might
be called any effect, was to warn traffickers to move in certain
directions rather cautiously.
FOOTNOTES

CHAPTER IV

1. Signed at Geneva, 11th February, 1925, L.N. Doc. C.82.M.41.1925.XI. The provisions of this Agreement were not to be applied to opium solely meant for medical and scientific purposes.

2. China, France, Great Britain, India, Japan, the Netherlands, Portugal and Siam.

3. Article I, paragraph 1.

4. Article I, paragraph 2.

5. Article I, paragraphs 3(a) and (b)

6. Article IV.

7. Article III.

8. Article VII

9. Article VIII


11. See further S.H. Bailey, op. cit., p. 31.

12. See Articles II and III of the Protocol.


15. Sir John Campbell


17. op. cit., p. 90.


19. See Preamble to the Convention.

20. Article 3.
"By Indian Hemp is understood the dried flowering or fruiting tops of the distillate plant cannabis sativa L., from which the resin has not been extracted, under whatever name they may be designated in commerce."

The Sub-Committee considered that it was impossible to designate them all by reason of the numerous and varied names by which they were known in the different countries and decided merely to designate them as a whole, mentioning some of the best known among them: hashish (Arabian and Egyptian), cazar (Turkish), Chira (Tunisian) and diamba (Brazilian).


See Note by the Indian Delegate in the Records of the Second Opium Conference, op. cit., p. 499.

Article 10.
On the other hand, if the Health Committee had found that a certain drug would not give rise to the drug habit on account of the medicaments with which the said drugs was compounded, the Council of the League was to be communicated the findings of the said Committee to the Contracting Parties, and consequently, the provisions of the Convention would not be applicable to that particular drug.

See the Section on the Health Committee of the League, supra.

ibid.,

supra., p. 158.

Article 12.

Article 13, paragraph 1.

Article 13, paragraph 3.

Article 13, paragraphs 4 and 5.

Article 13, paragraph 6.

It may be observed that such a practice would give rise to a variety of authorisations, whereas a uniform import-export practice was aimed at.

Article 13, paragraph 7.

Article 18.
35. Argentina, Australia, Bulgaria, Chile, Costa Rica, Cuba, Czechoslovakia, Danzig (Free City of), Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, Germany, Honduras, Hungary, Iraq, Ireland, Italy, Japan, Latvia, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Paraguay, Poland, Portugal, South Africa, Spain, Sweden, Switzerland, Siam, Turkey, Uruguay, United Kingdom and Venezuela.

36. China and the United States of America withdrew from the Conference; see also footnote 52.

37. Article 14.

38. A diversion certificate was to be issued only after the receipt of an import certificate, in accordance with Article 13, from the government of the country to which it was proposed to divert the consignment, and was required to fulfill all the conditions as laid down by Article 13 of the Convention. The country authorizing the diversion of the consignment was permitted to retain the copy of the original export authorization (or diversion certificate) accompanying the consignment, which would then return it to the country which issued it, notifying thereby the name of the country to which the diversion had been authorized.

39. Article 17.


42. op. cit., pp. 377-378.

43. op. cit., p. 380.


45. Ibid.,

46. op. cit., p. 493.

Sub-Committee F also opined that "By allowing this word to stand, we should end by including within the scope of those provisions of the Convention products which have a totally different medicinal effect or which are in any case not dangerous in the sense of those drugs we are considering." (p. 493).
47. op. cit., p. 494.


49. op. cit., Annex 27, p. 496.

50. Article 5:
   "The Contracting Parties shall enact effective laws or regulations to limit exclusively to medical and scientific purposes the manufacture, import, sale, distribution, export and use of the substances to which this Chapter applies. They shall cooperate with one another to prevent the use of these substances for any other purposes."

51. The Chinese delegate withdrew because there was no consensus on the prohibition of opium-smoking and smuggling by the governments in the possessions and territories in China. L.N. Doc. C. 760. M. 260. 1924. XI. vol. I, p. 497.


53. ibid.,

54. ibid.,

55. op. cit., p. 438.


57. op. cit., p. 480.

58. infra., see the discussion on the Limitation Convention, 1931, P. 278-274

59. Sir Malcolm Dolevangne


61. ibid.,

62. This Chapter related to Control of International Trade.


64. op. cit., p. 379.

65. See further the note of M. Brenier on a system of control with indirect limitative effects, op. cit., Appendix 5, p. 396.
66. op. cit., p. 398.
68. infra, Footnote 52 (including unnumbered).
69. The proposal was however accepted unconditionally by Greece, India, the Kingdom of the Serbs, Croats and Slovenes. Persia and Turkey made reservations, while Egypt proposed an amendment to insert "for other than medical and scientific purposes".
   op. cit., Annex 21, p. 479.
70. Hereinafter called the Bangkok Agreement. Held at Bangkok from November 9th to 20th, 1931.
   L. N. Doc. C. 577 M. 284. 1932.XI. (Minutes of the Meeting)
72. ibid.,
73. The Siamese government however reserved its right to sell dron to persons medically certified as dron-addicts.
   ibid.,
74. Year No. of persons registered Amount of drons sold
   1927-28 (first year of operation of the system) 2,581 42,437 tamlungs
   1928-29 2,581 24,424 "
   1929-30 1,631 17,063 "
   1930-31 966 9,504 "
75. The Commission was not allowed to visit China, and hence no recommendation could be made on the Chinese situation.
77. ibid.,
78. op. cit., pp. 21-22.
79. The new regulations concerning licensing of addicts came into force in Formosa in 1929. The addicts were classified into three categories:
   (a) opium smokers of incurable type;
   (b) those smokers who could be cured on compulsory treatment; and
   (c) those who were not confirmed opium smokers and from whom opium should have been withheld.
A mobile brigade was set up in 1927 in an effort to suppress the illicit traffic by land. In 1930, an armed coastguard vessel had been brought from the government of the Netherlands Indies with a view to strengthening prevention of smuggling by sea.

