

IV. Options to address the proliferation of non-scheduled “designer” precursors at the international level

214. Non-scheduled chemicals, alternates, substitute chemicals and pre-precursors are terms often used interchangeably to describe a development that increasingly poses a challenge to one of the pillars of international drug supply control, namely prevention of the diversion of chemicals as stipulated in article 12 of the 1988 Convention.

215. To address the challenges, it is necessary to understand the nature of “designer” precursors and the limitations of the existing legal framework with its focus on monitoring legitimate trade in a set of priority precursors listed in the two tables of the 1988 Convention.

216. The present thematic chapter builds on the Board’s observations over the years⁴⁷ and is aimed at providing input for a strategic discussion about precursor control in the twenty-first century.

The issue

217. The issue of non-scheduled chemicals is not new.⁴⁸ However, it has made a quantum leap in the past 8 to 10 years. The increases in the sophistication, diversification and scale of illicit drug manufacturing operations have far exceeded anything anyone envisioned at the time the 1988 Convention was drafted. This is especially true for the manufacture of synthetic drugs.

218. As a result, there now is virtually no limit to the range of chemicals and manufacturing methods that may be employed in illicit drug manufacture, including those that were previously considered unusable in illicit settings. Broadly speaking, the chemicals used are obtained from two supply sources, each with its own implications for the controls that can be applied:

(a) Chemicals available off the shelf and regularly traded for legitimate purposes, such as benzaldehyde, methylamine, and esters of phenylacetic acid (see paras. 127, 134 and 150 above);

(b) “Designer” precursors, which are purpose-made, close chemical relatives of controlled precursors and can easily be converted into a controlled precursor; they usually have no legitimate use and are therefore not traded widely and regularly (see box 5). Some of the commonly encountered “designer” precursors are the derivatives of P-2-P and 3,4-MDP-2-P methyl glycidic acid (see paras. 124 and 147 above).

219. While chemicals in the first category are, in principle, suitable for the monitoring system laid down in

⁴⁷INCB has repeatedly highlighted the issue, most comprehensively in the thematic chapter in its 2014 report on precursors, entitled “Making precursor control fit for 2019 and beyond (a contribution to the special session of the General Assembly in 2016)” (E/INCB/2014/4, paras. 24–27, 30–35, 208 and 209).

⁴⁸See, for example, the twentieth special session of the General Assembly, devoted to countering the world drug problem together, held in 1998, and the resulting resolution S-20/4 B, as well as the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem of 2009.

article 12 of the 1988 Convention, it is clear that the number of non-scheduled substances that could be used to replace the controlled precursors is almost infinite and poses a challenge to the international precursor control system for two reasons in particular:

(a) A system of assessments of individual substances and substance-by-substance scheduling will almost certainly be reactive and lag behind the speed of innovation of traffickers;

(b) Monitoring of international legitimate trade is at the core of the international precursor control regime. However, many of the chemicals that have recently emerged were designed specifically to circumvent controls. They have no legitimate uses beyond limited research and analysis, and there is no regular trade in them (i.e., they are not available off the shelf, although they may be manufactured on demand, including for legitimate industrial use).

220. Governments face significant difficulties in preventing non-scheduled chemicals from reaching clandestine laboratories. Some of those are legal in nature, others may stand in the way of cooperation. Therefore there is a need to provide Governments worldwide with a common framework and legal basis to address those challenges jointly.

Limited international special surveillance list

221. In 1998, pursuant to resolution 1996/29 of the Economic and Social Council, INCB established the limited international special surveillance list of non-scheduled substances to meet the need for flexible, complementary approaches.⁴⁹ The list, together with the recommended actions associated with it, enables Governments, in cooperation with the industries concerned, to establish uniform procedures and a common approach to preventing the diversion of non-scheduled chemicals. However, use of the list and cooperation with industry are voluntary.

222. The list currently contains 53 individual substances. In 2013, in response to the proliferation of “designer” precursors, INCB expanded the list in a generic manner. This meant that, instead of merely listing individual substances, the Board introduced extended definitions that capture common derivatives and other substances with chemical structures related to substances listed in Table I or Table II

⁴⁹The Board circulates the limited international special surveillance list of non-scheduled substances to competent national authorities once a year. The latest version is available from the Board’s secure web page. The list is also available on request.

