

CHAPTER TWO

AN OVERVIEW OF THE INTERNATIONAL DRUG CONVENTIONS

International drug control system came into operation even prior to the days of the League of Nations. The international drug Conventions that have been concluded since 1912 are the following:

1. The Hague Opium Convention 1912
2. The Geneva International Opium Convention, 1925
3. The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 1931.
4. The Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 1936
5. The Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 1972
6. The Convention on Psychotropic Substances, 1971

Additionally, the following Agreements and Protocols have also been concluded:

1. The First Geneva Agreement on Opium, 1925
2. The Agreement concerning the Suppression of Opium Smoking, 1931
3. The "1946 Protocol," Amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at the Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July, 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, signed at Lake Success, New York, on 11 December 1946 referred to in Article 44, paragraph 1, sub-paragraph (f) of the Single Convention.
4. The "1948 Protocol," Bringing under International Control Drugs Outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as Amended by the Protocol signed at Lake Success, New York on 11 December, 1946 signed at Paris on 19 November 1948, referred to in Article 44, paragraph 1, sub-paragraph (h) of the Single Convention; and
5. The "1953 Protocol" Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at New York on 23 June 1953, referred to in Article 44, paragraph 1, sub-paragraph (i) of the Single Convention.

Although the discussion of the Conventions concluded during the League period might seem excessive, it is believed that the experience, both positive and negative, produced by these Conventions, are highly relevant in the present context.

THE HAGUE OPIUM CONVENTION OF 1912

The Hague Opium Convention was the first international Convention in which an attempt was made to suppress if not eradicate the abuse of opium and other related substances (cocaine, morphine etc.). This Convention did not come into force until the date when the Treaty of Peace with Germany became effective.

This Convention defined⁴ such products as raw opium and prepared opium. Raw opium, according to this Convention, is the spontaneously coagulated juice obtained from the capsules of the *Papaver Somniferum*, and which has been submitted only to the necessary manipulations for packing and transport. Prepared opium is the product of raw opium obtained by a series of special operations, especially by dissolving, boiling, heating and fermentation, having for their object its transformation into an extract suitable for consumption. Prepared opium shall include dross and any other residues remaining when opium has been smoked.⁵

The Convention provided for control of export and import of opium (Articles 3, 5, 7, 8 and 13). The Contracting Powers undertook an obligation to prevent the export of raw opium to countries that had prohibited its entry and to restrict the importation of raw opium. The Convention did not prepare for any effective preventative action against unauthorised import or export in opium; it only made an attempt to impose some restrictions on the opium trade and the responsibility to fulfil the objective of the Convention in this regard was mainly given to the customs officers. It did not specify the fine by which the Contracting Powers were required to prohibit the export of prepared opium. There is, however, room for assumption that even if trade in prepared opium had been stopped, trade in raw opium would have still continued. In other words, countries could still manufacture prepared opium by importing raw opium.

Under this Convention it was for each Contracting Power to decide as to how to take action towards the gradual suppression of the manufacture of, internal trade in, and use of prepared opium and it did not indicate the consequences of the failure of a Contracting Power to take effective action.

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

After the Opium Convention of 1912 major action for the control of trade and traffic in drugs was attempted between 1920 and 1944. Incidentally, this was the period during which the League of Nations was functional and undertook to institutionalise action. In the management of drugs the League of Nations had two distinct tasks before it:

- (a) to devise a more systematic method for national control of the manufacture of, and the trade and traffic in, drugs;
- (b) to formulate effective preventative regulations and other control measures for the suppression of illicit traffic in drugs across national boundaries.

Article 23 paragraph (c) of the Covenant of League of Nations empowered the League to control both licit and illicit manufacture of, and trade and traffic in, opium and other dangerous drugs. During the League period the following three Conventions were completed in an effort to control both the licit and illicit manufacture of, and trade and traffic in, opium and other dangerous drugs:

