

PART IV

"Human law arises by the corporate action of a people setting up rules to govern the acts of its members, ... The source of legal authority is always the people or its prevailing part, even though it act in a particular case through a commission (or, in the case of the empire, through the emperor) to which it has delegated its authority."

G.S. Sabine,
A History of Political Theory, London,
1971, p.296.



PART IVCONTRIBUTIONS OF SOME OF THE INTER-
GOVERNMENTAL AND INTERNATIONAL NON-
GOVERNMENTAL ORGANISATIONS CONCERNED
WITH THE SUPPRESSION OF ILLICIT TRADE
AND TRAFFIC IN NARCOTIC DRUGSIntroduction

In this Part an attempt has been made to discuss the activities of the International Criminal Police Organization (INTERPOL) in its capacity as an inter-governmental organization, although there are certain other such organisations, which are concerned with similar activities, e.g. the League of Arab States.¹ On the other hand, the role of international non-governmental organisations (INGO's) concerning the suppression of the illicit trade and traffic in narcotic drugs can hardly be over-emphasised. It appears to be unnecessary to examine the organisational structures of these institutions. A brief historical account of the growth of such organisations will, however, be given in order to trace the incidence of the anti-drug movement led by them at different periods of history. An attempt has also been made to evaluate the role of such organisations concerning this matter, and also their contributions to the formulation of future policy and law by the United Nations Organization.

CHAPTER XII

1.

The International Criminal Police Organization (INTERPOL)
Introduction

The history of the International Criminal Police Organization is not long. This Organization succeeded the International Criminal Police Commission, which had been established in 1923 at the initiative of Johann Schöber, the then Vienna President of Police. The principal purposes of this Commission were twofold, namely,

- a. to ensure and officially promote the growth of the greatest possible mutual assistance between all criminal police authorities within the limits of the laws of their countries; and
- b. to establish and develop all institutions likely to contribute to the efficient suppression of ordinary law crime.

The International Criminal Police Commission had a chequered history. Although almost swallowed by its creator, the International Congress of Criminal Police, and by Austria, it managed to continue its operation in a restricted way until June, 1938, after which time it was transferred to Berlin. It came to an end during the fall of Berlin.²

On its re-birth in 1946, it continued to function in a

limited way until 1956³ when it was transformed into the International Criminal Police Organization (INTERPOL) with view, inter alia, to giving it a wider scope of function, which was embodied in its new constitution.

The general aims of the INTERPOL, as defined in Article 2 of its constitution, are very similar to those of the International Criminal Police Commission, viz.

- (a) " To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights";
- (b) " To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes".

Any intervention or activity of a political, military, religious or racial character is strictly forbidden to this organization.

(a) Method and Scope of its Functions

Although Article 2 of its constitution provides for co-operation among all criminal authorities, and making efforts for the prevention and suppression of ordinary law crimes, the General Secretariat of INTERPOL has

been specifically entrusted with the task of dealing, inter alia, with international crime cases, which comprises the collection of information on criminals, e.g. personal details of criminals (names, details of passports etc.) description of vehicles used by criminals, and special records of such criminals, e.g. fingerprints and photographs according to certain classifications and variations. In order to study and co-ordinate police investigation on the international level, crimes have also been classified into three groups viz., "C", "D" and "E"; the last group consists of crimes concerning "Drugs, currency counterfeiting, immorality, trafficking in women."⁴

The operational machinery of INTERPOL concerning detection and prevention of the illicit traffic in narcotic drugs is vast and complex; it ranges from an international radio network to the actual detection of the criminal. It would be inappropriate to make any effort to detail this operational machinery, mainly because some of its methods of work are highly technical in nature, while others are strictly confidential. Each country, upon joining this organization, designates a National Central Bureau which will operate as its representative in all INTERPOL matters affecting that country. These Bureaux constitute a kind of relay or first sorting centre through which the activity of INTERPOL radiates.⁵ They are required to inform the

INTERPOL, as soon as possible, of any suspect or any information concerning crime likely to be of international importance. On the other hand, they also act as "reception centres", i.e., they receive instructions or requests from INTERPOL to do or not to do certain things in the interest of the international community. "The national central bureaus are organized according to the norms which preside at the International Bureau".⁶ The principal technique of its operation is to exchange criminal information between members and itself, to hold conferences on criminal problems and to publish reports as often as possible. In addition to this, it also convenes annual General Assemblies of all its members to discuss matters of common interest and to prepare future programmes of international co-operation, with a view to promoting the eradication of international criminal activities.

In so far as the suppression of the illicit traffic in drugs is concerned, this organization has been playing an active role since 1926, when at the Berlin Congress, it emphasised the necessity of adopting legislation with a view to severely punishing criminals involved in international criminal activities, and of exchanging the names of drug traffickers and other relevant particulars thereto through a central service in each country.⁷ In 1930, at the Congress of Antwerp, the establishment not only of national central

bureaux, but also of an International Bureau had been recommended for the purpose of dealing with drugs.⁸ This should be taken as a positive attempt on the part of this organisation to establish direct relationships with various national governments.

The first truly international recognition of its contribution to the fight against the illicit traffic in drugs was given by the League of Nations, when it appointed representatives of the International Criminal Police Commission as technical experts to assist the Opium Advisory Committee of the League.⁹ The International Criminal Police Commission (I.C.P.C.) had not only been represented at the Limitation Conference of 1931, but the draft convention drawn up by its delegates had also been approved by the Advisory Committee on Traffic in Opium.¹⁰ The active part played by the I.C.P.C. in the drafting of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 1936 can hardly be ignored.¹¹ In fact, the Advisory Committee at its Fourteenth Session (1931) discussed various questions, connected with the draft Convention of 1936, which had been submitted to it by the International Criminal Police Commission.¹²

It is the continued positive contribution of this organization that promoted it, in 1971, from the status of a non-governmental organization to that of an inter-governmental organization.¹³ The functions of this organization in so far as the suppression of the illicit traffic in drugs is concerned, may

be divided mainly into two categories, viz. (a) preventive and (b) curative.

(b) Classification of its Functions

(i) Preventive Functions

Its preventive functions refer to those functions which are designed to prevent the occurrence of illicit traffic in drugs, viz. to inform the member governments of any prospective international crime, to draw up plans for better training of the police forces, to unify penal laws as far as practicable, and hold conferences, including annual general assemblies, for better understanding among its members and better international co-operation.¹⁴ In addition to these activities, this organisation, in its efforts to co-ordinate the preventive services on an international plane, circulates various tables and notices among its members.

One of its very important functions is to further the efforts of the United Nations in the suppression of the illicit traffic in drugs. In performing this function, it acts in consonance with the policies of the Commission on Narcotic Drugs with a view to acquiring information from various governments. Its activities even extend to the

prevention of drug offences by means of commercial or tourist planes. It takes preventive measures not only in those cases suspected threat of criminal offences, but also where such offences are potential.¹⁵ The preventive aspect of its functions also includes the training of police officers belonging to various national police authorities.¹⁶ It has also published a book entitled "Suppression of Illicit Traffic in Narcotic Drugs: Guide for the Use of Law Enforcement Agents", indicating, inter alia, the necessity of attaining a certain standard of law enforcement for the suppression of the illicit traffic in narcotic drugs.

(ii) Curative Functions :

These functions, as the title suggests, are performed after the commission of an offence. Once the information reaches the INTERPOL through a National Central Bureau and the International Bureau, it goes into operation. The growing incidence of drug-trafficking across national boundaries has led the INTERPOL authorities to devise many new scientific methods with a view to arresting such traffickers. Nevertheless, full national co-operation is necessary for the success of this organization, and in fact, such co-operation is usually

extended by various national governments , whether or not directly involved in a particular case.¹⁷ The responsibility for prosecution of the drug-traffickers lies with the national governments, and no instances have yet occurred where a drug-trafficker has been extradited.¹⁸ On the other hand, in the event of a drug-trafficker being arrested by INTERPOL itself he will be handed over to the national government concerned, with the expectation that he will be punished appropriately.

(c) Comments

Any success which INTERPOL may achieve in this field of international law is largely dependent upon the co-operation of national governments. Such co-operation denotes not only the willingness of the national governments to further the cause of INTERPOL in this matter, but also their competence to assist this organisation by means of the training of personnel, use of sophisticated instruments and improved administrative machinery. In addition to this, nations should be prepared to allow the INTERPOL authorities to deal with a criminal and /or criminal activity of an international character at the earliest opportune moment, instead of indulging into the theory of strict national sovereignty.

Although an inter-governmental organisation,

it is functionally, an international organisation, and by character, it is a horizontal institution. Its aim is not to unify the penal laws of various countries, but to promote the standard of such laws, wherever necessary, to harmonise such laws by identifying the common elements in them, and to internationalise crimes of a serious nature. It is not an international law-making body, in the strictest sense of the term; it acts as a guide to the enactment of necessary laws at the domestic level. It cannot usually issue directives; it can only recommend and request nations to do certain things, as necessary. Although a guardian, it cannot generally command the obedience of its member nations, especially because binding decisions require the unanimous approval of all members. Also, it has no power to enforce its decisions beyond its organisational jurisdiction, nor has it any financial autonomy. The powers of decisions are exercised by representatives of governments, who are inter pares.

The expression "inter-governmental organisation" is generally used for all public international organisations. Such organisations aim, inter alia, at co-operation between governments or between governmental organs.¹⁹ The importance of such organisations may be ascertained from the functions they perform and the characteristics they possess. Since the power of

decision is exercised by delegates of governments, enforcement of such decisions at the national level does not usually present problems. As they are inter pares, prospects of a decision on a matter are either too high or too low, i.e., either it will attain unanimity or will face a defeat.²⁰ The international capacities of such organisations are generally to be derived from their constitutions,²¹ and it is believed that inter-governmental organisations in practice perform "sovereign" and international acts even when these have not been authorised in their constitutions.²² This argument finds support if account is taken, inter alia, of the following: their capacity to conclude treaties,²³ to exercise exclusive jurisdiction over their organs,²⁴ to make laws, their international responsibility,²⁵ and their membership of other organisations.²⁶ In addition to these, there are many other criteria by which is exhibited the international legal personality of inter-governmental organisations, viz. convocation of and participation in international conferences, accreditation of delegates etc. enjoyment of privileges and immunities etc.

As in the case of international organisations, the international capacity and the scope of the international personality of inter-governmental organisations, depend upon their constitutions and the intention of their framers. The inherent powers which

they derive from their constitutions, cannot be disputed, and indeed, such powers may, if necessary, also have to be derived by reference to the necessary implications of the constitutional provisions.²⁷ Indeed, there are no basic differences between states and inter-governmental organisations in so far as their internal powers are concerned. Yet, differences between these two types of institutions are noticeable in so far as their territorial and personal jurisdiction are concerned. Such differences in internal powers occur not because the constitutions of inter-governmental organisations do not authorize them to exercise such powers but because such organizations usually do not represent interests comparable to those states. " Only when they exceptionally do represent comparable interests will the practical need arise. And the silence of their constitution is then no hindrance." ²⁸ On the other hand, the jurisdiction of inter-governmental organisations is limited by their purposes, as expressed in their constitutions. Yet, their jurisdiction extends beyond the organisations themselves, in that the matters of the expulsion of member states and even dissolution of themselves are within their exclusive inherent power, and no sovereign state can question this authority. In so far as the legal effects of resolutions of inter-governmental organisations are concerned, it may be observed that they earn even better recognition than those of the United Nations, since decisions are arrived at by these organisations only on those matters in respect of which the member states have a common interest, and consequently, the incidence of incompatibility between the decisions of an inter-governmental organisation and the provisions of the constitutions

of its member states is rather rare. Any act of an inter-governmental organisation beyond its constitutional authority will be deemed to be ultra vires, and in that event, the member countries should not be obliged to enforce it.

In so far as the International Criminal Police Organization is concerned, it fulfils the conditions of an inter-governmental organisation. The legislative functions of this organisation are in large measure confined to highly technical problems of a non-political character. Its legislative goals are determined to a considerable extent by technical advances in policing. It adopts a consensus-oriented legislative process in order to produce legislation necessary for the technical requirements of efficient policing without unduly straining the administrative and economic resources of a member country. Owing to differences in the economic, administrative and legal structures between countries, such legislation cannot be expected to produce optimum results, when applied to a particular situation; the primary purpose is to raise the standard of international policing generally.

The co-operation extended by member states in this regard is satisfactory, and indeed, the incidence of disregarding the recommendations and/or directives of the INTERPOL is very low owing to the nature of the functions it performs, although for the member states who dissent from a particular recommendation and/or resolution there would be no obligation to co-operate with the organisation in its aim to perform its external obligations. Such limitations upon the power of INTERPOL, as is true in respect of other such organisations, and of the external effects of a state's power, emanate not

from its constitution, but from one of the fundamental principles of general international law, namely, res inter alios acta. Yet, it may not be appropriate to evaluate the authority of an inter-governmental organisation with reference only to its apparent constitutional power. Seyersted went even further to suggest that "it is not the provisions of the constitution or the intention of its framers which establish the international personality of a state or an intergovernmental organisation, but the objective fact of its existence," and therefore, he rejected not only the doctrine of delegated powers in its rigid form, but also that of powers implied in the constitution, in favour of a doctrine of powers which are inherent in the organisation as they are in states.²⁹ Consequently, such internal capacity and the objective fact of their existence gives rise to rights and obligations to inter-governmental organisations under international law. Yet, their rights and obligations are not identical to those of the traditional subjects of international law. Although inter-governmental organisations may claim the same immunity before national courts as states may do, even in the absence of any provision in a convention to this effect,³⁰ it is doubtful "if a state has the same duty under general international law to grant diplomatic privileges and immunities to permanent representatives accredited to an international organisation with headquarters in its territory, as it has in respect of diplomatic representatives accredited to that state's own government."³¹ The non-fulfilment of certain traditional criteria of international personality by inter-governmental organisations should not preclude them from attaining international personality and international capacity, which are so necessary for fulfilling their goals.

