

prompted the emergence of rising illegal activities and the increased involvement of international organised crime syndicates.<sup>130</sup>

To specifically address illicit drug activities, the League of Nations convened a conference in 1936 that drafted the *1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs*, signed on 22 July 1936.<sup>131</sup> This was the first treaty to focus explicitly on drug trafficking and the first to make certain drug offenses international crimes.

In Article 2 the Convention stated:

*“Each of the High Contracting Parties agrees to make the necessary legislative provisions for severely punishing, particularly by imprisonment or other penalties of deprivation of liberty, the following acts – namely :*

*(a) 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, contrary to the provisions of the said Conventions;*

*(b) Intentional participation in the offences specified in this Article;*

*(c) Conspiracy to commit any of the above-mentioned offences;*

*(d) Attempts and, subject to the conditions prescribed by national law, preparatory acts.*

Also for the first time the Convention dealt explicitly with the issues of drug related crime committed abroad and the related questions of extradition.

Once again, however, the practical importance of this Convention remained limited because a number of key countries did not sign and ratify it. Among these was the USA, for which the convention was not sufficiently far-reaching and still did not render punishable all non-medical cultivation, production and distribution of drugs.<sup>132</sup> In addition, by this time, countries such as Germany and Japan were no longer participating in international conferences of this sort. In total, only 13 countries signed and ratified the 1936 Convention.<sup>h</sup> Moreover, it only became effective in October 1939, after World War II had started, and drug control was certainly not top priority for most countries during this time.<sup>133</sup> It was not until five decades later that these topics were dealt with at the international level, within the framework of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

<sup>h</sup> Belgium, Brazil, Canada, China, Colombia, Egypt, France, Greece, Guatemala, Haiti, India, Romania and Turkey.

### 2.3.4 International drug control in the final years of the League of Nations

Increasing political tensions in the late 1930s clearly weakened international cooperation. Germany, which had entered the League of Nations in 1926, left the organisation in 1933, after the National Socialists took power in that country. Japan left the League of Nations in 1933 after the League had voiced opposition to its invasion of the Chinese territory of Manchuria. Italy withdrew in 1937, when the League condemned its invasion of Ethiopia. The Soviet Union, which had only joined the League of Nations in 1934, left in 1939, after discord arising out of its aggression against Finland.<sup>134</sup> But despite the unfavourable political environment, international drug control continued to work rather satisfactorily until the outbreak of World War II. Most countries adhered to the conventions and even supplied statistics until 1939, some even during World War II.<sup>135</sup> Many of the offices of the international drug control system were, as of 1940, gradually transferred to the United States, though the official seat (and some staff) remained in Geneva. The Opium Advisory Committee was moved to Princeton and the Central Permanent Board and the Drug Supervisory Body to Washington.

### 2.4. Development of the present system under the United Nations

As of 1946, the United Nations assumed the drug control functions and responsibilities formerly carried out by the League of Nations. The functions of the League's *Opium Advisory Committee* were transferred to the United Nations *Commission on Narcotic Drugs* (CND). The functions of the Opium Section were taken over by a new *Division on Narcotic Drugs* (DND), which was headquartered in New York until 1955, when it was moved to Geneva. Similarly, the annual Commission on Narcotic Drugs meetings were held in New York until the mid-1950s and subsequently held in Geneva.<sup>136</sup> The decision to initially centre many of the key activities away from their traditional home in Geneva may have been based upon a desire to reinvigorate the drug control effort.<sup>137</sup>

In this context the technical and research expertise of the new United Nations Division on Narcotic Drugs was strengthened in a number of areas, changing the very character of the new drug control secretariat. One of the most innovative and ambitious programs at the time was the establishment of the United Nations programme for determining the origin of opium by chemical and physical means in 1949. In ECOSOC Resolution 548 (XVIII) D of July 1954, the Economic and Social Council decided (§14) to set up a United Nations narcotics laboratory<sup>138</sup> which was subsequently established in Geneva before being moved together with the other international drug control bodies to the new headquar-

ters in Vienna in 1979. The UN laboratory later also provided training and other forms of assistance to forensic laboratories in developing countries in order to enable them to identify drugs with modern analytical methods and assist law enforcement and the judicial system.<sup>139</sup> In addition, the DND developed technical expertise in a number of other areas, notably in law enforcement (setting up the regular Head of Law Enforcement Agency (HONLEA) meetings); demand reduction; and legal services, assisting governments to implement the international drug convention. One of the key tasks remained serving the Commission on Narcotic Drugs (CND) as its secretariat.

In order to improve the overall assistance to developing countries, an additional body was created in 1972, the *United Nations Fund for Drug Abuse Control (UNFDAC)*. Its main task was to raise funds to implement various technical assistance activities, notably providing assistance to developing countries in order to help farmers stop cultivating illegal drug crops; such activities are now grouped together under the generic category of “alternative development” or “alternative livelihoods”.

The Permanent Central Board (PCOB) and the Drug Supervisory Body (DSB), created by the League of Nations Conventions, were authorized to continue performing their functions under the aegis of the United Nations after World War II.<sup>140</sup> The standing bodies charged with international drug control would undergo many transformations in the coming decades.<sup>i</sup>

### 2.4.1 The 1946, 1948, and 1953 Opium Protocols

One of the first acts of the United Nations was the *1946 Protocol* which legally transferred all the drug control functions from the League of Nations to the United Nations. It entered into force on 10 October 1947. The previous drug control conventions and treaties remained in force and in the 1946 Protocol the international community restated its intention to maintain control over addictive drugs.<sup>141</sup>

i In 1945, the PCOB and DSB staff and records were moved back to Geneva and continued their work there. Their secretariats, however, were merged, establishing the basis for the International Narcotics Control Board (INCB). The geographical distance between the Division on Narcotic Drugs (DND) in New York and the PCOB and DSB in Geneva created, however, some difficulties with regard to day to day cooperation. This prompted, a decade later (1955), the geographical re-unification of the three drug control bodies (PCOB, DSB and DND) at one central location (Geneva). In 1979, the international drug control bodies (DND, UNFDAC and INCB) moved to their new headquarters in Vienna. Yet another decade later (1991), the secretariats of the three drug control bodies (DND, UNFDAC and INCB) were merged into the United Nations International Drug Control Programme (UNDCP). The secretariats of the UNDCP and of the Centre for International Crime Prevention (CICP) were unified in 1997 to become the Office for Drug Control and Crime Prevention. In 2002, the office was renamed the United Nations Office on Drugs and Crime (UNODC).

Around the time of World War II, new pain-killing medications were developed for treating battlefield casualties, the most important of which was methadone, developed by German scientists in 1937. Another important substance was pethidine, then known as Demerol. Both substances were produced and marketed by German companies during the war. In 1948, the CND drafted a separate agreement (‘protocol’) that required states to submit the new substances to the same estimates-of-need and statistical reporting provisions that applied to existing opium-based narcotics. The DSB and PCOB could then oversee the synthetic narcotics trade in the established manner. The *1948 Synthetic Narcotics Protocol* quickly gained wide acceptance, coming into force only a year later. In fact, this Protocol appears to have been a good illustration of prompt action by the international community preventing a potential disaster that was already looming.<sup>142</sup> The application of the 1948 Protocol meant the placing 14 new substances under international control by 1951 and a further six by 1954.<sup>143</sup>

Following World War II, the political situation had changed. The United States and the Soviet Union emerged as the two new superpowers. Germany and Japan had lost the war. The European colonial powers were weakened and in the process of giving up their colonial empires. During the War, in 1943, the US administration issued a resolution to end all opium smoking in the areas liberated from Japan, which also included previous colonies and territories controlled by various European countries.<sup>144</sup> Further, the US undertook, as of the late 1940s, new initiatives to finally prohibit the production and use of opium for other than medical and scientific needs.<sup>145</sup> The original plan, launched in 1948 by the head of the US delegation, Harry Anslinger<sup>j</sup> was to have this principle incorporated into a new Single Convention. Negotiations for the Single Convention (1961) would last for another thirteen years, because they were complicated by the emerging East-West conflict.

In the meantime, the final elimination of opium production and consumption in China, following the takeover of the country by the Communist Party in 1949, changed global opium markets forever. No longer could opium producing countries defer reductions on the pretext that any sacrifices made would simply be replaced by increases in Chinese domestic production. In a number of campaigns between 1949 and 1952, the government in China, counting on public support, effectively eliminated opium production, trade and consumption from China.<sup>146</sup>

During this period, a new attempt was made to solve the global opium problem. In June 1953, countries agreed

j Head of the Federal Bureau of Narcotics (FBN) and a key player in domestic and international drug control as of the early 1930s.

to the elaboration of a *Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of International and Wholesale Trade in and Use of Opium*, generally known as the *1953 Opium Protocol*. This document was intended to finally adopt the longstanding US goal of limiting opium production and use to only medical and scientific needs. According to this Protocol, only seven countries – Bulgaria, Greece, India, Iran, Turkey, the USSR and Yugoslavia – would be authorized to produce opium for export.<sup>147</sup> The Protocol also required countries to implement comprehensive control systems at the national level.