This point was rightly raised by the Dutch delegate. It implied that a lowering of price for retail sale would not give any guarantee as to reduction of illicit sale. It would increase the total sale, both licit and illicit.
102. See further the statement made by the Dutch delegate on this point; see also the practice followed in the case of other commodity agreements.


103. op. cit., p. 123.

104. It recommended that both fines and imprisonment should be the punishment "for offences having the character of illicit traffic". An attempt to induce a minor to smoke opium should be made an offence punishable with a heavy penalty.

ibid.

105. op. cit., p. 23.

106. See further the General Statement made by the Dutch delegate.

op. cit., pp. 10-12.

107. Recommendation No. 15.


110. Recommendation No. 4.


112. Recommendation No. 18.

113. Recommendation No. 19.

114. The United States however justified its presence on the strength of the Hague Convention of 1912.


116. S. H. Bailey; op. cit., p. 34.


118. See also the statements made by the Dutch and U.S. delegates. The U.S. delegate said:

"It will, I think, be admitted that the habit of opium-smoking is injurious, and that this holds true no matter where the addict resides. For that reason, my Government has felt that there is no moral justification for a double standard in this matter, and that it would be entirely inconsistent to permit the use of smoking opium by a rationing system or otherwise in the Philippine Islands, while recognising the fundamental evil of the habit by absolutely proscribing the drug in the home country."

op. cit., p. 12 and p. 24 respectively.
119. See the proposal made by the British delegate op. cit., p. 26.

120. op. cit., p. 16; this view was also supported by the Indian delegate, p. 21.


122. For the text of this Agreement see 51 League of Nations Treaty Series, p. 337.
See also generally, W.W.Willoughby, Opium as an International Problem—The Genova Conferences, John Hopkins Press, Baltimore, 1925.

See also L.N.Doc. C. 635. M. 254. 1930.XI.


126. supra., p. 231

127. supra., p. 208-211 Although the Bangkok Conference recommended limitation and control of poppy cultivation, instead of limitation of the manufacture of drugs, the underlying policy in both instances would be the same, i.e., a restrictive supply at the source.

128. The Opium Convention of 1912 and the International Opium Convention of 1925.

129. Article 25.

130. infra., §§ 749-751

131. infra., §§ 278-280

132. Article 1, paragraph 4 of the Convention.

133. Article 2.
In the case of any drug which was or might be included in Group II a summary statement was sufficient.

Article 21 of the International Opium Convention, 1925.

See further B. Renborg, op. cit., p. 100; see also Statistical Form B(G).

See also B. Renborg, op. cit., p. 137.

Articles 16 and 17.

It is understood that in a certain year world manufacture fell below the world requirements and as a result, the world stock had to be depleted. It was however re-constituted in the following year by increased manufacture within the limits of the estimates. See further B. Renborg, op. cit., p. 139.

For the determination of which account would have to be taken of the provisions of Articles 5 and 14 of this Convention.
156. Article 14, paragraph 2, sub-paragraph (i).

157. supra., p. 153

158. infra., pp. 246-274

159. See also S. H. Bailey, op. cit., p. 79.

160. infra., pp. 287-300

161. Article 15.

162. Article 17.

163. A specific provision was made regarding diacetylmorphine that in all cases it was to be either destroyed or converted.

164. Article 19.

165. See further S. H. Bailey, op. cit., 89-90.

166. See further D. Renborg, op. cit., p. 139.

167. Article 5, paragraph 7.

168. Dr. Knaffl-Lenz was a member of the Health Section of the Health Committee in 1923. The Opium Section entrusted him with the task of considering the problem concerning prohibition of the manufacture of heroin. The report which he prepared, on the basis of the information supplied by sixteen European States representing a population of 250 millions, established an estimate of 400 milligrams of raw opium per head under the existing conditions and information of the time.


171. L.N. Doc. C.C.P. 89.


173. See the Memorandum submitted by Dr. Wasserburg to the Sub-Committee for the limitation of manufacture of narcotics drugs. L.N. Doc. C.H. 849.


176. See further B. Renborg, op. cit., p. 136.


178. Some countries made excessive estimates of the "reserve stocks" required and this was pointed out by the Supervisory Body. L.N. Doc. 610. M. 286. 1933.XI., pp. 6-7.

179. See also S.H. Bailey, op. cit., pp. 92 et seq.

180. See Articles 12 and 14.

181. Article 5, paragraph 6.


183. S.H. Bailey, op. cit., p. 95.

184. op. cit., p. 73.

185. op. cit., pp. 73-74.

186. Article 13 of the Convention.

187. Relevant parts of Article 22 of the International Opium Convention, 1925:
   Paragraph 1
   "The Contracting Parties agree to send annually to the Central Board ... as complete and accurate statistics as possible relative to the preceding year, showing:
   sub-paragraph (b)
   "Manufacture of the substances covered by Chapter III, Article 4(b), (c) and (g) of the present Convention and the raw material used for such manufacture. The amount of such substances used for the manufacture of other derivatives not covered by the Convention shall be separately stated".

188. Article 22(1)(c) and (e) of the International Opium Convention, 1925
   sub-paragraph (c)
   "Stocks of the substances covered by Chapters II and III of the present Convention in the hands of wholesalers or held by the government for consumption in the country for other than government purposes".
   sub-paragraph (e)
   "Amounts of each of the substances covered by the present Convention which have been confiscated on account of illicit import or export; the manner in which the confiscated substances have been disposed of shall be stated, together with such other information as may be useful in regard to such confiscation and disposal".
189. Article 22, paragraph 2 of the International Opium Convention, 1925:
"The Contracting Parties agree to forward to the Central Board, in a manner to be prescribed by the Board, within four weeks after the end of each period of three months, the statistics of their imports from and exports to each country of each of the substances covered by the present Convention during the preceding three months. These statistics will, in such cases as may be prescribed by the Board, be sent by telegram, except when the quantities fall below a minimum amount which shall be fixed in the case of each substance by the Board."

