In previous articles for the CBW Conventions Bulletin, the regimes for the control of transfers of “banned and severely restricted chemicals” — the Rotterdam Convention for Prior Informed Consent — and for the control of High Production Volume (HPV) chemicals have been considered and their potential relevance to the Chemical Weapons Convention regime explored. This article continues this process by considering further control regimes for chemicals — those for narcotic drugs and psychotropic substances. These are also dual purpose chemicals as they have permitted medical uses as well as prohibited uses. They are also subject to international conventions requiring the monitoring of manufacture, production and international trade of such substances and of precursors and essential chemicals used in the illicit manufacture of narcotic drugs and psychotropic substances.

The control regimes for such drugs and psychotropic substances is of particular interest as the use of such materials for purposes other than those not prohibited under the Chemical Weapons Convention (CWC) — purposes not prohibited under the CWC are defined in Article II Definitions and Criteria as meaning:

(a) Industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;
(b) Protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
(c) Military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare;
(d) Law enforcement including domestic riot control purposes.

— would be subject to the general purpose criterion of the CWC and, in the case of materials of natural origin, by the general purpose criterion of the Biological and Toxin Weapons Convention (BWC). Insofar as some narcotic drugs and psychotropic substances are the natural products of living material — or synthetically produced analogues of such natural products — they can be regarded as falling under both the CWC and the BWC.

The control of narcotic drugs has been of global concern ever since the first international conference on the subject was held in Shanghai in 1909. The international control system has been developed under a number of treaties starting in 1912 with the adoption of the International Opium Convention. During the past 40 years a series of treaties adopted under the auspices of the United Nations require that Governments exercise control over the production and distribution of narcotic drugs and psychotropic substances, combat drug abuse and illicit traffic, and maintain the necessary national infrastructure and report to international organs on their actions.

There are four legal instruments which constitute the international regime for narcotic drugs and psychotropic substances: the 1961 Single Convention on Narcotic Drugs; the 1971 Convention on Psychotropic Substances; the 1972 Protocol Amending the Single Convention; and the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

The Single Convention on Narcotic Drugs 1961

This was adopted by states at a special international conference in 1961. It entered into force in 1964 after the deposit of the 20th instrument of ratification. This Convention replaced the treaties concluded before World War II on opiates, cannabis and cocaine. At present, control is exercised under this Convention of some 118 narcotic drugs, including opium and its derivatives, as well as synthetic narcotics such as methadone and pethidine. As of 2 January 2001, this Convention had 172 states parties.

The general obligations in Article 4 General Obligations require the parties to:

- take such legislative and administrative measures as may be necessary:
  (a) To give effect to and carry out the provisions of the Convention within their own territories;
  (b) To cooperate with other States in the execution of this Convention; and
  (c) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.

The substances under control are divided into four Schedules. To those familiar with the CWC Schedules, the schedules for the Single Convention are more complex. These are detailed in Article 2 Substances under Control:

Schedule I - these drugs are subject to all measures of control applicable under the Convention and in particular to those prescribed in certain Articles.

Schedule II - these drugs are subject to the same measures of control as drugs in Schedule I with the exception of measures presented in Article 30, paragraphs 2 and 5 in respect of retail trade.

Schedule III - these drugs are subject to the same measures of control as preparations containing drugs in Schedule II except that specific paragraphs of Article 31 and 34 need not apply and that for the purposes of estimates (Article 19) and statistics (Article 20), the information required shall be restricted to the quantities of the drugs used in the manufacture of such preparations.

Schedule IV - these drugs shall also be included in Schedule I and subject to all measures of control applicable to drugs in the latter Schedule and in addition thereto further measures should the State Party, in its opinion, require such measures.
The Convention also details specific measures, in addition to those applicable to all drugs in Schedule I, for opium, the coca leaf and cannabis.

A further requirement addresses substances that may be used in the illicit manufacture of drugs:

The Parties shall use their best endeavours to apply to substances which do not fall under this Convention, but which may be used in the illicit manufacture of drugs, such measures of supervision as may be necessary.

Consequently, Schedule IV contains the most highly controlled drugs, then Schedule I, then Schedule II and finally Schedule III. Schedule IV contains 17 drugs including several substituted fentanyl, cannabis and heroin, Schedule I contains 106 drugs (which include all the Schedule IV drugs) including coca leaf, cocaine, fentanyl, morphine, methadone, opium, pethidine and Schedule II contains 10 drugs including codeine. Schedule III contains preparations primarily of drugs in Schedule II containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations.