Box 5. Types of “designer” precursors

The chemical concepts that traffickers have employed in recent years to circumvent controls include:

- Series of related substances, such as esters and other simple derivatives from which a controlled precursor can often be recovered by a single hydrolysis step;
- Stable chemical intermediates, i.e., chemicals that are generated during the synthesis process for a controlled drug or precursor but are normally not isolated, and hence not traded, but immediately consumed in the next reaction step. APAAN and APAA are examples of such intermediates in the manufacture of P-2-P, amphetamine and methamphetamine. Purpose-made chemical intermediates have also been encountered as substitute precursors of fentanyl (see para. 204 above) and ketamine (see para. 208 above);
- Masked derivatives of controlled precursors (see paras. 124 and 147 above), i.e., chemicals that are not under international control but can easily be converted into the corresponding controlled precursor; the concept of masked precursors is based on what is known in organic synthesis as protection group chemistry;
- Masked derivatives of controlled drugs (see para. 156 above), i.e., substances that are not under international control but can easily be converted into the corresponding drug; their manufacture first requires the manufacture of the drug end product, which is subsequently converted into the non-scheduled masked derivative to disguise its identity and minimize the risks during smuggling.

of the 1988 Convention and that can be converted into a controlled precursor by readily applicable means.

223. The limited international special surveillance list and similar national and regional monitoring lists provide, in principle, the flexibility necessary to proactively address series of chemically related substances and “designer” precursors. However, the use of those lists is not legally binding and depends on both the level and the reach of voluntary cooperation between authorities and industries.

The 1988 Convention

224. The only way to subject a chemical to a global, legally-binding framework is by including it in one of the tables of the 1988 Convention. However, the scheduling process applies to individual substances only. Generic extensions are limited to salts⁵⁰ and optical

isomers.⁵¹ The tables of the 1988 Convention, unlike the schedules of the 1961 Convention and the national precursor legislation of many countries, do not extend controls to derivatives such as esters.

225. However, the 1988 Convention also provides guidance for developing national legislation that addresses non-scheduled chemicals and “designer” precursors. INCB has, in the past, pointed out the applicable provisions of the Convention, most importantly article 13 (materials and equipment). Other applicable provisions are set out in article 12, paragraph 8 (monitoring of national manufacture and distribution) and article 24 (stricter measures) (see box 6). Ways to address non-scheduled chemicals at the national level have also been set out in various resolutions of the Commission on Narcotic Drugs, most recently and comprehensively in its resolutions 56/13 and 60/5.

⁵⁰Each table of the 1988 Convention is accompanied by the phrase “the salts of the substances listed in this Table whenever the existence of such salts is possible”. (For Table II, the salts of hydrochloric acid and sulphuric acid are specifically excluded.)

⁵¹Although not explicitly stated in the 1988 Convention, it is understood that the names of each of those substances, as listed in the tables of the Convention, covers all (optical) isomeric forms of the substance (see the Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, p. 251, footnote 543). This is also reflected in the scheduling decisions of the Commission on Narcotic Drugs, which refer to the substance and its optical isomers, where applicable.

Box 6. Guidance provided for by the 1988 Convention*Article 13 of the 1988 Convention*

Article 13 of the 1988 Convention requires the parties to take such measures as they deem appropriate to prevent trade in and the diversion of materials and equipment for the illicit production or manufacture of narcotic drugs and psychotropic substances and to cooperate to this end. While this is not mentioned specifically, article 13 could be interpreted quite broadly to cover non-scheduled chemicals and emerging precursors (see also paragraphs 13.1 and 13.4 of the Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988). In its resolution 56/13, the Commission on Narcotic Drugs recalled article 13 as a basis for national responses to illicit drug manufacture involving non-scheduled substances.

Read together with article 3, paragraph 1, subparagraph (a), clause (iv), of the 1988 Convention, article 13 makes it mandatory for parties to establish as criminal offences the manufacture, transport or distribution of [...] materials and equipment when they are to be used for illicit purposes.^a These provisions relate not only to materials and equipment used for illicit laboratories within a party's territory, but also to materials and equipment that are smuggled out of or exported from the party's territory to other countries and used in illicit laboratories in those countries (see also paragraph 13.3 of the Commentary).