In the absence of a treaty, the recommendations of INTERPOL are not binding upon a member state, but they are binding with regard to its own operations or when projects are carried out with its assistance.³² Although strictly speaking, INTERPOL is a quasi-legislative and administrative body, it may be said that its legislations have been well-received by the international community even though they are not declaratory of customary international law. Any attempt to discard the validity of these legislations in respect of non-members of inter-governmental organisations becomes only academic, if the position of non-members is viewed from a pragmatic standpoint. Obligations to respect the legislations of inter-governmental organisations emanate from general international law, and indeed, an inter-governmental organisation, such as INTERPOL, is open to non-members for assistance, whenever necessary.

II. International Non-Governmental Organisations

(a) A Brief Account of Some Such Organisations

On looking to the past, it may be said that the anti-opium movement³³ on the non-governmental level during the League period was not a new phenomenon; it had had the benefit of experience from similar movements during the pre-League period.³⁴ The basic difference between the movement during the pre-League period and that during the League period, was that while the former was directed towards legalisation of the trade through international action, the latter was directed towards almost all aspects of the drug problem. While the former was primarily defensive, the latter was offensive, i.e., it took a more active role in strengthening the international rules of co-operation in this regard. It is from this perspective that the movement in this regard on the non-governmental level will have to be considered. Originally, the primary reasons for such a movement during the League period were the following:

(a) protest against the sectional interests of some of the Member States of the League; (b) the loss of faith in the League, especially in the absence of any clear-cut policy concerning suppression of the illicit traffic in drugs; and (c) lack of interest of the non-manufacturing /producing countries in taking any active role in the movement.

One of the principal organisations devoted to the eradication of the opium evil, during the League period, was the Anti-Opium Information Bureau in Geneva.³⁵ Its activities were varied, e.g. to point out to the League the roots of the opium-evil, to suggest,

however unofficially, possible remedies and indeed, to protest against certain measures taken by the League concerning this matter. The work of the Anti-Opium Information Bureau, especially concerning the limitation of the manufacture of drugs was indeed praiseworthy.³⁶ In addition, on the eve of any conference concerning drugs, this Bureau made attempts to publicise its opinion and thus to arrest the attention of the League authorities. Some of their observations were also forwarded to amongst others, the Secretariat of the League of Nations, the Chairman of the Opium Advisory Committee and also to the governments concerned. It was also a function of this Bureau to promote its aims by keeping vigilance upon the League's activities concerning the drug-problem, and to make observations, where necessary,³⁷ and also to urge people and non-official organisations to join its cause.³⁸

On the other hand, certain other non-governmental bodies of a general type also participated in this movement, and especially urged the need for a limitation of the manufacture of drugs, e.g. the Women's International League for Peace and Freedom,³⁹ the International Federation of League of Nations Societies,⁴⁰ and the Assembly of the Church of Scotland.⁴¹

The movement towards suppression of the illicit traffic in narcotic drugs went on both within and without the world organisation, i.e., the League, and subsequently the United Nations. Although various non-governmental organisations all over the world launched anti-drug movements, the following three organisations had been permitted to sit at public meeting of the U.N. Conference for

the Adoption of a Single Convention on Narcotic Drugs:

- (a) International Conference of Catholic Charities;
- (b) International Federation of Women Lawyers; and
- (c) World Alliance of Young Men's Christian Associations.

All of them are category "B" organisations.⁴² In terms of the Rules of Procedure of the Conference, such organisations were only allowed to participate without any right to make a statement, written or oral.⁴³ It is not necessary to go into details of these organisations; their functions are varied, although all of them are involved in the suppression of the illicit traffic in drugs. It is to be noted that their function is to play the role of "international actors". Consequently, it is expected of them to play an impartial, un sinister role in matters affecting international life. Any contrary behaviour on their part will relegate them to an inferior status, perhaps that of a faction.

(b) Relationship between International Non-Governmental Organisations and the World Organisation

The term "world organisation" in this context will include both the League of Nations and the United Nations Organisation. Both these organisations have had relationships with various international non-governmental organisations (hereinafter called INGOs) on a formal basis. It has had been the practice of these organisations to invite representatives from various INGOs to their conferences and vice versa. Sometimes, active association of the delegates to

the world organisation with various INGOs brings such organisations into a close relationship with the world organisation. On the other hand, the INGOs secure positions on various committees of the world organisation.⁴⁴ In certain cases, through pressure exercised by INGOs, the world organisation is made to re-consider its decisions, e.g. when the Limitation Convention (on Narcotic Drugs) of 1931 was about to be cancelled by the League Assembly owing to the lack of appropriation necessary for the carrying out of the Convention, its appropriation was retained as a result of appeal made by various Christian organisations in Geneva.

Since the relationship between the world organisation and the INGOs is one of co-operation rather than of rivalry, the former very often ask the latter to communicate their views to them on specific matters, and such views are also published by the world organisation.⁴⁵ The U.N., in its attempt to conclude a Single Convention on Narcotic Drugs asked the INTERPOL (which was then an INGO) to communicate its views on certain matters with which the latter organisation was closely connected, and published their views also.⁴⁶ Indeed, some of the specialised agencies, viz. the International Labour Organisation, the World Health Organization and the United Nations Educational Scientific and Cultural

Organization have procedures for consultation with INGOs.⁴⁷

It has been a policy of the world organisation to encourage the establishment and functioning of various INGOs. Article 24⁴⁸ of the League Covenant provided, inter alia, that all international bureaux already established by general treaties would be placed under the direction of the League if the parties to such treaties consented, and those parties involved in matters of international interest, not placed under the control of international bureaux or commission, were, subject to the consent of the Council, assured of the League's assistance, if it were necessary or desirable. In Article 25, the League Members agreed to encourage and promote the establishment and co-operation of duly authorized national Red Cross organisations having as their purpose, inter alia, the improvement of health.

Although the scope of this Article was, by interpretation, subsequently limited to official bodies (i.e., inter-governmental bodies) owing to their increasing number and activity, the importance of such bodies had never been lost sight of. The League Council, at its twenty-fifth session, stated, "it is not desirable to risk diminishing the activity of these voluntary organisations, the number of which is fortunately increasing, by even the appearance of an official supervision".⁴⁹

It may however be true to say that the League's policy towards

international politics prompted it to review Article 24 of its Covenant.⁵⁰

Article 71 of the U.N. Charter has directly recognised the importance of the INGOs in furthering the cause of international law. Certain types of INGOs have now been given a consultative status, and although there are three categories⁵¹ of such organisations in consultative relationship, the principles guiding the determination of eligibility for consultative status are, in the main, that the organisation is required to be concerned with matters falling within the "competence of the Economic and Social Council with respect to international economic, social, cultural, educational, health and related matters and to questions of human rights"; the aim and purposes of such organisations "shall be in conformity with the spirit, purposes and principles of the Charter"; such organisations "shall be recognized standing and shall represent a substantial proportion of the organised persons within the particular interest field in which it operates". Indeed, in its Preamble, the U.N. Charter has recognised individuals and non-governmental organisations by stating, inter alia, "We the Peoples..."⁵² In Rule 82 of the Rules of Procedure of the Economic and Social Council, the establishment

of a Committee on Non-Governmental Organizations has been made compulsory. In terms of Rule 85, this Committee "shall consult, in connexion with each session of the Council, with organisations in categories A and B on matters within the competence of these organizations concerning items on the provisional agenda of the Council on which the Council or the Committee or the organization requests the consultation".

In so far as the Single Convention on Narcotic Drugs is concerned, all the non-governmental organisations invited to attend the Conference belonged to Category B.⁵³ The representative of the INTERPOL was invited by the President of the Conference to express his views on the question of the suppression of the illicit traffic in narcotic drugs.⁵⁴ This was perhaps due to the fact that the contribution of the INTERPOL to the suppression of the illicit traffic in drugs surpassed those of the other organisations who were also invited to participate in the Conference. Although the INGOs do not enjoy a right to vote, and although they are merely consultative in status, it may be observed that some INGOs by virtue of their contributions and influence, actually participate⁵⁵ though without a right to vote. The role played by the INTERPOL in the adoption of the Single Convention on Narcotic Drugs, it is observed, amounted to participation of a very

high degree, although not complete participation.⁵⁶

(c) Law-Making Functions of the INGOs

International non-governmental organisations do not fulfil law-making functions in the traditional sense of the term, i.e., they do not follow the general classification of the sources of international law, as has found expression in Article 38 of the Statute of the International Court of Justice. These sources are, however, declaratory of "positivism" in international law; their validity as sources is not questioned, although their completeness as sources is often a matter of controversy.⁵⁷

The law-making functions of international non-governmental organisations, in so far as their internal matters are concerned, cannot be disputed. The question of international law-making by international non-governmental organisations should be considered from a different angle. Indeed, international non-governmental bodies do not possess international legal personality, stricto sensu, yet, functionally, their existence can hardly be denied by the international community. The draft rules prepared by such organisations are merely recommendatory, yet the recommendations of such organisations are very often promoted to obligatory rules, if parties to a treaty which incorporate those rules, express their willingness to be bound

by them. Such is, for example, the position of the International Chamber of Commerce.⁵⁸ On the other hand, there are certain other types of non-governmental organisations, for example, the International Red Cross, a humanitarian organisation which greatly influence law-making by the international community.⁵⁹ Indeed, the International Red Cross concludes agreements which, pursuant to the intention of the contracting parties, are not subject to municipal, but to international law.⁶⁰ The distinction between formal law-making, and creating circumstances for law-making or perhaps contributing directly to such law-making, is rather fine. However, it is to be admitted that the stronger a non-governmental organisation is, the greater is the prospect of its recommendations being accepted. On the other hand, for an entity to be regarded as a party to a treaty, it must have both the quality of a "subject of international law" and "treaty-making capacity". According to the International Law Commission, an international agreement irrespective of its form or designation means "an agreement in written form governed by international law and concluded between two or more States, or other subjects of international law, possessed of treaty-making capacity".⁶¹ In interpreting this provision, although the Commission observed, inter alia, that while "an agreement between States is not necessary or always an agreement

governed by international law, on the other hand, an agreement to which only one of the parties is a State (or other subject of international law, possessed of treaty-making capacity)- the other being a private individual or entity is necessary and always not an agreement governed by the law of treaties," yet it also observed that if "several States were involved, together with one or more private entities, the instrument might operate as a treaty purely in the relations between the States parties to it".⁶² According to the author, the latter part of the observation of the International Law Commission is declaratory of the fact that even treaties concluded by international non-governmental organisations, in fulfilment of the aforesaid provision," might operate as a treaty purely in the relations between the States parties to it". In addition to this, it may also be observed that very often matters dealt with by such organisations are of international importance, and the only applicable law in such matters shall be international law.⁶³ The question whether third parties would be bound by such treaties may be answered by a reference to Article 2, Paragraph 6 of the U.N. Charter. Although res inter alios acta is one of the fundamental principles of treaty-law, the question of non-application of this principle to non-members of the United Nations is viewed from different point of view.⁶⁴ The doctrine of res inter alios acta should indeed have a limited application to areas of international significance.

(d) Comments

It is appropriate to make a sharp distinction between the different kinds of international non-governmental organisations (INGOs). Not only do their activities overlap, but also for the desired good they should co-operate among themselves.⁶⁵ The INGOs which had participated, as observers, at the Conferances for the Adoption of a Single Convention on Narcotic Drugs, were different in character for each other, yet, their involvement in the same matter was the common ground for co-operation among them. The more they act horizontally, the stronger will be their position to influence the international society. One of their chief goals is to formulate a functionalist international law. Indeed, "as soon as this law will be no more confined to dealings among States only, and activities, undertaken by entities of some other description, become likewise relevant, the conspectus of this law can no more be defined ratione personae only. It may as yet be too early to have defined it exhaustively ratione materiae. But what appears to be within reach, is a definition ratione functionis. Indeed, there is already evidence for a significant reversal of qualifications: it is not the personality which makes a function international, but it is a function which confers legal internationality on the entity which is engaged in such activity".⁶⁶

The traditional maxim, ubi societas ibi jus tends to negate the existence of law without a society. State-made international law could be "exclusive law" only under the assumption that there are no transnational relations outside the state. The fundamental concept of transnational order is not of a metaphysical order, but relates to international function. Such transnational relations make inevitable the participation of entities other than state.

The history of their struggle for birth and viability is staggering, although during the contemporary period, the Charter of the United Nations has recognised them by providing that the Economic and Social Council "may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence."⁶⁷ The cause of the growth of international non-governmental organisations, in the western world, was their growing dissatisfaction with the State and the Church, and indeed, this latter organisation had influenced the international society more than the former did. This dominating position of the Church gave rise to two situations, viz.