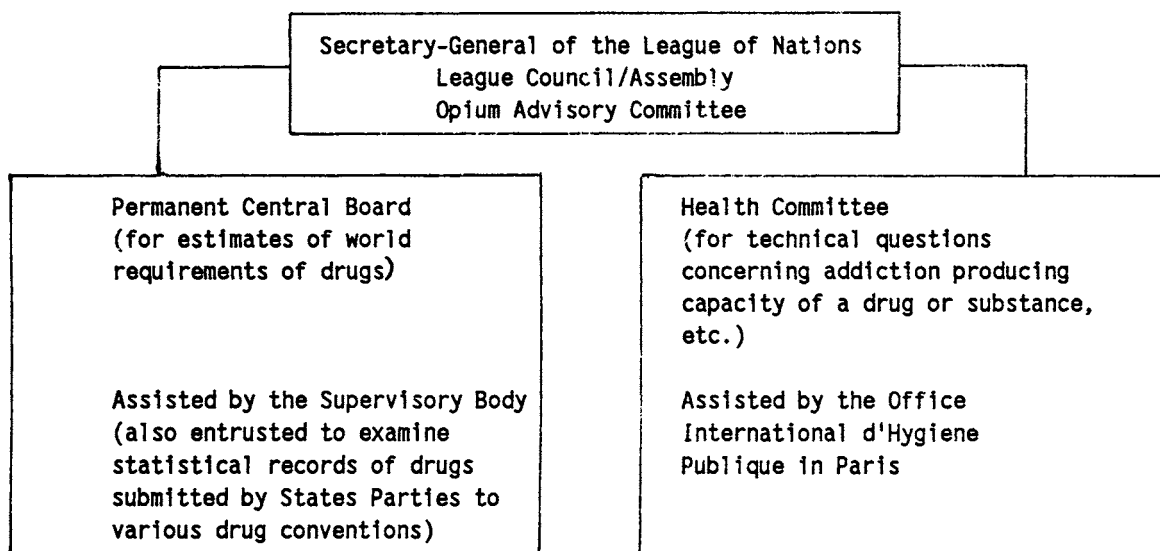
- (a) the International Opium Convention of 1925 (hereinafter called the 1925 Convention);
- (b) the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs 1931 (hereinafter called the Limitation Convention);

- (c) the Convention for the Suppression of Illicit Traffic in Dangerous Drugs 1936 (hereinafter called the 1936 Convention).

Two other Agreements were also concluded under the auspices of the League:

- (a) the Agreement concerning the Suppression of the Manufacture of, Internal Trade in, and use of Prepared Opium 1925 (hereinafter called the 1925 Agreement);
- (b) the Agreement Concerning the Suppression of Opium Smoking 1931 (hereinafter called the Bangkok Agreement).

The structure of the League machinery concerned with the drug control is shown below:



There is little point at present in going into details of the compositions and functions of the various bodies involved in the operation of the League's programme of action for the control of licit and illicit manufacture of, and trade and traffic in, drugs. It should, however, be pointed out that the League Committee took a direct role in the formulation of the Rules of Law in this area, as did the Opium Advisory Committee in the case of the Limitation Convention of 1931. The decision-making power lay with the League Assembly/Council and there was a marked preference for decision-making by political means.

It may, however, be interesting and indeed necessary to examine briefly the basic purposes of the Agreements and Conventions in relation to drug problems during the League period. The Preamble to the First Geneva Agreement on Opium 1925⁶ expressed a determination "to bring about the gradual and effective suppression of the manufacture of, internal trade in and use of, prepared opium, as provided for in chapter II of the International Opium Convention of 23 January 1912, in Far Eastern Possessions and Territories, including leased or protected territories", in which the use of prepared opium was temporarily authorised. The Parties to this Agreement were also desirous "on the grounds of humanity and for the purpose of promoting the social and moral welfare of their peoples, of taking all possible steps for achieving the suppression of the use of opium for smoking with the least possible delay", and therefore, they decided to conclude an agreement supplementary to the International Opium Convention of 1912.

One of the striking features of it was that the Contracting Powers made an attempt to establish a Government monopoly in the output of cultivation, manufacture of and trade

in opium. In fact, a Government monopoly was established in Macao in 1927.⁷ This Agreement also provided for the prohibition among the Contracting Powers of import/export of opium for the purpose of smoking. The Contracting Powers also agreed to co-operate with one another in their efforts to suppress the illicit traffic in opium by the direct exchange of information among the Governments concerned⁸ and also to render illegal transactions of opium punishable by law.

Two points need to be borne in mind in relation to this Agreement; first, that it was a mere Agreement, that is, it fell short of the usual legal obligations that are associated with a convention; and second, that at that time it was too difficult for the Contracting Powers to give away their economic benefits derived from opium. Not surprisingly therefore, the success of this Agreement was minimal.