The arrangements for changes to the Schedules are addressed in Article 3 Changes in the Scope of Control which places the obligation on a state party or the World Health Organization (WHO) to notify the Secretary-General of the United Nations and to furnish him with the information in support of the notification, should it have information which in its opinion may require an amendment to any of the Schedules. The Secretary-General is then required to transmit such notification, and any information he considers relevant, to the states parties, to the Commission on Narcotic Drugs of the UN Economic and Social Council and, and, where the notification has been made by a state party, to the World Health Organization. Article 3 contains the following:

3. Where the notification relates to a substance not already in Schedule I or II,
   (i) The Parties shall examine in the light of the available information the possibility of the provisional application to the substance of an [sic] measures of control applicable to drugs in Schedule I;
   (ii) Pending its decision as provided in subparagraph (iii) of this paragraph, the Commission may decide that the Parties shall apply provisionally to that substance all measures of control applicable to drugs in Schedule I. The Parties shall apply such measures provisionally to the substance in question.
   (iii) If the World Health Organization finds that the substance is liable to similar abuse and productive of similar ill effects as the drugs in Schedule I or Schedule II or is convertible into a drug, it shall communicate that finding to the Commission which may, in accordance with the recommendation of the World Health Organization, decide that the substance shall be added to Schedule I or Schedule II.

Article 3 goes on to make provision regarding assignment of drugs to Schedule IV by stating that:

5. If the World Health Organization finds that a drug in Schedule I is particularly liable to abuse and to produce ill effects (paragraph 3) and that such liability is not offset by substantial therapeutic advantages not possessed by substances other than drugs in Schedule IV, the Commission...
(f) Stocks of drugs as at 31 December of the year to which the returns relate;

Article 22 addresses the penal provisions required as follows:

1. (a) Subject to its constitutional limitations, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty.

(b) Notwithstanding the preceding sub-paragraph, when abusers of psychotropic substances have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to punishment, that such abusers undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of article 20.

whilst Article 23 enables a party to adopt more strict or severe measures of control than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the protection of public health and welfare.

The Convention on Psychotropic Substances

This was adopted in 1971 and entered into force in 1976. It was intended to control drugs not covered by previous treaties such as hallucinogens, amphetamines, barbiturates, non-barbiturate sedatives and tranquilizers. Some 111 psychotropic substances are covered, most of them contained in pharmaceutical products acting on the central nervous system. The Convention also calls for substances that have been judged to be particularly dangerous, such as lysergic acid diethylamide (LSD) to be placed under even stricter control than narcotic drugs. It also calls for substances with very wide legitimate medical use to be controlled in a less stringent way not to hamper their availability for medical purposes but on the other hand to avoid their diversion and abuse. As of 2 January 2001, it had 166 states parties.

This Convention does not have an article containing general obligations but the aim of the Convention is apparent from the Preamble in which the parties:

Determined to prevent and combat abuse of such substances and the illicit traffic to which it gives rise,

Considering that rigorous measures are necessary to restrict the use of such substances to legitimate purposes,

Recognizing that the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted,

The psychotropic substances are again assigned to four Schedules I, II, III and IV. In this case, Schedule I substances are subject to the most severe control measures and Schedule IV to the least severe control measures.

Schedule I: These are required to be subject to the special control measures elaborated in Article 7 which require parties to:

(a) Prohibit all use except for scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of their Governments or specifically approved by them;

(b) Require that manufacture, trade, distribution and possession be under a special licence or prior authorization;

(c) Provide for close supervision of the activities and acts mentioned in paragraphs (a) and (b);

(d) Restrict the amount supplied to a duly authorized person to the quantity required for his authorized purpose;

(e) Require that persons performing medical or scientific functions keep records concerning the acquisition of the substances and the details of their use, such records to be preserved for at least two years after the last use recorded therein; and

(f) Prohibit export and import except when both the exporter and importer are the competent authorities or agencies of the exporting and importing country or region, respectively, or other persons or enterprises which are specifically authorized by the competent authorities of their country or region for the purpose. The requirements of paragraph 1 of Article 12 for export and import authorizations for substances in Schedule I shall also apply to substances in Schedule I.

In addition, parties are required to:

(i) Require licences for manufacture, trade and distribution as provided in Article 8 for substances in Schedule II;

(ii) Require medical prescriptions for supply or dispensing as provided in Article 9 for substances in Schedule II;

(iii) Comply with the obligations relating to export and import provided in Article 12, except in respect to another Party having given such notice for the substance in question;

(iv) Comply with the obligations provided in Article 13 for substances in Schedule II in regard to prohibition of and restrictions on export and import;

(v) Furnish statistical reports to the Board in accordance with paragraph 4 (a) of Article 16; and

(vi) Adopt measures in accordance with Article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

Schedule II: The requirements on parties are essentially the same as the Schedule I requirements — but without the special control measures in Article 7 — to:

(i) Require licences for manufacture, trade and distribution in accordance with Article 8;

(ii) Require medical prescriptions for supply or dispensing in accordance with Article 9;

(iii) Comply with the obligations relating to export and import provided in Article 12, except in respect to another Party having given such notice for the substance in question;

(iv) Comply with the obligations of Article 13 in regard to prohibition of and restrictions on export and import;

(v) Furnish statistical reports to the Board in accordance with paragraphs 4 (a), (c) and (d) of Article 16; and