The 1953 Opium Protocol contained the most stringent drug-control provisions yet embodied in international law.<sup>148</sup> The agreement extended to raw opium the reporting requirements placed on manufactured drugs under the 1931 Convention. Aimed primarily at producing states, signatories would submit to the DSB estimates concerning the amount of opium planted, harvested, consumed domestically, exported and stockpiled. Year-end statistics would be reported to the PCOB. The Protocol also gave the Board responsibility for making inquiries into discrepancies, conducting inspections, and imposing embargoes. The Board was also empowered to establish national production limits and could take investigatory and punitive action even concerning states that were not a party to the Protocol. Production would be limited, on a global level, to that needed for medical and scientific use. Signatories were, however, allowed a fifteen year grace period before the full powers of the Protocol were in force. In exchange for accepting the new burdens and limitations, producer countries received a monopoly on licit sales of opium. Parties to the treaty agreed to buy opium only from the seven states named in the text.<sup>149</sup>

The Protocol stipulated that twenty-five states, including three of the seven producing states, had to ratify in order to activate the treaty. In total, 61 countries signed and ratified the Protocol.<sup>150</sup> However, among the seven identified opium producing and exporting states only India and later Iran ratified the Protocol during the 1950s. This was not sufficient for the Protocol to enter into force. By the time the 1953 Protocol was ratified in July 1963, it was essentially superseded by the 1961 Single Convention, which entered into force in December 1964. Consequently, the 1953 Opium Protocol was only in force for about 1½ years.

### 2.4.2 The 1961 Single Convention

The number of international legal agreements on narcotic drugs, including the 1953 Protocol, had reached a total of nine, and not all had been signed and ratified by all the key countries. The complexity of this system created a need for unification and simplification.<sup>151</sup> Following 13 years of negotiation, the Single Convention

was finally adopted in 1961 and entered into force on 13 December 1964, superseding all previous international conventions, protocols and treaties. This Convention is still regarded as a major achievement in the history of international efforts to control narcotics.<sup>152</sup> The time spent on these lengthy negotiations was worthwhile as it enabled the Single Convention to become a truly international instrument, supported by the overwhelming majority of all nations. Today, it is one of three treaties (together with the 1971 Convention on Psychotropic Substances and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances) that define the international drug control system. As of March 2008, there were 183 parties to the Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), representing 95% of the 192 UN States Members.<sup>153</sup> Far more countries acceded to it than to any previous drug control treaty.<sup>154</sup>

The Single Convention consists of 51 Articles, covering:

- definitions of the substances under control;
- the framework for the operations of the international drug control bodies;
- reporting obligations of States Members;
- obligations regarding the production, manufacture, trade and consumption of controlled substances;
- actions to be taken against illicit traffic and penal provisions.

The key provision of the Single Convention is to be found in Article 4: “*The parties shall take such legislative and administrative measures...to limit exclusively to medical and scientific purposes the production, manufacture, export, import distribution of, trade in, use and possession of drugs.*”<sup>155</sup>

The objectives of the Single Convention were three-fold: codification of existing multilateral treaty laws into one single document; streamlining of the international drug control machinery; and extension of the existing controls into new areas.

The first objective, to codify all existing multilateral treaty laws into one single treaty, was largely achieved. Provisions such as those on the estimates and statistics system established by the 1925 and the 1931 Conventions, were retained virtually without change. Similarly, the system of import and export authorizations remained intact, providing multiple avenues for discovering diversions from the licit trade. The same applied to the provisions for controlling the manufacture of narcotic drugs, established by the *1931 Convention*, which were continued while the new synthetic drugs, controlled under the 1948 Protocol, were included. The Single Convention

also retained the concept of schedules, first introduced in the *1931 Convention*, though expanding them from two to four. Some of the far-reaching inspection provisions contained in the *1953 Opium Protocol* (which, by 1961, had not yet entered into force) were, however, weakened in order to make the Single Convention more acceptable to several producer countries, most notably to the USSR and its allies. In addition, the Single Convention did not contain the closed list of seven recognized producers found in the *1953 Opium Protocol*. This was again mainly due to interventions by the Soviet Union, which argued that other developing countries (notably Afghanistan) should be allowed to participate in this lucrative business.

The previous drug control conventions and treaties were superseded by the Single Convention. Only the poorly subscribed *1936 Convention on the Illicit Traffic in Dangerous Drugs*, remained in force (except for Article 9 which was replaced by the new penal provisions contained in Article 36 of the Single Convention) because the delegations could not agree on which of its provisions to incorporate into the Single Convention.<sup>156</sup>

The second objective was to simplify and streamline the control machinery in order to strengthen the impact of international drug control efforts. This was done via the unification of the Permanent Central Board and the Drug Supervisory Body to become the International Narcotics Control Board (INCB). In addition, a number of administrative duties were consolidated and simplified. No consensus, however, was found on proposals to merge the Division of Narcotic Drugs with the secretariat of the INCB. Such a merger was only managed three decades later, with the creation of the United Nations International Drug Control Programme (UNDCP) in 1991.<sup>157</sup> While the main task of the Board was to monitor and control the licit production, manufacture, trade and consumption of narcotics, the Secretary-General [i.e. now UNODC, which is part of the UN's Secretariat] was to respond to the illicit trade.

The third objective of the Convention was the extension of the existing controls to include the cultivation of the plants grown as raw material for the production of natural narcotic drugs, as well as the prevention of non-medical drug consumption. Thus, the 1961 treaty continued to keep a tight rein on the production of opium and extended the international controls to the production of poppy straw (which increasingly served as the raw material of choice for the manufacture of morphine and other opiates) as well to the production of the coca-leaf and cannabis. These controls included the obligation to create national agencies for opium, coca, and, if applicable, for cannabis for countries deciding to maintain production of these crops for covering their medical and scientific needs. Such agencies were required to:

- designate the areas in which the cultivation could take place;
- allow only licensed cultivators to engage in such cultivation;
- take charge of importing, exporting, wholesale trading, and maintaining stocks.

Such provisions effectively barred private enterprises from participating in this lucrative line of business. At the same time, the Single Convention did not contain a general prohibition of drug production (as had been urged by some States Members, notably with regard to cannabis), but clear requirements that production, for whatever substance, could only take place under certain conditions and only for as long as there was a legitimate medical or scientific use for such drugs.

The Commentary to 1961 Convention pointed out that the term 'for medical purposes' was not uniformly interpreted by governments. Some flatly prohibited the consumption of narcotic drugs by addicts, while others permitted consumption by persons whose addiction proved to be incurable to prevent painful withdrawal symptoms. The Commentary also highlighted that the term 'for medical purposes' did not have the same meaning at all times and circumstances. Its interpretation depended, *inter alia*, on the stage of medical science. Not only 'western medicine' but also legitimate systems of indigenous medicine, such as those existing in China, India and Pakistan, had to be taken into account.<sup>158</sup>

The Single Convention prohibited, however, the non-medicinal, recreational practices of opium smoking, opium eating, coca-leaf chewing, as well as the smoking and other uses of cannabis resin and cannabis herb. At the same time, it enabled countries to opt for a transition period to abolish these practices. For instance, under the Convention, only persons officially registered as addicts by the competent authorities in 1964 were permitted to continue smoking opium. Countries also committed themselves to abolish the quasi-medical use of opium within a 15-year period (i.e. by 1979, as the Single Convention entered into force in 1964) and the practices of coca leaf chewing and the use of cannabis within a 25-year period (i.e. by 1989).<sup>159</sup>

The 'Penal Provisions' laid down in Article 36, §1 (a) state: "*Subject to its constitutional limitations each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering.. distribution, purchase, sale, delivery... brokerage, dispatch, ...transport, importation and exportation of drugs contrary to the provisions of the Convention... shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.*"

The use of drugs is not mentioned in Article 36. “Possession” is mentioned, but the Commentary makes it clear that this provision refers to “possession of drugs intended for distribution”, not possession of drugs for personal consumption. While personal possession is dealt with under Article 33, this section provides states far more flexibility, requiring only that they “use their best endeavours to prevent this possession by all those administrative controls of production, manufacture, trade and distribution which are required by the Single Convention.”<sup>160</sup> In other words, the Single Convention is tough on illegal production and trafficking, but it gives governments a high degree of flexibility in dealing with their local drug abuse problems, as long as they remain committed to the general obligation that “legislative and administrative measures have to be taken to limit to medical and scientific purposes... the use and possession of drugs” (Article 4, (c)).<sup>161</sup> While some national authorities have seen this as a weakness of the Single Convention, others have seen it as a strength, which enabled this Convention to survive for more than four decades and to gain almost universal acceptance.