190. Article 5, paragraph 6.

191. Reports of the Plenary Meeting of Official Representatives of the Manufacturing Countries, op. cit., p. 3.

192. supra, pp. 244-249

193. See further Reports of the Plenary Meeting of Official Representatives of the Manufacturing Countries, op. cit., p. 4.

194. ibid.,

195. The manufacturers, in the case of conversion of morphine into Codeine, treated the question in a manner quite different from that followed by the Opium Advisory Committee, op. cit., p. 5.

196. ibid.,

197. op. cit., p. 6.

198. Until about three years before the Limitation Conference, Turkey did not manufacture any drug at all, ibid.,

199. ibid.,


201. ibid.,


204. supra, See Sub-Sections 3 and E of this chapter.
205. In many parts of the world illicit factories and laboratories had been discovered. The Opium Advisory Committee had reported innumerable cases of clandestine traffic in drugs between 1929 and 1936. See Reports of the Advisory Committee on Traffic in Opium and Other Dangerous Drugs to the Council on the work of Twentieth, Twenty-first and Twenty-second sessions, L.N.Doc. C.253. M.125. 1935 XI, C. 278. M.168. 1936.XI and C.285. M. 186. 1937. XI, respectively.

206. See Preamble to the Geneva Agreement on Opium, 1925, and the recommendations made in the Agreement for the prevention of traffic in drugs and punishment of traffickers, Articles III, VII and VIII; see also the Bangkok Agreement of 1931, especially Recommendation Nos. 4, 5, 6, 7 and 16.


208. ibid.,


211. Article 15 of the Limitation Convention, 1931.
"The High Contracting Parties shall take all necessary legislative or other measures in order to give effect within their territories to the provisions of this Convention. The High Contracting Parties shall, if they have not already done so, create a special administration for the purpose of:
(a) Applying the provisions of the present Convention;
(b) Regulating, supervising and controlling the trade in the drugs;
(c) Organising the campaign against drug addiction, by taking all useful steps to prevent its development and to suppress the illicit traffic."

212. Advisory Committee on Traffic in Opium and Other Dangerous Drugs, Minutes of the Sixteenth session, L.N.Doc. C.480. M.244. 1935. XI., p. 85.

213. See further J.G.Starke, op. cit., p. 3 et seq.,


215. ibid.,
216. This Article did not, however, indicate whether these offences would be punishable in equal severity to those imposed for offences enumerated in Article 2.

217. Article 29 of the International Opium Convention, 1925:
"The Contracting Parties will examine in the most favourable spirit the possibility of taking legislative measures to render punishable acts committed within their jurisdiction for the purpose of procuring or assisting the commission in any place outside their jurisdiction of any act which constitutes an offence against the laws of that place relating to the matters dealt with in the present Convention."

218. See further J.G. Starke, op. cit., p. 3 et seq.,

219. Offences which have been detailed in Article 2 of this Convention.

220. See further J.G. Starke, ibid.,


222. Article 11.

223. Article 11(2) (a), (b) and (c).

224. Article 11(4).

225. Article 12(2) (a), (b) and (c).


227. Article 13(1) (b).


229. op. cit., p. 199.

The Sudanese government also preferred the system of communication through the diplomatic channels, since that was the existing practice of that government. op. cit., p. 198.


234. The Convention also presumed "crimes by analogy", which is a very impractical presumption because many countries do not recognise this principle, e. g W. Germany; see Dr. N. Henrichs, "Problems of Competence in International Law with regard to the Punishment of Narcotic Drug Offences and the Extradition of Narcotic Offenders", Bulletin on Narcotics, vol. XII, No. 1, 1960, pp. 1-7, at p. 3.

235. This view was expressed by the Austrian delegate at the Conference; see L.N.Doc. C.341.M.216.1936. XI., p. 181 (Annex 2).


237. ibid.

238. Such an apprehension was also expressed by the Swedish delegate at the Conference; L.N.Doc. op. cit., p. 183 (Annex 2). Nevertheless, the provisions of Article 15 that "the present Convention does not affect the principle that the offences referred to in Articles 2 and 5 shall in each country be defined, prosecuted and punished in conformity with the general rules of its domestic law" was reassuring, although it appears to be contradictory to the basic purpose of the Convention.

239. J.G. Starke, op. cit., p. 45.


The Swiss delegate also pointed out that the "Federal and Cantonal Criminal laws draws a distinction, as regards the various forms of offences, between the punishable forms of the perpetrated offence and attempts and preparatory acts, which are not punishable. Some preparatory acts, as in the case of counterfeiting currency, may be punishable. To be so, however, these acts must be specifically declared to be punishable by law.

L.N. Doc. op. cit., p. 183.

The Spanish delegate however commented on the draft Convention that "the draft " departs to a certain extent from this distinction" (i.e., distinction between preparatory act and an attempt), "since, although it appears to maintain it, it recognises a greater possibility than has hitherto been admitted as regards the punishment of preparatory acts. It might be preferable, if it is
241. desired to punish these acts in certain cases, to abandon the criterion of a "commencement of execution", because this already constitutes an attempt, and in the enumeration of those acts to adopt, owing to their exceptional nature, the "necerus clausus" criterion. It would even be better to leave the determination of preparatory acts and attempts to the legislation of each country...". L.N.Doc. op. cit., p. 188.

242. The vague expression, "preparatory act" was however avoided in the Convention for the Suppression of Counterfeiting Currency which "deals with offences involving more serious and more precise preparatory acts".

243. Comments of some of the delegates at the Conference; see L.N. Doc. op. cit.,

244. The question of a drug changing hands by means of a gift or loan was mentioned by the Spanish delegate, L.N.Doc. op.cit., p. 187.


246. The Canadian delegate found justification for such a provision on the strength of a similar provision contained in Canadian legislation, L.N.Doc. op.cit., p. 182.