Article 12, paragraph 8, of the 1988 Convention

Article 12, paragraph 8, requires the parties to take the measures they deem appropriate to monitor the manufacture and distribution of substances in Table I and Table II. This provision could also serve as a basis for taking measures against non-scheduled chemicals and emerging precursors, namely those that are starting materials and/or intermediates in the legitimate manufacture of substances in Table I and Table II of the 1988 Convention. National legislation adopted pursuant to this provision may include regulatory controls and/or criminal sanctions for the intentional commission of offences set out in article 3 of the 1988 Convention.

Article 24 of the 1988 Convention

Article 24 of the 1988 Convention provides a general basis for parties to put in place stricter measures of control than those mentioned in the Convention.

^aThese provisions are extended to the possession of materials or equipment (subparagraph (c), clause (ii) of article 3, paragraph 1). Article 3, paragraph 1, subparagraph (a), clause (v), and subparagraph (c), clause (iv), further extend the provisions for criminalization to the organization, management or financing of any of these offences, and to participation in, association or conspiracy to commit, attempts to commit, and facilitating the commission of any of the offences established in accordance with article 3.

The need for a common legal basis for interdiction and international cooperation

226. INCB considers that there is a need for a broader policy discussion about the options available to address the proliferation of series of non-scheduled chemicals and “designer” precursors at the international level. Such a policy discussion should complement and expand proven concepts in precursor control that have yielded results in the past and will continue to do so in most cases involving internationally controlled precursors.

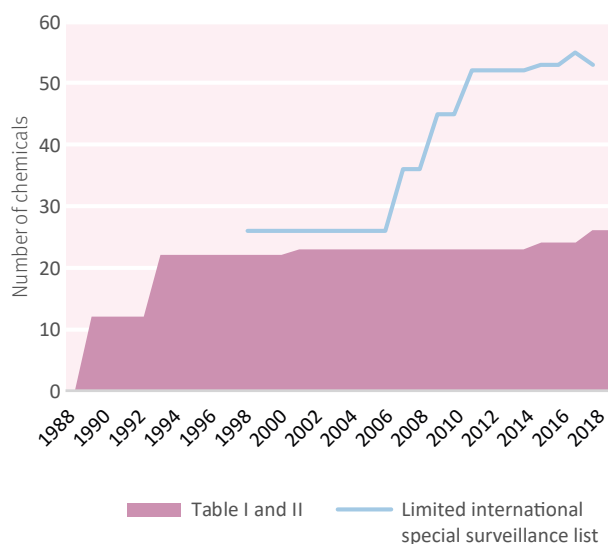
227. The need for that discussion has become particularly evident during the recent assessment of chemicals for possible inclusion in the tables of the 1988 Convention. Two of the chemicals assessed, APAA and 3,4-MDP-2-P methyl glycidate (the methyl ester of 3,4-MDP-2-P methyl glycidic acid), can be considered “designer” precursors. APAA is a close chemical relative of APAAN and started to emerge after APAAN was placed under control in 2014. A substitute for APAA is already available in illicit markets. 3,4-MDP-2-P methyl glycidate is one of a series of derivatives of 3,4-MDP-2-P methyl glycidic acid, and INCB has

formally issued a supplementary notification to capture at least one other known chemical relative that has been seized with equal frequency.

228. Controlled precursors can be replaced by an almost infinite number of substitutes (see figure XV), including many that have no legitimate uses and are designed purely to circumvent controls, much in the same way as designer drugs and new psychoactive substances are. It is neither feasible nor desirable to include such an ever-growing number of chemicals in the tables of the 1988 Convention, especially if those chemicals do not lend themselves to monitoring in legitimate trade flows.

229. Efforts could rather be focused on establishing a common legal basis that would enable authorities worldwide to disrupt the supply of such chemicals to illicit drug manufacturers without creating any unnecessary regulatory burden. To that end, Member States could identify ways and means to introduce more proactive elements in the tables of the 1988 Convention to address series of chemical relatives and support the prosecution of criminal cases. It should also be possible to establish a separate category of precursor chemicals that do not have any currently recognized legitimate uses. For that category, the provisions regarding enforcement measures, such as the requirement to provide for seizures (article 12, subparagraph 9 (b), of the 1988 Convention) could be separated from the regulatory requirement to monitor licit trade.

Figure XV. Numbers of chemicals in Table I and Table II of the 1988 Convention and on the limited international special surveillance list of INCB, 1988–2018



230. INCB encourages Governments to consider all available options and to work with the Board to make the framework for international precursor control more responsive to current challenges.