The Single Convention obliged States Members to assist their drug addicts with medical treatment and rehabilitation.<sup>162</sup> The original wording of Article 38, §1 (prior to its amendment in 1972) was: “The Parties shall give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts”. This was an innovation, as the earlier international narcotics treaties had not contained such an obligation, even though it was already a long held view that victims of addiction needed to be assisted by treatment and rehabilitation.<sup>163</sup>

### 2.4.3 The 1972 Protocol amending the Single Convention

Given the rapid rise of drug use in the second half of the 1960s, new efforts were made to strengthen the international drug control system. In the USA alone, the number of arrests at the state level for marijuana possession rose ten-fold between 1965 and 1970, and a national survey in 1971 revealed that 24 million Americans used cannabis at some point in their lifetimes. The number of heroin addicts was estimated to have risen from about 50,000 in 1960 to roughly half a million by 1970.<sup>164</sup> In addition to ongoing diversions of opium from licit producers, illegal opiate production also increased strongly in South-East Asia, notably in Myanmar. Starting in the early 1970s, Myanmar became the world’s largest supplier of illicit opiates for two decades. Much of the transformation of Myanmar’s opium into heroin took place in neighbouring Thailand, although clandestine heroin laboratories also appeared in Myanmar and Laos.<sup>165</sup> The Vietnam War exposed US soldiers to heroin use, and life-time prevalence among US sol-

diers was estimated to have been as high as 25%.<sup>166</sup> In response, US president Richard Nixon declared ‘war on drugs’ in the early 1970s, with a particular focus on heroin.<sup>167</sup> This “war” was not only based on law enforcement, but also included special action by the White House on research, treatment and educational efforts. Against this background, the US proposed a new conference to agree on a number of additional drug control measures, which was convened in March 1972 in Geneva to amend the 1961 Single Convention, with a view to strengthen both supply and demand reduction efforts.<sup>168</sup>

By fine-tuning the existing Single Convention, the 1972 Protocol underscored the necessity to strengthen the current control system, increase efforts to prevent illicit production, strengthen the efforts to fight the illegal traffic in narcotics, prevent the use of drugs, and deal with the consequences of drug abuse. The Protocol consists of a total of 22 amendments to the Single Convention. All parties to the Single Convention also signed and ratified the Protocol, with three exceptions: Afghanistan, Chad and the Lao PDR.<sup>169</sup>

According to the amended Article 19, governments had to supply to the Board, in addition to existing reporting requirements, *inter alia*, information on, “The area (in hectares) of the geographical location of land to be used for the cultivation of the opium poppy” and “The approximate quantity of opium to be produced.” This reporting requirement was part of the 1953 Opium Protocol, but had been superseded by the 1961 Single Convention.<sup>170</sup>

An additional article on the ‘Limitation of Production of Opium’ was intended to create economic incentives for licit opium exporting countries to keep controls up to standard. This passage empowered the INCB to deduct from such a country’s licit opium production quota for the next year any amounts which the Board considered to have been introduced into the illicit traffic, either from illicit or excess licit production. Countries prohibiting the cultivation of the opium poppy or the cannabis plant were also bound to “seize any plants illicitly cultivated and destroy them...” This amendment was to require states to enforce the laws on their books against the cultivation of illicit drugs. Recognising that not all states had equal capacity to fulfil this obligation, the concept of international assistance to enable governments to implement the Convention was introduced. The new Article 14 dealt with ‘Technical and Financial Assistance’ to be provided by competent United Nations organs and specialized agencies to implement the Convention.<sup>171</sup>

The Protocol also expanded the scope of Article 38 “Treatment of Drug Addicts” to ‘Measures against the Abuse of Drugs’. Under the new provisions, countries did not only have a legal obligation to treat and reha-

bilitate drug addicts, they also had a legal obligation to “take all practicable measures for the prevention of abuse of drugs and for the early identification ... of the persons involved” and to provide for the “social reintegration” of such persons.<sup>172</sup> Regarding the penal provision, the Protocol provided possible alternatives to incarceration. Parties could substitute measures of treatment for conviction or punishment for those implicated in the “cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provision of the Convention.”<sup>173</sup> Finally, the Protocol included a number of stipulations to improve the effectiveness of the controls implemented by the INCB, in addition to giving the INCB responsibility for ensuring a balance between supply and demand for narcotic drugs for medical and scientific purposes.<sup>174</sup>

Around the time of the Protocol, a number of other measures were taken to improve the global approach to drugs. As noted above, the United Nations Fund for Drug Abuse Control (UNFDAC) was created in 1972 to assist drug producing countries with crop substitution and alternative development programs. Major successes in illicit curbing opium production were achieved in particular in Thailand, partly linked to alternative development assistance projects assisted by UNFDAC, the Thai Government and other donors. Turkey also decided to prohibit all planting, cultivation or production of opium poppy after June 30, 1972.<sup>175</sup> In September 1974, the government of Turkey informed the United Nations that it would again permit the licensed cultivation of poppies for medical purposes,<sup>176</sup> but this time it would make use of the poppy straw method, which is less prone to diversion. These controls appear to have worked well and no reports of diversion of opium from licit channels were received thereafter. These efforts had a positive impact, temporarily reversing the upward trend in global heroin consumption experienced over the previous years.

#### 2.4.4 The 1971 Convention on Psychotropic Substances

After World War II, Japan suffered a major epidemic of methamphetamine abuse, due to the distribution of wartime stocks. This problem was addressed by a major market crack-down in 1954, and the passage of very strict legislation. In Europe, amphetamine use had become particularly widespread in Sweden and other Scandinavian countries, as well as in the UK, in the post-war years. A growing methamphetamine problem was also reported from the USA in the 1960s. Many of these drug problems initially appeared to have been regionally isolated phenomena, but a general upward trend in the use of synthetic drugs was seen globally.

As of the early to mid 1960s, most countries still imposed only minimal limitations on the distribution of amphetamines, barbiturates, tranquilizers and other synthetic, non-plant based drugs. As problems gained in intensity, domestic restrictions were introduced in several of the developed countries, prompting pharmaceutical companies to market their products more aggressively in less developed countries. The misuse of synthetic drugs thus became a truly global phenomenon and controversy emerged over the double standards applied to different classes of drugs.<sup>177</sup>

The first reaction was to add these psychotropic substances to the list of those controlled by the Single Convention, but this was potentially problematic for several reasons. The strict and cost intensive controls foreseen in the Single Convention were designed for a limited number of addictive substances with important but clearly defined use in medicine, mainly pain control. Broadening these provisions to cover a much wider range of substances might impose an unreasonable burden on the pharmaceutical industry, retarding innovation. It could also result in a weakening of the implementation of the Single Convention controls already in place. Based on these concerns, it became clear that a new treaty would have to be negotiated.

These negotiations proved to be difficult, because this time the drug producing countries were not the poor producers of the plant-based drugs, but some of the most powerful nations in the world. Fortunately, a group of equally powerful nations championed the cause, including the Scandinavian countries, which had been among the countries most affected by large-scale abuse of amphetamine-type stimulants, and the Soviet bloc. In the end, pharmaceutical interests who initially opposed the new controls came to see some merit in them, particularly for discouraging more marginal competitors. Nonetheless, it was in the interest of the pharmaceutical companies to keep new controls to a minimum.<sup>178</sup>

The resulting compromise was still a major step ahead for international drug control. The 1971 *Convention on Psychotropic Substances* placed under international control for the first time a number of amphetamine-type stimulants, hallucinogens (such as LSD), sedative hypnotics and anxiolytics (benzodiazepines and barbiturates), analgesics and antidepressants. A significant number of additional substances were added in subsequent decades.<sup>179</sup> Seventy-one states attended the plenipotentiary conference as well as the World Health Organisation, ICPO/INTERPOL<sup>180</sup> and a number of representatives from various pharmaceutical companies. The Convention entered into force in August 1976. As of March 2008, 183 countries were party to the 1971 Convention, equivalent to 95% of all UN States Members.<sup>181</sup>

The 1971 Convention consists of 33 Articles, and is based on the 1961 Convention, though it also contained some innovations. The parties agreed that all listed substances only be supplied with a medical prescription. Advertisement of these substances to the general public is prohibited and appropriate cautions and warnings have to be indicated on the labels and the accompanying leaflets. Parties to the Convention must also take, according to Article 20 §1, “*measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved*”. According to Article 8 (a) a general system of licensing has to be introduced for the manufacture, the domestic and international trade and the distribution of psychotropic substances.

Article 15 deals with inspection requirements. Parties have to maintain a system of inspection of manufacturers, exporters, importers, wholesalers, distributors, and medical and scientific institutions. A Party may also notify all other Parties through the Secretary-General that it prohibits the import into its country of one or more of the psychotropic substances and the other countries must then take measures to ensure that none of the substances specified in the notification are exported to the notifying country. Article 21 foresees a number of measures to fight the illicit traffic in these substances, mainly asking for mutual assistance in the area of law enforcement and judicial cooperation.

In addition to these general regulations, the Convention established four different Schedules for psychotropic substances with specific controls applying to each. Scheduling is based on two criteria: the potential therapeutic value and the potential risks related to the consumption of a substance.<sup>182</sup> The risks warranting scheduling, to be identified by the World Health Organisation, are the capability of a substance to create a state of dependence, the abuse potential, and evidence that the substance concerned is being abused or is likely to be abused so as to constitute a public health and social problem.<sup>183</sup> The scheduling of substances under the *1971 Convention* is therefore potentially more restrictive than the scheduling of opiates or cocaine related substances under the *1961 Convention*.

Schedule 1 lists those substances which are prohibited except for scientific and very limited medicinal purposes. The very strict provisions of Schedule 1 only allow for the manufacture, trade, distribution or possession of these substances subject to special licences, always under close government supervision and tight restrictions on the amounts to be supplied. Exports and imports are restricted to trade between the competent authorities or agencies of the exporting and importing country, or persons or enterprises specifically authorized by the competent authorities. Substances currently found under Schedule 1 include MDA and MDMA

(Ecstasy), for which there is only very limited recognized therapeutic use. Normal commercial transactions for Schedule I substances, are, in general, very difficult.