(vi) Adopt measures in accordance with Article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

Schedule III: The requirements on Parties are essentially the same as the Schedule II requirements — but without the requirements relating to import provided in Article 12 and to provide statistical reports — to:
requirements to require medical prescriptions or to comply the same as the Schedule III requirements — but without the March 2001 Page 5 CBWCB 51

Paragraph 4 sets out the procedure for the WHO: substances in Schedule I or Schedule II, as appropriate.

the possibility of the provisional application to the substance of all measures of control applicable to examine, in the light of all information available to them, Schedule II pursuant to paragraph 4, the parties shall that the substance is suitable for inclusion in Schedule I or information transmitted with such a notification indicates notification is made by a party, to the WHO. If the Drs. of the Economic and Social Council and, when the notification, and any information which he considers Schedules. The Secretary-General shall transmit such substance from one Schedule to another among those or the WHO has information justifying the transfer of a substance to notify the Secretary-General of the United Nations and furnish him with the information in support of that notification. The same procedure also applies when a party or the WHO has information justifying the transfer of a substance from one Schedule to another among those Schedules, or the deletion of a substance from the Schedules. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the parties, to the Commission on Narcotic Drugs of the Economic and Social Council and, when the notification is made by a party, to the WHO. If the information transmitted with such a notification indicates that the substance is suitable for inclusion in Schedule I or Schedule II pursuant to paragraph 4, the parties shall examine, in the light of all information available to them, the possibility of the provisional application to the substance of all measures of control applicable to substances in Schedule I or Schedule II, as appropriate. Paragraph 4 sets out the procedure for the WHO:

4. If the World Health Organization finds:

(a) That the substance has the capacity to produce

(i) (1) A state of dependence, and

requirements on parties are essentially the same as the Schedule III requirements — but without the requirements to require medical prescriptions or to comply with the obligations relating to export in Article 12 — to:

(i) Require licences for manufacture, trade and distribution in accordance with Article 8;

(ii) Require medical prescriptions for supply or dispensing in accordance with Article 9;

(iii) Comply with the obligations relating to export provided in Article 12, except in respect to another Party having given such notice for the substance in question;

(iv) Comply with the obligations of Article 13 in regard to prohibition of and restrictions on export and import; and

(v) Adopt measures in accordance with Article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

Schedule IV The requirements on parties are essentially Schedule I with the most highly controlled substances contains some 27 psychotropic substances including LSD, Schedule II contains 15 substances including amphetamine and phenylcyclidine, Schedule III contains 9 substances including several barbiturates and Schedule IV contains some 60 substances including other barbiturates and diazepam.

The arrangements for changes to the Schedules are in Article 2 Scope of Control of Substances which requires a party or the World Health Organization having:

information relating to a substance not yet under international control which in its opinion may require the addition of that substance to any of the Schedules of this Convention to notify the Secretary-General of the United Nations and furnish him with the information in support of that notification. The same procedure also applies when a party or the WHO has information justifying the transfer of a substance from one Schedule to another among those Schedules, or the deletion of a substance from the Schedules. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the parties, to the Commission on Narcotic Drugs of the Economic and Social Council and, when the notification is made by a party, to the WHO. If the information transmitted with such a notification indicates that the substance is suitable for inclusion in Schedule I or Schedule II pursuant to paragraph 4, the parties shall examine, in the light of all information available to them, the possibility of the provisional application to the substance of all measures of control applicable to substances in Schedule I or Schedule II, as appropriate. Paragraph 4 sets out the procedure for the WHO:

4. If the World Health Organization finds:

(a) That the substance has the capacity to produce

(i) (1) A state of dependence, and

(ii) Similar abuse and similar ill effects as a substance in Schedule I, II, III or IV, and

(b) That there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control, the World Health Organization shall communicate to the Commission an assessment of the substance, including the extent or likelihood of abuse, the degree of seriousness of the public health and social problem and the degree of usefulness of the substance in medical therapy, together with recommendations on control measures, if any, that would be appropriate in the light of its assessment.

The Commission on Narcotic Drugs, taking into account the communication from the World Health Organization, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources. The Convention also includes provision in Article 23 for states parties to introduce stricter control measures if they consider this desirable or necessary:

A Party may adopt more strict or severe measures of control than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the protection of the public health and welfare.

Article 8 Licences requires parties to ensure that:

the manufacture of, trade (including export and import trade) in, and distribution of substances listed in Schedules II, III and IV be under licence or other similar control measure.

In addition, the parties shall:

(a) Control all duly authorized persons and enterprises carrying on or engaged in the manufacture of, trade (including export and import trade) in, or distribution of substances referred to in paragraph 1;

(b) Control under licence or other similar control measure the establishments and premises in which such manufacture, trade or distribution may take place; and

(c) Provide that security measures be taken with regard to such establishments and premises in order to prevent theft or other diversion of stocks.