- (a) it lent support to all movements, whether institutionalised or not, promoting and popularising the policies of the Church; and

- (b) the oligarchical position of the Church became the "cause" of anti-Church movements, whether institutionalised or not.

Yet, the movements of both categories were centred round religion. The growth of such movements and institutions has been promoted by both selfish and idealistic motivations.⁶⁸ Humanitarian ideas were thought of as an integral part of religious ideas, and indeed, the earliest international non-governmental organisations are to be found only in these two areas.⁶⁹ The problems of health were considered to be associated with humanitarian activities.

On the other hand, in so far as the growth of international non-governmental organisations is concerned, the concerted efforts to recognise the individual, however rudimentary they might be, in matters of international concern, should not be over-emphasised. In other words, the incompatibility between the domains of state and Church (the latter concerned itself with the question of the recognition of the individual as a subject of international law) led to intervention in the legal framework of state-made international law, by movements of an international non-governmental character.⁷⁰ However, the double dissatisfaction with the state and with the Church resulted in the doctrine of Jus Gentium, which had a separate existence from state or Church-made law.⁷¹

It was an attempt to devise a "real law" to establish a relationship between law-making and law-enforcing, the relationship which "pure law" could not provide or establish. For approximately a whole century, the positive law remained without its countervailing power either in religious dissension or in Natural Law. It was not until the second half of the 19th century that attempts were again made by individuals to impose their law on the international society. "Reduced to their common denominator, all the movements of that kind possessed a basically humanitarian character".⁷² The movements and organisations engaged in humanitarian activities on a non-governmental level made their existence felt only by prescriptive method, and consequently, organised movements of these international non-governmental organisations commenced rather recently, and not earlier than the second half of the nineteenth century.

According to the nature of their functions and ideologies, international non-governmental organisations may be categorised as follows:

(a) consultative⁷³; (b) legislative; (c) ideological and (d) political.⁷⁴

While a political or a non-political INGO may assume the roles of consultative and legislative INGOs, ideological INGOs are sui generis. Yet, all INGOs are non-governmental, non-profit-making and specific purpose-oriented. The international character of such organisations is to be ascertained by the extent of their involvement

internationally. Following the underlying philosophy of legal pluralism it may be said that "NGOs do not negate the State, but tend to establish a kind of regulated, or even a federalist co-existence with the State."⁷⁵ Apparently, it is difficult to maintain any difference between a consultative INGO and a legislative INGO because the latter may also assume the role of the former; consequently, the difference, if any, between them is one of form rather than of substance. The law-making capacity of these organisations may not be questioned, but beyond their own institutional spheres, it is a question of their "ability" rather than of "capacity" to influence the international society in formulating the lex ferenda.⁷⁶ Pragmatically speaking, some INGOs exercise a considerable influence in the shaping of the law by virtue of an ability which was proved at the time when no great international organisation was in full operation. However, consultative INGOs, e.g. the INGOs which had been invited to the Conference for the Adoption of a Single Convention on Narcotic Drugs, 1961, receive only a recognition of their existence, if they are not allowed to participate with a right to vote. In contrast, ideological INGOs are "associations of people who have risen to a psychological appeal, and joined one another in an activity which has, at a certain stage of that organization's curriculum, obtained an international character. Thus, their basis was an appeal, the

nature of which must be susceptible to being internationalized, even if started as a purely national or sectional movement." ⁷⁷ These INGOs are founded on an assumed ideology which, in the course of time, tends to be promoted to an international ideology. Their philosophy is emotive, and stands for "do good to others" and their law-making function chiefly relates to their internal discipline. Consequently, despite the fact that they "possess a well developed procedural law, they are rather on the vague side in all that concerns 'substantive' law: an ideology cannot be exhaustively codified." ⁷⁸ Such INGOs are not, therefore, concerned with "positive" law. ⁷⁹ Political INGOs, on the other hand, as their name suggests, are politically orientated organisations. Such organisations primarily aim at achieving certain political goals fixed by themselves. The philosophy behind their goals is either the urge for self-determination or recognition. They do not normally come under the "ideological" group nor do they come under the "legislative" group. Like all other INGOs, they are also "pressure groups", and sometimes enjoy the status of a consultative INGO (Group B- without a right to vote). ⁸⁰ Again, an INGO may represent the ideas of two or more such traditionally classified INGOs. ⁸¹

The INGOs concerned with the suppression of the illicit trade and traffic in narcotic drugs are either consultative or ideological in character, yet all of them have the traits of a "pressure group". They are concerned with societal development, and consequently, are

instrumental to international social legislation. These organisations should be viewed as "social actors", and hence it may be observed that they are more concerned with bringing about changes in the social legislation, than with changing it themselves.

PART IVFOOTNOTES

1. It has not been possible, despite efforts, to obtain the required documents for examining the activities of the League of Arab States, in so far as the question of suppressing the illicit traffic in drugs is concerned. Incidentally, at the U.N. Conference for the Adoption of a Single Convention on Narcotic Drugs, 1961, only an expert from the League had been invited to participate.

CHAPTER XII

2. For its history see International Criminal Police Organization (INTERPOL): History and Constitution, 1958, (published by Interpol); see also A.J. Forrest, Interpol, (Allan Wingate), London, 1955.

During the 14th session of the Commission held in Bucharest in June, 1938, i.e., the time when the Second World War was looming large upon the world, a proposal had been made to move the headquarters of this organisation into a neutral country. Although this proposal did not find much support, an ardent desire to take over the International Criminal Police Commission was expressed by Heydrich, the then Director of the German police force, and it was chiefly in fulfilment of his sinister interests that this organisation was transferred to Berlin.

3. It was Mr. F.E. Louwage, the then Inspector General of the Belgian Police who revived the idea of international police co-operation after the Second World War. Although the constitution of the defunct Commission had been modified to a considerable extent to suit the purposes of the new Commission, it soon became essential to revise the constitution completely. The word "commission" was replaced by the word "organization", under the belief that the former expression usually signifies a body of people with a limited task. See further International Criminal Police Organization (INTERPOL): Its Purpose, Organization and Activities, 1958 (published by Interpol); see also P. Marabuto, "The International Criminal Police Commission and the Illicit Traffic of Narcotics", Bulletin on Narcotics, vol. III, 1951, pp. 3-15.
4. See The International Radio Network, 1956 (published by Interpol).
5. P. Marabuto, op. cit., p. 6.
6. op. cit., p. 7.

7. "International Co-operation in the Juridical Police Field" Memorandum of the I.C.P.C., Vienna, 1928, chapter X.
8. Report No. 5 by Dr. B. Schultz, September, 1931, 8th session.
9. See L.N. Doc. O.C. 1581, p. 10.
10. See L.N. Doc. C.455.M.193.1931 XI, pp. 31-32.
11. See also L.N. Doc. C.341.M.216.1936.XI, p. 201.
12. See the Report of the Sub-Committee Appointed to Study the Draft Convention Submitted by the I.C.P.C., which was presented to the Opium Advisory Committee during its sixteenth session, L.N. Doc. O.C. 1481, 1933 (Annex 1), p. 177.
13. See Report submitted by the Secretary-General at the XIth General Assembly session of Interpol held in Ottawa, 6-11 September, 1971, (No. 11), p. 3; see also U.N. Doc. E/4961 (dated 8th March, 1971), p. 3.
14. For example, see the International Criminal Police Review, No. 21, October, 1948, p. 19 and No. 33, December, 1943, pp. 24-25.
15. The accumulated drugs left by the German army caused a potential danger of illicit traffic in Occupied Germany. The Secretariat-General of the I.C.P.C. therefore convened a conference in February, 1949 at which the representatives of the three Inter-Allied Zones in Western Germany and of the frontier countries were present. This Conference adopted certain policies which were directed towards promotion of closer co-operation between the German authorities and the I.C.P.C. Indeed, the recommendation adopted by the U.N. Commission on Narcotic Drugs in this matter was in conformity with the initiative taken by the I.C.P.C. See E/CN.7/206 and E/CN.7/217.
16. Such training at INTERPOL is financed by the member governments. See further Reports of the General Secretariat of INTERPOL.
17. For examples of such co-operation, see Reports of the General Secretariat of INTERPOL.
18. In recent years, the case of Timothy Davey, a British subject, who in spite of being a minor was convicted of drug-trafficking in Turkey is an example of this. No appeal through the government channel could justify a mitigating circumstance in the eyes of the Turkish authorities.
19. See further H.G. Schermers, International Institutional Law, vol. I, A.W. Sijthoff, Leiden, 1972, p. 19.

20. *ibid.*, For a contrast between inter-governmental and supra-national institutions, see further H.G. Schermers, *op. cit.*, pp. 19-24.
21. See further F. Seyersted, "International Personality of Inter-governmental Organizations: Do their Capacities Really Depend upon their Constitutions?" 4 Indian Journal of International Law, 1964, p. 1.
22. F. Seyersted, *op. cit.*, p. 6; see also the case concerning Reparation for Injuries Suffered in the Service of the U.N., I.C.J. Reports, 1949.
23. See, for example, the Transfer and other agreements with the League of Nations and UNRRA; U.N. Treaty Series, Cumulative Index, No. 1., pp. 476-478. In practice, the treaty-making power of such organisations is not questioned even in the absence of provisions to this effect in their respective constitutions, e.g. the International Bureau of Weights and Measures has concluded a Co-operation Agreement with the UNESCO despite the absence of any provision to this effect in its constitution of May 20, 1875. The headquarters agreement concluded between the Hague Conference of Private International Law and the Netherlands Government is another example. The International Civil Aviation Organization has, however, been authorised by its Constitution to conclude treaties with other organisations (Articles 64 and 65).
24. Unlike non-governmental organisations, such organic jurisdiction of intergovernmental organisations is not amenable to the territorial jurisdiction and sovereignty of any state. Also, the judicial character and binding nature of the decisions, if rendered by the tribunals created by intergovernmental organisations, have been confirmed by the International Court of Justice in its Advisory Opinion on Effects of Awards of Compensation made by the U.N. Administrative Tribunal, I.C.J. Reports, 1954. Equally, the law-making capacity of such organisations has not been disputed. See generally, C.H. Alexandrowicz, The Law-Making Functions of the Specialised Agencies of the United Nations, (Angus and Robertson), Sydney, 1973.

In relation to the International Atomic Energy Agency, Alexandrowicz has rightly emphasised that the IAEA safeguards system (Article XII- according to this Article, the Agency has certain well-defined rights and responsibilities to the extent relevant to the particular project) "becomes obligatory only if a member state concluded an agreement approving an atomic energy project or if it otherwise obtained assistance through IAEA. Safeguards can also be made applicable upon request, in connexion with a bi-lateral or multilateral atomic energy arrangement." *op. cit.*, p. 147.

25. The authority of intergovernmental organisations to present international claims, whether by the express or implied power of such organisations, is no longer a matter of controversy. Such authority may be evidenced in the process of the Reparation Commission under Article 248 of the Treaty of Versailles to deal with the question of reparation. This Commission was also considered as a party to the arbitration between itself and the Standard Oil Company. See further Sir John F. Williams, "A Legal Footnote of the Story of German Reparations", XIII British Year Book of International Law, 1932, pp. 9-38. Fischer Williams confirmed the personality of this Commission by stating, inter alia, that "Commission was itself recognised in the Treaty of Versailles as a principal in the international world; it had 'agents' of its own, who were not the agents of the Creditor Powers. These agents were to be accorded by Germany 'the same rights and immunities' as those of 'diplomatic agents' of friendly Powers." (Article 240(3)), at p. 35.

On the other hand, states have presented claims to intergovernmental organisations, and such organisations have paid compensation, despite the absence of any specific provision to this effect in their constitutions. See further F. Seyersted, "United Nations Forces: Some Legal Problems", XXXVII British Year Book of International Law, 1961, pp. 357-475.

26. Certain intergovernmental organisations, together with states, have formed new organisations which have a separate international personality. The International Atomic Energy Agency and several Arab States have, by an international agreement concluded among themselves, established a regional radioisotope centre. Seyersted rightly pointed out that this "constitutes a separate intergovernmental organization with an international personality distinct from that of the Agency and the Member States; it can for example conclude international agreements with Members and non-members." Indeed, according to this Agreement (Article XI) the Host State "shall accord to the Centre, its premises, property, funds and assets the privileges and immunities which are necessary for the operation of the Centre in conformity with the Agreement on the Privileges and Immunities of the Agency." (Agency Doc. INF/CRIC/9/Rev.1). See further Seyersted, "International Personality of Intergovernmental Organisations", op. cit., p. 15.

27. In reference to the inherent powers of the U.N., the International Court of Justice, in its Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations, stated, inter alia, that under international law, "the organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.", op. cit., p. 182. See further G. Fitzmaurice, "The Law and Procedure of the International Court of Justice: International Organizations and Tribunals", XXIX British Year Book of International Law, 1952, pp. 1-62.