Schedule II substances may have a strong abuse potential or be widely abused, but they also have properties which lend themselves to be utilized for generally recognized therapeutic use. Several of the amphetamine-type stimulants, including methamphetamine, amphetamine, methylphenidate and fenetylline fall into this category, as well as one hallucinogen (phencyclidine) and a few sedative-hypnotics (methaqualone and secobarbital).<sup>184</sup> Commercial transactions for such substances are possible, though these substances remain strictly controlled. Manufacturers, wholesale distributors, exporters and importers have to keep records showing in detail the quantities manufactured, each acquisition and disposal, the date, supplier and the recipient. They also require separate import and export authorizations. The national authorities must also furnish the INCB annual statistics with regard to the quantities manufactured, exported to and imported from each country, and on the stocks held by manufacturers for Schedule I and Schedule II substances. Global manufacture and trade flows can thus be closely monitored.

Control of Schedule III and Schedule IV substances is less strict. Substances presently under control in Schedule III include, *inter alia*, cathine (a central nervous system stimulant), some barbiturates (amobarbital, cyclobarbital, pentobarbital), flunitrazepam (the most frequently abused benzodiazepine), buprenorphine (an opioid used in several countries in substitution treatment), and pentazocine (an opioid analgesic which is reported to be widely abused in some African countries). For Schedule III substances, no separate import or export authorizations are required. Record keeping requirements are less strict. National authorities must only provide the Board with aggregate information on the quantities manufactured, exported and imported. Most of the substances in Schedule IV are benzodiazepines, including diazepam, or barbiturates, such as phenobarbital. No separate import or export authorizations are required for these Schedule IV substances. Record keeping requirements are limited to showing the total quantities of the specific drugs manufactured, exported and imported. Similarly, national authorities must only provide the Board with aggregated (i.e. not detailed) information on the quantities manufactured, exported and imported.

If the Board has reason to believe that the aims of the Convention are being seriously endangered by the failure of a country to carry out the provisions, the Board can call the attention of the Parties, the Economic and Social Council and of the Commission on Narcotic Drugs and recommend to the Parties that they stop the export, import or both of particular psychotropic sub-

stances from or to the country concerned.

Like the Single Convention, the 1971 Convention also defined the respective roles of the INCB and the Secretary General. While the Board is charged primarily with monitoring the licit manufacture and trade in psychotropic substances, the Secretary General (today, the UNODC) is primarily concerned with the illicit side. Governments must furnish information with regard to “*Significant developments in the abuse of and the illicit traffic in psychotropic substances*”... (Article 16, §1 (b)), notably “*in respect of any case of illicit traffic in psychotropic substances or seizure from such illicit traffic which they consider important because of (a) new trends disclosed, (b) the quantities involved, (c) the light thrown on the sources from which the substances are obtained; or (d) the methods employed by the illicit traffickers*” (Article 16, §3).<sup>185</sup>

#### 2.4.5 The 1981 International Drug Abuse Control Strategy and the 1984 Declaration

Despite the efforts made over the previous decades, sharp increases in drug abuse were again noted toward the end of the 1970s in many countries. Initial progress made in curbing the global heroin problem had stalled as the void created by the strengthening of controls in Turkey in the early 1970s was soon filled by rising opium production in Mexico and in the Golden Triangle.<sup>186</sup> There was also an increase in opium production and diversion from Iran. This ceased following the Islamic Revolution. After 1979, there was a slow shift of opium production to neighboring Pakistan and eventually to Afghanistan. Cannabis production and consumption increased worldwide, with production increasing in Latin America and consumption in North America and, to a lesser extent, in Europe. Many states in the USA softened controls on cannabis use in the 1970s after the appearance of 1973 report by the *Commission on Marihuana and Drug Abuse* (NCMDA) that concluded that the possession of small amounts of marijuana should be decriminalized.<sup>187</sup> In parallel, illegal cocaine production from the Andean region increased dramatically from the early 1970s and cocaine started to emerge as a serious problem in North America beginning in the 1980s.

During this period, the Commission on Narcotic Drugs studied the possibilities of launching a comprehensive strategy to reduce international drug abuse. In 1981, an *International Drug Abuse Control Strategy*<sup>188</sup>, containing a basic five-year Programme of Action (1982-1986), was formulated. The Strategy called for international co-operation to combat drug abuse and trafficking with the following objectives:

- improvement of the drug control system,

- maintenance of a balance between legitimate drug supply and demand,
- eradication of illicit drug supply
- reduction of illicit traffic
- reduction of illicit demand and prevention of drug abuse, and
- treatment, rehabilitation and social reintegration of drug abusers.

The Strategy also called for various organizations and agencies operating within the United Nations system to provide increased support to assist Governments in activities such crop-substitution, drug law enforcement and preventive drug education programmes.

The status of the implementation of the Drug Abuse Control Strategy was reviewed each year through reports of the Economic and Social Council (ECOSOC) to the General Assembly on the production, manufacture, shipping and distribution of drugs. Though these reports suggested that the world community was strengthening the efforts in the on-going battle against illegal drug production, trafficking and abuse, the same reports also suggested that there was, in fact, an ongoing deterioration of the situation, notably due to rapid increase in the level of sophistication of the global networks of illegal drug traffickers.

In December 1984, the General Assembly adopted a ‘*Declaration on the Control of Drug Trafficking and Drug Abuse*,<sup>189</sup> which effectively enabled states to highlight the links between the illicit drug markets and economic and social development. The Assembly declared that the “*illegal production of, illicit demand for, abuse of and illicit trafficking in drugs impede economic and social progress, constitute a grave threat to the security and development of many countries and people and should be combated by all moral, legal and institutional means, at the national, regional and international levels*”. Its eradication, the Assembly resolved, was the collective responsibility of all States. The Declaration then went on to state that States Members should, “*undertake to intensify efforts and to co-ordinate strategies aimed at the control and eradication of the complex problem of drug trafficking and drug abuse through programmes including economic social and cultural alternatives*”.

#### 2.4.6 The 1987 Declaration and the Comprehensive Multidisciplinary Outline for Future Activities

The global situation with regard to drug production, trafficking and abuse did not improve in the 1980s. Illicit opium production in Myanmar continued at high levels and Afghanistan started to emerge as a key illicit opium producing country. Illegal coca leaf production and resulting cocaine manufacture in the Andean region



was growing dramatically. Cannabis production and consumption remained high, although there was significant eradication with longstanding consequences in several countries of Latin America. The situation was summarized as follows: *“The upsurge of drug addiction since the 1960s represents a previously unknown phenomenon, at least as far as its dimensions are concerned. Addiction has spread over the entire planet, sparing almost no nation, no social class and no age, regardless of sex and race. The damage caused to the physical psychological and social health of individuals and of communities has made drug addiction a public hazard on the world scale. Addiction has become a matter of serious concern to many Governments, for its affects public and social health and economic resources...”*<sup>190</sup>

Against this background, a renewed effort to address the drug problem at the global level was undertaken in 1987, as the Secretary-General called for an international conference to deal, for the first time at the ministerial level, with drug abuse and illicit trafficking.<sup>191</sup> The political declaration adopted at the 1987 Conference reaffirmed the political will to take vigorous action against drug abuse and trafficking and to set benchmarks for progress towards the long-term goal of a society free from drugs. The declaration also reconfirmed the collective responsibility of Governments to provide appropriate resources for the elimination of illicit production, trafficking and drug abuse. *“In evolving effective action against drug abuse, illicit production and trafficking, we emphasize the need for the international community to adopt measures to treat all aspects and causes of the problem”*.<sup>192</sup>

Another outcome of the conference was the adoption of guidelines for dealing with the reduction of supply, trafficking and demand of illicit drugs, summarized under the title: *Comprehensive Multidisciplinary Outline for Future Activities* (CMO). The CMO was divided into four chapters (prevention and reduction of the illicit demand, control of supply, suppression of illicit trafficking, treatment and rehabilitation) and contained 35 targets defining problems with subsequent suggested courses of action.