Furthermore, the parties shall require that:

all persons who obtain licences in accordance with this Convention or who are otherwise authorized ... shall be adequately qualified for the effective and faithful execution of the provisions of such laws and regulations as are enacted in pursuance of this Convention.

Article 12 Provisions relating to International Trade and Article 13 Prohibition of and Restrictions on Export and Import set out the requirements in respect of import and export of psychotropic substances. Article 12 requires that for substances in Schedule I or II:

(a) Every Party permitting the export or import of substances in Schedule I or II shall require a separate import or export authorization, on a form to be established by the Commission, to be obtained for each
such export or import whether it consists of one or more substances.

(b) Such authorization shall state the international non-proprietary name, or, lacking such a name, the designation of the substance in the Schedule, the quantity to be exported or imported, the pharmaceutical form, the name and address of the exporter and importer, and the period within which the export or import must be effected. If the substance is exported or imported in the form of a preparation, the name of the preparation, if any, shall additionally be furnished. The export authorization shall also state the number and date of the import authorization and the authority by whom it has been issued.

c) Before issuing an export authorization the Parties shall require an import authorization, issued by the competent authority of the importing country or region and certifying that the importation of the substance or substances referred to therein is approved, and such an authorization shall be produced by the person or establishment applying for the export authorization.

d) A copy of the export authorization shall accompany each consignment, and the Government issuing the export authorization shall send a copy to the Government of the importing country or region.

e) The Government of the importing country or region, when the importation has been effected, shall return the export authorization with an endorsement certifying the amount actually imported, to the Government of the exporting country or region.

For substances in Schedule III the requirements are that:

(a) The Parties shall require that for each export of substances in Schedule III exporters shall draw up a declaration in triplicate, on a form to be established by the Commission, containing the following information:

(i) The name and address of the exporter and importer;

(ii) The international non-proprietary name, or, failing such a name, the designation of the substance in the Schedule;

(iii) The quantity and pharmaceutical form in which the substance is exported, and, if in the form of a preparation, the name of the preparation, if any; and

(iv) The date of despatch.

(b) Exporters shall furnish the competent authorities of their country or region with two copies of the declaration. They shall attach the third copy to their consignment.

(c) A Party from whose territory a substance in Schedule III has been exported shall, as soon as possible but not later than ninety days after the date of despatch, send to the competent authorities of the importing country or region, by registered mail with return of receipt requested, one copy of the declaration received from the exporter.

(d) The Parties may require that, on receipt of, the consignment, the importer shall transmit the copy accompanying the consignment, duly endorsed stating the quantities received and the date of receipt, to the competent authorities of his country or region.

Insofar as the prohibition of and restrictions on export and import are concerned, the provisions of Article 13 are that:

1. A Party may notify all the other Parties through the Secretary-General that it prohibits the import into its country or into one of its regions of one or more substances in Schedule II, III or IV, specified in its notification. Any such notification shall specify the name of the substance as designated in Schedule II, III or IV.

2. If a Party has been notified of a prohibition pursuant to paragraph 1, it shall take measures to ensure that none of the substances specified in the notification is exported to the country or one of the regions of the notifying Party.

3. Notwithstanding the provisions of the preceding paragraphs, a Party which has given notification pursuant to paragraph 1 may authorize by special import licence in each case the import of specified quantities of the substance in question or preparations containing such substances. ....

The information to be provided by states parties is detailed in Article 16 and includes the following:

1. The Parties shall furnish to the Secretary-General such information as the Commission may request as being necessary for the performance of its functions and in particular an annual report regarding the working of the Convention in their territories including information on:

(a) Important changes in their laws and regulations concerning psychotropic substances; and

(b) Significant developments in the abuse of and the illicit traffic in psychotropic substances within their territories.

2. The Parties shall also notify the Secretary-General of the names and addresses of the governmental authorities referred to in sub-paragraph (f) of Article 7, in Article 12 and in paragraph 3 of Article 13. Such information shall be made available to all Parties by the Secretary-General....

4. The Parties shall furnish to the Board annual statistical reports in accordance with forms prepared by the Board:

(a) In regard to each substance in Schedules I and II, on quantities manufactured, exported to and imported from each country or region as well as on stocks held by manufacturers;

(b) In regard to each substance in Schedules III and IV, on quantities manufactured, as well as on total quantities exported and imported;

(c) In regard to each substance in Schedules I and II, on quantities used for industrial purposes in accordance with sub-paragraph (b) of Article 4. The quantities manufactured which are referred to in sub-paragraphs (a) and (b) of this paragraph do not include the quantities of preparations manufactured.

The requirements for penal provisions are detailed in Article 22 and require that:

1. (a) Subject to its constitutional limitations, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty.

(b) Notwithstanding the preceding sub-paragraph, when abusers of psychotropic substances have committed such offences, the Parties may provide, either as an alternative to conviction or punishment...
or in addition to punishment, that such abusers undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of Article 20.