247. See also Dr. Henrichs, op. cit., p. 6.

248. Starko observed that "this Article has not entirely lost its significance. A new dimension has been added to it as a result of the post-war practice of concluding peace-time status of forces agreements, where jurisdiction may be exercisable by the sending State in the territory of the receiving State over members of the visiting force, and over accessory civilian or depot personnel." op. cit., p. 46.

249. Such an opinion was expressed by the Sudanese delegate at the Conference. Colombia and India also objected. L.N. Doc. op. cit., pp. 189-190.

250. J.G. Starko, op. cit., p. 45.

251. France, Germany and Great Britain.

253. The term "political offence" is usually associated with "diplomatic asylum". The definition of the term "political offence" is enmeshed with controversy. According to Judge Alvarez, any act "which purports to overthrow the domestic political order of a country must be regarded as a political offence". The Asylum case, I.C.J. Reports, 1950, p. 298. According to one authority, the definition of a "political offender" may even be extended to mean a person who is "persecuted for political reasons", as explained in a purely declaratory manner in Article 2 of the Montevideo Convention, 1939, see the Dissenting Opinion of Judge Azevedo in the Asylum case, op. cit., at p. 354; for a very instructive discussion of the various aspects of extradition, see Francis (Sir) Piggott, Extradition: A Treatise on the Law Relating to Fugitive Offenders, London, 1910.

According to Schwarzenberger, "In international law, the concept of political crime is entirely a creation of treaties. Thus, parties to treaties on extradition or diplomatic asylum are free agents in defining this term by objective or subjective criteria or restricting its meaning by the exclusion of certain crimes from the category of political crimes". G. Schwarzenberger, International Law, vol. I (International Law as Applied by International Courts and Tribunals), London, 1957, at p. 262. He also pointed out that, if as in the Havana Convention of 1928, the parties have failed to express their intention, the question resolve itself into one of treaty interpretation," ibid.

254. This point was emphasised by the delegates of Canada, Spain, Sudan and the U.S.S.R. at the Conference, L.N. Doc. op. cit., p. 191 (Annex 2).

255. Article 9, paragraph 4 of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 1936: "The High Contracting Party to whom application for extradition is made shall, in all cases, have the right to refuse to effect the arrest or to grant the extradition of a fugitive offender if his competent authorities consider that the offence of which the fugitive offender is accused or convicted is not sufficiently serious".

* italics added.

256. Dr. Henrichs, op. cit., p. 6.


258. ibid.

259. Article 11, paragraph 2, sub-paragraph (b).
This Article primarily dealt with the provision concerning transmission of letters or request relating to the offences referred to in Articles 2 and 5 of the Convention.


W. Friedmann, op. cit., p. 62; see also P. Jessup, Transnational Law, Yale, op. cit., 1956, pp. 15-16.


According to Schwarzenberger, "Functional international co-operation is an ambiguous term. It may stand for a specific approach to the solution of any international problem, but it has come to mean more particularly international co-operation in economic, social, cultural and educational matters. This restrictive use of the term is not accidental. In principle, any social question can be treated from a functional point of view. Then, ends and means are considered with sole reference to circumstances which are intrinsically relevant to the constructive solution of the problem in hand. Conversely extraneous factors are ignored.

Thus, to any extent to which international functional co-operation requires a curtailment of sovereignty, it is assumed that, in the interest of the task in hand, States are willing to acquiesce in a corresponding restriction of their freedom of action. Functional co-operation in this sense is a typical community attitude. An international community would be expected to approach any cited problem in this spirit, whether it were that of peace-making, peaceful change, collective security, disarmament or economic co-operation."


infra., pp. 342-344

G. Schwarzenberger, Power Politics, op. cit., p. 420.

supra., p. 349


J. Frankel, op. cit., p. 237.
272. i.e., the Opium Advisory Committee


275. See further W. Friedmann, op. cit., p. 90.

276. See further J. Franklin, op. cit., p. 233 et. seq.


278. supra, ¶ 27-29

279. The Permanent Central Board was, however, given extensive power of inquiring into the drug-situation in a country, and of bringing such a situation to the attention of the Contracting Parties, and of the Council of the League. The Board could also recommend total ban on export until that situation had been improved. See further Articles 24 and 25.

280. Article 5.

281. See Minutes of the Conference, op. cit., p. 133; see also Renborg, op. cit., pp. 19-20.

282. This Convention came into force on September 25, 1928. Ratification by ten Powers was required.

283. See further S. H. Bailey, op. cit., p. 75.

284. See Article 24.


286. H. L. May, op. cit., p. 4.

287. H. L. May, op. cit., p. 5.

288. See further Renborg, op. cit., p. 139.


290. ibid.

291. ibid.
All orders received would have to be referred in the first instance to the central office which would record them and certify, after examination of previous records, whether they could be executed in whole or in part without exceeding the country's estimate. The governments of the exporting countries would undertake not to authorise the export in whole or in part of the drugs ordered until a certificate had been produced from the central office certifying that the order of a part of it fell within the limits of the importing country's estimate. It was primarily a matter of honest and efficient book-keeping. See further L.N. Doc. op. cit., p. 7.

The Soviet delegate stated that it could not associate itself with any proposal that would place the central office in the hands of the manufacturers. ibid.

supra., pp. 272-274

supra., pp. 275-277

See further Renborg, op. cit., p. 155.

supra., pp. 285-289


Greene v. U.S., 154, Fed. 401 at p. 410 (1907)


In the case of federal countries, where the laws relating to crimes vary from State to State, no general principle has yet been established as to whether the federal or local law of the requisitioned State would be applicable. See Factor v. Laubenheimer, 290 U.S. 276 (1933). This decision was however criticised on the grounds that in rendering its decision, the court took the terms of the treaty into account only, and ignored the technical considerations involved in the case. See further J. Brietly's report to the Committee of Experts of the League of Nations, 1926, L.N. Doc. L.1926.V.8., p. 3; see also the Harvard Draft Convention on Extradition of 1935, 29 American Journal of International Law (supplement) 1935. In these two documents it was suggested that the degree of punishment in both countries should be taken into consideration.