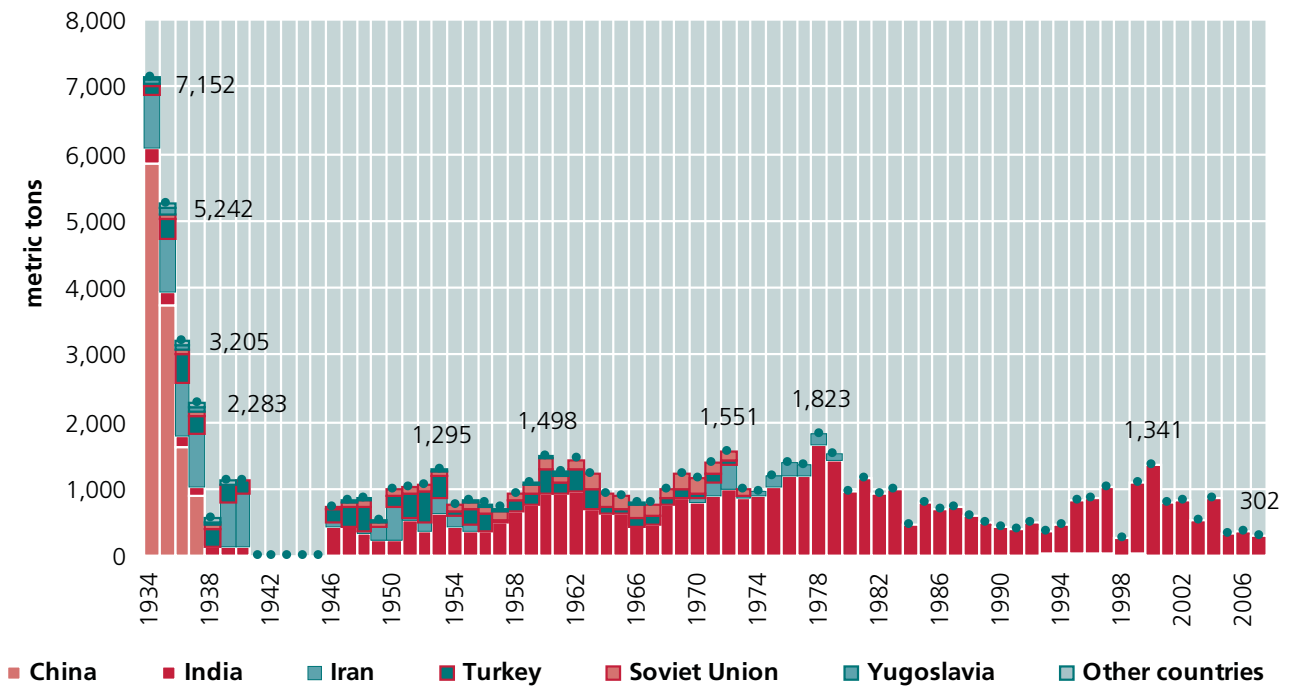
The CMO gained greater importance after being mentioned in the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, which stipulates that, *“The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances... These measures may be based, inter alia, ... on the Comprehensive Multidisciplinary Outline adopted by the International Conference on Drug Abuse and Illicit Traffic, held in 1987, as it pertains to... prevention, treatment and rehabilitation”*. In addition, many of the recommendations made with regard to the suppression of illicit trafficking and the control of supply are reflected in the 1988 Convention.<sup>193</sup>

One of the main achievements of the CMO was the introduction of the concept of a balanced approach in dealing with the drug problem.<sup>194</sup> In Chapter I, the CMO discussed the supply control model versus the demand control model. The CMO concluded: *“For the purpose of dealing with the totality of the problems posed by drug abuse and illicit trafficking, both the supply of and the demand for drugs should be reduced and action should be taken to break the link between demand and supply, that is, the illicit traffic.”*<sup>195</sup>

The CMO called for research to assess the extent of drug abuse. This would involve the establishment of information collection, analysis and dissemination activities at the national level, including the systematic collection of data from records of the police, registers of deaths, courts (including coroners' courts), hospital emergency rooms, drug treatment centres, prisons, mental hospitals, psychiatric clinics, correctional institutions, social security and welfare organizations, schools and universities, the armed forces, employers, trade unions, and community agencies.

The CMO recommended the implementation of an 'early warning' system which would help to identify trends in use, investigate the causes, and propose recommendations for dealing with the situation. It then promoted the development of 'national education programmes', including drug abuse prevention curricula in all educational institutions. In addition, the CMO addressed the dangers of drug abuse at the workplace, asking employers' and workers' organizations to develop joint action programmes with a view to discouraging drug abuse. It also highlighted the role of cultural and sport activities as alternatives to drug abuse and the importance of film and other media for discouraging rather than glamorizing the use of illicit drugs.

Chapter II advocated the reinforcement and extension of measures for controlling the supply of drugs. This included the identification and mapping of areas under illicit cultivation, as well as undertaking studies to determine how the livelihood of rural populations would be affected by the discontinuance of illicit cultivation. The CMO promoted transitional economic and financial assistance to assist farmers and encouraged the United Nations system to seek funds for integrated rural development projects in support of the eradication of illicit plantings and crop substitution programmes. However, it also made it clear that such assistance had to be contingent on the commitment of recipients to abandoning illicit cultivation, though the ban could be imposed in stages. Another key area for action was seen in the control of precursor chemicals. Chapter III dealt with the suppression of illicit trafficking in precursors, promoting the use of controlled deliveries, profiling, facilitation of extraditions, and measures against money laundering.

**Fig. 23: Reported licit opium production, 1934-2006**

Sources: INCB, *2007 Narcotic Drugs*, New York 2008 and official data published by the League of Nations, the Permanent Central Opium Board and the International Narcotics Control Board, compiled in Francois Xavier Dudouet, PhD Dissertation "Le contrôle international des drogues, 1921-1999", Université Paris X Nanterre, 2002.

Chapter IV discussed in detail the problems related to treatment and rehabilitation, stressing again the importance of evaluations to improve the effectiveness of treatment outcome. The CMO saw drug addiction as a chronic recurring disorder which responds to treatment. It argued, however, that several treatment episodes may be necessary before long-term abstinence is realized. The CMO stressed the importance of seeking out drug addicts in their customary environment with a view to guiding them towards treatment and that treatment centres should carry out 'individualized' treatment programmes. In terms of diseases transmitted through drug using habits, such as HIV/AIDS and hepatitis, the CMO recommended, notably where such infections tend to become a health hazard to larger segments of society and where the drug-using habits cannot be stopped immediately, to invite experts to study possible prophylactic measures. Such measures, however, should not promote or facilitate drug abuse.

#### 2.4.7 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

By the late 1980s the international drug control system had been successful in restricting the licit production of opium and coca to the actual legal requirements. Some diversions from licit channels still occurred, but they had ceased to be a major problem at the global level. The

same applied to most Schedule I and Schedule II substances controlled under the *1971 Convention on Psychotropic Substances*. The situation was less positive for several of the Schedule III and Schedule IV substances. Their misuse was still widespread in many countries. Taken together, the controls on the licit side were generally working well and showing good results.

On the other hand, illicit production of opium/heroin and of coca/cocaine continued rising through the 1980s, as did trafficking and abuse in these substances. In addition, some psychotropic substances, notably the amphetamine-type stimulants, were starting to be manufactured in clandestine laboratories in North America, Europe and South-East Asia. The situation was steadily and rapidly deteriorating and drug abuse was described as reaching epidemic proportions in many parts of the world.<sup>196</sup> All countries in the world seemed to be vulnerable to drug trafficking and abuse, regardless of geographical location, political orientation and stage of economic development.<sup>197</sup>

The problem was exacerbated by increasing levels of violence and sophistication among the transnational organized crime groups which were facilitating the transit and marketing of these drugs. The Medellin and Cali cartels, operating out of Colombia, controlled much of the cocaine trade from Colombia to the United States and other countries. They were not only trafficking ever

larger amounts of cocaine to North America and Europe, but also started to become a serious threat to security and governance.<sup>198</sup> They made use of the assets generated from the cocaine business to corrupt the local and national authorities and, when this did not prove to be successful, turned to large-scale violence to intimidate the political decision makers. This was made explicit by the minister of justice of Colombia, Guillermo Plazas Alcid, who, addressing the 1988 Conference in Vienna, stated that *“Illicit drug traffic menaced the health and well-being of individuals, spread corruption, abetted criminal conspiracy and subverted public order. It threatened the sovereignty and security of States and disrupted the economic, social and cultural structure of society.”*<sup>199</sup>

Against such a background the General Assembly requested that the Commission on Narcotic Drugs, *“initiate, as a matter of priority, the preparation of a draft convention against illicit traffic in narcotic drugs which considers the various aspects of the problem as a whole, in particular, those not envisaged in existing international instruments.”*<sup>200</sup> Thus, the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances met in Vienna from 25 November to 20 December 1988. Delegations from 106 States participated in this conference. The Conference drew up and adopted a new *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*.<sup>201</sup>

The 1988 Convention, consisting of 34 Articles, entered into force just two years later, on 11 November 1990 and has proven to be a powerful instrument in the international struggle against drug trafficking. As of March 2008, 183 countries were parties to this Convention.<sup>202</sup>

Some of the obligations of this Convention are rather far-reaching, going beyond those contained in earlier Conventions. This raised fears that they could be misused by some countries for other political objectives. In order to dissipate such fears, Article 2 §2 makes it clear that, *“The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.”*

The Convention is clearly directed against drug traffickers.<sup>203</sup> The 1961 Convention only obliged Parties to make trafficking activities ‘punishable offences’, but the 1988 Convention obliges Parties to make them a ‘criminal offences’. Article 3, §2 also specifies that, *“the possession, purchase or cultivation of .. drugs... for personal consumption”* should be established as a criminal offence. This goes beyond the requirements of the previous conventions. This has been, and continues to be, a controversial stipulation for some countries. The Commentary

to the 1988 Convention reveals a number of legal interpretations of this Article and notes the legal loopholes that could be used by countries which oppose making the possession of drugs for personal use a criminal offence.<sup>204</sup> In any case, Parties can - according to Article 4 (c) of the 1988 Convention - provide *“in cases of a minor nature... alternatives to conviction or punishment such as education, rehabilitation or social reintegration as well as ... treatment and aftercare...”*