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,

(a) (i) If a series of related actions constituting offences under paragraph 1 has been committed in different countries, each of them shall be treated as a distinct offence;

(ii) Intentional participation in, conspiracy to commit and attempts to commit, any of such offences, and preparatory acts and financial operations in conjunction with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;

(iii) Foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism; and

(iv) Serious offences heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offence was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such offender has not already been prosecuted and judgement given.

(b) It is desirable that the offences referred to in paragraph 1 and paragraph 2 (a) (ii) be included as extradition crimes in any extradition treaty which have been or may hereafter be concluded between any of the Parties, and, as between any of the Parties which do not make extradition conditional on the existence of a treaty or on reciprocity, be recognized as extradition crimes; provided that extradition shall be granted in conformity with the law of the Party to which application is made, and that the Party shall have the right to refuse to effect the arrest or grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.

The 1972 Protocol Amending the Single Convention

This has been in force since 1975 and highlights the need for treatment and rehabilitation of drug addicts. As of 2 January 2001, it had 161 states parties.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

This was adopted in 1988 and entered into force in 1990 is designed to prevent the laundering of money obtained from illicit trafficking and to provide concrete instruments for international law enforcement. As of 2 January 2001, it had 158 states parties.

The Convention includes provisions for the tracing, freezing and confiscation of proceeds and property derived from drug trafficking. Courts are empowered to make available or seize bank, financial or commercial records and bank secrecy cannot be invoked. The Convention also aims to bar all havens to drug traffickers and provides for the extradition of drug traffickers and for mutual legal assistance between states on drug-related investigations. In addition, under this Convention states parties commit themselves to eliminate or reduce illicit demand for drugs, monitor precursors and essential chemicals used in the illicit manufacture of narcotic drugs and psychotropic substances.

Article 2 Scope of the Convention sets out the purpose of the Convention as being:

to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

It then in Article 3 sets out offences under the Convention including:

1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

(a) (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

(ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

(iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;

(iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

(v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above;

Article 12 Substances Frequently Used in the Illicit Manufacture of Narcotic Drugs or Psychotropic Substances

sets out the following obligations:

1. The Parties shall take the measures they deem appropriate to prevent diversion of substances in Table I and Table II used for the purpose of illicit manufacture of narcotic drugs or psychotropic substances, and shall co-operate with one another to this end.

The Article sets out the measures to be taken in regard to the substances in Tables I and II. Whilst these generally apply equally to chemicals in both Table I and II, the substances in Table I are subject to the monitoring of exports.

Article 12 sets out measures to be taken to monitor the manufacture and distribution of substances in Table I and Table II:

(a) Without prejudice to the generality of the provisions contained in paragraph 1 of this article and the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the Parties shall 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.

(b) To this end, the Parties may:

(i) Control all persons and enterprises engaged in the manufacture and distribution of such substances;

(ii) Control under licence the establishment and premises in which such manufacture or distribution may take place;

(iii) Require that licensees obtain a permit for conducting the aforesaid operations

(iv) Prevent the accumulation of such substances in the possession of manufacturers and distributors, in excess of the quantities required for the normal conduct of business and the prevailing market conditions.

In addition, a system to monitor international trade is required:

Each Party shall, with respect to substances in Table I and Table II, take the following measures:

(a) Establish and maintain a system to monitor international trade in substances in Table I and Table II in order to facilitate the identification of suspicious transactions. Such monitoring systems shall be applied in close co-operation with manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent authorities of suspicious orders and transactions.

(b) Provide for the seizure of any substance in Table I or Table II if there is sufficient evidence that it is for use in the illicit manufacture of a narcotic drug or psychotropic substance.

(c) Notify, as soon as possible, the competent authorities and services of the Parties concerned if there is reason to believe that the import, export or transit of a substance in Table I or Table II is destined for the illicit manufacture of narcotic drugs or psychotropic substances, including in particular information about the means of payment and any other essential elements which led to that belief.

(d) Require that imports and exports be properly labelled and documented. Commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names, as stated in Table I or Table II, of the substances being imported or exported, the quantity being imported or exported, and the name and address of the exporter, the importer and, when available, the consignee.

(e) Ensure that the documents referred to in subparagraph (d) of this paragraph are maintained for a period of not less than two years and may be made available for inspection by the competent authorities.

The additional measures relating to the export of substances in Table I are the following:

(a) In addition to the provisions of paragraph 9, and upon request to the Secretary-General by the interested Party, each Party from whose territory a substance in Table I is to be exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country:

(i) address of the exporter and importer and, when available, the consignee;

(ii) Name of the substance in Table I;

(iii) Quantity of the substance to be exported;

(iv) Expected point of entry and expected date of dispatch;

(v) Any other information which is mutually agreed upon by the Parties.

(b) A Party may adopt more strict or severe measures of control than those provided by this paragraph if, in its opinion, such measures are desirable or necessary.