The Fugitive Offences Act, 1967 which was formulated in pursuance of the Scheme of Commonwealth rendition, as adopted in the Commonwealth Conference of 1966, maintained that rendition should not be ordered if in the opinion of the Secretary of State or a relevant court that the nature of the offence is political or that the accused would not be punished for political reasons. See mainly S. 14.


304. In 1924 and 1925, the Japanese delegate maintained that Japan would find it difficult to recognise the principle embodied in Article 4 (which became Article 8 in the final version of the Convention) as a general rule.


306. ibid.,


309. See further Henrichs, op. cit., p. 4.

310. infra, pp. 731-737 and pp. 746-748.
II

CONCLUSIONS

(Reflections on the Problem of an International Legal Order with Reference to Drug - Abuse)

The experiences of the years preceding the League of Nations had created an enormous impact upon the policies of the League itself. Those were the days of chaos, confusion and "might" as opposed to "right". Competition of naked vital interests rather than co-operation for the global interest was prevalent. The idea of the nation state, which reigned supreme, came to be recognised as the cornerstone of a stable political structure. This, in fact, was an expression of self-protection or self-interest, both politically and economically. Interests are the embodiments of diversities in any political system. Since political situations arise out of disagreement, any equilibrium that will be produced through the interaction of such interests will be an unstable one. Primarily, politics is about policy, and policy is a matter of either the desire for change or the desire to protect something against change. Needless to say that the nations who have the upper hand in the shaping of the balance of power, both economic and political, will resist change in the existing policy. Similarly, the smaller nations, who are the underdogs, in order to register their protests as to their status, though not to participate actively in the shaping of the policy and the balance of power, make noise about a presumed general interest. The stronger powers, owing to the urge to protect their own interests, instead of aggravating the situation, endeavour to equate their own interests with the presumed general interest. In such a situation,
the possibility of establishing law and order becomes remote, and
the pseudo order, i.e., an order in the interests of particular
groups or sections, which makes room for itself, suppresses those
activities of the governments which need to be promoted but are not,
because they appear to be too troublesome for them. According to
Professor Schwarzenberger, the "contributions made to the problem
of international economic order by the unorganised or at the most,
partly organised international society of the pre-1914 era lie
primarily in the fields of de facto and pseudo orders." 213

The First World War represented in certain respects, the end
of an era, while in other respects, it was a mere incident in a
continuing process, the process which fostered self-interest,
national monopolies in production and manufacture of commodities
and above all, the rule of armed force. The League was born as
a maladjusted child, and upon birth, its growth, if it might be
called a growth, was in an incongenial environment. Zimmerm, in
examining the state of international law, in the pre-1914 period,
rightly observed, "the rules of international law, as they existed
previous to 1914, were, with a few exceptions, not the outcome of
the experience of the working of a world-society. They were simply
the result of the contracts between a number of self-regarding poli-
tical units—stars whose courses, as they moved majestically through
a neutral firmament, crossed one another from time to time. The
multiplication of these external impacts or collisions rendered it
mutually convenient to bring their occasions under review and to
frame rules for dealing with them." One of the reasons for the failure of international law during the 19th century was its inability to create truly universal international organisations. The few international economic organisations that had been created during this period could not fulfil their purposes owing to the lack of proper administrative machinery. Also, their "alliance with national states made international anarchy a far graver danger than it had ever been before." Unfortunately, the same basic trend of the pre-1914 period, and even the factors that produced the War, prevailed during the life-time of the League. Bertrand Russell, in his attempt to trace the principal causes of political change during the hundred years from 1814 to 1914, pointed out the need for the belief in freedom and also the necessity for organisation, and he concluded by saying that "It is not by pacifist sentiment, but by the world-wide economic organization, that civilized mankind is to be saved from collective suicide." The elements of a world-wide international organisation are many, and the existence of such elements pre-supposes a number of conditions.

However, in order to save mankind from collective suicide, the League was brought into existence. Administration of international matters through an international organisation of this kind was a totally new experiment, and whatever the League tried initially, it had not enjoyed any benefit from previous experience, primarily because there was no experience to
its credit in certain areas.

In order to determine the effectiveness of the League machinery, in the administration of narcotics or, for that matter, in the administration of any other sphere of international life, it is necessary to establish the position of the League in relation to the theory of international organisation. An international organisation is, in reality, a union of two or more states for the service of one or more common needs. "To be real and valid the union must be in essence a community of material conditions, productive of common interests and policies." Such common interests and policies must be genuine, otherwise, if states "moved by ideal or sentimental influences, pretend to create a union without having in fact the false character of the union and its effectiveness will soon make itself felt." Any conflict of divergent interests and irreconcilable policies will act as a disintegrating influence on the creation of a truly universal organisation.

Unfortunately, the League was not intended to be at once a whole machinery of organised international co-operation. The framers of the League Covenant did not intend nor did they find it desirable to replace the pre-League system of international co-operation, if it might be called such, by a completely new system. It may be worthwhile to recall that in the Peace Conference, at a certain stage, states were classified according to the extent of their interests, i.e., general or limited. It is against this background that any question of international order during this
period has to be examined.