27. In its Advisory Opinion on Effects of Awards of Compensation made by the United Nations Administrative Tribunal the Court also pointed out that although the U.N. Charter contains no express provision for the establishment of judicial bodies, a contrary interpretation may not be appropriate, and held that the capacity to establish such organs (to do justice as between the organization and the staff members) arises "by necessary intendment of the Charter" . I.C.J. Reports, 1954 , pp. 56-57; see also I.C.J. Reports, 1949, op. cit., p. 182.
28. F. Seyersted, "International Personality of Inter-governmental Organizations etc.", op. cit., p. 20.
29. op. cit., pp. 39-40.
30. See further W.S. Penfield, " The Legal Status of the Pan American Union", XX American Journal of International Law, 1926, pp. 257-262.
31. F. Seyersted, op. cit., p. 49.
32. The standards prescribed by the International Atomic Energy Agency are in the nature of recommendations, but they are binding with regard to its own operations, and when projects are carried out with its assistance.
See also the Model Code for Safety Regulations of the International Atomic Energy Agency.
33. Originally, opium being the only substance to have found its way into the illicit traffic, and to have caused other related problems across national boundaries, the movement which had been launched against these evils was known as the Anti-Opium Movement. The subsequent movements were not named after any particular substance.
34. supra., pp. 36-42
35. This Bureau is no longer in existence. (It was originally situated at 8 rue J.-A. Gautier, Geneva and subsequently at 9, Avenue Bertrand, Geneva).
36. See various publications of this Bureau. This Bureau pointed out, inter alia, that it would not be appropriate for the Conference to let matters of national interest dominate and prevent a solution, and that the Conference was to be of no less interest to the non-manufacturing countries. It emphasised that the manufacturing countries had no special rights which the consuming countries did not have.
See further its Report entitled "What the Conference on Limitation Should do, 1931.
37. See further, for example, its Conference Press Note No. 2, dated 1st July, 1931, entitled "Limitation".

38. Text of a lecture delivered by the Director of this Bureau (on April 29, 1930) in the course of the International Conference on Opium and Other Dangerous Drugs, held under the auspices of the Women's International League for Peace and Freedom.
39. L.N.Doc. C.115.1931.XI, Annex 3. Conf. L.F.S. 25.
40. L.N. Doc. C.115.1931.XI. Annex 4. Conf. L.F.S. 64.
41. L.N. Doc. C.115.1931. XI. Annex 6. Conf. L.F.S. 69.
42. *infra.*, p. 795 and *Footnote* 80.
43. See U.N. Doc. E/CONF.34/24, p. XXIX.
44. The Committee on Social Questions of the League had a considerable number of associations as "corresponding members". Various women organisations through joint efforts obtained a representative on the League's Commission on the Traffic in Women and on the Commission dealing with Slavery and Slave Trade.
45. In its documents, the League published the activities of certain organisations, viz. the International Law Association and the International Association of Penal Law with which it maintained a close relationship in respect of penal and penitentiary problems.
46. U.N. Doc. E/CONF.34/24, vol. I, especially at pp.120 et. seq.
47. Indeed, the ILO, before the War, largely depended for its existence upon the continued support of non-governmental organisations, in addition to the support given to it by the International Federation of Trade Unions.
48. Article 24 of the League Covenant:
- "1. There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.
 2. In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.
 3. The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League."

The League of Nations also asked the World Alliance of Y.M.C.A. s to prepare a report on the work of certain Associations of certain countries in their campaign against the suppression of illicit trade and traffic in drugs.

49. The League showed its promptness to recognise the specialised and organised bodies, such as the International Chamber of Commerce which had been a very powerful and influential body, whereas a less influential body, e.g. the International Co-operative Alliance, found it difficult to influence the League.

50. See further L. C. White, International Non-Governmental Organizations, New Brunswick, 1951, p.254.

51. There are three categories of consultative INGOs, viz.

(i) Organisations which have a basic interest in most of the activities of the Economic and Social Council, and are closely linked with the economic and social life of the areas which they represent (category A);

(ii) Organisations which have a special competence in certain aspects of the Council's activities (category B); and

(iii) Organisations which, by means of ad hoc consultation, are able to make a significant contribution to the activities of the Council (category C).

See further ECOSOC's Resolution No. 288 (X), Part III

The INGOs in categories A and B may not only send representatives to attend the meetings of the Council and its Commissions, but also submit written statements, which are distributed to all Members of the United Nations and to the specialised agencies. An INGO in category A, however, enjoys certain special privileges, e.g. it may ask the Agenda Committee to place an item on the provisional agenda of the Council, although the Committee retains the powers of final decision in this matter. If, however, the request is granted, the organisation concerned may present its views at any meeting of the Agenda Committee at which the question of inclusion of the item is discussed. INGOs belonging to any of these categories may however send observers to public meetings of the Council and its Commissions.

52. See also D.W. Bowett, op. cit., p. 63.

53. At the time the Conference had been convened, the INTERPOL was an international non-governmental organisation.

54. See, for example, U.N. Doc. E/CONF.34/24.vol. I, op. cit., (Twenty-sixth Plenary Meeting), pp. 120 et. seq.,

55. In this connection see D.W. Bowett, op. cit., p. 63. According to Bowett, the difference between "participation" and "consultation" is fundamental.

56. It may also be observed that the role played by the International Red Cross in the formulation of "humanitarian law" amounts to participation.

57. See further author's article entitled "Equity in International Law: Its Growth and Development", Georgia Journal of International and Comparative Law, 1975, pp. 381-406, especially at pages 397-398.
58. The Uniform Rules of Documentary Credits 1975 although not truly international rules, have attained the ratification of a good number of nations, and have been binding upon the signatory states, on ratification by them. Such Rules have at least created an international law of a limited character.
The directives of the International Criminal Police Organization (INTERPOL) before its becoming an intergovernmental organization, were very seriously followed by the member states, and even in certain cases, by non-members for their own benefit.
59. The contributions of the International Red Cross, especially to the Law of War can hardly be ignored.
See further G.I.A.D. Draper, The Red Cross Conventions, 1958.
60. Quoted by F. Seyersted in "International Personality of Intergovernmental Organizations etc.", op. cit., at p. 50, from Taracouzio, The Soviet Union and International Law: A Study on the Legislation, Treaties and Foreign Relations of the Union of Soviet Socialist Republics, New York, 1935, at p. 15 and at pp. 205-206. See also the Agreement of 9/12 May, 1960 between the United States, the Federal Republic of Germany, France, the United Kingdom and the Comité international de la Croix-Rouge concerning the International Tracing Service (U.S. Treaties and Other International Acts, Series No. 4736, and the Agreement of June 6, 1955 (U.K. Treaty Series No. 11, 1956) transferring to the Comité the direction and administration of the International Tracing Centre at Arolsen.
61. Draft Article 2, Yearbook of the International Law Commission, 1959, vol. II, p. 95.
62. *ibid.*, see also O.J. Lissitzyn, "Efforts to Codify or Restate the Law of Treaties", 62 Columbia Law Review, pp. 1166-1205, at p. 1177, and F. Seyersted, op. cit., p. 51.
Seyersted referred to, as an example, the Agreement between the United Nations and the Carnegie Foundation Concerning the Use of the Premises of the Peace Palace at the Hague (General Assembly Resolution 84(1) of 11 December, 1946). Article XIV of this Agreement provided: "It is expressly understood that the question of the establishment of the International Court of Justice at the Peace Palace exclusively concerns the United Nations and the Carnegie Foundation, and is consequently outside the jurisdiction of any other organization; the Foundation declares its readiness to accept all the responsibilities arising out of this principle."

63. In the case of the International Chamber of Commerce, however, the absence of such a truly international element in many matters (e.g. documentary credits) relating to so-called international commerce has prevented it from applying truly international law. It is more of a conflict of law situation.
64. See further H. Kelsen, The Law of the United Nations, Stevens, 1951, especially, pp. 106-108.
65. See further J.J. Lador-Laderer, International Non-Governmental Organizations and Economic Entities: A Study in Autonomous Organization and Jus Gentium, A.W. Sijthoff, 1963, p. 379.
66. J.J. Lador-Laderer, op. cit., p. 380.
67. Article 71.
68. See Also L.C.White, op. cit., p. 4.
69. According to White, although "some form of international organization has existed since early times, notably the Roman Catholic Church and the religious orders (i.e., the Franciscans, the Jesuits, the Dominicans etc.), it was not until the second half of the nineteenth century that, impelled by the forces released by the industrial revolution", the modern movement toward international organisation began to gather impetus. *ibid.*,
70. Lador-Laderer has described it as "tribunical intervention", which is an historic allusion to the function of the tribuni plebis of ancient Rome, as the representatives of the plebes in their clash with the patricians. The tribuni were inviolable for this purpose. They were vested with a right of intervention- auxilium- if, in some individual case, the just and established practice of the constitution had been broken. See further Lador-Laderer, op. cit., p. 33 et. seq.,
71. op. cit., p. 30.
72. op. cit., p. 31.
73. See Article 71 of the U.N. Charter. See also ECOSOC's Resolution 288(B)(X) of February 27, 1950. According to this resolution, the purpose of consultation is to enable the Council or one of its bodies "to secure expert information or advice from organizations having special competence" and also "to enable organizations which represent important elements of public opinion to express their views". By reference to the conditions of eligibility for registration for the purpose of consultation, the same resolution provides that "any organization which is not established by inter-governmental agreement shall be considered as a non-governmental organization for the purposes of these arrangements."

74. *infra.*, p. 795
75. See Lador-Lederer, *op. cit.*, p. 61.
76. There are certain INGOs, as for example, the International Red Cross the legislative function of which is considered significant by the international community, and indeed, its contribution to the laws of war and "humanitarian law" cannot possibly be ignored.
77. Lador-Lederer, *op. cit.*, p. 174.
As examples of such INGOs mention may be made of the Society of Friends, Ordre de Malte and Bahais
78. Lador-Lederer, *op. cit.*, p. 189.
79. On the other hand, as Lador-Lederer has very appropriately pointed out, it was through the International Red Cross that certain basic postulates of the Holy Scriptures found their way into international positive law, *op. cit.*, p. 190. It may also be appropriate to mention that such religious postulates were recognised because of their special nature, and not because of their being supported by the International Red Cross.
80. For example, World Alliance of Young Men's Christian Associations.
81. For example, the World Council of Churches. Although apparently engaged in religious matters, this Council has on many occasions, in extension of its religious ideas, involved itself in other matters, especially those relating to the right of self-determination of the colonised areas.

CONCLUSIONSSection I

The U.N. era has shown a greater concern for the control of trade and traffic in narcotic drugs than ever before, and this may be evidenced in the efforts of the World Organisation to operate both curative and preventive methods of suppression of drug abuse.¹ In addition to this, this era has witnessed more institutionalisation of the anti-narcotic programme than before. There may indeed be as many suggestions for improvement of the drug-situation as there are problems. Whatever may be the suggestions for improvement of the situation, the close co-operation of governments is essential. On the other hand, the desired result may not be achieved owing to varying standards of administrative and legal machinery. Therefore, the problems of drugs are problems of governments and they are to a certain extent allowed by governments to grow, owing to the lack of effective preventive machinery. It is from this point of view that the drug problems are considered as "domestic-international" and "international-domestic" problems.² Indeed, national control is complementary to the international control system, and again, the international control system should not prove impossible to be followed by national governments, hence the need

for an appropriate and acceptable standard of national administration.³ The efforts of the INTERPOL and the U.N. have been directed towards this end.⁴ The success of these efforts depends to a considerable extent not only upon the priority they are willing to give to the problems relating to drugs, but also upon the co-operation the nations are willing to extend. The question of priority is again connected with that of economic life, i.e., in certain countries production and/or manufacture of drugs or narcotic substances used for manufacturing drugs is a source of income and employment so that the problem of replacing that source of income and employment poses a second hurdle. Although the efforts made by the U.N. to overcome these difficulties have met with considerable success,⁵ drug-taking being a part of social life and culture in certain countries, a complete solution of this problem may prove to be unattainable. To this must be added the attitudes of nations towards sovereignty, i.e., states are still reluctant to entrust this task to international control organs, to the desired extent. Drugs have, it may be observed, many attractions. While the economically poorer countries have resort to drugs, very often as a part of their social culture, and perhaps produce and manufacture them on economic grounds, the economically richer countries have become breeding-

grounds for the illicit traffickers in drugs not as a matter of necessity, but more as a symptom of luxury and because of social and psychological inadequacies. Therefore, the problems of drugs is of international concern for two opposite reasons, although in both cases, a complete eradication of the evil is essential. However, the following observations may be made in so far as the programme of suppression of the illicit trade and traffic in drugs is concerned.

Despite an admitted international concern about the drug-problem, the "licit" trade in drugs for medical and scientific reasons cannot be stopped, until and unless, all nations have attained self-sufficiency in so far as the supply of essential drugs is concerned. This is, indeed, a remote prospect and therefore the "licit" trade in drugs will persist at least for years to come and give rise to certain problems in varying degrees, depending upon the co-operation extended by various nations. Therefore, the efforts of the international bodies and of the national governments at least for the time being may only be directed towards the suppression of this evil "as far as possible."