The substances in Table I and Table II, including the amendments made by the Commission on Narcotic Drugs in force on 23 November 1992 are as follows:

<table>
<thead>
<tr>
<th>Table I</th>
<th>Table II</th>
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<tbody>
<tr>
<td>N-acetylantranilic acid</td>
<td>Acetic anhydride</td>
</tr>
<tr>
<td>Ephedrine</td>
<td>Acetone</td>
</tr>
<tr>
<td>Ergometrine</td>
<td>Anthranilic acid</td>
</tr>
<tr>
<td>Ergotamine</td>
<td>Ethyl ether</td>
</tr>
<tr>
<td>Isosafrole</td>
<td>Hydrochloric acid</td>
</tr>
<tr>
<td>Lysergic acid</td>
<td>Methyl ethyl ketone</td>
</tr>
<tr>
<td>3,4-methylene-dioxymethyl-2-propanone</td>
<td>Phenylacetic acid</td>
</tr>
<tr>
<td>1-phenyl-2-propanone</td>
<td>Piperidine</td>
</tr>
<tr>
<td>Piperonal</td>
<td>Potassium permanganate</td>
</tr>
<tr>
<td>Pseudoephedrine</td>
<td>Sulphuric acid</td>
</tr>
<tr>
<td>Safrole</td>
<td>Toluene</td>
</tr>
</tbody>
</table>

The salts of the substances listed in Table I whenever the existence of such salts is possible

<table>
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</tr>
<tr>
<td>Ergometrine</td>
<td>Anthranilic acid</td>
</tr>
<tr>
<td>Ergotamine</td>
<td>Ethyl ether</td>
</tr>
<tr>
<td>Isosafrole</td>
<td>Hydrochloric acid</td>
</tr>
<tr>
<td>Lysergic acid</td>
<td>Methyl ethyl ketone</td>
</tr>
<tr>
<td>3,4-methylene-dioxymethyl-2-propanone</td>
<td>Phenylacetic acid</td>
</tr>
<tr>
<td>1-phenyl-2-propanone</td>
<td>Piperidine</td>
</tr>
<tr>
<td>Piperonal</td>
<td>Potassium permanganate</td>
</tr>
<tr>
<td>Pseudoephedrine</td>
<td>Sulphuric acid</td>
</tr>
<tr>
<td>Safrole</td>
<td>Toluene</td>
</tr>
</tbody>
</table>

Provisions are also included in this Article for the amendment of the Tables:

2. If a Party or the [International Narcotics Control] Board has information which in its opinion may require the inclusion of a substance in Table I or Table II, it shall notify the Secretary-General and furnish him with the information in support of that notification. The procedure described in paragraphs 2 to 7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from Table I or Table II, or the transfer of a substance from one Table to the other.

3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission [on Narcotic Drugs], and, where notification is made by a Party, to the Board. The Parties shall communicate their comments concerning the notification to the Secretary-General, together with all supplementary information which may assist the Board in establishing an assessment and the Commission in reaching a decision.

4. If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit purposes and for the illicit manufacture of narcotic drugs or psychotropic substances, finds:

(a) That the substance is frequently used in the illicit manufacture of a narcotic drug or psychotropic substance;

(b) That the volume and extent of the illicit manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action, it shall communicate
to the Commission an assessment of the substance, including the likely effect of adding the substance to either Table I or Table II on both licit use and illicit manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.

5. The Commission, taking into account the comments submitted by the Parties and the comments and recommendations of the Board, whose assessment shall be determinative as to scientific matters, and also taking into due consideration any other relevant factors, may decide by a two-thirds majority of its members to place a substance in Table I or Table II.

Finally, Article 12 includes an exclusion of its provisions from pharmaceutical preparations:

14. The provisions of this article shall not apply to pharmaceutical preparations, nor to other preparations containing substances in Table I or Table II that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means.

Article 14 entitled Measures to Eradicate Illicit Cultivation of Narcotic Plants and to Eliminate Illicit Demand for Narcotic Drugs and Psychotropic Substances includes the following provisions:

1. 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 and to the elimination of illicit demand for narcotic drugs and psychotropic substances under the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

2. Each Party shall 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 measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.

3. (a) The Parties may co-operate to increase the effectiveness of eradication efforts. ... The Parties may agree on any other appropriate measures of co-operation.

Article 20 Information to be Furnished by the Parties requires that:

1. The Parties shall furnish, through the Secretary-General, information to the Commission on the working of this Convention in their territories and, in particular:
   (a) The text of laws and regulations promulgated in order to give effect to the Convention; ...

Appreciation

The central aim of these conventions is to limit the supply of and demand for narcotic drugs and psychotropic substances to medical and scientific needs. The measures of control prescribed by the three conventions vary in strictness from one group of drugs to another. For this purpose, drugs and chemicals are listed in various schedules annexed to the conventions according to the differences in their dependence-producing properties, therapeutic value and risk of abuse, or in the case of chemicals, in relation to the impact the control measures would have on permitted commercial trade and on their availability for illicit use.

