

TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS

DRAFT CONVENTION FOR THE SUPPRESSION OF ILLICIT TRAFFIC IN DANGEROUS DRUGS.¹

C.199(a).M.109(a).1935.XI.
[O.C.1599(a).]

FURTHER REPLIES FROM GOVERNMENTS TO THE SECRETARY-GENERAL'S LETTER, DATED JULY 16TH, 1934² (SECOND CONSULTATION).

Note by the Secretary-General.

Geneva, October 22nd, 1935.

With reference to document C.199.M.109.1935.XI,³ the Secretary-General has the honour to communicate herewith to the Members and States non-members of the League, and to the Council, the replies to the letter of July 16th, 1934, received between May 7th and October 22nd, 1935.

List of countries United States of America, Brazil, Free City of Danzig, Egypt, Roumania and Uruguay

I. UNITED STATES OF AMERICA. (Note dated April 20th, 1935, received in the Secretariat on May 14th, 1935.)

Department of State,
Washington, D.C.

The draft Convention under reference appears to be substantially similar to previous drafts in regard to which the views of the Government of the United States have already been communicated to the Secretary-General of the League of Nations, the last communication having been transmitted to the Secretary-General, through the American Legation at Berne, under date of April 13th, 1934.

The Government of the United States is, therefore, constrained to reiterate the views expressed in previous communications to the effect that (1) it would not be practicable to give effect in the United States to the provisions of the draft Convention which would require prosecution in one country for offences committed in another country and (2) in the opinion of this Government, the provisions of existing treaties for the suppression of illicit activities connected with the traffic in narcotic drugs, if given proper effect by all the interested Governments, are adequate to accomplish the purpose of the treaties.

For the reasons stated, therefore, the Government of the United States would not feel disposed to participate in the proposed Convention.

2. BRAZIL (September 9th, 1935).

Extract of letter from the Consulate of the United States of Brazil, Geneva.

I am authorised to inform you that the Brazilian Government, in reply to Circular Letter 120.1934.XI, of July 16th, 1934, approve the draft of articles suitable to be included in an international Convention for the Suppression of the Illicit Traffic in Dangerous Drugs.

¹ See *Official Journal*, June 1935, page 674.

² Circular Letter 120.1934.XI.

³ See *Official Journal*, June 1935, page 677.

3. FREE CITY OF DANZIG (September 16th, 1935).

Polish Delegation accredited
to the League of Nations, Geneva.

Following on the enquiries made by the League Secretariat on August 29th, 1933, under Circular Letter 159.1933.XI, and on May 30th, 1934, under Circular Letter 120.1934.XI, concerning the observations of the Free City of Danzig on the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, the Polish delegation has the honour to inform the Secretary-General that the Senate of the Free City has notified the Polish Government of its intention not to accede to the Convention in question.

The Senate gave as its chief reason the fact that no narcotic drugs are produced or manufactured in the territory of the Free City. The very small quantities coming from abroad and intended for medical requirements are subject to strict control. Moreover, up to the present, the Danzig police authorities have not discovered in the territory of the Free City any persons engaged in the illicit traffic in narcotics.

The Senate of the Free City therefore considers that the legal means at its disposal for combating the less serious offences in connection with the illicit traffic in narcotics are quite satisfactory and states that it does not appear to be necessary for the Free City of Danzig to accede to that Convention.

4. EGYPT (July 13th, 1935).

Ministry for Foreign Affairs,
Department of Political and Commercial Affairs,
Political Relations.

I have the honour to inform you that the Egyptian Government, which is engaged in Egypt in a very active campaign against the use of narcotic drugs, is particularly interested in the international suppression of the traffic in dangerous drugs. Consequently it can only subscribe to the principles underlying the draft Convention, the aims of which it thoroughly approves.

At the same time, the methods envisaged in the Convention for achieving these aims call, from the Egyptian standpoint, for certain observations.

The purpose of the proposed Convention is to ensure the suppression of the illicit traffic in dangerous drugs, not only by standard definitions of punishable acts, but also by deservedly severe penalties.

But, as there are fourteen consular courts in Egyptian territory, and as they do not always apply the general principles in force in the capital, varied and often ineffective penalties may be imposed in Egypt for the offences mentioned in the Convention, according to the competent court.

The Egyptian Government feels that the Convention cannot allow diverse and inadequate penalties to be imposed in the territory of one contracting State (and that a State in which the campaign against narcotic drugs is of the highest importance), when it is endeavouring to do away with such a state of affairs in all countries signatories to the Convention.