Again, admitting that it is a problem of international

concern, and that it may be solved primarily by international means, acceptance of those means by nations will be necessary; in other words, generally speaking, nations should become parties to the international conventions on drugs without any reservations. Unfortunately, the response of the nations in this regard is not entirely satisfactory. International law does not make it obligatory for states to become parties to a convention, let alone members of an international organisation, but it is essential that the members of the international community behave responsibly. In the event of any improvement or achievement, all the states of the international community become beneficiaries, and hence, following the basic principles of "obligation" all nations should co-operate in the efforts of the world organisations, otherwise, they will enjoy their rights only, without performing their duties. Therefore, the proposition that obligation arises only for those who are members of the world organisation or parties to an international convention, becomes merely academic.⁶ From the point of view of administration, it may be observed that, although the programmes in the Single Convention to improve the administrative machinery of drug-control, are not entirely novel, their efforts to unify the system can only be successful if governments co-operate. In view of the universal

character of the administrative machinery, the effects of non-co-operation of the non-parties to the Single Convention becomes minimal. To express it fully, since in terms of the Single Convention all importers and exporters whether or not parties to it, are required to observe the estimates and statistical report systems, the non-parties will, ipso facto, be affected by its provisions, and therefore, pragmatically speaking, the maxim of treaty law, res inter alios acta may not be operative in this context.

As "profit" is the primary motive behind all business ventures, and as the problems of drugs are of admitted international concern, it may be advisable to place production and/or manufacture of drugs and addiction-producing substances under the absolute control of states. Non-adherence to this practice should disqualify a state from importing and exporting drugs and/or addiction-producing substances, whether or not a party to the international drug convention.

As regards the preventive aspects of the drug problem, not only should the curricula at schools provide for "drug education", but such education should also be made available to those who are not at schools. Given their ill effects, drugs should no longer be associated with social culture, and it is only by education that a change can be brought about in the present

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attitudes and practices of nations.⁷

Drug-offences, including drug-trafficking, should be considered as "international crimes", and drug-traffickers should be looked upon as international criminals. In view of the gradual rise in drug-offences and also in view of the very gloomy prospects for a multinational treaty on extradition,⁸ it seems appropriate that nations should conclude bi-lateral treaties on the extradition of drug-offenders, or in the event of existing bi-lateral treaties concerning extradition of criminals, drug-offenders should also be included in them.

The problems of drugs involve two kinds of offenders, namely, drug traffickers and drug-addicts. While the former cause crime, the latter fall victims of it. While the former deserve punishment for deterrence, the latter, punishment treatment and rehabilitation. The programme of suppression of the illicit traffic in drugs should therefore aim, inter alia, at two things: (a) a punitive policy which will aim at the prevention of drug offences and (b) a curative policy, although such a policy may be both preventive-curative and curative-preventive.

The constituent members of the present-day international community are still guarding their sovereignty jealously, and in this situation the prospects of creating an international agency with complete authority become hopeless.⁹ Yet, practically speaking, the international narcotics control system is being

administered by and through two international bodies, viz. the Commission on Narcotic Drugs and the International Narcotics Control Board. While the former is a political body (its members being government representatives) the latter is a technical body. While the former is a policy-making body, the latter assists in the implementation of the policies made by the former. It is therefore imperative that the members of the Commission do not frustrate the objectives of the Single Convention by formulating policies designed only to further their own interests. As this possibility cannot be ruled out, it may be appropriate to suggest that decisions in the Commission should be made by a substantive majority vote expressed in a joint report. The representatives of the countries may be given the right to express their collective views in a matter under discussion by the Commission. Both the majority and minority opinions should be noted.

SECTION II. Reflections on the Problem of
and International Legal Order
with reference to Drug Abuse

The U.N. era may be expected to be a comparatively sophisticated era in that it has had the benefit of the experience of the past, and indeed, constant efforts are being made to improve the conditions for law and order. The struggle to find a rational basis of law is, however, a continuous process. This struggle tends to become more problematic because of the varying concepts of justice, and because of such related dimensions as the political, economic and social. Indeed, a concentration of power in any of these areas is disruptive, and distances the prospect of creating a climate of law and order, let alone an international legal order. Moreover, the task of a legal order is not only to find and establish the conditions of law and order, but also to influence other related areas of life, social, economic, political etc. Although demands for a legal order are made, especially by people and institutions motivated by humanitarian ideals, such demands are obstructed by certain people and institutions apprehensive of their security. Indeed, the unequal distribution of economic power causes a great disruption of bargaining power, especially when the weaker nations need economic and political support.¹⁰

Although the U.N. era has been characterised by reformative ideas, e.g. the right of self-determination, creation of a humanitarian law etc., yet the international community does not seem to be

adequately prepared to respond to these ideas. Consequently, the conditions for the required "social awareness", on which will rest the law, seem unlikely to emerge. Many international lawyers have speculated on the prospects of an international order in these areas of international law. Each of such lawyers has advanced his own reasoning for his thesis, and their conclusions may broadly be categorised as follows:

- A. that there is no prospect for establishing an international order;
- B. that with the fulfilment of certain conditions, an international order may emerge; and
- C. that, of late, an international legal order is emerging.

The validity of these three views will be examined with reference to the drug situation. It is appropriate to give a brief account of the above views so that further reflections on an international legal order in connection with the drug situation may be made.

The starting point for the jurists upholding the first view is that unless the international community is characterised by certain so-called established criteria of a legal order, the existence of such an order is out of the question, and therefore, they also assert that the existing state of the international community cannot be promoted to the desired standard. A "legal order", generally speaking, pre-supposes a system of norms, prescriptive in nature, regulating human conduct by certain rules of law, and even

by legal sanctions, if necessary. There is no dispute among the classical and modern lawyers over the definition of a "legal order"; lawyers belonging to either group accept the following attributes of a legal order, namely, (a) a system of norms; (b) the prescriptive nature of these norms; and (c) obedience to those norms, enforced, if necessary. It has often been the tendency of lawyers to justify the existence of a "legal order" by referring to the third criterion. Conversely, they have failed to examine whether the norms of the existing system are "real" or "assumed", the latter, not subscribed to by many members of a society; and whether the "prescriptive" nature of the norms has been confirmed by an application of the third criterion. In other words, a system of norms was defined by the lawyers upholding the traditional view, in the abstract and for abstract purposes, being motivated by the idea that the laws "ought" to be designed for no other ultimate end but the benefit of the people. Not only did the term "ought" receive a conservative interpretation, but also the "assumed benefit of the people" was usually defined by a few, who assumed the role of moral guardians of a society.¹¹ In such a situation the sense of obligation, opinio juris sive necessitatis is absent. Similarly, if the wishes of the minority are imposed upon the majority of states of the international community, the validity of the rules of law, representing the wishes of the minority, is often questioned or accepted with dissatisfaction, and hence the stability of the legal order applying those rules becomes uncertain. Unfortunately, such a tendency has dominated the international community until recent years.¹²

Regarding the second view, in their instructive work "Law and Minimum Public Order", McDougal and Feliciano appropriately mentioned that " the establishment of a society generally administering a law adequately expressing the deepest aspirations of the world's peoples for freedom, security and abundance- the establishment, in other words, of a world public order of human dignity- is truly a problem of the most heroic proportions." ¹³ The McDougal school of thought does not disregard the basic realities that pose obstacles to the establishment of a world public order, and indeed, it is pointed out that " one indispensable prerequisite to the achievement of such a world public order is the securing of minimum order, understood as freedom from expectations of severe deprivations by unauthorized coercion and violence." ¹⁴ Given the state of the contemporary international community, which is characterised by violence, ¹⁵ coercion-permissible and non-permissible, ¹⁶ destruction of values, ¹⁷ unilateral claims upon international economic resources ¹⁸ etc., the eminent international lawyers in the post-World War II period have busied themselves in examining the role of law in the light of the overall setting of international politics. Of them, mention should be made of M. McDougal, C.W.Jenks, W. Friedmann, R. Higgins, O. Schachter, E. Stein . As Falk has pointed out, these scholars "give attention to the definition of realistic goals for international law in the light of the decentralised character of international society. There is almost a consensus present among contemporary international lawyers that such an intellectual orientation is essential to the fruitful study of international

law." ¹⁹ Falk also reminds us that the "result of this orientation is to bring the study of international law into ever closer association with the outlook, method and concerns of the social scientist." ²⁰ Unless such an intellectual orientation is established in this area of international law, the prospects of establishing any international legal order are remote. The lawyers who have shown disbelief in the possibility of any international legal order, viz. Kelsen and Schwarzenberger support their views by referring to the behaviour of nations in various areas of international life, and by a preoccupation with the concept of "ought" in law. They therefore consider the question of establishing international order in a cynical way. Indeed, Schwarzenberger, referring to the abortive attempts made by the international community, both during the League and the U.N. era, to bring about a profound change in the quasi-international order and the establishment of an organised world society under expanding world law, observed that "there is no need to recount why, both in the League of Nations and the United Nations, these aspirations remained unfulfilled day dreams. Similarly, it is unnecessary to do more than recall the devices enabling all or at least the key members of the League of Nations and the United Nations to reduce, at will, these constitutional frameworks to mere systems of power politics in disguise." ²¹

The third view not only rejects the traditional concept of international legal order, but also on re-defining the ingredients of an international legal order, identifies the emergence of such an order in certain areas.

The principal constituent element of a "legal order" are the obedience of a given community to law, and hence to the law-maker; and the enforceability of law by the law-maker. If obedience to law becomes spontaneous so that enforceability can be attained by non-coercive measures on the part of the law-maker, the legal order that will consequently be established may be described as a "spontaneous legal order". Where obedience to law is not spontaneous, it can only command a "compulsory obedience". Such obedience may be described as "non-spontaneous and/or coercive" and hence the legal order that it will produce may only be a "non-spontaneous" or "coercive" legal order. Such an order presumes the Austinian thesis that law is, by its very nature, a coercive order. In other words, this thesis disregards the role of obligation and sense of responsibility on the part of the community, whether national or international. This thesis also disregards the fact that the law-giver makes the law-maker. In the absence of such a process (i.e., law-giving and law-making) all regimes become fascist and autocratic, and eventually the other inevitable consequences ensue. In the name of universal rules, particular rules of behaviour are enforced by the dominant on the weak, self interest in the name of universal interest is fulfilled, and an artificial order is maintained, even by coercive methods. Law and order in such a situation promotes the principle of self-help. Conversely, if the international community is not characterised by these standards of behaviour on the part of a few, then we can think of an international legal order.

The critics of international legal order, namely, Schwarzenberger and Kelsen, have based their theses of "no order" or at the most, quasi-legal order, on an assumed "ideal legal order". While the former attempts to justify his thesis of jus cogens by referring to the seven fundamental principles of international customary law (viz. sovereignty, consent, recognition, good faith, international responsibility, self-defence and freedom of the seas), the latter not only views "sanctions" as a component of a legal order, but also advocates a theory of law which repudiates the sociological approach to law.²² These views also suffer from a lack of inquiry into the incidence of transformation of norms, validity of the customary practice, role of participation of the members of the international community in the formation of an international norm, and so on. A justifiable legal order pre-supposes a spontaneous sense of obligation on the part of the members of a given community, and recognition of their rights and duties is the condition of such a "sense". This is the crux of the problem of an international legal order.

The U.N. era, especially the period up to the 1960's, has been characterised by a distrust of the old practice of the international community in almost all spheres of international life. The newly independent states question the validity of the so-called international law, alleging the absence of its truly international character. On the other hand, distrust in this law was largely caused by its inadequacy to meet the challenges of the present-day international community. The formative years of the U.N. were also characterised by "politicization" of its aims, and indeed, in such a situation, the

question of establishing an international legal order in its true sense becomes irrelevant.

In so far as the drug conventions are concerned, their acceptance and ratification have been characterised by politicization in that certain of the producing and manufacturing countries ratified the drug instruments (conventions and protocols) with reservations.²³ Worse still, in certain cases such instruments have also been denounced,²⁴ and indeed the Single Convention has also, in Article 46, made provisions for denunciations. Psychologically speaking, two factors might have contributed to such behaviour: (a) that the poorer nations finding themselves in a stronger position, in so far as production and manufacture of drugs are concerned, either followed the pattern of behaviour of the powerful nations as an act of retaliation, or genuinely became non-conformists for economic reasons, and (b) that in so far as the powerful nations were concerned, such a pattern of behaviour was more often than not the case. Consequently, in a world characterised by a climate of retaliation and counter-retaliation, the emergence of an international legal order was out of the question. Hence, from a legal point of view, there existed a violent international society.²⁵ Violence in this context does not necessarily imply an application of physical force; a denial of the rights of the people whether to agree or to protest (especially during the politicization of matters), non-recognition and hence denial of the right of participation, may also amount to violence. The new subjects of international law did not however question the law-making process as such, e.g. treaties etc; they only questioned the validity

of the system which sets this process in motion, i.e., the process of creating customary international law by means of treaties which are not truly international in character,^{25(a)} and consequently, the theories of acquiescence and consent²⁶ or absence of protest²⁷ which are thought to be declaratory of law by estoppel²⁸ have also been questioned.

