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NARCOTIC DRUGS AND THE TASKS OF INTERNATIONAL CRIMINAL LAW

(A short summary of the text.)

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With the customary use or consumption of certain things the State is in general not concerned. As soon as such a custom, however, produces an abnormal state of affairs she cannot remain indifferent any more and is bound to make a stand through her various administrative ramifications and especially by the medium of penal law. Considering this, narcotic drugs owing to their effect will also justifiably arouse the keen interest of criminal law.

The one-by-one enumeration of narcotic drugs by their names would not suffice to determine their conceptional boundaries apart from other things. At the same time a mere definition of their essential common properties cannot be either reassuring in itself. Therefore, under the heading of narcotic drugs come all substances that, inducing through their use or consumption a habit of a constant nature detrimental to health and arousing criminal tendencies, are denoted as such on the ground of the latest scientific experiences by a properly qualified international committee.

Penal law is interested in narcotic drugs in their numerous aspects. Notably, narcotics may serve in many an instant as the means for the perpetration of criminal acts, but they can be used at the execution of some punishment, too. Further, it is not to be doubted that an addiction in narcotics will influence the normal psycho-moral condition of the person using or consuming them in such a way as to render the addict not at all or only to a reduced degree responsible to law. Proper appreciation should be given also to the affirmations made on the part of drug addicts. Worthy of notice are also those addicts who are in a house of detention for some criminal act and are suffering there in want of their habitual drug over the measure of their punishment. But, alongside of all these, two problems must be placed in the foreground of our considerations: the question of the illicit traffic in drugs and that of the “sui generis” figure of the drug addict.

The world striving to attain universal human welfare realised rather lately the necessity of taking up the struggle against the contamination of narcotics. After a few unsuccessful attempts the first conference of any importance assembled in Shanghai in 1909 endeavouring to effect the solution of the question of narcotic drugs. A repeated conference was held at The Hague in 1912 and this time the so-called International Opium Convention was brought into existence. Afterwards the appearance of the League of Nations opened up new and wide channels – towards the suppression of the addiction in narcotics. In 1924 two opi-

um conferences were held in Geneva. An important stage was reached in 1926 by the exertions of the Persian enquiring committee, then again in 1929 by those of the Far-Eastern enquiring committee. A wide-ranged international conference aiming to limit the production of narcotics assembled in Geneva in 1931. Equally in 1931 the possibilities of the suppression of opium smoking were discussed at Bangkok. In 1936 a momentous conference was held in Geneva for the suppression of the illicit traffic in narcotics. In the years immediately preceding the 1939/1945 World War plans were being elaborated for a further conference and, although the military events prevented its convocation, the organs of the League of Nations endeavoured to proceed with their work even during the war.

Since the turning of the century four such international agreements were drawn up as have an interest, each of them, for all parts of the world from the standpoint of the struggle against narcotics and it shows up a deficiency in international collaboration that only nine States could be found acceding to all four agreements. A solution of the problems of narcotics, after having laid down its principles, can be arrived at only through complete international solidarity. In this way only can be reached a satisfactory solution concerning the all important question of the addiction and the illicit traffic in narcotics.

The gist of the problems involved in illicit traffic may be brought to light in the concise question whether it seems to be necessary and right and, if so, in what way and manner, to restrict the free traffic in narcotics by the means of criminal law.

The proper limits to the traffic in narcotics are set by medical and scientific needs. Upon some territories a traffic exceeding these needs has been also permitted, which is to be considered as lawful illicit traffic.

The modes of engaging in illicit traffic can not be enumerated. Smuggling and forbidden inland trade are most frequently met with. Here belong also the maintenance of premises serving to facilitate the addiction in narcotics and the trading in implements necessary to it. Illicit traffic is encouraged, too, by incitement to addiction in narcotics as well as their giving away. A particularly important form of illicit traffic is the producing of narcotic drugs. Attention should be paid to the participation of minors and women in forbidden traffic.

The struggle against illicit traffic calls for international public interest, consequently it is not enough to inflict severe punishment upon the perpetrators of such crimes, but it is absolutely necessary also to define the legal concept of illicit traffic in narcotic drugs with international unanimity. In this respect the creation of an international police force coupled with an extension of the extradition rules is required yet as well as the perhaps utopian – like international law-courts. Nothing but such international team-work and cooperation may promise success in the face of the illicit traffic's network covering often continents.

Together with the problem of illicit traffic in narcotics another and in its importance equally momentous question abides solution: that of the addiction in narcotic drugs.

The gist of the problem of addiction in narcotics may be brought to light in the concise question whether it seems to be necessary and right for criminal law and, if so, in what manner, to proceed actively against the drug addict merely because of his use or consumption of narcotics.

Although some national legislatures have attempted to give a definition of the drug addict, these definitions were deficient. Taking into consideration all points of view, by drug addict such a person is to be understood as uses or consumes narcotics without medically approved reason.

If it could be ascertained what is it that leads to an addiction in narcotics, then by the suppression of the ascertained reason one might get nearer to the solution. There is no doubt, however, that Man's spiritual abnormalities, nervous or mental derangements, hereditary qualities, sex and age, the climatic conditions of his dwelling-place, medical prescriptions relating to the use of narcotics, his curiosity, profession, social position, or again the shocks he suffers individually, all these cannot be set down as his sole reason for addiction in narcotics. It may be supposed that, whoever is concerned, even a single use or consumption of the drug has the power in itself to awaken a passion for it.

So the question presents itself whether criminal law is allowed to act in any way only because someone is a drug addict or must wait until he commits some crime.

The purpose of penal law does not consist only in retaliating criminal acts of the moment but, even further, in preventing possibly in the present already the crimes of the future. Addiction in narcotics is harmful to health and fosters criminal tendencies. Society must defend itself, therefore, against the probability of this criminal practice, just as we raise a dam against the river though it is not flooding yet. For this reason a firm stand must be made against the drug addict in order to suppress this passion of his which endangers Public Health and Public Security.

To attain this end punishment is unsuitable because for the most it contains reprisals. Criminal-curative treatment is needed, namely the drug addict's subjection to a compulsory abstinence cure.

So it must be declared that addiction in narcotics is to be regarded as a "sui generis" delict and the said measures of security are to be applied against the drug addict. With an eye to international public interest it is necessary also in this respect to define the legal concept of the addiction in narcotics with international unanimity.

The devastating effects and the penally valued danger of narcotics are urging that the question of the illicit traffic and addiction in narcotic drugs should be solved by international collaboration on the grounds of international criminal law.