THE GENEVA INTERNATIONAL OPIUM CONVENTION OF 1925

The Geneva International Opium Convention of 1925 was the first Convention concluded during the League period in an attempt to suppress abuse of the drug. The primary objective of this Convention was to introduce a system whereby both production and/or manufacture of narcotic substances would be limited and international trade in narcotic substances would be suppressed. This Convention came into force on 25 September 1928. In this Convention four separate chapters were allocated to four separate programmes:

Chapter II - Internal Control of Raw Opium and Coca Leaves

Chapter III - Internal Control of Manufactured Drugs

Chapter IV - Indian Hemp

Chapter V - Control of International Trade

This Convention therefore, made special provisions for domestic control of raw opium, coca leaves and manufactured drugs and control of international trade in the same. It also implied that the control scheme would admit of two aspects; domestic and international. Although the Hague Opium Convention of 1912 recognised the importance of domestic control, the present Convention provided for more specific measures of such control. Additionally, unlike the 1912 Convention, this Convention made provision for the internal control of coca leaves by limiting the number of towns, ports or other localities through which export or import of coca leaves was to be permitted.⁹ In Article 2, the Parties undertook to strengthen the laws and regulations where necessary, in furtherance of the obligations of this Convention.

The 1925 Convention had certain striking features: it devised a procedure by which the quality of drug, i.e. whether or not a drug should be categorised as a dangerous drug for the purpose of international control, would be determined by the Health Committee of the League of Nations in consultation with the Permanent Committee of the Office International d'Hygiene Publique in Paris. In the event of the Health Committee finding that any narcotic substance, to which this Convention did not apply, was liable to abuse and productive of ill-effects, it had the obligation to send its recommendation to the Council of the League urging that the Convention provisions of control be applied to such a drug.

In accordance with this Convention the Permanent Control Board was created for the purpose of intermediate definition of the drug industry, and intermediate trade in drugs. In fact, in a way, the present International Narcotics Control Board is a successor of the Permanent Control Board. In order to cover the deficiencies of the 1912 Convention, the

Advisory Committee of the League found it necessary to adopt a policy of limiting the production of raw materials from which narcotic drugs are manufactured. No attempt to limit the production of raw materials can be successful in the absence of a correct system of preparing estimates of drugs. One of the functions of the Board was to obtain current information concerning the actual production/manufacture, stock, consumption of drugs for various Governments.

However, the Board had no effective power to prevent the accumulation of excessive quantities of the substances covered by the Convention, nor was it within the competence of the Board to question or express any opinion upon the statistics. Nevertheless, Article 24 of the Convention authorises the Board to watch the course of international trade in drugs. If it found that excessive quantities of any substance covered by this Convention had accumulated in any country, or that there was a danger of a country becoming a centre of illicit traffic, the Board had the right to ask the Secretary-General of the League for an explanation from the Government of the country concerned. If no explanation was forthcoming within a reasonable time, or if the explanation was unsatisfactory, the Board had the authority to call the attention of the Governments of all the Contracting Parties and of the council of the League of Nations to the matter, and to recommend that no further convention substances should be made to the country concerned until the Board was satisfied that the situation had been rectified. The Convention also provided for the publication of the Board's report on the matter and recommendations to the country concerned. Although it was not obligatory for the country concerned to abide by the recommendation of the Board, it was the friendly right of any of the Contracting Parties to draw the attention of the Board to any matter relating to the Convention which appeared to require an investigation.

Unfortunately, the application of the system of import certificates and export authorisation was not made compulsory for the Contracting Parties and in the event of trade in the narcotic drugs with a non Contracting Party, a Contracting Party was only required to apply the provisions of this Convention as to trade as far as the circumstances permitted.¹⁰ The system of import certificates and export authorisation was not applicable between non Contracting Parties.