On the other hand, Schwarzenberger, in discussing the role of treaties as a primary element of the law-creating process referred to "international treaty law and that part of international customary law which has its origin in treaties...",²⁹ and he also pointed out that when "new States or outsiders co-opted as members of the legal system by way of recognition-first, by the Holy See and subsequently, by the existing subjects of international law- the new comers were treated as having consented to be bound by these assumed rules, and these gradually hardened into rules of international customary law."³⁰ The controversy concerning the formation of customary international law in a given area is never-ending. Baxter could not subscribe to the traditional view concerning the formation of customary international law.^{30(a)} Falk in commenting on the thesis of D'Amato on "The Concept of Custom in International Law" referred to another dimension of the problem when he stated that in a world of "hostile and diverse national governments the prospects for explicit agreement are exceedingly limited. At the same time, the rapidity of technological change build pressures against the fundamental ordering of ideas embodied in the Westphalian conception of international order... Third party decision makers, for instance, courts, are influenced by many factors in determining whether or not

to validate a claim that an action constitutes a customary norm of international law." ³¹

Yet, on reflection, it seems appropriate to state that the essence of an economic order, albeit in a rudimentary form, may be found in those areas where economic realities have been the main issue, such as the grant of the right of navigation and commerce, the right of innocent passage, health and sanitation matters and international postal administration. The reciprocity and order which have been established in these areas were motivated, not by fear of sanctions, but by a sense of common obligation on the part of the members of the international community do not question the validity of such customary practice, and their emergence has not disturbed the traditional concept of prescriptive and dispositive rights, where appropriate.

In more recent time, because of an imperative situation created by monopoly in the production of certain commodities, e.g. coffee, wheat, sugar and coca, internationally acceptable pricing-formulas have been devised.³² The existence of an economic order has been explicit in these areas of international law, and the problems of ratification have not paralysed its development. Indeed, the willingness of the nations of the international community to be bound by their obligations, has been the primary characteristic of their behaviour. The General Agreement on Tariffs and Trade which has become operative despite non-ratification by any nation, testifies to this.

The Single Convention on Narcotic Drugs was brought into force with reasonable speed, and despite certain loopholes in the Convention, the non-parties are, willy nilly, subject to the effects of the

Convention, especially in view of the estimates and statistical returns system. On the other hand, there are certain areas, viz. law of the sea, human rights, laws of war, where the prospect of any international legal order appears to be remote. These are politically-charged areas, although economic factors are involved. It is either the absence of any imperative situation in these areas, i.e., the absence of an imperative economic factor, e.g. in the area of human rights and laws of war, or the presence of a pressing economic necessity on the part of certain nations only, as in the area of the law of the sea, that has contributed to the present disorder in these areas of international law. Disorder is prevalent in these areas of international law because of the existence of sharp conflicts between nations as to customs, treaty-obligations and hence the applicability of existing norms. At this point it is opportune to make the following observations:

(a) In discussing the state of international legal order the concept of order may prove to be irrelevant, and the prospect of establishing a new order should not be ruled out. A legal order passes through a test of conflicts and counter-conflicts over norms within a society. Consequently, only a quasi-order, or no order, can be established during such a period of conflict, although the struggle for legal order is continuous because "rules of jus cogens are necessary for the viability of the legal system and for its protection from subversive

arrangements."³³ An organised society is one of the bases of jus cogens, and it is believed that multilateral treaties giving rise to peremptory norms are its vehicles. Therefore, in international law the existence of jus cogens pre-supposes two things: (a) an organised society; and (b) a number of multilateral treaties giving rise to peremptory norms in various areas of international life. Of these two pre-conditions of international jus cogens, an examination of the second will bring out the first.

One of the basic traits of a multinational treaty is that it is declaratory of the intention of the parties concerning a certain matter. By such a treaty a peremptory norm cannot be created instantly,³⁴ especially if the principle of ratification is strictly adhered to. Conversely, if the intention of the parties to a multilateral treaty is the main criterion as to their recognition of their obligations, then their signatures should be treated as adequate for this purpose,³⁵ yet the problem may still arise that the mere conclusion of a multilateral treaty does not of itself create a peremptory norm until it has been brought into force by a considerable number of states, and its provisions been practised for a reasonable period of time. In other words, a "test period" is necessary for a treaty to create a peremptory norm. Such is the case

with the Genocide Convention, which has failed to create a peremptory norm, even though it has been brought into force by nations.

That multilateral treaties do not of themselves create peremptory norms may also be established by pointing out that such treaties are not necessarily declaratory of undisputed customs. In connection with the Continental Shelf Convention of 1958, Fawcett very appropriately observed that the "Continental Shelf Convention operates in a relatively new field, and it is perhaps not surprising that the limits of the Continental Shelf prescribed in 1958 are already in need of greater precision in face of technological advances and the possibilities of using the deep sea-bed, abyss or ocean floor, and obtaining their resources..."³⁶

The creation of a peremptory norm by a multi-lateral treaty can be confirmed only through the implementation of its provisions by states over a reasonable period of time.³⁷ States, in this context, should especially include the powerful states and, in respect of a multi-lateral treaty of a limited scope, those members of the international community that hold key positions in respect of the subject matter concerned, i.e. holding an advantageous or disadvantageous position in respect of a specific matter.

In so far as the drug-conventions prior to the Single Convention are concerned, it has been established that not only did those conventions omit certain vital aspects of control of trade and traffic in various drugs and narcotic substances, but also that many of the large producing and manufacturing countries either abstained or failed to become parties to those conventions. The Single Convention is, however, a departure from the previous drug conventions. Not only is the scope of this convention much wider than that of the previous drug-conventions, but also almost all the drug-producing and manufacturing countries have become parties to it.³⁸ Even the non-parties are, generally, complying with the provisions of this treaty.³⁹ Also, as stated before, as a result of the estimates and statistical returns systems, the non-parties are also, willy nilly, affected by the regime of this convention.⁴⁰ In so far as this convention is concerned, it is not the Parties who are mostly derogating from its provisions, but only certain groups or individuals who indulge in illicit trafficking in drugs. It is believed that more comprehensive preventive measures and co-operation on the part of the Parties to this convention will certainly make its regime more effective. It is also believed that, with certain modifications, which have been pointed out in various parts of this thesis, and with certain changes in the attitudes of nations towards

sovereignty, international co-operation and of course, the drug-habit, the Single Convention may give rise in due course to a peremptory norm.

Since the members of the international community failed to set an acceptable standard of behaviour, in so far as the drug-conventions prior to the Single Convention are concerned, it may be observed that the international community, at least in respect of this area of international law, was not organised. The stability of a legal order largely depends upon the genuineness of the foundation upon which it is based. The drug-conventions concluded prior to the Single Convention failed to lay a strong and genuine foundation for a legal order in this area of international law.

(b) A coercive order is no order. A legal order pre-supposes the participation of the subjects under a legal regime, and such participation should be spontaneous, arising from a sense of obligation and duty.⁴¹ In determining the basic principles of minimum order, McDougal appropriately said that "force and intense coercion are not to be used for the expansion of values".⁴²

In discussing the role of norms in international politics, Kaplan and Katzenbach said that "commitment to principle is not an advantage if it is engaged in mechanically. A nation ought to commit itself only to principles with which it can live-

and with which others can also live. Principles that do not give promise of a durable and acceptable international order are likely to stir rigid opposition rather than acceptance. Moreover, principles cannot be asserted merely as a bluff, for the bluff may be called."⁴³ The tendency to personalise the society is an expression of power. Any such attempt pre-disposes to conflicts and counter-conflicts, and any order, if established, out of this effort, will not only be transitory but also coercive. The folly of power-seeking, which destroys the prospect of any stable international legal order, owing to psychological demoralisation, was also pointed out by de Visscher when he said "it is vain to expect a regeneration of the international order from mere technical arrangement of relations between political entities which themselves strive for constant extension of their power. Regeneration depends upon psychological factors, and these are necessarily human. The crisis of the spirit and structure of contemporary society; it can be resolved only in respect for human values".⁴⁴

In so far as the drug-conventions are concerned, "respect for human values" was practically absent, especially in the early part of the twentieth century. People had been made drug-addicts, through the maintenance of an unrestricted supply of drugs with a view to making a source of income more secure. Absence of concern for human values was also evident during

the League period in so far as this trade was concerned. This may be shown in the behaviour of national governments in their reluctance to subscribe to the regime of the various drug-conventions which had been concluded during this period.

The national governments retained their rights to denounce the conventions,⁴⁵ and no attempt was made at government level to impart drug-education to people. The larger drug-producing and manufacturing nations jealously guarded their monopolies, and thus contributed to the psychological warfare, which encouraged the non-adherence of the smaller nations. Smaller and greater nations alike made no genuine effort to strengthen their national laws and administrative machinery with a view to controlling production and manufacture of and illicit trade in drugs.⁴⁶

Despite its defects, the Single Convention is an improvement upon the previous drug conventions. The U.N. has produced concrete programmes of assistance to nations in their efforts to eradicate drug abuse. In 1971 it established a fund called the U.N. Fund for Drug Abuse Control (UNFFAC).⁴⁷ It has also taken more concrete steps for crop replacement and community development,⁴⁸ and established a Central Training Unit for Law Enforcement Officers,⁴⁹ the main functions of which are the following:

- (a) to deal with problems created by drug addiction and drug abuse, including illicit trafficking;
- (b) to formulate international and national policies concerning various aspects of drug abuse; and
- (c) to investigate techniques for use by law enforcement officers.

It has also established various projects⁵⁰ and institutions⁵¹ to cater for the needs of the affected areas.⁵² The U.N. programmes which have found expression through the Single Convention, certainly evidence the concern of the United Nations for human values.

(c) A legal order, short of a teleological approach, will only be a pseudo-order. In fact, a concomitant relationship is to be maintained between teleology and law, i.e., the functional approach towards law.⁵³ In discussing the importance of social and political factors in the development of positive international law, de Visscher stated that if, "it is true that the fact precedes the qualification as law, the latter remains alone decisive and the mere uniformity or external regularity of certain attitudes never justifies a conclusion of normativity. This is where the teleological orientation of law, without rejecting the observation of facts, is specifically distinguished from such observation by the

selection of the social data to be used for its own ends. No custom is established until the moment when human thought comes to regard a way of social behaviour as an element of order important enough to be observed henceforth as legally binding. The inductive reasoning that establishes the existence of custom is 'tied' reasoning: the matter is one not only of counting the observed regularities, but of weighing them of evaluating them in terms of social ends considered desirable".⁵⁴ This functional approach to law is supposedly a non-political, pragmatic and service-orientated approach to international co-operation. It assumes that co-operation among various states is more likely to be achieved in non-political areas. "It is essentially an assertion and defense of the contention that an ever-increasing inter-dependence among states in economic, social and technical areas will eventually resolve political conflicts and eliminate war".⁵⁵ The exponents of this approach, namely David Mitrany, E. Haas, Percy Corbett, W. Friedmann, C. Wilfred Jenks and Julius Stone believe that not only might the domain of international law be extended, but also its effectiveness might be improved, if the development and study of law were closely correlated with the satisfaction of certain socio-economic needs or the attainment of non-political (e.g. non-controversial) goals in the international systems.⁵⁶ Indeed at various points, scientific, economic,

psychological, sociological and anthropological considerations impinge upon international law. Unfortunately, the creation of an international legal order has mostly been viewed as a matter of law only, and indeed, as Gould and Barkum rightly observed, "the social sciences, with some exceptions, have not been greatly interested in normative considerations".⁵⁷ It is important that a legal system bears a "direct relationship to the behaviour it wishes to regulate", and it is out of this that a co-relationship between "positive law" and "living law" may emerge.⁵⁸

The recommendations of the E.C.O.S.O.C. of the United Nations have, in effect, no legally binding force. Therefore, the U.N. in so far as its economic and social spheres of action are concerned, ruled out the possibility of any coercive order. The institutions entrusted with the task of implementing the control regime of the Single Convention on Narcotic drugs cannot, in effect, establish a coercive order by invoking the sanction provisions of the Convention.⁵⁹ A satisfactory execution of the provisions of the Convention may be secured only through a spontaneous co-operation of nations, and the co-operation extended by nations has so far been generally satisfactory. The efforts of the U.N. authorities, at least since the coming into force of the Single Convention,

have been mainly directed to the social, psychological and related aspects of the drug-problem. In order to further this aspect of its activities, the institutions concerned with the drug-problem maintain a close liaison with other relevant bodies, viz.

- (a) United Nations Conference on Trade and Development (UNCTAD);
- (b) United Nations Industrial Development Organisation (UNIDO);
- (c) United Nations Development Programme (UNDP);
- (d) World War Programme (WFP);
- (e) United Nations Children's Fund (UNICEF);
- (f) United Nations Capital Development Fund (UNCADF);
- (g) United Nations Institute for Training and Research (UNITAR);
- (h) Regional Economic Commissions;
- (i) United Nations Educational, Scientific and Cultural Organisations (UNESCO);
- (j) International Labour Organisation (ILO);
- (k) Food and Agriculture Organisation (FAO);
- (l) World Health Organisation (WHO);
- (m) International Criminal Police Organisation (INTERPOL).⁶⁰

(d) Although in the politically-charged areas of international law, the emergence of a legal order appears to be a remote possibility, an international economic order is emerging.⁶¹ Hence the conclusion that the more the economic factors and necessities become the guiding factors and create compelling situations, the better are the prospects of establishing an order.⁶² An order should be achieved by instalments.