The 1988 Convention was unique in its focus on the prevention of money laundering. Much of the subsequent work done in this area by various players, including the Financial Action Task Force of the OECD, has been based on the 1988 Convention. In principle, money laundering would have already been a punishable offence under the 1961 Convention, referred to as “financial operations in connexion with the offences referred to in this article ...” But, this obligation, hidden in the text of the 1961 Convention, had been largely ‘forgotten’ by most countries prior to the more explicit formulations contained in the 1988 Convention. In Article 3 §1 (b) drug related money laundering (*“conversion or transfer of property, knowing that such property is derived from an offence established in subparagraph (a) is established as a criminal offence and Article 3 §1 (a) (v) establishes that the financing of any of the drug trafficking related offences, when committed intentionally, must be a criminal offence. In targeting criminal proceeds, the convention also asked for the ‘confiscation’ of proceeds derived from drug related offences.”*<sup>205</sup> Moreover, courts have to be empowered to seize bank, financial or commercial records.<sup>206</sup>

A major achievement of the 1988 Convention was the establishment of precursor control at the international level. Trade in precursor chemicals for the manufacture of illegal drugs was, in theory, already a punishable offence under the 1961 Convention. It could have been subsumed as a ‘preparatory act’, for example, but very few countries had implemented precursor legislation prior to the 1988 Convention. The 1988 Convention establishes that the manufacture, transport or distribution of equipment used in the manufacture of illicit drugs as well as the manufacture, transport or distribution of precursor chemicals, knowing that they are used for the illicit manufacture of drugs, should be deemed criminal offences. In Article 12, the Convention went several steps further and set out an international precursor control regime that is monitored by the International Narcotics Control Board. Substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances were identified and listed in two Tables, with a stricter controls foreseen for Table I substances. The general obligation of Parties with regard to precursor control is laid down in Article 12, §8. It stipulates that Parties have to *“take the measures they deem appropriate to monitor the manufacture and distribution of substances*

*in Table I and Table II which are carried out within their territory.”*

The scope of criminal offences for which extradition can be sought was enlarged in the 1988 Convention. Acts such as money laundering, or the manufacture, transport, distribution of equipment and of substances listed in Table I and II (precursor chemicals) became extraditable offences.<sup>207</sup> Otherwise, the extradition rules (Article 6) do not deviate substantially from what was already laid down in the previous drug conventions. They are largely based on the concept of incorporating drug related offences into extradition treaties between States (Article 6 §2).

Though the 1988 Convention tends to promote the concept of extradition it also provides for some escape clauses, notably if the authorities in a country believe that compliance would facilitate the punishment of a person “*on account of his race, religion, nationality or political opinions.*” It also makes extraditions “*...subject to the conditions provided for by the law of the requested Party.*” In fact, a number of national legal traditions do not allow for the extradition of nationals to foreign countries, partly based on constitutional principles.<sup>208</sup> In such a case, Article 4 §2 stipulates that the Party which refuses to extradite a person to another country on the ground that the offence has been committed by one of its nationals must then “*take such measure as may be necessary to establish its jurisdiction over the offences.*” In general, the national laws of many countries have, however, become more favourable towards extraditions over the last two decades.

Another innovation in the 1988 Convention is the endorsement of ‘controlled deliveries’, defined as “*the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances in Table I and Table II... to pass out of through or into the territory of one or more countries with the knowledge and under the supervision of the competent authorities...with a view to identifying the persons involved*” in drug trafficking offences and “*taking legal action against them.*” The most obvious attraction of this law enforcement strategy is that it facilitates the identification, arrest and prosecution of the principals, organizers and financiers in the criminal venture in question instead of merely arresting those involved at the lower level in the hierarchy. Such action can significantly contribute towards the general goal of disrupting and dismantling drug trafficking organizations.<sup>209</sup>

Though the 1988 Convention was geared towards reducing illicit traffic in drugs, it also obliges Parties to prevent or reduce the supply of drugs, requiring each Party has to, “*take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and*

*cannabis plants, cultivated illicitly in its territory.”*

The subsequent sentence in Article 14 §2 created some confusion: “*The measures adopted shall respect fundamental human rights and take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.*” The reference to ‘traditional licit uses’ was interpreted by some countries in the Andean region (Bolivia and Peru) as an acknowledgement by the international community that such ‘traditional licit uses’ still existed and that ‘due account’ for such ‘traditional licit uses’ would have to be taken, including for sufficient production to satisfy these ‘traditional licit uses’ (coca chewing, ‘mate de coca’ tea). In contrast, the 1961 Convention had already outlawed the habit of coca leaf chewing, opium smoking, the quasi-medical use of opium and the non-medical use of cannabis, and the production of drug crops for such purposes. Countries could ask for transitional reservations under the 1961 Convention to enable people registered by 1964 to continue with their habits. The maximum transitional period granted by the 1961 Convention ended for opium in 1979 and for cannabis and the coca-leaf on 12 December 1989.<sup>210</sup> Under Article 14 §1 of the 1988 Convention, however, it is made explicit that “*Any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances ... under the provision of the 1961 Convention.*”<sup>211</sup> Thus, the INCB has pointed out the existing international drug conventions, including the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, do not provide for licit production for ‘traditional licit use’.<sup>212</sup>

In Article 14 §3 addresses the concept of alternative development. “*....Such co-operation may, inter alia, include support, when appropriate for integrated rural development leading to economically viable alternatives to illicit cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account.*” Paragraph 3 does not directly create an obligation on parties, but it draws attention to the need, in some countries, for alternative development programmes that are designed, in effect, to rebuild a local economy hitherto partly or entirely based on illicit cultivation.<sup>213</sup>

On the demand side, parties to the 1988 Convention also must adopt “*appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances.*”<sup>214</sup> This required Parties to adopt appropriate measures to eliminate illicit demand for narcotic drugs and psychotropic substances, “*with a view to removing the financial incentives for illicit traffic.*”

### 2.4.8 Special Session of the General Assembly June 1998

In the first half of the 1990s, the measures taken in compliance with the 1988 Convention proved to be successful in dismantling some of the world's largest criminal networks, such as the Medellin and the Cali cartels operating out of Colombia. Extraditions for drug related offences became more common. Progress was also made against drug related money laundering. For example, the Financial Action Task Force (FATF), founded in 1989 under the auspices of the OECD, developed an initiative to combat the misuse of financial systems by persons laundering drug money. This resulted in 40 recommendations, drawn up in 1990, which were regularly updated and increasingly developed into global standards, assisting participating states to reduce the vulnerability of their financial systems.<sup>215</sup> The first positive results were also made in the area of precursor control. Controlled deliveries gained in importance. In fact, most of the provisions of the 1988 Convention were implemented by a growing number of countries.

The dismantling of some of the large drug networks was important to reduce their capabilities to infiltrate and corrupt whole political systems, but the end of these large groups did not stop drug trafficking. A large number of smaller drug trafficking groups took their place. The downward trend in drug abuse, seen in the second half of the 1980s, did not continue in the USA after 1991/92. Europe was faced with major increases in drug abuse, from cannabis to various ATS, cocaine and heroin. The end of communism also precipitated growing levels of drug consumption, notably among youth, in the transition countries of Central and Eastern Europe. Drug abuse also emerged increasingly as a serious social problem in many developing countries, notably in countries along the main transit routes. ATS, notably methamphetamine, emerged as an ever more serious problem in many countries of East and South-East Asia. Countries in Latin America, which were primarily producer and transit countries, started to become increasingly affected by cocaine abuse. Countries in Africa suffered from ever larger cannabis production and consumption and ongoing diversions of pharmaceutical drugs into parallel markets.

Against this background, a new initiative was taken by the international community to address the world drug problem. Following preparations for more than two years, a special Session of the United Nations General Assembly (UNGASS) took place from 8-10 June 1998. It was devoted to reflecting on the effectiveness of the international drug control system and to come up with new ideas on how best to counter the world drug problem. In his opening statement, UN Secretary-General Kofi Annan made reference to the drastic proliferation of drugs over the previous 30 years and expressed his

hope that “*when historians study the work of humankind in the field of drug control, they will write about the next few days as the point where this trend was reversed.*”<sup>216</sup>

The UNGASS adopted, unanimously, a ‘*Political Declaration*’ and linked to it the ‘*Guiding Principles on Demand Reduction*’ as well as a number of measures to enhance international cooperation to counter the world drug problem, notably sections devoted to the:

- ‘*Action plan against manufacture, trafficking and abuse of ATS and their precursors*’
- ‘*Control of precursors*’;
- ‘*Measures to promote judicial cooperation*’
- ‘*Countering money laundering*’;
- ‘*Action plan on international cooperation on the eradication of illicit drug crops and on alternative development*’.

The Political Declaration adopted by the United Nations General Assembly consists of a preamble and 20 paragraphs.<sup>217</sup> In the first operative paragraph, the States Members of the United Nations reaffirm the “*unwavering determination and commitment to overcoming the world drug problem through domestic and international strategies to reduce both the illicit supply of and the demand for drugs.*” The obligation of countries to follow a balanced approach was thus reconfirmed.