Following the example set in the Convention for the Supervision of the International Trade in Arms, an article should be added to the proposed Convention, under which " the High Contracting Parties who possess extra-territorial jurisdiction in the territory of another State party to the present Convention undertake, in cases where the rules of this Convention cannot be enforced by the local courts as regards their nationals in such territory, to impose on the latter the penalties laid down in their national legislation for any acts contrary to the provisions of the present Convention "

It is essential to Egypt that these words should appear in the Convention, for this change would enable offenders who are nationals of the capitulation Powers to be dealt with in Egyptian territory on the same footing as nationals of the country and foreigners amenable to the national courts.

The list in Article 1 is more comprehensive than the terms of Egyptian narcotic drug legislation, which does not cover the manufacture, conversion, extraction or preparation of dangerous drugs. As Egypt does not produce these drugs, it was not thought necessary to make those acts offences under the law but the Egyptian Government is prepared to accept the most comprehensive list of drug offences and to amend its legislation accordingly.

With regard to penalties, the Egyptian Government is not in favour of dividing the offences mentioned in Article 1 into serious and less serious offences, the latter punishable only by a fine or by administrative penalties. It is difficult, without weakening the repressive measures and without causing undesirable divergencies and inequalities between various bodies of national law to make such distinctions in the Convention or to leave it to the national legislations to make them, especially as there are no administrative penalties in some countries.

Apart from the possession of narcotic drugs by a private individual for his personal use, which does not come within the scope of the Convention and should accordingly be omitted from Article 1, all the acts enumerated in this article, including possession, are undoubtedly serious acts calling for severe penalties, because they can only be committed with a view to traffic in dangerous drugs. The Egyptian Government is therefore of opinion that it would be preferable to do away with fines and to make imprisonment compulsory for all the offences mentioned in this article.

The Egyptian Government approves the Italian proposal that Articles 1 and 2 should specify the minimum term of imprisonment to be introduced into the legislation of States acceding to the Convention for the offences indicated in the said articles.

On the contrary it is unable to support the proposal of the Union of Soviet Socialist Republics with regard to the introduction of a clause providing for the confiscation of property, as this is incompatible with the fundamental principles of most modern constitutions. Furthermore, while it could accept Canada's proposal to make conspiracy in narcotic drug cases a punishable offence (the new Article 47a of the Egyptian Penal Code on voluntary agreements is in accordance with this proposal), it could not support the proposal that acts committed on the territory of one of the contracting parties directed against the narcotic laws of any other contracting party should be punishable. The latter proposal would be unnecessary if, as a result of the Convention, narcotic drug offences were made the same everywhere, if conspiracy were made punishable, and if preparatory acts were regarded as separate offences (further reference will be made to this later on), and, lastly because possession is in itself an offence under the Convention.

The original text of Article 1, paragraph 2, stated that "the above offences shall be punishable even when the various acts forming the elements which constitute the said offences have been committed in different countries"

As revised, paragraph 2 of Article 1 would not seem to have achieved its purpose of making the original paragraph clearer. It contains an ambiguity which was not present in the first draft. Does this measure relate to the combination of offences or penalties, which would be ruled out by the very fact that there is only one offence committed in several countries, or does it apply to subsequent offences even though the acts, if punished, would in any event be taken into account as introducing the aggravating circumstance of previous convictions in bodies of law which provide for the international recognition of previous convictions?

The conception "preparatory act" is also inconsistent with the condition that this act must constitute a commencement of execution. In these circumstances, it is no longer a preparatory act but an attempt.

Furthermore, if the preparatory act mentioned in paragraph 2 must constitute a commencement of execution either in the country in which it was committed or in another country, this provision is not necessary in the first case in view of paragraph 3, under which attempts are punishable, whereas in the second case we do not see how it is possible to impose penalties for a preparatory act which is not a commencement of execution in the country where it was committed and which is not regarded as a separate offence.

These provisions, however, are unsatisfactory in any event, owing to the vagueness of the expression "preparatory act". In the Convention for the Suppression of Counterfeiting Currency, which nevertheless deals with an offence involving more serious and more precise preparatory acts, this very obscure conception was avoided. It should also be avoided in the Convention on narcotic drugs.

In this matter as in crimes against the safety of the State, preparatory acts such as the possession of bombs or material serving for the commission of the offence constitute offences *suu generis*, and are punishable as separate offences. There is, therefore, no reason why the Convention should not treat acts preparatory to the offences mentioned in Article 1 as separate offences. To regard possession in itself as a punishable offence, possession in most cases being only preparatory to another offence, is surely a way of treating the preparatory act as a separate offence. If this suggestion were adopted, it would be necessary to punish attempts at preparatory acts regarded as separate offences.

Lastly it is pointed out that conspiracy on Egyptian territory in connection with an offence committed abroad is not punishable under Egyptian legislation, as it does not disturb Egyptian public order. The Convention might, in the interest of international solidarity, provide for the punishment of acts of conspiracy coming within the above category. In this event, Egyptian legislation would conform to that rule.