The achievements of the international society in the systematic pricing arrangements for certain commodities, viz. coffee, tea, sugar and cocoa should not be ignored.⁶³ On the other hand, the lack of foresight on the part of certain nations, as regards regulating the oil-market has indeed caused a chaotic situation. It is to be borne in mind that the emergence of an acceptable pricing formula for oil is not an impossibility; the oil-producing countries are using oil to ensure certain future benefits. Nevertheless, their efforts to come to a compromise should not/underestimated. The oil-situation has, however, confirmed the fact that in the event of a limited reserve of natural resources, a situation conducive to compromise emerges, and that economic factors predominantly shape the political balance of power. The two important areas where the emergence of an economic order is noticeable are the regimes of the

International Monetary Fund and the General Agreement on Tariffs and Trade. Observance of the regulations, rather than non-observance, is the practice of nations. According to Friedmann, such co-operative understanding creates pressure to comply with legal obligations also.⁶⁴ The disturbance, if any, in these areas of international law, is caused, not by behaviour of nations, but mostly by unforeseen economic situations for which the regimes were not prepared.

In so far as the narcotic drug situation is concerned, it may be said that the estimates and statistical returns systems, coupled with various other programmes launched towards the suppression of drug abuse, demonstrates a tendency towards an economic order. Any disturbance in this system is generally caused by individuals and not by states. The growing number of ratifications of the drug-treaties and the increased participation of countries, indicate an encouraging improvement in this area of international law.

(e) The creation of an acceptable international legal norm demands that there exist a close relationship between public and private law. Friedmann very hopefully observed that it is clear that "the new fields of international law are developing

from a far-reaching interpenetration between public and private law. The form and authority of the new international norms, whether agreed on the United Nations level or the more restricted level of regional communities, is the concern of public international law."⁶⁵ According to Schermers, "rules contained in the legal order of an international organisation may conflict with the rules of other legal orders. In order to resolve such conflicts a hierarchy of legal orders is required, a system by which legal order would have priority over the legal orders of its component pacts. National laws should yield to binding international rules."⁶⁶ Schermers, in order to justify his argument, cited as an example, the International Sanitary Regulations of the World Health Organisation, which superseded several treaties concluded earlier by governments for precisely the same purpose.⁶⁷ This certainly implies a re-thinking of the existing attitudes of nations towards sovereignty. Friedmann regretfully observed that the "degree of submission by the 'over mighty subjects' to an international sovereign is still in a rudimentary phase. But the international society is very far from primitive, with respect to the means of communication and articulation. It does not have to rely on the slow growth of custom. New norms and principles can develop very quickly as a result of continuous communication, discussion and organisation."⁶⁸

It is through such communication and discussion among various members of the international society that certain common grounds may be found, and the experiences gained on those grounds gradually extended to other areas of international life. Jenks, in his discussions on the need for a comparable readjustment of perspective by international lawyers, mentioned that the task with which law confronts us in the field of international law has two aspects: "One element in that task is to achieve an intellectual revolution ... which will give us a legal system with sufficiently broad and deep foundations to command the allegiance of a world community with a fundamentally changed composition and distribution of influence. A second and equally important element in that task is to achieve this result by a sufficiently evolutionary process to avoid impairing the authority of well-established law in a degree which would prejudice for an indefinite period the possibility of establishing an effective body of international law on a world wide basis. Only a multi-cultural and multi-legal system approach will enable us to master this twofold task."⁶⁹

Another two important elements in the emergence of an international legal order is the promotion of a belief in the efficacy of international law, and the application of its rules even to the domestic sphere, wherever possible.

In regard to the control of drugs, it is apposite to mention that the Estimates and Statistical Returns systems testify to the belief of a considerable number of states (Parties to both the Single Convention and the 1972 Protocol) in international law, which has also been confirmed by their attempts to implement various provisions of the aforesaid instruments through their domestic laws. In other words, success in suppressing drug-abuse involves both aspects of international responsibility, namely, international-domestic and domestic-international . The intention of the Parties to the Single Convention and the 1972 Protocol to co-operate with the various organs concerned, of the U.N. and the INTERPOL, in connection with drug matters should be recognised although a higher standard of co-operation and a sense of international responsibility might be expected of them.

It is encouraging that the number of parties to the aforesaid instruments is increasing.⁷⁰ Legally speaking, non-parties to either of these instruments do not come under its regime, yet the effects of the Estimates and Statistical Returns systems upon them make them conform to certain of the requirements of these instruments. On the other hand, success in suppressing drug-abuse depends upon a multitude of factors, e.g. education, social values, preparedness of societies to change their traditional life-style, if necessary etc. In less politically charged spheres, like the present one, international law can offer satisfactory remedies. Falk rightly observed that the " inability of international law to guarantee

an altogether peaceful world does not imply its inability to promote a more peaceful world, or to deal adequately with the many aspects of international life having nothing directly to do with war and peace." 71

1. For a good survey of the system of international drug-control, see H.L. May, "Narcotic Drug Control", 485 International Conciliation, 1952, pp. 491-536.
2. See further B.A. Renborg, International Drug Control, Carnegie Endowment for International Peace, Washington,, 1947; see also by the same author, "International Control of Narcotics", 22 Law and Contemporary Problems, 1957, p. 86.
3. See also H.L. May, "Narcotic: Drug Control: Development of International Action and the Establishment of Supervision under the United Nations", 441 International Conciliation, 1948, pp. 301-380, at p. 358.
4. See further F.W. Swacker, "Control of Narcotic Drugs and United Nations Technical Assistance", 46 ABAJ, p. 182; see also "International Control of Narcotic Drugs", 39-41, United Nations, New York, 1965.
5. See further J.W. Samuels, "International Control of Narcotic Drugs and International Economic Law", VII Canadian Yearbook of International Law, 1969, pp. 192-224, at p. 193; R.W. Gregg, "The United Nations and the Opium Problem", 13 International and Comparative Law Quarterly, p. 96; R.W. Gregg, "Politics of International Drug Control", 49 ABAJ, 1963, p. 176; N. Ansley, "International Efforts to Control Narcotics", 50 Journal of Criminal Law, p. 105, and R.W. Gregg, "Single Convention for Narcotic Drugs", 16 Food, Drug and Cosmetic Law Journal, p. 187.
6. For a very instructive discussion on the obligations of non-members of the United Nations, see H. Kelsen, The Law of the United Nations: A Critical Analysis of its Fundamental Problems, Stevens, London, 1951, pp. 106-108; see also Goodrich, Hambro and Simmons, Charter of the United Nations: Commentary and Documents, (3rd edition), Columbia University Press, 1969, p. 59.
7. *supra.*, p. 15, p. 17 and pp. 498-501.
8. *supra.*, pp. 333-337 and pp. 746-748.
9. See further I.G. Waddell, "International Narcotics Control", 64/1, American Journal of International Law, 1970, pp. 310-323, at p. 321.
10. See further R. Pound, "The Task of the Law in the Atomic Age", in Law, State and International Legal Order: Essays in Honour of Hans Kelsen, Engel & Metall (ed) University of Tennessee Press, Knoxville, 1964, pp. 233-246, at p. 245.

11. Indeed, what Roscoe Pound said in respect of the formative era of the American law, is equally true in respect of modern day international law. In his opinion, in the era of "adventurous individual free self-assertion, from the end of the sixteenth to the nineteenth century ... the problem of the legal order was to make sure the maximum of free individual self-assertion, subject only to the limitations compatible with the same maximum of free individual self-assertion by all other individuals. These limitations were taken to be ascertainable and provable by reason or to discover themselves in experience. So long as there was abundant room in the world and new domains for free self-assertion opened continually, there was no consciousness of a serious problem for the jurist ... But there is an end of all things mortal; and the days of ample room, adventurous exploration and exploitation seem past."
R. Pound, *op. cit.*, p. 234.
12. Falk rightly observed that the "international lawyers of the period after World War I, dominated by approaches associated with legal positivism or natural law, achieved a different sort of policy irrelevance from the policy justification of recent years. These earlier international lawyers detached law from the political context of world affairs and made very rigid analyses of the regulation of state conduct by invoking supposedly fixed and unambiguous rules of restraint. They relied for a new system of world order upon agreed rules but they failed to develop an adequate appreciation of the social and political difficulties of making these rules into effective behavioural norms."
R.A. Falk, The Status of Law in International Society, Princeton, 1970, p. 448; see also W.C. Schiffer, The Legal Community of Mankind, New York, 1954, and Charles de Visscher, Theory and Reality in Public International Law, (P.E. Corbett, translated), Princeton, 1968.
13. M.S. McDougal and F.P. Feliciano, Law and Minimum World Public Order: The Legal Regulation of International Coercion, Yale University Press, 1961, p. 261.
14. *ibid.*,
15. See generally R.A. Falk, *op. cit.*, and International Law and the Civil War, ed. by the same author, published under the auspices of the American Society of International Law, John Hopkins Press, Baltimore, 1971; see also by the same author, Legal Order in a Violent World, Princeton University Press, 1968.
16. See further McDougal and Feliciano, *op. cit.*, especially chapters 2 and 3.

17. ibid., chapter I; see also Stein and Shand, Legal Values in Western Society, Edinburgh University Press, 1974.
18. See further R.A. Falk, The Status of Law in International Society, op. cit., pp. 242-264.
For a study of the various approaches to the Law of the Sea: Western Hemisphere Perspectives, see R. Zacklin (Ed.) The Changing Law of the Sea, published under the auspices of the Carnegie Endowment for International Peace, A.W. Sijthoff, Leiden, 1974; see also J. Andrassy, International Law and the Resources of the Sea, Columbia University Press, New York, 1970.
19. R.A. Falk, The Status of Law in the International Society, op. cit., p. 449.
20. ibid.,
21. G. Schwarzenberger, International Law and Order, Stevens, 1971, p. 19.
22. See further "The Theory of Pure Law in Historical Perspective" in the Essays in Honour of Hans Kelsen, S. Engel (Ed.), University of Tennessee Press, 1964, p. 30; see also H. Kelsen, "The Pure Theory of Law and Analytical Jurisprudence", LV Harvard Law Review (No.1), 1941, pp. 44-70.
23. See further G. Schwarzenberger, Economic World Order? Manchester University Press, 1970, pp. 132-134.
24. e.g. the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 1936 was denounced by the Netherlands.
25. See further R.A. Falk, Legal Order in a Violent World, op. cit.,
- 25(a). The term "international treaty" should not be synonymously used with the term "universal treaty", and the pattern of accepting a so-called "international" treaty by states should be carefully considered. Whether or not a treaty will be internationally accepted depends very much upon the following factors: (a) the subject-matter of the treaty itself, and (b) the degree to which the interests, political and/or economic, of nations will be affected by acceptance of a given treaty. In regard to the Genocide Convention of 1948 and the Supplementary Slavery Convention of 1956, for example, despite the fact that both treaties embody humanitarian and moral concepts that are universally recognised and both declare that breach of any obligations under these treaties will be punishable by the national law, the pattern of acceptance of them by the old and new states is remarkably striking. 30 per cent and 28 per cent of the new states became parties to the Genocide and Slavery Convention respectively, whereas 77 per cent and 63 per cent of the old states became parties to them respectively (figures are valid until 1971). The new states allege that their general dissatisfaction at the lack of an appropriate

- 25(a). international outlook (for instance, the reservations made by various nations in the case of the Genocide Convention) is manifested in their acceptance of such treaties. On the other hand, the drug conventions concluded during the U.N. period have attained a remarkably high number of ratifications within a relatively short period for the following reasons: (a) that they contain flexible standards of regulations in order that the states faced with special situations may also accept these treaties, and (b) that the importance of the drug-problem has been regarded as a matter of international concern by most old and new states.
- See further UNITAR, Toward a Wider Acceptance of U.N. Treaties: A UNITAR Study by O. Schachter, M. Nawaz and J. Fried, (Ed.), Arno Press, New York, 1971, pp. 30-34 and 126-127.
26. I. MacGibbon, " The Scope of Acquiescence in International Law", 31 British Year Book of International Law, 1954, p. 143.
27. I. MacGibbon, " Some Observations on the Part of Protest in International Law", 30 British Year Book of International Law, 1953, 293.
28. D.W. Bowett, " Estoppel before International Tribunals and its Relation to Acquiescence", 33 British Year Book of International Law, 1957, p. 176; see also I. MacGibbon, "Estoppel in International Law", 7 International and Comparative Law Quarterly, 1958.
29. G. Schwarzenberger, A Manual of International Law (5th Edition), Stevens, 1967, p. 29.
30. G. Schwarzenberger, op. cit., p. 28; see further C.W. Jenks, The Common Law of Mankind, Stevens, 1958, p. 98.
- 30(a) R.R. Baxter, "Treaties and Custom", 129 Recueil des Cours, 1970 vol. I, pp: 31-104.
31. Foreword of R.A. Falk on A. D'Amato's The Concept of Custom in International Law, Cornell University Press, New York, 1971, p. ix.