THE CONTROL OF INTERNATIONAL TRADE IN DRUGS

Although the system of import certificates and export authorisation is an integral factor for the control of international trade and drugs, this Convention made some additional legislative provisions exclusively for the control of international trade and drugs. In terms of Article 5 the Contracting Parties were required to enact effective laws or regulations to limit exclusively to medical and scientific purposes, the manufacture, import, sale, distribution, export and use of the substances covered by this Convention. In accordance with Article 1 of this Convention they were also required to take appropriate measures to prohibit as regards their internal trade, the delivery to or possession by any authorised person of the substances to which this Convention applied. In this connection this Convention followed the provision of Article 9 of the Hague Opium Convention of 1912. The Contracting Parties also undertook to apply their laws and regulations in relation to narcotic substances to free parts and free zones within their territories. According to Article 15 no consignment for export of any of the substances covered by this Convention was allowed to pass through a third country unless it was accompanied by a diversion certificate. The provisions of this Article were not applicable to transportation of substances by post.

Despite some detailed provisions as to international trade in narcotic substances, the Government of an exporting country could not be compelled to produce an import certificate in respect of a consignment if the destination of such a consignment was a known convention country.

THE AGREEMENT CONCERNING THE SUPPRESSION OF OPIUM SMOKING 11

As appears from the title of the Agreement, it was exclusively concerned with the question of the suppression of opium smoking. It was a mere 'agreement' only. It was limited to those countries that had experienced the problem of opium smoking. Under Article 12 of the Geneva Agreement on Opium 1925 the signatory States had undertaken to review from time to time the programmes with regard to the application of Chapter II of the Hague Opium Convention of 1912 and also to the Geneva Agreement. The agreement concerning the suppression of opium smoking 1931 therefore required the fulfilment of the promises of the Parties concerned.

The countries that had experienced problems relating to opium smoking were mainly in the Far East: Burma, Formosa, Kwantung Leased Territory, Malaysia and Hong Kong, the French possessions in the Far East (Indo China), the Portugese possession in the Far East (Macao) and the Netherlands Indies.

It should be pointed out that some of the countries affected by opium smoking, namely Burma and Siam did not accept the 1925 Geneva Agreement unreservedly. Indeed, it was revealed in 1931 that the situation in these two countries as regards opium smoking did not improve to any appreciable extent. The failure of the Siamese Government in particular to gain effective control of opium smoking may be attributed to economic factors such as a shortage of Government shops owing to a paucity of firms, the geographical conditions and the lack of reliable persons to take responsibility for such shops. A Commission of Enquiry was set up to study the opium situation in the Far East.¹² This Commission recommended a system of registration of smokers, listing and rationing consumers and also a reduction in retail prices in order to compete with smugglers. It is not possible to go into details of the progress achieved by the countries concerned in relation to this problem but it appears that the degree of progress varied from country to country in view of their differing geographical, economic and social circumstances.

THE CONVENTION FOR LIMITING THE MANUFACTURE AND REGULATING THE DISTRIBUTION OF NARCOTIC DRUGS

The title of this Convention is self-explanatory. The preceding Convention and Agreement did not prove to be satisfactory to combat effectively the drug problems. Although the Geneva Convention of 1925 imposed the general obligation on the Contracting Parties to limit the manufacture of drugs, it failed to devise any effective methods of achieving such limitation. However, through this Convention the International Community renewed its effort to limit the manufacture of, and regulate the distribution of, Narcotic drugs. This Convention came into force on 9 July 1933.

This Convention was meant, inter alia, to supplement the Hague Opium Convention of 1912 and the Geneva Opium Convention of 1925, and under it, the term 'drugs' included both 'completely refined' and 'partly manufactured drugs'. But the Convention imposed no obligations as to raw opium, coca leaves, Indian hemp or prepared opium. The Convention contains terms which are important for the purpose of its operation; in fact this was the first international Convention to do so. Examples of some such terms are the following:

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| <u>Manufacture:</u> | included any process of refining. |
| <u>Conversion:</u> | denoted the transformation of a drug by a chemical process (with the exception of the transformation of alkaloids into their salts). |
| <u>Estimates:</u> | included the estimates required to be furnished in accordance with Article 2-5 of this Convention, but also the supplementary estimates. |

Reserved Stocks: denoted the stock of drugs for the normal domestic consumption of the country in which they were maintained; the stock that had been converted in that country and the stock that had been exported.

Government Stocks: referred to stocks kept under Government control for the use of the Government and to meet exceptional circumstances.

Exports: included re-exports.

In order to limit the manufacture of drugs the Convention devised two important methods:

- (1) A system of estimates and
- (2) A system of limiting manufacture of drugs.

Under this Convention each High Contracting Party undertook to furnish annually to the Permanent Central Board estimates for each of the drugs to which the Convention was made applicable.