The Egyptian Government therefore proposes the following wording for paragraphs 2 and 3.

"The above acts shall be punishable even when the various offences forming the elements which constitute the said acts have been committed in different countries.

"The above-mentioned legislative provisions shall make punishable each of the above acts and also attempts."

Ad Article 2. — This article only concerns countries (Egypt is not one of them) which have accepted the principle of the international recognition of previous convictions. As very few Egyptians are resident abroad, the introduction of this principle would only interest Egypt if the consular courts applied it in exercising penal jurisdiction over nationals of the capitulation Powers.

In this case there would be no objection to adopting the principle of the international recognition of previous offences. In that hypothesis, Article 2 of the Convention would be applied.

5. ROUMANIA (July 17th, 1935).

Royal Roumanian Legation
accredited to the League of Nations

I have the honour to inform you that the Roumanian Government has no observation to make in regard to the draft Convention for the Suppression of Illicit Traffic in narcotic drugs.

6. URUGUAY (August 23rd, 1935).

Ministry for Foreign Affairs.

I have the honour to transcribe below the report of the Narcotics Control Department at the Ministry of Public Health.

Montevideo, August 8th, 1935.

From the Narcotics Control Department to the Minister of Public Health.

After studying the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, on which the Government of Uruguay was asked to express its opinion, the Executive Department considers that, in principle, international co-operation in the suppression of the illicit traffic in dangerous drugs should be one of the most cherished aspirations of every nation in the world. However, it considers it expedient first of all to explain to the League Secretariat, through the Ministry for Foreign Affairs, the exact position of our country. As regards penal measures, we would state that:

1. Uruguay has already imposed severe penalties under her new law relating to the Penal Code which came into force on December 1st, 1934, in virtue of the provisions of Article 223, the text of which has on two occasions been communicated in the reports of the Government of the Eastern Republic of Uruguay on the traffic in opium and other dangerous drugs for the years 1933-34 and 1934-35, which were sent to the international supervisory body in accordance with existing engagements.

2. In the opinion of the Executive Department and the Commission for Suppression, these penal measures are essential for the defence of each country and for the achievement of tangible results in regard to the suppression of the illicit traffic. However, from the international standpoint, our country will derive little benefit from the draft treaty because, its neighbours have not signed the Geneva Convention for limiting the Manufacture of Narcotic Drugs of July 13th, 1931, which was ratified by Uruguay by Decree-Law of April 3rd, 1933. Nevertheless, Uruguay has not remained inactive, and, in the opinion of the Executive Department, this should be pointed out by the Government of the Republic to the League Secretariat. In fact, it was on the proposal of the Uruguayan Government, as can be seen from the original Minutes and the report of the technical delegation of the Public Health Ministry that the problem of addiction and the control of the licit and illicit traffic in narcotics was discussed by that important international body. This department considers that the proposal in question, which was approved on December 22nd, 1933, should be transcribed in full in the final report of the Ministry for Foreign Affairs—subject to the approval of the Minister of Public Health—so as to make it quite clear that Uruguay has been a most active promoter of all measures designed to combat the various aspects of the traffic in opium and other dangerous drugs. Moreover, the Commission for the Suppression of Addiction, attached to the Public Health Ministry initiated confidential negotiations with the Argentine and Brazil for the purpose of inducing those neighbouring countries to accede to the Geneva Convention for limiting the Manufacture of Narcotic Drugs of 1931. At the ninth Pan-American Health Conference, the plenipotentiary delegates of Uruguay again stressed the necessity for the American countries represented at the Conference to ratify the Opium Convention in question, as they had been urged to do in December 1933 during the seventh Pan-American Conference.

3. In the Argentine, Bolivia, Paraguay Peru and Uruguay the Penal Law Treaty of 1889 is in force, nearly all the measures proposed in the League's draft—Circular Letter 120.1934.XI—are already embodied in that treaty. For the League's information, we transcribe below the relevant articles of the Penal Law Treaty of 1889, which was ratified by Uruguay on October 17th, 1892:

" *Article 1.* — Irrespective of the nationality of the victim, the perpetrator or the injured party offences shall be tried by the courts and punished in accordance with the laws of the nation in whose territory they are committed.

" *Article 2.* — Persons committing punishable acts in one State who would be brought before the authorities of that State if the offence produced its effects therein shall, if the said offence injures only rights and interests guaranteed by the laws of another State, be tried by the courts and punished in accordance with the laws of the latter.

" *Article 6.* — Acts committed in the territory of a State which are not punishable in accordance with its laws but are punishable by the country in which they produce their effects may not be tried by the latter unless the offender falls within its jurisdiction."

No comments need be added to the foregoing considerations. We would merely repeat that the Executive Department considers that the international position of Uruguay in regard to the suppression of the illicit traffic in dangerous drugs should be made quite clear.