32. See further J.E.S. Fawcett, "The Function of Law in International Commodity Agreements", 44 British Year Book of International Law, 1970, pp. 158-176, and "Commodity Problems and Politics", UNCTAD, Second Session Report, 1968, vol.II. See also on coffee: R.B. Bilder, "The International Coffee Agreement: A Case History in Negotiation", 28 Law and Contemporary Problems, 1963, pp. 328-377; see also by the same author, "The International Coffee Agreement, 1962", 57 American Journal of Int. Law, 1963, 888-892.
- wheat : L.A. Wheeler, "Governmental Intervention in World Trade in Wheat". Journal of World Trade Law 1967, pp.379-398 and International Grains Agreement, 1968 (cmd. No. 3840).
- sugar : J. Southgate, "World Trade in Sugar", Journal of World Trade Law, 1967, pp. 595-631
- coca : U. Wassermann, "Towards an International Coca Agreement", Journal of World Trade Law, 1968, pp. 521-543
- 32(a). Although the General Agreement on Tariffs and Trade has not been accepted by the Soviet bloc, it has been well-accepted by the non-Soviet countries. It is thought that the importance of this Agreement in terms of liberalisation of international trade, abolition of tariffs, and avoidance of trade discrimination by the application of most-favoured nation treatment has given it more internationality.
33. "The Concept of Jus Cogens in International Law", Paper and Proceedings of the Conference on International Law, organised by the Carnegie Endowment for International Peace, 1967, p. 9.
34. See further B. Cheng, "United Nations Resolutions on Outer Space: 'Instant' International Customary Law?", Indian Journal of International Law, 1965, pp. 23-48. According to Cheng, "There is no reason why a new opinio juris may not grow overnight between states so that a new rule of international customary law (or unwritten international law) comes into existence instantly." op. cit., at p. 46.
35. L. Oppenheim, International Law: A Treatise, vol. I (H. Lauterpacht, Ed.,) Longmans, 8th Edition, 1955. Oppenheim observed that "International law in no case imposes a legal duty of ratification", p. 909; see further McNair (Lord), Law of Treaties, Oxford (Clarendon), 1961. McNair observed that "The law leaves the parties to decide whether or not ratification is required." p. 133.
36. J.E.S. Fawcett, "The United Nations and International Law" in The Evolving United Nations: A Prospect for Peace ? K. Twitchett (Ed.) Europa, London, 1971, p. 68.
37. According to Tunkin, "Completion of the process of concluding an international treaty is completion of the process of forming a norm of international law." G.I. Tunkin, Theory of International Law (Translated by W.E. Butler), London, 1974, p. 101. In his discussion on the basic processes of forming norms of international law, Tunkin observed that "A customary norm

37. of international law arises in consequence of the repeated actions of states. The element of repetition is basic to the formulation of a rule of conduct. In the majority of instances the repetition of specific actions in analogous situations can lead to the consolidation of such practice as a rule of conduct." op. cit., p. 114.

Although Tunkin subsequently admitted that time is of no significance in the proof of custom, he failed to clarify what kinds of states, in terms of status, would be necessary for the creation of a customary norm of international law. See also R.R. Baxter, "Treaties and Custom", 129 Recueil des Cours, 1970. Baxter also stated that "the time factor as a separate legal element in the proof of custom now seems irrelevant." p. 67.

38. One of the reasons for its coming into force within a reasonably short period of time was that most of the parties were parties to the previous drug conventions and protocols. It is rather a "merger treaty".

39. supra., p. 811.

40. Even Tunkin believes that "there is no basis for rejecting the possibility of creating a customary norm by the practice of abstaining from actions." G.I. Tunkin, op. cit., p. 116. See also the opinion of Judge Basdevant in the Lotus Case: "The custom observed by states to refrain from prosecuting foreign nationals accused of causing a collision of vessels on the high seas is a customary norm of international law." P.C.I.J., Series A, 1927, p. 69.

41. According to Friedmann, "This sense of obligation derives from a variety of motives. A recognition of the predominant common interest in observing a code of conduct, a sense of moral responsibility for the observance of civilised rules of behaviour freely agreed upon, habit, and of course, a fear of the consequences of violation, are all important component factors in the sense of obedience, although their respective weight varies greatly, from nation to nation and from one historical period to another, and although it is greatly influenced by the particular political conditions of any particular state at a given time. The fear of punishment for non-obedience is thus not absent from the sense of obligation. But it is no longer the crucial element in the assessment of the reality of international law both from the presumption of a legal hierarchy, culminating in an international sovereign, and from the requisite of a sanction, i.e., the threat of a punishment inflicted for the violation of the international legal norm as an essential condition of its legal character." W. Friedmann, The Changing Structure of International Law, Stevens, 1964, p. 82.

42. McDougal and Feliciano, Law and Minimum World Public Order, op. cit., p. 377.
43. M.A. Kaplan and N. Katzenbach, The Political Foundations of International Law, John Wiley & Sons, New York, 1961, p. 345.
44. C. de Visscher, op. cit., p. 128.
45. supra., pp. 375-376.
46. supra., see especially pp. 317-318 and p. 330.
47. The purpose of this Fund is to "develop short and long-term plans and programmes intended to launch a concerted and simultaneous attack on the supply of drugs, the demand for them and the illicit trade through which the drugs flow from the producer to the consumer." See further "Information Letter" September, 1975, issued by the Division of Narcotic Drugs, p. 5.
48. Such a programme was launched in the Highlands in Northern Island in 1973. See further "Information Letter", February, 1973.
49. This Unit was established in 1972 with financial aid from the Fund. It is associated with the Division of Narcotic Drugs.
50. One of such projects is the Narcotics Foundation of the Philippines Inc. (NFPI) (established in 1968) which pursues the prevention of drug abuse and the treatment and rehabilitation of persons dependent on drugs. This Foundation depends on membership fees and voluntary donations for its validity. The Dangerous Drugs Board of the Philippines was established in 1972 (which is composed of six members who are Secretaries of the following Ministries: Health, Justice, National Defence, Education and Culture and Social Welfare) as a policy-making and co-ordinating body to provide supervision and guidance over all governmental and private efforts to solve the problems of drug abuse. See further "Information Letter"(s) of October and November, 1975.
51. The NFPI also operates Treatment and Rehabilitation Centres in the Philippines which are duly accredited by the Dangerous Drugs Board. These Centres principally offer the following services: residential care, counselling and social service, medical and psychiatric guidance.
52. UNFDAC has recently assisted the Afghan government considerably in the latter's plan to plough back a higher proportion of profit into improving law enforcement. National laws in Afghanistan have been tightened up, and the farmers who previously relied upon opium production are being helped to find alternative source of income. The Afghan government, with other international agencies, is organising special development inputs to remote areas of traditional opium poppy cultivation. The Afghan Ministry of Public Health, with the assistance of the World Health Organization, supported by UNFDAC, is working on plans for treating the relatively few inhabitants of the country who have become opium addicts. This will remove another incentive for illicit production. See further "Information Letter", October, 1975.

53. See further W. Friedmann, *op. cit.*, chapter 17.
54. C. de Visscher, *op. cit.*, pp. 156-157; see further B. Cheng, "Twenty Years of the International Court of Justice", Yearbook of World Affairs, 1966, pp. 241-256.
55. See further A. Sheikh, International Law and National Behaviour: A Behavioural Interpretation of Contemporary International Law and Politics, John Wiley & Sons, 1974, p. 18.
56. See further Sheikh, *op. cit.*; see also D. Mitrany, A Working Peace System, Quadrangle Books, Chicago, 1946, E. Haas, Beyond the Nation State, Stanford University Press, 1964, P.E. Corbett, Law in Diplomacy, Princeton University Press, 1959. W. Friedmann, The Changing Structure of International Law, *op. cit.*, C. Wilfred Jenks, Law, Freedom and Welfare, Oceana, 1964, and The Prospects of International Adjudication, Oceana, 1965, and J. Stone, Legal Controls of International Conflict, Stevens, 1959.
57. W.L. Gould and M. Barkun, International Law and the Social Sciences, Princeton University Press, 1970, at pp. 47 and 48.
58. See further F.S.C. Northrop, Philosophical Anthropology and Practical Politics, Macmillan, 1963, p. 4.
59. *supra.*, especially at pp. 449-461.
60. See further "Information Letter" of August, 1975.
61. See further D. Mitrany, "The United Nations in Historical Perspective" in The Evolving United Nations: A Prospect for Peace ? K. Twitchett (ed), *op. cit.*, p. 157.
62. See further the Declaration on the Establishment of a New International Economic Order and the Programme Action on the Establishment of a New International Economic Order, G.A. Resolution 3201 (S-VI), May 1, 1974 and G.A. Resolution 3202 (S-VI) of May 1, 1974 respectively. See also G.A. Resolution 3281 (XXIX) of December 12, 1974, entitled "The Charter of Economic Rights and Duties of States", and G.A. Resolution 2625 (XXV) of October 24, 1970, entitled "The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations"; see also R.C.A. White, "A New International Economic Order", International and Comparative Law Quarterly, 1975, p. 542.
63. *supra.*, p. 823 and footnote 32.
64. W. Friedmann, *op. cit.*, chapter VIII.
65. W. Friedmann, *op. cit.*, p. 187.
66. H.G. Schermers, International Law: Functioning and Legal Order, vol. II, Sijthoff, 1972, p. 459.

67. See further K. Skubiszewski, "Enactment of Law by International Organizations", 41 British Year Book of International Law, 1965-66, p. 266.
68. W. Friedmann, *op. cit.*,
69. C.W. Jenks, The Common Law of Mankind, *op. cit.*, p. 87.
70. See Annex (List of Parties to the Single Convention and the 1972 Protocol).
71. R.A. Falk, The Status of Law in International Society, *op.cit.*, p. 51.

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9. 1950	312. 1965
57. 1952	343. 1966
76. 1954	363. 1967
45. 1955	407. 1969
116. 1957	425. 1969
131. 1957	437. 1970
142. 1958	460. 1970
160. 1959	478. 1971
211. 1961	498. 1972
229. 1962	526. 1973
273. 1964	551. 1974.

LIST OF U. N. FORMS USED IN CONNECTION
WITH TRADE IN DRUGS

Estimates

- | | |
|----------|--|
| Form B/4 | Annual Estimates of Opium Production.

This form concerns only countries and territories where the cultivation of the poppy is authorized for the purpose of harvesting opium. |
| Form B/S | Annual Estimates of Requirements of Narcotic Drugs. |
| Form E/S | Annual Estimates of Requirements of Narcotic Drugs for other than Medical or Scientific Purposes. |

Statistics

- | | |
|--|---|
| Form A/S | Quarterly Statistics of Imports and Exports of Narcotic Drugs. |
| Form C/S | Annual Statistics of Production, Manufacture, Consumption, Stocks and Seizures of Narcotic Drugs- and of the quantities of drugs procured for special purposes and of the quantities withdrawn from special stocks to meet the requirements of the civilian population. |
| Form R/S | Annual Statistics on Narcotic Drugs for Non-Medical Purposes. |
| " Yellow List"
Annex to the Statistical Forms | List of Narcotic Drugs under International Control. |

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- Mavrommatis Palestine Concessions, P.C.I.J. (1924)
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- Reparation for Injuries Suffered in the Service of the U.N., I.C.J. (1949)
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LIST OF PARTIES

TO

THE SINGLE CONVENTION ON NARCOTICDRUGS, 1961 ANDTHE 1972 PROTOCOL(AS AT 8 MAY, 1976)The Single Convention on Narcotic Drugs, 1961.

Afghanistan	Iceland
Algeria	India
Argentina	Iran
Australia	Iraq
Bahamas	Israel
Bangladesh	Italy
Belgium	Ivory Coast
Brazil	Jamaica
Bulgaria	Japan
Burma	Jordan
Byelorussian Soviet Socialist Republic	Kenya
Cameroon	Kuwait
Canada	Laos
Chad	Lebanon
Chile	Lesotho
Colombia	Luxembourg
Costa Rica	Madagascar
Cuba	Malawi
Cyprus	Mali
Czechoslovakia	Malaysia
Dahomey	Mauritius
Denmark	Mexico
Dominican Republic	Monaco
Ecuador	Morocco
Egypt	Netherlands
Ethiopia	New Zealand
Fiji	Nicaragua
Finland	Niger
France	Nigeria
Gabon	Norway
German Democratic Republic	Pakistan
Germany, Federal Republic of	Panama
Ghana	Paraguay
Greece	Peru
Guatemala	Philippines
Guinea	Poland
Haiti	Portugal
Holy See	Republic of Korea
Honduras	Republic of Viet-Nam

Parties to the Single Convention

Romania	Trinidad and Tobago
Saudi Arabia	Tunisia
Senegal	Turkey
Singapore	Ukranian Soviet Socialist Republic
South Africa	Union of Soviet Socialist Republic
Spain	United Kingdom or Great Britain and Northern Ireland
Sri Lanka (Ceylon)	United States of America
Sudan	Upper Volta
Sweden	Uruguay
Switzerland	Venezuela
Syria	Yugoslavia
Thailand	Zaire
Togo	Zambia

The 1972 Protocol

Argentina	Jordan
Australia	Kenya
Brazil	Korea
Cameroon	Kuwait
Chile	Lesotho
Colombia	Madagascar
Costa Rica	Malawi
Cyprus	Monaco
Dahomey	Niger
Ecuador	Norway
Egypt	Panama
Fiji	Paraguay
Finland	Philippines
France	Romania
Germany, Federal Republic of	Senegal
Guatemala	Singapore
Haiti	South Africa
Holy See	Sweden
Iceland	Syria
Israel	Thailand
Italy	Tonga
Ivory Coast	Uruguay
Japan	United States of America