In the second paragraph, States Members, “*Recognize that action against the world drug problem is a common and shared responsibility requiring an integrated and balanced approach in full conformity with the purposes and principles of the Charter of the United Nations and international law, and particularly with full respect for the sovereignty and territorial integrity of States, non-intervention in the internal affair of States and all human rights and fundamental freedoms...*” Four items are important here:

- the concept of “*shared responsibility*” (previously referred to as ‘*collective responsibility*’ in the 1984 Declaration on the Control of Drug Trafficking and Drug Abuse),
- the “*balanced approach*” (the term as such was used here for the first time in a legal international document, though the concept had been known and accepted at the international level, at least, since the 1987 Multidisciplinary Comprehensive Outline),
- the respect of ‘*sovereignty, territorial integrity*’ and thus the ‘*non-intervention into internal affairs*’ (all of these were also mentioned in previous treaties) and,
- for the first time, the linking of drug control to the ‘*Charter of the United Nations, ‘human rights’, and fundamental freedoms.*”

The declaration is comprehensive, reflecting States Members' desire to view the illicit drug problem in as wide a context as possible. The 1998 Political Declaration was the first legal document linking drug production/trafficking and terrorism. In §10, concern is expressed about the links between illicit drug production, trafficking and terrorist groups, and cooperation is pledged in response to these threats. In §11 a link is made between illicit drug production and illicit trafficking in drugs and arms and states are called to increase cooperation in stemming illegal arms trafficking.

Following these rather general calls for cooperation, §13-§19 represent the core of the Political Declaration. Reference is made to the various Action Plans detailed in the document (regarding ATS, precursors, money laundering, judicial cooperation, demand reduction and elimination of narcotic crops). The year 2003 is set as the target date for the introduction of the measures foreseen and the year 2008 as the target date by which significant and measurable results should be achieved in the field of demand reduction and the reduction in the illicit cultivation of coca bush, cannabis, and opium poppy, as well as the illicit manufacture, marketing and trafficking of psychotropic substances, including synthetic drugs, and the diversion of precursors.

States are requested to take into account the outcome of that session when formulating national strategies and programmes and are called to “*report biennially to the Commission on Narcotic Drugs on their efforts to meet the above-mentioned goals and targets for the year 2003 and 2008, and request the Commission to analyse these reports in order to enhance the cooperative effort to combat the world drug problem.*” To assist with international monitoring of these efforts, the Biennial Reports Questionnaire (BRQ) was developed, regularly ‘reminding’ States Members of their obligations and providing a framework for donors to invest in target areas identified in the Political Declaration and the accompanying Action Plans.

In contrast to the international drug conventions, there are no procedures foreseen in the Political Declaration to have an independent evaluation of the implementation of the Political Declaration and the accompanying Action Plans – §20 only declares that the CND should analyse the reports obtained from States Members and use this information to enhance the cooperative efforts to fight the drug problem. While the drug conventions foresee that in case of non-compliance by an individual state the INCB could impose international sanctions, no formal sanction mechanisms are foreseen for non-compliance with the Political Declaration and the accompanying Action Plans.

Under the Convention, States Members have provided self-evaluations on the degree of progress made in their

BRQ returns. Analysis of these responses suggests that the overall implementation of the Political Declaration, the Action Plans and the proposed measures improved from 51% over the 1998-2000 period to 60% over the 2006-07 period. But this is a ‘process evaluation’, a report on the efforts made. No provision was made for an ‘outcome evaluation’, or an analysis of the extent to which efforts have had real impact, due to the fact that, for the majority of countries, baseline data on the demand and the supply side were not available in 1998.

The Political Declaration proved to be a valuable tool as it encouraged a number of countries to renew their efforts in the area of drug control and strengthen international cooperation. Major successes were made in reducing the area under coca cultivation, for instance, in Peru and Bolivia in the 1990s, and in Colombia after 2000. Morocco reduced its cannabis resin production significantly over the 2003-2005 period. Major successes were also achieved in South-East Asia, notably by Myanmar and the Lao PDR, in reducing opium production, following the achievements made by Thailand over the previous three decades. These successes were, however, overshadowed by the rapid expansion of opium production in Afghanistan.

Demand data, where available, suggest that drug use stabilized or fell in the United States and that the strong upward trend reported in Europe in the 1990s gave way to signs of stabilization (except for cocaine) in recent years. Demand for drugs in a large number of developing countries, however, appears to have continued rising.

One of the main achievements of the UNGASS process in 1998 was the elaboration of a *Declaration on the Guiding Principles of Drug Demand Reduction*.<sup>218</sup> Demand reduction at the international level was, until then, governed by rather brief treatment in the international drug conventions. Some international guidance existed in the recommendations of the 1987 Comprehensive Multidisciplinary Outline (CMO). The 1988 Convention suggested that countries refer to the CMO in developing their demand reduction measures, but it did not make their use compulsory. In contrast, the ‘Declaration on the Guiding Principles of Drug Demand Reduction’ provides States with detailed principles of how to design their national strategies with regard to demand reduction.

The main innovation of the Guiding Principles was that demand reduction policies should not only aim at preventing the use of drugs, but also at “reducing the adverse consequences of drug abuse,” bringing to the fore a longstanding debate concerning “harm reduction”. The United States, the Russian Federation, Japan, China, and several developing countries are in favour of tradi-

tional demand reduction efforts (prevention and treatment) in order to reduce or keep drug use levels low. Most European countries, Australia, and Canada have long advocated that these efforts be supplemented with harm reduction programmes, such as needle exchange, often in the context of keeping drug use-related HIV/AIDS rates low.

The 1998 Declaration on the Guiding Principles makes it clear that both elements, the 'prevention of drug use' and the 'reduction of adverse consequences' should be present in demand reduction policies<sup>k</sup>. The International Narcotics Control Board (INCB) had already acknowledged in 1993 that harm reduction had a role to play in a tertiary prevention strategy; however the Board pointed out that such harm reduction programmes should not be carried out at the expense of, or be considered substitutes for, activities designed to reduce the demand for illicit drugs, and that they should not promote and/or facilitate drug abuse.<sup>219</sup>

Self-evaluations by States Members suggest that the Guidelines on Demand Reduction influenced the measures taken at national level. The Biennial Reports Questionnaire returns suggest an improvement in the overall implementation rate from, on average, 23% over the 1998-2000 period to 29% over the 2006-07 period (average of the composite indices for 'prevention', 'treatment' and 'reducing negative consequences'). This improvement is off a very low global base, however, since demand reduction is, for many countries, a new concept, in contrast to the extensive work done on the supply side.

In selected geographical regions, implementation rates were found to have been significantly higher. High rates for implementation of the proposed prevention measures were found in North America (81% in 2006/07) and in Oceania (70%). Low rates were found in Sub-Saharan Africa (25%). Similarly, in terms of treatment and rehabilitation, high implementation rates were reported from Oceania (69%) and North America (59%), while in Sub-Saharan Africa the implementation rate amounted to just 10%. In the case of measures aimed at reducing the negative consequences of drug use, the highest implementation rates were found in Oceania (76%), followed by West and Central Europe (50%) and North America (50%).

There were also significant differences in the implementation rates for specific activities. Provision of information and education as part of prevention programmes was shown to have risen from 34% in 1998-2000 to 42% in 2006/07 at the global level. The availability of prevention programmes in schools rose to 90%. In the

<sup>k</sup> For more detail see United Nations Office on Drugs and Crime, "Reducing the adverse health and social consequences of drug abuse: A comprehensive approach", Discussion paper, Vienna 1998.

area of reducing the negative consequences of drug use, measures such as needle exchange programmes rose from 39% to 52%.<sup>220</sup>

States Members at the General Assembly Special Session elaborated several *Action Plans* which were designed to refocus international attention and provide concrete steps to improving the work of the international community work in priority areas.

The preamble of the *Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development*<sup>221</sup> refers to a number of principles to be taken into account in the fight against drugs ('shared responsibility', 'integrated balanced approach', 'full respect of sovereignty', 'territorial integrity', 'non-intervention in internal affairs', 'human rights', 'fundamental freedoms', 'sustainable human development') and defines 'alternative development' as a process "to prevent and eliminate the illicit cultivation of plants containing narcotic drugs .. through specifically designed rural development measures in the context of ... sustainable development efforts ... recognizing the particular sociocultural characteristics of the target communities and groups...".

The self-evaluations by States Members suggested that there were some improvements in the areas covered by this Action Plan. Over the 1998-2000 period, 30% of the countries had a National Plan (including alternative development) to reduce or eliminate the cultivation of illicit crops; this proportion rose to 42% in 2006/07. For National Plans including eradication and other law enforcement measures, the corresponding increase was from 37% to 46%. In terms of international cooperation for alternative development, the rates were lower and the improvement was only very moderate. The proportion of States reporting international cooperation in the area of alternative development and eradication programmes increased from 17% to 21%. Monitoring and evaluation of alternative development and eradication programmes improved from 16% to 22%.<sup>222</sup> The average of the reported measures to implement the Action Plan (national plans, international cooperation, monitoring) shows an overall improvement in the implementation rate from 22% (1998-2000) to 29% in 2006-07. This level of implementation remains, however, less impressive than in several other areas, reflecting the fact that alternative development requires substantial financial resources.

