

BORN IN THE USA

Fifty years ago an international treaty consolidated global anti-drug laws and set the framework for the future of drug prohibition. **Cindy Fazey** charts the development and impact of the 1961 Single Convention on Narcotic Drugs.

“International treaties signed 30 years ago are not appropriate to the modern age. The treaty does not recognise the present or point to the future. It enshrines the past”.

George W. Bush, 1st May 2001

Many believe this sentiment should apply to the Single Convention on Narcotic Drugs, which was signed 50 years ago in 1961. But unlike the Strategic Arms Limitation Treaty George W. Bush was referring to, the Convention is not regarded by the US and many other nations as out of date. It is so set in stone as to be immovable, although an amending Protocol was added in 1972. It cannot be denounced (that is, revoked), changed or even tinkered with. Together with two other subsequent Conventions (1972 and 1988), it remains the world's basic control mechanism not only for illicit or illegal drugs, but also the control of these drugs in their legal form, such as morphine.

The Single Convention consolidated all earlier attempts at control, from the 1912 International Opium Convention, known as the Hague Convention, through the Geneva Conventions of 1925 and 1931 and a series of additions, agreements and protocols that beefed up regulations and amended conventions. It established four schedules of drugs. Schedules I to III largely reflect the A,B,C of the UK classification system.

The schedules were based on distinctions made by the 1931 Geneva Convention. Schedule 1 drugs were those capable of causing addiction, being converted into addictive drugs but which were rarely used in medicine and Schedule II drugs were those that did not cause addiction, were capable of being converted into addictive drugs, and widely used in medicine. The Schedule III drugs were largely those which had been exempted from the more onerous burdens of regulation. Schedule IV was the tightest of all. It existed for those Schedule I drugs for which nations may want to introduce stricter controls or more severe punishments.

Therefore the classification system we have today is based on the thinking from 1931. The Commission on Narcotic Drugs can add to or change the drugs under control. The main drugs under control were the opium poppy, the coca bush and cannabis (but only the ‘flowering and fruiting tops of the cannabis plant’).

A Geneva Convention in 1924, also known as the Second Opium Conference, was called to set maximum limits on production of legal morphine, heroin and cocaine and to restrict for export the raw materials from which the drugs were made. The Americans walked out when their proposal to restrict the use of opium and coca drugs to “medical or scientific” purposes was rejected. Other countries argued this would make the League of Nations authority superior to their national sovereignty – they wanted control over their own domestic drug policy.

The issue of cannabis was not even on the agenda, but in the furore that followed the walk-out, Egypt's delegate Dr Mohamed El Guindy proposed a ban on cannabis, supported by the Turkish delegate and also by any remaining Americans. El Guindy may have been motivated by a desire to punish the British for their occupation of his country, which had ended only two years previously. Moreover, the ban would hit a very large cannabis trade between the UK and India; cannabis, or Indian Hemp, was the main source for rope-making and sailing ships traditionally used a prodigious amount of rope. So the compromise was to define cannabis as the flowering and fruiting tops of the plant, which definition was incorporated into the 1961 Convention which says “this Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes...or horticultural purposes”.

In the run-up to Single Convention, there was a strong US-led push to create a worldwide total ban on morphine and heroin, one that would even withdraw it from medicinal use. But other countries resisted. The UK, guided by the Rolleston Committee of 1926, had taken the treatment route and permitted physicians to prescribe these drugs if “after every effort has been made for the cure of addiction, the drug cannot be completely withdrawn”.

The prohibitionists had started their campaign in 1923, continuing at the Geneva conferences of 1925 and 1931,

and through the WHO in 1955. But at the 1961 Single Convention discussions, other countries insisted on a clause in the preamble “recognising that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes.” The drugs being controlled should be limited to “medical and scientific purposes”, but these terms were never defined, thus allowing the prescription of heroin to heroin addicts in England and later in the 1990s in Switzerland and the Netherlands.