One of the special features of this Convention was that the Board was given the authority to request the non Contracting Parties to provide estimates in accordance with the provisions of this convention. In the absence of any estimate from a non Contracting Party, the Supervisory Board was authorised to submit an estimate for that country to the Board.

All estimates of drugs required for domestic consumption were based solely on the medical and scientific requirements of a country. All estimates were to be furnished using the form prescribed by the Board. The detailed provisions as to estimates were provided by the Convention; for example, each country was required to show in its estimates for each drug, its alkaloids or salts, or preparation of the alkaloids or salts:

- (1) The quantity necessary for medical and scientific purposes, including the quantity required for the manufacture of preparations for the export of which export authorisation was not required;
- (2) The amount of the reserved stocks to be maintained;
- (3) The quantity necessary for the purpose of conversion, whether for domestic consumption or for export;
- (4) The quantity required for the maintenance of Government stocks if any.

The methods of arriving at the total estimates for each country under this Convention may be shown in the form of a formula:

$$\text{Total Estimates} = \text{Manufacture} + \text{Imports} - \text{The Quantity Exported During a Year.}$$

The Limitation Convention covered manufactured drugs only. It appeared that in formulating the system of limiting the manufacture of drugs under this Convention, the High Contracting Parties made two assumptions:-

- (a) That there would be no application of the principle of res inter alios acta i.e. the Non-Parties to this Convention would be bound by the directive of this Convention;

- (b) That the estimate system under this Convention encompasses all possible drugs and raw materials from which drugs could be manufactured. However, the estimates system devised by this Convention was in many ways an innovative system and indeed it formed the basis of the Estimated World Requirements of Dangerous Drugs.

THE CONVENTION FOR THE SUPPRESSION OF THE ILLICIT TRAFFIC IN DANGEROUS DRUGS, 1936

Neither the Geneva Convention of 1925 nor the Limitation Convention of 1931 directly recognised illicit traffic in drugs as a criminal offence. The Convention for the Suppression of the Illicit Traffic in Dangerous Drugs 1936 was the first international Convention concluded for the purpose of suppressing illicit traffic in dangerous drugs, and to make the offence punishable. Regulations aimed at promoting licit trade in a commodity may not necessarily cover all the loopholes of illicit trade in the same. The Limitation Convention failed to limit the manufacture of drugs within the prescribed limit; additionally, the drugs Conventions concluded during the League period were generally 'promotive' to licit trade rather than 'preventive' against illicit trade in drugs. None of the drug Conventions concluded during the League period dealt with the curative aspect of the illicit trade. This Convention had as its object the strengthening of the measures intended to penalise offences contrary to the provisions of the International Opium Convention signed at the Hague on January 23, 1912, the Geneva Convention of February 19, 1925 and the Convention for Limiting the Remanufacture and Regulating the Distribution of Narcotic Drugs at Geneva on July 13, 1931. Its other object was to combat by the methods most effective in the circumstances the illicit traffic in the drugs and substances covered by the above Conventions. Unfortunately, the conditions necessary for strengthening 'the measures intended to penalise offences' were not existent at the time the convention was concluded. Although some of the contemporary International Conventions dealt with criminal offences (e.g. the Convention on the Suppression of the Traffic in Women and Children, 1921, the Convention on the Suppression of the Traffic in Obscene Publications, 1923, the Slavery Convention, 1926, the Convention on the Suppression of Counterfeiting Currency, 1929 and the Convention on the Traffic in Women of Full Age, 1933), the Contracting States abstained from incurring obligations which went beyond the necessities of the situation.¹³

The initiative to conclude such a Convention was taken by the International Criminal Police Organisation (Interpol). Interpol pointed out that an International Convention aimed at suppressing the illicit traffic in dangerous acts and the attendant punishment in the event of committing illicit traffic might cover the gaps in the (1912, 1925 and 1931) Conventions. Prior to the 1936 Convention, there was no platform for establishing closer co-operation in respect of drug offences between the police authorities of different countries. However, it was not the first initiative of its kind. The Convention for the Suppression of Counterfeiting Currency, 1929, operated as a model for the 1936 Convention. This Convention came into force on 26 October 1939.