The Agreements and Conventions concerning the control of traffic in drugs concluded during the League period had been influenced by the ideas and interests of the contemporary international society. The League's attempt to suppress the illicit traffic in drugs was laudable especially in that its message was transmitted through the International Opium Convention of 1925 and the Limitation Convention of 1931. It made the first attempt to administer and control the problem through a universal organisation. The question still remains as to how far such an organisation was a truly universal organisation, whether the attempts were genuine and also whether the participation of nations was total. Since the pre-League concept of universality was still alive in the minds of the framers of the League Covenant, the concept of universality that prevailed during the pre-League era may be described as Imperial Universality. There was no real universal participation of the states. The assumptions about participation were two, viz. that the universal organisation would be constituted of all civilised nations and that there would be no participation from any other kind of state. In other words, the problem of non-participation was over-simplified and ignored. Participation in such an organisation was indirectly made possible only for those states which fulfilled the artificial criterion of civilisation, and also those who found it advantageous to join such an organisation with a view to protecting their own interests. The willingness of those states whose participation and co-operation in the universal organisation were truly essential went
unheeded, and consequently, the result that could have been achieved from the participation of such states was lost. That kind of universality the League attempted to achieve was relative universality. Its failure to achieve absolute or near-absolute universality was to a great extent self-induced or deliberate, in as much as it ignored the question of the participation of non-members, or of states with reservations laid down by themselves, because it wanted to facilitate relative universality by direct means, in which it also failed.

Participation of states in the drug-treaties was not universal. It would be true to say that no machinery was provided to make participation universal, nor was there any machinery to make participation of states near-universal, at least on a conditional or restrictive basis. It appears that in relation to drugs there were two other factors which contributed to the non-participation of states, viz.

(a) consciousness of self-interest, i.e., the fear of restrictions over economic life, or more important, of loss of control over the drug trade resulting in loss of revenue; and

(b) failure to provide any alternative opportunity, i.e., the countries which depended primarily upon the revenue from the production of opium poppy or manufacture of drugs, as the case might be, could have been members, if alternative sources of revenue had been provided for.

Consequently, the non-participation of a country, in certain circumstances, turned out to be a way of protecting its
own interests, even at the cost of traffic in drugs. Participation of the states in the drug conventions under the auspices of the League may be divided into the following categories:

(a) **Obligatory-Obligatory**

In this situation, some states recognised their obligation to be bound by the provisions of the conventions. In other words, this was a self-imposed obligation, and because it was a self-imposed obligation, all provisions of the conventions were treated in the same spirit, e.g. Australia, France, India and U.K. (Parties to the 1912, 1925 and 1931 Conventions without any reservation);

(b) **Voluntary-Obligatory**

The effect this would ultimately produce is the same as under the first situation. The difference is in the nature of the willingness which prompts states to be bound. In this situation the willingness is to a great extent caused by the opportunities which are offered. In other words, they are not self-induced obligations, nevertheless, once they have accepted the membership, they intend to be bound by the instrument, e.g. Colombia accepted the 1912 Convention under reservations, whereas she accepted the 1936 Convention without any reservation, and the same was done by Switzerland;
(c) **Obligatory - Voluntary**

In this situation, the obligation is conditional, i.e., neither self-induced nor genuine. Membership will be accepted owing to over-estimation of the opportunities which would help fulfil self-interests, with the right reserved to withdraw in the case of a conflict of interests. In other words, in such a situation, obligation takes the form of pseudo-obligation, e.g. the Netherlands accepted the 1912 Convention without any reservation, but she denounced the 1936 Convention; and

(d) **Voluntary - Voluntary**.

In this situation, states will accept or denounce membership as they like. The question of obligation in such a situation becomes irrelevant, e.g. Sweden, Thailand and the United Kingdom accepted the 1912 Convention with reservations, but did not accept the 1936 Convention. 326

This, then, was the nature of the membership of and participation in the so-called universal organisation as far as this area of international law was concerned.

It may also be worthwhile to examine how far the objective itself, i.e., the question of suppressing the illicit traffic in drugs, was a truly collective objective. For a truly collective objective, the pre-requisite is quite clear— a collective interest. States, for this purpose, will be willing to renounce their vital interests. The absence of renunciation of vital interests was very pronounced in
all the drug conventions concluded during the League era, and the reasons for this were two, viz. (a) absence of faith in a collective system, and (b) over-consciousness of vital interests, as had been emphasised in (i) their unwillingness to bring the profit-earning drugs within the purview of the conventions, and hence (ii) their desire to apply the limitation and control system in a relative as opposed to an absolute form.

The abstention of a considerable number of drug-producing and/or manufacturing countries from becoming signatories to the conventions also evidenced their unpreparedness to identify their own interests with the collective interest. It was primarily for this reason that the anti-opium movement, which was pioneered by the people with no sinister interests, was directed towards subordination of the forces of vital interests. There was no recognition of the common necessities, and hence the common will, which is a sine qua non of a truly universal organisation, was not born.

From the above synoptic account, the conclusions that may be drawn are the following:

(i) that although the League period was a significant period in the development of international law, it overwhelmingly followed the characteristics of the pre-League era, in the matter of political change. The primary causes of political change in the pre-League era, particularly from 1814 to 1914, were of three kinds, viz. political theory, economic technique and important individuals. 327. The political theory found expression
in the conviction of nations in their respective nationalities, and in the inevitable competition among larger powers to become the largest one. For the application of their accepted political theory laissez faire was recognised to be the economic technique. Individuals, generally speaking, affect politics in two ways, viz. (a) as components of interests and (b) as persons of strategic importance.

As explained above, the significance of these three causes of political change during the League era was also demonstrated in the area of the control of traffic in narcotic drugs.

(ii) that international institutions are so important in international politics because they embody power. The embodiment of power in such institutions is concomitant with the relinquishment of power by the individual states. Such relinquishment of power is again concomitant with the sacrifice of self-interest which is made to make room for the community interest. Unless there is the realisation that jura publica anteferenda privatis, the probability of such a community interest is a cry in the wilderness.