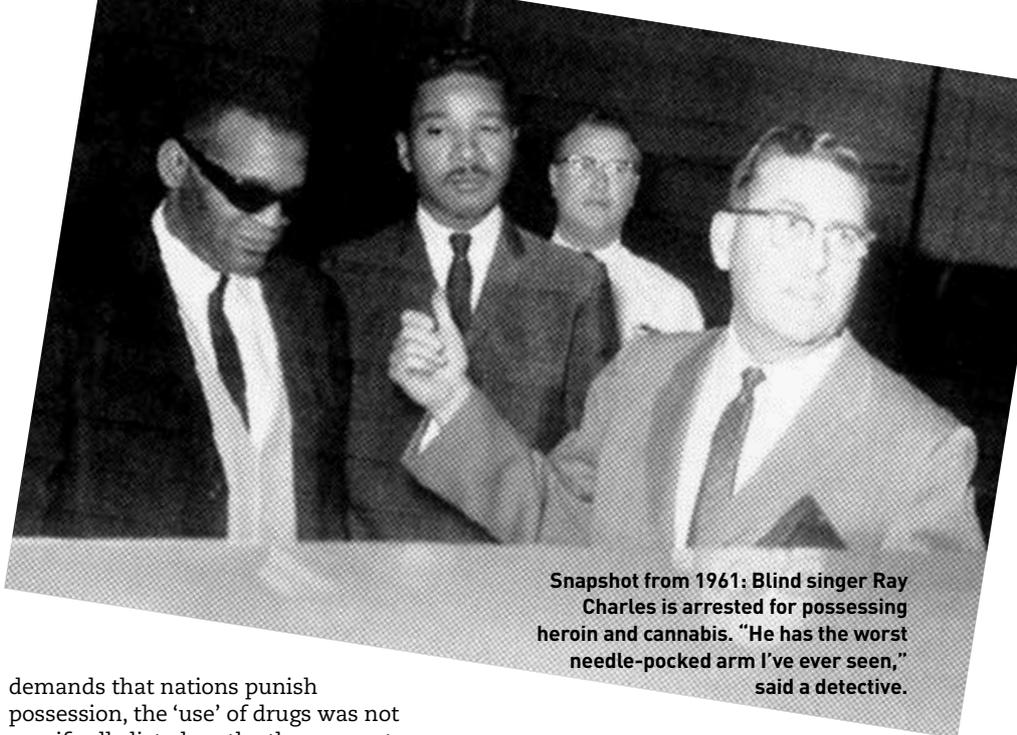
The Single Convention set out a list of substances under control and established the bodies to supervise that control, namely the Commission on Narcotic Drugs and the International Narcotic Control Board (INCB). It is, however, important to note that they have no mechanism to enforce or execute the Convention, other than pillorying parties that do not follow their interpretation of the Convention.

The 1961 Convention’s two ‘guardians’ have since shaped much international policy and practice. The Commission on Narcotic Drugs now comprises 53 member states, but virtually every country sends an observer if they are not a member, and since no votes are taken the distinction is marginal. The INCB comprises only 13 ‘experts’.

The essential role of the INCB is to “ensure adequate availability of narcotic drugs, including opiates, for medical and scientific purposes, while at the same time preventing illicit production of, trafficking in and use of such drugs”. To this end, governments estimate their needs on an annual basis and the Board attempts to match these with estimates from officially recognised manufacturers and growers in countries authorised by the Board. Governments can then import or manufacture any of these drugs within the estimated ranges.

The Board’s functions, therefore, were supposed to be limited to monitoring and controlling the legal production, import and export of opium, cannabis and cocaine, and ensuring stringent controls to prevent supplies being diverted to the illicit market. However, both as a result the influence of some early secretaries to the Board and also because of the self-importance with which some Board members view their brief and role, its pronouncements often greatly exceed its original brief and often go beyond board members’ spheres of technical competence.

Although the Convention specifically



Snapshot from 1961: Blind singer Ray Charles is arrested for possessing heroin and cannabis. “He has the worst needle-pocked arm I’ve ever seen,” said a detective.

demands that nations punish possession, the ‘use’ of drugs was not specifically listed, so they are not required to punish the offender. This led over the years to many vehement exchanges at the Commission on Narcotic Drugs where the US insisted that possession and use were the same, and the Netherlands, among others, that they were not, and that the UN had no right to interfere in a sovereign nation’s domestic legislation. The US was eventually to get its way in 1988 when the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances obliged signatories to make the possession of controlled drugs for personal consumption a criminal offence under domestic law.

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Out of 51 Articles in the Convention, only one (Article 38) deals – in three very brief sentences – with ‘measures against the abuse of drugs’, in other words drug education and treatment. “The Parties shall give special attention to and take all practicable measures for

the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the person involved and shall co-ordinate their efforts to these ends”.

One of the most misunderstood parts of this and subsequent Conventions, and often misunderstood by international lawyers, is that the conventions are immovable. Article 46 of the 1961 Convention states it can be denounced, while Article 47 says that “any Party may propose an amendment to this Convention.”

Yet no member state is going to risk being a pariah state and threatening the whole international treaty edifice by denouncing the Convention. Although the Convention says that it can be amended, de facto it cannot because the mechanism to do so makes it highly unlikely. A proposed change has to go from the Commission on Narcotic Drugs to its next superior body in the UN – The Economic and Social Council (ECOSOC). Unanimity is required: just one country opposing the amendment will kill it.

And then there is the 1969 Vienna Convention on the Law of Treaties which states that “every treaty in force is binding upon the parties to it and must be performed by them in good faith.” In effect, once you have signed a treaty you cannot get out of it – unless, as in the case of strategic arms, the super-powers agree. In the matter of illicit drugs, they never will.

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