Given the massive increase of ATS manufacture, trafficking and abuse in the 1990s, a special Action Plan was drawn up. This *Action Plan against Illicit Manufacture, Trafficking and Abuse of ATS and their Precursors*<sup>223</sup> consists of five chapters. The first two chapters deal with demand-related issues, the third with information (affecting both the demand and the supply side) and the

last two chapters with supply related issues. The chapters dealing with the supply-side contained a number over concrete obligations. The chapters dealing with the demand side, in contrast, were kept rather general.

Self-evaluations by States Members suggest that there was a growing adherence to the measures proposed in the Action Plan. The composite index developed on the basis of replies to the Biennial Reports Questionnaire (BRQ), showed an overall improvement in the implementation rate from 44% over the 1998-2000 period to 55% over the 2006-07 period. The composite index was based on a number of sub-indices which all showed improvements. At the subregional level, strong efforts to implement the ATS Action Plan were found in Oceania (96%), North America (94%), Central and Western Europe (63%) and in East and South-East Asia (62%).<sup>224</sup>

The *Control of Precursors* Action Plan calls on States Members to implement the already existing obligations under Article 12 of the 1998 Convention (dealing with precursor control), as well as repeating some of the proposals made under the ATS Action Plan.<sup>225</sup> Measures going beyond these requirements are few, and include new data collection requirements for Governments. According to §9, States, in cooperation with competent international bodies, should: (a) "... establish... mechanisms... for obtaining data on the licit manufacture, import or export of precursors... and for the monitoring the movement of such substances, including the establishment of a register of public or private companies engaged in any activity relating thereto". No such crucial data collection requirements, needed for the identification of potential diversions, existed under the 1998 Convention. The proposed measures also went beyond the 1998 Convention in their demand for stronger controls for international trade in acetic anhydride (used in the manufacture of heroin) and potassium permanganate (used in the manufacture of cocaine).

Self-evaluations by States Members show that there was a growing compliance with the measures on precursor control, rising from 61% over the 1998-2000 period to 74% over the 2006-07 period. The rather high implementation rates were also a reflection of the fact that the proposed measures did not go much beyond already existing obligations under the 1988 Convention. Nonetheless, they signalled ongoing improvements of precursor control towards international standards (laid down in the 1988 Convention and re-confirmed in the UNGASS process). The analysis of the results reveals that States have well-developed legislation relating to the control of precursor chemicals (93%), prior import/export authorizations (94%) and established working procedures for monitoring and identifying suspicious transactions involving precursors (82%). Encouraging advances were made in a number of countries that

received technical assistance, as well as in countries that had established procedures to investigate the diversion of chemicals. However, data also suggest that more needs to be done with regard to codes of conduct in cooperation with the chemical industry, making resources available for technical assistance and for international cooperation in seizing illicit consignments of precursor chemicals.<sup>226</sup>

The *Measures to Promote Judicial Cooperation Action Plan* dealt with recommendations to promote extradition, mutual legal assistance, transfer of proceedings, other forms of cooperation and training, controlled delivery, illicit traffic by sea and complementary measures.<sup>227</sup> The proposed measures were, by and large, already contained in the 1988 Convention, and the Action Plan simply served to make suggestions on implementation. For example, it makes reference to the availability of new information technology which could be used to speed up existing information exchange procedures. At the same time, the proposed measures were all formulated as 'recommendations', not as obligations.

Self-evaluations by States Members show that there was a growing compliance with the measures to promote judicial cooperation, rising from 63% (2000-2002) to 68% (2006-07). The high implementation rates are again a reflection that most of the measures had been already foreseen by the 1988 Convention. In the case of extraditions, the composite index showed an improvement from 75% to 77%. Overall, 90% of the countries reported that they had legislation on extradition procedures. The percentage of States Members not allowing the extradition of their nationals remained, however, high: 58% of the countries indicated that national law either precluded or seriously limited the extradition of nationals. Measures taken to comply with mutual legal assistance requirements improved from 69% to 79%. In terms of legislation permitting mutual legal assistance the improvement was even more pronounced (from 77% to 90%). The implementation rate for proposed measures to facilitate the transfer of proceedings was far lower, though rising as well (from 28% to 36%). Regarding law enforcement cooperation, the implementation rate improved from 73% to 79%. Measures taken in the area of controlled deliveries increased from 71% to 83%, suggesting that the use of this instrument has, by now, become common practice in many countries. The implementation of measures in the area of drug trafficking by sea improved from 37% to 52%. Surprisingly good results were achieved regarding the implementation of the newly recommended measures to protect judges, prosecutors, surveillance personnel, law enforcement officers and witnesses, rising from 63% to 79%.<sup>228</sup>

Like many of the other Action Plans, the measures proposed for countering money laundering are primarily



geared towards facilitating implementation of the 1988 Convention.<sup>229</sup> The primary innovation is contained in the third paragraph in the preamble. In this paragraph, the 40 recommendations established by the Financial Action Task Force (FATF) are enshrined as the global standard in anti-money laundering activities. Getting this adopted was problematic, as most States Members had not participated in the elaboration of the FATF recommendations. They were driven through by reference to a CND resolution which had already suggested these recommendations comprised the global standard: “Recalling also Commission on Narcotic Drugs resolution 5 (XXXIX) of 24 April 1996, in which the Commission noted that the forty recommendations of the Financial Action Task Force established by the heads of State or Government of the seven major industrialized countries and the President of the European Commission remained the standard by which the measures against money laundering adopted by concerned States should be judged ...” The subsequent paragraphs then identify a number of other activities undertaken at the regional and international levels to fight money laundering and stress the need to harmonize legislation and intensify international cooperation to effectively prevent money laundering.

The self-evaluations by States Members revealed that there was a growing compliance with the measures foreseen to fight money laundering at the global level. The implementation of the obligation to criminalize the laundering of the proceeds of drug trafficking and other serious crime improved from 72% of reporting countries over the 1998-2000 period to 92% over 2006-07. In terms of legislation on the freezing, seizure and confiscation of the proceeds of crime, implementation rose from 71% to 89%. Regarding the requirement to have money-laundering as an extraditable offence, the implementation rate increased from 65% to 77%. The obligation for States to require a declaration for cross-border transportation of cash rose from 49% to 83%, and for negotiable bearer instruments from 31% to 62%. Moreover, the implementation of measures to prevent and detect money laundering in the financial system improved from 55% to 82%.<sup>230</sup> Taking all of these components together, data suggest that the overall implementation rate of the measures foreseen to counter money laundering improved from 61% in 1998-2000 to 83% in 2006-07.

## 2.5 Achievements and unintended consequences of the international drug control system

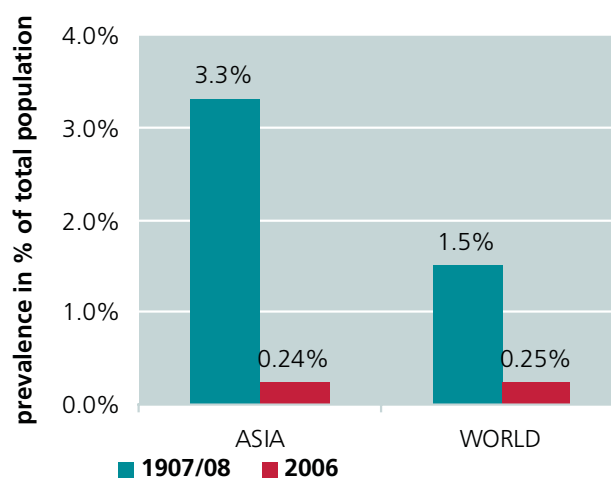
Despite many twists and turns, the history of international drug control elaborated above tells a relatively simple story. At the turn of the previous century, the world faced unregulated transnational markets in highly addictive substances. Free trade in drugs resulted in the

greatest drug problem the world has ever confronted: the Chinese opium epidemic. Unilateral efforts to address this problem failed, and it was not until international pressure brought the drug producing nations to the negotiating table that a solution was found. By mid century, the licit trade in narcotics had been brought under control, a remarkable achievement given that many national economies had been as dependent on opium as the addicts themselves. Illicit markets were an unavoidable consequence of international controls, and these have proven extremely problematic. But it is easy to forget what the world was like before these controls were in place, and what an achievement the international drug control system represents.

Among multilateral systems, the one regulating illicit drugs has a powerful characteristic: when a State Party ratifies one of the three Conventions, it becomes obliged to bring its national laws in line with international law. Of course, the drug problems that confront the world are diverse, and standardised laws may not be optimal for addressing the individual needs of each country. But uniformity is absolutely essential to protect the multilateral system from its biggest vulnerability: a unilateral action by a single State Party can compromise the integrity of the entire system.

Today, there is a higher level of international consensus in this field than ever before. The pace of normative development that the international community experienced between 1961 and 1988 could not have been so rapid otherwise. Adherence to the conventions is now virtually universal. Ninety six percent of all countries (186 countries) are State Parties to the Single Convention on Narcotic Drugs of 1961. Ninety four percent (183 countries) are State Parties to the 1971 Convention

**Fig. 24: Estimates of annual prevalence of opiate use, 1907/08 and 2006**



Sources: UNODC calculations based on International Opium Commission, Shanghai, February 1909, UNODC, *World Drug Report 2008*.