The Commission on Narcotic Drugs This is a subsidiary body of the Economic and Social Council of the United Nations. The Commission has the power to determine whether a new drug or chemical should be listed or whether a listed drug should be transferred to another schedule or deleted. In doing so, it must take into account the findings and recommendations of the World Health Organization with respect to drugs and the International Narcotics Control Board with respect to chemicals. The Commission prepares comprehensive reports on its sessions that are available on the Internet as part of the Official Records of the Economic and Social Council. These reports include a chapter on the implementation of the international drug control treaties.

The International Narcotics Control Board This is the independent and quasi-judicial control organ for the implementation of the United Nations drug conventions, established in 1968 by the 1961 Single Convention and replacing preceding international treaty bodies in the drug control field. The responsibility of the INCB is to promote government compliance with the provisions of the drug control treaties and to assist them in this effort. It carries out tasks in two broad areas:

a. With regard to permitted manufacture and trade in drugs, the INCB seeks to ensure that adequate supplies are available for medical and scientific uses and that leakage to illicit traffic does not occur. This is achieved by the estimates system for narcotic drugs and a voluntary assessment system for psychotropic substances. In addition, the INCB also monitors government control over chemicals used in the illicit manufacture of drugs and assists governments in preventing diversion of these chemicals into illicit traffic.

b. The INCB identifies weaknesses in national and international drug control systems and helps remedy those situations. The INCB is also responsible for assessing new chemicals found to be used in the illicit manufacture of drugs for possible international control. In cases where the INCB finds that Governments are not meeting their treaty obligations, it urges them to adopt remedial measures, and it may bring treaty violations to the attention of the States Parties, the Commission on Narcotic Drugs and the Economic and Social Council.

In accordance with the requirements in the conventions, the INCB prepares an annual report on its work containing an analysis of the information at its disposal. Interestingly all three conventions include language requiring the unrestricted distribution of the reports of the INCB. For example the 1988 Convention states in Article 23 that:

The reports of the Board shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.

The INCB annual report and its supplements, available via http://www.incb.org/, provides a comprehensive survey of...
the drug control situation in various parts of the world. As an impartial body, the INCB seeks to identify and predict dangerous trends and suggests necessary measures to be taken. Its annual report includes a section entitled “Operation of the international drug control system” which reviews the status of adherence to the treaties and cooperation with governments during the previous year to implement the drug control system. The annual report is supplemented by technical reports on narcotic drugs and psychotropic substances giving a detailed account of estimates of annual legitimate requirements in each country as well as data on the permitted production, manufacture, trade and consumption of these drugs worldwide.

The annual report is supplemented by the report to the Commission on Narcotic Drugs which contains an analysis of measures governments have taken against the diversion of precursors and essential chemicals and trends in illicit trafficking in such substances.

The UN Drug Control Programme (UNDCP) was founded in 1991 and has the following main objectives:

a. To provide effective leadership for all UN drug control initiatives
b. To anticipate and help to prevent developments that could aggravate illicit drug production, trafficking and abuse
c. To be a world wide centre of expertise and repository of information in all fields of drug control
d. To assist the CND and INCB in implementing their treaty functions
e. To provide technical assistance to help Governments to establish adequate drug control structure and strategies, as well as technical cooperation in the different fields of drug control.

The UNDCP budget document for 1998–99, available via www.undcp.org, includes information on a total of 295 ongoing projects divided into four main areas: Policy support, legislation and advocacy; Prevention and reduction of drug abuse; Elimination of illicit crops; and Suppression of illicit drug trafficking. The budget for 1998–99 was some $218 million; most of this (about three-quarters) is earmarked by the donor governments for specific projects.

**Conclusions**

The three drug conventions together control a significant number of narcotic drugs (118), psychotropic substances (111) along with precursors and essential chemicals (22) used in the illicit manufacture of narcotic drugs and psychotropic substances. The number of parties to all three conventions is close to 160 and it is evident that states continue to increase the number of their adherences. The three drug conventions together control a significant number of narcotic drugs, psychotropic substances, precursors and essential chemicals assigned to Schedules or Tables.

The control measures include both national monitoring and controls as well as export and import measures. One of the provisions under Article 13 of the 1971 Convention on Psychotropic Substances enables states parties to notify the prohibition of the importation of specific substances in Schedules II, III or IV of the Convention. 24 of the states parties have used this notification procedure for the prohibition of the importation of several substances; for example, India has prohibited 31 substances and Pakistan 34. Export and import authorizations are required by national legislation for all substances in Schedule III of the 1971 Convention by 150 countries and for all substances in Schedule IV of that Convention by some 140 countries.

The annual report of the INCB together with its supplements is a much sharper and more pointed document than is usual in annual reports of international organizations. This doubtless reflects the independent nature of the INCB which, for example, in its annual report names the states which have not accorded to the individual conventions or, in the case of the Single Convention of 1961 have yet to accede to the Convention as amended by the 1972 Protocol. It also does not hesitate to name states parties which have shortcomings in regard to the implementation of particular aspects of the Conventions.