In so far as the control of trade and traffic in narcotic drugs during the League era was concerned there was a pronounced lack of community interest. International institutions obtain justification from their capacity to keep order. In a situation of multitudinous diversities to seek an order will be a vain attempt.
(iii) that international co-operation in its early stage of development is not to be understood or appreciated in terms of present-day law-making or administration. International co-operation in those days should be taken as pre-legal international co-operation. One of the requirements of transforming pre-legal international co-operation into legal co-operation is sanction. Yet, whether there is the strength of sanction or not, voluntary respect for the law makes the international administrative system work. The importation of sanction becomes a folly especially when the tug-of-war between nations prevails, as to their protection of interests and hence material prosperity. In such a situation, strong nations are able to enforce their own rights, weak states need international protection; yet under any system of sanctions the stronger states would control the situation and the weaker would be at their mercy—tempered by law. In such a situation, any attempt to establish an order, whether legal or moral, would be premature. This had been rightly described by Zimmerm when he said that "by the force of circumstances which were not foreseen and could not in any case have been arrested, the League, in so far as it was destined to be a centre of international politics at all, was bound to develop, not into the quiet and
efficient Secretariat of a group of co-operating governments, with a Whitehall Gardens atmosphere, but into something between a market-place, a public meeting and a revivalist place of worship. Since nationalism is the prevalent religion or superstition of the age, it was inevitable that, when allowed to run riot in foreign affairs, it should produce creeds and dogmas admitting of ready application in that field; 329

(iv) that when the forces of law are absent or have been removed, the question arises as to whether moral forces tend to establish any order. 330 To put it another way, when law as a restraint on power fails, do the forces of morality also automatically surrender to power instead of at least making some protest. If struggle for power were the only force behind international politics, the study of such a subject would be insipid and monotonous. In fact, the seekers of power, at a certain point, take shelter under ideologies to conceal their aims. Thus, the game of power politics, knowingly or unknowingly, intentionally or unintentionally, gives recognition to ideologies, and starts working in harmony with the demands of normative order of reason, morality and justice. Therefore, "power is subject to limitations, in the interest of society as a whole and in the interest of its individual members, which are not the result of the mechanics of the struggle for power but are superimposed upon that struggle in the form of norms or rules of conduct by the will of the members of society themselves." 331 The more united a society is, and the
more important it considers that its interests should be protected by rules of conduct, the more effective are its sanctions. "Society exerts its greatest pressures, and therefore has the best chance of enforcing its rules of conduct against its recalcitrant members when it brings all the different kinds of sanctions at its disposal simultaneously to bear upon the infractor of its rules." The same mechanism applies in the case of the international community. Should, however, there be conflicts between different rules of conduct, which is highly probable in the case of the international community, these can be decided by a process of elimination, i.e., the states(s) against which such rules are invoked will respond to some of them, and violate the others. Thus, the normative order of the international community tends to keep the power aspiration of the state(s) within the tolerable bounds determined by the international community. Nevertheless, the effectiveness of pressure directed against the tyrant, depends on the degree to which the agencies that assume the task of directing pressure upon him, are organised. The functions which such agencies are required to perform are of two distinct kinds, viz. positive and negative, although they produce identical effects. In other words, one is mandatory, while the other is prohibitory. The positive character of their functions will compel the tyrant
state(s) to surrender to the normative rules of the international community, and thus to contribute positively to the ideals of those agencies. By means of a negative process, these agencies will impose restraints upon the free exercise of power by these tyrants, irrespective of whether or not the tyrant is immediately agreeable to surrender to the normative rules of the community.

In so far as the control of illicit traffic in narcotic drugs during the League era was concerned, such a task was assumed by the agencies that launched the anti-opium movement. This movement was not as organised as it should have been. The feebleness of this movement can be accounted for by the conflicts in its objectives, administrative inability, and above all, the lack of an effective machinery of co-operation. Nevertheless, by a negative process of function, it put some restraint upon the free exercise of power of the tyrants, and positively, it caused a surrender, at least on terms less favourable to the tyrants than before, and led to the conclusion of some international conventions in this area of international law.

(v) that the concept of law and order becomes relevant in relation to the protection of the interests of a society. In municipal systems, governments tend to establish law and order first where troubles exist or are anticipated. This does not however mean that governments in the municipal systems establish law
governments tend to establish law and order first where troubles exist or are anticipated. This does not, however, mean that governments in the municipal systems establish law and order to allow fair play among competing interests. On the contrary, governments themselves are "coalitions of interests", and the identification of governments with certain interests in society is essential. In the case of the international community, international law and institutions are developed to fulfil its interests. The vehicle for fulfilling those interests are determined mostly by the Super Powers. Although such Powers, to a certain extent, identify themselves with the interests of the community for the protection of their own interests, they will, in the absence of strong opposition, establish their own law and order. Schwarzenberger observed that the "organization of a collective system aiming at universality must be such as to preclude any danger of abuse in the interests of one Power or group of States." He also rightly observed, in relation to the state of de jure economic order of the post-1919 era, that during this period the League made attempts to "create potential economic jus cogens through multilateral treaties." The cardinal provisions were made in Article 23 of the League Covenant, which set out rules concerning, inter alia, supervision by itself of the
execution of agreements relating to the traffic in opium and other dangerous drugs. Although these rules "might have become the nucleus of a substantial international economic order on a universalist treaty basis," the force of these rules was lost because the Members of the League undertook to fulfil these ends "subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon" by them.

In support of his argument as to the character of the obligations entered under Article 23 of the League Covenant, Professor Schwarzenberger referred to the Advisory Opinion of the Permanent Court of International Justice in the Case concerning the Railway Traffic between Lithuania and Poland, in which the Court observed: "it is impossible to deduce from the general rule contained in Article 23 (e) of the Covenant an obligation for Lithuania to open the Landwarów-Kaisiadorys railway section for international traffic, or for part of such traffic; such obligation could only result from a special agreement."

In this connection it would also be worthwhile to examine if the League of Nations made any attempt to create any consensual jus cogens in the field of control of the traffic in dangerous drugs and other similar areas of international economic law. The League made attempts to create potential international jus cogens in various
fields, viz. slave-trading, traffic in women and children for immoral purposes, the illicit manufacture of and traffic in dangerous drugs, the circulation of obscene publications and the suppression of counterfeiting currency.