This Convention consisted of only 25 articles of which the first sixteen articles formed three informal sections, viz:

- (1) Provisions aimed at improving domestic registration to suppress the illicit traffic in drugs (Articles 2 - 6)
- (2) Provisions designed to prevent offenders from escaping punishment on technical grounds, and to confiscate the materials intended to be put into illicit traffic (articles 7 - 10)
- (3) Provisions concerning administration and international co-operation (Articles 11 - 16)

Under this Convention each High Contracting Party undertook to make the necessary legislative provisions for severely punishing drug traffickers, particularly by imprisonment or other penalties aimed at depriving liberty. Provisions for severe punishment were made for the following unauthorised acts:

- (1) the manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, despatch, despatch in transit, transport, importation and exportation of narcotic drugs;
- (2) international participation in the offences at (1);
- (3) conspiracy to commit any of the offences at (1); and
- (4) attempts, and subject to the conditions prescribed by international law, preparatory acts.

The High Contracting Parties were free to deal with the offences not falling under any of the above categories according to their own legislation. Negligent acts were excluded from the penal provisions of this Convention.

However, this Convention included such terms as 'international participation' 'conspiracy to commit any offences', denoting the need for a stricter application of its provisions.

Article 3 is one of the fundamental Articles. In this Article the High Contracting Parties who possessed extra-territorial jurisdiction in the territory of another High Contracting Party undertook to enact the necessary legislation for punishing their nationals who would be found guilty within that jurisdiction of any offence specified in Article 2. Such punishment to be at least as severe as if the offence had been committed in their own jurisdiction.

Article 6 aims at establishing habitual criminality of an offender, and provided that where "the principal of the international recognition of previous convictions is recognised, foreign convictions for the offences referred to in Article 2 shall, subject to the conditions prescribed by the domestic law" be recognised for the above purpose.

Articles 7 and 8, in principle, aim at punishing the nationals and foreigners alike in those cases where the offenders escaped punishment on technical grounds, e.g. by changing his nationality after the commission of an offence.

In terms of Article 8, "foreigners who are in the territory of a High Contracting Party and who have committed abroad any of the offences set out in Article 2 shall be prosecuted as though the offence had been committed in that territory", but this provision is subject to two conditions:

- (a) that extradition, even though requested, cannot be granted for a reason independent of the offence itself; and
- (b) that the law of the country of sojourn permits prosecution for offences committed abroad by foreigners.

Article 9 of the Convention makes offences relating to illicit traffic in drugs extraditable offences.

It is to be admitted that the 1936 Convention has hardly lost its importance even at the present time.

Unfortunately, the prospects of recognition of a criminal offence in any two countries even within a regional arrangement are slim, yet mutual recognition of drug offences appears to be of utmost importance. Incidentally, the practice of granting 'dual nationality' to a person among certain States appears to be one of the reasons for showing apathy towards conclusion of extradition treaties of a bilateral character.

THE RELEVANCE OF THE LEAGUE EXPERIENCE TO THE U.N. SYSTEM IN THE SOLUTION OF THE DRUG PROBLEM

Understandably, the Covenant of the League of Nations made insufficient provisions for economic and social matters. The League was not intended to be a whole machinery of organised international co-operation.¹⁴ The drafters of the League Covenant did not intend nor did they find it appropriate to replace the pre-League system of international co-operation by a completely new system. It is against this background that the effectiveness and scope of enforcement of international agreements concerning the control of drug problems should be considered.

Despite the prevailing apathy of the contemporary international society toward the solution of the drug problem by means of international machinery, the League's attempts to deal with the drug problem was relatively successful.

The International Opium Convention of 1925 and the International Convention of 1931 formed the basis, to a considerable extent, for the Single Convention on Narcotic Drugs 1961. Participation of States in the drug Conventions was not universal; the effects of non-universal participation was obvious. The principal reasons for non-universal participation in any Convention were two: first, self-interest, that is, the fear of restrictions on and loss of control over any trade resulting in the loss of revenue; and second, the failure of the international community to provide any alternative opportunity in order to enable the drug producing and manufacturing countries to switch over from drugs to some other sources of income.

The U.N. regime for the cure and prevention of drug problems should have been formed taking into consideration the success, failure and weakness of the drug Conventions concluded during the League period. Despite the fact that rather less priority was given by the League to the drug problems, it becomes evident that these problems could only be solved by the intervention of certain specialised bodies operative under the supervision of a universal organisation.