In the context of the chemical and biological weapons conventions, many of the substances controlled under the three drug conventions are chemicals of biological origin and would also be covered by the general purpose criteria in either or both the CWC and the BWC in respect of uses prohibited under these conventions. It is evident that the substances controlled under the drug conventions are dual-purpose materials and that the associated export-import control regimes are intended increasingly to enable the exporting country to seek validation of the import request by the authorities of the importing countries before authorising the export. It is thus very clear that this is yet another area in which the global trend is towards greater control of exports and imports.

A number of different dual-use material regimes now exist — such as those for chemical warfare agents and precursors; banned and severely restricted chemicals; pathogens and genetically modified organisms; and narcotic drugs and psychotropic substances. It is evident that all show that the monitoring and control of exports and imports in dual-use materials is becoming the standard as more and more countries around the world want to safeguard the public health and the environment and thereby promote safety, security and prosperity. The trend is increasingly towards more controls over potentially harmful materials to ensure that these are not misused to cause harm to people or states.

Taking the wider scene into consideration, it is evident that the trend is increasingly — whether chemicals, biological organisms or drugs and psychochemicals are concerned — towards a world in which governments want...
to be consulted prior to potentially dangerous dual use materials and equipment being introduced into their country and the exporting governments equally want to be assured that the export is for legitimate purposes and is not going to be misused. It is probable that some 20 to 25 years hence it would be regarded as irresponsible to transfer any potentially dangerous dual use materials and equipment without first receiving confirmation from the importing country that the transfer is for legitimate purposes. Such a situation would certainly meet the obligations placed on states parties under the relevant Articles of the CWC and BWC not to transfer chemicals or biological agents and toxins for prohibited purposes.

Reference

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Progress in The Hague Quarterly Review no 33
Developments in the Organization for the Prohibition of Chemical Weapons

The period under review, from late December 2000 until early March 2001 was dominated by discussion of the budget of the Organization for the Prohibition of Chemical Weapons (OPCW) and the programme of work of its Secretariat for 2001. The two main difficulties encountered were a cash flow problem and the identification of several structural problems in the budget, especially in relation to reimbursements under Article IV and VI.

A large shortfall in the 2000 budget and forecasted underfunding for the 2001 programme of work, resulting from a convergence of numerous factors, both internal and external, was revealed in the first weeks of the year and intensive efforts were undertaken to address deficiencies in the process by which the OPCW budget is constructed and approved. The Secretariat’s response to the financial situation included the imposition of austerity measures designed to bring the programme of work in line with the funds available; consequently, reductions in verification and international cooperation activities, as well as in other areas, were implemented during the period under review.

The Organization gained two further members following the ratifications by Zambia and Dominica of the Chemical Weapons Convention (CWC). Both the Southern African Development Community (SADC) and the Organization of Eastern Caribbean States (OECS), regional organizations to which Zambia and Dominica belong, were the focus of Secretariat outreach and international cooperation programmes in 2000. By mid-March, after entry into force of the Convention for these two countries, the Convention would have 143 states parties and 31 signatories. The 1972 Biological and Toxin Weapons Convention (BWC) also has 143 states parties, 115 of which it shared with the CWC.

In addition, the OPCW hosted the “International Symposium on Cooperation and Legal Assistance for the Effective Implementation of International Agreements” during 7–9 February. This represented one of the first opportunities for individuals from government agencies, international organizations, national police forces, and the academic community, concerned with the prevention and prosecution of international crime, to come together to discuss the penal enforcement of international treaties like the CWC. The proceedings included a presentation of the Harvard Sussex Program Draft Convention to Prohibit Biological and Chemical Armament Under International Criminal Law by HSP Director Mathew Meselson.

Executive Council

The twenty-third session of the Executive Council met during 20–23 February.

The Council also met in informal sessions during the period under review. The first such meeting took place on 26 January — following a briefing given to Council members by the Director-General on 17 January — and addressed the financial situation of the Organization including matters relating to the 2000, 2001, and 2002 budgets. Informal consultations on the 2001 budget led by coordinator Mark Albon (South Africa), critical because of the austerity measures applied by the Secretariat, continued on 12 February. An additional informal meeting was convened on 19 February to discuss progress on chemical weapons destruction and the destruction and conversion of chemical weapon production facilities (CWPFs). The next informal meeting on the same topic was scheduled to take place on 2 April, and similar meetings were planned for three additional occasions during 2001.

In his opening statement to the Council, the Director-General warned against the degradation of the Organization’s programme of work — especially as regards the verification regime and international cooperation — resulting from the current impasse over the Organization’s budget and finances. He highlighted four challenges facing the Organization in the immediate future:

• universal membership to the treaty, especially in Northeast Asia and the Middle East where adherence to the CWC could play an important role mitigating the ongoing violence and tension in those regions;

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