As far as the suppression of the illicit manufacture of and traffic in dangerous drugs was concerned, attempts were made by the League to create such *jus cogens* on a "universalist treaty basis". But the intrinsic value of such attempts became depreciated, since all these Conventions were subject to denunciation either immediately or, in some cases after the expiry of five years, with effect one year after denunciation. However short-lived these Conventions were, they created prohibitory rules, but the creation of prohibitory rules alone does not justify the description of international *jus cogens*. True international *jus cogens*, according to Professor Schwarzenberger, must satisfy certain criteria, viz.

(a) whether it is sufficiently important to form part of a reasonably stable international legal order;

(b) in support of the above, evidence should be given

(i) as to the number of parties to the conventions embodying such rules; and (ii) the length of the commitment in terms of time; and

(c) whether or not individual parties to such a multilateral treaty are allowed to make subsequent *inter se* arrangements, modifying or abrogating their multilateral obligations.
If the international drug conventions are put to this test, it will be found that not only did the conventions lose their universalist character, but also in certain cases, their application was limited to narrow areas. In support of this argument it may be stated that:

(i) the parties to the conventions were not obliged to apply these rules to all parts of their territories;

(ii) the parties remained free to qualify their ratifications and accessions by reservations favourable to them, and where the reservations were not acceptable to some, the Contracting Party which made reservations remained a party in relation to those who did not object to those reservations; and

(iii) the parties were free to denounce the Conventions either immediately or, in some cases, after the expiry of five years and with effect one year after denunciation.\(^{338}\)

The other important criterion in this regard is whether any consensual rules discussed at the time of a convention was being considered had been declaratory of the existing international customary law. The other element that has to be taken into account here is whether the rule of international customary law in question was one of \textit{jus cogens}, and therefore, unalterable on a consensual basis.\(^{339}\) What is to be noticed is whether any binding law has been
created irrespective of the will of individual parties. The obligatory part of the law may find expression either in the international customary law or, in the alternative test, perhaps not of the same standard, in the general principles of law recognised by civilised nations. 340

The prohibitory rules which had been created in all the drug conventions during the League era, were further strengthened by criminal sanctions under municipal law, and therefore, "the relevant rules of international customary law or general principles of law recognised by civilised nations would consist of prohibitions... of the illicit manufacture of, and traffic in, dangerous drugs." 341 Despite the above, it may be observed that the sanction provisions of these conventions were loose, and that compliance with the provisions of these conventions was not obligatory for all states members of the international community. With this must be taken into account the low degree of integration which was attainable in a loose confederation such as the League of Nations. No basic differences existed between the "states reached in unorganised international society and international society organised in the League of Nations." 343

The validity of the maxim, ubi societas ibi jus, is questionable in the sphere of international law. Dr. Jenks found it necessary to seek the ultimate basis of obligation outside the law. He emphasised
that "only by accepting the will of the world community as the basis of civilised conduct can man continue to exist as a social being." Dr. Jenks certainly deserves commendation for his attempt to justify the ultimate basis of obligation from the philosophical standpoint, but this is too optimistic an idea even about the present-day international community, let alone the international community organised in the League of Nations. The truth is that "No State is prepared to abandon the principle that agreements must be performed (pacta sunt servanda) any more than, in domestic terms, it is willing to abandon the idea that laws must be obeyed. Yet, at the same time, it is abundantly clear that whenever the "bargain" concept is projected too far in the future, whenever an agreement is felt to have been unfairly imposed or coerced (as at Versailles), or whenever one of the parties strongly feels that there is no longer any reasonable relationship between benefits and burdens, it runs into difficulty—doctrine to the contrary notwithstanding." The international community in the League of Nations era was too interest-knit a community to give way to jus cogens, consensual or otherwise. Professor Schwarzenberger rightly observed that "Such little consensual jus cogens as, in the pre-1914 and 1919-1939 periods, was superimposed on international economic customary law was too limited and too fragmentary to constitute an international economic order in any meaningful use of the term. In any case, this consensual law fell so far short of universality as hardly to qualify as a world order."
311. The term "national interest" has been used in International Relations to mean the interests upheld by individual nation(s) at all costs which may clash with global ideals. For a good analysis of "national interest" as is used in International Relations, see J. Frankel, National Interest, London, 1970; H.J. Morgenthau, Politics Among Nations: The Struggle for Power and Peace, New York, 1967; and W. Friedmann, op. cit., p. 47 et. seq.,


317. infra, p. 345-348

318. For a good account of the factors leading to the creation of the League, see F.P. Walters, op. cit.,


320. P.B. Potter, op. cit., p. 5.

321. See further P.B. Potter, op. cit., p. 7.


325. infra., p. 847, J.t--t 48.

326. For these examples see further, G. Schwarzenberger, Economic World Order, op. cit., pp. 132-134.
See further, B. Russell, op. cit.


A. Zimmerm, op. cit., p. 292.

For a discussion of the role of international morality, see H. Morgenthau, op. cit., chapter 16.

H. Morgenthau, op. cit., p. 220.

H. Morgenthau, op. cit., p. 221.


The other rules set out by this Article were: to secure and maintain fair and humane conditions of labour for men, women and children, to secure just treatment of the native inhabitants of territories under the control of the Members of the League, to entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, trade in arms and ammunitions with the countries in which the control of this traffic was necessary in the common interest, to secure and maintain freedom of communication and of transit and equitable treatment for the commerce of all Members of the League and also to take steps in matters of international concern for the prevention and control of disease.


G. Schwarzenberger, op. cit., p. 26 et. seq.

ibid.,
The expression "general principles of law recognised by civilized nations" begs questions. What is the standard which determines a "civilized nation"?

For a good discussion of such general principles, see C. Parry, The Sources and Evidences of International Law, England, 1965, chapter IV.


342. Article 24 of the International Opium Convention, 1925; Article 14 of the Limitation Convention, 1931, and Articles 2, 4, 9 and 10 of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 1936.

343. G. Schwarzenberger, Economic World Order? op. cit., p. 34.

